

IN THE INCOME TAX APPELLATE TRIBUNAL
‘B’ BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.412/Bang/2016
Assessment Year : 2011-12

M/s Mavenir Systems Pvt. Ltd., “Beech” E1, 2 nd Floor, Manyata Embassy Business Park, Outer Ring Road, (Hebbal – K.R Puram Section), Bengaluru-560 045. PAN – AAECM 9663 N	Vs.	The Income-Tax Officer, Ward-4(1)(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar, Advocate
Revenue by	:	Shri Muzaffar Hussain, CIT (DR)

Date of Hearing	:	04-02-2021
Date of Pronouncement	:	25-03-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against the final assessment order dated 23/12/2015 passed by Ld.ITO Ward 4(1)(3), Bangalore for assessment year 2011-12 on following grounds of appeal:

“I. Transfer Pricing

The grounds mentioned hereinafter are without prejudice to one another.

1. The learned Assessing Officer ("learned AO"), learned Transfer Pricing Officer ("learned TPO") and the Honourable Dispute Resolution Panel ("Hon'ble DRP") grossly erred in adjusting the transfer price by INR 2,02,90,530/- of the Appellant's international transactions with its Associated Enterprises ("AEs") with respect to the Software Development Services ("IT") rendered by the tax payer u/s 92CA of the Income-tax Act, 1961.

2. The learned AO/learned TPO/Hon'ble DRP erred in rejecting the TP documentation maintained by the Appellant by invoking provisions of sub-section (3) of 92C of the Act.

3. The learned AO/learned TPO/Hon'ble DRP erred in rejecting comparability analysis carried in the TP documentation and in conducting a fresh comparability analysis by introducing various filters in determining the ALP.

4. The learned AO/learned TPO/Hon'ble DRP erred in not considering the previous two years financial data of the comparable companies while determining the ALP.

5. The learned AO/learned TPO/Hon'ble DRP erred in applying export earning filter of 75% instead of 25% of the total sales, leading to a narrower comparable set.

6. The learned AO/learned TPO/Hon'ble DRP erred in not considering the provision for bad and doubtful debts as extraordinary in nature.

7. The learned AO/learned TPO/Hon'ble DRP has grossly erred in not rejecting Acropetal Technologies Ltd. on the grounds of functional dissimilarity, abnormal trend of profitability and failing of employee cost filter.

8. The learned AO/learned TPO/Hon'ble DRP has grossly erred in not rejecting E Zest Solutions based on functional dissimilarity, lack of segmental data and presence of significant inventory.

9. The learned AO/learned TPO/Hon'ble DRP has grossly erred in not rejecting E-Infochips Ltd. for functional dissimilarity, abnormal trend of profitability and diversified operations which includes research and development.

10. The learned AO/learned TPO/Hon'ble DRP has grossly erred in not rejecting ICRA Techno Analytics Ltd. on the ground of functional dissimilarity and lack of segmental data.

11. The learned AO/learned TPO/Hon'ble DRP has grossly erred in rejecting companies that ought to have been included as comparables

- Akshay Software Technologies Ltd "Z
- Comp-U-Learn Tech India Ltd.
- LGS Global Ltd.
- Maveric Systems Ltd.
- Thinksoft Global Services Ltd.
- CG-VAK Software Exports Ltd.

• *Globsyn Infotech Ltd.*

12. *The learned AO/learned TPO/Hon'ble DRP has erred in making the following errors in the computation of working capital adjustment.*

a. in proposing a restriction to the working capital adjustment without giving any cogent reason

b. in considering the wrong SBI PLR while computing the working capital adjustment.

13. *The learned AO/learned TPO/Hon'ble DRP erred in not allowing appropriate adjustment towards to the risk differential between the Appellant vis-à-vis comparable companies.*

14. *The learned AO/learned TPO/Hon'ble DRP erred in levying interest under Section 23413 of the Income-tax Act, 1961.*

The appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.”

2. The Ld.AR submitted that assessee has raised additional ground vide application dated 09/01/2020, wherein following grounds have been raised:

“Ground No. 9: The learned AO/ learned TPOI Hon'ble DRP erred in not excluding Persistent Systems & Solutions Ltd. from the list of comparable companies.”

3. The Ld.AR submitted that comparable Persistent Systems And Solutions Ltd. was selected by the Ld.TPO during the transfer pricing assessment proceedings. Assessee also included this comparable in the TP study. The Ld.AR submitted that based on judicial pronouncements by coordinate benches of this Tribunal, in *Genesis Intergrating Systems (India)Pvt. Vs.DCIT* reported in [\[2012\] 20 taxmann.com 715](#), *Mobility Infotech India (P.) Ltd v. Dy. CIT* [\[2018\] 97 taxmann.com 2](#) and many more such decisions, it was submitted that, this comparable is functionally not similar with that of assessee due to high turnover and deserves to be excluded.

4. The Ld.AR submitted that though this comparable was included by assessee. Subsequently it could be alleged for exclusion. In support he placed reliance on the decision of *Hon'ble Special Bench of Chandigarh Tribunal* in case of *Quark Systems Ltd.*, reported in 38 SOT 307.

5. It was submitted that, no prejudice would be caused to the revenue by reason of the above additional grounds being admitted and adjudicated and accordingly the balance of convenience is in favour of such an order being passed by this *Hon'ble Tribunal*. The Ld.AR states and submits that the issues raised in the additional ground above are legal issues and arise out of the order of the lower authorities.

6. We heard Ld.DR on this issue.

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

8. We notice that the *Special bench of this Tribunal* has held in the case of *Dy. CIT v. QuarkSystems P. Ltd. (supra)* that, the non-comparable companies, even if it was selected by the assessee in TP study, could be excluded, since there is no estoppels against law. There should not be any dispute that the ultimate purpose of the transfer pricing analysis is to determine the Arms Length Price of International transactions, which is sought to be proved by comparing the financials of comparable companies. In the instant case, the assessee has prayed for consideration of above company before Ld DRP. Accordingly, we are of the view that

consideration of above said companies would help to determine the ALP of the international transactions.

9. Accordingly, the additional ground raised by assessee stands admitted.

Brief facts of the case are as under:

10. The Assessee is a company engaged in the business of software development and 100% subsidiary of Mavenir Systems Inc. US. It filed its return of income for year under consideration on declaring income of Rs.56,544/- after claiming exemption under section 10A amounting to Rs.1,50,27,256/-. The case was selected for scrutiny, and notice under section 142(1) of the Act, was issued to assessee, in response to which, representative of assessee appeared before Ld.AO and filed details as called for.

11. The Ld.AO observed that, assessee had international transaction with its associated enterprise exceeding Rs.15 crores, and accordingly, reference was made to the Ld.TPO under section 92CA of the Act.

12. Upon receipt of reference, the Ld.TPO called for economic details of international transaction between assessee and associated enterprise in Form 3 CEB. The Ld.TPO noted that, assessee had following international transaction with its AE:

Particulars	Amount in Rs.
Software development services	15,40,36,635/-
Total	15,40,36,635/-

13. The Ld.TPO observed that, assessee used TNMM as most appropriate method, and PLI as OP/OC and computed its margin

at 10.05%. He noted that, assessee selected following 8 comparables having average margin of 13.88%.

Name of the company	Markup on Total Cost (without adjustment)
A B M Knowledgeware Ltd.	40.35
C G- VAK Software& Exports Ltd.	5.44
Globsyn Infotech Ltd.	6.6
Kals Information System Ltd.	18.69
Melstar Information Technologies Ltd.	1.93
Persistent Systems and Solutions Ltd.	21.79
R S Software (India) Ltd.	16.18
Thinksoft Global Services Ltd.	0.08
Number of Companies	8
Mean	13.88%

14. Ld.TPO rejected economic analysis undertaken by assessee and conducted fresh economic search by applying following filters:

Step	Description
1	Companies whose data for FY 2010-11 is not available — excluded
2	Companies whose software development service income < Rs. 1 Cr - excluded
3	Companies whose software development service revenue is < 75% of the total operating revenue - excluded
4	Companies which have related party transactions > 25% of sales - excluded
5	Companies which have export sales < 75% of sales in software cases - excluded
6	Companies whose employee cost is < 25% of their turnover in software cases - excluded
7	Companies having different financial year ending - excluded
8	Companies which have persistent losses for the last three years up to and including FY 2010-11 - excluded

9	Companies having peculiar economic circumstances - excluded
10	Companies that are functionally different - excluded

15. The Ld.TPO thus selected following 13 comparables with operating margin of 24.82%.

Sl.No	Company name	Net margin as per TP order
1	Acropetal Technologies Ltd.	31.98%
2	E Zest Solutions	21.03%
3	E-Infochips Ltd	56.44%
4	Evoke	8.11%
5	ICRA Techno Analytics Ltd.	24.83%
6	Infosys Ltd	43.39%
7	Larsen & Toubro Infotech Ltd	19.83%
8	Mindtree Ltd.(Seg.)	10.66%
9	Persistent Systems & Solutions Ltd.	22.12%
10	Persistent Systems Ltd.	22.84%
11	R S Software (India)Ltd.	16.37%
12	Sasken Communication Technologies Ltd.	24.13%
13	Tata Elxsi Ltd.(Seg.)	20.91%
	Average	24.82%

16. He proposed an adjustment of Rs.1,95,06,722/- being shortfall. It is submitted that the Ld.TPO restricting to 1.63% towards working capital adjustment.

17. Aggrieved by additions made by Ld.AO/TPO assessee raised objections before DRP.

18. The DRP upheld exclusion of 6 comparables selected by the Ld.TPO and restricted to following 7 comparables with average margin of 24.55 % as under:

Sl.No	Company name	Mark-up on Total Costs (WC - adj) (in %)
1	Acropetal Technologies Ltd.	28.68
2	e-Zest Solutions Ltd.	18.95
3	E-Infichips Ltd.	56.13
4.	Evoke Technologies Ltd.	7.96
5.	ICRA Techno Analytics Ltd.	22.80
6.	Persistent Systems and Solutions Ltd.	21.16
7.	RS Software (India) Ltd.	16.19
	Average	24.55

19. On receipt of DRP directions, Ld.AO passed final assessment order by making, transfer pricing addition as per proposed adjustment by Ld.TP O.

20. Aggrieved by order of Ld.AO, assessee is in appeal before us. Assessee challenges exclusion of 4 comparables in Ground No.7-10 on the basis of functional dissimilarities, being ;

- Acropatel Technologies Ltd
- E Zest Solutions
- E-Infichips Ltd
- ICRA Techno Analytics

21. Assessee has also sought inclusion of 3 comparable is in Ground No.11 being;

- Akshaya Software Ltd.

- LGS Global Ltd.
- Thinksoft Global Services Ltd

22. The Assessee also seeks working capital adjustment on actual in Ground No.12.

23. Apart from the above referred comparables, Ld.AR has not pressed upon and argued any other issues raised in the ground of appeal.

Accordingly, we are restricting our observation in respect of selected comparables referred to herein above alleged by assessee for inclusion/exclusion.

24. Before we undertake comparability analysis, it's *sine qua non* to understand the FAR of assessee under software development service segment.

Functions:

Mavenir India has 101 employees, including a country manager and an administrative staff, directors of various projects (e.g. software development, improvements to existing software, testing and validation of software, and document writing), and system engineers providing technical support to the sales team. Mavenir India does not sell products or provide similar contract R&D and support services to third party customers.

25. Asset Owned:

26. Risks Assumed:

27. Ground No.7 Assessee is seeking exclusion following comparable Acropatel Technologies Ltd.:

It is submitted that this comparable is functionally not similar with assessee. It has been submitted that this comparables carries out diversified activities without segmental information.

28. The Ld.AR relied on decision of coordinate bench of this *Tribunal* in case of *Electronics for Imaging India Pvt. Ltd., vs. DCIT* for assessment year 2011-12 reported in [2017] 85 *taxmann.com* 124, wherein these comparables have been held to be functionally different with a contract service provider like assessee.

29. On the contrary, Ld.CIT.DR relied on observations of authorities below.

30. We also note that this comparable, was directed to be excluded in following decisions on identical observations :

- *DCIT vs. CGI Information Systems & Management Consultation (P.) Ltd reported in [2018] 93 taxmann.com 9*
- *DCIT Vs Herbalife International India (P.) Ltd reported in [2019] 111 taxmann.com 244*

31. We note that under similar circumstances this Tribunal in case of *DCIT vs CGI Information Systems (supra)* observed as under:

“19. Acropetal Technologies Limited - As far as exclusion of this company as a comparable company is concerned, it is seen from the Directions of the DRP at paragraph 2.7 at page-9, that this company was excluded on the grounds that: (i) the segmental information containing the break-up of its export sales and employee costs, was not available and it was not possible to ascertain if it passed the export earnings and/or employee costs filters; and (ii) a substantial portion of its software development activities have been outsourced on sub-contract and it could, therefore, not be retained as a comparable. The DRP in directing exclusion of this company followed decision of Hyderabad Bench of ITAT in the case of Capital IQ Information Systems (India) (P.) Ltd. v. Dy. CIT (International Taxation) [2013] 32 taxmann.com 21(Hyd. - Trib.). The DRP also observed that this company was predominantly doing on-site development of software and therefore cannot be compared with a company which develops software off-shore. One of the filters applied by the TPO was that companies where employee costs are less than 25% of turnover cannot be regarded as comparable. In the absence of segmental information, it was not possible to ascertain as to whether this company passes the test adopted by the TPO himself for comparison. The learned DR submitted that the required data can be culled out from the information available in the public domain or by resorting to a process of calling for information from this company u/s.133(6) of the Act. The learned counsel for the Assessee in this regard pointed out that the Hon'ble Delhi High Court rejected a similar argument by the Revenue in the case

of Pr. CIT v. Saxo India (P.) Ltd. [2016] 74 taxmann.com 88. In the circumstances, this company was rightly held by the DRP to be not comparable. We are of the view that once a company becomes not comparable for the reason that segmental information to apply filters, we need not consider any other aspect of comparability. The learned counsel for the Assessee made submissions before us that this company was rightly directed to be excluded by the DRP on the above basis and further contended that even otherwise, this company is not functionally comparable to the Assessee. As already stated, we do not wish to go into this aspect as this company goes out of comparability on other reasons.

32. Further, Ld.AR alleged that, Acropetal is functionally not similar with a contract service provider like assessee. This observation could not be dislodged by Ld.CIT.DR.

We also note that, Acropetal Technologies has been held to be into products by this *Tribunal*, in case of *Electronics for Imaging India Pvt.Ltd (supra)*. We therefore are of the opinion that this comparables cannot be included in the final list of comparables.

Respectfully following the aforesaid decisions, we direct exclusion of Acropetal Technologies.

Ground No.8

33. The Ld.AR submitted that E-zest Solution Ltd, is having software development services as well as product and also shown closing stock in the financials. It was also submitted that this company has on-site services and significant presence of inventory and is functionally incomparable and is engaged in product development, web development and KPO services and segmental details are not available.

34. The Ld.AR also relied upon the decision of the co-ordinate bench of this Tribunal dt.22.4.2016 in the case of *Electronics for Imaging India (P.) Ltd. v. DCIT* in IT(TP)A No.227 & 285/De1/2013.

35. On the other hand, the Ld.DR relied on orders passed by authorities below.

36. We have considered the rival submissions as well as the relevant material on record.

37. We find that the assessee has raised objections against this company before the DRP. However the DRP did not adjudicate the objections raised by the assessee. We found that this comparable was remanded by co-ordinate Bench in case of *Applied Materials India Ltd. v. ACIT* IT(TP) Appeal Nos.17 & 39/Bang/2016, dt.21.09.2016 for the Assessment Year 2011-12.

The *Tribunal* has observed at page 17 para 9.1.3 as under :

"9.1.3 We have considered the rival submissions as well as the relevant material on record. We find that the assessee has raised objections against this company before the DRP. However the DRP did not adjudicate the objections raised by the assessee. The decision of this Tribunal in the case of M/s. Electronics for Imaging India Pvt. Ltd. (supra) relied upon by the learned Authorised Representative is based on two aspects. (i) The information received under Section 133(6) of the Act was considered by the TPO without sharing with the assessee and (ii) nature of the activity is KPO. It is pertinent to note that the question of BPO and KPO is relevant only in ITES segment and not for software development services segment. On the contrary, the decision in the case of Toluna India Pvt. Ltd. (supra), pertains to the Assessment Year 2007-08, therefore the facts of the different year cannot be applied without verification. Accordingly, we set aside this issue of comparability of E-Just Solution Ltd. to the record of the Assessing Officer/TPO for

deciding the same after verification of the relevant facts as well as considering the objections of the assessee."

38. The decision of this *Tribunal* in the case of M/s Applied Materials of India Ltd. v. ACIT (supra) relied upon by the Ld.AR based on two aspects (i) The information received under Section 133(6) of the Act was considered by the TPO without sharing with the assessee and (ii) nature of the activity is KPO. It is pertinent to note that the question of BPO and KPO is relevant only in ITES segment and not for software development services segment.

39. Accordingly, we set aside this issue of comparability of E-Jest Solutions Ltd. to the record of the Assessing Officer/TPO for deciding the same after verification of the relevant facts as well as considering the objections of the assessee.

40. Ground No.9 is against inclusion of M/s.E-Infochips, by authorities below.

41. Ld.AR placed reliance upon decision of coordinate bench of this *Tribunal* in case of *Electronics for Imaging India Pvt.Ltd (supra)* wherein, E- Infochips Ltd is excluded for failing in service income filter. We have perused submissions advanced by both sides in light of records placed before us.

42. The Ld.CIT DR submitted that Ld.TPO while analysing comparables observed that, this company has revenue from software development up to 88%.

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

44. It is observed that this *Tribunal* in case of *Autodesk India Pvt Ltd. vs ACIT (supra)* excluded E- Infochips Ltd., by following view taken by this *Tribunal* in case of *Comscop Network (India) Pvt.Ltd. Limited vs ITO in IT (TP) A/Bang/2016 dated 22/02/17* wherein, this company was excluded for reason that, there is no segmental information regarding diverse functions performed by this company and that there was major fluctuation in its profits, which influenced turnover of this company. We also note that this *Tribunal* in case of *DCIT vs CGI Information Systems (supra)* had encountered with an identical situation for year under consideration. This tribunal observed as under:

“24. As far as ground No. 4 raised by revenue is concerned, the said ground of appeal is weak and any event comparability of companies that were excluded by the DRP were on valid grounds contemplated by the relevant statutory provisions of the act and rules. As far as ground No. 5 in revenue’s appeal is concerned, the revenue seeks to challenge the exclusion of AE Infotech Ltd. On the ground that it failed direct software service income filter at 75%. At the outset, the assessee submits that E Infotech Ltd was excluded by the DRP on the ground that: (i) no segmental information is regarding its diverse functions is available; (ii) it failed the software service income filter and 75%; (iii) there were major fluctuations in profit and turnover every years which seems to be influenced by extraordinary/peculiar circumstances; and (iv) there is a presence of inventory (page 10 and 11 of the DRP’s directions). The revenue, in its appeal has challenged its exclusion only on the 2nd ground. In other words, the revenue has not challenged its exclusion on the other grounds stated hereinabove and thus its exclusion on these grounds have attained finality and cannot be disturbed by this Hon’ble Tribunal. Even otherwise, we are of the view that the DRP rightly arrived at the finding that companies software development service revenue for FY 2010-11 was less than 75% of its total operating revenue for the year. Thus the above action of the DRP in rejecting the above companies correct.”

45. From the above, it is observed by this *Tribunal* consistently in various decisions for A.Y: 2011-12 held that, this company

does not satisfy service income filter being 75%. We therefore, do not see any reason to set aside this company to Ld.TPO.

Therefore, respectfully following view taken by coordinate bench of this *Tribunal* in *DCIT vs M/s CGI Information Systems and Management consultations pvt. Ltd. (supra)*, we direct Ld.TPO to exclude this company.

Accordingly this ground raised by revenue stands dismissed.

Ground No.10

46. ICRA Technology Analytics Ltd is not functionally comparable with a captive service provider like assessee. It is submitted that this company has significant RPT of 24.81% with margin of 24.83% and predominantly into Software Development Services and which is engaged in diversified activities and no segmental details are available and further concentrated in niche area of business intelligence and analytics space and has revenue from licensing activities. It has been submitted that coordinate bench of this *Tribunal* has held this comparable to be functionally not comparable with assessee in case of *Applied Materials India Pvt. Ltd. v. ACIT* reported in IT(TP) Appeal Nos.17 & 39/Bang/2016, dt.21.09.2016] for the Assessment Year 2011-12. It has been submitted that this *Tribunal* found this company not functionally comparable to the software development captive services provider.

47. It is also submitted that this company has significant growth in business of intelligence and analytics space which are

different from activities of the functional profile of the assessee and engaged in licensing activity.

48. The contrary the Ld. CIT DR placed reliance on orders passed by authorities below.

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

50. We found the said comparable was excluded by the co-ordinate Bench of the *Tribunal* in the case of Applied Materials India Ltd., (supra) at pages 32 & 33 paras 17.1 & 17.2 as under :

17.1 We have heard the learned D.R. as well as learned A.R. and considered the relevant material on record. The DRP has rejected this company by recording the fact as under :

"We examined the annual report from which it is evident that the entire revenue has been shown under service segment which indicates that the revenue from software development, consultancy, licensing and sub-licensing, annual maintenance charges for software support. WEB development and hosting has been reported in one segment, thus in absence of segmental information, we concur with the view of the DRP in preceding year and accordingly direct the Assessing Officer to exclude this company from comparables."

17.2 We further note that the Tribunal in the case of DCIT v. Electronics for Imaging India Pvt. Ltd. (supra) has considered the comparability of this company in paras 14 to 16 as under :

"(1) ICRA Techno Analytics Ltd. (seg)

14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, this company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:-

"Having heard the contention, on perusal of the annual report, it is noticed by us that the segmental information is available for two segments i.e., services and sales. However, it is evident from the annual report that the service segment comprises of software development, software consultancy, engineering services, web development, web hosting, etc. for which no segmental information is available and therefore, the objection of the assessee is found

acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables."

15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when this company is engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing, then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.

16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider."

Nothing has been brought before us to show that the facts recorded by the DRP as well as by the co-ordinate bench of this Tribunal are not correct. Accordingly, in view of the decision of the co-ordinate bench of this Tribunal in the case of Electronics for Imaging India Pvt. Ltd. (supra), we do not find any error or illegality in the order of the DRP on this issue."

Based on the above we direct this comparable to be excluded from the final list.

Additional Ground:

In the additional ground assessee is seeking exclusion of Persistent Systems and Solutions Ltd.

51. This company was part of the TP Study analysis however the assessee raised is seeking exclusion before us. The Ld.AR submitted that these companies are functionally not comparable to the assessee as these are engaged in diversified activity i.e. rendering of software development services and licensing, royalty of software products. Thus without having the separate segmental details and data these diversified activities cannot be compared with the assessee. He has further pointed out that the company Persistent Systems Ltd. also engaged in developing products and therefore the activities are not comparable with

that of the assessee. In support of his contention, he has relied upon the decision of this (Tribunal) in the case of (*Electronics for Imaging India (P.) Ltd. vs. DCIT*) (Supra) and submitted that this company was found to be not comparable with the software development services provider.

52. On the other hand, the Ld.CIT.DR placed reliance on orders passed by authorities below.

We have considered the rival submissions in light of material placed on record.

At the outset we note that the functional comparability of these two companies have examined by the co-ordinate bench of this Tribunal in the case of *Electronics for Imaging India (P.) Ltd.* in I T(TP) A Nos. 227 & 285/Del/2013 by order dated 22/04/2016 in paras 60 and 61 & as under:

" Persistent Systems & Solutions Ltd.

60. The assessee has the grievance against rejection of this company by the DRP. The ld. AR has submitted that assessee did not raise any objection against this company, however, the DRP has rejected the said company. Therefore, the said company should be retained in the list of comparables.

61. Having considered the rival submissions as well as relevant material on record, at the outset, we note that the DRP has examined the functional comparability of this company by considering the relevant details as given in the annual report of this company. The DRP has given the finding that the entire revenue has been earned by this company from the sale of software services and products and in the absence of segmental details, it cannot be considered as comparable with software services segment. We find that this company has shown the income from sale of software services and products to the tune of Rs.6.67 crores. We further note that as per Schedule 11, the entire revenue has been shown under one segment i.e., sale of software services and products. Therefore, no separate segment has been given in respect of software services. Accordingly, the composite data of revenue as well as margins of this company pertaining to the sale of

software services and products cannot be considered as comparable with the software development services segment of the assessee. In view of the above facts and circumstances, we do not find any error or illegality in the directions of the DRP in excluding this company from the list of comparables. This ground of CO is dismissed.”

53. It has been submitted that the above observation was followed by coordinate bench of this *Tribunal* in case of *Electronics for Imaging vs DCIT* reported in *85 taxmann.com 124* for assessment year 2011-12 and had excluded this comparable as not comparable with a captive service provider.

54. We further find from the annual report placed at page 1167-1168 that there is no change in the activity and functions of these companies during the year under consideration in comparison to the Assessment Year 2010-11.

Accordingly, following the decisions of the co-ordinate benches of this *Tribunal* (*supra*), we direct the AO/TPO to exclude these two companies from the set of comparables."

Accordingly we allow the additional ground raised by assessee.

Ground No.11:

55. The Assessee is seeking inclusion of Akshay software Technologies Ltd., LGS Global Ltd. and Thinksoft Global Ltd. in the final list of comparables, which was also engaged in providing software development services. It has been submitted that these comparables were also considered by coordinate bench of this *Tribunal* in case of *Applied Materials India Ltd., (supra)*. It is submitted by the Ld.AR that this *Tribunal* was pleased to remand

the question of inclusion of this company for fresh consideration by the AO/TPO.

56. Respectfully following the decision of the *Tribunal*, we set aside the order of the Ld.TPO/AO excluding this company as a comparable company and remand the issue of comparability of this company be considered afresh by the Ld.TPO/AO.

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

Ground 12(a)

57. The Ld.AR submitted that assessee is challenging the action of restricting the working capital adjustment. He referred to Rule 10B(3) that provide that an adjustment ought to be provided for any differences in the economic factors between the tested party and the comparables. The Ld.AR also placed reliance on decision of coordinate bench of this tribunal in case of *ARM Embedded Technologies Pvt.Ltd. vs ITO* in IT(TP)A No. 1369/Bang/2014 and *VMWare Software India Pvt.Ltd. vs DCIT* in *IT (TP)A.No.1311 (Bang.) of 2014, dated 6-1-2017*, wherein the *Tribunal* directed to grant full working capital adjustment without any.

On the contrary, the Ld.CIT.DR relied on orders passed by authorities below.

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

59. The Ld.TPO restricted the working capital adjustment at 1.63%. Identical issue which had come up before this Tribunal in the case of *Rambus Chip Technologies (India) (P.) Ltd. v. Dy.*

CIT IT(TP)A.23/Ban/2015, dt. 22.07.2015, wherein this tribunal observed and held as under:

"13.As regards ground No.3(f). learned counsel for the assessee submitted that the AO/TPO while considering the working capital adjustment, has arrived at the working capital adjustment in the case of the assessee at 5.97%, but while giving effect to the working capital adjustment, has restricted the said adjustment to 1.71% in case of uncontrolled comparables selected by the TPO. The learned counsel for the assessee submitted that the TPO has not given any basis for such restriction of the working capital adjustment. He submitted that the CIT (A) also has not applied his mind to this issue but has summarily confirmed the order of the AO and therefore it has to be set aside.

60. Respectfully following the consistent view taken by this tribunal, we direct Ld.AO/TPO to recompute the working capital adjustment in the case of comparables in actual.

We note that in all the transfer pricing cases this *Tribunal* has been directing the Ld.AO/TPO to grant working capital on actual. Present assessee being a captive service provider there is minimal risk undertaken and therefore there is a necessity to provide adjustment to the margins of comparables in the final list to set apart the differences.

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

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

Order pronounced in the open court on March, 2021

(CHANDRA POOJARI)

Accountant Member

Bangalore,

Dated, the March, 2021.

/Vms/

(BEENA PILLAI)

Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-3-2021		Sr.PS
3.	Draft proposed & placed before the second member	-3-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-3-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-3-2021		Sr.PS/PS
6.	Kept for pronouncement on	-3-2021		Sr.PS
7.	Date of uploading the order on Website	-3-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-3-2021		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