

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No.2347/Bang/2019

Assessment Year : 2015 - 16

M/s Metric Stream Infotech (India) Pvt. Ltd., AMR Tech Park-4B, No.23 & 24, Hongasandra Village, Begur Hobli, Bengaluru South Taluk, Bengaluru-560 068. PAN – AACCM 4991 K	Vs.	The Asst. Commissioner of Income Tax, Circle-4(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Padamchand Khincha, C.A
Respondent by	:	Shri Muzaffar Hussain, CIT (DR)

Date of Hearing	:	11-03-2020
Date of Pronouncement	:	24-04-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against final assessment order dated 27/09/2019, passed by Ld.ACIT Circle-4(1)(2), Bangalore under section 143(3) read with 144C of the Act on following grounds of appeal:

- 1. The Orders passed by learned Deputy Commissioner of Income Tax, Circle . 4(1)(2), Bangalore (hereinafter referred as "AO" for brevity), learned Assistant Commissioner of Income Tax (Transfer Pricing Officer) . 2(1)(1), Bangalore (hereinafter referred as "TPO" for brevity) and the Honourable*

- DRP-2, Bengaluru ("AO", "TPO" and DRP collectively referred as "Income tax authorities" for brevity) are bad in law and liable to be quashed.
2. The learned DRP has erred in confirming the action of AO in making a reference for the determination of the Arm's Length Price of the international transactions to the TPO without demonstrating as to why it was necessary and expedient to do so.
 3. The Income Tax Authorities have erred in not appreciating that, the addition made to the income returned is bad in law as the charging or computation provision relating to income under the head "Profits & Gains of Business or Profession" do not refer to or include the amounts computed under Chapter X.
 4. The Income tax authorities have erred in passing the Order without demonstrating that the Assessee had any motive of tax evasion.

Ground relating to computation of ALP for the software development segment

5. The Income Tax Authorities have erred in:
 - a. Relying on information collected u/s 133(6) of the Act without providing the Assessee the complete information or providing an opportunity to cross examine the companies concerned or their authorized representative in case of following companies;
 - i. Nihilent Technologies Limited
 - ii. Infobeans Technologies Limited
 - iii. Cybage Software Private Limited
 - b. Adopting a flawed process in issuing notices u/s133(6) and relying upon the replies thereto to compute the ALP;
 - c. Not detailing the process as to how and to which companies the notices had been issued and whether all the replies thereto had been considered while concluding the proceedings.
 - d. Rejecting the transfer pricing analysis undertaken by the Assessee on unjustifiable grounds;
 - e. Conducting a fresh transfer pricing analysis despite absence of any defects in the transfer pricing analysis submitted by the Assessee;
 - f. Adopting inappropriate filters like 25% RPT filter, one sided turnover filter, etc in the process of selecting comparables;
 - g. Rejecting following comparables selected by the Assessee in the TP study on unjustifiable grounds;
 - i. Akshay Software Technologies Private Limited; and
 - ii. Sagarsoft India Limited.
 - h. Rejecting the following additional comparables proposed by the Assessee without giving any cogent reasons and on unjustifiable grounds;
 - i. Sankhya Infotech
 - ii. Athena Global Tehnologies Private Limited
 - iii. Evoke Technologies Private Limited
 - iv. Harbinger Systems Private Limited
 - v. Isummation Technologies Private Limited
 - vi. Maveric Systems Limited
 - i. Adopting following companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, turnover, RPT filter, despite having unusual business circumstances or high margins, etc.;

- iv. *Tata Elxsi Ltd*
- v. *Rheal Software Private Limited*
- vi. *Mindtree Limited*
- vii. *Larsen and Turbo Infotech Limited*
- viii. *R S Software Limited*
- ix. *Infobeans Technologies Limited*
- x. *Persistent Systems Limited*
- xi. *Nihilent Technologies Limited*
- xii. *Aspire Systems (India) Pvt Ltd*
- xiii. *Inteq Software Private Limited*
- xiv. *Infosys Limited*
- xv. *Cybage Software Private Limited*

J. *Inappropriately computg the operating margins of following comparables;*

- i. *Tata Elxsi Ltd*
 - ii. *Persistent Systems Ltd*
 - iii. *Sasken Communication Technologies Ltd*
 - iv. *Cigniti Technologies Ltd*
- k. *Not considering provision for doubtful debts as operating in nature despite direction by the DRP.*
- l. *Not making proper adjustment for enterprise level and transactional level differences between the Assessee and the comparable companies.*
- m. *Ignoring the business, commercial and industry realities and economic circumstances applicable to the Assessee vis a vis the comparables;*
- n. *Not recognizing that the Assessee was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account; and*
- o. *Not granting adjustment for working capital differential while computing the ALP.*

Ground relating to computation of ALP for the sales and marketing segment

6. *The learned DRP has erred in confirming the action of the TPO in:*
- a. *Rejecting the transfer pricing analysis undertaken by the Assessee on unjustifiable grounds;*
 - b. *Conducting a fresh transfer pricing analysis despite absence of any defects in the transfer pricing analysis submitted by the Assessee;*
 - c. *Adopting inappropriate filters like 25% RPT filter, one sided turnover filter, etc in the process of selecting comparables;*
 - d. *Rejecting Priya International Limited as a comparable as selected by the Appellant in the TP study on unjustifiable grounds;*
 - e. *Adopting companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, turnover, RPT filter, despite having unusual business circumstances or high margins, etc.;*
 - i) *Ugam Solutions Pvt.Ltd*

- ii. *Axience Consulting Private Limited*
- iii. *Platinum Advertising Private Limited*
- f. *Inappropriately computing the operating margins of comparables;*
 - i. *ICC International Agencies Ltd.*
 - ii. *Kestone integrated marketing services Private Limited.*
 - iii. *Axience Consulting Pvt Ltd.*
- g. *Not making proper adjustment for enterprise level and transactional level differences between the Assessee and the comparable companies.*
- h. *Ignoring the business, commercial and industry realities and economic circumstances applicable to the Assessee vis a vis the comparables;*
- i. *Not recognizing that the Assessee was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account;*
- j. *Not granting adjustment for working capital differential while computing the ALP; and*

Grounds Relating to Notional Interest on Trade Receivables

- 7. *The income tax authorities have erred in:*
 - i. *Ignoring the business, commercial and industry realities and economic circumstances applicable to the Appellant;*
 - ii. *Making adjustment for notional interest on extended payment terms given to AE without appreciating that there is no real income arising to the Appellant;*
 - iii. *Not appreciating that the receivable from the AE is not an international transaction within the meaning of section 92B of the Act;*
 - iv. *Not appreciating that the receivable is not separate transaction from provision of services from which it is arising;*
 - v. *Not appreciating the fact that, the impact of extended credit period would be factored in working capital adjustment while determining the ALP and accordingly, no separate or further adjustment of interest on the receivables is warranted;*
 - vi. *Incorrectly computing the interest on outstanding trade receivables:*
 - *Without prejudice, adopting 6 months LIBOR plus 400 basis points for determining arm's length interest rate at 4.3807%. The rate determined is excessive.*
 - *Without prejudice, not adopting only LIBOR as the basis for benchmarking.*

Ground relating to corporate tax

- 8. *The learned DRP and AO have erred in:*
 - i. *Disallowing a sum of Rs. 61,37,356/- towards service tax paid on expenses and debited to the profit & loss account during the year;*
 - ii. *Concluding an amount of Rs. 61,37,356/- of service tax input written off cannot be claimed as business expenditure without appreciating the fact that, the input tax credit couldn't be utilize in the first quarter of FY 2014-15 as Appellant's services are not liable for output tax;*
 - iii. *Without appreciating the fact that, out of total service tax input written off of Rs.61,37,356/- debited to the profit & loss account during the year,*

the Assessee received refund of Rs. 50,68,250/- on 10-Nov-17 and the same is offered to tax in the return of income for AY 2018-19 and refund of Rs.716,171/- on 22-Oct-18 and same is offered to tax in AY 2019-20.

- iv. Without prejudice, the AU to be directed to exclude Service tax refund offered to tax in AY 2018-19 and AY 2019-20 from the total income of the respective years.*

GROUND RELATING TO INTEREST U/S 234A and 234B

9. The learned DRP and AO have erred in levying a sum of Rs.75,28,600/- under section 234A and Rs.6,00,80,838/- under section 234B respectively. In the facts and in the circumstances of the case, interest under section 234A and 234B is not leviable. The Assessee denies its liability to pay any further interest. Even otherwise, the interest calculated is excessive and incorrect.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

Brief facts of the case are as under:

2. Assessee is a company and filed its return of income for year under consideration on 31/03/2016 declaring total income of Rs.32,73,15,740/-. Notice under section 143 (1) was issued to assessee and the case was selected for scrutiny. Subsequently notice under section 143 (2) was issued along with questionnaire in response to which representative of assessee appeared before Ld.AO and filed requisite details as called for. Ld.AO observed that assessee had international transaction with its associated enterprise that exceeded Rs. 15 crores and accordingly the case was referred to transfer pricing officer under section 92CA of the Act.

3. Upon receipt of reference, Ld.TPO called for economic details of international transaction entered into by assessee with its associated enterprise in form 3 CEB. From the details filed

Ld.TPO observed that assessee had following transaction with its associated enterprise:

Particulars	Amount in received	Total Amount
Provisions of Software Development services	1988372472	1988372472
Provision of sales and Marketing Services	358428957	358428957
Trade Receivables and Closely Linked to service revenue	488951686	488951686
Unbilled Revenue Closely Linked to service revenue	8760209	8760209
Reimbursement of Expenses	97361787	97361787
Total		2941875111

4. Ld.TPO observed that assessee considered TNMM as most appropriate method and OP/OC as PLI for computing arm's length margin of assessee at 13.03% for software development segment 11.03% for sales and marketing services. Assessee used 14 comparables with median margin of 13.03% for software development segment. Assessee used 9 comparables with median margin of 11.03% under sales and marketing segment.

Following are the comparables selected by assessee in the TP study under both these segment:

Software Development Service segment:

S.No.	Name of the Company	Weighted Average of adjusted margins (OP/OC)
1	Sagar Soft India Limited	-0.90%
2	TVS Infotech Limited	2.96%

3	Kals Information Systems Ltd	3.38%
4	Caliber Point Business Solutions Limited (Segmental)	3.65%
5	Akshay Software Technologies Limited	5.37%
6	Sasken Communication Technologies Limited (Segmental)	7.23%
7	Cigniti Technologies Ltd.	8.20%
8	CG-VAK Software a Exports Ltd	11.54%
9	Helios a Matheson Information Technology Limited	15.68%
10	R Systems International Limited (Segmental)	19.43%
11	SQS India BFSI Limited (formerly Thinksoft Global Services Ltd) (Consolidated)	19.63%
12	Larsen a Toubro Infotech Limited	23.54%
13	R S Software (India) Limited	25.46%
14	InfoBeans Technologies Limited	41.60%
	35th Percentile Average Margin	5.37% , 13.03%
	Median	8.20%
	65 th Percentile	19.43%

Sales and Support Service Segment

S.No	Name of the Company	Weighted Average of adjusted Margins (OP/OC)
1	ICC International Agencies Ltd (Segmental)	2.85%
2	I C R A Management Consulting Services Ltd.	3.81%
3	Concept Public Relations India Ltd.	4.24%
4	Priya International Ltd (Segmental)	5.06%
5	Kestone Integrated Marketing Services	7.62%

	Private Limited	
6	MCI Management (India) Limited	8.27%
7	India Tourism Development Corporation Ltd (Segmental)	11.48%
8	E D C I L (India) Ltd. (Segmental)	16.35%
9	Killick Agencies and Marketing Limited	27.52%
	35th Percentile , Average Margins	5.06% , 11.03%
	Median	7.62%
	65th Percentile	8.27%

5. Ld.TPO applied various filters to the comparables selected by assessee under both segments issued show cause notice to assessee in respect of comparables shortlisted by Ld.TPO. After receiving and considering the reply filed by assessee, the final comparables considered by Ld.TPO under both segments are as under:

Software Development Segment:

Sl.No.	Name of the Company	Weighted Average Operating Margin Cost
1	Kals Information Systems Ltd	11.88%
2	E-Zest Solutions Ltd	14.05%
3	CG-V AK Software & Exports Ltd.	18.50%
4	Tata Elxsi Ltd. (Seg)	19.34%
5	Rheal Software Pvt. Ltd	19.88%
6	Mindtree Ltd.	20.55%
7	Larsen & Toubro Infotech Ltd.	24.21%
8	R S Software (India) Ltd.	24.82%
9	Infobeans Technologies Ltd.	29.91%
10	Persistent Systems Ltd	31.69%
11	Nihilent Technologies Ltd.	32.21%
12	Aspire Systems (India) Pvt. Ltd.	34.18%
13	Inteq Software Pvt. Ltd.	37.90%
14	Infosys Ltd.	38.59%
15	Thirdware Solution Ltd.	41.12%
16	Cybage Software Pvt. Ltd.	66.27%
	35th Percentile	20.55%
	Median	27.37%
	65th Percentile	32.21%

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Sales and Marketing Segment

S.No.	Name of the Company	OP/OC
1	ICRA Management Consulting Services	6.99%
2	Kestone Integrated Marketing Services Pvt Ltd	13.30%
3	Irclass Systems & Solutions Pvt. Ltd	15.21%
4	Ugam Solutions Pvt. Ltd.	16.87%
5	Axience Consulting Pvt. Ltd.	18.03%
6	India Tourism Devp. Corpn. Ltd. (Seg)	21.80%
7	Killick Agencies Et Mktg. Ltd.	24.16%
8	Platinum Advetiising Pvt. Ltd.	34.07%
9	ICC International Agencies Ltd. (Seg)	42.04%
	35th Percentile	16.87%
	Median	18.03%
	65th Percentile	21.80%

6. Ld.TPO observed that there is a delay in receipt of payment for receivables and thus computed the outstanding receivables by granting a period of 60 days as per the agreement. Ld.TPO calculated interest at 4.3807% on the amount outstanding.

Ld.TPO thus proposed total adjustment as under:

Sl.No.	Description	Adjustment u/s 92 CA (In Rs.)
1.	Software development segment	25,23,23,880
2	Marketing Support Services	2,26,02,390
3	Interest on delayed receivables	24,18,490
Total adjustment u/s 92CA		27,73,44,760

Ld.TPO did not grant working capital adjustment in the hands of assessee.

Aggrieved by proposed adjustment, assessee raised objections before DRP.

7. DRP while giving directions to Ld.AO excluded hardware solutions Ltd, Intech software as it fails RPT filter for FY 2012-13

and FI 13-14. DRP accepted Cigniti and Sasken Communications as comparables under software development segment.

7.1. Regarding sales and support service segment, DRP excluded Irclass Systems and Solutions Pvt.Ltd, India Tourism Development Corporation Ltd and Killick Agencies and Marketing Ltd as comparables.

7.2. As regarding working capital adjustment DRP upheld the order of Ld.TPO even though this *Tribunal* in assessee's own case for assessment year 2013-14 directed Ld.AO to provide working capital adjustment.

8. On receipt of the directions by DRP, Ld.AO passed final assessment order by making addition in respect of trans-apprising adjustment amounting to Rs.22,02,83,262/-. Ld.AO further made addition on account of service tax input return off amounting to Rs.61,37,356/-. The total income assessed by Ld.AO in the hands of assessee was Rs.55,37,36,358/-.

Aggrieved by order of Ld.AO, assessee is in appeal before us now.

9. Ld.AR submitted that assessee wishes to argue only certain comparables for inclusion/exclusion under both the segments. He submitted that for year under consideration both assessee as well as revenue have considered median of 3 immediately preceding assessment years for computing margin as per newly inserted Rule 10 CA introduced w.e.f. 01/10/2015.

10. Referring to grounds raised by assessee, he submitted that **Ground No.1-4** or general in nature which do not require adjudication.

11. Grounds 5-6 are raised for in appropriate inclusion/exclusion of comparables by Ld.AO/TPO, Ld.AR

submitted that assessee wishes to argue certain comparables for inclusion/exclusion under both segments as under:

11.1. Software Development Service Segment:

Comparables sought for exclusion:

Applying turnover filter: Tata Elxi Ltd (Seg.), Mindtree Ltd., Larsen and Toubro Infotech Ltd., RS Software (India) Ltd., Persistent Systems Ltd., Nihilent Technologies Ltd., Infosys Ltd., Cybage software Pvt.Ltd.

For functional dissimilarities: Rheal Software Pvt.Ltd., Aspire Systems (India) Pvt.Ltd., Infobeans Technologies Ltd., Inteq Software Pvt. Ltd.

For inclusion: Sankhya Infotech, Athena Global Technologies, Evoke Technologies Pvt.Ltd., Harbinger Systems Pvt.Ltd., Isummation Technologies Pvt.Ltd and Maveric Systems Ltd.

11.2. Sales and Marketing Support service segment:

For exclusion: Ugam Solutions Pvt.Ltd., Axience Consulting Pvt.Ltd., Platinum Advertising Pvt.Ltd.

For inclusion: Priya International Ltd (Seg).

12. Before we undertake comparability analysis, it is *sine qua non* to understand functions performed, assets owned and risk assumed by assessee under both these segments.

12.1. Software development service segment:

Ld.TPO observed as under:

FUNCTIONAL ANALYSIS OF THE TAXPAYER

2.1 Metric Stream India is a wholly owned subsidiary of Metric Stream Inc. Metric Stream India is engaged in the business of providing software development services and sales & marketing services to Metric Stream Inc. Metric Stream India is remunerated on cost plus basis for the above services.

Metric Stream Inc. ("Metric Stream") provides Enterprise-wide GRC and Quality solutions for global corporations. Metric Stream enterprise solutions are used in diverse industries such as pharmaceutical, medical device, high tech manufacturing, energy financial services, healthcare, manufacturing, food and beverages, and automotive to manage quality processes, corporate policies manage regulatory and industry-mandated compliance and corporate governance initiatives.

Metric Stream India is a part of Metric Stream Inc. Its 99.65 percent of equity share capital is held by Metric Stream Inc. Accordingly, Metric Stream India shall constitute Metric Stream Inc.'s AEs by virtue of common control and capital.

12.1.1. From TP study at page 257 it is observed that assessee entered into an agreement with its associated enterprise in U.S. according to which assessee is to provide service in relation to information technology strategy, software development, testing, infrastructure management and technical support at cost plus basis.

12.1.2. It is observed that U.S. associated enterprise play significant role in determining business strategy of group including assessee and is responsible for all top management functions of corporate strategy, Treasury, legal and regulatory affairs and designing the policy with respect to its group operations including assessee. At page 260 of paper book, it is observed that no strategic functions are performed by assessee and is primarily performed the tactical managerial functions regarding day-to-day management of business. At page 263 of paper book it is observed that assessee has been providing Ltd functions under software development service segment which includes Ltd functional specifications and requirement analysis,

coding and documentation, project management, testing and quality assurance, limited integration.

12.2. Sales and marketing support segment

In TP study at page 269 of paper book it has been submitted that assessee renders limited assistance in identifying customers in India, advertising and sales promotion under this segment.

12.2.1. Assets owned:

Under both these segment assessee is identified to be owning routine tangible assets like office of equipment, furniture's and fixtures, computer equipment etc

12.2.2. Risks assumed:

Under software development service segment assessee has been identified to be undertaking limited market risk only.

It has been stated that under sales and marketing support segment assessee is hundred percent risk mitigated.

12.3. Characterisation:

On the basis of functional analysis, assessee has been characterised to be a risk mitigated contract service provider for both the segments. The assets scheduled substantiates that the performance of functions are linked to the assets employed which are routine in nature and does not carry out any significant enterprise in real activities nor does it bears any significant risk associated with such services rendered by assessee.

On the basis of above FAR analysis we shall undertake comparability of alleged comparables for exclusion/inclusion.

13. Software development service segment:**13.1. Exclusion alleged by assessee on turnover filter:**

Ld.AR argued that assessee seeks exclusion of Tata Elxi Ltd (Seg.), Mindtree Ltd., Larsen and Toubro Infotech Ltd., RS Software (India) Ltd., Persistent Systems Ltd., Nihilent Technologies Ltd., Infosys Ltd., Cybage software Pvt.Ltd. by applying turnover filter.

13.2. Ld.AR submitted that authorities below applied lower limit of turnover filter of Rs.1 crore and ignored applying an upper turnover filter. It was submitted that, consistently revenue always took stand that turnover is not a relevant filter in software industry. It has been contended by revenue that in software industry size has no influence on the margins earned by a comparable company. What matters is a human capital. It was under these circumstances that Ld.TPO applied only lower limit of turnover filter for excluding companies having turnover less than Rs.1 crore.

13.3. Ld.CIT.DR submitted that when companies functionally similar to assessee, and is potentially comparable, the same cannot be excluded merely because of high or low turnover. Ld.CIT.DR placed reliance upon decision of *Hon'ble Delhi High Court* in case of *Chriscapital Investment Advisers (India) Pvt. Ltd vs DCIT* reported in [2015] 56 taxmann.com 417.

We have perused submissions advanced by both sides in light of records placed before us.

13.4. We note that Ld.AO/TPO has applied filter of more than Rs.1 crore, but did not put an upper limit to the filter. This *Tribunal* in case of *Genesis Integrating Systems India Pvt Ltd vs*

DCIT reported in (2012) 53 SOT 159 and various other decisions have held that, companies having turnover in excess of Rs.200 crores cannot be compared with companies having turnover less than Rs.200 crore. This proposition has been accepted by *Hon'ble Bombay High Court* in case of *CIT vs Pentair Water Pvt.Ltd.*, by order dated 16/09/2015 in *ITA No. 18/2015*. *Hon'ble court* upheld rejection of companies having turnover holding that turnover is a relevant factor in considering comparability of companies.

13.5. Objection raised by Ld.CIT.DR by placing reliance upon decision of *Hon'ble Delhi High Court* in case of *Chris Capital (supra)* has been dealt with by this *Tribunal* in case of *Autodesk India Pvt.Ltd. vs DCIT* in (2018) 96 taxmann.com 263 for assessment year 2005-06. This *Tribunal* reviewed gamut of case laws to consider, whether companies having turnover more than Rs.200 crores should be regarded as comparable with a company having turnover less than 200 crore. This *Tribunal* held as under:

17.7 *We have considered the rival submissions. The substantial question of law (Question No.1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) Pvt. Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the learned counsel for the Assessee the observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of obiter dictum. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a non-jurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of Pentair Water India (P.) Ltd. (supra) has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we respectfully follow the*

view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.

17.8 *In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India (P.) Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of NTT Data (supra), Societe Generale Global Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra).*

13.6. Ld.AR submitted that though this decision was rendered with reference to AY 2005-06 and 2006-07, same reasoning would apply to AY 2015-16 also and in this regard.

Based upon above discussions we are of opinion that objection raised by revenue cannot withstand the test of law.

Accordingly we direct Ld. AO/TPO to exclude Tata Elxi Ltd (Seg.), Mindtree Ltd., Larsen and Toubro Infotech Ltd., RS Software (India) Ltd., Persistent Systems Ltd., Nihilent Technologies Ltd., Infosys Ltd., Cybage software Pvt.Ltd. for having high turnover as compared to a captive service provider like assessee.

14. Ld.AR submitted that assessee alleges exclusion of Rheal Software Pvt.Ltd., Aspire Systems (India) Pvt.Ltd., Infobeans Technologies Ltd., Inteq Software Pvt. Ltd. for functional dissimilarities.

14.1. Rheal Software Pvt.Ltd.

Ld.AR submitted that DRP themselves note that this comparable is involved in a gamut of software development. He submitted that this company was selected by learnt TPO on the ground that it is only earning income from export of software development services. Referring to the annual reports placed at page 930-937 of paper book volume 2, Ld.AR submitted that this company earns income only from export of software development services. It has been submitted that this comparable has fluctuating margins of net profit over a period of 5 years. Referring to page 710 of paper book volume to Ld.AR submitted that figures referred in the table reproduced herein below, shows drastic fluctuation, which do not indicate profit and loss resulting from operations of this company.

Particulars	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Operating Revenue	10,25,11,776	9,33,74,775	8,05,96,844	8,80,89,662	6,48,67,848
Operating	3,93,45,616	3,90,57,071	31,60,967	2,34,38,726	16,70,562

Profit					
OP/OR(%)	38.38%	41.83%	3.92%	26.61%	2.58%

14.1.1. From annual report it has been submitted that reason for such fluctuation is also not known. Ld.AR placing reliance on decision of *Allscripts (India) Pvt.Ltd vs DCIT* reported in (2015) 62 *Taxmann.com* 232, submitted that, if there is drastic fluctuation operating margins of a company with extreme high in one year and extreme low in other year's, the said company should be excluded as comparable, as it does not reflect normal operations.

14.1.2. Ld.CIT.DR, however submitted that though there is a fluctuating margin there is no dispute that this company is functionally similar to assessee and earns revenue from only one segment of software development services like assessee.

14.1.3. We have perused submissions advanced by both sides in light of records placed before us.

As we go through annual report of this company placed at page 930-937 of paper book volume 2, we are of the opinion that it does not offer a clear picture of activity performed by this company under software development service. Admittedly, there is a trend of diminishing revenue from financial year 2010-11 to financial year 2014-15 for which, reason is not known from details available and placed on record. In our view this diminishing revenue should have further triggered investigation by Ld. AO/TPO.

14.1.4. We therefore set aside this comparable back to Ld.AO/TPO to call for information is from this company under section 133 (6) to understand the reasoning behind the fall in

revenue. In the event, diminishing revenue indicates the level of risk undertaken by this company which cannot be compared with absolutely no risk company like assessee, the same should be excluded. Needless to say that proper opportunity of being heard should be granted to assessee in accordance with law.

Accordingly we set aside this comparable back to Ld.AO/TPO.

14.2. Aspire Systems (India) Pvt.Ltd.,

Ld.AR submitted that, this company has been selected by Ld.TPO under the impression that it passes all filters. Ld.AR further submitted that this company should be rejected as it has substantial related party transaction. It has been submitted that for financial years 2013-14 and 2014-15 this company fails RPT filter of 25%. He referred to the statistics of related party transaction in the annual report at page 1087-1094 of paper book volume 2. Ld. A.R. has filed summary of related party transactions in immediately to preceding assessment years which has been reproduced as under:

Revenue Operation	Nature of transaction		1,56,52,92,158	1,79,11,27,395
Name of the Party	Nature of Transaction	2012-13	2013-14	2014-15
Aspire Systems Inc., USA	Rendering of Services	NA	19,35,53,666	23,62,84,09 1
Aspire Systems Inc., USA	Purchase of Service		16,91,3 1,960	18,39,98,056
Aspire Systems Inc., USA	Expenses Reimbursed		96,35,388	2,58,04,908
Aspire Systems FZE, UAE	Rendering of Services		89,54,074	1,09,74,404
Aspire Systems FZE, UAE	Purchase of Service		67,48,895	1,05,70,5 25
Versant Technologies Pvt Ltd	Expenses Reimbursed		-	6,42,711
Applied Development	Purchase of Service		-	21,28,568

Software (India) Pvt Ltd				
Pureapps Consulting Services Pvt Ltd	Rendering of Services		-	2,75,148
Pureapps Consulting Services Pvt Ltd	Purchase of Service		9,4 1,456	-
Pureapps Consulting Services Pvt Ltd	Expenses Reimbursed		15,398	17,088
Aspire Systems IL	Rendering of Services		1,33,62,286	4,72,01,091
Ziffity Solutions private Limited	Rendering of Services		-	1,85,310
Ziffity Solutions private Limited	Purchase of Service		-	31,86,239
Asteor Software Private Limited	Rendering of Services		56,36,220	19,29,302
Asteor Software Private Limited	Purchase of Service		29,5 5,526	30,22,908
Aspiration Energy Private Limited	Expenses Reimbursed		-	20,528
Telesolar Solutions Pvt Ltd	Rendering of Services	NA	19,10,824	17,72,043
Telesolar Solutions Pvt Ltd	Purchase of Service		1,95,000	-
Mensa Foods Private Limited	Purchase of Servicer'		82,80,470	1,14,01,737
Mensa Foods Private Limited	Expenses Reimbursed		-	34,140
TOTAL			42,13921,163	53,94,48,797
RPT/Sales (%)			26.92%	30.12%

Ld.AR submitted that this *Tribunal* has been following RPT filter of more than 15% and has excluded comparables which do not satisfy the filter.

14.2.2. On the contrary, Ld.CIT.DR submitted that Ld.AR does not dispute functional similarity of this company with assessee. Ld.CIT.DR submitted that this comparable may be set aside to Ld.AO/TPO for verification of submissions advanced by Ld.AR.

14.2.3. We have perused submissions advanced by both sides in light of records placed before us.

It is noted that DRP also has not verified this aspect though the objection was raised. In fact DRP notes that this company fulfils RPT filter adopted by Ld.TPO. DRP went on different footing which was not raised by assessee as an objection. The details necessary for computing RPT of this comparable in the preceding 2 financial years were available before authorities below however the same has been ignored. This *Tribunal* in case of *Robert Bosch Engineering and Business Solutions Ltd vs DCIT* reported in (2018) 99 *taxman.com* 359, held that RPT filter can be in the range of 25% to 15% of total receipts from software development services depending on availability of comparable companies. As there are comparables under this segment, there would be no infirmity in considering comparables having RPT up to 15% of total revenues. This view is supported by decision of this *Tribunal* in case of *24/7 customer (P) Ltd vs DCIT* reported in (2012) 28 *Taxmann.com* 258. Considering the fact that authorities below has not verified the statistics advanced by Ld.AR in respect of the percentage of related party sales this company had, it would be just and proper to direct Ld.AO/TPO to examine submissions advanced in this regard. We also direct that if RPT is found to be more than 15% of the total revenues, then this comparable should be excluded from the finalist.

Accordingly we set aside this comparable back to Ld.AO/TPO

14.3. Infobeans Technologies Ltd.,

Ld.AR submitted that this comparable was selected by authorities below as it passes all filters, based upon response received from this company under section 133 (6) of the act. He submitted that this observation is contrary to the facts and

figures appearing in annual report. Referring to page 1015 Ld.AR submitted that this company is operating at CMMI Level 3 and is a software service company specialising in business application development for web and mobile. In the company overview this company has been stated to be primarily engaged in providing custom developed services to offshore clients and it provides software engineering services primarily in custom application development, content management systems, enterprise mobility, Big Data analytics. Ld.AR thus submitted that this company is functionally not at all similar with a captive service provider like assessee that this providing Ltd services to its associated enterprises.

14.3.1. On the contrary Ld. CIT DR, referring observations of DRP in para 3.6.1 submitted that the activities of company fall under the gamut of software development has categorised by company itself and that the information obtained under section 133 (6) is sufficient enough to come to such conclusions. However he submitted that this comparable also may be sent back to learnt AO/TPO for verification.

14.3.2. We have perused submissions advanced by both sides in light of records placed before us.

It is observed that the annual report of this company categorises the diversify services provided by this company under software development segment. We also note that this company is basically into application development for web and mobile and provides customised services to its offshore clients comprising. Entire revenue received by this comparable ease under one single

segment of sale of software. This company also owns software licenses.

14.3.3. In our considered opinion this comparable cannot be considered to be functioning in 100% risk mitigated environment and is a full-fledged enterprise. Such a comparable cannot be compared with a captive service provider like assessee.

Accordingly we direct this comparable to be excluded from finalist

14.4. Inteq Software Pvt. Ltd.

Ld.AR submitted that this comparable was wrongly included by Ld.TPO on the ground that it passes all filters. He submitted that this comparable is also having related party transaction which is more than 25% in the preceding 2 assessment years. Referring to page 783 Ld.AR submitted that this comparable has RPT of 81.86% and 79.74% for financial years 2012-13 and 2013-14 respectively. For the sake of convenience the said table is reproduced herein below:

Description	FY 2012 -13	FY 2013 -14
Sale of Software Development and service charges	16,19,48,588	18,50,43,097
Total Related party Transaction	16,19,48,588	18,50,43,097
Operating Revenue	19,78,25,530	23,28,50,688
RPT/Operating Revenue	81.86%	79.47%

14.4.1. On the contrary, Ld.CIT.DR submitted that Ld.AR does not dispute functional similarity of this company with assessee. Ld.CIT DR submitted that this comparable may be set aside to Ld.AO/TPO for verification of submissions advanced by Ld.AR.

14.4.2. We have perused submissions advanced by both sides in light of records placed before us.

It is noted that DRP did not verified this aspect having regard to the annual report filed by assessee. In fact DRP notes that this company fulfils RPT filter adopted by Ld.TPO. We refer to our observations while deciding the comparability of aspire systems (India) private limited in preceding paragraphs. Applying the same observation mutatis mutandis in the present comparable, we direct Ld. AO/TPO to verify the RPT filter having regard to the annual report. We also direct that if RPT is found to be more than 15% of the total revenues, then this comparable should be excluded from the finalist.

Accordingly we set aside this comparable back to Ld.AO/TPO

15. For Inclusion:

15.1. Ld.AR submitted that assessee seeks inclusion of Sankhya Infotech, Athena Global Technologies, Evoke Technologies Pvt.Ltd., Harbinger Systems Pvt.Ltd., Isummation Technologies Pvt.Ltd and Maveric Systems Ltd. on functional similarities. At the outset both sides submitted that DRP in its order has some really rejected the comparables without considering the submissions advanced by assessee. It has been submitted by both sides that these comparables could be set aside to Ld.AO/TPO for reconsidering on the basis of far analysis.

Based upon the above submissions by both sides, we set aside this issue back to Ld.AO/TPO for reconsideration of Sankhya Infotech, Athena Global Technologies, Evoke

**Technologies Pvt.Ltd., Harbinger Systems Pvt.Ltd.,
Isummation Technologies Pvt.Ltd and Maveric Systems Ltd.**

16. Sales and Marketing Support service segment:

Ld.AR submitted that assessee seeks exclusion of Ugam Solutions Pvt.Ltd., Axience Consulting Pvt.Ltd., Platinum Advertising Pvt.Ltd. for functional dissimilarities.

16.1. Ugam Solutions Pvt.Ltd.,

Ld.AR submitted that complete set of annual report of this comparable is not available in public domain. He submitted that relevant extract of database available from website are placed at page 1421-1423 of paper book is volume 3 from which at page 1423 this company has been stated to be operating in one primary segment being managed analytics. He submitted that this company even otherwise going by the website information is functionally not similar with that of assessee as the clientele of this company services and provides solutions to global market research firms which include research operations, technology infrastructure transition, data warehousing aggregation and visualisation, sample management optimisation, global program management, custom panel solution, reporting solution and mobile solutions etc. He thus submitted that this comparable is functionally not similar with assessee who is a captive service provided and provides Ltd functions as required by the associated enterprise.

16.1.1. Ld.CIT DR relied upon authorities below.

16.1.2. We have perused submissions advanced by both sides on the basis of records placed before us. Admittedly this company is

into managed analytical services and provides solutions to global market research firms, retailers, leading brands as has been observed by DRP in para 8.2.1. A fit comparable the functions rendered by assessee to the associated enterprise this company cannot be a fit comparable due to functional dissimilarities and risk assumed by this company.

Accordingly we direct this comparable to be excluded from the final list.

16.2. Axience Consulting Pvt.Ltd.

Ld.AR submitted that this company is also functionally not similar with assessee's as it is providing services to financial indulged service industry by combining high-end financial analytics, modelling and Tata services with high-quality business intelligence. Referring to page 14 to 5 of annual report Ld.AR submitted that main service provided by this company is in the field of market research and public opinion polling which is very different from sales and marketing support services provided by assessee to its associated enterprises.

16.2.1. On the contrary, Ld. CIT DR placed reliance upon orders passed by authorities below.

16.2.2. We have perused submissions advanced by both sides in light of records placed before us.

Admittedly, this company is in financial analysis and research, business intelligence, business and market research, strategic human capital services as recorded by DRP in para 8.3.1. Further we also note page 1428 that there is no segmental details available in respect of revenues earned under each segment. Annual report at page 1431 records that this company is

knowledge solution business intelligence and consulting firm providing high-quality solutions. In our considered opinion functions performed by this company cannot be compared with Ltd back-office support provided by assessee to its associated enterprises under sales and marketing segment.

Accordingly we direct exclusion of this comparable from final list.

16.3. Platinum Advertising Pvt.Ltd.

Ld.AR submitted that this comparable is functionally not similar with assessee as it caters to advertising agencies and media planning, buying and selling of media spaces and ancillary services. It is also been submitted that there is no segmental details available and insufficient information about this comparable on public domain.

16.3.1. Ld.CIT DR on the contrary submitted that this company is and assessee before us provides advertising services to its associated enterprises. He thus submitted that functionally this comparable is similar with that of assessee.

16.3.2. We have perused submissions advanced by both sides in light of records placed before us.

We note that authorities below has summarily included this comparable without analysing the functional profile assets owned and risks assumed by this comparable having any similarity with assessee before us. We accordingly direct Ld.AO to carry out FAR analysis having regard to the annual report available on public domain. In the event further information is required Ld.AO/TPO shall call for it under section 133 (6) of the act. Needless to say

that proper opportunity of being heard shall be granted to assessee as per law.

Accordingly this comparable is set aside to Ld.AO/TPO for verification afresh.

16.4. For Inclusion:

Ld.AR submitted that assessee seeks inclusion of Priya International Ltd (Seg). At the outset both sides submitted that DRP in its order has some really rejected the comparables without considering the submissions advanced by assessee. It has been submitted by both sides that these comparables could be set aside to Ld.AO/TPO for reconsidering on the basis of far analysis.

Based upon the above submissions by both sides, we set aside this issue back to Ld.AO/TPO for reconsideration of Priya International Ltd (Seg.)

Accordingly, Ground No.5-6 stands allowed as indicated hereinabove.

17. Ground No.7 alleged by assessee against adjustment of notional interest on outstanding receivables.

From TP study, it is observed that payments to assessee are not contingent upon payment received by AEs from their respective customers. Further Ld.AR submitted that working capital adjustment undertaken by assessee includes the adjustment regarding the receivables and thus receivables arising out of such transaction have already been accounted for. Alternatively, he submitted that working capital subsumes sundry creditors and therefore separate addition is not called for.

17.1. Ld.TPO computed interest on outstanding receivables at the rate equal to 4.3087% on receivables that exceeded 60 days. It has been argued by Ld.AR that authorities below disregarded business/commercial arrangement between the assessee and its AE's, by holding outstanding receivables to be an independent international transaction.

17.2. Ld.AR placed reliance on decision of *Delhi Tribunal* in *Kusum Healthcare Pvt.Ltd vs. ACIT reported in (2015) 62 Taxmann.com 79*, deleted addition by considering the above principle, and subsequently *Hon'ble Delhi High Court* in *Pr. CIT vs. Kusum Health Care Pvt. Ltd. (2017) 398 ITR 66 (Del)*, held that no interest could have been charged as it cannot be considered as international transaction. He also placed reliance upon decision of *Delhi Tribunal* in case of *Bechtel India vs DCIT* reported in *(2016) 66 taxman.com 6* which subsequently upheld by *Hon'able Delhi High Court vide order dated 21/07/16 in ITA No. 379/2016*, also upheld by *Hon'ble Supreme Court vide order dated 21/07/17, in CC No. 4956/2017*.

17.3. It has been submitted by Ld.AR that outstanding receivables are closely linked to main transaction and so the same cannot be considered as separate international transaction. He also submitted that into company agreements provides for extending credit period with mutual consent and it does not provide any interest clause in case of delay. He also argued that the working capital adjustment takes into account the factors related to delayed receivables and no separate adjustment is required in such circumstances.

17.4. On the contrary Ld.CIT.DR submitted that interest on receivables is an international transaction and Ld.TPO rightly determined its ALP. In support of the contentions, he placed reliance on decision of *Delhi Tribunal* order in *Ameriprise India Pvt. Ltd. vs. ACIT (2015- TII-347-ITAT-DEL-TP)* wherein it is held that, interest on receivables is an international transaction and the transfer pricing adjustment is warranted. He stated that Finance Act, 2012 inserted *Explanation* to Section 92B, with retrospective effect from 1.4.2002 and sub-clause (c) of clause (i) of this *Explanation* provides that:

- (i) *the expression "international transaction" shall include—*
..... (c) *capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;....* .

17.5. Ld.CIT DR submitted that expression '*debt arising during the course of business*' refers to trading debt arising from sale of goods or services rendered in course of carrying on business. Once any debt arising during course of business is an international transaction, he submitted that any delay in realization of same needs to be considered within transfer pricing adjustment, on account of interest income short charged or uncharged. It was argued that insertion of *Explanation* with retrospective effect covers assessment year under consideration and hence under/non-payment of interest by AEs on debt arising during course of business becomes international transactions, calling for computing its ALP. He referred to decision of *Delhi Tribunal* in *Ameriprise (supra)*, in which this

issue has been discussed at length and eventually interest on trade receivables has been held to be an international transaction. Referring to discussion in said order, it was stated that *Hon'ble Delhi Bench* in this case noted a decision of the *Hon'ble Bombay High Court* in the case of *CIT vs. Patni Computer Systems Ltd., (2013) 215 Taxmann 108 (Bom.)*, which dealt with question of law:

“(c) `Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?”

17.6. Ld.CIT DR submitted that, while answering above question, *Hon'ble Bombay High Court* referred to amendment to section 92B by Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside view taken by Tribunal, *Hon'ble Bombay High Court* restored the issue to file of Tribunal for fresh decision in light of legislative amendment. It was thus argued that non/under-charging of interest on excess period of credit allowed to AEs for realization of invoices, amounts to an international transaction and ALP of such international transaction has to be determined by Ld.TPO. In so far as charging of rate of interest is concerned, he relied on decision of the *Hon'ble Delhi High Court* in *CIT vs. Cotton Naturals (I) Pvt. Ltd (2015) 276 CTR 445 (Del)* holding that currency in which such amount is to be re-paid, determines rate of interest. He, therefore, concluded by summing up that interest on

outstanding trade receivables is an international transaction and its ALP has been correctly determined.

17.7. We have perused the submissions advanced by both the sides in the light of the records placed before us.

This Bench referred to decision of Special Bench of this *Tribunal* in case of *Special Bench of ITAT in case of Instrumentation Corpn. Ltd. v. Asstt. DIT in ITA No. 1548 and 1549 (Kol.) of 2009, dated 15-7-2016*, held that outstanding sum of invoices is akin to loan advanced by assessee to foreign AE., hence it is an international transaction as per explanation to section 92 B of the Act. We also perused decision relied upon by Ld.AR. In our considered opinion, these are factually distinguishable and thus, we reject argument advanced by Ld.AR.

17.8. Alternatively, it has been argued that in TNMM, working capital adjustment subsumes sundry creditors. In such situation computing interest on outstanding receivables and lones and advances to associated enterprise would amount to double taxation. *Hon'ble Delhi Tribunal* in case of *Orange Business Services India Solutions Pvt. Ltd. vs. DCIT in ITA No. 6570/Del/2016* vide its order dated 15.2.2018 has observed that:

“There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter

once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors Pvt. Ltd. vs. DCIT (2017) 398 ITR 120 (Del). Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital of the assessee. Applying the decision in Kusum Health Care (supra), the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterized as international transactions."

17.9. In view of the above, we deem it appropriate to set aside this issue to Ld.AO/TPO for deciding it in conformity with the above referred judgment. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in accordance with law.

Accordingly these ground raised by assessee stands allowed for statistical purposes.

18. Ground No.8 raised by assessee towards disallowance of Rs.61,37,356/- towards service tax paid on expenses.

Ld.AR submitted that the service tax input of Rs.61,37,356/- relates to the 1st quarter of financial year 2014-15 relevant to assessment year under consideration. He submitted that service tax incurred as part of expenses was accounted separately with expectation that it would be set off against service tax payable or a refund would be received by assessee. Subsequently as the same did not happen service tax was debited to the profit and loss account separately instead of accounting it as a part of

respective aspect expense account. He submitted that the service tax input couldn't be utilised in the 1st quarter, as there was no output tax on marketing support services provided by assessee. Further he submitted that due to certain amendments in the indirect tax law, assessee was liable to pay service tax on the marketing support services only from October 2014 and in order to pay such output tax, assessee utilized input tax credit that was brought forward as balance. Under such circumstances Ld.AR submitted that the input tax credit amounting to Rs.61,37,356/- has been written off in the books of account and claimed as refund in the service tax return. Ld.AR submitted that assessee has received a refund of the said amount which was offered to tax in the relevant year however assessing officer denied that the refund was due to assessee.

18.1. Ld.AR at the outset submitted that the same may be verified by Ld. AO before considering the claim.

18.2. Ld.CIT DR did not object for due verification of above details submitted by Ld.AR.

18.3. We have perused submissions advanced by both sides in light of records placed before us.

We note that expenditure was incurred but could not be adjusted against input credit which was subsequently written off as part of business expenditure. It has been submitted that assessee has received refund in subsequent year and offered the same to tax in the relevant year. We direct Ld.AO to verify these details and consider the claim of assessee in accordance with law.

Accordingly this ground raised by assessee stands allowed for statistical purposes.

19. Ground No.9 is consequential in nature and therefore do not require any adjudication.

In the result appeal filed by assessee stands allowed as indicated hereinabove.

Order pronounced in the open court on 24th April, 2020.

Sd/-
(B. R. BASKARAN)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 24th April, 2020.

/Vms/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income-Tax Appellate Tribunal.
Bangalore.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS	24-4-2020		Sr.PS/PS
6.	Kept for pronouncement on	24-4-2020		Sr.PS
7.	Date of uploading the order on Website	11-5-2020		Sr.PS
8.	If not uploaded, furnish the reason			Sr.PS
9.	File sent to the Bench Clerk	11-5-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS