

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(TP)A No. 3363/Bang/2018</b>
<b>Assessment Year : 2014-15</b>

M/s. Tyco Fire & Security India Pvt. Ltd., D-601, RMZ Contennial, Kundalahalli Main Road, Bangalore – 560 048. PAN: AABCT0087C	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle – 7 (1)(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Rajan Vora, CA
Revenue by	:	Shri Sumer Singh Meena, CIT DR (OSD)

Date of Hearing	:	05-01-2022
Date of Pronouncement	:	30-03-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against the final assessment order dated 26.10.2018 passed by the Ld.ACIT, Circle – 7(1)(1), Bangalore for Assessment Year 2014-15 on following grounds of appeal.

*“Based on the facts and circumstances of the case and in law, Tyco Fire & Security India Private Limited (hereinafter referred to as "the Appellant"), respectfully craves leave to prefer an appeal against the appeal order passed by the learned Assessing Officer (hereinafter referred to as the "learned AO") dated October 26, 2018 under section 143(3) read with section 144C of the Income-tax Act, 1961 ("the Act") pursuant to the directions dated September 20, 2018 issued by the Dispute Resolution Panel (hereinafter referred to as the "DRP") u/s 144C (5) of the Act (the Impugned order) inter-alia on the following grounds:  
That on the facts and circumstances of the case and in law:*

**Jurisdictional Ground**

1. *The order of the learned AO pursuant to the directions of the DRP, to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.*

**Grounds relating to transfer pricing matters:****General grounds:**

2. *The learned AO, based on directions of the DRP, erred in assessing the total income of TFSIPL at **INR** 277,581,895 as against the returned income of 'Nil' as computed by the Appellant.*

3. *The learned AO / Transfer Pricing Officer ("TPO") / DRP erred in making an addition of **INR** 761,911,715 to the total income of the Appellant on account of adjustment in the arm's length price for transactions entered by the Appellant with its associated enterprise.*

4. *The learned AO / TPO / DRP erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Rules, and conducting a fresh economic analysis for the determination of the ALP in connection with the impugned international transaction and holding that the Appellant's international transactions are not at arm's length.*

5. *The learned AO / TPO / DRP erred in law and in facts, by applying less than INR 1 crore turnover filter as a comparability criterion and not applying a higher threshold limit for turnover filter.*

6. *The learned AO / TPO / DRP erred in law and in facts, by determining the arm's length margin / price using only FY 2013-14 data which was not available to the Appellant at the time of complying with the transfer pricing documentation requirements.*

7. *The learned AO / TPO / DRP erred in law and in facts, by rejecting certain comparable companies identified by the Appellant for having different accounting year / financial year (i.e. companies having accounting year / financial year other than March 31 or companies whose financial statements were for a period other than 12 months).*

8. *The learned AO / TPO / DRP erred in law and in facts, by exercising powers under section 133(6) of the Act to obtain information which was not available in public domain and relying on the same for comparability purposes.*

**Grounds relating to Project & Trading ("P&T") segment**

9. *The learned AO / TPO / DRP erred in law and in facts, by rejecting the following companies based on unreasonable comparable criteria:*

*a) Unisafe Fire Protection Specialists*

*10. The learned AO / TPO / DRP erred in law and in facts, by considering provision for estimated losses on projects as operating while computing the operating margins earned by the Appellant under P&T segment.*

*11. The learned AO / TPO / DRP erred in law and in facts, by not considering purchase price adjustment to eliminate effect of currency depreciation while computing the operating margins earned by the Appellant under P&T segment.*

*12. The learned AO / TPO / DRP erred in law and in facts, by including total value of management service fee in the operating cost base while computing the operating margins earned by the Appellant under P&T segment without regard to his own analysis as regard the arm's length price of the management services.*

*13. The learned AO / TPO / DRP erred in law and in facts, by considering foreign exchange as operating in nature and including the same in the operating cost base while computing the operating margins earned by the Appellant under P&T segment.*

*14. Without prejudice to the above grounds of objection, the learned AO / TPO / DRP erred in law and in facts, by erroneously computing adjustment on total operating cost base of the Appellant under P&T segment and not limiting the adjustment to the value of international transactions of the Appellant under P&T segment.*

*It may be noted that submission of the above ground is in no way to be considered as acceptance of the Appellant to transfer pricing adjustment as determined by the learned AO / TPO / DRP for P&T segment.*

**Grounds relating to Contract R&D segment:**

*15. The learned AO / TPO / DRP erred in law and in facts, by using export sales less than 75% k of total sales as a comparability criterion for Contract R&D services segment.*

*16. The learned AO I TPO I DRP erred in law and in facts, by rejecting certain comparable companies identified by the Appellant using employee cost greater than 25% of turnover as a comparability criterion for contract R&D services segment.*

*17. The learned AO / TPO / DRP erred in law and in facts, by accepting the following companies ased on unreasonable comparable criteria:*

- a) Infosys Ltd*
- b) Larsen & Toubro Infotech Ltd*
- c) Persistent Systems Ltd*
- d) R S Software (India) Ltd*
- e) Cigniti Technologies Ltd —*
- f) Thirdware Solutions Ltd*
- g) Mindtree Ltd*

18. *The learned AO / TPO / DRP erred in law and in facts, by rejecting the following companies based on unreasonable comparable criteria:*

- a) *Akshay Software Technologies Ltd*
- b) *E-Zest Solutions Ltd*
- c) *Sasken Communications Technologies Ltd*
- d) *Kals Information Systems Ltd*

19. *The learned AO / TPO / DRP erred in law and in facts, by rejecting the following additional companies proposed by the Appellant:*

- a) *Celstream Technologies Ltd*
- b) *Evoke Technologies Pvt Ltd*
- c) *Kireeti Soft Technologies Ltd*
- d) *Maveric Systems Ltd*
- e) *Daffodil Software Ltd*
- f) *Exilant Technologies Pvt Ltd*

20. *The learned AO / TPO / DRP erred in law and in facts, by not making suitable adjustment to account for differences in working capital position of the Appellant vis-a-vis the comparables.*

21. *The learned AO / TPO / DRP erred in law and in facts, by not making suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparables.*

***Grounds relating to payment of management fees:***

22. *The learned AO / TPO / DRP erred in surpassing his jurisdiction which is limited to determination of ALP, by delving into whether the Appellant has actually received the services in connection with the amounts paid towards management fees.*

23. *Without prejudice to the above Ground, the learned AO / TPO / DRP erred in stating that the Appellant was not able to justify the actual receipt of management services.*

24. *The learned AO / TPO / DRP erred in law and in facts, by rejecting the separate economic analysis as undertaken by the Appellant to benchmark management services transaction basis TNMM and adopting the 'Other Method' as per Rule 10B(1)(f) of the Rules to be the most appropriate method.*

25. *Without prejudice to the above grounds, the learned AO / TPO / DRP erred in law and in facts, by adopting unjustified / arbitrary basis in computing the arm's length price of management fees based on the 'Other method' prescribed under Rule 10B of the Income Tax Rules, 1962.*

26. *Without prejudice to above grounds, the learned AO / TPO / DRP erred in law and in facts, by upholding the learned TPO's approach of computing an adjustment towards management service fee even*

*though the same is included as a part of operating cost base of P&T segment.*

*It may be noted that submission of the above ground is in no way to be considered as acceptance of the Appellant to transfer pricing adjustment as determined by the learned AO / TPO / DRP for P&T segment.*

**Grounds relating to corporate tax matters:**

*27. The learned AO erred, in law and in facts, by disallowing INR 66,019,470 as tax paid and borne by the Appellant on salary paid to expatriate employee (Mr. Sharad Bohra). The learned AO erred, in law and in facts, by not giving cognizance to the fact that the tax borne by the Appellant has been grossed-up while calculating the income tax of the expatriate employee and accordingly offered to tax by the employee without claiming any exemption under Section 10(10CC) of the Act.*

*Without prejudice to the above, the learned AO also erred, in law and in facts, by inadvertently disallowing INR 38,478,050 in respect of tax on salary paid to expatriate employee whereas the total taxes borne by the Appellant on the expatriate salary is only INR 27,541.420.*

*28. The learned AO / DRP erred, in law and in facts, by disallowing payment of management fees amounting to **INR** 123,439,147 to its AEs under section 40(a)(ia) of the Act without appreciating the fact that the Appellant is not required to withhold taxes on these payments under relevant as per the provisions of the Act.*

*29. The learned AO has erred, in law and in facts, in levying interest of INR 1,471,558 under section 234A of the Act even though the Appellant has filed its return of income within the due date of filing the return of income.*

*30. Without prejudice to our contentions above, the learned AO has erred, in law and in facts, in levying interest of INR 40,467.845 under section 234B of the Act.*

*The Appellant submits that each of the above grounds is independent and without prejudice to one another. The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."*

**2. Brief Facts of the case are as under:**

**2.1** The assessee is a part of Tyco Group's fire and security business and is a wholly owned subsidiary of Tyco Asia Investments Limited, Mauritius ("TAIL"), during FY 2013-14.

which is ultimately held by Tyco International Limited, Switzerland. The assessee is engaged in:

- Provision of fire & security services including designing, installing and servicing of fire detection / prevention and suppression systems and electronic security systems along with industrial support and maintenance; trading in fire detection, prevention and suppression systems and electronic security systems; and
- Provision of software development ("SWD") services to Tyco Group companies in the nature of software development services related to product enhancement of existing products for Tyco Safety Products & Tyco Retail Solutions verticals.

**2.2** For the year under consideration, the assessee filed its original return of income on 29/11/2014, declaring loss of INR 64,62,47,017/-. The return of income was selected for scrutiny by issue of a notice under section 143(2) of the Act. The case was selected for scrutiny and statutory notices were issued to assessee, in response to which representative of assessee appeared before the Ld.AO and filed requisite details as called for.

**2.3.** The Ld.AO from the details filed by assessee observed that assessee had international transactions exceeding Rs.15 cores and accordingly the case was referred to the Ld.TPO for determining the ALP of the transaction.

**2.4.** On receipt of the reference, the Ld.TPO called for the details of the international transactions in Form 3CEB. The Ld.TPO observed that Tyco Fire & Security India Pvt.Ltd., is a part of Tyco Group's fire and security business.

**2.5** The Ld.TPO during observed that assessee earned revenue of INR 92,66,37,986 under the following three segments:

- Project and Trading Segment ('P&T Segment') : INR 79,34,44,132;
- Software development Services Segment : INR 9,03,63,396;
- Management Service fees : INR 4,28,30,458

**Brief background on P&T segment**

**3.** International transactions dealing with provision of fire & security services including designing, installing and servicing of fire detection / prevention and suppression systems and electronic security systems along with industrial support and maintenance: trading in fire detection, prevention and suppression systems and electronic security systems are benchmarked under P&T segment. These international transactions are purchase of traded goods from AEs. purchase of capital goods from AEs and reimbursement of expenses to AEs.

**4.** The assessee benchmarked the transactions on an aggregated basis by adopting Transaction Net Margin Method. The assessee had selected following 12 Comparable under P&T Segment with average margin of 2.87% and concluded the same to be at arm's length given its operating profit margin of 2.58%.

Sl.No.	Name of the Company (M/s.)	Margin (%)
1.	A G C Networks Ltd.	0.87%
2.	Artefact infrastructure Ltd	5.84%
3.	Coromandel Engineering Co. Ltd.	-4.44%
4.	Patel Engineering Ltd.	12.37%
5.	SPML Infra Ltd.	8.17%
6.	Thakral Services (India) Ltd.	6.74%
7.	Thermax Instrumentation Ltd.	-8.31%
8.	U B Engineering Ltd.	5.35%
9.	Unisafe Fire Protection	0.27%

	Specialists India Pvt Ltd.	
10.	Zicom Electronic Security Systems Ltd	6.76%
11.	Aditya Industech Pvt. Ltd.	1.25%
12.	Beetel Teletech Ltd.	-0.38%
	<b>Arithmetic mean</b>	<b>2.87%</b>

5. The Ld.TPO selected only two comparables out of the 12 comparables chosen by the assessee viz. Thakral Services India Ltd. and Zicom Electric Security System and introduced one additional comparable i.e. Jupiter International Limited and computed the average margin of 5.06%. Following were the comparables selected by the Ld.TPO.

Sl.No.	Name of the Company	OP/Sales
1	Thakral Services (India) Ltd	5.62%
2	Jupiter International Ltd	4.23%
3	Zicom Electronic Security Systems Ltd	5.32%
	Average	5.06%

6. The Ld.TPO determined the operating profit margin for P&T Segment at -25.25% as against 2.58% determined by the assessee. The Ld.TPO also treated following items to be non operating and arrived at a margin of 2.58%:

- Provision for estimated losses on project of INR 29,64,71,365 treated as operating;
- Purchase price adjustment of INR 8,23.57,878 treated as operating;
- Forex loss of INR 12,26,17,774 considered as operating;
- Management fees of INR 22,70,28.627 considered as operating.

### **Software development services segment**

7. International Transactions pertaining to provision of services in the nature of software development services to Tyco Group companies, in relation to product enhancement of existing

products for Tyco Safety Products & Tyco Retail Solutions verticals is covered under Software development services segment. For the services provided the assessee is compensated on a cost plus 15% basis.

**8.** The assessee benchmarked Software development services segment by adopting Transactional Net Margin Method ('TNMM') and arrived at a set of following 10 comparables with an average margin of 12.08%.

<b>Sl. No</b>	<b>Name of the Company (M/s.)</b>	<b>Margin (%)</b>
1	Akshay Software Technologies Ltd.	7.46%
2	Bells Softech Ltd.	7.92%
3	Helios & Matheson Information Technology Ltd.	18.27%
4	Kals Information Systems Ltd.	9.81%
5	Mindtree Ltd	17.84%
6	Spry Resources India Pvt Ltd.	16.75%
7	Vedavaag Systems Ltd.	0.72%
8	C S S Corp Pvt. Ltd.	20.01%
9	E-Zest Solutions Ltd.	12.60%
10	Sasken Communication Technologies Ltd.	9.43%
	<b>Arithmetic mean</b>	<b>12.08%</b>

The Ld.TPO rejected all except one comparable identified by the assessee. By performing a fresh economic analysis, the Ld.TPO identified following 8 comparables with an average margin of 29.40%. The Ld.TPO also recomputed the margin earned by the assessee at 4.79% as against 15.00% computed by the assessee.

Sl No	NAME OF TAX PAYER	Amounts in Rs. Lakh			OP/OC (in %)
		OR/SALES	OC	OP	
1	Infosys Ltd.	46,91,700	32,77,700	11,84,200	36.13%
2	Larsen & Toubro Infotech Ltd.	4,54,360	3,64,619	89,741	24.61%
3	Mindtree Ltd.	2,99,010	2,48,290	5,072	20.43%
4	Persistent Systems Ltd.	1,18,412	87,649	3,07,625	35.10%
5	R S Software (India) Ltd.	35,188	28,321	6,867	24.25%
6	Cigniti Technologies Ltd.	5,563	4,359	1,204	27.62%
7	S Q S India B F S I Ltd.	20,061	16,394	3,667	22.37%
8	Thirdware Solution Ltd.	19,883	13,742	6,140	44.68%
	Average				29.40%

### **Management fees**

9. The assessee separately benchmarked the international transaction of payment of management fees on a cost plus 5% basis to AEs by adopting transactional net margin method. The average margin as per the assessee's economic analysis is 11.30%. Thereby the assessee concluded the same to be in the arm's length range.

The Ld.TPO, while determining the adjustment for P&T segment included management fees of INR 9,38,74,977 in the operating cost base and applied the arm's length margin determined by the Ld.TPO of 5.06% (OP/OR) on such enhanced cost base. Further, the Ld.TPO also undertook a separate economic analysis and determined the arm's length price of management fees separately as INR 5,10,44,518, thus effecting an additional adjustment of INR 4,28,30,458.

10. The Ld.TPO thus computed the proposed adjustment as under:

S.no	Description	Amount
1	Software development services	9,03,63,396
2	PROJECT/TRADING ACTIVITY	79,34,44,132
3	Management service fees	4,28,30,458
<b>Total adjustment</b>		<b>92,66,37,986</b>

The Ld.AO passed the Draft assessment order on receipt of the Order under section 92CA by further proposing following additions:

Transfer Pricing addition	Rs.92,66,37,986/-
Disallowed Salary paid to Expat employees in Foreign Currency	Rs. 6,60,19,470/-
Reimbursement of expenses	Rs.12,34,39,147/-

Against the draft assessment order, the assessee raised objection before the DRP.

The DRP allowed the objection raised by assessee to treat certain operating income as operating in nature under the R& D segment.

All other objections raised by assessee were dismissed by the DRP.

**11.** On receipt of the DRP direction, the Ld.AO passed the final assessment order making additions in the hands of assessee as under:

Add:	As per Transfer Pricing as discussed above in para - 3 -	76,19,11,715
Add:	As discussed in the above para - 4.1- Salary to Expatriate Employees in Foreign Currency	3,84,78,050
Add:	As discussed in the above para -4.2 - Reimbursement of Expenses	12,34,39,147

Aggrieved by the order of the Ld.AO the assessee has preferred appeal before this *Tribunal*.

**12.** At the time of hearing the Ld.AR restricted the arguments to the effective grounds being Ground No.9-14, 17-18, 20-26 & 28. It is submitted that remaining grounds are either general in nature or not pressed by the assessee. We, accordingly restrict adjudication only in respect of the grounds argued by the Ld.AR. The Ld.AR also submitted that except for the Paper book from

page 1812 to 2189, Fact sheet from page 2190 to 2231 and the chart in respect of the comparables alleged for inclusion and exclusion under both the segments, no other paper books needs to be considered.

**13.** However for the sake of understanding the FAR of assessee under both the segments, we refer to the transfer pricing report placed at page 175. Before we undertake the comparability analysis, it is *sine qua non* to understand the FAR of assessee under Project & Training Segment and Contract R & D Segment.

#### **14. Project & Training Segment**

##### **Functions:**

Assessee is engaged in the business of Fire & security services including designing, installing and servicing of fire detection, prevention and suppression systems and electronic security systems. Once the installation is completed the maintenance services team checks the complete set-up to determine defects, if any. Once the quality check is performed and the tests/trials carried out the set-up is handed over to the customer. Generally, a warranty period of 12 months is provided whereby any services faults / faulty products are replaced free of cost.

In addition, the assessee also undertakes servicing of the fire safety and security products either as a part of the consolidated contract or as separate contracts.

As some trading activity is also carried out as part of the projects activity, the international transactions pertaining to the projects activity and trading activity have been analysed under one segment.

## **15. Contract R & D Segment**

### **Functions:**

TFSIPL undertakes contract R&D services in relation to software, for example CCTV and other data capturing devices, and electronic hardware. TFSIPL operates as contract service provider and is remunerated for these R&D services on a cost plus mark-up basis, with a mark-up of 15% on the total costs incurred. The software development services provided are based on the conceptualization and specifications as provided by Tyco Group and TFSIPL is involved in the execution and implementation activities.

The R&D team in TFSIPL is only involved in software development and does not undertake any development in hardware design.

### **Management support:**

Separately, Tyco Group provides management services in the nature of certain marketing and product development advisory services, information technology support services, financial support services, human resource services and others from the Tyco Group. The costs incurred in providing these services are cross-charged to TFSIPL with a mark-up of 5% thereon.

### **Assets employed:**

The following routine tangibles are owned by TFSIPL as on 31.03.2014.

The assessee does not own any significant intangibles and does not undertake any significant R&D on its account that leads to the development of non-routine intangibles. TFSIPL uses the trademarks, process, know-how, technical data software,

operating / quality standards etc. developed / owned by Tyco Group.

### **Risks assumed**

#### Market Risk:

In respect of the project / trading activity the assessee bears market risk in terms of getting customer wide tender process.

In respect of the contract R&D services, the assessee operates as contract service provider and therefore does not bear market risk.

#### Product / Service Liability Risk:

The assessee bears little risks on this account as all products are covered by a warranty provided by Tyco Group.

#### Research & Development (“R&D”) Risk:

The assessee does not bear any costs on R&D on its own account and therefore has no risk on this account.

#### Credit Risk:

In respect of the projects / trading activity, the assessee has sales to third parties and therefore bears the normal credit risks associated with receivables. However, it does enjoy favourable credit period in terms of payment to Tyco Group on products purchased.

In respect of the contract R&D services, the assessee operates as a contract service provider and is accordingly assured of the payments from Tyco Group.

#### Technology Risk:

The assessee is dependent on technical know-how from Tyco Group and therefore its technology risks are limited.

#### Price Risk:

The assessee bears the routine risks associated with the sale of products to third parties.

**Inventory Risk:**

In respect of the Projects / Trading activity, the assessee is responsible for managing its inventory of products. Accordingly, it is exposed to the usual inventory risks.

**Foreign Exchange Risk:**

In respect of the projects/trading activity, the assessee bears a risk on this account as it imports in foreign currency and sells in the local currency.

In respect of the contract R&D services, the assessee raises invoices and receives money in INR. Therefore, the assessee does not bear any risk on this count.

**Characterisation:**

Based on the facts as presented in the above analysis of functions performed, assets employed and risks assumed by TFSIPL, it is possible to characterise the assessee as a project service provider with respect to designing, installing and servicing of fire detection prevention and suppression systems and electronic security systems along with occasional sale of Tyco products in India as a routine distributor, assuming the routine risks associated with the said business activities. In addition, the assessee is characterized as a low risk, contract service provider in relation to the R&D services (in the nature of software development services).

Thus, the assessee assumes less than routine risks associated with undertaking such activities, without owning any intellectual property.

Based on the above we deal with the comparability of alleged comparable for inclusion/exclusion with assessee.

**16. Ground No.9** is raised by the assessee against exclusion of Unisafe Fire Protection Specialists from the list of comparables under Project & Training Segment.

It is submitted by the Ld.AR that this comparable is rejected by the Ld.TPO by holding that it was not a part of the Ld.TPO's search matrix. The Ld.AR however submitted that this comparable is functionally comparable with that of the assessee and also fulfills all the filters applied by the Ld.TPO.

The Ld.DR suggested the comparable may be remanded to the Ld.AO/TPO for verification.

We are therefore inclined to remand this comparable to the Ld.TPO for due verification. The assessee is directed to file all necessary documents before the Ld.AO. The Ld.AO shall consider this comparable if all necessary filters stand satisfied.

**Accordingly Ground no.9 raised by assessee stands allowed for statistical purposes.**

**17. Ground No.10** is raised by the assessee against treating provision for estimated losses as operating in nature for computing assessee's margin under Project & Training segment.

The Ld.AR submitted that, while computing operating margin for P&T segment, assessee considered provisions for estimated losses of ₹ 29, 64, 71, 365/- as known operating in nature. The lone Dayo considered the same as operating in nature.

It is submitted that the provision was created on the projects based on the requirements laid down in accounting standard 7-construction contracts. It is submitted that assessee used to recognise the revenue and expenses as and when the outcome of construction contract could be estimated reliably to the stage of completion. It is submitted that when the probable total costs

exceeds the total revenue the expected laws on construction contract was recognised as an expenses immediately.

On the contrary the Ld.CIT.DR submitted that under the P&T segment, assessee is providing fire and security services including designing, installing and servicing of fire detection/prevention and suppression systems et cetera along with maintenance. The alleged estimated losses are related to the operations of assessee and hence are to be a part of operating expenses. He thus supported the orders passed by authorities below.

**18. Ground no.11** is raised by assessee against treating purchase price adjustment to eliminate effect of currency depreciation as operating in nature for computing assessee's margin.

**19. Ground No.13** is raised by assessee against treating the Foreign exchange loss as operating in nature.

Ground 11 and 13 are interrelated to each other and therefore are considered together.

The Ld.AR submitted that, during the year under consideration the currency depreciation materially affected the purchase price. The currency depreciation led to imports becoming costlier and adversely impacting the profitability of the assessee and other companies that having substantial imports.

The Ld.AR submitted that, the import analysis in case of the comparable is selected by assessee under the P&T segment are very less as compared to that of assessee. The Ld.AR thus submitted that the adjustment if any has to be made in the hands of the assessee in order to iron out the differences.

We have perused the submissions advanced by both sides in light of records placed before us in respect of grounds 10, 11, 13.

**20.** The common contention raised by assessee in all these grounds is in respect of the adjustments to be considered in the hands of assessee rather than the uncontrolled comparables. The justification for such submission is that the comparable companies have not incurred similar kind of expenditure or have identical kind of estimated provisions. It is a submission of assessee that appropriate adjustment therefore is called for on account of differences between the uncontrolled and controlled transactions. In support he plays reliance on following decisions:

- *decision of Hon'ble Delhi Tribunal in case of Honda Trading Corporation India Pvt.Ltd., in ITA No.5297/Del/2017 by order dated 08/03/2013*
- *decision of Hon'ble Mumbai Tribunal in case of Pengea3 and Legal Database Systems Pvt.Ltd. in ITA numbers to 128/M/2014, 1958/M/2014 by order dated 06/03/2017*
- *decision of honourable Bombay High Court in case of CIT versus in the sun Unilever Ltd reported in (2016) 72 taxman.com 3 to 5*

**21.** Rule 10B(1)(e) of the Rules states that adjustments should be made to account for the differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market.

Rule 10B(2) of the Rules provides comparability of an international transaction with an uncontrolled transaction needs to be judged with reference to certain specified factors.

Rule 10B(3) of the Rules provide that:

*"An uncontrolled transaction shall be comparable to an international transaction if —*

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

**22.** The OECD Guidelines on this aspect is as follows:-

*Para 1.35. Where there are differences between the situations being compared that could materially affect the comparison, comparability adjustments must be made, where possible, to improve the reliability of the comparison. Therefore, in no event can unadjusted industry average returns themselves establish arm's length conditions"*

*Para 1.36 . ..... material differences between the compared transactions or enterprises should be taken into account. In order to establish the degree of actual comparability and then to make appropriate adjustments to establish arm's length conditions (or a range thereof), it is necessary to compare attributes of the transactions or enterprises that would affect conditions in arm's length dealings. Attributes that may be important include the characteristics of the property or services transferred, the functions performed by the parties (taking into account assets used and risks assumed), the contractual terms, the economic circumstances of the parties, and the business strategies pursued by the parties."*

**23.** Para 2.74 states as follows:

*"..... Thus where the differences in the characteristics of the enterprises being compared have a material effect on the net margins being used, it would not be appropriate to apply the transactional net margin method without making adjustments for such differences. The extent and reliability of those adjustments will affect the relative reliability of the analysis under the transactional net margin method'*

*(Emphasis supplied)*

**24.** US transfer pricing Regulations on this aspect is as follows:-

Regulation 1.482-1(d)(2) of the US regulation states as follows:

*"In order to be considered comparable to a controlled transaction, an uncontrolled transaction need not be identical to the controlled transaction, but must be sufficiently similar that it provides a reliable measure of an arm's length result. If there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results. For purposes of this section, a material difference is one that*

*would materially affect the measure of an arm's length result under the method being applied."*

*The Indian transfer pricing regulations, OECD Guidelines and the US transfer pricing regulations call for an adjustment to be made in case of material differences in the transactions or the enterprises being compared so as to arrive at a more reliable arm's length price/ margin. While the Indian transfer pricing regulations refer to the adjustments on uncontrolled transactions, however the same has to be read with Rule 10B(3) of the Rules which clearly emphasizes the necessity and compulsion of undertaking adjustments. Hence in case appropriate adjustments cannot be made to the uncontrolled transaction, due to lack of data, then in order to read the provisions of transfer pricing regulations in harmony, the adjustments should be made on the tested party.*

**25.** The reliability and accuracy of adjustments would largely depend on availability of reliable and accurate data. For certain types of adjustments, relevant data for comparables may either not be available in public domain or may not be reliably determinable based on information available in public domain, whereas, it may be possible to make equally reliable and accurate adjustments on the tested party (whose data would generally be easily accessible). In such a scenario, one has to resort to the provisions of Rule 10B(3)(ii) which provides for making "reasonably accurate adjustments" for eliminating any material differences between the two transactions being compared. The purpose or intent of the comparability analysis is to examine as to whether or not, the values stated for the international transactions are at ALP i.e., whether the price charges is comparable to the price charges under an uncontrolled transaction of similar nature. The regulations don't restrict or provide that the adjustments cannot be made on the results of the tested party. Therefore, keeping in mind the aforesaid objective, the net profit margin of the tested party drawn from its financial accounts can be suitably adjusted to facilitate its comparison with other uncontrolled entities/transactions as per

subclause (i) of rule 10B(1)(e) of the Rules itself. The absence of specific provision in Rule 10B(1)(e)(iii) of the Rules does not impede the adjustment of the profit margin of tested party.

This view is laid down in the following decisions:-

- *Capegemini India Pvt. Ltd. (ITA No.7861/Mum/2011)*
- *Demang Cranes & Components (India) Pvt Ltd. [49 SOT 610 (Pune)]*

**26.** Foreign exchange gain or loss relatable to an international transaction is part and parcel of such international transaction. Thus, the argument of the Ld.AR that forex loss is not part of the operating cost cannot be accepted. Forex loss may arise in the normal course of the business and can be reckoned as operating in nature, however the loss arising on account of abnormal fluctuation or on account of abnormal movement in forward exchange contracts has to be treated as non-operating in nature. We place reliance on following decisions:

*Decision of Hon'ble Delhi Tribunal in case of Schneider Electric India (P.) Ltd. v. Dy. CIT reported in (2016) 75 taxmann.com 115*

*Decision of Hon'ble Delhi Tribunal in case of Honda Trading Corpn. India (P.) Ltd. reported in (2013) 33 taxmann.com 21;*

*Decision of co-ordinate bench of this Tribunal in case of SAP Labs India (P.) Ltd. reported in (2010) 8 taxmann.com 207*

*Decision of co-ordinate bench of this Tribunal in case of CISCO Systems (India) (P.) Ltd. reported in (2014) 50 taxmann.com 280*

the reliability and accuracy of adjustments would largely depend on availability of reliable and accurate data. For certain types of adjustment relevant data for comparables may either not be available in public domain or may not be readily determinable based on information available in public domain. Whereas it may be possible to make equally reliable and accurate adjustment of the tested party whose data is easily accessible. The purpose and intent of comparability analysis is to examine as to whether, or not, the values stated for the international transactions are at arms length. It means, it is an exercise to ascertain whether the

price charged in case of a controlled transaction is comparable to the price charged under the uncontrolled transaction of similar nature. In our view the regulations do not cast any restriction to provide adjustment to be made on the tested party. Therefore if the data in respect of uncontrolled transactions are not sufficiently available in order to iron out the differences, the adjustment is to be made in the hands of the tested party.

Accordingly we remand these issues back to the Ld.AO, with the direction to consider the claim of assessee based on the above discussions in respect of the provision for estimated losses on projects as well as the excessive forex loss earned by assessee under the PNP segment.

**Accordingly grounds 10, 11, 13 stands allowed for statistical purposes.**

**27. Ground no.12** is raised by assessee against treating management service fee under operating cost base while computing the operating margin of assessee under Project & Training segment.

It has been submitted by the Ld.AR that grounds 22 to 26 & 28 has been raised without prejudice to the Ground no. 12.

It is submitted by the Ld.AR that the Ld.AO/TPO carried out 3 types of adjustment in respect of the management fees paid by assessee to its AE, which are as under:

- by considering management fees as part of the operating cost base for computing margin under P&T segment;
- by benchmarking the international transaction of payment of management fee separately using other method and data mining adjustment of the Rs.4,28,30,458/-

- by disallowing the payment of management fees amounting to ₹ 12,34,39,147 under section 40 (a) (ia) of the act.

The Ld.AR submitted that, assessee has undertaken an independent analysis in respect of the management fees paid to its assessee and accordingly had to consider the expenditure as non-operating while computing the margin under P&T segment. He submitted that assessee did remind the margin to be 11.3% by using TNN members are most appropriate method.

**28.** It is also submitted by the Ld.AR that assessee has benchmarked the transaction by using TNN members are most appropriate method and using comparable is determine the transaction to be at arms length whereas, the Ld.TPO used other method and without undertaking the procedure laid down under section 92 CA disallowed the entire expenditure by holding that assessee has no substantiated the expenditure having incurred wholly and exclusively for the purpose of business.

He submitted that the Ld.AO by separately determining an adjustment under section 40 (a) (ia) of the act is unjust. He submitted that these are expenditure incurred by assessee and is not liable for tedious to be deducted on the 5% mark up paid on the cost.

The Ld.AR submitted that by considering the management fees under 3 different categories the revenue has transgressed beyond the statutory provisions.

On the contrary, the Ld.CIT.DR placed reliance on orders passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

**29.** We do not agree with the applicability of provisions under section 40 (a) (ia) of the act as it forms part of international transaction which needs to be considered in accordance with section 92CA of the act.

The issue that now remains is whether the payment of management fee should be aggregated with the P&T segment or to be considered as a separate international transaction?

In our opinion the transaction of management fees deserves to be benchmarked separately in accordance with the provisions of the Act by adopting the method applicable as per Rule 10 B of Income tax Rules.

**30.** We note that the Ld.AO/TPO has not considered the analysis carried out by assessee and has rejected out rightly by observing that no benefit has been accrued to assessee. Accordingly, in the interest of justice. On this issue back to the Ld.AO/TPO to consider the economic analysis filed by assessee in accordance with law. We emphasise that the benchmarking of the transaction needs to be done as per the provisions of section 92 CA read with Rule 10 B.

**Accordingly these grounds raised by assessee stands allowed for statistical purposes.**

**31. Ground No.17** raised for exclusion certain comparables under SWD segment. It is submitted that assessee wish to restrict the submissions to only following 4 comparables:

Infosys Ltd.

Larsen & Toubro Ltd

Persistent Systems Ltd

Thirdware Solutions

**32. Infosys Ltd:**

This comparable was upheld by authorities below and has been objected by assessee for its inclusion. Ld.AR submitted that this company is functionally not comparable with that of assessee as it is engaged in providing diversify activities like business consulting, technology, engineering and outsourcing services. It has been submitted that this company is a market leader in software development segment and provides IP-based solutions. It has also been submitted that this company owns huge intellectual properties and revenues from licensing of software products which is not at all akin to the functions performed and assets owned by assessee. Ld.AR submitted that, this company is a huge brand value and expenses of brand building is high. Referring to page 629 of supplementary paper book, the Ld.AR submitted that this company owns products and are also involved in research and development activities.

Ld. CIT DR placed reliance upon orders of authorities below.

We have perused submissions advanced by both sides in light of records placed before us.

From the annual report of this company placed in the paper book relied upon by Ld.AR, it is observed that this company is not comparable to the profile of assessee. Further it is an accepted position that this company is a giant risk-taking company and is engaged in development and sale of software products and own intangible assets. Under such circumstances we deem it fit and proper to exclude this comparable from the finalist.

**Accordingly Ld. AO/TPO is directed to exclude this company.**

**33. Larsen and Toubro Infotech Ltd:**

This comparable was upheld by authorities below and has been objected by assessee for its inclusion. Ld.AR submitted that this company is functionally not comparable with that of assessee and is engaged in providing consultancy and testing services. Further it has been submitted that there is no segmental information available in the annual reports of this company. Ld.AR submitted that this company owns its own brand and have products and are engaged in trading activity. This company also has R&D services and presence of huge intangibles and brands.

On the contrary, Ld.CIT DR submitted that, this company should be remanded by following the view taken by coordinate bench of this *Tribunal* in case of *CGI Information Systems and management consultants (P) Ltd. v. Dy. CIT* reported in (2019) 101 taxmann.com 294.

We have perused submissions advanced by both sides in light of records placed before us.

Ld.CIT DR placed reliance on decision of *CGI Information Systems and management consultants (P) Ltd. (supra)*, wherein this *Tribunal* observed and decided as under:

"9. In respect of the applicability of this *Tribunal* order for exclusion of *Larsen & Toubro Infotech Ltd*, this has been submitted by ld. AR of assessee in the chart submitted before us that on page no. 698 of Annual Report paper book, this company has debited an amount of Rs. 27,10,89,274/- as cost of bought-out items for resale. But this fact was not brought to the notice of the *Tribunal* in the case of *Advice America Software Development Center (P.) Ltd. (supra)*. It has also been submitted that on page no. 706 of Annual Report paper book, this has been reported that this company is engaged in sale of services to its related parties and this fact was also not brought to the notice of *Tribunal* in case of *Advice America Software Development Center (P.) Ltd. (supra)*. When we examine paras 14 to 20 of this *Tribunal* order where there is discussion regarding inclusion/exclusion of *Larsen & Toubro Infotech Ltd*, we find that there is no discussion on these two aspects that this company is having significant amount of cost of

*bought-out items for resale and it is engaged in sale of services and products to its related parties and hence, in our considered opinion, this Tribunal order cannot be considered as a binding precedence because this Tribunal order is silent on these two important aspects as to this aspect that this company is having sizeable amount of bought out items for resale and have related party transactions in respect of sales of services and products. We also find that in the case of remaining three Tribunal orders i.e. Microsoft Research Lab India Pvt. Ltd.'s case (supra), WM Global Technology Services (India) (P.) Ltd. (supra) and in the case of Tecnotree Convergence Pvt. Ltd. (supra), the matter was remanded to the TPO for fresh decision. Hence, we feel it proper that in the present case also, this issue should go back to the file of TPO for fresh decision after providing adequate opportunity of being heard to the assessee and while deciding the issue afresh, all the available Tribunal orders on this issue should be considered by the TPO in proper perspective."*

It is observed that the decision in case of *CGI Information Systems Management Consultants Pvt. Ltd (supra)* was in respect of assessment year 2013-14. On perusal of annual report of this comparable placed at page 702 of supplementary paper book, it is observed that during the year this company has not derived any revenue from sale of products. The only revenue earned by this comparable during the relevant year under consideration is from sale of services. It is observed at page 892 that this company incurred overseas staff costs at Rs.15,46,46,82,017/-, reveals that revenue earned from software services is mainly from offshore services. In the present case of assessee, there is no such expenses incurred for overseas staff costs. At page 884 of supplementary paper book, it is clear that export revenue from software services amounts to Rs.44,14,84,25,372/- out of gross income of Rs.46,43,94,03,178/-. In view of the aforestated observations for year under consideration, the issue of comparability of this company should be examined by Ld.AO/TPO afresh.

**Accordingly, we set aside this comparable back to Ld. AO/TPO.**

**34. Persistent Systems Ltd.**

This comparable was included by Ld.TPO and opposed by assessee. Ld.AR submitted that this company is functionally different with that of assessee, as it is involved in providing complete product life cycle service to its clients. It has been submitted by Ld.AR that this company specializes in software products, services and technology innovations. He submitted that this company is identified to be carrying out services in telecom to telecom and wireless clients, life science and health care, infrastructure and systems.

On the contrary, Ld.CIT DR submitted that, this company should be remanded by following the view taken by coordinate bench of this *Tribunal* in case of *CGI Information Systems and management consultants (P) Ltd. (supra)*.

We have perused submissions advanced by both sides in light of records placed before us.

The decision relied upon by Ld.CIT DR in case of *CGI Information Systems & Management Consultants (P) Ltd(supra)*. has not considered details that has been obtained under 133 (6) in respect of this company for year under consideration. Therefore, in our opinion this decision cannot be of any help to revenue.

Coming to submission of the Ld.AR that this company has acquired certain intellectual property products and generate revenue from licensing and support of such products stands supported by the details available at pg 1042 of the paper book. It is also observed that this company is involved in the entire life-cycle of software development which is not similar to what assessee caters to its associated enterprises. Assessee carries out

only such functions which are required by associated enterprise under its supervision and guidance.

**Accordingly, we direct Ld. AO/TPO to include this comparable from the finalist.**

### **35. Thirdware Solutions Ltd**

This comparable has been considered by Ld.TPO which has been objected by assessee. Ld.AR submits that this company is functionally different and earned revenues from export of services, subscription and training and sale of licensing. Ld.AR submitted that there are no segmental details in respect of this comparable.

Ld.CIT DR however placed reliance upon decision of *Hon'ble Delhi High Court* in case of *Steria India Ltd. v. Dy. CIT* reported in (2018) 92 *taxmann.com* 120. She submitted that *Hon'able Delhi High Court* held this comparable to be a good company.

We have perused submissions advanced by both sides in light of records placed before. From the annual report of this company placed at page 1450, it is observed that at page 1529, segment reporting of this company is set to be comprised of software development, implementation and support services. Further it has been submitted therein that primary segment reporting is based on geographical areas, viz Domestic India (products and services) and International rest of the world (exports-software services). It is also been submitted therein that this company maintains separate books of account for the reported segments. In profit and loss account at page 1548, it is observed that during the year under consideration, this company earned revenue from sale of products at Rs.20,675.74 Lakhs whereas, revenue from sale of services is shown to be at 'nil'. Ld.TPO while considering

this comparable only considered footnote at page 1549, wherein bifurcations of revenue from sale of products has been given as; export of software services has been recorded to be at Rs.20194.37, software services from local units amounting to Rs.414.07, revenue from subscription and training amounting to Rs.59.32 and sale of licenses amounting to Rs.7.98. We therefore reject the contention of assessee that segmental details are not available in respect of this comparable. In our view Ld.TPO has considered the export of software service segment for purposes of comparability with that of assessee (refer computation of margin for this comparable at page 55 of order passed by Ld.TPO).

Respectfully following decision of *Hon'ble Delhi High Court* in case of *Steria India Ltd. (supra)* we do not find any infirmity in the view of authorities below in including this company.

Accordingly, we uphold the inclusion of this comparable to the finalist.

**Accordingly Ground no.17 raised by assessee stands partly allowed.**

**36. Ground.No.18:** The assessee is seeking inclusion of only one comparable raised among the rest of the comparables in this ground. Therefore we restrict our adjudication only in respect of following comparable:

**37. Akshaya Software Technologies:**

It is the submission of the Ld.AR that, this comparable is functional with that of assessee whereas the Ld.TPO has rejected this comparable from the finalist. We note that revenue does not dispute functional similarity of this comparable with assessee.

In the interest of justice we remand this comparable back to Ld.AO/TPO. The learnt AO/TPO shall verify the economic details

of this comparable and apply the filter is to consider it in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly this ground raised by assessee stands partly allowed.**

**38. Ground No.20-21:** are in respect of computing incorrect operating margins of comparables by not granting appropriate working capital and risk adjustments.

It has been submitted by Ld.AR that working capital and risk adjustment has been denied to assessee on the ground that assessee failed to demonstrate such differences could have any impact on assessee's profit. It has been submitted by Ld.AR that the submissions advanced by assessee demonstrating computational impact has not been considered by the Ld.AO/TPO. Before us, Ld.AR submitted that it is an accepted principle upheld in various decisions of this *Tribunal* that working capital adjustment should be allowed on actual. It has been submitted that all relevant details for computation of working capital was provided to AO/DRP which has been disregarded. He placed reliance upon the decision of coordinate bench of this *Tribunal* in case of *Huawei Technologies India (P.) Ltd. v. Jt. CIT* reported in (2019) 101 *taxmann.com* 313, wherein it has been held that the working capital has to be granted in actual.

On the contrary, Ld.CIT DR placed reliance upon orders passed by authorities below.

We have perused submissions advanced by both sides in light of records placed before us including the decision relied upon by Ld.AR in case of *Huawei Technologies India Pvt. Ltd. (supra)*.

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

Chapters I and III of OECD Transfer Pricing Guidelines contain guidelines on comparability analyses for transfer pricing purposes. Guidelines on adjustments to be provided is found in paragraphs 3.47-3.54 and in the Annex to Chapter III. The guidelines must be followed for computing arm's length principle, and for comparing comparable uncontrolled transactions. Reasonably accurate adjustments should be made to eliminate effect of any such differences

Paragraphs 13 to 16 of OECD guidelines, emphasizes need for working capital adjustment in terms of receivables and payables as under:

*"13. In a competitive environment, money has a time value. If a company provided, say, 60 days trade terms for payment of accounts, the Price of the goods should equate to the price for immediate payment plus 60 days of interest on the immediate payment price. By carrying high accounts receivable a company is allowing its customers a relatively long period to pay their accounts. It would need to borrow money to fund the credit terms and/or suffer a reduction in the amount of cash surplus which it would otherwise have available to invest. In a competitive environment, the price should therefore include an element to reflect these payment terms and compensate for the timing effect.*

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

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

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

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

**40.** The reverse applies to huge accounts payable. By having high accounts payable, a company is benefitting from a relatively long period to pay its suppliers. It would need to borrow less money to fund its purchases and/or benefit from an increase in the amount of cash surplus available to invest. In a competitive environment, the cost of goods sold should include an element to reflect these payment terms and compensate for the timing effect. A company with high levels of inventory would similarly need to either borrow to fund the purchase, or reduce the amount of cash surplus which it is able to invest. Making a working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential

comparables, with an assumption that the difference should be reflected in profits. Methodology to compute working capital adjustment is given in Paragraphs 13 to 16 of the aforesaid *OECD Guidelines (supra)*. These guideline also indicate factors that needs to considered like;

**41.** The point in time at which the Receivables, Inventory and Payables should be compared between tested party and comparables, and whether it should be the figures of receivables, inventory payable at the yearend or beginning of the year or average of these figures that should be considered;

In the matter of determination of Arm's Length Price, it cannot be said that the burden is on the assessee or the Department to show what is the Arm's Length Price. The data available with the assessee and Department should be the starting point and depending on the facts and circumstances of a case, further details can be called for. As far as the assessee is concerned, the facts and figures with regard to its business must be furnished. In so far as applying inventory, receivables and payables for computing working capital adjustment alleged by DRP/TPO in case of certain comparables, ITAT Delhi Bench in case of *ITO v. E Value Servc.com* reported in (2016) 75 *taxmann.com* 195 held that, insisting on daily balances of working capital requirements to compute working capital adjustment is not proper, as it will be impossible to carry out such exercise and that working capital adjustment has to be based on the opening and closing working capital deployed.

**42.** It must not be forgotten that transfer pricing analysis is estimation and not an exact science. One has to see that, reasonable adjustment must be made where ever it is needed, so

as to bring both comparable and test party on same footing. In present facts of case, DRP may be correct in denying working adjustment due to unavailability required data, however there is no merit in observations of DRP/TPO as supported by Ld.CIR DR, in denying working capital adjustment due to absence of details for working out adjustments in comparable companies chosen. If we appreciate the argument advanced by Ld.CIT.DR, there would remain no comparables for the purpose of comparability analysis to determine ALP of an international transaction, and this would be fatal to entire exercise of transfer pricing analysis.

**43.** Regarding comparable companies, one has to fall back upon only on information available in public domain. If that information is insufficient, it is beyond the power of the assessee to produce correct information about comparable companies. Revenue on the other hand has sufficient powers u/s.133(6) to compel production of required details from comparable companies. If this power is not exercised to find to get information required, then it is no defense to say that Assessee has not furnished required details to deny any adjustment on account of working capital differences. Therefore this objection of DRP is not sustainable. Therefore in, endeavor should be made to bring in comparable companies for the purpose of broad comparison and working capital adjustment claimed by Assessee should be analysed, keeping in mind, OECD guidelines (supra). Based on the above discussions, and respectfully following decision of coordinate Bench of this *Tribunal* in the case of *Huawei Technologies India (P.) Ltd.* (supra), we direct working capital adjustment to be computed and to allow as per actual,

after considering exclusion/inclusion of comparable companies in the final set of comparables as discussed hereinabove.

**Accordingly this ground raised by assessee stands allowed.**

**In the result, the appeal filed by assessee stands partly allowed as indicated hereinabove**

Order pronounced in the open court on 30<sup>th</sup> March, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 30<sup>th</sup> March, 2022.  
/MS /

**Copy to:**

- |               |                        |
|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore