

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

<b>Appeal Nos. &amp; Assessment Years</b>	<b>Appellant</b>	<b>Respondent</b>
IT(TP)A No. 1940/Bang/2017 2013-14	M/s. Huawei Technologies India Pvt. Ltd., Sy. No.37, 46, 45/3, 45/4 ETC, KNo.1540, Divyashree Technopark, Near EPIP Industrial Area, Kundalahalli Village, Bengaluru – 560 037. <b>PAN : AAACH 8599 L</b>	ACIT, Circle - 3(1)(2), Bengaluru.
ITA No.2140/Bang/2017 2010-11	ACIT, Circle - 3(1)(2), Bengaluru.	M/s. Huawei Technologies India Pvt. Ltd., Bengaluru – 560 037. <b>PAN : AAACH 8599 L</b>
ITA No.2051/Bang/2017 2010-11	M/s. Huawei Technologies India Pvt. Ltd., Bengaluru – 560 037. <b>PAN : AAACH 8599 L</b>	ITO, Ward - 11(2), Bengaluru.

Assessee by	:	Shri. Alasser Rampurawala, CA
Revenue by	:	Ms. Neera Malhotra, CIT (DR)(ITAT), Bengaluru

Date of hearing	:	02.08.2021
Date of Pronouncement	:	04.08.2021

**O R D E R**

**PER SHRI N.V VASUDEVAN, VICE-PRESIDENT :**

**ITA Nos.2051, 2140/Bang/2017**

These appeals by the assessee and Revenue are directed against the order dated 22.08.2017 of CIT(A)-3, Bengaluru in relation to AY 2010-11.

2. The assessee is engaged in the business of provision of Software Development Services (SWD services), and Information Technology enabled Services (ITeS) to its wholly owned holding company. In terms of the provisions of Sec.92-A of the Act, the assessee and its wholly owned holding company were Associated Enterprises ("AEs"). In terms of Sec.92B(1) of the Act, the transaction of providing SWD Services and ITeS was an "international transaction" and in terms of Sec.92(1) of the Act, any income arising from an international transaction shall be computed having regard to the arm's length price. In this appeal by the assessee, the dispute is with regard to determination of Arms' Length Price (ALP) in respect of the aforesaid two international transactions of (i) rendering SWD services to the AE and (ii) ITeS to the AE. We shall deal each of the international transactions separately.

3. As far as the provision of Software Development services are concerned, the assessee filed a Transfer Pricing Study (TP Study) to justify the price paid in the international Transaction as at ALP by adopting the Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM) of determining ALP. The assessee selected Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI) for the purpose of comparison. The OP/OC of the assessee was arrived at 11.81% by the assessee in its TP study. The operating income was Rs.2,82,25,47,733/-. The assessee chose companies who are engaged in providing similar services such as the assessee. The assessee identified 16 companies whose average arithmetic mean of profit margin was comparable with the Operating margin of the assessee. The assessee therefore claimed that the price it charged in the international transaction should be considered as at Arm's Length.

4. The Transfer Pricing Officer (TPO) to whom the determination of ALP was referred to by the AO, accepted TNMM as the MAM and also used the same PLI for comparison i.e., OP/TC. He also selected comparable companies from database.

The TPO accepted 5 companies chosen by the assessee as comparable companies. The TPO on his own identified 5 companies as comparable with the assessee company and worked out the average arithmetic mean of their profit margins as follows:

<b>Sl. No.</b>	<b>Name</b>	<b>PLI</b>
1.	Infosys Ltd	45.01%
2.	Kals Information Systems Ltd.(seg)	38.37%
3.	Larsen & Toubro Infotech Ltd.	19.33%
4.	Mindtree Ltd.(seg)	14.83%
5.	Persistent Systems & Solutions Ltd.	15.38%
6.	Persistent Systems Ltd.	30.35%
7.	R S Software (India) Ltd.	10.259%
8.	Sasken Communication Technologies	17.36%
9.	Tata Elxsi(seg)	21.88%
10.	Thinksoft Global Services Ltd.	17.05%
	<b>AVERAGE MARGIN</b>	<b>22.99%</b>

5. The TPO computed the Addition to total income on account of adjustment to ALP as follows:

Arm's Length Mean Margin on cost	22.99%
Less: Working Capital Adjustment (Annex. C)	1..28%
Adjusted margin	21.71%
Operating Cost	252,44,36A24

Arms Length Price(ALP) @ 121.71% of Operating Cost	307,24,91,572
Price Received (Op. Revenue)	282,25,47,733
<b>Shortfall being adjustment u/s 92CA</b>	<b>24,99,43,839</b>

6. The above shortfall of Rs.24,99,43,839/- was treated as transfer pricing adjustment u/s 92CA in respect of software development segment of the taxpayer's international transactions. Thus a sum of Rs.24,99,43,839/- was added to the total income of the assessee on account of determination of ALP for provision of SWD services by the assessee to its AE.

7. The assessee did not file objections before the Disputes Resolution Panel (DRP) against the draft assessment order passed by the AO wherein the addition suggested by the TPO as adjustment to ALP was added to the total income of the assessee by the AO. The assessee filed appeal before CIT(A) against final Assessment Order of the AO and the CIT(A) gave certain directions. To the extent the assessee did not get relief from the CIT(A), the assessee has preferred appeal before the Tribunal. To the extent the TPO's order was modified, the Revenue has preferred appeal before the Tribunal.

8. We shall take up for consideration assessee's appeal first. Though the assessee has raised many grounds in its appeal, at the time of hearing, the learned Counsel for the assessee submitted that the assessee wishes to press for adjudication only ground Nos.9, 11 and 13. These grounds read as follows:

“9. *The Ld. CIT(A) erred in law and on facts by including **Infosys Ltd.** as a comparable to the Appellant on the ground that it is functionally comparable, whereas the scale of operations of this comparable is significantly larger than that of the Appellant, it earns significant brand profits and owns significant intangible assets, it has income from sale of software products, it incurs high sales and marketing*

*expenses and that it has significant research & development expenditure.*

11. *The Ld. CIT(A) erred in law and on facts by including **Persistent Systems Ltd.** as a comparable to the Appellant on the ground that it is functionally comparable, whereas this comparable should have been excluded on the grounds that there exists extra-ordinary events during the year, it owns significant intangibles and that it is functionally not comparable to the Appellant.*
13. *The Ld. CIT(A) erred in rejecting the adjustment, provided by the Ld. TPO, for the differences in **working capital** of the Appellant and the comparable companies.”*

9. As far as ground No.9 is concerned, the same relates to exclusion of Infosys Ltd., as a comparable company. The learned counsel for the assessee placed reliance on a decision of the ITAT Bangalore Bench in assessee's case for AY 2012-13 in IT(TP)A No.1939/Bang/2017 wherein the Tribunal followed the decision rendered in the case of CGI Information Systems & Management Consultants (P) Ltd. Vs. ACIT (2018) 94 taxmann.com 97 (Bang Trib) which was also a decision rendered for AY 2012-13 where the assessee was a company engaged in rendering software development services such as the assessee. In the said decision, Infosys Ltd. was excluded from the list of comparable companies by following the decision of the Hon'ble Delhi High Court in the case of *CIT v. Agnity India Technologies (P.) Ltd.* [2013] 36 taxmann.com 289/219 Taxman 26 (Delhi). The Tribunal accepted that Infosys Ltd. is a giant risk taking company and engaged in development and sale of software products and also owns intangible assets and therefore not comparable with a software development service provider such as the assessee in that case.

10. The CIT(A) however did not accept the plea of the assessee for exclusion of this company for the detailed reasons given in his order at paragraph 4.1 to 4.3 of his order. One of the conclusion of the CIT(A) is that high turnover is not a relevant criteria for excluding a company from the list of comparable companies. It was the

case of the assessee that Infosys Ltd.'s turnover was Rs.21,140 Crores whereas the assessee's turnover was only Rs.282.25 Crores and hence the two companies are not comparable. The CIT(A) rejected the plea of the assessee.

11. As far as excluding the companies on the basis of turnover is concerned, the issue has been settled in several decisions of the Tribunal and has been elaborately discussed by this Tribunal in the case of *Autodesk India Pvt. Ltd. v. DCIT in IT(TP)A No.540 & 541/Bang/2013, order dated 06.07.2018*. The Tribunal in this decision after review of entire case laws on the subject, considered the question, whether companies having turnover more than 200 crores upto 500 crores has to be regarded as one category and those companies cannot be regarded as comparables with companies having turnover of less than 200 crores, the Tribunal held as follows:-

“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 *CIT Vs. Pentair Water India Pvt.Ltd. Tax Appeal No.18 of 2015 judgment dated 16.9.2015* 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 (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 (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 (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 Capgemini India Pvt.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 M/S.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).”

12. In view of the aforesaid decision of the Tribunal, we are of the view that the CIT(A) ought to have excluded Infosys Ltd., as a comparable company by applying the turnover filter. We direct that this company should be excluded as a comparable company.

13. The next grievance of the Assessee is regarding not excluding Persistent Systems Ltd. As far as exclusion of this company is concerned, the ld. counsel for

the assessee drew our attention to a decision of this Tribunal rendered in the case of CSG Systems International (I) P. Ltd. v. DCIT, ITA No.2026/Bang/2017, order dated 31.7.2016 (the Assessee in that case was also a SWD service provider such as the Assessee and the same comparables chosen in the case of the Assessee in this appeal was also chosen as comparable company by the TPO in that case) wherein the comparability of this company with the SWD services company such as the assessee came up for consideration. The Tribunal Vide para 20 of the very same aforesaid order of the Tribunal, Persistent Systems Ltd. was excluded from the list of comparable companies on the ground that these companies were engaged in diversified activities and earning revenue from various activities including licensing of products and income from maintenance contracts and there was no segmental reporting so that the operating margins of SWD services of this company can be compared with the assessee. In the light of the aforesaid decision of the Tribunal, we do find merit in ground No.1 raised by the Assessee and allow the same.

14. The next grievance projected by the Assessee in its appeal is with regard to the action of the CIT(A) in not allowing any adjustment towards working capital differences. On this issue we have heard the rival submissions. the TPO allowed working capital adjustment accepting the calculation given by the Assessee. The CIT(A) in exercise of his powers of enhancement held that no adjustment should be made to the profit margins on account of working capital differences between the tested party and the comparable companies for the following reasons:

- (i) The daily working capital levels of the tested party and the comparables was the only reliable basis of determining adjustment to be made on account of working capital because that would be on the basis of working capital deployed throughout the year.
- (ii) Segmental working capital is not disclosed in the annual reports of companies engaged in different segments and therefore proper comparison cannot be made.

- (iii) Disclose in the balance sheet does not contain break up of trade and non-trade debtors and creditors and therefore working capital adjustment done without such break up would result in computation being skewed.
- (iv) Cost of capital would be different for different companies and therefore working capital adjustment made disregarding this different based on broad approximations, estimations and assumptions may not lead to reliable results.

15. The learned counsel for the Assessee brought to our notice the decision of the Tribunal in Assessee's own case for AY 2012-13 wherein on an identical issue, the Tribunal held that working capital adjustment cannot be denied to the Assessee, in IT (TP) A.No. 1939/Bang/2017 *Huawei Technologies India Pvt. Ltd. v. JCIT [2019] 101 taxmann.com 313 (Bang. Trib.)*.

“10. The next grievance projected by the Assessee in its appeal is with regard to the action of the CIT(A) in not allowing any adjustment towards working capital differences. On this issue we have heard the rival submissions. The relevant provisions of the Act in so far as comparability of international transaction with a transaction of similar nature entered into between unrelated parties, provides as follows:

**Determination of arm's length price under section 92C .**

**10B .** (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction [*or a specified domestic transaction*] shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely :—

**(a) to (d).....**

(e) transactional net margin method, by which,—

- (i) the net profit margin realised by the enterprise from an international transaction [*or a specified domestic transaction*] entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

- (ii) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;
- (iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction [*or the specified domestic transaction*] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;
- (iv) the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);
- (v) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction [*or the specified domestic transaction*];

(f).....

(2) For the purposes of sub-rule (1), the comparability of an international transaction [*or a specified domestic transaction*] with an uncontrolled transaction shall be judged with reference to the following, namely:—

- (a) the specific characteristics of the property transferred or services provided in either transaction;
- (b) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;
- (c) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;
- (d) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets,

overall economic development and level of competition and whether the markets are wholesale or retail.

(3) An uncontrolled transaction shall be comparable to an international transaction [*or a specified domestic transaction*] if—

- (i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or
- (ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

11. A reading of Rule 10B(1)(e)(iii) of the Rules read with Sec.92CA of the Act, would clearly shows that the net profit margin arising in comparable uncontrolled transactions has to be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, which could materially affect the amount of net profit margin in the open market.

12. Chapters I and III of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereafter the “TPG”) contain extensive guidance on comparability analyses for transfer pricing purposes. Guidance on comparability adjustments is found in paragraphs 3.47-3.54 and in the Annex to Chapter III of the TPG. A revised version of this guidance was approved by the Council of the OECD on 22 July 2010. In paragraph 2 of these guidelines it has been explained as to what is comparability adjustment. The guideline explains that when applying the arm’s length principle, the conditions of a controlled transaction (i.e. a transaction between a taxpayer and an associated enterprise) are generally compared to the conditions of comparable uncontrolled transactions. In this context, to be comparable means that:

- None of the differences (if any) between the situations being compared could materially affect the condition being examined in the methodology (e.g. price or margin), or
- Reasonably accurate adjustments can be made to eliminate the effect of any such differences. These are called “comparability adjustments.

13. In Paragraph 13 to 16 of the aforesaid OECD guidelines, need for working capital adjustment has been explained as follows:

“13. In a competitive environment, money has a time value. If a company provided, say, 60 days trade terms for payment of accounts, the price of the goods should equate to the price for immediate payment plus 60 days of interest on the immediate payment price. By carrying high accounts

receivable a company is allowing its customers a relatively long period to pay their accounts. It would need to borrow money to fund the credit terms and/or suffer a reduction in the amount of cash surplus which it would otherwise have available to invest. In a competitive environment, the price should therefore include an element to reflect these payment terms and compensate for the timing effect.

14. The opposite applies to higher levels of accounts payable. By carrying high accounts payable, a company is benefitting from a relatively long period to pay its suppliers. It would need to borrow less money to fund its purchases and/or benefit from an increase in the amount of cash surplus available to invest. In a competitive environment, the cost of goods sold should include an element to reflect these payment terms and compensate for the timing effect.

15. A company with high levels of inventory would similarly need to either borrow to fund the purchase, or reduce the amount of cash surplus which it is able to invest. Note that the interest rate July 2010 Page 6 might be affected by the funding structure (e.g. where the purchase of inventory is partly funded by equity) or by the risk associated with holding specific types of inventory)

16. Making a working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential comparables, with an assumption that the difference should be reflected in profits. The underlying reasoning is that:

- A company will need funding to cover the time gap between the time it invests money (i.e. pays money to supplier) and the time it collects the investment (i.e. collects money from customers)
- This time gap is calculated as: the period needed to sell inventories to customers + (plus) the period needed to collect money from customers – (less) the period granted to pay debts to suppliers.”

14. Examples of how to work out adjustment on account of working capital adjustment is also given in the said guidelines. The guideline also expresses the difficulty in making working capital adjustment by concluding that the following factors have to be kept in mind (i) The point in time at which the Receivables, Inventory and Payables should be compared between the tested party and the comparables, whether it should be the figures of receivables, inventory and payable at the year end or beginning of the year or average of these figures. (ii) the selection of the appropriate interest rate (or rates) to use. The rate (or rates) should generally be determined by reference to the rate(s) of interest applicable to a commercial enterprise operating in the same market as the tested party. The guidelines conclude by observing that the purpose of working capital adjustments is to improve the reliability of the comparables.

15. In the present case the TPO allowed working capital adjustment accepting the calculation given by the Assessee. The CIT(A) in exercise of his powers of enhancement held that no adjustment should be made to the profit margins on account of working capital differences between the tested party and the comparable companies for the following reasons:

- (i) The daily working capital levels of the tested party and the comparables was the only reliable basis of determining adjustment to be made on account of working capital because that would be on the basis of working capital deployed throughout the year.
- (ii) Segmental working capital is not disclosed in the annual reports of companies engaged in different segments and therefore proper comparison cannot be made.
- (iii) Disclose in the balance sheet does not contain break up of trade and non-trade debtors and creditors and therefore working capital adjustment done without such break up would result in computation being skewed.
- (iv) Cost of capital would be different for different companies and therefore working capital adjustment made disregarding this different based on broad approximations, estimations and assumptions may not lead to reliable results.

16. The CIT(A) also placed reliance on a decision of Chennai ITAT in the case of Mobis India ITA No.2112/Mds/2011 (2013) 38 taxmann.com. That decision was based on the factual aspect that the Assessee was not able to demonstrate how working capital adjustment was arrived at by the Assessee. Therefore nothing turns on the decision relied upon by the CIT(A) in the impugned order. In the matter of determination of Arm's Length Price, it cannot be said that the burden is on the Assessee or the Department to show what is the Arm's Length Price. The data available with the Assessee and the Department would be the starting point and depending on the facts and circumstances of a case further details can be called for. As far as the Assessee is concerned, the facts and figures with regard to his business has to be furnished. Regarding comparable companies, one has to fall back upon only on the information available in the public domain. If that information is insufficient, it is beyond the power of the Assessee to produce the correct information about the comparable companies. The Revenue has on the other hand powers to compel production of the required details from the comparable companies. If that power is not exercised to find out the truth then it is no defence to say that the Assessee has not furnished the required details and on that score deny adjustment on account of working capital differences.

Regarding applying the daily balances of inventory, receivables and payables for computing working capital adjustment, the Delhi Bench of ITAT in the case of ITO Vs. E Value Serve.com (2016) 75 taxmann.com 195(Del-Trib) has held that insisting on daily balances of working capital requirements to compute working capital adjustment is not proper as it will be impossible to carry out such exercise and that working capital adjustment has to be based on the opening and closing working capital deployed. The Bench has also observed that that in Transfer Pricing Analysis there is always an element of estimation because it is not an exact science. One has to see that reasonable adjustment is being made so as to bring both comparable and test party on same footing. Therefore there is little merit in CIT(A)'s objection on working capital adjustment based on unavailable daily working capital requirements data. There is also no merit in the objection of the CIT(A) regarding absence of segmental details available of working capital requirements of comparable companies chosen and absence of details of trade and non-trade debtors of comparable companies as these details are beyond the power of the Assessee to obtain, unless these details are available in public domain. Regarding absence of cost of working capital funds, the OECD guidelines clearly advocates adopting rate(s) of interest applicable to a commercial enterprise operating in the same market as the tested party. Therefore this objection of the CIT(A) is also not sustainable.

17. In the light of the above discussion we are of the view that the CIT(A) was not justified in denying adjustment on account of working capital adjustment. Since, the CIT(A) has not found any error in the TPO's working of working capital adjustment, the working capital adjustment as worked out by the TPO has to be allowed. We may also add that the complete working capital adjustment working has been given by the Assessee and a copy of the same is at page 173 & 192 of the Assessee's paper book. No defect whatsoever has been pointed out in these working by the CIT(A). We may also further add that in terms of Rule 10B(1)( e) (iii) of the Rules, **the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions which could materially affect the amount of net profit margin in the open market.** It is not the case of the CIT(A) that differences in working capital requirements of the international transaction and the uncontrolled comparable transactions is not a difference which will materially affect the amount of net profit margin in the open market. If for reasons given by CIT(A) working capital adjustment cannot be allowed to the profit margins, then the comparable uncontrolled transactions chosen for the purpose of comparison will have to be treated as not comparable in terms of Rule 10B(3) of the Rules, which provides as follows:

**“(3) An uncontrolled transaction shall be comparable to an international transaction if—**

**(i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged to paid in, or the profit arising from, such transactions in the open market; or**

**(ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences.”**

18. In such a scenario there would remain no comparable uncontrolled transactions for the purpose of comparison. The transfer pricing exercise would therefore fail. Therefore in keeping with the OECD guidelines, endeavor should be made to bring in comparable companies for the purpose of broad comparison. Therefore the working capital adjustment as claimed by the Assessee should be allowed. We hold and direct accordingly.”

16. Respectfully following the aforesaid decision, we hold that the working capital adjustment as claimed by the Assessee should be allowed. We hold and direct accordingly.

17. In the result, appeal by the Assessee is partly allowed.

18. As far as Revenue’s appeal is concerned, the first two grounds of appeal of the Revenue reads thus:-

*“1. The ld. CIT(A) erred in following the ratio laid down by the Hon’ble High Court in the case of M/s. Tata Elxsi Ltd. (ITA No.70/2009).*

*2. The ld. CIT(A) erred in holding that the expenses reduced from the Export Turnover must also be reduced from the Total Turnover since there is no provision under Sec. 10A for exclusion of such expenses from Total Turnover.”*

19. We have considered the rival submissions. Taking into consideration the decision rendered by the Hon’ble High Court of Karnataka in the case of *CIT v. Tata Elxsi Ltd [2012] 349 ITR 98 (Karn)*, we are of the view that whatever is excluded from export turnover should also be excluded from total turnover while

computing deduction u/s.10A of the Act. We are of the view that as of today, law declared by the Hon'ble High Court of Karnataka which is the jurisdictional High Court is binding on us. Moreover, the order of the Hon'ble Karnataka High Court has been upheld by the Hon'ble Supreme Court in the case of *CIT v. HCL Technologies Ltd. in Civil Appeal No.8489-98490 of 2013 & Ors. dated 24.04.2018*. Hence these grounds are rejected.

20. The next grievance of the revenue projected in Ground No.4 and 5 is with regard to exclusion of M/S.Kals Information Systems Ltd., by the CIT(A) as not comparable with the Assessee. This company was excluded by the CIT(A) for the reason that it was functionally dissimilar to the assessee, by placing reliance of the decision of this Hon'ble Tribunal in Assessee's own case for the Assessment year 2009-10. The company is engaged in the development of software products and providing related services. It also provides implementation and maintenance of software products. It has developed a range of products such as Shine ERP software, Docuflo, Dac4Cast, CMSS, La Vision, Virtual Insure and Aldon. The annual report also confirms that the company is engaged in development of software and software products. The company holds significant inventories which account for 27% of the total current assets which demonstrates that it is a product development company as against a pure software service provider like the assessee. The functions carried out by the two companies being substantially different, this company ought to stand rejected as a comparable. The company is being consistently excluded from the list of comparables in similar cases. Since the circumstances leading to it being excluded as being functionally dissimilar in the previous assessment continue to remain same, the company ought to remain excluded in the current assessment year. This Tribunal in *DCIT v. Electronics for Imaging India P. Ltd* [(2016) 70 taxmann.com 299 (Bang – Trib.)], *ACIT v. Broadcom India Research (P.) Ltd* [2016] 72 taxmann.com 77 (Bangalore - Trib.) and *ITO v. Interwoven Software Services (India) (P.) Ltd.*[2016] 74 taxmann.com 103 (Bangalore - Trib.), directed

this company to be excluded in the case of assesseees similar to the Assessee herein. We, therefore, find no ground to interfere with the order of CIT(A).

21. In the result, appeal by the Revenue is dismissed.

22. In the result, the appeal by the assessee is partly allowed while the appeal by the Revenue is dismissed.

**23. IT(TP)A No.1940/Bang/2017 for Assessment Year 2013-14 :** This appeal by the assessee is directed against the order dated 24.08.2017 of CIT(A)-3, Bengaluru, in relation to AY 2013-14.

24. The assessee is engaged in the business of provision of Software Development Services (SWD services), to its wholly owned holding company. In terms of the provisions of Sec.92-A of the Act, the assessee and its wholly owned holding company were Associated Enterprises ("AEs"). In terms of Sec.92B(1) of the Act, the transaction of providing SWD Services was "international transaction" and in terms of Sec.92(1) of the Act, the Any income arising from an international transaction shall be computed having regard to the arm's length price. In this appeal by the Assessee, the dispute is with regard to determination of Arms' Length Price (ALP) in respect of the international transaction of rendering SWD services to the AE.

25. As far as the provision of Software Development services are concerned, the Assessee filed a Transfer Pricing Study (TP Study) to justify the price paid in the international Transaction as at ALP by adopting the Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM) of determining ALP. The Assessee selected Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI) for the purpose of comparison. The OP/OC of the Assessee was arrived at 19.14% by the Assessee in its TP study. The Assessee chose 7 companies

who are engaged in providing similar services such as the Assessee. The average arithmetic mean of profit margin of those companies was comparable with the Operating margin of the Assessee. The Assessee therefore claimed that the price it charged in the international transaction should be considered as at Arm's Length.

26. The Transfer Pricing Officer (TPO) to whom the determination of ALP was referred to by the AO, accepted TNMM as the MAM and also used the same PLI for comparison i.e., OP/TC. The TPO computed the OP/OC of the Assessee at 12.55%. The TPO identified 7 companies as comparable with the Assessee company and worked out the average arithmetic mean of their profit margins as follows:

SL. NO.	NAME OF TAX PAYER	OP/OC (in %)
1	C G-V A K Software & Exports Ltd.	20.54%
2	I C R A Techno Analytics Ltd.	17.10%
3	Larsen & Toubro Infotech Ltd.	26.06%
4	Mindtree Ltd. (Seg)	18.19%
5	Persistent Systems Ltd.(Seg)	28.27%
6	R S Software (India) Ltd.	17.41%
7	Tech Mahindra Ltd.(Segmental)	18.72%
	<b>AVERAGE</b>	<b>20.90%</b>

27. The TPO computed the Addition to total income on account of adjustment to ALP as follows:

***“15.4. Computation of Arm's Length Price:***

*The arithmetic mean of the Profit Level indicators is taken as the arm's length margin. PI see Annexure A for details of computation of PLI of the comparable. Based on this, the a length price of the services rendered by the taxpayer to its AE(s) is computed as under:*

**SWD**

<i>Arm's Length Mean Margin on cost</i>	<i>20.90%</i>
<i>Less: Working Capital Adjustment</i>	<i>2.18%</i>
<i>(As per Annex. C)</i>	
<i>Adjusted margin</i>	<i>18.72%</i>
<i>Operating Cost'</i>	<i>4,55,38,08,913</i>
<i>Arms Length Price(ALP)</i>	<i>5,40,64,27,373</i>
<i>119.41% of Operating Cost)</i>	
<i>Price Received</i>	<i>5,00,59,91,046</i>
<i>Variation in Price</i>	<i>40,04,36,327</i>
<i>3% of price received</i>	<i>15,01,79,731</i>
<i>Shortfall being adjustment</i>	<i>40,04,36,327</i>

*The above shortfall of Rs.40,04,36,327/-(Rupees Forty Crore Four Lakh Thirty Six Thousand Three Hundred Twenty Seven Only) is treated as transfer pricing adjustment 92CA in respect of software development segment of the taxpayer's international transactions.”*

Thus a sum of Rs.40,04,36,327/- was added to the total income of the assessee on account of determination of ALP for provision of SWD services by the assessee to its AE.

28. The assessee did not file objections before the Disputes Resolution Panel (DRP) against the draft assessment order passed by the AO wherein the addition suggested by the TPO as adjustment to ALP was added to the total income of the Assessee by the AO. The AO passed the final Order of Assessment against which the assessee filed appeal before CIT(A). To the extent the Assessee did not get relief from the DRP, the Assessee has preferred appeal before the Tribunal.

29. At the time of hearing the learned counsel for the assessee prayed for limited relief of exclusion of 3 companies chosen by the TPO and retained by the DRP, viz., CG Vak Software & Exports Ltd., Larsen & Toubro Infotech Ltd., and Persistent Systems Ltd. He also prayed for inclusion of 1 company rejected by the TPO and CIT(A) viz., Spry Resources India Private Limited. All other grounds with regard to determination of ALP as raised in the grounds of appeal before Tribunal were not pressed except Ground No.14 with regard to Working Capital adjustment.

30. The learned counsel for the assessee submitted that in the case of M/s. Hewlett Packard (I) Software Operation Pvt. Ltd., Vs. ACIT in IT(TP)A No.2866/Bang/2017 : Asst.Year 2013-2014 order dated 10.03.2021, this Tribunal excluded three of the comparable companies which the assessee now seeks exclusion in this appeal and has included the company which the assessee seeks inclusion. The case decided by the Tribunal is also a case of a SWD service provider such as the assessee and the case relates to AY 2013-14. Further in the case cited by the learned counsel for the assessee, the very same comparable companies chosen in the case of the assessee in this appeal was also chosen by the TPO as comparable companies. Tribunal in the said order, following its decision in the case of M/s. NXP India Ltd. In IT(TP)A No.3861/Bang/2017 order dated 27.04.2020, held that in earlier year, Larsen & Toubro Infotech Limited has incurred expenditure on "cost of brought out items for resale at Rs.27,10,89,274 and that it has huge intangible assets and brand value in software at Rs.143,61,95,196 and it has intangible asset in the form of business rights to the tune of Rs.153,42,45,196 as shown in the Fixed Assets as on 31.03.2013. Regarding Persistent Systems, it was held that this company was engaged in product engineering services, platforms and solutions, IP and related business, which is functionally different from assessee's case and it has earned revenue from R & D activities. Persistent Systems Limited also owns intellectual properties. Further, segmental data is not available as seen from the Notes forming part of financial statements under the head "Revenue from

operations (net)", placed at paper book page No.1260 and it has net income from sale of software services as discussed in earlier year. Regarding M/s. C G Vax Software and Exports Ltd., this company was excluded because it is not only engaged in the business of computer software development, but is also engaged in product manufacturing process, owns huge intangible assets and is also engaged outsourced product development. As far as exclusion of the company by name Spry Resources India Pvt. Ltd., is concerned, the learned Counsel for assessee relied on the order of a Co-ordinate Bench of this Tribunal in the case of Synamedia India (P) Ltd., [2020] 116 taxmann.com 852 for Assessment Year 2013-14 dealt with an identical claim made by the assessee who a SWD service provider such as the assessee and in whose case also, the very same 7 comparables chosen in the case of assessee in the appeal was chosen as comparable by the TPO. On inclusion of the company Spry Resources India Pvt. Ltd., (supra) the Tribunal held as follows:

*“(c) Spy Resources India Pvt.Ltd.,*

- 39.This comparable was excluded by Ld.TPO by observing that this company has reported trade receivables at Rs.7.49 crores for year under consideration whereas, in immediately preceding year, total turnover was Rs.3.45 crores only. Ld.AR submitted that, there is no objection raised by Ld.TPO regarding its functional similarities. He further submitted that merely because trade receivables for year under consideration are more than what was in the preceding year, exclusion of this comparable is not appropriate.*
- 40.Ld.CIT DR placed reliance upon orders passed by authorities below.*
- 41.We have perused submissions advanced by both sides in light of records placed before us.*
- 42.We are of opinion that this comparable needs to be relooked into by Ld.AO/TPO, as this has not been raised before DRP and nothing has been filed before DRP in respect of this comparable. Ld.CIT DR did not object for considering this comparable and therefore in the interest of Justice, we direct Ld.AO/TPO to look into export income earned by this comparable.*

*43. Accordingly this comparable is set aside to Ld.AO/TPO for due verification.”*

31. The learned DR relied on the order of the Tribunal in the case of WM Global Technology Services Pvt. Ltd., 91 taxmann.com 403 (Bang – Trib) wherein the Tribunal upheld exclusion of C G Vax Software and Exports Ltd., and remitted for fresh consideration inclusion and exclusion of L & T Infotech Ltd., Persistent Systems Ltd., and Spry Resources (P) Ltd. We however find that the reasons given by the DRP are the same reasons which the Tribunal has not accepted in its order in the case of NXP India Pvt. Ltd. (supra). Therefore, respectfully following the aforesaid decision, we direct exclusion of the following three companies from the list of comparable companies viz., CG Vak Software & Exports Ltd., Larsen & Toubro Infotech Ltd., and Persistent Systems Ltd.

32. We have considered the rival submissions. In the case of CGI Information Systems and Management Consultants (P) Ltd. (2019) 101 taxmann.com 294 (Bang-Trib), the following decisions in relation to the two out of the three comparables sought to be excluded by the Assessee, viz., persistent systems Ltd., and L & T Infotech Ltd. were considered in the light of several decisions of the Tribunal. The decisions so considered were the following:

(i) *Pitney Bowes Software India (P.) Ltd. v. Addl. CIT* [2018] 92 taxmann.com 6 (Delhi - Trib.) (para 4),

(ii) *CGI Information Systems & Management Consultants (P.) Ltd. v. Asstt. CIT* [2018] 94 taxmann.com 97 (Bang. - Trib.) (para 4),

(iii) *Microsoft Research Lab India (P.) Ltd. v. Dy. CIT* [IT (TP) Appeal No. 1276 (Bang.) of 2017, dated 3-11-2017] (para 6),

(iv) *WM Global Technology Services (India) (P.) Ltd. v. Asstt. CIT* [2018] 91 taxmann.com 403 (Bangaluru. - Trib.) (para 6),

(v) *AdviceAmericaSoftwareDevelopmentCenter (P.) Ltd. v. ITO* [2018] 94 taxmann.com 179 (Bang. - Trib.) (para 6)”

33. The Tribunal after considering the above decisions held as follows:

8. We have considered the rival submissions. First of all, we decide ground nos. 9 and 10 of the appeal of the assessee. Regarding the assessee's request for exclusion of Larsen & Toubro Infotech Ltd. for softwaredevelopment services segment, it is the submission of the learned AR of the assessee that this issue is covered in favour of the assessee by the Tribunal order rendered in the case of *Pitney Bowes Software India (P.) Ltd. (supra)* for the same Assessment Year. As per Para No. 3 of this Tribunal order, the TP adjustment was made in respect of provision of softwaredevelopment services to the AE. In the present case also, the issue in dispute is regarding exclusion or inclusion of this comparable *i.e.* Larsen & Toubro Infotech Ltd. in respect of the softwaredevelopment services segment of the assessee company. Hence it is seen that this Tribunal order is relevant in the present case. We also find that in respect of both these comparables *i.e.* Persistent Systems Ltd. and Larsen & Toubro Infotech Ltd., the Tribunal order rendered in the case of *AdviceAmericaSoftwareDevelopmentCenter (P.) Ltd. (supra)* is against the assessee. Copy of this Tribunal order is made available before us. Paras 14 to 21 of this Tribunal order are relevant for decision in respect of exclusion of Larsen & Toubro Infotech Ltd. and Persistent Systems Ltd. respectively. Hence for ready reference, these paras from this Tribunal order are reproduced hereinbelow.

"14. Larsen & Toubro Infotech Ltd. As far as this company is concerned, this company also renders SWD services. In page-15 of the TPO's order, the functional similarity of this company with that of the Assessee has been tabulated by the TPO. The objections of the Assessee for rejecting such objections has been set out at pages-21 to 23 of the TPO's order. The DRP upheld the order of the TPO including this company as a comparable company.

15. The grounds on which the Assessee seeks exclusion of this company from the list of comparable companies is on the ground that (i) this company is functionally dissimilar to that of SWD service provider and that it developsSoftware products ; (ii) Segmental Information of various segments are not available; (iii) Scale of operation and presence of intangibles, brand etc.

16. As far as functional dissimilarity of this company is concerned, this company also renders SWD services in three clusters, in the form of Service Cluster for banking, financial services, insurance, Media & entertainment and Travel & Logistics), Industrial Cluster comprising of all manufacturing sectors, telecom cluster relating to product engineering services. As rightly held by the DRP all the above

activities are SWD services. The fact that the Assessee mainly caters to SWD services in banking industry cannot be the basis to hold that this company and the Assessee are not functionally comparable. The difference pointed out by the Assessee are not material differences in terms of Rule 10B(2) of the Rules.

17. As far as the objection that this company apart from rendering SWD services is also engaged in developing its own Software Products, the TPO has brought out in his order that the products developed by the Assessee are platforms used by this company to enable design and developing software for use by a customer in particular industry. For e.g., the product UNITRAX is a Software that enables recording keeping enabling fund and insurance companies to manage the administration of their wealth management. Based on this software the Assessee designs Software for specific needs of a customer. No product is sold off the shelf by the company. Hence the objection of the Assessee that this company is a Software Product company was rightly held by the TPO/DRP to be not valid.

18. The objection with regard to absence of segmental information has been met by the TPO by pointing out that the whole segment of SWD services was considered for comparability. The objection of the Assessee in this regard is not specific and is vague and is on an assumption that this company operates in three segments. The TPO has pointed out that there is only one segment and hence this objection in our view was rightly disregarded by the revenue authorities.

19. As far as the objections regarding presence of intangibles, it is seen from the order of the TPO that the intangibles are nothing but Operating systems, office tools, development tools, testing tools etc., that are used in the process of rendering SWD services by the Assessee and therefore cannot be the basis to hold that this company is functionally not comparable with the Assessee. As far as the objection regarding presence of brand value is concerned, it has been held by the TPO that there is no intangible in the form of brand owned by this company. The scale of operations of this company cannot be the basis to hold that this company is not comparable when functionally it is found to be comparable.

20. None of the objections raised by the Assessee meet the criteria for excluding this company in terms of comparability criteria laid down in Rule 10B(2) of the Rules. We therefore uphold the inclusion of this company in the list of comparable companies.

21. Persistent Systems Ltd.: The objection of the Assessee for excluding this company from the list of comparable companies is on the ground that this company is also engaged in making software products and is not only in providing SWD services and that the segmental details of revenue from sale of Software Products and revenue from rendering SWD services are not available. This objection is examined in the light of the Annual Report of this company for 2013 which is at pages 648 to 841 of Volume-III Paper Book filed by the Assessee. The learned AR pointed out that even in the annual report this company is stated to be in the business of developing software products. The reference by the learned AR is to the consolidated Accounts, *i.e.*, inclusive of the activities of the group (AE companies). The unconsolidated accounts of this company is at page 787 of Volume-III paper book filed by the Assessee. The profit & Loss account is at page-793 of Volume-III paper book filed by the Assessee. Income from operation is Rs. 9967.53 million. Note 21 to the note on accounts gives the break of this revenue which is at page - 814 and it is fully from providing software development services. This revenue has been compared with costs and the OP/TC of this company arrived at by the TPO. Note 26 to the notes on accounts gives the segmental break-up and the segments are all software services segment and there is no product segment at all. The learned AR placed reliance on decisions where this company was excluded from the list of comparable companies. These decisions do not relate to AY 13-14. We can therefore safely proceed on the basis that those decisions are rendered on their facts prevailing in the relevant AY. As far as the present AY 13-14 is concerned, the plea of the Assessee for exclusion of this company on the ground that it is a software product company is held to be without any basis and is rejected. No other arguments were advanced for exclusion of this company. Hence, we uphold the orders of the revenue authorities including this company in the list of comparable companies."

**9.** In respect of the applicability of this Tribunal order for exclusion of Larsen & Toubro Infotech Ltd, this has been submitted by ld. AR of assessee in the chart submitted before us that on page no. 698 of Annual Report paper book, this company has debited an amount of Rs. 27,10,89,274/- as cost of bought-out items for resale. But this fact was not brought to the notice of the Tribunal in the case of *AdviceAmericaSoftwareDevelopmentCenter (P.) Ltd. (supra)*. It has also been submitted that on page no. 706 of Annual Report paper book, this has been reported that this company is engaged in sale of services to its related parties and this fact was also not brought to the notice of Tribunal in

case of *Advice America Software Development Center (P.) Ltd. (supra)*. When we examine paras 14 to 20 of this Tribunal order where there is discussion regarding inclusion/exclusion of Larsen & Toubro Infotech Ltd, we find that there is no discussion on these two aspects that this company is having significant amount of cost of bought-out items for resale and it is engaged in sale of services and products to its related parties and hence, in our considered opinion, this Tribunal order cannot be considered as a binding precedence because this Tribunal order is silent on these two important aspects as to this aspect that this company is having sizeable amount of bought out items for resale and have related party transactions in respect of sales of services and products. We also find that in the case of remaining three Tribunal orders i.e. *Microsoft Research Lab India Pvt. Ltd.'s case (supra)*, *WM Global Technology Services (India) (P.) Ltd. (supra)* and in the case of *Tecnotree Convergence Pvt. Ltd. (supra)*, the matter was remanded to the TPO for fresh decision. Hence, we feel it proper that in the present case also, this issue should go back to the file of TPO for fresh decision after providing adequate opportunity of being heard to the assessee and while deciding the issue afresh, all the available Tribunal orders on this issue should be considered by the TPO in proper perspective.

**10.** Similarly in respect of exclusion of Persistent Systems Ltd. also, the Id. DR of revenue has placed reliance on Tribunal order rendered in the case of *AdviceAmericaSoftwareDevelopmentCenter (P.) Ltd. (supra)* and it has been pointed out by him that in this case, it was held by the Tribunal in para 21 that this company is not required to be excluded but this is the submission made by Id. AR of assessee before us that while deciding the issue against the assessee in this case, the relevant page of the Annual Report of this company being page no. 861 of the Annual Report paper book was not considered properly and it is pointed out before us that it has been reported on this page of the Annual Report of that company that this company is earning revenue from royalty and the company also earns service tax and value added tax. This is the claim of the assessee before us that VAT is leviable only on sale of goods and therefore, it has to be seen that what is the quantum of sale of goods by that company and whether segmental information in that regard is available or not. It has been submitted that as per the remaining three Tribunal orders rendered in the case of *Microsoft Research Lab India (P.) Ltd. (supra)*, *WM Global Technology Services (India) (P.) Ltd. (supra)* and in the case of *Tecnotree Convergence Pvt. Ltd. (supra)*, the matter was remanded back to the TPO for fresh decision and therefore, in our considered opinion and in the facts of present case, we feel that this issue should also be restored back to the file of TPO for fresh decision in the light of all these four Tribunal orders after providing adequate opportunity of being heard to the assessee. We order accordingly.

**11.** In respect of software development services segment, we restore the matter back to the AO/TPO for fresh decision regarding the assessee's claim for exclusion of Larsen & Toubro Infotech Ltd. and Persistent Systems Ltd. after providing adequate opportunity of being heard to the assessee and the issue should be decided after considering all available Tribunal orders for Assessment Year 2013-14 in respect of exclusion of these two companies. Accordingly ground nos. 9 and 10 are allowed for statistical purposes.

34. Following the aforesaid decision we remand the issue of comparability of the aforesaid two companies to the TPO/AO for fresh consideration in the light of the directions as contained in the aforesaid order.

35. As far as exclusion of Spry Resources is concerned, the issue is settled by the decision cited by the learned counsel for the Assessee and in the decision cited by learned DR, the tribunal remanded the issue only because there was no opportunity afforded to the Assessee. Hence, we uphold inclusion of Spry Resources India Pvt.Ltd., as a comparable company.

36. What remains for consideration now is only inclusion of CG VAK Software and Exports Ltd. In the decision cited by the learned DR, this company was included as a comparable company for the reason that the annual report showed that CG - VAK Software Exports Ltd. is a software development company and not a product company and that to brand CG - VAK Software Exports Ltd. as a software product development company, it was incumbent upon the assessee, to prove that CG - VAK Software Exports Ltd. is having its own software products, over which it has proprietary right or any other right. The tribunal further held that from the bare perusal of the annual report and the financials it is clear that CG - VAK Software Exports Ltd. did not have any products in its inventory and there is no mention of any work-in-progress in respect of software products. The tribunal held that CG - VAK Software Exports Ltd. is a software development company and was doing the work of integration, assimilation or patch work for its client and for that purposes is

also rendering some services on-site. Therefore it cannot be urged that it was a product company. These findings are directly contradictory to the findings of the Tribunal rendered in the case of Hewlett Packard India Software operation Pvt.Ltd. (supra). Hence, we deem it proper to remand the issue of comparability of this company also to the TPO/AO for consideration afresh to find out from the financials and annual report and if necessary to issue notice u/s.133(6) of the Act and in other manner provided in the Act, to find out the true position with regard to the AO.

37. The TPO/AO will afford opportunity of being heard to the assessee on the issues that are being set aside to him for fresh consideration.

38. The other issue raised by the assessee in Gr.No.14 is with regard to not granting working capital adjustment. This issue is identical to the issue that we have decided in assessee's appeal for AY 2010-11. For the reasons given therein, we allow Gr.No.14 raised by the assessee and direct the AO/TPO to allow working capital adjustment.

39. In the result, the appeal by the assessee is partly allowed.

40. In the combined result, ITA No.2140/Bang/2017 is dismissed, ITA No. 2051/Bang/2017 and IT(TP)A No.1940/Bang/2017 are partly allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

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

Sd/-  
**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.  
Dated : 04.08.2021.  
/NS/\*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.