

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

IT(TP)A No.432/Bang/2021 : Asst.Year 2016-2017

M/s. Ametek Instruments India Private Limited Plot No.1, EPIP Industrial Area, Divyashree NR Enclave, 4 th Floor Block A, Whitefield Bengaluru - 560 066. PAN : AAHCA2869B.	v.	The Assistant Commissioner of Income-tax, Circle 1(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.K.R.Vasudevan, Advocate
Respondent by : Dr.Manjunath Karkihalli, CIT -DR

Date of Hearing : 01.06.2022	Date of Pronouncement : 13.06.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against final assessment order dated 30.03.2021 passed u/s 143(3) r.w.s. 144C(13) of the I.T.Act. The relevant assessment year is 2016-2017.

2. The Registry had noted a delay of 111 days in filing this appeal. The final assessment order was received by the assessee on 30.03.2021 and appeal ought to have been filed within 60 days from the date of receipt of the final assessment order. However, we notice that the Hon'ble Apex Court vide its judgment in Miscellaneous Application No.665/2021 dated 23.09.2021, due to the pandemic situation had excluded the period from 15th March, 2020 to 2nd October, 2021 in

computing the period of limitation for any suit, appeal, application or proceedings. In view of the above judgment of the Hon'ble Apex Court, there is no delay in filing this appeal and we proceed to dispose of the same on merits.

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of provision of marketing support services and software support services / engineering design services to its Associate Enterprises (AEs). For the assessment year 2016-2017, the return of income was filed on 30.11.2016 declaring income of Rs.18,74,47,670. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued. During the course of assessment proceedings, it was noticed that the assessee had undertaken the following international transactions with its AEs:-

International transaction	Value (Rs.)
Income from software development / engineering design services	30,69,58,491
Trade Receivables	8,21,35,544
Trade payables	18,83,888

4. The matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the above said transactions. The OP/OC of the assessee for the assessment year 2016-2017 was 15% (refer page 3 and 4 of TPO's order). The TPO, however, rejected the TP study of the assessee by conducting his own TP analysis by adopting various filters and selecting the following set of comparables:-

Sl. No.	Company Name	Average
1.	KALS Information Systems Pvt. Ltd.	8.60%
2.	E-Zest Solutions Ltd.	10.87%
3.	Rheal Software Pvt. Ltd.	14.50%
4.	Sybrant Technologies Pvt. Ltd.	14.74%
5.	Harbinger Systems Pvt. Ltd.	15.06%
6.	C g Vak Software & Exports Ltd.	18.50%
7.	R S Software India Ltd.	20.87%
8.	Larsen & Toubro Infotech Ltd.	24.83%
9.	Orion India Systems Pvt.Ltd.	25.64%
10	Nihilent Limited	26.36%
11	Inteq Software Pvt. Ltd.	28.20%
12	Persistent Systems Limited	30.89%
13	Infobeans Technologies Limited	32.42%
14	Thirdware Solutions Limited	36.90%
15	Infosys Limited	38.61%
16	Aspire Systems India Pvt. Ltd.	39.28%
17	Cybage Software Pvt. Ltd.	66.45%
	35 th Percentage	18.50%
	Median	25.64%
	65 th Percentage	30.89%

5. The TPO did not allow any working capital or risk adjustments. The TP adjustment made in the SWD segment stood at Rs.2,84,.00,335. Pursuant to the TPO's order, the draft assessment order was passed incorporating the above TP adjustment. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP did not grant any relief with regard to the exclusion / inclusion of comparable companies. The DRP directed the TPO to recompute the margin of four comparable companies, namely, KALS Information Systems Private Limited, C G Vak Software & Exports Limited, Harbinger Systems Private Limited and Orion India Systems Private Limited. Pursuant to the DRP's directions, final assessment order was passed on 30.03.2021. However, the DRP's directions to recompute the margin of the above said four companies was not given effect to. Aggrieved by the final

assessment order, the assessee has filed this present appeal. The assessee has raised several grounds, however, during the course of hearing the assessee limited the submission to the following grounds:-

- (i) Upper Turnover filter (Ground 14)
- (ii) Exclusion of companies (SWD Segment) Ground 21
- (iii) Working capital adjustment (Ground 19)
- (iv) Interest on outstanding receivable (Ground 24-31)

We shall adjudicate the above grounds as under:-

Ground 14 (Upper Turnover Filter)

6. In the above ground, the assessee is seeking application of upper turnover filter and thereby exclusion of following seven companies:-

- (i) Larsen & Toubro Infotech Limited
- (ii) Nihilent Limited
- (iii) Persistent Systems Limited
- (iv) Thirdware Solutions Limited
- (v) Infosys Limited
- (vi) Aspire Systems India Private Limited
- (vii) Cybage Software Private Limited.

6.1 According to the learned AR, since a lower turnover filter has been applied, the TPO / DRP ought to have applied a higher turnover filter to exclude the above seven companies. The DRP has rejected the objections of the assessee by observing that turnover does not have an influence on the

margins of the company as far as the service sector is concerned. The learned AR has placed reliance upon the rulings of the Bangalore Bench of the Tribunal in the case of BORQS Software Solutions Pvt. Ltd. v. ITO in IT(TP)A No.310/Bang/ 2021 (Bangalore) A.Y. 2016-2017 and Northern Operating Services Pvt. Ltd. in IT(TP)A No.101/Bang/2016 & CO 8/Bang/ 2017 (order dated 15.02.2019).

6.2 The learned Departmental Representative supported the orders of the Income Tax Authorities. It was submitted by the learned DR that if the turnover of a comparable company is less or more than 10 times the turnover of the assessee, then it cannot be considered as a comparable company.

6.3 We have heard rival submissions and perused the material on record. The Bangalore Bench of the Tribunal in the case of BORQS Software Solutions Pvt. Ltd. v. ITO (supra) has considered various judicial pronouncements on this issue including that of the Hon'ble High Courts wherein divergent views were taken with respect to the application of different filters. It was held by the Tribunal that application of turnover filter is justified on the basis of classification of companies as per the report of Dun and Bradstreet. Since the assessee in the present has income from software services to the tune of Rs.30.69 crore, companies reporting turnover above Rs.200 crore are considered not comparable. As regards the specific plea of the learned DR that if turnover of a comparable company is less or more than 10 times the turnover of the

assessee, then it cannot be considered as a comparable company, we find this plea was rejected by the Bangalore Bench of the Tribunal in the case of Northern Operating Services Pvt Ltd. (supra). The relevant submission of the parties and the finding of the Tribunal in case of Northern Operating Services Pvt. Ltd. (supra) read as follows:-

“15. The ld. DR submitted that the Hon’ble High Court of Karnataka in the case of M/s. Acusis Software (I) P. Ltd. V. ITO in ITA No.223/2017, judgment dated 14.08.2018, has taken the view that if the turnover of a comparable company is less or more than 10 times the turnover of the assessee, then it cannot be considered as a comparable company. The ld. DR drew our attention to the turnover of 10 comparable companies which is as follows:-

Sl. No.	Name of the case	Operating Income	Operating cost	OP./OC
1	Accentia Technologies Ltd.	1,069,026,524	82,93,91,898	28.89%
2	Acropetal Technologies	494,399,332	389706574	26.86%
3.	Cosmic Global Ltd.	62,496,615	5,69,15,360	9.81%
4.	e4e Healthcare (capitaline)	613,160,587	54,56,25,872	12.38%
5.	ICRA Online Ltd. (seg.)	156,691,000	11,67,49,267	34.21%
6.	Jeevan scientific Technology Ltd.	1,721,400,000	1,00,86,52,592	70.66%
7	Infosys B PO Ltd.	11,291,147,909	9,57,73,24,546	17.89%
8.	Jindal Intellicom (capitaline)	390,358,799	35,12,69,641	11.13%
9.	Mindtree Ltd. (seg.)	5,653,000,000	5,10,39,05,999	10.76%
10	iGate Global Solutions Ltd.	11,845,540,000	9,47,11,65,000	25.07%

He submitted that if such criterion is applied, then that would be the proper basis for excluding companies for the purpose of comparability based on turnover.

16. The ld. Counsel for the assessee, on the other hand, submitted that the Hon’ble High Court of Karnataka in the case of Acusis Software (I) P. Ltd. (supra) merely dismissed the appeal of assessee on the ground that no substantial question of law arises for consideration. In particular, he drew our attention to the following paragraphs of the judgment of Hon’ble High Court:-

“14. The findings of the learned Tribunal as regards the comparable namely, Mercury Outsourcing Management Ltd., which too have been excluded by the Tribunal are quoted below for ready reference:-

“(ii) Mercury Outsourcing Management Ltd.

13.1 The learned Authorised Representative has submitted that the TPO has rejected this company on the similar reasoning of diminishing revenue and abnormal cost.

13.2 On the other hand, the learned DR has submitted that this company is incurring persistent losses and further the turnover of this company is less than Rs.1 Crore and therefore it does not satisfy the filter of turnover applied by the TPO.

13.3 We have considered the rival submissions as well as the relevant material on record. At the outset, we note that turnover of this company in the ITES segment is only Rs.45.33 lakhs which in any case does not satisfy any filter of turnover in comparison to the assessee's turnover more than Rs.27 Crores. Even if we apply the tolerance range of turnover of 10 times on both sides of the assessee's turnover then the company which is having less than Rs. 2.7 Crores of turnover will be outside the said range of 10 times. Accordingly, we are of the view that this company which is having only Rs. 45.33 lakhs turnover cannot be considered as a good comparable to the assessee".

15. From the aforesaid findings of the learned Tribunal, we are satisfied that the reasons assigned by the learned Tribunal in excluding the aforesaid company as comparable is also reasonable and the same deserves to be accepted by us. It is analysed by the learned Tribunal in extenso which arrived at a decision that the company which is having only Rs.45.33 lakhs turnover cannot be considered as comparable to the Assessee-company whose turnover is more than Rs.27 Crores.

16. The decision of the learned Tribunal in the other cases referred to by the learned counsel for the Appellant-Assessee would not render the findings of the learned Tribunal in the present case nugatory or perverse for the reason that analyzing of the comparables may be in a different context and the same need not be blindly or generally adopted in all cases, irrespective of the context or the circumstances calling upon for the inclusion/exclusion of the comparables which absolutely is a decision to be taken by the learned Tribunal as last fact finding authority. This view is supported by our judgment dated 25.08.2018 on Softbrands case (supra), which we find it appropriate to quote hereunder to its relevant extent:-"

17. He submitted that the question of law which the assessee sought to raise before the Hon'ble High Court was justification for excluding Mercury Outsourcing Management Ltd. as a comparable company. It is in that context that the aforesaid decision was rendered by the Hon'ble High Court. He pointed out that the Tribunal in excluding Mercury Outsourcing Management Ltd., had taken a view that its turnover was small compared to the assessee's turnover and therefore not comparable, even if the tolerance range of turnover of 10 times on both the sides of assessee's turnover is applied. There is no positive finding by the Tribunal that the company can be excluded for the purpose of comparability on the basis of turnover, only if the turnover is 10 times on both the sides of assessee's turnover. On the conclusions of the Tribunal, the Hon'ble High Court only held that it is reasonable and deserves to be accepted. In para 16, the Hon'ble High Court has clearly observed that the decisions rendered in other cases referred to by the ld. Counsel for the assessee would not render the findings of the Tribunal in the case before the High Court as

negatory or perverse for the reason that analysing of the comparables may be in a different context. The same need not be blindly or generally adopted in all the cases, irrespective of the context or circumstances calling for exclusion/inclusion of the comparables. The finding in each case is therefore a finding of fact. He pointed out that the Tribunal in the case of Autodesk (I) P. Ltd. v. DCIT [2018] 96 taxmann.com 263 [Bang. Trib.] after analysing the entire cases on the point, came to the conclusion that the decision rendered by the Tribunal in the case of Genesis Integrated Systems (I) P. Ltd. [2012] 53 SOT 159 lays down the correct law on the application of turnover filter and that decision has to be followed. He pointed out that the DRP in the present case has followed the ruling in the case of Genesis Integrated Systems (I) P. Ltd. (supra) and therefore the order of DRP has to be upheld.

18. We have given a careful consideration to the rival submissions and are of the view that as rightly submitted by the ld. Counsel for the assessee, the decision rendered by the Hon'ble High Court of Karnataka in the case of Acusis Software (I) P. Ltd. (supra) does not positively say that for a company to be excluded on the basis of high turnover, the tolerance range of turnover of 10 times on both the sides of assessee's turnover has to be seen. Even the Tribunal in the order against which the appeal was filed, did not proceed on application of turnover filter with any such condition. Therefore, it is not correct to say that for application of turnover filter, tolerance range of turnover of 10 times on both the sides of assessee's turnover has been laid down by the Hon'ble High Court. The Hon'ble High Court held that the order of Tribunal is correct and calls for no interference and further held that no question of law arose for consideration. The decision rendered in the case of Autodesk (I) P. Ltd. (supra) of the Tribunal after analysing every conflicting views has ultimately concluded that the law laid down in the case of Genesis Integrated Systems (I) P. Ltd. (supra) has to be followed. The following were the relevant observations of the Tribunal:-

"17.8. In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India Pvt.Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of M/S.NTT Data (supra), Societe Generale Global Solutions (supra) and

LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra)."

19. In the given facts and circumstances of the case, we find no grounds to interfere with the order of DRP on this issue. Consequently, ground Nos.4 & 5 raised by the revenue are dismissed as without any merit.

20. In the result, the appeal by the revenue is dismissed."

6.3.1 Accordingly, by following the above orders of the Tribunal, we direct the AO / TPO to apply appropriate upper turnover filter and exclude companies accordingly.

Ground 21 (Exclusion of Companies) (SWD Segment)

7. In the above ground, the assessee is seeking to exclude comparable companies namely Inteq Software Private Limited and Infobeans Technologies Limited. Each of the above companies is dealt with in the subsequent paragraphs.

Inteq Software Private Limited

7.1 The assessee is seeking to exclude this company from margin calculation on account of the RPT filter. The learned AR has submitted that this company's margin for A.Y. 2014-2015 has to be excluded as it fails the RPT filter. Undisputedly both the assessee as well as the TPO / DRP

have upheld the application of the RPT filter, then there is no reason why a company failing this filter for a particular year should be excluded from margin calculations. Additionally, the learned AR has placed reliance on the rulings of the Bangalore Bench of the Tribunal in the case of BORQS Software Solutions Pvt. Ltd. v. ITO (supra) wherein margins of F.Y. 2013-2014 relevant to assessment year 2014-2015 was directed to be excluded in arriving at ALP.

7.2 The learned DR has placed reliance on the orders of the Revenue Authorities.

7.3 We have heard rival submissions and perused the material on record. Since the issue has not been examined by the lower authorities and considering the rulings in the case of BORQS Software Solutions Pvt. Ltd. v. ITO (supra), we direct the AO / TPO to compute the RPT for the A.Y. 2014-2015 and check if it clears the criteria. It is ordered accordingly.

Infobeans Technologies Limited

7.4 The assessee is seeking to exclude this company from margin calculation on account of functional dissimilarity. The learned AR has submitted that this company's margin for A.Y. 2015-2016 has to be excluded as it is functionally incomparable for the said year. The learned AR has placed reliance on the rulings of the Bangalore Bench of the Tribunal in the case of BORQS Software Solutions Pvt. Ltd. v. ITO (supra) wherein margins of A.Y. 2015-2016 were directed to be excluded in arriving at ALP. The relevant extract of the

order is as under:-

“28. The above conclusions of the DRP have not been countered by the Assessee and by merely relying on findings in earlier AY that this company was held to be not a comparable company, the Assessee cannot seek exclusion of this company from the list of comparable companies. The only direction that the Assessee can get is that the margins for AY 2015-16 in which year this company was regarded as not comparable have to be ignored in arriving at the average of three years profit margin of this company. We direct accordingly.”

7.5 The learned DR has placed reliance on the orders of the Income Tax Authorities.

7.6 We have heard rival submissions and perused the material on record. Since the issue has not been examined by the lower authorities, we direct the AO /TPO to consider the rulings of the Bangalore Bench of the Tribunal in the case of BORQS Software Solutions Pvt. Ltd. v. ITO (supra) and recompute the margins accordingly. It is ordered accordingly.

Ground 19 (Working Capital Adjustment)

8. The above ground is dealing with working capital adjustment. The assessee has submitted that the TPO did not allow any adjustment on working capital. Further, the DRP did not allow relief on this count.

8.1 The assessee has placed reliance on the decision of the Bangalore Bench of the Tribunal in the case of M/s.Huawei Technologies India (P) Ltd. v. JCIT reported in (2019) 101 taxmann.com 313 (Bangalore), wherein the Tribunal has held that working capital should be allowed as per actual. The relevant extract of the order of the ITAT in the case of

M/s.Huawei Technologies India (P) Ltd. (supra) reads as follow:-

“15. In the present case the TPO allowed working capital adjustment accepting the calculation given by the Assessee. The CIT (A) in exercise of his powers of enhancement held that no adjustment should be made to the profit margins on account of working capital differences between the tested party and the comparable companies for the following reasons:

(i) The daily working capital levels of the tested party and the comparables was the only reliable basis of determining adjustment to be made on account of working capital because that would be on the basis of working capital deployed throughout the year.

(ii) Segmental working capital is not disclosed in the annual reports of companies engaged in different segments and therefore proper comparison cannot be made.

(iii) Disclose in the balance sheet does not contain break up of trade and non-trade debtors and creditors and therefore working capital adjustment done without such break up would result in computation being skewed.

(iv) Cost of capital would be different for different companies and therefore working capital adjustment made disregarding this different based on broad approximations, estimations and assumptions may not lead to reliable results.

16. The CIT (A) also placed reliance on a decision of Chennai ITAT in the case of Mobis India Ltd. v. Dy. CIT [2013] 38 taxmann.com 231/[2014] 61 SOT 40. That decision was based on the factual aspect that the Assessee was not able to demonstrate how working capital adjustment was arrived at by the Assessee. Therefore nothing turns on the decision relied upon by the CIT (A) in the impugned order. In the matter of determination of Arm's Length Price, it cannot be said that the burden is on the Assessee or the Department to show what is the Arm's Length Price. The data available with the Assessee and the Department would be the starting point and depending on the facts and circumstances of a case further details can be called for. As far as the Assessee is concerned, the facts and figures with regard to his business has to be furnished. Regarding comparable companies, one has to fall back upon only on the information available in the public domain. If that information is insufficient, it is beyond the power of the Assessee to produce the correct information about the comparable companies. The Revenue has on the other hand powers to compel production of the required details from the comparable companies. If that power is not exercised to find out the truth then it is no defence to say that the Assessee has not furnished the required details and on that score deny adjustment on account of working capital differences. Regarding applying the daily balances of inventory, receivables and payables for computing working capital adjustment, the Delhi Bench of ITAT in the case of ITO v. E Value Serve.com [2016] 75 taxmann.com 195

(Delhi - Trib.). has held that insisting on daily balances of working capital requirements to compute working capital adjustment is not proper as it will be impossible to carry out such exercise and that working capital adjustment has to be based on the opening and closing working capital deployed. The Bench has also observed that that in Transfer Pricing Analysis there is always an element of estimation because it is not an exact science. One has to see that reasonable adjustment is being made so as to bring both comparable and test party on same footing. Therefore there is little merit in CIT (A)'s objection on working adjustment based on unavailable daily working capital requirements data. There is also no merit in the objection of the CIT (A) regarding absence of segmental details available of working capital requirements of comparable companies chosen and absence of details of trade and non-trade debtors of comparable companies as these details are beyond the power of the Assessee to obtain, unless these details are available in public domain. Regarding absence of cost of working capital funds, the OECD guidelines clearly advocates adopting rate(s) of interest applicable to a commercial enterprise operating in the same market as the tested party. Therefore this objection of the CIT (A) is also not sustainable.

17. In the light of the above discussion we are of the view that the CIT (A) was not justified in denying adjustment on account of working capital adjustment. Since, the CIT (A) has not found any error in the TPO's working of working capital adjustment, the working capital adjustment as worked out by the TPO has to be allowed. We may also add that the complete working capital adjustment working has been given by the Assessee and a copy of the same is at pages 173 & 192 of the Assessee's paper book. No defect whatsoever has been pointed out in these working by the CIT (A). We may also further add that in terms of Rule 10B(1)(e) (iii) of the Rules, the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions which could materially affect the amount of net profit margin in the open market. It is not the case of the CIT (A) that differences in working capital requirements of the international transaction and the uncontrolled comparable transactions is not a difference which will materially affect the amount of net profit margin in the open market. If for reasons given by CIT (A) working capital adjustment cannot be allowed to the profit margins, then the comparable uncontrolled transactions chosen for the purpose of comparison will have to be treated as not comparable in terms of Rule 10B(3) of the Rules, which provides as follows:

"(3) An uncontrolled transaction shall be comparable to an international transaction if—

(i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged to paid in, or the profit arising from, such transactions in the open market; or

(ii) reasonably accurate adjustments can be made to eliminate the material effects of such differences."

18. In such a scenario there would remain no comparable uncontrolled transactions for the purpose of comparison. The transfer pricing exercise would therefore fail. Therefore in keeping with the OECD guidelines, endeavor should be made to bring in comparable companies for the purpose of broad comparison. Therefore the working capital adjustment as claimed by the Assessee should be allowed. We hold and direct accordingly."

8.2 The learned DR supported the directions of the DRP.

8.3 We have heard rival submissions and perused the material on record. In view of the rulings in the case of M/s.Hauwei Technologies India (P) Ltd. v. JCIT (supra), the basis of rejection of the relief by the DRP is no longer valid. We, therefore, direct the AO / TPO to consider the workings in the light of the aforesaid rulings and allow appropriate adjustment in arriving at the ALP. It is ordered accordingly.

8.4 In the result, ground 19 is allowed for statistical purpose.

Grounds 24 to 31 (Interest on Outstanding Receivables)

9. The assessee has submitted that no benchmarking analysis was done by the TPO, which is mandate of the law. It is also the submission of the assessee that when the DRP directed the adoption of SBI short term deposit interest rate, instead of Libor Plus 450 basis points as adopted by the TPO, the DRP has erred in not providing an opportunity of being heard.

9.1 We have heard rival submissions and perused the material on record. The principles of natural justice have

been violated since no opportunity of being heard was provided when DRP directed to adopt SBI short term deposit rate instead of Libor plus 450 basis points adopted by the TPO. Further, the TPO has not followed the provisions of the Act in benchmarking the international transaction, hence, the matter needs reconsideration. The assessee has raised contentions with respect to the applicability of the rulings of the Delhi Bench of the Tribunal in the case of Bechtel India Pvt. Ltd. in ITA No.1478/Del/2015 (order dated 21.12.2015), wherein it has been held that no adjustment for interest on receivables is warranted if the company is debt-free. It has been pointed that the Hon'ble High Court (in ITA 379/2016 – judgment dated 21.07.2016) as well as Hon'ble Supreme Court in SLP has not interfered with the order of the Tribunal. It is relevant to note from the order of the Hon'ble High Court and Hon'ble Supreme Court that the same is in the nature of summary dismissal without venturing into the adjudication of question of law. Such an order will not have a binding precedent with respect to facts in the present case. The order of the Tribunal in the case of Bechtel India Pvt. Ltd. (supra) has not considered the amendment varying the transaction of receivables has been considered as an international transaction u/s 92B of the I.T.Act. In such a scenario, we are constrained to follow the above order of the ITAT Delhi Bench. The assessee has also placed reliance on the recent order of the jurisdictional Tribunal in the case of Verifone India Technology Pvt. Ltd. v. ACIT in IT(TP)A No.290/Bang/2021 (order dated 25.04.2022) wherein the Tribunal has directed the lower authorities to benchmark the transactions by

following any one of the methods prescribed under the Income Tax Rules. We are inclined to follow the same and direct the AO / TPO to benchmark the transaction as per the provisions of the Act and Rules formulated there under. It goes without saying that any proposed addition should result in an opportunity of being heard and adhere to the principles of natural justice. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 13th day of June, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 13th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-1, Bangalore.
4. The Pr.CIT -1, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore