IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.3338/Bang/2018: Asst.Year 2013-2014
ITA No.3339/Bang/2018: Asst.Year 2014-2015

M/s.Inflow Technologies Private Limited, No.33 & 34, Inflow House Indiranagar, 1st Stage Off 100ft Road Bangalore – 560 038. **PAN : AABCI3528B.**	v.	The Asst.Commissioner of Income-tax, Circle 3(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Nitish Ranjan, CA
Respondent by : Sri.Pradeep Kumar, CIT-DR

Date of Hearing : 03.08.2021		**Date of Pronouncement : 04.08.2021**

O R D E R

Per George George K, JM

These appeals at the instance of the assessee pertain to assessment years 2013-2014 and 2014-2015. Since these appeals were heard together, it is being disposed of by this consolidated order.

We shall dispose of the appeals as under:

ITA No.3338/Bang/2018 (Asst.Year 2013-2014)

2. Though 17 grounds are raised in this appeal, the learned AR, during the course of hearing, pressed only ground Nos. 12, 14, 15, 16 and 17. Ground Nos.12, 14 and 15 are relating to transfer pricing adjustment. Ground Nos.16 and 17 are regarding corporate tax issue.

We shall adjudicate the grounds as under:-

Ground No.12 (Transfer Pricing Adjustment)

> *"Ground No.12 : Computation of margin of the comparable companies adopted by the ld.TPO is erroneous."*

3. As regards the above ground, the only contention of the learned AR is that out of the final list of comparables selected by the TPO (refer page 6 of the TPO's order), the margin of one of the comparable companies, namely, Priya International Limited is erroneous. It was submitted by the learned AR that this fact was noticed by the DRP in assessee's own case for assessment year 2012-2013, wherein the DRP directed the A.O. to take the margin of only electronic segment.

3.1 The learned Departmental Representative did not raise any specific objection to the submission of the learned AR in his written submission dated 28.01.2021.

3.2 We have heard rival submissions and perused the material on record. The DRP in its directions dated 28.12.2016 for assessment year 2012-2013 in assessee's own case had directed the A.O. to rectify the margin of Priya International Limited by adopting only electronics segment. The relevant directions of the DRP for assessment year 2012-2013 in assessee's own case, reads as follow:-

> *"M/s Priya International Limited:*
> *It is noticed from the Annual Report that, out of the sales of Rs.9.05 crores, the sale of software is only Rs.2.66 crores. The balance revenue is from sale of chemicals. It is noticed by us that there are three segments, i.e., indenting, chemicals and electronic. In our view, the TPO should have considered only the electronics segment. Accordingly, we direct the TPO to*

rectify the margin while giving effect to the directions of this order."

3.2.1 The financials of Priya International Limited for the assessment year 2013-2014 is placed on record at pages 103 to 120 of the paper book filed by the assessee. On perusal of the financial, it is clear that comparable company, namely, Priya International Limited is having three segments for the relevant assessment year also. Out of the total revenue of Rs.11,12,36,471 for the relevant assessment year, the sale of software / electronics is only to the tune of to Rs.3,03,49,608. The AO / TPO is directed to adopt the margin of Priya International Limited with regard to the segment of electronics alone. It is ordered accordingly.

3.2.2 In the result, ground No.12 is allowed for statistical purposes.

Ground Nos.14 and 15 (Transfer Pricing Adjustment)

"Ground No.14 : The ld.CIT(A) erred in enhancing the transfer pricing adjustment by directing the Ld.TPO to re-compute the arm's length price in the case of the Appellant at entity level.

Ground No.15 : The Ld.CIT(A) failed to consider that in accordance with the provisions of Chapter X of the Income Tax Act, adjustment with respect transfer pricing has to be restricted to Associated Enterprises' transactions only."

4. As regards the above grounds, the learned AR contends that the CIT(A) has erred in enhancing the transfer pricing adjustment by directing the AO to re-compute the arm's length price of the assessee at entity level. The learned AR submitted that according to the provisions of Chapter X of the Income-tax Act, the TP adjustment has to be restricted to the Associate Enterprises' transactions alone. In this context, the

learned AR relied on the Bangalore Bench of the Tribunal in the case of IKA India Private Limited v. DCIT in IT(TP)A No.2192/Bang/2017 (order dated 17.09.2018).

4.1 The learned DR did not raise any specific objection to the above contention of the assessee in the written submission filed by him.

4.2 We have heard rival submissions and perused the material on record. The Bangalore Bench of the Tribunal in the case of IKA India Private Limited v. DCIT (supra) had held that as per section 92 of the I.T.Act, the transfer pricing adjustment has to be made with reference to the international transactions the assessee had undertaken with its AEs. The relevant finding of the Co-ordinate Bench of the Tribunal reads as follow:-

> *"55. We have considered the rival submissions. The reasoning of the CIT(A) for considering the entire sales in manufactured finished goods segment for determination of ALP is that certain components and raw materials used in manufacture of finished goods are also sourced from AE and there is a possibility of the cost of such component having been bargained at a price which is not at arm's length. This presumption of the CIT(Appeals) is without any basis. He has not demonstrated with actual figures as to how there would be impact on profit margin on sale of finished products to AE because of purchases of some components from AE. He has given examples which are imaginary figures. Apart from this, the TPO has accepted that purchase of raw material and components by the assessee from its AE is at arm's length. Therefore, the basis on which the CIT(A) proceeded to apply the ALP test for transactions with non-AE is neither correct on facts nor permissible in law. As rightly contended by the assessee, section 92 of the Act can be applied only in respect of international transactions i.e., transactions with AE.*
>
> *56. In view of the above transfer pricing provisions and various judicial precedents, we hold that the transfer pricing adjustment should be restricted only to the AE related transactions of the assessee."*

4.2.1 In view of the clear directions of the Co-ordinate Bench order of the Tribunal in the case of IKA India Private Limited v. DCIT (supra) that the transfer pricing adjustment should be restricted to AEs related transaction, we direct the AO / TPO to re-compute the arm's length price of the assessee in respect of the international transaction it had entered with its AEs. It is ordered accordingly.

4.2.2 In the result, ground No.14 and 15 are allowed for statistical purposes.

Ground No.16 & 17 (Corporate Tax issue) (Disallowance of interest expenses)

> *"Ground No.16 : The Ld.AO erred in disallowing the interest paid on account of statutory payments amounting to Rs.15,16,148. The Ld.CIT(A) erred in not deleting the said disallowance..*
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> *Ground No.17 : The Ld.AO and the Ld.CIT(A) ought to have appreciated that the impugned interest expense is allowable under the provisions of the Act."*

5. The above grounds relate to disallowance of amount of Rs.15,16,748 being interest expenditure on account of delayed payment of service tax, TDS, excise duty, entry tax, VAT, etc. The AO had disallowed the entire amount of Rs.15,16,148 by holding it as not an allowable business expenditure.

5.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, it was submitted that the interest is compensatory in nature and should be allowed as expenditure u/s 37 of the I.T.Act. The CIT(A) noticed that the receipt and payment of service tax,

excise duty, VAT etc. are not included in the Profit & Loss account of the assessee, and it is only forming part of the Balance Sheet. Considering this factor, the CIT(A) held that the interest expenditure on account of delayed payment of statutory dues cannot be allowed as a business expenditure. The CIT(A) also relied on the judgment of the Hon'ble Bombay High Court in the case of Aruna Mills Ltd. v. CIT [1957] 31 ITR 155 (Bom.)]and the Calcutta High Court in the case of Orient General Industries Ltd. v. CIT [1994] 209 ITR 409 (Cal.)].

5.2 Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities. The learned AR has also relied on the order of the Mumbai Bench of the Tribunal in the case of Chander K.Raichandani v. ACIT in ITA No.799/Mum/2012 (order dated 08.02.2013).

5.3 The learned DR relied on the finding of the AO and the CIT(A).

5.4 We have heard rival submissions and perused the material on record. The assessee had claimed as deduction in the Profit and Loss Account, interest expenditure on account of delayed payment of statutory dues amounting to Rs.15,16,748. Whether the statutory payment are routed through the Profit and Loss account or not is immaterial for deciding the issue whether interest paid for the belated payment of statutory dues is compensatory or not (if the same is compensatory, the interest expenditure is allowable deduction u/s 37 of the I.T.Act). The Mumbai Bench of the

Tribunal in the case of Chander K.Raichandani v. ACIT (supra) had clearly held that the simple interest paid for belated payment of statutory dues is nothing but compensatory and allowable deduction u/s 37 of the I.T.Act. The Co-ordinate Bench of the Mumbai Tribunal relied on various judicial pronouncements. The relevant finding of the Mumbai Bench of the Tribunal, reads as follow:-

> *"5. The Hon'ble Supreme Court in the case of Mahalakshmi Sugar Mills Co. vs. CIT, 123 ITR 429(SC) have held that interest for delay payment of statutory dues is an allowable deduction u/s.37(1) of the Act. Same view has also been taken by Hon'ble Supreme Court in the case of Lachmandas Mathuradas vs CIT, 254 ITR 799(sc). We also find that Hon'ble Allahabad High Court in the case of Commissioner of Income-tax v. Ishwari Khetan Sugar Mills (Pvt.) Ltd.,272 ITR 224(All) have held that interest on delayed payment of provident fund is an allowable deduction u/s.37(1) of the Act. Hon'ble Delhi High Court in the case of Commissioner of Income-tax v. Delhi Automobiles, 272 ITR 381 (Del) has held that interest payments on delayed sales tax is an allowable deduction u/s.37(1) of the Act. In view of above and respectfully following the judicial pronouncements (supra), we are of the view that interest on late 3 payment of MVAT to the extent of Rs.6,41,348/- is an allowable deduction u/s.37(1). Hence, we reverse the orders of authorities below by allowing the deduction of interest u/s.37(1) on account of late payment tax under MVAT Act, 2002. Hence, grounds of appeal taken by assessee is allowed.*

5.4.1 In view of the Co-ordinate Bench of the Tribunal, we hold that the sum of Rs.15,16,748 paid as interest for belated payment of statutory dues is an allowable deduction. It is ordered accordingly.

5.4.2 In the result, ground Nos.16 and 17 are allowed.

ITA No.3339/Bang/2018 : Asst.Year 2014-2015

6. Thirteen grounds are raised in this appeal. The learned AR had only pressed ground Nos.10 to 13. Ground No.10 is regarding working capital adjustment and Ground No.11 to 13 are regarding corporate guarantee commission.

We shall adjudicate the issues, ground-wise as under:

Ground No.10

> *"Ground No.10 : The Ld.TPO erred in not providing working capital adjustment to the margins of the comparable companies adopted by him. Hon'ble DRP erred in rejecting the plea of the appellant."*

7. The TPO did not grant working capital adjustment claimed by the assessee while determining the arm's length price. The observations of the TPO in not granting working capital adjustment reads as follow:-

> *"The taxpayer's Net margin on sales in the AE segment as shown on page 3 is at a margin of 1.31%. Further, no adjustments like working capital and other adjustments can be given unless reasonably accurate adjustment can be made. The purpose of making an adjustment is to increase the comparability and not the profitability. Further, in the absence of accurate details of debtors and creditors of the taxpayer as well as the Uncontrolled Comparables, no working capital adjustment is given."*

7.1 The DRP affirmed the view taken by the AO / TPO.

7.2 Aggrieved, the assessee has filed this appeal before the ITAT. The learned AR by referring to page 105 of the paper book, submitted that the details of working capital adjustment were on record before the AO / TPO and the DRP. It was submitted that the rejection of claim of working capital adjustment is against the Rules and judicial pronouncements. The learned AR relied on the ITAT Bangalore Bench orders in the case of M/s.Goldman Sachs Services Pvt. Ltd. V. JCIT in ITA No.2355/Bang/2019 (order dated 15.06.2020) and Yahoo

Software Development India Pvt. Ltd. v. JCIT reported in [2020] 115 taxmann.com 60 (Bangalore-Trib.).

7.3 The learned DR has filed a brief written submission essentially supporting the order of the AO/TPO and the DRP.

7.4 We have heard rival submissions and perused the material on record. The solitary reason assigned by the TPO which was endorsed by the DRP is that the assessee had not demonstrated the impact of working capital adjustment on profit margin of assessee as well as the comparable companies. In this context, we find on identical facts, the Bangalore Bench of the Tribunal in the case of Yahoo Software Development India Pvt. Ltd. v. JCIT (supra) had held that when the details required for working capital adjustment has been provided by the assessee, the Revenue Authorities were not justified in denying the claim of the assessee for deduction. The relevant finding of the Bangalore Bench of the Tribunal, reads as follow:-

> *"14. 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.

15. 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.

16. 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.

17. In Paragraphs 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."

18. 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.

19. In the present case the TPO 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.

20. The TPO 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 defense 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 tested party on same footing. Therefore there is little merit in TPO/DRP's objection on working adjustment based on unavailable daily working capital requirements data. There is also no merit in the objection of the TPO/DRP 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 TPO/DRP is also not sustainable.

21. In the light of the above discussion, we are of the view that the revenue authorities were not justified in denying adjustment on account of working capital adjustment. 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 186 to 200 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 TPO/DRP 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 the revenue authorities 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."

22. 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 should be allowed. We hold and direct accordingly.

23. As we have already observed, the assessee in the present case has given all the details required for working capital adjustment and the revenue authorities were not justified in denying the claim of assessee for deduction. The TPO/AO is directed to allow working capital adjustment in the light of the material already available on record, after affording opportunity of being heard to the assessee.

24. The TPO/AO is directed to compute the ALP in the light of directions as given above, after affording opportunity of being heard to the assessee."

7.4.1 In the instant case, we find that the assessee has provided the detailed working capital adjustment working before AO / TPO and the DRP. The working capital adjustment worked out by the assessee are enclosed at page 105 of the paper book filed by the assessee. No defect with regard to the assessee's working capital adjustment was

pointed out by the AO / TPO nor by the DRP. In terms of Rule 10B(1)(e)(iii) of the I.T.Rules, the net margin arising in comparable uncontrolled transactions should be taken 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 TPO / DRP that differences in working capital requirements of the international transactions 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 the Revenue Authorities working capital adjustment cannot be allowed to the profit margin, 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 I.T.Rules.

7.4.2 As mentioned above, the assessee in the present case has given all the details required for working capital adjustment. Therefore, the Revenue Authorities were not justified in denying the claim of the assessee for deduction. Hence, the AO / TPO is directed to allow the working capital adjustment in the light of the material placed on record, after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

7.5 In the result, ground No.10 is allowed for statistical purposes.

Ground No.11 to 13 (Corporate Guarantee Commission)

"Ground No.11 : The Ld.TPO has erred in making an adjustment of Rs.7,58,746 beign 2% of the corporate guarantee given by the assessee on payments to be made by its subsidiaries. The Hon'ble DRP ought to have deleted the entire adjustment instead of merely restricting to 1.6% @ Rs.6,06,997.

Ground No.12 : The Ld.TPO and the Hon'ble DRP ought to have appreciated that the impugned activity of extending corporate guarantee for its own wholly owned subsidiary is in the nature of `shareholder activity' or `Stewardship activity'.

Ground No.13 : The Ld.TPO and the Hon'ble DRP disregarded the fact that as against the corporate guarantee of Rs.3,79,37,300 extended by the Appellant in favour of its subsidiary, there was a sum of Rs.7,67,65,463 of the subsidiary lying with the Appellant no account of advance for which no interest was charged by the subsidiary."

8. The brief facts with regard to the above grounds are as follow:-

The assessee, as a part of share purchase agreement, during the business structuring had given a corporate guarantee to one of its group supplier CISCO for supplies made to its AE (Inflow Singapore). According to the assessee, it did not intend to get any remuneration for the same since these activities were in the nature of shareholders / stewardship activities, and was only incidental to the main activities of the assessee. It was further submitted that it had not costed anything to the assessee in making such an arrangement. It was also contended that the above corporate guarantee did not have any bearing on the profit, loss, income, assets of the assessee so as to call it as an international transaction as contemplated u/s 92B(1) of the I.T.Act. The assessee also submitted that it was having advances of Rs.7,67,65,463 from its AE and advances from

AE was well over the corporate guarantee of Rs.3,79,37,300 extended by the assessee in favour of its subsidiary. The AO / TPO rejected the submissions of the assessee and computed tax at 2% on the quantum of corporate guarantee given by the assessee to its AE.

8.1 The DRP held that the corporate guarantee given by the assessee to its AEs was an international transaction and would fall within the definition of international transaction u/s 92B of the I.T.Act brought in by Finance Act, 2012. The DRP after relying on various judicial pronouncements computed the rate at 1.6% instead of 2% computed by the AO / TPO.

8.2 The assessee being aggrieved, has filed this appeal before the Tribunal.

8.3 We have heard rival submissions and perused the material on record. The corporate guarantee is an international transaction and there is no doubt that the arm's length price has to be computed with reference to the said transaction. However, in the instant case, it is the case of the assessee that amount of Rs.7,67,65,463 of the subsidiary is lying with the assessee on account of advance for which no interest was being charged by the subsidiary. This factual aspect has not been examined neither by the AO / TPO nor by the DRP. Hence, we are of the view that the matter needs to be examined afresh by the AO / TPO and we remit the issue to the files of the AO / TPO. It is ordered accordingly.

8.4 In the result, ground Nos. 11 to 13 are allowed for statistical purposes.

9. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on this 04th day of August, 2021.

Sd/-	**Sd/-**
(Chandra Poojari)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 04th August, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-3, Bengaluru
4. The Pr.CIT-3,Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore