

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

IT(TP)A No.2695/Bang/2017
Assessment Year : 2013-14

M/s. Finastra Software Solutions (India) Private Limited, [formerly known as Misys Software Solutions (India) Pvt. Ltd.], 4 th to 6 th Floor, North Tower, Virgo Building, Bagmane Constellation, Bengaluru – 500 037. PAN : AAACK 9067 G	Vs.	The ACIT, Circle - 4(1)(2), Bengaluru.
ASSEESSEE		RESPONDENT

Assessee by	:	Shri. T. Suryanarayana, Advocate
Respondent by	:	Shri. Arunkumar, CIT(TP-2)(DR)(ITAT), Bengaluru

Date of hearing	:	16.12.2021
Date of Pronouncement	:	21.12.2021

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the final Order of Assessment dated 06.10.2017 of ACIT, Circle – 4(1)(2), Bengaluru, passed under section 143(3) r.w.s. 144C(B) of the Income Tax Act, 1961 (Act) in relation to AY 2013-2014.

2. The issue that arises for consideration in the above appeal pertains to the aggregate transfer pricing adjustment (“TP adjustment”) of Rs.14,33,66,140/- made by the Transfer Pricing Officer (‘the TPO’ for short) towards the International transactions of provision of Software Development services (Rs.13,56,24,957/-) and Information Technology Enabled services

(Rs. 82,40,297/-) to the assessee's Associated Enterprises, which was subsequently reworked to Rs.15,49,23,283/- on giving effect to the directions of the Dispute Resolution Panel ('the DRP' for short).

3. The assessee is a wholly owned subsidiary of Misys India Holding Ltd., UK which is a part of the Misys Group of companies and is engaged in the provision of software design and development ("SWD"), IT enabled back office services ("ITES") and marketing support services to its overseas associated enterprises ("AEs"). In terms of section 92 of the Act, the Income from international transaction (i.e., transaction with AE) had to be determined having regard to Arm's Length Price (ALP). The SWD services provided pertain to banking products, TCM products and Open Source solutions of the Misys Group. The IT enabled services are in the nature of finance back office services including treasury services.

4. During the previous year relevant to the assessment year 2013-14, two of the international transactions that took place between the assessee and its AEs were the provision of SWD services by the assessee at a price of Rs.214,50,19,648/-, for which a TP Adjustment made by the TPO to an extent of Rs. 13,56,24,957/-, and the provision of ITe Services by the Assessee at a price of Rs. 19,45,94,513/- in respect of which an adjustment of Rs. 82,40,297/- was made by the TPO.

5. Initially, a draft assessment order dated 02.12.2016 came to be passed by the Assessing Officer ('AO' for short) upon incorporating the aforesaid TP adjustments. Aggrieved, the assessee filed its objections before the DRP

which, vide its directions dated 08.09.2017, partly allowed the assessee objections.

6. Pursuant to the directions of the DRP, the AO passed the final assessment order dated 06.10.2017 in which the TP adjustment was reworked to Rs.15,49,23,283/-. Aggrieved by the DRP's directions which were incorporated in the impugned order, to the extent the Assessee did not grant relief, the assessee has preferred the appeal before this Hon'ble Tribunal. We shall first take up for consideration the addition under section 92 of the Act in the SWD Services separately.

7. **SOFTWARE DEVELOPMENT SERVICES** : The details of the revenue and profit margin earned by the assessee in this segment was as follows:

Operating Income	Rs. 214,50,19,648/-
Operating Cost	Rs.188,91,12,456/-
Operating Profit (Op. Income – Op. Cost)	Rs. 25,59,07,192/-
Operating/Net mark-up (OP/TC)	13.55%

8. Both the assessee and the TPO adopted TNMM as the MAM and the PLI chosen for comparison of assessee's profit margin with comparable companies as Operating Profit / Total Cost (OP/OC). Out of the 7 comparables selected by the assessee, the TPO accepted the 2 companies viz. Mindtree Ltd. (however, TPO adopted different margin) and RS Software (India) Ltd. (however, TPO adopted different margin), and rejected the other 5.

9. The TPO selected 5 more companies as comparable and determined the ALP as follows:

Comparables selected by TPO and their arithmetic mean:

Sl. No.	Name of the Company	Mark-up on Total Costs (WC-unadj) (in %)
1	CG-VAK Software Exports Ltd.	20.54
2	ICRA Techno Analytics Ltd.	17.10
3	Larsen and Toubro Infotech Ltd.	26.06
4	Mindtree Ltd. (seg.)	18.19
5	Persistent Systems Ltd.	28.27
6	RS Software (India) Pvt. Ltd.	17.41
7	Tech Mahindra Ltd. (seg.)	18.72
AVERAGE MARK-UP		20.90
Adjusted margin		20.73

Computation of arm's length price by the TPO and adjustment made:

Arm's Length Mean Mark-up	20.90%
Less: Working Capital Adjustment	0.17%
Adjusted mean mark-up of the comparables	20.73%
Operating Cost	Rs. 1,88,91,12,456/-
Arm's Length Price – 120.73% of Operating Cost	Rs. 2,28,06,44,605/-
Price Received	Rs.2,14,50,19,648/-
Shortfall being adjustment u/s. 92CA	Rs.13,56,24,957/-

10. Aggrieved by the draft order of the AO incorporating the addition of Rs.13,56,24,957/- to the total income of the assessee being shortfall in ALP, the assessee performed objections before the Dispute Resolution Panel (DRP). Briefly, the directions issued by the DRP are as follows:

Functional comparability:

- Upon accepting the contention of the Assessee that the segmental details of Tech Mahindra Ltd. are unavailable, the DRP directed the exclusion of the company.
- The DRP, however, rejected the contentions of the Assessee that Persistent Systems Ltd., CG-VAK Software Exports Ltd. and Larsen and Toubro Infotech Ltd. were not functionally comparable to it and consequently upheld their inclusion in the final list of comparables.
- The DRP also rejected the contentions of the Assessee that, *inter alia*, Evoke Technologies Pvt. Ltd. is functionally comparable to it and consequently upheld its exclusion from the final list of comparables.

11. List of Comparables post the DRP's Directions:

On giving effect to the above directions issued by the DRP, the final list of comparables is as follows:

SI. No.	Name of the Company
1	CG-VAK Software Exports Ltd.
2	ICRA Techno Analytics Ltd.
3	Larsen and Toubro Infotech Ltd.
4	Mindtree Ltd. (seg.)
5	Persistent Systems Ltd.
6	RS Software (India) Pvt. Ltd.

12. Pursuant to the directions of the DRP, the AO passed a final assessment order wherein the TP adjustment stood reworked in terms of the DRP's directions. Aggrieved by the final Order of Assessment, the assessee is in

appeal before the Tribunal. Briefly, the grounds in the appeal that are being pressed are as follows:

- (i) That CG-VAK Software Exports Ltd., Larsen and Toubro Infotech Ltd. and Persistent Systems Ltd. ought to be excluded from the final list of comparables. (**Ground Nos. 4.1 and 4.2**)
- (ii) That Evoke Technologies Pvt. Ltd. ought to be included in the list of comparables as it is are functionally comparable to the Assessee (**Ground No. 4.5**)
- (iii) That the margin of Mindtree Ltd. ought to be recomputed. (**Ground No. 4.4**)

These grounds read as follows:

- 4.1. That CG-VAK Software Exports Ltd., Larsen & Toubro Infotech Ltd., Persistent Systems Ltd., and Tech Mahindra Ltd. are liable to be excluded from the list of comparables as the functions performed. assets employed and risks assumed by the said companies are entirely dissimilar and incomparable to that of the Assessee.*
- 4.2. That. in addition, Persistent Systems Ltd. and Tech Mahindra Ltd. are liable to be excluded from the list of comparables because of the numerous acquisitions and amalgamations that took place in FY 2012-13 in respect of which no adjustment can be made to their margins to eliminate the materials effects thereof.*
- 4.4. That. without prejudice and in any event. the margins of CG-VAK Software Exports Ltd.. Larsen & Toubro Infotech Ltd.. Persistent Systems Ltd.. and Mindtree Ltd. ought to be recomputed.*

13. As far as ground Nos.4.1 and 4.2 is concerned, in these grounds, the assessee is seeking the exclusion of the CG-VAK Software Exports Ltd., Larsen and Toubro Infotech Ltd. and Persistent Systems Ltd. from the list of comparables.

(i) CG-VAK Software Exports Ltd. (“CG-VAK”):

As far as exclusion of this company from the list of comparable companies is concerned, we have heard the rival submissions. This company is engaged rendering outsourced product development services along with provision of software services, as opposed to the assessee who is engaged in provision of software development. The company reports its services under two segments being software development services and BPO services without any segmental details given in respect of the outsourced product development services. Therefore, in the absence of segmental details provided in respect of the software services, the comparability of the company cannot be determined. The company is also involved in research and development as part of its software development. The TPO has considered the revenue from entire operations, i.e., both software development services and BPO services without appreciating that the BPO services rendered by the company cannot be compared to the software development services rendered by the assessee. The TPO and DRP erred in failing to appreciate that in the absence of segmental details for the software development service being provided, the comparability of the company could not be established. This Tribunal in the case of *NXP India Pvt. Ltd. v. DCIT* ([2020] 116 taxmann.com 421 (Bangalore - Trib.)) for the assessment year 2013-14, wherein in the case of a similarly placed assessee, the company was directed to be excluded on the same ground of absence of segmental details. We therefore direct exclusion fo this company from the list of comparable companies.

(ii) **Persistent Systems Ltd.** – We have heard the rival submissions on exclusion of this company from the list of comparable companies. This company is functionally dissimilar to it as it is engaged in software products, services and technology innovation. The company focuses on next generation technology centred on four main themes- Cloud computing, Analytics, Social enterprise and Enterprise Mobility. The company also focuses on establishing a strong IP portfolio and the IP led business of the company saw a significant boost during the year under consideration due to two product acquisitions by its subsidiaries. Further, during the year under consideration, the company also concluded a contract to take over IBM's TNPM product road map, which would help the company strengthen its position in relation to the IP led business. As per the press release of the Company, the company launched PaxPharma – a compliance-based, Design to Print (D2P) automation solution designed specifically for pharmaceutical packaging and product lifecycle management. The company also announced the launch of its newly developed AppExchange application in 2012 from which it is evident that the Company has been launching application and products throughout the year which is not comparable to the Assessee. Thus the company is engaged in product engineering, acquisition and development, consultancy and solutions. The company also undertakes significant research and development operations, approved by the government, as evidenced by intangible assets capitalised by the company, and has spent Rs. 27.87 million in FY 2012-13 towards R & D activity. Such R & D costs have also been capitalised owing to future economic benefits arising out of the same. Therefore, this company cannot be compared to the Assessee who is engaged in the provision of

routine IT services. Further, the company reports its segmental details on the basis of type or class of customers and geography and not on the basis of services rendered. Therefore, in the absence of segmental details with respect to its software development services segment being made available, the company cannot be held as a comparable to the assessee. The DRP, in its directions, has held that the company merely develops software for its customers who in turn produce the software products, without appreciating the fact that the company in its annual report discloses that it is into development of software products, which makes it functionally different from that of the assessee. Further, this company has been consistently excluded from the final list of comparables in cases of assessees placed similarly to the Assessee. This Hon'ble Tribunal in the case of *NXP India Pvt. Ltd. v. DCIT* ([2020] 116 taxmann.com 421 (Bangalore - Trib.)) for the assessment year 2013-14, wherein in the case of a similarly placed assessee, the company was directed to be excluded. In view of the above, we direct that this company should be excluded from the final list of comparables.

(iii) Larsen and Toubro Infotech Ltd.:

This company is a global IT services and solutions provider. It is involved in a diverse range of activities from application development, architectural services, BPO, consulting, enterprise integration, infrastructure management services, integrated engineering services, mobility services, oracle services, SAP services etc., which is not comparable to the assessee which is engaged in the business of rendering routine software development services. Additionally, the company is involved in resale of products and derives revenues from this activity.

During the year under consideration, the company reorganised its business into three segments:

Segment	Services Cluster	Industrials Cluster	Telecom
Services	Banking, financial services, insurance, media and entertainment, travel and logistics and healthcare	Hi Tech and consumer electronics, consumer, retail and pharma, energy and process, automobile and aerospace, plant and equipment and industrial machinery, utilities and E&C	Product engineering services

As there no details made available in respect to the software development services, the company cannot be held as a comparable to the Assessee. Further, the company is also into trading in products and owns several intangibles and enjoys significant brand value. As a result of this high brand value, the company enjoys a high bargaining power in the market. The company has also incurred significant expenses in foreign currency amounting to 51.17% of its total expenditure which suggests that the company operated on a business model different from that of the Assessee. Detailed submissions in this regard are made at pages 433-438 of the paperbook and 127-132 of the appeal set. This company has been consistently excluded from the final list of comparables in cases of assesseees similar to the Assessee. This Hon'ble

Tribunal in the case of NXP India Pvt. Ltd. v. DCIT ([2020] 116 taxmann.com 421 (Bangalore - Trib.)) for the assessment year 2013-14, wherein in the case of a similarly placed assessee, the company was directed to be excluded. In view of the above, we hold that this company ought to stand excluded from the final list of comparables.

14. As far as ground **No. 4.5 raised by** the assessee is concerned, the assessee seeks inclusion of Evoke Technologies Pvt. Ltd., in the list of comparable companies. This company was proposed as a comparable by the assessee during the course of the proceedings before the TPO but was rejected by the TPO for the reason that he was unable to compute the correct percentage of forex earned by the company in the previous year on the premise that he had applied a filter of forex earnings to sales when, in fact, the filter applied by the TPO was export service income to sales. The exclusion of this company was challenged by the assessee before the DRP which upheld its exclusion on the same basis.

15. We have heard the rival submissions for inclusion of this company in the list of comparable companies. The TPO proceeded to exclude this company on the basis that the TPO applied a filter of forex earnings to sales when, in fact, the filter applied by the TPO was "*Companies whose export service income less than 75% of the sales were excluded*". Reference can be made to the filters applied by the TPO. Thus, since it is wholly evident that the TPO has not applied the filter of forex earnings to sales, his action in excluding as well as the DRP's action in upholding the exclusion of Evoke from the list of comparables only for this reason is entirely erroneous and unsustainable. That apart, export earnings for of this company for FY 2012-13 are well in excess of 75% of its revenues and, therefore, clearly satisfies

the filter applied by the TPO. Note No. 14 to the company's accounts records export sales at Rs. 37,38,26,810/- which amounts to 99.97% of its total sales amounting to Rs. 37,39,04,810/-. As for the TPO's observation that it was not possible to ascertain its forex earnings in FY 2012-13, we find that that the TPO erred in relying on the details furnished in the Director's Report as against the data published in the companies audited financials which is what is required to be considered. Thus, viewed from any angle, it is apparent that Evoke passes export revenues filter that was applied by the TPO and thus its exclusion on this basis is baseless and erroneous. This company is engaged in the business of software development and is consistently being included in the list of comparables in the cases of assessee placed similarly to that of the Assessee for various assessment years. This Tribunal in the case of *Applied Materials India Pvt. Ltd. v. ACIT* [TS-815-ITAT-2016(Bang)-TP at paras 21-21.2 in pages 1755-1756] where this company was directed to be included in the final list of comparables. In view of the above, we direct that this company be included in the final list of comparables to the Assessee's SWD service segment.

16. In ground No.4.4, the assessee is seeking recomputation of the margin of Mindtree Ltd. After hearing the rival submissions, we find that the TPO, while computing the margin of the company, has taken into consideration certain non-operating income. Further, the TPO did not take into account the correct value of expenses. If the correct figures are adopted, the margin of the company would be 16.43%. Detailed submissions in this regard are placed at pages 168 and 169 of the paperbook. The DRP failed to adjudicate on this objection raised by the assessee. In view of the above, we direct the TPO to recompute the margin of Mindtree Ltd., after considering the claim of the assessee in this regard.

17. The TPO will compute the ALP of international transaction of rendering SWD services as per directions given above, after affording assessee opportunity of being heard.

18. Information Technology Enabled Services : As far as the ITeS segment is concerned, the financial results of the assessee are as follows:

Operating Income	Rs.19,45,94,513/-
Operating Cost	Rs.16,92,12,620/-
Operating Profit (Op. Income – Total. Cost)	Rs.2,53,81,893/-
Operating/Net mark-up (OP/TC)	15.00%

19. The assessee chose TNMM as MAM and selected 9 comparable companies. Comparison of the TP study done by the assessee and TPO:

	Assessee	TPO
Methodology adopted	TNMM	TNMM
Profit Level Indicator (PLI)	OP/TC	OP/TC
Database used	PROWESS & CAPITALINE	PROWESS & CAPITALINE
Comparables selected	9	9
Period for which data used	FYs ending during the period April 1, 2011 and March 31, 2013.	FY 2012-13

Note: Out of the 9 comparables selected by the Assessee, the TPO accepted the 2 companies viz., Infosys BPO Ltd. and Jindal Intellicom Ltd. and rejected the other 7.

20. Comparables selected by TPO and their arithmetic mean:

Sl. No.	Name of the Company	Mark-up on Total Costs (WC-unadj) (in %)
1	Acropetal Technologies	24.16
2	Microgenetic Systems Ltd.	16.34
3	Jindal Intellicom Pvt. Ltd.	-3.00
4	Harton Communications Ltd. (seg.)	44.07
5	Microland Ltd.	8.62
6	Capgemini Business Services (India) Pvt. Ltd.	26.78
7	Tech Mahindra Ltd. (seg.)	22.27
8	e4e Healthcare Business Services Pvt. Ltd.	17.26
9	Infosys BPO Ltd.	29.28
AVERAGE MARK-UP		20.64
Adjusted margin		19.87

21. Computation of arm's length price by the TPO and the adjustment made:

Arm's Length Mean Mark-up	20.64%
Less: Working Capital Adjustment (after restriction)	0.77%
Adjusted mean mark-up of the comparables	19.87%
Operating Cost ('OC')	Rs.16,92,12,620/-
Arm's Length Price ('ALP') = 119.87% of OC	Rs. 20,28,34,810/-
Price Received	Rs. 19,45,94,513/-
Shortfall being adjustment u/S. 92CA	Rs. 82,40,297/-

22. The assessee filed objections before the DRP to the draft Order of Assessment in which the shortfall in ALP was added to the total income of the assessee. Briefly, the directions issued by the DRP are as follows:

Functional comparability:

- Upon accepting the contention of the Assessee that the segmental details of Tech Mahindra Ltd. are unavailable, the DRP directed its exclusion.
- The DRP, however, rejected the contentions of the Assessee that Infosys BPO Ltd. and Hartron Communications Ltd. were not functionally comparable to it and consequently upheld their inclusion in the final list of comparables.
- The DRP also failed to adjudicate on the contentions raised by the Assessee challenging exclusion of certain comparables chosen by it and erroneously adjudicated on the comparability of certain comparable when the Assessee merely sought for recomputation of their margins.

23. List of Comparables post the DRP's Directions

As per the DRP's directions, the final list of comparables is as follows:

SI. No.	Name of the Company
1	Acropetal Technologies
2	Microgenetic Systems Ltd.
3	Jindal Intellicom Pvt. Ltd.
4	Harton Communications Ltd. (seg.)
5	Microland Ltd.
6	Capgemini Business Services (India) Pvt. Ltd.
7	e4e Healthcare Business Services Pvt. Ltd.
8	Infosys BPO Ltd.

Pursuant to the directions of the DRP, the AO passed a final assessment order in which the TP adjustment in respect of the ITES segment stood reworked.

24. The assessee aggrieved by the final Order of Assessment has preferred appeal before the Tribunal. Briefly, the grounds in the appeal which are being pressed are as follows:

- That Hartron Communications Ltd. and Infosys BPO Ltd. ought to stand excluded from the final list of comparables (**Ground Nos. 5.1 and 5.2**)

25. In grounds Nos. 5.1 and 5.2, the assessee is seeking the exclusion of two companies being Hartron Communications Ltd. and Infosys BPO Ltd. from the final list of comparables for the reason that the same are functionally dissimilar to the assessee and also do not pass all the filters applied by the TPO and subsequently upheld by the DRP.

26. Hartron Communications Ltd. (“Hartron”): We have heard the rival submissions on exclusion of this company. The assessee objected to the choice of this company by the TPO for the reason that the company (i) fails the filter of IT enabled service income to sales >75% and (ii) has wide fluctuations in profit which suggested peculiar economic circumstance for which no appropriate adjustment could be made to mitigate the impact on the margin. However, the TPO rejected the contention of the assessee and retained the company in the final list of comparables on the ground that (i) income to sale filter is not applicable in the case as the BPO segment of the company alone was taken into account for comparability search and (ii) the TPO had chosen comparables without looking into whether the comparable had made profits or losses and (iii) losses in the earlier year does not warrant exclusion of a comparable. The DRP held that the company was comparable to the assessee as its primary reporting segment was ITES-BPO and

consequently upheld the inclusion of the company in the final list of comparables.

27. The TPO erred in holding that the application of service income to total income filter does not arise when the segmental details of the company are selected, when, the filter applied is for exclusion of companies whose ITeS and related services revenue is less than 75% of the total operating revenues. The said filter is applied to select companies which are predominantly engaged in the provision of the services under consideration. In such circumstances, it is illogical to state that service income to total income filter cannot be applied when segmental details are available. This view of the TPO which was upheld by the DRP, if accepted, renders the filter otiose. In addition, the DRP upheld the functional comparability of the company for the reason that its business segment was reported as the primary segment. In doing so, the DRP failed to observe that although the company has reported its business segment to be the primary segment, the company has earned significant revenues from other two segments being from rental income and real estate. As a result, although the primary segment of the company is the business segment, the income from the relevant services constitutes merely 55.65% to the total income. The relevant extract of the annual report of the company is produced at pages 601-602 of the paperbook. As the company fails the TPO's filter service income to sales in excess of 75%, the company ought to be excluded from the final list of comparables.

28. Further, there are wide fluctuations in the margins of the company. The company has suffered from losses during the preceding two financial years and margins for Financial Years 2010-11 to 2012-13 vary between (40.53%) to 33.43%. Although this objection was raised before the TPO, the same came

to be rejected for the reason that the comparables have been chosen by the TPO without looking into whether the same make profit or losses. In case of Hartron, while the company registered profits during the year under consideration, it has consistently registered losses of -40.53% for the FY 2010-11, -27.09% for the FY 2011-12, -2.46% for the FY 2013-14 and -20.65 for the FY 2014-15. Considering the wide fluctuations in the margins, the said company ought to stand excluded from the list of comparable companies. Further, as per the annual report of the Company, the policy followed by it for recognition of revenue/expenditure is as under:

“All revenues and expenses are accounted for on accrual basis except for processing charges (export income), interest on calls in arrears, listing fee and leave encashment which are accounted for on cash basis.”

The above note suggests that cash basis of accounting is followed for export income (office back-up operations segment) as against accrual system of accounting followed for recording expenses, which is contrary to the matching principles of accounting. This Tribunal in the case of **ISG Novasoft Technologies Ltd. v. DCIT** (Order dated 29.04.2019 passed in IT(TP)A No. 42/Bang/2018) wherein this company came to be excluded from the final list of comparable for the assessment year 2013-14, in the case of a similarly placed assessee. Therefore, this company ought to be excluded from the final list of comparables. We hold and direct accordingly.

29. Infosys BPO Ltd. (“Infosys”): We have heard the rival submissions for exclusion of this company from the list of comparable companies. Infosys ought to stand excluded from the final list of comparables on numerous counts. The company is engaged in the provision of integrated IT and business

process outsourcing solutions across a variety of verticals including Banking and Capital Markets, Communication Media and Entertainment, Manufacturing, Emerging Market Solutions, Insurance and Healthcare, Retail, Energy, Utilities and Resources, Automotive and Aerospace, Transportation and Services. The services rendered consist of Sourcing and procurement, customer service, financing and accounting, knowledge services and human resources. Further, the company is engaged in providing consultancy, management and strategic transformation services wherein business metrics and benchmarks developed by the company is used in assisting the client. The company is also engaged in provision of cloud based services such as 'E-Discover' as well as services in relation to compliance in Health, Safety and Environment. These services cannot be compared to the routine back office services provided by the Assessee. Infosys also renders services to the Government of India, which distinguishes it from the assessee, as winning contracts with the Government would require strategic reduction in prices. The company focuses on delivering solutions to its clients which goes beyond rendering routine ITE services. From the above, it is evident that Infosys BPO is engaged in rendering business solutions and consultancy to its customers which is different from the functional profile of the Assessee. In addition, Infosys also enjoys significant brand value and owns several intellectual properties which place it in different from that Assessee. In view of its substantial brand value, the company enjoys an advantage in the market and has high bargaining power. As a result of the brand value, the company receives a premium in the market. Relevant submissions in this regard are made at pages 468-474 of the paperbook and pages 147-154 of the appeal set.

30. This company has been consistently rejected in cases of assessee placed similarly to that of the Assessee. This Tribunal in the case of *ISG*

Novasoft Technologies Ltd. v. DCIT (Order dated 29.04.2019 passed in IT(TP)A No. 42/Bang/2018) wherein this company came to be excluded from the final list of comparable for the assessment year 2013-14, in the case of a similarly placed assessee. Therefore, this company ought to be excluded from the final list of comparables. We hold and direct accordingly.

31. We direct the TPO to compute the ALP in ITeS segment as per directions contained in this order, after affording assessee opportunity of being heard.

32. In the result, appeal of the assessee is partly allowed.

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

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-

(N. V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated : 21.12.2021.
/NS/*

Copy to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.