

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 227 & 228 /H/2021 Assessment Year: 2016-17		
ADP Pvt. Ltd., Hyderabad. PAN - AANCA8983A (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 1(1), Hyderabad. (Respondent)
Assessee by:		Shri H. Srinivasulu
Revenue by:		Shri YVST Sai
Date of hearing:		10/12/2021
Date of pronouncement:		03/02/2022

ORDER

PER L.P. SAHU, A.M.:

Both these appeals of the assessee are directed against the order dated 30/03/2021 passed u/s 143(3) rws 144C(13) and 144C(13) r.w.s. 143(3A) & 143(3B) of the Income-tax Act, 1961 (in short 'the Act') for the AY 2016-

17. The grounds of appeal raised in both the appeals are as under:

ITA No. 227/Hyd/2021:

“Based on the facts and circumstances of the case, ADP Private Limited (hereinafter referred to as 'the Appellant') respectfully craves to prefer an appeal against the Assessment order passed by National e-Assessment Centre, Deputy Commissioner of Income Tax, Circle 2(1), Delhi/ Deputy Commissioner of Income tax, Circle 1(1), Hyderabad [hereinafter referred to as the Ld. AO] under Section 143(3) LW.S 144C(13) and 144C(13) read with sections 143(3A) & 143(3B) of the Act on the following grounds:

General:

1. On the facts and circumstances of the case and in contrary to law, the Additional Commissioner of Income-tax (Transfer Pricing), (hereinafter referred to as 'the Ld. TPO') and the Ld. AO under the directions issued by the Hon'ble Dispute Resolution Panel, Bengaluru ('the Hon'ble DRP'), erred in making a transfer Pricing addition of Rs. 50,31,76,086 to the Appellant's income and thereby determining a total income of Rs. 157,70,82,306 and the said addition being wholly unjustified are liable to be deleted.

2. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and Hon'ble DRP further erred in in upholding/confirming the action of Ld. TPO in violating the principle of natural justice by passing the Order under section 92CA(3) of the Act dated 31 October 2019 without providing the appellant with an opportunity of being heard and accordingly order passed by Ld. TPO is bad in law and liable to be quashed.

Transfer Pricing:

A. Provisions of software development services

3. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and the Hon'ble DRP further erred in upholding/confirming the action of Ld. TPO in accepting the following inappropriate companies as comparables:

- Rheal Software Private Limited*
- RS Software (India) Limited*
- Larsen & Toubro Infotech Limited (Segmental)*
- Tata Elxsi Limited (Segmental)*
- Nihilent Technologies Limited*
- Inteq Software Private Limited*
- Persistent Systems Limited*
- Infobeans Technologies Limited*
- Aspire Systems (India) Private Limited*
- Infosys Limited*
- Thirdware Solutions Limited*
- Cybage Software Private Limited*

4. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding/confirming the actions of the Ld. TPO in rejecting the following companies selected by the Appellant without providing cogent reasons, even though they are functionally comparable and pass all the filters applied by the Ld. TPO:

- Infomile Technologies Ltd.*
- Akshay Software Technologies Limited*
- SagarSoft India Limited*
- Sasken Communication Technologies Limited*
- Evoke Technologies Private Limited*
- Nucleus Software Exports Limited*
- E-Zest Solutions Limited*
- Ace Software Exports Limited*
- Sankhya Limited*
- Harbinger Systems Private Limited*

5. *Without prejudice to the above mentioned grounds, on the facts and circumstances of the case and in contrary to law, the Ld. TPO erred by incorrectly computing the margin of following comparable companies:*

- *CG- V AK Software & Exports Limited*
- *Larsen & Toubro Infotech Limited (segmental)*
- *Aspire Systems (India) Private Limited*
- *Infosys Limited*

6. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in considering the facilitation cost of CDK Global (India) Private Limited incurred by the Appellant for transition of sale of dealer services division as the cost of the Appellant and thereby imputing a mark-up on such cost. Further, the Ld. TPO erred in holding this transaction as a deemed international transaction and the Hon'ble DRP erred in holding this transaction as an international transaction.*

B. Provision of Information Technology enabled Services ('ITeS')

7. *On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and the Hon'ble DRP further erred in upholding/confirming the action of Ld. TPO in accepting the following inappropriate companies as comparables :*

- *Crossdomain Solutions Private Limited*
- *Tech Mahindra Business Services Limited*
- *Infosys BPO Limited*
- *SPI Technologies India Private Limited*
- *Eclerx Services Limited*
- *MPS Limited*

8. *On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble*

DRP further erred in upholding/confirming the action of Ld. TPO in rejecting the following companies without providing cogent reasons, even though they are functionally comparable and pass all the filters applied by the Ld. TPO:

- *Sundaram Business Services Private Limited*
- *Informed Technologies Limited*
- *Allsec Technologies Limited*
- *AXA Business Services Limited*
- *Jindal Intellicom Limited*
- *Cosmic Global Limited*
- *Suprawin Technologies Limited*
- *R Systems International Limited*
- *BNR Udyog Limited*
- *Tata Consulting Engineers Limited*
- *Tata Elxsi Limited*
- *ACE BPO Services Private Limited*
- *Cameo Corporate Services Limited*

9. Without prejudice to the above mentioned grounds, the facts and circumstances of the case and in contrary to law, the Ld. TPO erred by incorrectly computing the margin of following comparable companies:

- *Microland Limited*
- *Infosys BPO Limited*
- *SPI Teehnologies India Private Limited*

c. Common Grounds to Provision of software development services and ITeS

10. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding/confirming the action of the Ld. TPO in rejecting the transfer pricing analysis /study prepared by the Appellant, without appreciating that none of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied.

11. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the actions of the Ld. TPO in not allowing risk adjustment

in accordance with the provisions of Rule 10B of the Income-tax Rules, 1962 ('Rules') to account for differences between the international transactions undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.

12. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in not allowing working capital adjustment, which was duly demonstrated before the Ld. TPO / the Hon'ble DRP, in accordance with the provisions of Rule 10B of the Rut" to account for differences between the international transactions V undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.

13. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding the action of the Ld. TPO in confirming the application/incorrect application of the following filters:

- Rejection of companies with different financial year ending;*
- Rejection of companies with export revenue less than 75% of the total revenue;*
- Rejection of companies with peculiar economic circumstances.*

14. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble

DRP further erred in upholding / confirming the action of the Ld. TPO in considering provision for bad and doubtful debts and bad debts as a non-operating expenditure while computing the operating margin of the eomparable companies

D. Outstanding receivables

15. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO, in considering outstanding receivable as a separate and distinct international transaction and further erred in making transfer pricing adjustment in the nature of notional interest on receivables amounting to Rs. 1,23,24,559.

16. On the fact, and circumstances of the case and in contrary to law, the addition made by the Ld. TPO with respect to interest on outstanding receivables is untenable and be deleted since the addition has been made by computing interest on an invoice to invoice basis as against on a weighted average basis for all invoices raised during the year under consideration.

17. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP erred in not providing justification for selection of State Bank of India's ('SBI') short term deposit rates as an appropriate comparable uncontrolled price ('CUP') to benchmark the Appellant's outstanding receivables .

18. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP has failed to understand that outstanding receivables cannot be benchmarked using SBI short term deposit rates. Benchmarking exercise should be performed with another company operating in the similar industry, akin to Appellant.

19. *Without prejudice to Ground No. 15 to 18 above, on the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP has erred in not appreciating that the receivables due from overseas AEs are in foreign currency and hence, interest if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans, i.e., at USD LIBOR plus.*

Other grounds:

20. *That the order passed by the Additional/Joint / Deputy / Assistant Commissioner of Income Tax Income-tax Officer, National e-Assessment Centre, Delhi ('Ld AO') dated 30 March 2021 under Section 143(3) r.w.s 144C(13) r.w.s 144(3A) and 144(3B) of the Act for the AY 2016-17, determining a net taxable income of INR 1,57,81,26,170 and thereby determined a income-tax demand of INR 37,69,92,133 under the normal provisions of the Act and a tax demand towards dividend distribution tax ('DDT') amounting to INR 41,72,50,334 along with interest levied under Section 115P of the Act for an amount of INR 16,88,87,040, is contrary to the facts and circumstances of the case and in law and is liable to be quashed.*

21. *On the facts and circumstances of the case and in law the Ld. AO erred in not granting deduction claimed under Section 80G of the Act amounting to INR 10,43,860 and further erred in not granting an opportunity of being heard to the Appellant, to present its case on merits, before denial of such deduction.*

22. *On the facts and circumstance of the case and in law, the Ld. AO erred by granting credit of tax deducted at source ('TDS') of INR 3,08,05,249 as against the eligible TDS credit of INR 3,08,07,638 available to the Appellant, thereby resulting in short grant of credit of TDS of INR 2,389.*

23. *On the facts and circumstance of the case and in law, the ld. AO erred by granting credit of advance tax of INR 28,30,00,000 as against the eligible advance tax credit of INR 35,66,82,429 available to the Appellant. thereby resulting in short grant of advance tax of INR 7,36,82,429.*

24. *On the facts and circumstance of the case and in law, the Ld. AO grossly erred in levying interest under Section 234A of the Act of INR 46,47,052, without giving cognizance to the fact that there was no delay in filing the income-tax return by the Appellant for the A Y 2016-17.*

25. *On the facts and circumstance of the case and in law, the Ld. AO erred in levying interest under Section 234B and 234C of the Act amounting to INR 13,94,11,560 and INR 5,80,865 respectively.*

26. *Without prejudice to the above ground, on the facts and circumstance of the case and in law, the Ld. AO ought to have computed interest under Section 234C of the Act with reference to the tax due on the returned income as declared in the income-tax return and not on assessed income.*

27. *On the facts and circumstance of the case and in law, the Ld. AO has grossly erred in not granting credit of DDT paid by the Appellant on the dividends distributed to the shareholders and thereby determining a DDT liability of INR 41,72,50,334 including levy of interest under Section 115P of the Act amounting to INR 16,88,87,040.*

Consequential:

28. *On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest and penalty and the said levy of interest and penalty being wholly unjustified, ought to be deleted.”*

1.1 We notice at the outset that assessee's instant appeal in ITA No. 227/Hyd/2021 of the assessee for AY 2016-17 suffers from 13 days delay in filing before the ITAT. Considered the submissions of the assessee that the assessee was prevented by a reasonable cause in filing this appeal with a delay of 13 days. We rely on Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that revenue's impugned delay in filing this appeal is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

2. Briefly the facts of the case are that the assessee company M/s. ADP Private Limited with PAN of AAACW2655C is engaged in providing broad range of software development, maintenance & support services and Information Technology Enabled Services to its Associated Enterprises. It filed its Return of Income for the A.Y. 2016-17 on 30.11.2016 declaring an income of Rs.1,07,39,06,220/- under normal provisions and book profits at Rs.100,31,48,751/- u/s 115JB. The case was

selected for scrutiny and notices u/s 143(2) dated 24.07.2017 & 09.08.2018 were issued and served on assessee electronically. Subsequently notices u/s 142(1) were issued, calling for information electronically. In response, Assessee Company submitted the information electronically.

2.1 The AO observed that since the assessee had international transactions with Associate Enterprises, in accordance with the provisions u/s 92CA of the IT Act, the case was referred to the Transfer Pricing Officer (TPO), Hyderabad with prior approval of Pr. CIT-1, Hyderabad. Order u/s 92CA(3) was passed by TPO on 31-10-2019 by arriving at an adjustment of Rs.27,83,27,552/-towards software development segment, an adjustment amount of Rs. 23,25,77,641/- towards Information Technology enabled Services and an adjustment amount of Rs.1,23,24,559/- towards interest on delayed receivables. The AO thereafter passed his draft assessment order on 19-12-2019.

2.2 Aggrieved by the draft order, the taxpayer filed its objections before the DRP. Learned Panel's directions dated 10-022021, granted part relief to the assessee. Accordingly, the AO passed his assessment order whereby assessing the total income at Rs. 157,70,82,306/- by making the following adjustments:

1. Adjustments on account of provision of SDS
– Rs. 25,82,73,886
2. Adjustment on account of provision of
Information technology enabled serv. – Rs. 23,25,77,641
3. Interest on delayed receivables – Rs. 1,23,24,559

3. This leaves the assessee aggrieved.

4. As regards ground No. 3 regarding provisions of software development services, the assessee's contention that the lower authorities have erred in adopting the following companies as comparables:

4.1. Larsen & Toubro Infotech Ltd. (Segmental): The ld. Authorised Representative of the assessee submitted that this company is functionally different to the assessee company for the following reasons:

1. The principal business activity of the company comprise computer programming, consultancy and other activities.
2. The company also deals in products. Company owns proprietary software products developed in-house, some of the products owned by the company such as digite swift ALM
3. The company earns revenue from trading of goods i.e. Rs. 197.3 cr.
4. The company operates under two segments. In this regard, software services segment, amongst others also include high-end services i.e., Media & Entertainment.
5. It has extraordinary event like amalgamation
6. Segmental details are not available to compute correct PLI

In view of the above submissions, the ld. AR of the submitted to exclude this company as comparable to the assessee company. In this connection, he relied on various decisions of coordinate benches of ITAT including the decisions of coordinate bench of ITAT, which are placed in the paper book to submit that the ITAT excluded the above company as comparable in assessee's own case for AY in ITA No. 1711/Hyd/2011 for determining ALP.

4.2. The ld. DR, on the other hand, relied on the order of the lower authorities & submitted that L&T Infotech is engaged in rendering of software services and hence, functionally comparable to assessee. In this regard, he has drawn reference to Note T(3) (iii) pertaining to earnings in foreign exchange earnings, which are placed at page NO. 1314 of the paper book volume No. 3 of assessee's paper book.

4.3. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find substance in the submissions of the ld. AR and on going through the financial statements of Larsen & Toubro Infotech Ltd., in particular at page Nos. 1249 of paper book – Volume – 3 disclosure under the Companies Act, 2013, we observe that the company information system resource centre Pvt. Ltd. (ISRC) was amalgamated with the company with effect from

September, 21, 2015 and the appointed for the scheme was October, 17 2014, which reads as under:

“Pursuant to the Scheme of Amalgamation sanctioned by the Hon’ble High Court of Bombay vide its order dated September 04, 2015, Information Systems Resource Centre Pvt. Ltd. (ISRC) was amalgamated with the Company with effect from September 21, 2015. The appointed date for the Scheme was October 17, 2014. Consequently, the entire business, assets, liabilities, duties and obligations of ISRC have been transferred to and vested in the Company with effect from October 17, 2014.

ISRC was engaged in the business of software services with respect to application development, information technology support and maintenance service to OTIS Elevator Company, USA and other companies of UTC group and was acquired by the Company on October 16, 2014.”

4.4 From the above observations, which were extracted from the financial statements, the company named ISRC amalgamated with the company (Larsen & Toubro) and profitability with this amalgamation will impact. Therefore, If an extraordinary event has taken place by way of amalgamation in a company, that company cannot be considered as a comparable as held by the coordinate bench of ITAT, Pune, in the case of Entercoms Solutions (P.) Ltd. v. Assistant Commissioner of Income-tax__ [2022] 134 taxmann.com 59 (Pune - Trib.). Accordingly, we direct the AO/TPO to exclude this company as comparable from the list of comparables.

5. Tata Elxsi Ltd. (Segmental): The ld. AR of the assessee submitted that this company renders high-end KPO services i.e. digital content creation, technology and product engineering, chip design, embedded production design, visual computing lab, AI design services. He further submitted that this company earns revenue from sale of trades goods of Rs. 33.74 crore and the same corroborated by existence of inventory in P&L statement about Rs. 2.89. He, therefore, submitted that this company may be excluded as comparable in the comparable list for determining ALP. He relied on various decisions of ITAT including the decision in ITA No. 2233/Hyd/2018 for the assessment year 2014-15 wherein this company is excluded as comparable.

5.1 The ld. DR, on the other hand, besides relying on the orders of revenue authorities, submitted that this company Tata Elxsi is engaged in rendering of software services and, hence, functionally comparable to the assessee company.

5.2 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench of this Tribunal in assessee's own case in ITA No. 2233/Hyd/2018, for AY 2014-15, directed the AO/TPO to

exclude this company from the list of comparables for determining ALP by observing as under:

"27. As regards Persistent Systems Ltd, the objections of the assessee are as under:

a) The Company is functionally not comparable. It is engaged in selling of the following:

i. Software products (IP);

ii. Platforms (Solutions & Integration); and iii.services (product engineering) b. There are no segmental details between software products and services.

28. In the case of Tata Elxsi, the assessee has taken the following objections:

a) It is not functionally comparable to the assessee. In the financial statements of the company, the nature of business carried out by Tata Elxsi is given below:

i) Corporate Information "Tata Elxsi Ltd was incorporated in 1989. The Company provides product design and engineering services to the consumer electronics, communications and transportation industries and systems integration and support services for enterprise customers. It also provides digital content creation for media and entertainment industry"

29. We find that in the case of [Infor \(India\) \(P\) Ltd vs. ACIT](#) in ITA No.2307/Hyd/2018, the Coordinate Bench of the Tribunal has considered similar objections of the assessee therein and has held that these two companies along with Thirdware Solutions Ltd is not comparable to the software development company like the assessee before us. The relevant portions has been reproduced by us in the above paras. Respectfully following the same, these two companies are also directed to be excluded from the final list of ITA No 2233 of 2018 ADP Private Ltd Hyderabad comparables. Thus, assessee's ground of appeal No.2 is partly allowed."

5.3 In the said decision, it has been held that the company is functionally different and engaged in diversified activities and since the revenue could not controvert the said decision nor brought any contrary decision, following the same, we direct the AO/TPO to exclude this company from the final list of comparables.

6. Persistent Systems Ltd.: The ld. AR of the assessee submitted that this company is a global company specializing offers complete product life cycle services. It has earned revenue from software licensing amounting to Rs. 23.88 crores. He submitted that the revenue from licenses establishes that this comparable is engaged in developing of software products and not rendering of software development services. He, therefore submitted that this company may be excluded as comparable to the assessee company for determining ALP. He relied on various decisions of ITAT including the decision in ITA No. 2233/Hyd/2018 for AY 2014-15 wherein this company is excluded as comparable.

6.1 The ld. DR, on the other hand, submitted that this company is not a product company and is engaged in the development of SaaS platform enabling its client for onward development of products on the same.

6.2 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench in assessee's own case in ITA No. 2233/Hyd/2018 for AY 2014-15, directed the AO to exclude this company from the list of comparables for determining ALP by observing as under:

"27. As regards Persistent Systems Ltd, the objections of the assessee are as under:

a) The Company is functionally not comparable. It is engaged in selling of the following:
i. Software products (IP);
ii. Platforms (Solutions & Integration); and iii. services (product engineering) b. There are no segmental details between software products and services.

28. In the case of Tata Elxsi, the assessee has taken the following objections:

a) It is not functionally comparable to the assessee. In the financial statements of the company, the nature of business carried out by Tata Elxsi is given below:

i) Corporate Information "Tata Elxsi Ltd was incorporated in 1989. The Company provides product design and engineering services to the consumer electronics, communications and transportation industries and systems integration and support services for enterprise customers. It also provides digital content creation for media and entertainment industry"

29. We find that in the case of [Infor \(India\) \(P\) Ltd vs. ACIT](#) in ITA No.2307/Hyd/2018, the Coordinate Bench of the Tribunal has considered similar objections of the assessee therein and has held that these two companies along with Thirardware Solutions Ltd is not comparable

to the software development company like the assessee before us. The relevant portions has been reproduced by us in the above paras. Respectfully following the same, these two companies are also directed to be excluded from the final list of ITA No 2233 of 2018 ADP Private Ltd Hyderabad comparables. Thus, assessee's ground of appeal No.2 is partly allowed."

6.3 In the said decision, it has been held that the company is functionally different and engaged in diversified activities and since the revenue could not controvert the said decision nor brought any contrary decision, following the same, we direct the AO/TPO to exclude this company from the final list of comparables.

7. Infobeans Technologies Ltd.: The Id. AR of the assessee submitted that this company is functionally different for the following reasons:

1. It is engaged in diversified activities in the nature of custom application development, content management systems, enterprise mobility, big data analytics,
2. No change in the business as compared to last year
3. Leading provider of consulting technology & next generation service.
4. There is abnormal increase in percentage of revenue from 35.35 crore to 62.06 crore.
5. It is also into IT enabled services i.e. business process management, HR and Payroll, commerce
6. No segmental details are available.

7.1 He relied on various decisions of ITAT including the decision in ITA No. 2233/Hyd/2018 for AY 2014-15 wherein this company is excluded as comparable.

7.2 The Ld. DR, on the other hand, submitted that this company is engaged in rendering of software services and, hence, functionally comparable to assessee company.

7.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench of this Tribunal in ITA No. 2233/Hyd/2018 for AY 2014-15, directed the AO/TPO to exclude this company from the list of comparables for determining ALP by observing as under:

21. Having regard to the rival contentions and the material on record, we find that the Coordinate Bench of the Tribunal in the following case has considered similar objections of the assessee therein to direct exclusion of this company from the final list of comparables. For the purpose of ready reference, the relevant paragraph is reproduced below:

"18. We have heard the rival contentions and perused the record. The first aspect is the functional comparability of concern which has been finally selected to be comparable. In respect of Infobeans Systems Pvt. Ltd., the financials of said concern clearly reflect that in addition to providing software development services to its associated enterprises, it had also earned foreign exchange from export of goods on FOB basis. The event of export of goods was also mentioned in notes and also in the Profit and Loss Account, where revenue from sale of software was declared. The segmental details of two activities

carried on by the said concern were not available and in the absence of the same, the concern could not be equated as functionally comparable to a concern which was providing software development services to its associated enterprises. Applying the same set of reasoning as in the paras hereinabove, we hold that Infobeans Systems Pvt. Ltd. is not comparable to the assessee".

22. Respectfully following the same, we direct that Infobeans be excluded from the final list of comparables in this case also.

7.4 On perusal of the order of the coordinate bench of this Tribunal and on perusal of the financial statements of Infobeans Technologies Ltd., we observe that the company is functionally not comparable and no segmental details are available. Therefore, the coordinate bench did not consider this company as comparable in assessee's own case for AYS 2014-15 & 2015-16. Respectfully following the decision of the coordinate bench, we direct the AO/TPO to exclude this company from the final list of comparables.

8. Aspire Systems India Pvt. Ltd.: The ld. AR of the assessee submitted that this company fails related party transaction filter of 25% applied by TPO. Further, he submitted that this company shall also be excluded from the final set of comparables as it is functionally different and has undertaken extraordinary event. Amalgamation of applied development software (India) P. Ltd and pure apps consulting services with assessee thereby impacting the operating margin. As a result of intangibles, there is an

increase in turnover from Rs. 183.50 to 233.05 crore. He, therefore, submitted that this company may be excluded from the final set of comparables.

8.1 Ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that the TPO has rightly included this company as comparable for determining the PLI as it satisfied the filters.

8.2 We have considered the rival submissions and perused the material on record as well as gone through the orders of AO/TPO/DRP. We find that the extraordinary events regarding amalgamation issue was not raised before them and the ld. AR of the assessee has raised this issue for the first time before us, which is placed on record. The ld. AR has also relied on various decisions. Therefore, we remit this issue to the file of the TPO/AO for examining all the factual issues regarding this company raised before us and decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee. The assessee is directed to provide necessary documents before the AO/TPO to substantiate its claim.

9. Infosys Ltd.: The ld. AR submitted referring to the rule 10B of the IT Rules, which expressly lay down the preconditions for comparability of uncontrolled transactions with international transactions as under:

1. The specific characteristics of the property transferred or services provided in either transaction
2. The functions performed taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions
3. The contractual terms 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.
4. 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 govt orders in force, cost of labour and capital in 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.

9.1 He further submitted that this company offers end to end business solutions including product support, product engineering and lifecycle solutions, artificial intelligence, software products, business platforms and solutions. Further, he submitted that it has a turnover of Rs. 53,983 crores whereas assessee's turnover is Rs. 437 crores and the turnover of this company is 123 times more than assessee. He, therefore, submitted that this company cannot be compared as the different in its size and scale of operations have a direct impact on their profitability. He relied on various decisions of ITAT including the decision in

ITA No. 2233/Hyd/2018 for AY 2014-15 wherein this company is excluded as comparable.

9.2 On the other hand, Id. DR submitted that under TNMM comparable transactions needs to be broadly similar with this company and significant product diversity and some functional diversity between the controlled and uncontrolled parties are acceptable.

9.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench in assessee's own case in ITA No. 2233/Hyd/20189, for AY 2014-15, directed the AO/TPO to exclude this company from the list of comparables for determining ALP by observing as under:

"25. Having regard to the rival contentions and the material on record, we find that in a number of decisions including the assessee's own case, Infosys Ltd has been held to be not comparable with any other software development company such as the assessee due to its huge turnover and high profit margin and also as it is into software products and owns intangible intellectual property rights. In the case of Agnity India Technologies Ltd, 36 Taxmann.com 289 (Del), the Hon'ble Delhi High Court has held that Infosys Ltd is not comparable to other software development company. Relevant paragraphs are reproduced hereunder:

"8. It is a common case that Satyam Computer Services Ltd. should not be taken into consideration. The Tribunal for valid and good reasons has pointed out

that Infosys Technologies Ltd. cannot be taken as a comparable in the present case. This leaves L&T Infotech Ltd. which gives us the figure of 11.11 %, which is less than the figure of 17% margin as declared by the respondent-assessee. This is the finding recorded by the Tribunal. The Tribunal in the impugned order has also observed that the assessee had furnished details of workables in respect of 23 companies and the mean of the comparables worked out to 10%, as against the margin of 17% shown by the assessee. Details of these companies are mentioned in para 5 of the impugned order".

26. Respectfully following the same, we direct the exclusion of this company from the final list of comparables."

9.4 On perusal of the entire financial statements, we observe that the company is functionally not comparable and selling and marketing expenses are 5% of revenue and there were extraordinary events also noted i.e. transfer of product – financial & edge services as well as diversified activities like artificial intelligence, products services, platforms, consulting etc. Also onsite revenue was 52.7% and no segmental details like services, consulting products are available. In view of the above observations, the coordinate bench in assessee's own case for AY 2014-15 directed to exclude this company as comparable. Respectfully following the said decision, we direct the AO/TPO to exclude this company as comparable from the list of comparables.

10. Thirdware Solutions Ltd.: The Id. AR submitted that this company is functionally different to assessee for the following reasons:

1. This company earns revenue from sale of products, evident from purchases of stock in trade of Rs. 39.88 crore as per P&L Account.
2. It is engaged in diversified activities, i.e. professional, technical and business and services and IT consulting services.
3. The segmental details between software services and consultancy services are not available.
4. It has revenue from subscribing and training Rs. 32.59 lakhs and also income from licensing amounting to Rs. 8.77 lakhs and, therefore, functionally not comparable.

He relied various decisions of ITAT including the decision in ITA No. 2233/Hyd/2018 for AY 2014-15 wherein this company was excluded from the final set of comparables. He, therefore, requested to exclude this company for determining ALP.

10.1 The Id. DR, on the other hand, submitted that this company is engaged in rendering of software services and hence, functionally comparable to assessee. In this regard, he has drawn inference to note 37 pertaining to earnings in foreign exchange earnings, which is placed at page 2268 of the paper book of assessee vide volume 3.

10.2 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench of this

Tribunal in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 vide order dated 18/12/2020 directed the AO/TPO to exclude this company as comparable for determining ALP by observing as under:

"16. Having regard to the rival contentions and the material on record, we find that in the cases relied upon by the learned Counsel for the assessee, the assessee therein had also raised similar objections and the Tribunal has held Thirdware Solutions to be not comparable to the assessee. We find that the assessee before us is carrying on similar activities as the companies in those cases and therefore, the decisions taken by the Tribunal in those cases are applicable to the assessee before us. For the sake of ready reference, the relevant paras of the Tribunal orders are reproduced hereunder:

(1) ITA No.520/Mum/2012 - Infor Global Solutions Ltd vs. Dy.CIT

xi) THIRDWORD SOLUTIONS LTD.

"36. This company was selected by the Transfer Pricing Officer and retained by the DRP. Objecting to the selection of the aforesaid company as a comparable, the learned Authorised Representative submitted that this company is involved in the activities of software development services as well as development of product. However, no segmental details are available. Thus, he submitted that this company cannot be treated as a comparable. In support of such contention, the learned Authorised Representative relied upon the following decisions: -

ITA No 2233 of 2018 ADP Private Ltd Hyderabad

i) [ACIT vs. Tech Mahindra Ltd.](#), [2018] 91 taxmann.com 329;

ii) Ness Innovative Business Services Pvt. Ltd. vis DCIT, [2014] 151 ITD 190;

iii) LSI Technologies India Pvt. Ltd. vis ITO, [2015] 60 taxmann.com 405;

iv) PCIT vis S. T. Ericsson India Pvt. Ltd. ITA no.821/2017, dated 31.01.2018;

v) S. T. Ericsson India Pvt. Ltd. vis ACIT, ITA no.1672/Del./ 2014;

vi) Dialogic Networks India Pvt. Ltd. vis ACIT, ITA no. 7280/Mum/ 2012, dated 27.07.2018; and

vii) Accenture Services Pvt. Ltd. vis ACIT, [2018] 96 taxmann.com

37. The learned Departmental Representative submitted, before the Transfer Pricing Officer the assessee has not objected to the selection of this company as a comparable. He submitted, only in subsequent stages, the assessee has objected to selection of the aforesaid company by raising new grounds. He submitted, since the issue of development of product by this company and unavailability of segmental details, were not raised before the Transfer Pricing Officer, it requires verification.

38. We have considered rival submissions and perused materials on record. Though, it may be a fact that the assessee may not have objected to selection of this company before the Transfer Pricing Officer, however, the assessee raised objections against selection of Infor Global Solutions India Pvt. Ltd. this company before the DRP as well as before us. The grievance of the assessee is, the company being involved in development of products and since no segmental details are available in the annual report, it cannot be treated as comparable. The Co- ordinate Bench in Tech Mahindra Ltd. (supra) having found this company to be involved in development of software product and trading in software licenses has held that it cannot be a comparable to a software development service provider.

Similar view has been expressed in the other decisions cited before us by the learned Authorised Representative. Since, many of these decisions relate to very same assessment year, following the ratio laid down in these decisions, we hold that this company cannot be a comparable to the assessee".

(2) ITA Nos.1196 & 1197/Hyd/2010 - Intoto Software India Private Ltd. Vs. ACIT

23. The other companies which are objected to by the assessee are Flextronics Software Limited, Foursoft Limited and Thirdware Software Solution Limited. As far as these three companies are concerned, the learned Counsel appearing on behalf of the assessee submitted that they are into both software as well as product development. He submitted that the TPO has taken note of the fact these companies are also into product development but has selected these companies as comparables by applying the filter of more than 70% of its revenue being from software development services. The learned Counsel ITA No 2233 of 2018 ADP Private Ltd Hyderabad submitted that the functions of these companies are different from the assessee who was into sole activity of software development for its associated enterprise. He submitted that the TPO has allocated the expenditure in the proportion of the revenue of these companies from software services and software products and has adopted the figure as segmental margin of the company and has taken these companies as comparables. He submitted that by taking the proportionate expenditure, the correct financial results would not emerge. He submitted that nothing prevented the Assessing Officer/TPO from obtaining the segmental details from the respective comparable companies before adopting them as comparable companies and before taking the operating margin for arriving at the arms length price. He submitted that wherever the segmental details are not available, then the said companies should not be taken as comparables. For this purpose, he placed reliance upon the decision of the

Bangalore Tribunal in the case of First Advantage Offshore Services Pvt. Ltd. vs. Dy. DCIT in ITA.No.1252/Bang/2010 wherein these companies were directed to be excluded from the list of comparables.

24. The learned D.R. however, supported the Orders of the authorities below.

25. Having heard both the parties and having gone through the material on record, we find that the TPO at page 37 of his order has brought out the differences between a product company and a software development services provider. Thus, it is clear that he is aware of the functional dissimilarity between a product company and a software development service provider. Having taken note of the difference between the two functions, the Assessing Officer ought not to have taken the companies which are into both the product development as well as software development service provider as comparables unless the segmental details are available. Even if he has adopted the filter of more than 75% of the revenue from the software services for selecting a comparable company, he ought to have taken the segmental results of the software services only. The percentage of expenditure towards the development of software products may differ from company to company and also it may not be proportionate to the sales from the sale of software products. Under [section 133\(6\)](#) of the I.T. Act, the TPO has the power to call for the necessary details from the comparable companies. It is seen that the Assessing Officer/TPO has exercised this power to call for details with regard to the various companies. As seen from the annual report of Foursoft Limited which is reproduced at page 7 of the TPO's Order, the said company has derived income from software licence also and AMCs.

26. As far as Thirdware Software Solution Limited is concerned, we find from the information furnished by the said company that though the said company is also into product development, there are no software

products that the company invoiced during the relevant financial year and the financial results are in respect of services only. Thus, it is clear that there is no sale of software products during the year but the said company might have incurred expenditure towards the development of the software products.

27. As far as Flexitronics Software Limited is concerned, we find that at page 90 of his Order, the TPO has also observed that the said company has incurred expenditure for selling of products and has incurred R & D expenditure for development of the products. The above facts clearly demonstrate that there is functional dissimilarity between the assessee and ITA No 2233 of 2018 ADP Private Ltd Hyderabad these companies and without making adjustment for the dissimilarities brought out by the TPO himself, these companies cannot be taken as comparable companies. The method adopted by the TPO to allocate expenditure proportionately to the software development services and software product activity cannot be said to be correct and reasonable. Wherever, the Assessing Officer/TPO cannot make suitable adjustment to the financial results of the comparable companies with the assessee- company to bring them on par with the assessee, these companies are to be excluded from the list of comparables. Therefore, we direct the Assessing Officer/TPO to exclude these three companies from the list of comparables".

(3) [ITA No.2071/Hyd/2011 - M/s. CNO IT Services \(India\) P\) Ltd vs. ACIT "27. Flextronics Software Limited and Thirdware Software Solutions Limited:-](#) The assessee has objected to these two companies to be treated as comparable mainly on the ground that both these companies are into product development. We find that in case of [Intoto Software India \(P\) Ltd. \(<supra](#)) the co-ordinate Bench of this Tribunal having found that these two companies are functionally different as they are into product development has directed excluding these companies for comparability analysis.

Respectfully following the decision of the Coordinate Bench of this Tribunal in case of Intoto Software India (P) Ltd. (supra) we also direct the Assessing Officer/TPO to exclude both these companies".

(4) ITAT Delhi Bench (2017) 79 Taxmann.com 207 - [St.Ericsson India \(P\) Ltd vs. Addl. CIT "THIRD WARE SOLUTIONS LIMITED](#)

47. This is again TPO's own comparable and assessee sought to exclude this company from the list of comparables on the ground of non-comparable services i.e application implementation, management and development services. TPO rejected objections raised by the assessee by observing that software development, implementation and support services are various subsegments of software development services only and require employment of software engineers and retained this company as a comparable for benchmarking international transactions.

48. However, perusal of the annual report of this company, available at page 1735 to 1782 of the Paper Book Vol.IV, goes to prove that the substantial revenue of this company is from sales and operating sales of licence; software services, export from SEZ unit, export from STPI unit and revenue from subscription. It is also apparently clear that software services segment accounts for Rs 8.91 crores out of the total sales of Rs. 77 crores whereas segmental results are not available. So, when this company's substantial revenue is from other various business segments like ITA No 2233 of 2018 ADP Private Ltd Hyderabad sale of licence, software services and segmental results are not available, this company cannot be a valid comparable for benchmarking the international transaction, hence ordered to be excluded".

(5) ITA No.1810/Hyd/2012- Intoto Software India P.Ltd vs. ITO

7. *Thirdware Solutions Ltd 15.3. We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the material on record that the company is engaged in product development and earns revenue from sale of licenses and subscription. However, the segmental profit and loss accounts for software development services and product development are not given separately. Further, as pointed out by the learned Authorised Representative, the Pune Bench of the Tribunal in the case of E- Gain Communications Pvt. Ltd. (supra) has directed that since the income of this company includes income from sale of licenses, it ought to be rejected as a comparable for software development services. In the case on hand, the assessee is rendering software development services. In this factual view of the matter and following the afore cited decision of the Pune Tribunal (supra), we direct that this company be omitted from the list of comparables for the period under consideration in the case on hand."* "7.4. Therefore, respectfully following the decisions of the Coordinate Bench of the Tribunal (supra), we direct that these companies be excluded from the list of final comparables".

(6) *ITA No.464 & 608/Hyd/2014- Planet Online Private Limited,Vs.ACIT 10.6 As far as Thirdware Solutions is concerned, assessee has sought exclusion of the aforesaid company because it is into product development and purchase and sale of licences. It is further contention of assessee that though segmental details for sales is available but no expenditure bifurcation is available, which makes it impossible to correctly determine the operating margin of software services. On a perusal of the break-up of sales of this company as on 31 st March, 2009, the contention of assessee appears to be correct. Further, ITAT Bangalore Bench in case of 3DPLM Software Solutions Ltd. Vs. DCIT (supra), has held as under:*

"15.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the material on record that the company is engaged in product development and earns revenue from sale of licenses and subscription. However, the segmental profit and loss accounts for software development services and product development are not given separately. Further, as pointed out by the learned Authorised Representative, the Pune Bench of the Tribunal in the case of E-Gain Communications Pvt. Ltd. (supra) has directed that since the income ITA No 2233 of 2018 ADP Private Ltd Hyderabad of this company includes income from sale of licenses, it ought to be rejected as a comparable for software development services. In the case on hand, the assessee is rendering software development services. In this factual view of the matter and following the afore cited decision of the Pune Tribunal (supra), we direct that this company be omitted from the list of comparables for the period under consideration in the case on hand."

10.7 The Id. DR has not brought any material to our notice to demonstrate that the aforesaid finding of the coordinate bench will not be applicable to AY under consideration. Therefore, following the view expressed by the ITAT Bangalore Bench, we exclude this company from the list of comparables".

(7) ITA No.7280/Mum/2012 - Dialogic Networks (India) Pvt. Vs. ACIT

37. The thirteenth comparable under dispute is Thirdware Solutions Ltd. This company is engaged in application implementation, application management and application development. Accordingly company is not a pure software development company. This company is also engaged in trading of software which is evident from the financials of the company. It is also engaged in the purchase and sale of license as is apparent from page 167 of Paper book. We noted that this company has not disclosed any segmental

information in the annual report. We therefore agree with the contention of the assessee's counsel that this company is functionally different and cannot be taken to be comparable to assessee. Our aforesaid view is duly supported by the decision of Bangalore Bench of this Tribunal in the case of Infor (Bangalore) P. Ltd Vs ACIT (ITA 1550/Rang/2012) (AY 2008-09) wherein it was held as under:-

"31 Coming to Thirdware Solutions Ltd (seg), findings of the Tribunal in the above mentioned case of 3DPLM Software Solutions Ltd(supra), appear at Para nos. 15.1 to 15.3 which is reproduced hereunder:

15. 1 This company was proposed for inclusion in the list of comparables by the TPO. Before the TPO , the assessee objected to the inclusion of this company in the list of comparables on the ground that its turnover was in excess of Ps. 500 Crores. Before us, ITA No . 7 2 80 / Mu m /2 0 12 the assessee has objected to the inclusion of this company as a comparable for the reason that apart from software development services, it is in the business of product development and trading in software and giving licenses for use of software. In this regard. the learned Authorised Representative submitted that: -

(i) This company is engaged in pro duct development and earns revenue from sale of licences and subscription. It has been pointed out from the Annual Report that the company has not provided any separate segmental profit and loss account for software development services and product develop ment services. In the case of E -Gain communications Pvt Ltd. (2008 - TII- 04-I TA T-PUNE- TP), the Tribunal has directed that this company be omitted as a comparable for software service providers, as its income includes income from sale of licences which has increased the margins of the company The ITA No 2233 of 2018 ADP Private Ltd Hyderabad Learned A.R prayed that in the light of the above facts and in view of the afore cited

decision of the Tribunal (supra). this company ought to be omitted from the list of comparables.

15 2 Per contra, the learned Departmental Representative supported the action of the TPO in including this company in the list of comparables.

15.3 We have heard the rival submissions and perused and carefully considered the material on record. It is seen from the material on record that the company is engaged in product development and earns revenue from sale of licenses and IT(TP)A.1550/Bang/2012 Page-29 subscription.

However, the segmental profit and loss accounts for software development services and product development are not given separately. Further, as pointed out by the learned Authorised Representative, the Pune Bench of the Tribunal in the case of F -Gain Communications Pvt. Ltd. (supra) has directed that since the income of this company includes income from sale of licenses, it ought to be rejected as a comparable for software development services. In the case on hand, the assessee is rendering software development services.

In this factual view of the matter and following the afore cited decision of the Pune Tribunal (supra). we direct that this company be omitted from the list of comparables for the period under consideration in the case on hand. " No contrary decision was brought to our knowledge. We therefore hold that this company be excluded from comparable as selected by TPO and we direct the AO accordingly".

(8) ITA No.655/PUN/2017- M/s. PubMatic India Private Limited. Vs. ACIT

20. Now, coming to the next concern i.e. Thirdware Solutions Ltd., which is functionally dissimilar as it was deriving revenue from sale of license and software

services export from SEZ units and revenue from subscription, etc. Our attention was drawn to the financials of said concern placed at pages 708 onwards of Paper Book and it was pointed out that the company had imported raw materials and was also owning intangibles and hence, made it in-comparable to the assessee. In the absence of any segmental details being available, we find merit in the plea of assessee.

21. The Pune Bench of Tribunal in Approva Systems Pvt. Ltd. Vs. DCIT in ITA No.1921/PUN/2014, relating to assessment year 2010- 11, order dated 25.01.2017 had excluded Thirdware Solutions Ltd. being not comparable to a concern which was providing software services. The relevant findings are as under:-

"11. We find that the Tribunal noted that the TPO had selected KALS Information System Ltd. and Thirdware Solution Ltd. as being comparable, whereas the case of assessee was that both the said ITA No 2233 of 2018 ADP Private Ltd Hyderabad concerns were functionally different. With regard to KALS Information System Ltd., it was pointed out that the said company was earning income from sale of application software and segmental information with respect to software services were available. In respect of Thirdware Solution Ltd., it was pointed out that the said concern was engaged in software development, trading of software licences and training implementation activities apart from software development. Another contention was raised that Thirdware Solution Ltd. was super profit earning company and was also engaged in the business of software licences and trading of implementation activities. The Tribunal taking note of the Special Bench decision in the case of Maersk Global Centres (India) Pvt. Ltd. Vs. ACIT vide ITA No.7466/M/2012 in respect of super profits and inclusion of concern Thirdware Solution Ltd., held that the said concern was not comparable and observed as under:-

"29. We have considered the rival arguments made by both the sides. We find the Special Bench of the Tribunal in the case of Maersk Global Centres (India) Pvt. Ltd. Vs. ACIT vide ITA No.7466/Mum/2012 has observed as under :

Schedule: Sales	As on 31.3.2019	As on 31.3.2018
Sale of Licence	22,237,588	3,916,427
Software Licence	89,177,023	76,724,371
Export from SEZ	478,572,420	263,971,033
Export from STPI	162,900,630	168,863,049
Revenue from sub.	16,433,714	9,293,874
	770,321,376	522,768,754

"99. The question No. 2 referred to this Special Bench is as to whether, in the facts and circumstances of the case, companies earning abnormally high profit margin should be included in the list of comparable cases for the purpose of determining arm's length price of an international transaction. As already observed, the issue involved in this question has become infructuous in so far as the case of the assessee before the Special Bench is concerned and the same therefore no more survives for consideration in the present case. In generality, we are of the view that the answer to this question will depend on the facts and circumstances of each case inasmuch as potential comparable earning abnormally high profit margin should trigger further investigation in order to establish whether it can be taken as comparable or not. Such investigation should be to ascertain as to whether earning of high profit reflects a normal business condition or whether it is the result of some abnormal conditions prevailing in the relevant year. The profit margin earned by such entity in the immediately preceding year/s may also be taken into consideration to find out whether the high profit margin ITA No 2233 of 2018 ADP Private Ltd Hyderabad represents the normal business trend. The FAR analysis in such case may be reviewed to ensure that the potential comparable earning high profit

satisfies the comparability conditions. If it is found on such investigation that the high margin profit making company does not satisfy the comparability analysis and or the high profit margin earned by it does not reflect the normal business condition, we are of the view that the high profit margin making entity should not be included in the list of comparable for the purpose of determining the arm's length price of an international transaction. Otherwise, the entity satisfying the comparability analysis with its high profit margin reflecting normal business condition should not be rejected solely on the basis of such abnormal high profit margin. Question No. 2 referred to this special bench is answered accordingly". 29.1 We find from the details furnished by the assessee that the assessee is a software developer whereas Thirdware Solutions Ltd. is engaged in the business of sale-cum-licence of software which is available from the audited accounts, the details of which are as under :

Apart from the above the company is also having dividend income, interest income and profit on sale of investment as well as premium of software contract totalling to Rs.2,30,48,603/- which is as per Schedule-13 "other sources". From the various decisions relied on by the Ld. Counsel for the assessee we find Thirdware Solutions Ltd. has been rejected on the ground that it is functionally dissimilar. The Hyderabad Bench of the Tribunal in the case of Intoto Software India Pvt. Ltd. Vs. ACIT and Viceversa in consolidated order dated 24-05-2013 for A.Y. 2005-06 and 2007-08 at para 26 of the order has observed as under :

"26. As far as Thirdware Software Solution Limited is concerned, we find from the information furnished by the said company that though the said company is also into product development, there are no software products that the company invoiced during the relevant financial 52 year and the financial results are in respect of services only. Thus, it is clear that there is no sale of software products during the year but the said

company might have incurred expenditure towards the development of the software products." 29.2 In various other decisions also Thirdware Solutions Ltd. has been rejected as a comparable on the ground that it is functionally dissimilar. We therefore find force in the submission of the Ld. Counsel for the assessee that Thirdware Solutions Ltd. should not be included as a comparable. We accordingly set-aside the order of the CIT(A) and direct the Assessing Officer to exclude the same from the list of comparables."

12. Both the learned Authorized Representatives have admitted that Thirdware Solutions Ltd. was involved in similar functions as in ITA No 2233 of 2018 ADP Private Ltd Hyderabad earlier year and in view thereof, we hold that the said concern is functionally different and is to be excluded from final list of comparables."

(9) ITA No.2307/Hyd/2018- M/s. Infor (India) P Ltd Vs. ACIT

77. As regards Tata Elxsi Ltd, Thirdware Solutions Ltd and Persistent Systems Ltd are concerned, we find that their comparability to the assessee has been considered in the assessee's own case for the A.Y 2007-08 and it is submitted that there is no change of activities of either the assessee or the comparables during the relevant A.Y before us i.e. A.Y 2014-15.

78. The learned DR has not rebutted this contention of the assessee. Therefore, respectfully following the decision of the Coordinate Bench at Mumbai in ITA No.520/Mum/2012 dated 4.12.2018, in the case of Infor Global Solutions India (P.) [Ltd. v.Deputy Commissioner of Income Tax](#), we direct the exclusion of these three companies from the final list of comparables. For the sake of ready reference, the relevant paras are reproduced hereunder:

"29. We have considered rival submissions and perused materials on record. The primary and fundamental

reason on the basis of which assessee seeks rejection of the aforesaid comparable is, it is also engaged in the development of product and segmental details are not available. Notably, in case of LSI Technologies India (P.) Ltd. (supra), the Co-ordinate Bench while examining the comparability of the aforesaid company to a software development service provider, has rejected this company as a comparable considering the fact that it is engaged in product development and product design services. The same view has been reiterated by the Tribunal in the other decisions cited by the learned Authorised Representative. Since, many of these decisions pertain to the impugned assessment year, respectfully ITA Nos 161 and 2307 of 2018 Infor India P Ltd Hyderabad.

following the aforesaid decisions of the Tribunal, we direct the Assessing Officer to exclude this company from the list of comparables.

35. We have considered rival submissions and perused materials on record. On a perusal of the documents placed in the paper book it appears that this company is engaged in various activities including development of niche product and development services. Thus, the company is functionally different from the assessee. Considering the aforesaid aspect, the Co-ordinate Bench in case of Telcordia Technologies India (P.) Ltd. (supra), which is for the very same assessment year, has excluded this company as a comparable. Similar view has also been expressed in the other decisions cited by ITA No 2233 of 2018 ADP Private Ltd Hyderabad the learned Authorised Representative. Thus, keeping in view the decisions of the Tribunal referred to above, we hold that this company cannot be a comparable to the assessee.

38. We have considered rival submissions and perused materials on record. Though, it may be a fact that the assessee may not have objected to selection of this company before the Transfer Pricing Officer, however,

the assessee raised objections against selection of this company before the DRP as well as before us. The grievance of the assessee is, the company being involved in development of products and since no segmental details are available in the annual report, it cannot be treated as comparable. The Co-ordinate Bench in Tech Mahindra Ltd. (supra) having found this company to be involved in development of software product and trading in software licenses has held that it cannot be a comparable to a software development service provider. Similar view has been expressed in the other decisions cited before us by the learned Authorised Representative. Since, many of these decisions relate to very same assessment year, following the ratio laid down in these decisions, we hold that this company cannot be a comparable to the assessee".

17. Thus, we direct the TPO to exclude this company i.e. Thirdware Solutions from the final list of comparables.

10.3 From the financial statements, we observe that it is functionally not comparable with respect to professional, technical and business services as well as IT consulting services. No segmental details between software services and consultancy services are available. Unallocable expenses are Rs. 2.16 crores therefore, not possible to calculate correct PLI. Purchase of goods Rs. 39.88 crore debit4ed to P&L Account included in software services sales of Rs. 221.36 crores. Revenue From subscription & training was Rs, 32.59 lakhs, revenue from sale of licenses was Rs. 8,77,000. In view of these observations, the coordinate bench in assessee's own case for AY 2014-15 directed to exclude this company as comparable. Respectfully following the said decision, we direct the

AO/TPO to exclude this company from the final list of comparables.

11. The ld. AR of the assessee has not pressed the following comparables at the time of hearing before us, hence, the same are dismissed as not pressed:

1. Rheal Software Pvt. Ltd.
2. RS Software (India) Ltd.
3. Nihilent Technologies Ltd.,
4. Inteq Software Pvt. Ltd.,
5. Cybage Software Pvt. Ltd.

12. As regards ground No. 4, the ld. AR of the assessee requested the Bench to inclusion of the following comparables, which were rejected by the TPO/DRP:

12.1. Evoke Technologies Pvt. Ltd.: The ld. AR of the assessee submitted that this company may be included as comparable as it is functionally similar to assessee company and accepted in earlier years as comparable. He submitted that as per Directors report, there is no change in nature of business and engaged in IT decision and development services. He submitted that in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 vide order dated 18/12/2020 the coordinate bench included this company as comparable for determining ALP. He also relied on the following cases:

- 1) Infor India(P) ltd. Vs. DCIT, ITA No. 161 and 2307/Hyd/2018
- 2) Conexant Systems Pvt. Ltd., ITA No. 464/Hyd/2016

12.2 The ld. DR, on the other hand, submitted that this company not appeared in TPO's search matrix and it is taken as a comparable, it amounts cheery picking and, therefore, the TPO/DRP has rightly rejected this company as comparable.

12.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The coordinate bench in the assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018, directed the AO to include this company as comparable to the assessee for determining ALP by observing as under:

"31. As far as Evoke Technologies Ltd is concerned, the TPO has rejected the said company as a comparable on the ground that from the annual report of the said company, it is noticed that the stand alone financials reported from 2013-14 include revenue and net profit figures of one Branch outside India also. The learned Counsel for the assessee brought to our notice that in the case of Infor (India) (P) Ltd, the Coordinate Bench of this Tribunal in ITA No.2307/Hyd/2018 has held as under:

"73. As regards Evoke Technologies is concerned, the contentions of the assessee are that this company is functionally similar to the assessee, whereas the TPO & DRP have held that the financials of this company include the revenue of one branch outside India which are unaudited and hence are not reliable. The learned Counsel for the assessee however, drew our attention to page 963 of the Paper Book, which is part of the Annual Report of Evoke Technologies Ltd wherein the revenue

of Indian Branch of assessee is separately shown. Taking the same into consideration, we direct the AO/TPO to reconsider the comparability of this company by taking the revenue from Indian Branch only. Thus, the ground for Maveric Systems Ltd is rejected and for Evoke Technologies Ltd is allowed for statistical purposes.

32. Since the issue is similar, we direct the AO/TPO to reconsider the comparability of this company to the assessee by taking the revenue from Indian Branch only.”

12.4 We observe that this company is functionally comparable to assessee company and accepted in earlier years as comparable as there is no change in nature of business and engaged in IT decision and development services. Therefore, following the decision of the coordinate bench in assessee's own case for AY 2014-15 cited supra, we direct the AO/TPO to reconsider the comparability of this company to the assessee by taking the revenue from Indian Branch only.

13. The Id. AR of the assessee not pressed the following comparables quoted in ground No. 4 and therefore, the same are dismissed as not pressed:

1. Akshay Software Technologies Ltd.
2. Nucleus Software Exports Ltd.
3. ACE Software Exports Ltd.
4. Sasken Communication Technologies Ltd.
5. Infomile Technologies Ltd.
6. Sagarsoft India Ltd.
7. E-zest Solutions Ltd.
8. Sankhya Ltd.

9. Harbinger Systems Pvt Ltd.

14. **As regards ground No. 5** relating to the action of TPO that incorrectly computing the margin of the following comparable companies.

1. CG-VAK Software & Exports Ltd.
2. Larsen & Toubro Infotech Ltd. (Segmental)
3. Aspire Systems (India) Pvt. Ltd.
4. Infosys Ltd.

14.1 After hearing parties and considering the orders of TPO/DRP, it is observed that since we have excluded the said companies, namely, Larsen Toubro Infotech Ltd. and Infosys Ltd., there is no need to compute the margin in respect of these both the companies. In respect of companies M/s CG-VAK Software & Exports Ltd. and Aspire Systems (India) Pvt. Ltd., the TPO and AR of the had computed PLI as under:

	PLI calculated by	
	TPO	Assessee
M/s CG-VAK Software & Exports Ltd.	16.76%	12.03%
Aspire Systems (India) Pvt. Ltd.,	33.04%	32.00%

14.2 Since the PLI calculated by the TPO and assessee are having difference, we are of the view that the same requires factual verification and hence, we remit these companies to the file of the TPO to compute correct margin after factual

verification. Thus, this ground is partly allowed for statistical purposes.

15. As regards ground No. 6 relating to transaction with CDK (India) Ltd., the assessee recovered a sum of Rs. 15,68,07,171/- from CDK Global (India) Ltd., AE towards employee benefit expenses, operating, administration and other expenses without Mark up. The TPO held the transaction between the assessee and the CDK Global is a deemed international transaction and imputed a mark up of 26.36% and 26.52% to software development services and ITES Segment respectively. DRP upheld the action of TPO.

15.1 Before us, the ld. AR of the assessee submitted as under:

1. It is not a deemed international Transaction.
2. DRP has referred to wrong transactions reported in T.P Study.
3. A Transaction between two residents cannot be treated as an International Transaction.
4. There is an Agreement with CDK India Ltd and this agreement was not examined by TPO & DRP despite placing it before them.
5. The Assessee has offered the capital gain in its returns of Income in the year of transfer of dealer services division (AY 2015-16)

15.2 He submitted that in A.Y 2015-16, Hon'ble ITAT has set aside the same issue to the file of the TPO for reconsideration, therefore, he requested the Bench to remit this issue to the file of the TPO for reconsideration.

15.3 The Id. DR, on the other hand, relied on the orders of TPO/DRP.

15.4 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. Since the coordinate bench of this Tribunal in assessee's own case in ITA No. 1611/Hyd/2019 for AY 2015-16 remitted to the file of the TPO for reconsideration, following the same we remit the issue to the file of TPO with identical directions as given in AY 2015-16.

16. As regards ground No. 7 relating to provision of information technology enabled services (ITeS) wherein the assessee challenged the action of the TPO/DRP in accepting the inappropriate companies as comparables, which are as under:

16.1 Infosys BPO Ltd.: The Id. AR submitted that this company may be excluded from the final set of comparables for the reason that this company has incurred outsourcing costs for FY 2013-14, FY 2014-15 and FY 2015-16 and the outsourcing cost incurred by this company reflects a different operating model and hence cannot be compared

with the assessee company. Further, he submitted that while this company operates under various revenue model as per the assignments i.e., proportional completion method on rendering services, whereas the assessee charges a mark-up on the cost incurred to provide the services. Further, he submitted that since the cost structure and revenue model of this company is different with that of the assessee, this company ought to be rejected as a comparable company. He relied on the decision of the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 wherein the coordinate bench excluded this company as comparable.

16.2 The ld. DR, on the other hand, submitted that presence of outsourcing cost/subcontracting cost does not affect functional comparability. Further, it reduces the operating margin of the company, which is beneficial to the assessee. He, therefore, submitted that the TPO/DRP has rightly included this company as comparable.

16.3 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. We find that the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 has excluded this company as comparable by observing as under:

"38. Having regard to the rival contentions and the material on record, we find we find that the Coordinate Bench of this Tribunal in the assessee's own case not only for the A.Ys 2009-10 for the A.Y 2010-11 has also considered this issue at Paras 6 to 9 in ITA No.221/Hyd/2015 which reads as under:

"6. The TPO has selected many comparables and among them M/s. Infosys BPO Ltd., TCS e-serve Ltd., and Eclerx Services Ltd., were objected to on the reason of high turnover and functionally different. With reference to Infosys BPO, the objection was that the said company renders wide array of services and has high brand value and turnover is also very high. With reference to TCS E-serve Ltd., there was exceptional event as the company was taken over by Tata Consultancy Services in the year 2008-09 and heavy turnover is due to its takeover. Further, it was submitted that the company was functionally different as it has three different services and segmental information was not arrived. As far as E-clerx Services Ltd., it was submitted that this company caters to high end KPO services and cannot be compared to routine BPO services provided by assessee. The DRP vide para 3.10 has accepted the assessee's objections and accordingly, directed the TPO to exclude the above three companies. There are other directions of the DRP on TP adjustments on which neither party has raised grounds, except the Revenue on the above exclusion of three companies.

7. Referring to the order of the TPO, it was the contention of Ld.DR that DRP was not correct in excluding them on the basis of the turnover, whereas Ld. Counsel submitted that DRP has followed the decisions of the Co-ordinate Benches in excluding the above three comparables.

8. We have considered the rival submissions and perused the order of the DRP and Co-ordinate Benches. As far as M/s. TCS e-Serve Ltd., is concerned, the Co-ordinate Bench of ITAT in the case of M/s Hyundai

Motors India Engineering P. ltd in ITA Nos. 1743/Hyd/2014 (AY.2010-11) & ITA No. 1917/Hyd/2014 (AY.2010-11) dt. 13-11-2015, has decided the issue as under:

ITA No 2233 of 2018 ADP Private Ltd Hyderabad "TCS e-SERVE LIMITED 11.2.1. As regards TCS e-Serve Limited is concerned, we find that it possesses brand value as is evident from the Schedule-N (Operation and Other expenses) to the P & L A/c of the annual report for the financial year 2009-10 of Rs.46,065 thousands and also that it possesses intangibles in the form of software licenses which have not been taken note of by the authorities below while adopting its margin. It is also the case of the assessee that this company has a turnover of Rs.1405.10 crores which is 25 times of the turnover of the assessee and hence, is not comparable to the assessee. The Ld. Counsel for the assessee had also placed reliance upon the TPO's order in the case of M/s. IGS Imaging Services India Ltd., to hold that there are exceptional circumstances during the relevant financial year due to which this company is not comparable to the assessee. The Ld. Counsel for the assessee also submitted that the segmental details of this company are not available and hence, has to be excluded on this count also.

11.2.2. We find that the assessee's contentions about the presence of 'brand value' and owning of 'intangibles' is supported by the evidence on record. However, as regards the extraordinary event or exceptional circumstance there is no material placed before us by the Ld. Counsel for the assessee. Therefore, merely because the TPO in another case has held that there is an extraordinary event for which this company has to be excluded from the list of comparables, it cannot be excluded. Such claim has to be supported by evidence on record. As regards the functional dissimilarity and huge turnover and brand value is concerned, we find that this Tribunal in assessee's own case for A.Y.2009-10 while considering the

comparability of the assessee with Infosys BPO Ltd., has taken note of the possession of the brand value and intangibles which influenced the financial results of this company. The Hon'ble Delhi High Court in the case of [CIT vs. Agnity India Technologies P. Ltd.](#), (2013) 219 Taxman 26 (Del.), held that huge turnover companies like Infosys and Wipro cannot be considered as comparable to smaller companies like assessee therein. In the case before the Hon'ble High Court (supra), the turnover of the assessee was about Rs.15.79 crores as against the turnover of Rs.1016 crores of the Infosys. Considering these facts, the Hon'ble High Court had directed for exclusion of Infosys BPO because of its brand value and also on the grounds of functional dissimilarity and huge turnover. Though, the company before us is TCS e-Service Ltd., and not Infosys BPO, we find that the turnover of the assessee company for this assessment year is around Rs.50 crores as against the turnover of TCS e-Serve Limited of Rs.1405.10 crores. Therefore, following the turnover filter as well as taking note of the fact that it owns and possesses brand value and intangibles as compared to the assessee which does not own such assets, we direct that this company be excluded from the list of final comparables. Accordingly, assessee's grounds of appeal No.6 is partly allowed.

8.1. Respectfully following the above decision of the Co-ordinate Bench, we confirm the order of DRP excluding the above company from the list of comparables.”

We observe from the financial statements of this company, that this company is functionally dissimilar and use robotics automation and diversified activities. Therefore, following the decision of the coordinate bench, we direct the AO/TPO to exclude this company as comparable for determining ALO.

17. Eclerx Services Ltd.: The ld. AR of the assessee submitted that this company may be excluded as comparable from the final set of comparables as this company is engaged in providing KPO services, different to low end BPO services provided by the assessee. He submitted that Safe Harbor Rules recognizes ITeS activities under tow distinct categories i.e., BPO and KPO and activities of this company falls under KPO services. He submitted that the services provided by this company of following:

- a) Contract Risk Review, b) Margin Exposure Management, c) Online Operations and web analytics, d) CRM and business intelligence, e) Content creation, f) business process consulting.

17.1 He further submitted that as per NIC code provided in the annual report, this company has been classified as KPO and has been awarded as leading KPO's in India, basis award and accolades received. He submitted that this company has undertaken the following extraordinary transactions thereby impacting the operating margins:

- a) Acquisition of CLX Europe
- b) Amalgamation of Agilest consulting (P) ltd.

17.2 He relied on the decision of the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2293/Hyd/2018 wherein the coordinate bench excluded this company as comparable.

17.3 The Id. DR, on the other hand submitted that this company is engaged in rendering ITeS, therefore, functionally comparable to assessee. He submitted that amalgamation has no impact on the profits of the company. He, therefore, submitted that TPO/DRP has rightly included this company as comparable to assessee company.

17.4 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. We find that the coordinate bench in assessee's own case for AY 2014-15 cited supra has excluded this company as comparable by observing as under:

38. Having regard to the rival contentions and the material on record, we find we find that the Coordinate Bench of this Tribunal in the assessee's own case not only for the A.Ys 2009-10 for the A.Y 2010-11 has also considered this issue at Paras 6 to 9 in ITA No.221/Hyd/2015 which reads as under:

"6. The TPO has selected many comparables and among them M/s. Infosys BPO Ltd., TCS e-serve Ltd., and Eclerx Services Ltd., were objected to on the reason of high turnover and functionally different. With reference to Infosys BPO, the objection was that the said company renders wide array of services and has high brand value and turnover is also very high. With reference to TCS E-serve Ltd., there was exceptional event as the company was taken over by Tata Consultancy Services in the year 2008-09 and heavy turnover is due to its takeover. Further, it was submitted that the company was functionally different as it has three different services and segmental information was not arrived. As far as E-clerx Services Ltd., it was submitted that this company caters to high end KPO services and cannot be

compared to routine BPO services provided by assessee. The DRP vide para 3.10 has accepted the assessee's objections and accordingly, directed the TPO to exclude the above three companies. There are other directions of the DRP on TP adjustments on which neither party has raised grounds, except the Revenue on the above exclusion of three companies.

7. Referring to the order of the TPO, it was the contention of Ld.DR that DRP was not correct in excluding them on the basis of the turnover, whereas Ld. Counsel submitted that DRP has followed the decisions of the Co-ordinate Benches in excluding the above three comparables.

8. We have considered the rival submissions and perused the order of the DRP and Co-ordinate Benches. As far as M/s. TCS e-Serve Ltd., is concerned, the Co-ordinate Bench of ITAT in the case of M/s Hyundai Motors India Engineering P. ltd in ITA Nos. 1743/Hyd/2014 (AY.2010-11) & ITA No. 1917/Hyd/2014 (AY.2010-11) dt. 13-11-2015, has decided the issue as under:

ITA No 2233 of 2018 ADP Private Ltd Hyderabad "TCS e-SERVE LIMITED 11.2.1. As regards TCS e-Serve Limited is concerned, we find that it possesses brand value as is evident from the Schedule-N (Operation and Other expenses) to the P & L A/c of the annual report for the financial year 2009-10 of Rs.46,065 thousands and also that it possesses intangibles in the form of software licenses which have not been taken note of by the authorities below while adopting its margin. It is also the case of the assessee that this company has a turnover of Rs.1405.10 crores which is 25 times of the turnover of the assessee and hence, is not comparable to the assessee. The Ld. Counsel for the assessee had also placed reliance upon the TPO's order in the case of M/s. IGS Imaging Services India Ltd., to hold that there are exceptional circumstances during the relevant financial year due to which this company is not comparable to the assessee. The Ld. Counsel for the assessee also submitted that the segmental details of

this company are not available and hence, has to be excluded on this count also.

11.2.2. We find that the assessee's contentions about the presence of 'brand value' and owning of 'intangibles' is supported by the evidence on record. However, as regards the extraordinary event or exceptional circumstance there is no material placed before us by the Ld. Counsel for the assessee. Therefore, merely because the TPO in another case has held that there is an extraordinary event for which this company has to be excluded from the list of comparables, it cannot be excluded. Such claim has to be supported by evidence on record. As regards the functional dissimilarity and huge turnover and brand value is concerned, we find that this Tribunal in assessee's own case for A.Y.2009-10 while considering the comparability of the assessee with Infosys BPO Ltd., has taken note of the possession of the brand value and intangibles which influenced the financial results of this company. The Hon'ble Delhi High Court in the case of [CIT vs. Agnity India Technologies P. Ltd.](#), (2013) 219 Taxman 26 (Del.), held that huge turnover companies like Infosys and Wipro cannot be considered as comparable to smaller companies like assessee therein. In the case before the Hon'ble High Court (supra), the turnover of the assessee was about Rs.15.79 crores as against the turnover of Rs.1016 crores of the Infosys. Considering these facts, the Hon'ble High Court had directed for exclusion of Infosys BPO because of its brand value and also on the grounds of functional dissimilarity and huge turnover. Though, the company before us is TCS e-Service Ltd., and not Infosys BPO, we find that the turnover of the assessee company for this assessment year is around Rs.50 crores as against the turnover of TCS e-Serve Limited of Rs.1405.10 crores. Therefore, following the turnover filter as well as taking note of the fact that it owns and possesses brand value and intangibles as compared to the assessee which does not own such assets, we direct that this

company be excluded from the list of final comparables. Accordingly, assessee's grounds of appeal No.6 is partly allowed.

8.1. Respectfully following the above decision of the Coordinate Bench, we confirm the order of DRP excluding the above company from the list of comparables.

We observe from the financial statements that this company is functionally dissimilar and engaged in KPO and BPO services and amalgamation of Agilest Consulting Pvt. Ltd., vide page No. 23 of paper book volume -1 para 8 and acquisition of CLX Europe which impacts on the profits of the company. From the financial statements of the Chairman's message placed at page No. 18 of paper book volume - 1, it has been categorically stated that after acquisition of CLX Europe, the revenue has grown by 30%, which clearly shows that it impacts on the profitability of the company. These are extraordinary events. Therefore, If an extraordinary event has taken place by way of amalgamation in a company, that company cannot be considered as a comparable as held by the coordinate bench of ITAT, Pune, in the case of *Entercoms Solutions (P.) Ltd. v. Assistant Commissioner of Income-tax* [2022] 134 taxmann.com 59 (Pune - Trib.). Accordingly, we direct the AO/TPO to exclude this company as comparable from the list of comparables.

18. The ld. AR of the assessee has not pressed the following companies as comparables raised in Ground No. 7, therefore, the same are dismissed as not pressed:

1. Crossdomain solutions Pvt. Ltd.
2. Tech Mahindra Business Services Ltd.
3. SPI Technologies India Pvt. Ltd.
4. MPS Ltd.

19. **As regards ground No. 8** relating to the rejection of the following companies as comparables by the TPO/DRP in the ITeS domain:

19.1 Informed Technologies Ltd.: The ld. AR of the assessee submitted that this company may be included in the final list of comparable companies as this company is engaged in the business of providing ITeS and is leading content provider to securities and financial research industry, akin to ITeS segment of assessee. He submitted that this company also satisfies filters adopted by the TPO. He, therefore, requested the Bench to include this company in the final list of comparable companies. He relied on the following case laws:

1. Hyundai Motor India Engg. Pvt. Ltd., ITA No. 1807/Hyd/2017
2. Infor (India) P. Ltd., ITA No. 212/Hyd/2017
3. TNS India (P.) Ltd., ITA No. 1875/Hyd/2012
4. CGI Information Systems & Management Consultants Pvt. Ltd., ITA No. 183/Bag/2017
5. PTC Software (India) Pvt. Ltd., ITA No. 1605/Pune/2011.

He also relied on the decision of the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 wherein the coordinate bench included this company as comparable.

19.2 The Id. DR, on the other hand, relied on the orders of lower authorities.

19.3 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. We find that the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2233/Hyd/2018 has held as under:

"40. As regards Ground No.5, the assessee is seeking inclusion of only two companies i.e. Informed Technologies Ltd and Ace BPO Services (P) Ltd. As regards Informed Technologies Ltd, the TPO did not accept this company as a comparable on the ground that this company has high non-current investment of Rs.6.05 crores and further that it is a KPO. According to the assessee, it is also not a KPO but is an ITeS company and that its total Revenue is from the Call Centre Services only. He therefore, prayed that this company may be included in the list of comparables.

41. Similarly, as regards Ace BPO Services Ltd, the contentions of the assessee are that this company is functionally comparable and that it satisfies all the filters of the TPO and also that there are no related party transactions or the (RPT) of this company are negligible. It is also submitted that the financials of this company are very much available in the public domain and therefore, the findings of the TPO that the financial of the company are not available is not correct. He

relied upon the decision of the Tribunal in the case Infor (India) (P) Ltd wherein the Tribunal directed the AO/TPO to adopt this company as a comparable and prayed for a similar direction in the case of the assessee also.

42. The learned DR relied upon the orders of the authorities below.

43. Having regard to the fact that the assessee has brought out that these two companies satisfies the filters adopted by the TPO and that the findings of the TPO with regard to the distinguishing factors are not correct, we deem it fit and proper to set aside the issue to the file of the AO/TPO with a direction to re-examine the above facts/contentions of the assessee and if they are found to be correct, the said Companies be adopted in the final list of comparables.”

19.4 We find from the order of the lower authorities that they have rejected this company on the ground that data not available in public domain and not appeared in search matrix. During the course of hearing, the ld. AR filed paper book – Volume – 2 containing pages 675 to 741, in which the financial statements have been placed by the assessee in regard to inclusion of this company in ITeS. Following the said decision, we remit this issue to the file of the AO/TPO with a direction to re- examine the above facts/contentions of the assessee and if they are found to be correct, the said Company be adopted in the final list of comparables. Accordingly, this issue is remitted to the file of AO/TPO.

20. With regard to the following companies raised in Ground No. 8, the Id. AR of the assessee has not pressed, therefore, the same are dismissed as not pressed:

1. Suprawin Technologies Limited
2. Jindal Intellicom Limited
3. ACE BPa Services Private Limited
4. Sunadaram Business services Private Limited
5. AXA Business Services Limited
6. R Systems International Limited
7. Tata Consulting engineers Limited
8. Tata E1xsi Limited
9. BNR Udyog Limited
10. Cosmic Global Limited
11. Allsec Technologies Limited.
12. Cameo Corporate Services Ltd.:

21. As regards ground No. 9 relating to wrong computation of margins of the following comparables in ITES domain:

1. Microland Ltd.
2. Infosys BPO Ltd.
3. SPI Technologies India Pvt. Ltd.

21.1 On considering the submission of the Id. AR that the TPO has wrongly computed the margin of the said comparable companies, accordingly, we set aside these comparables to the file of the AO/TPO with a direction to compute the correct margin. Thus, this ground is allowed for statistical purposes. Since we have directed to exclude Infosys BPO Ltd for determining ALP vide para No. 16.3

supra, the remaining two companies, namely, Microland Ltd and SPI Technologies India Pvt. Ltd. are required to be recalculated for determining ALP. The assessee is directed to provide data for recalculating the margins.

22. **Ground Nos. 10 & 11** have not been pressed by the ld. AR of the assessee at the time of hearing, therefore, the same are dismissed as not pressed.

23. **With regard to Ground No. 12**, the ld. AR of the assessee submitted that the assessee demonstrated the impact of working capital on profit of comparables adopted by the TPO. He submitted that the working capital adjustment is allowed in assessee's own case for AY 2015-16 in ITA No. 1611/Hyd/2019.

23.1 The ld. DR, on the other hand, submitted that the assessee has not demonstrated the impact of working capital differences on its profit. He submitted that average working capital will not reflect the actual capital employed during the year and the segmental working is not disclosed in annual reports, and therefore, the TPO/DRP has not allowed the working capital adjustment.

23.2 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. Following the decision of the coordinate bench in assessee's own case for AY 2015-16 in ITA No.

1611/Hyd/2019, vide Para No. 3, placed at page No. 2123 of paper book, we direct the AO/TPO to allow the working adjustment done by the assessee. Thus, this ground is allowed.

24. **Ground No. 13** has not been pressed by the ld. AR of the assessee at the time of hearing, therefore, this ground is dismissed as not pressed.

25. **Ground No. 14** is relating to the provision for bad and doubtful debts and bad debts as a non-operating expenditure by the TPO/DRP while computing the operating margin of the comparable companies.

25.1 The ld. AR of the assessee submitted that the provision for doubtful debts is operating cost and he relied on the decision of the coordinate bench in assessee's own case for AY 2014-15 in ITA No. 2293/Hyd/2018 dated 02/08/2019.

25.2 The ld. DR, on the other hand relied on the orders of TPO/DRP.

25.3 We have considered the rival submissions and perused the material on record as well as the orders of TPO/DRP. Following the decision of the coordinate bench in assessee's own case cited supra for AY 2014-15 in ITA No. 2293/Hyd/2018, we remit this issue to the file of the AO with a direction decide the same in line with the order of

ITAT cited supra. Thus, this ground is allowed for statistical purposes.

26. As regards ground Nos 15 to 19 relating to outstanding receivables, the TPO made adjustment of Rs. 1,23,24,559/- by adopting SBI PLR for bench marking the transactions and charged interest for 365 days and not for the delayed period. The DRP upheld the action of TPO.

26.1 Before us, the ld. AR of the assessee submitted that the assessee's business model is cost plus and, therefore, delay in receiving amount will not make any difference as margin is assured. He submitted that tainted transaction is made as the basis against ALP principle. He submitted that CUP method is not applicable as the SBI is not providing software services, therefore, adopting SBI PLR is improper bench marking by TPO. He submitted that comparable transactions have to be from ITES. Further, he submitted that LIBOR plus method has to be adopted as receivables are in foreign currency and interest has to be calculated for delayed period. Weighted average method has to be applied. He relied on the following cases:

1. Assessee's own case for AY 2015-16 in ITA No. 1611/Hyd/2019
2. Value Momentum services Pvt. Ltd., ITA No. 2197/hyd/2017
3. Kony India Pvt. Ltd., ITA No. 1709/hyd/2019.

26.2 The Id. DR, on the other hand, relied on the orders of revenue authorities.

26.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The issue is squarely covered by the decision of the coordinate bench in assessee's own case for AY 2015-16 in ITA No. 1611/Hyd/2019 vide para No. 4 placed at page 2123 of assessee's paper book. Following the same, we direct the AO/TPO to delete the impugned adjustment on account of interest on outstanding receivables.

27. As regards ground Nos. 20 to 27, wherein, the assessee contended that the AO has grossly erred in not granting credit of DDT paid by the assessee on the dividends distributed to the shareholders and thereby determining a DDT liability of Rs. 41,72,50,334/- including levy of interest under section 115P of the Act amounting to Rs. 16,88,87,040/-.

27.1 The Id. AR of the assessee submitted that the entire DDT was paid within the due date and denies the interest liability u/s 115P. He submitted that the assessee is entitled for deduction u/s 80G, but the AO denied granting of deduction u/s80G of Rs. 10,43,860/-. He submitted that the AO not granted TDS of Rs. 2,389/-. He submitted that the AO granted short advance tax credit of Rs.

7,36,82,429/- as the assessee was paid for a sum of Rs. 35,66,82,429/- as advance tax. He submitted that charging of interest u/s 234A, 234B and 234C by the AO is wrong. He, finally submitted that the assessee has evidences to submit that the AO has wrongly made adjustments in the final calculation of the tax demand and requested the Bench to remit these issues to the file of the AO to decide the same after verification of documentary evidence.

27.2 The ld. DR, on the other hand, relied on the order of AO.

27.3 We have considered the rival submissions and perused the material on record as well as the orders of revenue authorities. As the ld. AR of the assessee submitted that the assessee has all the evidence to prove that the entire DDT was paid within the due date, not granting deduction u/s 80G, not granting of TDS, short grant of advance tax and wrongly charging of interest u/s 234A and 234C, we remit these issues back to the file of AO with a direction to consider the evidences filed by the assessee and decide the issues in accordance with law after providing opportunity of being heard to the assessee. The assessee is directed to substantiate its claim by way of documentary evidence before the AO. Thus, ground Nos. 20 to 27 are treated as allowed for statistical purposes.

ITA No. 228/Hyd/2021

28. In this appeal, the assessee has raised the following grounds of appeal:

“Based on the facts and circumstances of the case, ADP Private Limited (hereinafter referred to as 'the Appellant') respectfully craves to prefer an appeal against the Assessment order passed by National e-Assessment Centre, Deputy Commissioner of Income Tax, Circle 2(1), Delhi/ Deputy Commissioner of Income tax, Circle 1(1), Hyderabad [hereinafter referred to as the Ld. AO] under Section 143(3) R.W.S 144C(13) and 144C(13) read with sections 143(3A) & 143(3B) of the Income-tax Act, 1961 ('the Act') on the following grounds:

General:

1. On the facts and circumstances of the case and in contrary to law, the Deputy Commissioner of Incometax (Transfer Pricing Officer)-I, (hereinafter referred to as 'the Ld. TPO') and the Ld. AO under the directions issued by the Hon'ble Dispute Resolution Panel, Bengaluru ('the Hon'ble DRP'), erred in making a Transfer Pricing addition of Rs. 32,63,46,008 to the Appellant's income and thereby determining a total income of Rs. 98,60,66,648 and the said addition being wholly unjustified are liable to be deleted.

2. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and Hon'ble DRP further erred in in upholding/confirming the action of Ld. TPO in violating the principle of natural justice by passing the Order under section 92CA(3) of the Act dated 30 October 2019 without providing the appellant with an opportunity of being heard and accordingly order passed by Ld. TPO is bad in law and liable to be quashed.

Transfer Pricing:

A. Provisions of software development services

3. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and the Hon'ble DRP further erred in upholding/confirming the action of Ld. TPO in accepting the following inappropriate companies as comparable:

- Rheal Software Private Limited*
- RS Software (India) Limited*
- Larsen & Toubro Infotech Limited (Segmental)*
- Tata Elxsi Limited (Segmental)*
- Nihilent Technologies Limited*
- Inteq Software Private Limited*
- Persistent Systems Limited*
- Infobeans Technologies Limited*
- Aspire Systems (India) Private Limited*
- Infosys Limited*
- Thirdware Solutions Limited*
- Cybage Software Private Limited*

4. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding/confirming the actions of the Ld. TPO in rejecting the following companies selected by the Appellant without providing cogent reasons, even though they are functionally comparable and pass all the filters applied by the Ld. TPO:

- Infomile Technologies Ltd.*
- Akshay Software Technologies Limited*
- SagarSoft India Limited*
- Sasken Communication Technologies Limited*
- Evoke Technologies Private Limited*
- Nucleus Software Exports Limited*
- E-Zest Solutions Limited*
- Ace Software Exports Limited*
- Sankhya Limited*

- *Harbinger Systems Private Limited*

5. *Without prejudice to the above mentioned grounds, on the facts and circumstances of the case and in contrary to law, the Ld. TPO erred by incorrectly computing the margin of following comparable companies:*

- *CG- V AK Software & Exports Limited*
- *Larsen & Toubro Infotech Limited (segmental)*
- *Aspire Systems (India) Private Limited*
- *Infosys Limited*

B. Provision of Information Technology enabled Services ('ITeS')

6. *On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO has erred and the Hon'ble DRP further erred in upholding/confirming the action of Ld. TPO in accepting the following inappropriate companies as comparables:*

- *Crossdomain Solutions Private Limited*
- *Tech Mahindra Business Services Limited*
- *Infosys BPO Limited*
- *SPI Technologies India Private Limited*
- *Eclerx Services Limited*
- *MPS Limited*

7. *On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding/confirming the action of Ld. TPO in rejecting the following companies without providing cogent reasons, even though they are functionally comparable and pass all the filters applied by the Ld. TPO:*

- *Sundaram Business Services Private Limited*
- *Informed Technologies Limited*
- *Allsec Technologies Limited*

- *AXA Business Services Limited*
- *Jindal Intellicom Limited*
- *Cosmic Global Limited*
- *Suprawin Technologies Limited*
- *R Systems International Limited*
- *BNR Udyog Limited*
- *Tata Consulting Engineers Limited*
- *Tata Elxsi Limited*
- *ACE BPO Services Private Limited*
- *Cameo Corporate Services Limited*

8. *Without prejudice to the above mentioned grounds, on the facts and circumstances of the case and in contrary to law, the Ld. TPO erred by incorrectly computing the margin of following comparable companies:*

- *Microland Limited*
- *Infosys BPO Limited*
- *SPI Technologies India Private Limited*

C. Common Grounds to Provision of software development services and ITeS

9. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in rejecting the transfer pricing analysis / study prepared by the Appellant, without appreciating that none of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied.*

10. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in not allowing risk adjustment, in accordance with the provisions of Rule 10B of the Income Tax Rules, 1962 ('Rules') to account for differences between the international transactions*

undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.

11. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in not allowing working capital adjustment, which was duly demonstrated before the Ld. TPO /the Hon'ble DRP, in accordance with ~ the provisions of Rule 10B of Rules to account for differences between the international transactions ~ undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.

12. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding the action of the Ld. TPO in confirming the application/incorrect application of the following filters:

- Rejection of companies with different financial year ending;*
- Rejection of companies with export revenue less than 75% of the total revenue;*
- Rejection of companies with peculiar economic circumstances.*

13. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in considering provision for bad and doubtful debts and bad debts as a non-operating expenditure while computing the operating margin of the comparable companies.

D. Outstanding receivables

14. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO, in considering outstanding receivable as a separate and distinct international transaction and further erred in making transfer pricing adjustment in the nature of notional interest on receivables amounting to Rs. 1,12,56,411.

15. On the facts and circumstances of the case and in contrary to law, the addition made by the Ld. TPO with respect to interest on outstanding receivables is untenable and be deleted since the addition has been made by computing interest on an invoice to invoice basis as against on a weighted average basis for all invoices raised during the year under consideration.

16. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP erred in not providing justification for selection of State Bank of India's ('SBI') short term deposit rates as an appropriate comparable uncontrolled price ('CUP') to benchmark the Appellant's outstanding receivables ..

17. On the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP has failed to understand that outstanding receivables cannot be benchmarked using SBI short term deposit rates. Benchmarking exercise should be performed with another company operating in the similar industry, akin to Appellant.

18. Without prejudice to Ground No. 14 to 17 above, on the facts and in the circumstances of the case and in contrary to law, the Ld. TPO / the Hon'ble DRP has erred in not appreciating that the receivables due from overseas AEs are in foreign currency and hence, interest if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans, i.e., at USD LIBOR plus.

Other grounds:

19. That the order passed by the Additional/Joint / Deputy / Assistant Commissioner of Income Tax Income-tax Officer, National e-Assessment Centre, Delhi ('Ld AO') dated 30 March 2021 under Section 143(3) r.w.s 144C(13) r.w.s 144(3A) and 144(3B) of the Act for the AY 2016-17, determining a net taxable income of INR 66,47,10,040 (however, the Ld AO erroneously did not consider the adjustments made in final assessment order while computing the demand in the computation sheet) and thereby determined an income-tax demand of INR 37,50,23,954 under the normal provisions of the Act, is contrary to the facts and circumstances of the case and in law and is liable to be quashed.

20. On the facts and circumstances of the case and in law the Ld. AO erred in not granting deduction claimed under Section 80G of the Act amounting to INR 49,89,400 and further erred in not granting an opportunity of being heard to the Appellant, to present its case on merits, before denial of such deduction.

21. On the facts and circumstance of the case and in law, the Ld. AO erred in not granting any credit of tax deducted at source ('TDS') as against the eligible TDS credit of INR 2,19,11,954 available to the Appellant, thereby resulting in short grant of credit of TDS of INR 2,19,11,954.

22. On the facts and circumstance of the case and in law, the Ld. AO erred in not granting any advance tax credit as against the eligible advance tax credit of INR 25,63,17,571 available to the Appellant, thereby resulting in short grant of advance tax of INR 25,63,17,571.

23. On the facts and circumstance of the case and in law, the Ld. AO grossly erred in levying interest under

Section 234A of the Act of INR 46,00,856, without giving cognizance to the fact that there was no delay in filing the income-tax return by the Appellant for the A Y 2016-17.

24. On the facts and circumstance of the case and in law, the Ld. AO erred in levying interest under Section 234B of the Act amounting to INR 13,80,25,680.

Consequential:

25. On the facts and in the circumstances of the case and in law, the Ld. AO erred in in levying interest and penalty and the said levy of interest and penalty being wholly unjustified, ought to be deleted.”

29. As regards ground No. 3 regarding provision of software development services, the TPO/DRP wrongly, accepting the companies as comparable for determining ALP, since this ground is similar to ground No.3 in ITA No. 227/Hyd/2021, following the decision therein vide para Nos. 4 to 10.3 supra, we direct the AO/TPO to exclude the following companies as comparable for determining ALP:

- *Larsen & Toubro Infotech Limited (Segmental)*
- *Tata Elxsi Limited (Segmental)*
- *Persistent Systems Limited*
- *Infobeans Technologies Limited*
- *Aspire Systems (India) Private Limited*
- *Infosys Limited*
- *Thirdware Solutions Limited*

29.1 The ld. AR of the assessee has not pressed the following comparables at the time of hearing before us, hence, the same are dismissed as not pressed:

1. Rheal Software Pvt. Ltd.
2. RS Software (India) Ltd.
3. Nihilent Technologies Ltd.,
4. Inteq Software Pvt. Ltd.,
5. Cybage Software Pvt. Ltd.

30. As regards ground No. 4, the ld. AR of the assessee requested the Bench to inclusion of the comparable, i.e. Evoke Technologies Pvt. Ltd., which was rejected by the TPO/DRP. Since this ground is similar to ground No. 4 in ITA No. 227/Hyd/2021, following the decision therein vide paras No. 12 and 12.4 supra, we direct the AO/TPO to include this company as comparable to the assessee for determining ALP.

31. The ld. AR of the assessee not pressed the following comparables quoted in ground No. 4 and therefore, the same are dismissed as not pressed:

1. Akshay Software Technologies Ltd.
2. Nucleus Software Exports Ltd.
3. ACE Software Exports Ltd.
4. Sasken Communication Technologies Ltd.
5. Infomile Technologies Ltd.
6. Sagarsoft India Ltd.
7. E-zest Solutions Ltd.
8. Sankhya Ltd.
9. Harbinger Systems Pvt Ltd.

32. As regards ground No. 5 relating to the action of TPO that incorrectly computing the margin of the following comparable companies.

1. CG-VAK Software & Exports Ltd.
2. Larsen & Toubro Infotech Ltd. (Segmental)
3. Aspire Systems (India) Pvt. Ltd.
4. Infosys Ltd.

32.1 After hearing parties and considering the orders of TPO/DRP, it is observed that since we have excluded the said companies, namely, Larsen Toubro Infotech Ltd. and Infosys Ltd., there is no need to compute the margin in respect of these both the companies. In respect of companies M/s CG-VAK Software & Exports Ltd. and Aspire Systems (India) Pvt. Ltd., the TPO and AR of the had computed PLI as under:

	PLI calculated by	
	TPO	Assessee
M/s CG-VAK Software & Exports Ltd.	16.76%	12.03%
Aspire Systems (India) Pvt. Ltd.,	33.04%	32.00%

32.2 Since the PLI calculated by the TPO and assessee are having difference, we are of the view that the same requires factual verification and hence, we remit these companies to the file of the TPO to compute correct margin after factual verification. Thus, this ground is partly allowed for statistical purposes.

33. As regards ground No. 6 relating to provision of information technology enabled services (ITeS) wherein the assessee challenged the action of the TPO/DRP in accepting the inappropriate companies as comparables, namely, Infosys BPO Ltd. and Ecelerx Services Ltd. Since this ground is similar to ground No. 7 in ITA No. 227/Hyd/2021, following the decision therein vide para Nos. 16 to 17.4, we direct the AO/TPO to exclude the said two companies as comparable for determining ALO.

34. The Id. AR of the assessee has not pressed the following companies as comparables raised in Ground No. 7, therefore, the same are dismissed as not pressed:

1. Crossdomain solutions Pvt. Ltd.
2. Tech Mahindra Business Services Ltd.
3. SPI Technologies India Pvt. Ltd.
4. MPS Ltd.

35. As regards ground No. 7 relating to the rejection of the company i.e. Informed Technologies Ltd. as comparables by the TPO/DRP in the ITeS domain. Since this ground is similar to ground No. 8 in ITA No. 227/Hyd/2021, following the decision therein vide para nos. 19.1 to 19.3, we direct the AO/TPO to include this company as comparable for determining ALO.

36. With regard to the following companies raised in Ground No. 7, the Id. AR of the assessee has not pressed, therefore, the same are dismissed as not pressed:

1. Suprawin Technologies Limited
2. Jindal Intellicom Limited
3. ACE BPa Services Private Limited
4. Sunadaram Business services Private Limited
5. AXA Business Services Limited
6. R Systems International Limited
7. Tata Consulting engineers Limited
8. Tata E1xsi Limited
9. BNR Udyog Limited
10. Cosmic Global Limited
11. Allsec Technologies Limited.
12. Cameo Corporate Services Ltd.:

37. As regards ground No. 8 relating to wrong computation of margins of the following comparables in ITES domain:

1. Microland Ltd.
2. Infosys BPO Ltd.
3. SPI Technologies India Pvt. Ltd.

37.1 Since this issue is materially identical to the ground raised in ITA No. 227/Hyd/2021 as ground No. 9, following the decision therein vide para Nos. 21 & 21.1, we set aside these comparables to the file of the AO/TPO with a direction to compute the correct margin. Thus, this ground is allowed for statistical purposes. Since we have directed to exclude Infosys BPO Ltd for determining ALP vide para

No. 16.3 supra, the remaining two companies, namely, Microland Ltd and SPI Technologies India Pvt. Ltd. are required to be recalculated for determining ALP. The assessee is directed to provide data for recalculating the margins.

38. **Ground Nos. 9 & 10** have not been pressed by the Id. AR of the assessee at the time of hearing, therefore, the same are dismissed as not pressed.

39. **With regard to Ground No. 11**, regarding the working capital adjustment, since this ground is similar to ground No. 12 in ITA No. 227/Hyd/2021, following the decision therein vide paras No. 23 to 23.2, we direct the AO/TPO to allow the working adjustment done by the assessee. Thus, this ground is allowed.

40. **Ground No. 12** has not been pressed by the Id. AR of the assessee at the time of hearing, therefore, this ground is dismissed as not pressed.

41. **Ground No. 13** is relating to the provision for bad and doubtful debts and bad debts as a non-operating expenditure by the TPO/DRP while computing the operating margin of the comparable companies. Since this ground is similar to ground No. 14 raised in ITA No. 227/Hyd/2021, following the decision therein vide paras

No. 25 to 25.3, we remit this issue to the file of the AO with a direction decide the same in line with the order of ITAT cited supra. Thus, this ground is allowed for statistical purposes.

42. As regards ground Nos 14 to 18 relating to outstanding receivables, these grounds are similar to ground Nos. 15 to 19 raised in ITA No. 227/Hyd/2021, following the decision therein vide paras No. 26 to 26.3, we direct the AO/TPO to delete the impugned adjustment on account of interest on outstanding receivables.

43. As regards ground Nos. 19 to 24, wherein, the assessee contended that the AO has grossly erred in not granting credit of DDT paid by the assessee on the dividends distributed to the shareholders. These issues are similar to ground nos. 20 to 27 raised in ITA No. 227/Hyd/2021, following the decision therein vide para Nos. 27 to 27.3, we remit these issues back to the file of AO with a direction to consider the evidences filed by the assessee and decide the issues in accordance with law after providing opportunity of being heard to the assessee. The assessee is directed to substantiate its claim by way of documentary evidence before the AO. Thus, ground Nos. 19 to 24 are treated as allowed for statistical purposes.

44. In the result, both the appeals are partly allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 3rd February, 2022

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 3rd February, 2022.

kv

Copy to :

1	<i>ADP Pvt. Ltd., 2-91/14/3-5/C, Laxmi Cyber City, Block C, Kondapur Village, Serlingampally Mandal, Ranga Reddy District, Telangana - 500 084</i>
2	<i>DCIT, Circle - 1(1), IT Towers, AC Guards, Masab Tank, Hyderabad - 500 004.</i>
3	<i>DRP - 1, Bengaluru</i>
4	<i>DCIT, TPO - 1,, Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	