

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

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

IT(TP)A No.250/Bang/2022 : Asst.Year 2017-2018  
&  
SA No.22/Bang/2022

M/s.Sprinkl India Private Limited 3 <sup>rd</sup> Floor, East Wing Building No.3, Block B, Divyashree 770 Town Centre, Off HAL Airport Road, Yamlur P.O. Bengaluru - 560 037. <b>PAN : AAQCS9370N.</b>	v.	The Deputy Commissioner of Income-tax, Circle 6(1)(2) Bengaluru.
(Appellant/Applicant)		(Respondent)

Appellant by : Sri.Tata Krishna, Advocate  
Respondent by : Sri.Sumeer Singh Meena, CIT-DR

<b>Date of Hearing : 13.07.2022</b>	<b>Date of Pronouncement : 15.07.2022</b>
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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 18.02.2022. The relevant assessment year is 2017-2018.

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

The assessee is a wholly owned subsidiary of Sprinklr US. It provides software development services to its parent company. For the assessment year 2017-2018, the return of income was filed on 31.10.2017 declaring total income of Rs.24,99,66,540. 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, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the international transaction undertaken by the assessee with its Associated Enterprises (AEs). The TPO vide his order u/s 92CA of the I.T.Act dated 27.01.2021 determined the TP adjustment of Rs.12,63,71,153. The details of the TP adjustment made by the TPO reads as follows:-

Sl. No.	Segments	Amount (Rs.)
1.	Software Development (SWD)	11,89,55,025
2.	Market Support Service (MSS)	74,16,128
	Total	<b>12,63,71,153</b>

3. Pursuant to the TPO's order, the draft assessment order was passed on 07.04.2021 by incorporating the TP adjustment proposed by the TPO.

4. Aggrieved by the draft assessment order, the assessee filed objections before the Dispute Resolution Panel (DRP) on 28.05.2021. The DRP vide order dated 24.01.2022 rejected the objections raised by the assessee. However, the DRP in its order directed the TPO to verify certain issues. Pursuant to the DRP's directions, final assessment order was passed on 18.02.2022 incorporating the same transfer pricing adjustment proposed in the TPO's order.

5. Aggrieved by the final assessment order, the assessee has filed the present appeal before the Tribunal. The assessee has filed a concise ground raising therein 11 grounds and various sub-grounds. However, the learned AR during the

course of hearing submitted that if ground 8.5.1 is adjudicated in the software development segment, the other grounds may be left open.

6. The learned Departmental Representative supported the orders of the TPO and the DRP. The specific contentions of the learned AR and the learned DR shall be mentioned in the respective grounds when we adjudicate the same. The first ground that needs to be adjudicated in the software development segment is ground 8.5.1, which reads as follows:-

**TP Adjustment (Software development segment)**  
**Ground 8.5.1**

*“8.5.1 The Lower Authorities are not justified in failing to adopt the upper turnover filter of Rs.200 crores that resulted in wrongful selection of 8 companies viz., Larsen & Toubro Infotech Ltd., Mindtree Ltd., R Systems International Ltd., Persistent Systems Ltd., Tata Elxsi Ltd., Nihilent Ltd. Infosys Ltd., and Cybage Software Pvt. Ltd. selected by the TPO which even otherwise fail the test of comparability.”*

7. 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) Tata Elxsi Limited
- (v) Infosys Limited
- (vi) Mindtree Limited

(vii) Cybage Software Private Limited.

8. 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. The learned AR has placed reliance on the order 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).

9. 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.

10. In the rejoinder, it was submitted that the DR's plea for application of multiplier of 10 times the turnover was rejected by the ITAT in case of Northern Operating Service Private Limited (supra) and Autodesk India (P) Ltd. (2018) 96 taxmann.com 263. It was further submitted that in several cases where turnover was between Rs.100 crore and 200 crore, the ITAT had directed the companies having turnover

exceeding Rs.200 crore to be excluded from comparable list on account of turnover filter. The details of the said case are as follows:-

Sl. No.	Citation	Turnover of the tested party (Rs.)
1.	Autodesk India (P.) Ltd. v. DCIT (2018) 96 taxmann.com 263 (Bang-Trib.)	
2.	Tavant Technologies India (P.) Ltd. v. DCIT (2020) 120 taxmann.com 122 (Bang-Trib.)	100,18,13,973
3.	Micro Focus Software India (P.) Ltd. v. ACIT (2020) 113 taxmann.com 244 (Bang-Trib.)	154,06,39,918
4.	Dell International Services India (P.) Ltd. v. DCIT (2018) 89 taxmann.com 44 (Bang-Trib)	109,98,69,000
5.	Zynga Game Network India (P.) Ltd. v.DCIT (2020) 119 taxmann.com 403 (Bang-Trib)	109,99,71,917
6.	Sami – Sabinsa Group Ltd. (TS-183-ITAT-2022 (Bang)-TP)	165,58,22,100

11. We have heard rival submissions and perused the material on record. At the outset, we notice that the TPO/DRP have erred in not applying the upper turnover filter to reject high turnover companies, while on the other hand, he has rejected companies with lower turnover of less than one (1) Crore. As per the Dun & Bradstreet classification of software industry, the companies could be classified under three major heads depending on the turnover of the company viz.,

- a. Less than Rs 200 crores categorized as small size companies;
- b. Rs 200 crores to Rs 2000 crores categorized as medium size companies;
- c. More than Rs 2,000 crores categorized as large size

companies.

12. The turnover of the assessee for the relevant assessment year is Rs 134 crores and therefore would fall under the category of small size company having turnover in the range of Rs 1 crore to Rs 200 crores. Therefore, the companies not falling within the range, i.e, companies having turnover less than Rs.1 crore or turnover more than Rs 200 crores deserves to be excluded. 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. 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 is 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.”*

13. Accordingly, by following the above orders of the Tribunal, we direct the AO / TPO to apply appropriate upper turnover filter and exclude above mentioned seven companies from the list of comparables. It is ordered accordingly.

14. In ground 8.5.1, the assessee is also seeking exclusion of R Systems International Limited from the list of comparables on turnover filter. The learned AR submitted that the turnover of R Systems International Limited exceeded Rs.200 crore for the relevant assessment year, namely, A.Y. 2017-2018, hence, cannot be taken as a comparable and margins for the same are to be ignored for previous two assessment years also. In support of his contention, the learned AR relied on 3<sup>rd</sup> proviso to Rule 10CA(2) of the I.T.Rules, 1962. Further, the learned AR submitted that R Systems International Limited is having a different financial year and on account of the same, the said company has to be excluded. In this regard the learned AR relied on the order of the ITAT in the case of M/s.ACI Worldwide Solutions Pvt. Ltd. in IT(TP)A No.106/ Bang/2022 (order dated 13.05.2022, A.Y.2017-2018).

15. The learned Departmental Representative was duly heard.

16. We have heard rival submissions and perused the material on record. The issue is restored to the files of the AO / TPO. The AO / TPO is directed to exclude M/s R Systems International Limited, if it is found the said company has prepared financials for the year ending December 2016. It is ordered accordingly.

17. Since we have adjudicated ground 8.5.1, the other ground raised with regard to software development services segment is left open.

**TP Adjustment of Rs.74,16,128 (Grounds 9.1 to 9.8)**

18. The other grounds for adjudication is with regard to the TP adjustment of Rs.74,16,128 in respect of MSS segment. The learned AR submitted that the TPO and the DRP had erred in characterizing the assessee's activities as Marketing Support Services (MSS), when the nature of work carried out by the assessee falls into Information Technology Enabled Services (ITES) segment. It was stated that objection of the assessee as regards re-characterisation of segment into MSS instead of ITES, was not considered by the TPO nor by the DRP. Therefore, it was prayed the matter may be restored to the files of the TPO to consider the claim of the assessee that characterization of the segment as MSS is wrong and the same ought to be treated as ITES segment.

19. The learned Departmental Representative supported the orders of the TPO and DRP.

20. We have heard rival submissions and perused the material on record. The functions of the assessee under the support service division as per TP study are as follows:-

*“Support: Sprinklr India Support team provides support to Global clients of for Sprinklr USA and interfaces with Sprinklr USA support team. This team works 24x7 and respond to any queries and troubleshoot issues reported by clients. Team work with other teams to get resolution of The problems faced by customer.*

*Demand Generation: Sprinklr India Demand generation works on generating high quality prospect engagements that will result in the generation of leads, opportunities and ultimately revenue for the Sprinklr sales teams across new business as well as increasing opportunities for Sprinklr in our customer base.*

*Sales Reps: Sprinklr India Sales Reps team identifies prospective cents, negotiates and closes the sales deals. This team also works on building solutions that will help them to build relations ships with multiple stake holders and influence them in a positive way. Solutions Consultant: Sprinklr India Solutions Consultants partners with Sales team to uncover a customer's current and future states and their goals in order to provide best solutions. Solution consultants are instrumental in the sales cycle, bringing their technical and industry expertise to create compelling solutions for customers.”*

21 In reply to the show cause notice dated 23.12.2020 issued by the TPO, the assessee specifically submitted that the nature of support service provider by the assessee is to be regarded as ITES. The reply of the assessee dated 09.01.2021 reads as follows:-

*“5.8 It is submitted that the aforesaid segment comprises of significantly back office support services i.e., demand generation and support [more than 90% of headcount] and a small portion as support for sales & marketing services i.e, sales reps and solutions consultancy.*

*5.9 The demand generation team will pick enquiries coming into portal and help such enquiries to grow into business interests to enable the sales tem to take it forward. The team works remotely in the back office.*

*5.10 The support tem provides post sales support to customers on remote basis in the back office.*

*5.11 It is submitted that revenue of over 86% is arising from carrying on back office function. This satisfies the core service filter of 75%.*

*5.12 Upon perusal of the aforesaid functions, it is submitted that the Assessee is providing low end back office support services which are classifiable as back office services and sales & marketing services.*

*5.13 It is submitted that even the sales & marketing services provided are routine support services.*

*5.14 Hence, it is submitted that the aforesaid nature of support services provided by the Assessee is to be regarded as Information Technology Enabled Services (ITES).”*

22. From the above reply of the assessee it is clear, it was contended that the activities in support service segment falls under the activities of “back office operation”, “call centre or contract centre services” and “for remote maintenance and support centres” under Rule 10TA(e) that defines ITES. The TPO in his order dated 27.01.2021 has not conducted any study with respect to support services. In page 23 of the TPO’s order, he had listed 11 companies (6 companies rejected by the TPO on the basis of assessee’s objection and 5 companies retained), without conducting any study similar to the study

made in para 10 with respect to software segment (page 17 to 19 of the TPO's order). Therefore, without a proper study, the TPO could not have selected 11 companies at the first instance, hence, , the TP addition made in respect of support services cannot be sustained.

23. The assessee has raised specific objections before the DRP with regard to re-characterisation of support services as marketing support services instead of ITES. The relevant objection of the assessee before the DRP reads as follows:-

*“The company further submits that the Learned TPO has not characterized the nature of Support Services provided by the assessee company. Without a proper characterization, it is not desirable to proceed with the bench-marking. The nature of work carried out by the assessee company falls into ITES Segment. Therefore, the assessee company objects for the selection carried out by the Learned TPO.”*

24. There is no discussion by the DRP with regard to the above objection raised by the assessee. Therefore, we are of the view that the entire TP adjustment made under the MSS segment needs fresh TP analysis by the TPO. Accordingly, the issues raised in ground 9 and its sub-grounds are restored to the files of the AO / TPO for conducting fresh TP study analysis in support services segment of the assessee. It is ordered accordingly.

25. No arguments were raised with regard to grounds 10 and 11, hence, the same are dismissed.

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26. Since we have disposed of the appeal, the stay application becomes infructuous and the same is dismissed as such.

27. In the result, the appeal filed by the assessee is partly allowed and the stay application filed by the assessee is dismissed.

Order pronounced on this 15<sup>th</sup> day of July, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 15<sup>th</sup> July, 2022.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore