

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "I-1": DELHI.

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.418/Del./2018
Assessment Year 2013-14

Agilent Technologies India Private Limited, Ground Floor, Elegance Tower, Plot No.8, Jasola District Centre, Jasola, New Delhi – 110 025 PAN AABCA9874A	vs.,	The DCIT, Circle – 1 (2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Tiwari, Advocate And Ms. Tanya, Advocate.
For Revenue :	Shri Surender Pal, CIT-DR

Date of Hearing :	07.03.2022
Date of Pronouncement :	30.03.2022

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the order dated 31.10.2017 of the DCIT, Circle-1(2), New Delhi, for the A.Y. 2013-14 passed under section 143(3) read with section 144C(13) of the I.T. Act, 1961.

2. The facts of the case, in brief, are that the assessee-company was incorporated on 26.07.1999 and is a wholly owned subsidiary of Agilent Technology Europe, B.V. The assessee-company is engaged in the business of sale and servicing of Medical Analytical Testing and Measurement Equipment. It filed its return of income on 19.11.2013 declaring total income of Rs.36,77,83,430/-. Since the assessee had undertaken certain international transactions with its AEs, the A.O. referred the matter to the TPO for determination of Arms Length Price ["ALP"] of the international transactions.

2.1. During the course of T.P. assessment proceedings, the TPO noted that Agilent Technologies India Pvt. Ltd was incorporated in New Delhi, India. It commenced its operations in July 1999. The company is primarily engaged in facilitating sales of Agilent Group's products in the Indian Market. For this purpose, it had purchases from various "Factories" of Agilent Group. Agilent India also provides software development and marketing services to ATSH/ATUS. However, these services constitute only 4.01%

of Agilent India's revenue. He noted that assessee-company had entered into the following international and domestic transactions during the year:-

S. No.	International Transaction	Amount in INR
1	Purchase of finished goods	2541277609
2	Receipt of commission income	879003115
3	Re-export of goods	128765627
4	Provision of labour services	5045871
5	Provision of IT and BCC Services	75772502
6	Provision of software development services	60254625
7	Provision of marketing support services	81328313
8	Provision of group marketing services	119342383
9	Purchase of fixed assets	32162849
10	Sale of fixed assets	1284515
11	Cost reimbursement paid/payable	9822382
12	Receipt of labour services	4614686
13	Cost reimbursement received/receivable	171880992

2.3 He noted that for the software development services, assessee-company has applied Transactional Net Margin Method ["TNMM"] as the most appropriate method. The Operating Profit to Total Cost ["OP/TC"] ratio has been taken as the Profit Level Indicator [PLI] for the TNMM analysis. He noted that the PLI of the assessee-company has been arrived at 12.28% on cost. However, the average PLI of

the comparables has been arrived at 8.92% as per the analysis in the T.P document. After applying various filters for exclusion of certain comparables such as unavailable data for the F.Y. 2012-13, company software development services income is less than Rs.2 crore, the company's gross revenue from services is less than 75% of the total operating revenues, companies who have export sales less than 75% of the sales from software development services, companies having more than 25% RPT, companies having persistent losses, companies whose employee cost is lower than 25% of the total cost, companies having different financial years, companies that are functionally different from that of the tax payer and companies that are having peculiar economic circumstances, the TPO retained certain comparables and rejected certain comparables taken by the assessee-company in the T.P. study report and proposed the following 14 comparables whose average profit is 17.97% and accordingly proposed an upward adjustment of Rs.30,60,859/-. After considering the various submissions made by the assessee, the TPO selected the final set of

comparables as per Pages 40 and 41 of the T.P. order, the details of which, are as under :

S.No.	Company Name	OP/OC
1.	Acropetal Technologies Ltd. (seg)	11.58%
2.	Akshay Software Technologies Ltd.,	7.16%
3.	Cigniti Tech	8.64%
4.	E-Zest Solutions	9.79%
5.	Infosys Limited	37.67%
6.	Larsen & Toubro Infotech Ltd. (Seg.)	39.35%
7.	Mindtree Ltd.,	23.01%
8.	Persistent Systems Ltd.,	15.41%
9.	R S Software (India) Ltd.,	17.73%
10.	Sasken Communication Technologies Ltd.,	11.82%
11.	Spry Resources Pvt. Ltd.,	9.86%
12.	Tata Elxsi	8.94%
13.	Thirdware Solution Ltd., (Overseas Segment)	33.47%
14.	ICRA Techno Analytics Ltd.,	17.10%
	Average	17.97%

2.4. Since the assessee-company has not demonstrated that there is a difference in the levels of working capital employed by it vis-à-vis from the comparables, the A.O./TPO did not allow working capital adjustment. Similarly, the TPO did not allow adjustment on account of outstanding receivables overdue from Associated Enterprises. Accordingly, the TPO proposed an adjustment of Rs.30,60,859/- being the ALP of the international transactions in respect of provision of software services

entered into by the assessee with its A.Es and an amount of Rs.3,30,567/- on account of outstanding receivables overdue from its A.Es. The A.O. in the draft assessment order made the above addition.

2.5 The assessee approached the DRP who vide order dated 13.09.2017 issued certain directions to re-compute the ALP. Accordingly, the TPO recomputed the ALP of the international transactions by making an upward adjustment of Rs.22,99,123/- to the income of the assessee. The A.O. accordingly passed the final assessment order making the above addition to the total income of the assessee.

3. Aggrieved with such order of the A.O./TPO/DRP the assessee is in appeal before the Tribunal by raising the following grounds :

1. *“The Ld. AO erred in proposing to assess the income of the Appellant at INR 37,00,82,560 as against the returned income of INR 36,77,83,430 by making an addition of INR 22,99,123 by*

holding that the Appellant's international transaction does not satisfy the arm's length principle envisaged under the Act;

2. The order passed by the Ld. AO/ Learned Transfer Pricing Officer ("Ld. TPO") in pursuance of the directions issued by the Hon'ble Dispute Resolution Panel ("Hon'ble DRP") enhancing the income of the Appellant by INR 22,99,123 is bad in law;

3. The Ld. AO/ Ld. TPO erred in enhancing the income of the Appellant by INR 21,58,680 by holding that the international transactions of the Appellant pertaining to provision of software development services ("IT") from its Associated Enterprises ("AEs") does not satisfy the arm's length principle envisaged under the Act and in doing so, have grossly erred in:

3.1. disregarding multiple year/ prior years' data as used by the Appellant in the Transfer Pricing ("TP") documentation and holding that

current year [i.e. Financial Year (“FY”) 2012-13] data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation;

- 3.2. rejecting comparability analysis in the TP documentation and in conducting a fresh comparability analysis based on application of the additional/revised filters in determining the Arm’s Length Price;*
- 3.3. disregarding the arm’s length price (“ALP”) as determined by the Appellant in the TP documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 (“the Rules”);*
- 3.4. Committing factual/ computational errors while calculating the operating margins of the companies selected as comparable in the TP order;*

3.5. *erroneously including certain functionally dissimilar companies that are full-fledged risk taking entrepreneurs and high profit making companies for benchmarking a low risk captive service provider like the Appellant (in the software service segment) and excluding certain comparable companies on arbitrary/ frivolous grounds.*

4. *The Ld. AO/ Ld. TPO erroneously imputed an interest of INR 1,40,443 for the receivables outstanding beyond 30 days and while doing so, has grossly erred in:*

4.1. *recharacterising the overdue receivables amount as deemed loan and that it constitutes as an international transaction separate from the main transaction:*

4.2. *not appreciating that in relation to the overdue receivables, the conduct of the Appellant with its AEs and non AEs was exactly the same;*

- 4.3. *arm's length price determination for outstanding receivables is subsumed within the arm's length price determination of the principal international transaction itself;*
 - 4.4. *computing the amount of interest by applying an arbitrary credit period for determining overdue status;*
 - 4.5. *determining an interest rate of LIBOR plus 400 basis points without giving regard to various factors responsible for determination of interest rate.*
 - 4.6. *Disregarding judicial pronouncements in India in undertaking the TP adjustment; and*
5. *The Ld. AO has grossly erred in proposing to initiate penalty proceedings under section 271(1)(c) of the Act.*

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course

of the proceedings before the Hon'ble Income Tax Appellate Tribunal in the interest of the natural justice. The aforesaid grounds are mutually exclusive and without prejudice to each other."

4. Learned Counsel for the Assessee submitted that although a number of grounds have been raised by the assessee, however, he will restrict his arguments for exclusion of 04 comparables namely (1) Infosys Ltd., (2) Larsen & Toubro Infotech Ltd. (Seg.) (3) Mindtree Ltd., and (4) Thirdware Solution Ltd., (Overseas Segment) and adjustment on account of receivables overdue from the A.Es.

4.1. Learned Counsel for the Assessee drew the attention of the Bench to the final set of comparables taken by the TPO at Pages 40 and 41 of the order where he has taken 14 comparables, the details of which are already reproduced in Para 2.1 above.

4.2. So far as Infosys Limited is concerned, Learned Counsel for the Assessee drew the attention of the Bench to

the submissions made before the DRP, copy of which is placed at Page-17 of the PB where the following objections were raised.

- Functionally different : Engaged in diversified activities including consulting, application design, development, re-engineering and maintenance system integration and implementation and business process management etc.
- Scale of operations : Turnover during the year is 25,385 crores which is 773 times more than that of the Assessee.
- Brand Profits and significant intangible assets: Company focus on immense brand building and profits derived by Infosys are predominantly due to its premium branding.
- Product development: Company owns products and leverages on its premium banking solutions – Finocle.

- Significant AMP expenses: Incurs AMP expenses which are 4.8% of the total revenue.
- Significant R&D expenses: High R&D activities for developing new functionalities and patenting innovative technologies. (2.1%).
- Reliance placed on Agnity Indio Technologies Pvt. Ltd (ITA No.1204/2011) wherein the High Court rejected Infosys on various factors which includes turnover, capital, advertisement, sales promotion, brand building and expenditure on R&D.

4.3. The Learned Counsel for the Assessee further drew the attention of the Bench to the revenue of Infosys Limited at Rs.36,765 crores which is 6027 times that of the assessee whose total revenue is Rs.6.10 crores. He submitted that the assessee-company does not incur any Research & Development ["R & D"] expenses for software development services. However, Infosys Limited has incurred R & D expenses of Rs.907 crores during the F.Y. 2012-13. Referring to the order of the Tribunal in assessee's own case for the A.Y. 2010-11, he submitted that under

identical circumstances the Tribunal has excluded Infosys Limited from the list of comparables.

5. So far as inclusion of Larsen & Toubro Infotech Ltd., (Seg) as a comparable by the A.O./TPO/DRP is concerned, the Learned Counsel for the Assessee referred to Page-68 of the PB and submitted that Larsen & Toubro Infotech Ltd. (Seg) is functionally not comparable since as per the Company's website Larsen & Toubro Infotech Ltd., (Seg) develops in-house products and earns revenue therefrom. The list of software products developed by the company are as under :

i. Unitrax ® - for Banking & Financial services

Unitrax ® is a SaaS-based transfer agency record keeping platform, enabling fund and insurance manufacturers to manage the administration of their wealth management products including mutual funds, fixed income, structured notes, annuities, and insurance investment products. The product is delivered through a graphical user interface providing

integration with web-based B1 reporting and sales analytics features and functions. Unitrnx®'s Web services-based architecture makes it very easy to connect to in-house applications and can be leveraged to bring the utmost value to your end investors and advisors by providing readily used information via the web portal, investor and advisor trax.

(Source:<https://www.lntinfotech.com/en-us/AboutUs/Pages/Overview.aspx>)

(ii) ACCURUS1 - Underwriting Workbench Solution- for Insurance :

AccuRUSI™ provides a unified working environment for commercial insurance underwriting that improves underwriting rigor, productivity and process control, it facilitates integration with multiple internal and external systems to facilitate workflow automation all through the underwriting lifecycle. Leveraging and harmonizing advanced technologies such as workflow management, collaboration, rules engine and business

analytics, AccuRUSI™ helps commercial insurers achieve strategic and operational underwriting goals.”

5.1. He submitted that the income from software development services and products cannot be identified separately in case of L & T. Further there is presence of intangible assets to the tune of Rs.130 crores in the form of software and business rights. However, there is no such intangible assets in the case of the assessee-company. He submitted that the Tribunal in assessee's own case for the A.Y. 2010-11 has excluded this company from the list of comparables. He submitted that the issue in the case of Infosys Limited will be equally applicable for the L & T also.

6. So far as inclusion of Mindtree Ltd., as a comparable is concerned, the Learned Counsel for the Assessee drew the attention of the Bench to page-74 of the PB and submitted that the above company cannot be included as a comparable on account of functional dissimilarity. The Learned Counsel for the Assessee drew

the attention of the Bench to the following objections filed before the DRP which has been brushed aside by them.

- *“Functionally not comparable*

Mindtree Limited ('Mindtree' or 'the Company') is an international Information Technology consulting and implementation company that delivers business solutions through global software development. The Company is structured into two business units - Information Technology (IT) Services and Product Engineering ('PE') Services. IT Services offer consulting and implementation and post production support for customers in manufacturing, financial services, travel and leisure and other industries, in the areas of e-business, data warehousing and business intelligence, supply chain management, ERP and maintenance and re-engineering of legacy mainframe applications. PE Services provides full life cycle product engineering, professional services and sustained engineering services. It also enables faster product realization by leveraging the expertise in the

areas of hardware design, embedded software, middleware and testing and through Mindtree's own IP building blocks in the areas of Bluetooth, VOIP, 1VP6, iSCSI and others in datacom, telecom, wireless, storage, industrial automation, avionics, consumer products and computing.”

6.1. The Learned Counsel for the Assessee further submitted that this company is engaged in Research and Development activities by building in-house Research Labs. Therefore, on account of being functionally different segment, high turnover and on account of engagement in R & D activities, Mindtree Limited should be excluded from the list of comparables. Referring to the decision of Bangalore Bench of the Tribunal in the case of M/s. Sunquest Information Systems (India) P. Ltd., vs., DCIT vide ITA.No.1604/Bang/2014 and the decision in the case of Lam Research (India) P. Ltd., vs., DCIT vide ITA.No.1437/Bang/2014 and various other decisions, he submitted that this company should be excluded from the list of comparables.

7. So far as Thirdware Solution Ltd., (Overseas Segment) is concerned, the Learned Counsel for the Assessee submitted that the income of this company is derived from software development, subscription contracts and sale of user license. Referring to page-73 of Annual Report, the Learned Counsel for the Assessee drew the attention of the Bench to the following :

“Revenue from Software development and implementation on time and material contracts is recognised and are billable to clients as per the terms of specific contracts. On fixed – price contracts revenue is recognised and billable based on milestones achieved and after receiving the sign-off certificates from the customers for the specific milestones specified in the contracts. Revenue from Subscription contract is recognised on acceptance of renewal of the contract and is accrued over the period of the contract. Revenue from sale of user licenses for software applications

*is recognised on e-delivery of Software Licence Key
to end user.”*

7.1. He submitted that it is evident that this company generates income from not only software development services, but also sale of license and subscription of contracts. However, the assessee-company is a captive service provider engaged in rendering only software development services. Referring to the decision of Bangalore Bench of the Tribunal in the case of 3DPLM Software Solutions Ltd. vs., DCIT vide ITA.No.1303/Bang./2012 wherein it has been held that this company has been excluded from the list of comparables on the ground that the company is engaged in product development and earns revenue from sale of licenses and subscription and no separate segmental data has been provided for software development services and product development services. He submitted that this company should be excluded from the list of comparables.

8. So far as adjustment on account of outstanding receivables overdue from A.Es is concerned, the Learned

Counsel for the Assessee submitted that the Tribunal in assessee's own case in ITA.No.1291/Del./2015 order dated 27.11.2020 for the A.Y. 2010-11 has deleted the adjustment on account of outstanding receivables overdue from A.Es. The Hon'ble Delhi High Court in the case of Kusum Healthcare Private Limited vs., ACIT reported in [2015] 62 taxmann.com 79 (Del.) has upheld the decision of the Tribunal in deleting the notional interest adjustment on delayed A.E receivables. He accordingly submitted that this being a covered matter in favour of the assessee, the ground raised by the assessee on this issue should be allowed.

9. The Ld. D.R. on the other hand heavily relied on the order of the A.O./TPO/DRP. So far as the 04 comparables are concerned, he submitted that the DRP has given justifiable reasons while rejecting the arguments made by the assessee for exclusion of these comparables. So far as adjustment on account of overdue receivables from it's A.Es is concerned, he submitted that the amount is very small and TPO/DRP have given justifiable reasons for the adjustment. The Ld. D.R. further submitted that the

Coordinate Bench of the Tribunal in the case of Bharti Airtel Services vs., DCIT vide ITA.No.161/Del./2017 order dated 06.10.2012 and batch of other appeals, has upheld the T.P. adjustment for outstanding debtors beyond the agreed period. He accordingly submitted that the order of the A.O./TPO/DRP being in accordance with law, the same should be upheld and the grounds raised by the assessee should be dismissed.

10. We have considered the rival arguments made by both the sides, perused the orders of the A.O./TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. From the arguments made by both the sides, we confine our decision to the exclusion of the 04 comparables and the adjustment on account of outstanding receivables overdue from the A.Es.

10.1. So far as inclusion of Infosys Limited is concerned, we find merit in the submissions of the Learned Counsel for the Assessee that this company is functionally different being engaged in diversified activities including consulting,

application, design, development, re-engineering and maintenance system communication and implementation of business process management etc. It has revenue of Rs.36,765/- crores which is 6027 times higher than that of the assessee and Infosys Limited has incurred huge R & D expenses of Rs.907 crores during the F.Y. 2012-13. However, the assessee-company has not incurred any R & D Expenses and the total revenue of the assessee is only Rs.6.10 crores. Further the assessee-company is engaged in providing routine software services only to its A.Es.

10.2 We find an identical issue had come-up before the Tribunal in assessee's own case for the A.Y. 2010-11. We find the Tribunal vide ITA.No.1291/Del./2015 order dated 27.11.2020, while excluding Infosys Technologies Ltd., from the list of comparables has observed as under :

“10. With respect to the Infosys technologies it is the claim of the assessee that the turnover of the above company is such a huge turnover that it is not comparable with the assessee company is software

development division. For this proposition we look at page number 165 of the paper book wherein the software development division revenue of the assessee is only Rs. 16.80 crores whereas the turnover of the comparable company i.e. Infosys technologies Ltd compared by the learned transfer pricing officer is Rs.21.140 crores. It is also submitted before us that the asset base of the assessee company is merely Rs.42.7 crores whereas the asset base of Infosys technologies Ltd is Rs.4188 crores. The assessee has not incurred any expenditure on brand whereas the comparable company has incurred an expenditure of Rs.57 crores. The learned departmental representative could not controvert the above dissimilarity between the asset base, turnover of the company, the brand utilised by the comparable. Thus, In view of such a huge turnover of the comparable company, relying on the decision of the honourable Bombay High Court in case of CIT versus Pentair water private limited and of honourable Delhi High Court in case of CIT versus Agnity India

technologies Ltd in ITA number 1204/2011 dated 10 July 2013 the above comparable is directed to be excluded.”

10.3. Respectfully following the decision of the Tribunal in assessee's own case for the A.Y. 2010-11 (supra), we hold that Infosys Technologies cannot be considered as comparable with that of the assessee-company. We, therefore, direct the A.O./TPO to exclude this company from the list of comparables.

11. So far as Larsen & Toubro Infotech Ltd., (Seg) is concerned, we find this company is also not functionally comparable since this is a project company and has got huge brand value which is evident from the Director's Report at Page-70 of the PB of the Annual Report which reads as under:

“BRANDING

The 'L & T' Brand has grown steadily across the globe, riding on increasing visibility of the

Company in new geographics and now industry sectors. The Company's efforts to contribute value to its global clients and making them more successful, more cost effective and more agile have also strengthened the 'L & T' Infotech Brand. This has been apparent as existing clients have made referrals to their peers concerning your Company's skill sets.

The overall brand recall and brand experience amongst our stakeholders is being continuously monitored, reviewed and enhanced. Your Company's clients also hold us as a 'trusted business partner' rather than a mere supplier of commoditized IT services and cost arbitrage.

Your Company has recently adopted following 3 - pronged value proposition to elevate its engagements with clients to the next level and thereby infusing new energy in the Company Brand ; internally and externally ;

1. *Business to IT Connect : The business value that drives IT is also reflected during the process of conceiving designing, delivering and maintaining IT solutions designed with an appreciation key of the business domain where these solutions will be deployed.*
2. *Engage the Future : A point of view around technologies that will disrupt traditional business and personal behavior, Articulation of IT Services based on such a point of view has resonated with clients, analysts and advisors alike. This market posture has assisted in elevating us beyond the pack of our Industry peers.*
3. *Execution Excellence : Flawless, world-class and consistent execution; this concept extends beyond delivering to technical specifications. It also matures our posture with our clients to that of a Trusted Business partner, a partner*

*involved not only in IT but also in business
official decisions beyond IT.”*

11.1. Further the Annual Report of L & T shows that it is engaged in providing onsite services to its customer. It's onsite expenses constitute 41.37% of the total sales. We find, the Bangalore Bench of the Tribunal in the case of M/s. Trilogy E-Business Software India Private Limited vs., The DCIT vide ITA.No.1054/Bang/2011 has held that in case of companies whose revenues are majorly from onshore services are functionally dissimilar to companies performing offshore services. The relevant observations of the Tribunal read as under :

"67. The companies who generate more than 75% of the export revenues front onsite operations outside India are effectively companies working outside India having their own geographical markets, cost of labour etc., and also return commensurate with the economic conditions in those countries. Thus assets and risk profile, pricing as well as prevailing market conditions

are different in predominantly onsite companies from predominantly offshore companies like the taxpayer.

Since the entire operations of the tax payer are taking place offshore i.e., in India; it is but natural that it should be compared with companies with major operations offshore, due to the reason that the economics and profitability of onsite operations are different from that of offshore business model.”

11.2. Similarly, the Bangalore Bench of the Tribunal in the case of M/s. Arowana Consulting Ltd., vs., ITO vide I.T. (TP) A.No.21/Bang/.2014 has held that a Company which earns its revenue predominantly from rendering development services onsite should be compared only with Companies which also have revenue of software development onsite. We further find from note to accounts that no segmental details available for onsite and offshore operations of L & T. Accordingly, in our opinion the said company cannot be taken as comparable. We, therefore, direct the A.O./TPO to exclude

Larsen & Toubro Infotech Ltd., (Seg.) and Infosys Limited from the list of comparables.

12. So far as Mindtree Ltd. is concerned, we find this company is not functionally comparable being an International Information Technology Consulting and Implementation Company that delivers business solution through global software. It has significant high turnover of Rs.2361 crores whereas assessee-company has turnover of Rs.6.10 crores. Further, this company has incurred huge R & D expenses by building in-house Research Labs which is evident from page-34 of the Annual Report. Therefore, in view of the decision of Hon'ble Bangalore Bench of the Tribunal in the case of M/s. Sunquest Information Systems (India) P. Ltd., vs., DCIT vide ITA.No.1604/Bang./2014 and Lam Research (India) P. Ltd., vs., DCIT vide ITA.No.1437/Bang./2014 wherein it has been held that Mindtree Ltd., (Seg.) cannot be included in the list of comparables, we direct the A.O./TPO to exclude this company being not comparable.

13. So far as Thirdware Solution Ltd., (Overseas Segment) is concerned, we find merit in the arguments of the Learned Counsel for the Assessee that this company is functionally different since it provides Software Application, Implementation and Support Services which is dissimilar from that of the assessee-company.

14. In view of the above and in view of the various decisions relied on by the Learned Counsel for the Assessee in the paper book, we hold that Thirdware Solution Ltd., (Overseas Segment) cannot be included in the list of comparables. We, therefore, direct the A.O./TPO to exclude this company from the list of comparables.

14.1 The grounds raised by the assessee on the issue of inclusion/exclusion of comparables are accordingly allowed.

15. Now coming to the adjustment on account of outstanding receivables overdue from the A.Es, we find identical issue had come-up before the Tribunal in assessee's own case for the A.Y. 2010-11 (supra) wherein the Tribunal has decided the issue and directed the TPO to delete the

adjustment on account of outstanding receivables overdue from the A.Es. The relevant observations of the Tribunal are as under :

“12. With respect to the adjustment on account of the overdue receivable from the associated enterprises, the learned dispute resolution panel in objection number 7.5 has held that TPO’s objection in not allowing working capital adjustment does not hold good and directed the learned transfer pricing officer to give working capital adjustment using the OECD methodology applying SBI prime lending rate as the interest rate. When working capital adjustment is granted to the assessee there is no requirement once again of making any adjustment on account of the overdue receivable from associated enterprises as the sundry debtors outstanding of the assessee includes outstanding receivable from associated enterprise. In view of this, we direct the learned transfer pricing officer

to delete the adjustment on account of outstanding receivable from associated enterprise.”

16. Since the facts of the instant case are identical to that of the facts of the case of the assessee for the A.Y. 2010-11 (supra), therefore, respectfully following the decision of the Tribunal in assessee's own case and in absence of any contrary material brought to our notice by ld. DR, we direct the A.O./TPO to delete the adjustment on account of outstanding receivables overdue from the A.Es. The ground raised by the assessee on this issue is allowed.

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

Order pronounced in the open court on 30.03.2022.

Sd/-
[Ms. ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated 30th March, 2022.

VBP/-