

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.254/Hyd/2021		
Assessment Year: 2016-17		
Indeed India Operations Private Limited, Hyderabad. PAN : AADCI5931J.	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri H. Srinivasulu	
Revenue by:	Shri Rajendra Kumar, CIT-DR	
Date of hearing:	11.07.2022	
Date of pronouncement:	10.08.2022	

ORDER

Per Laliet Kumar, J.M.

This appeal is filled by the assessee feeling aggrieved with the order dt.30.03.2021 passed by the National e-Assessment Centre, Delhi u/s 143(3) r.w.s. 144C(13) and 144C(13) r.w.s. 143(3A) and 143(3B) of the Income Tax Act, 1961 for the assessment year 2016-17. The assessee had filed a letter dated 12.07.2022, as per which the following grounds were pressed by the assessee :

4. Incorrect Selection of comparable companies

- a. Laresn & Turbo Infotech Ltd.*
1. Brand value
 2. Extraordinary event-Amalgamation
 3. Functionally different
 4. Internally developed intangibles
 5. Income from trading of goods
 6. Two segments-Software services include Knowledge Process Outsourcing(KPO) (Medial& Entertainment)
 - 7.Segmental details are incomplete and computation of correct margin is not possible
 8. Excluded by Hon'ble ITAT in AY 2016-17 in case of ADP Private Ltd.
- b. Tata Elxsi Ltd.*
1. Functionally different
 2. It is a KPO and ITES company
 3. Existence of inventory in profit and loss account
 4. Internally developed intangibles
 5. Income from sale of traded goods
 6. Segmental details are incomplete and computation of correct margin is not possible
 7. Excluded by Hon'ble ITAT in AY 2016-17, AY 2015-16 and AY 2014-15 in case of ADP Private Ltd.
- c. Persistent Systems Ltd.*
1. Functionally different
 - 2.No segmental information
 3. Revenue from products
 4. Significant related party transactions
 5. Presence of brand
 6. Research and development approval by CSIR
 7. Excluded by Hon'ble ITAT in AY 2016-17, AY 2015-16 and AY 2014-15 in case of ADP Private Ltd.
- d. Infosys Ltd.*
1. Huge turnover
 2. functionally different -software products and services
 3. significant selling and marketing expenses
 - 4.Extraoridnary event-buisness transfer
 5. engaged in diversified activities
 6. Presence of brand
 7. A leading provider of consulting technology, Out sourcing & next generation services
 8. Onsite revenue
 9. No segmental available
 10. Deferred consideration for acquisition debited to profit and loss account

11. Excluded by Hon'ble ITAT in AY 2016-17, AY 2015-16 and AY 2014-15 in case of ADP Private Ltd.

e. Thridware Solutions Ltd.

1. Functionally different
2. No segmental details between software services, and consultancy services
3. Segmental details between India & overseas has unallowable expenses, computation of correct margin is not possible.
4. Revenue from purchase of goods
5. Revenue from subscription and training
6. Revenue from sale of licenses
7. Excluded by Hon'ble ITAT in AY 2016-17 and AY 2014-15 in case of ADP Private Ltd.

5. Incorrect rejection of comparable companies selected by the Appellant in the transfer pricing study

a. Evoke Technologies Private Ltd.

1. Functionally comparable
2. No change in nature of business- IT design and development
3. DRP gave a wrong finding-it is a part of TP Analysis of appellant
4. Search matrix cannot be the criteria of selection-FAR is the basis
5. Included by Hon'ble ITAT in AY 2016-17 in case of ADP Private Ltd.

6. Incorrect rejection of comparable companies that are functionally comparable to the Appellant.

a. Sagarsoft(India) Limited

1. Passes all filters of the transfer pricing officer
2. Treated as a software services company in earlier years.
3. Profit in two out of three years
4. Functionally comparable
5. Prowess data base is not only the database in India

10, 11 and 12 Interest on outstanding receivables

- I. The assessee has not pressed the ground no.2, 3 and 7 to 9. For that the assessee has filed the letter dt.12.07.2022. Therefore, the said grounds are dismissed being not pressed.

- II. As mentioned herein above in ground No. 5, the assessee has pressed for incorrect rejection of comparable companies selected by it while preparing transfer pricing study namely, Evoke Technologies Limited. However, no other comparable namely Akshay Software, Sasken communication Technologies Ltd. and Intense Technologies Ltd. have not been pressed by the assessee. Accordingly, the inclusion of these three comparables are rejected.
- III. As mentioned herein above in ground No.6 assessee has pressed for incorrect rejection of comparable company that is functionally comparable to the assessee namely, Sagarsoft (India) Limited. However, no other comparable namely Infomile Technologies Ltd, Nucleus Software Exports Ltd, E-Zest Solutions Ltd, Ace Software Exports Ltd, Sankhya Infotech Ltd. and Harbinger Systems Private Ltd. have not been pressed by the assessee. Accordingly, the inclusion of these three comparables are rejected.
- IV. On the other hand, ld.DR has raised no objection for not pressing the grounds mentioned in the letter dt.12.07.2022 of the assessee.
- V. **Hence, the same are dismissed as not pressed.**

2. The captioned appeal filed by the assessee is found to be barred by 26 days delay in filing. It has moved a petition requesting the bench to condone the delay. We heard the party on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

2.1. The brief facts of the case are that assessee is a company engaged in the business of providing software development and support services.

2.2. The profile of the assessee as per the TPO order is as under :

“M/s. Indeed India Operations Pvt. Ltd. is engaged in providing Software Development & Support services to Indeed US and provision of software development and support services and Marketing & sales support services to Indeed Ireland. Indeed India also operates as non-exclusive reseller of Job Listing Space for the Indian Markets. Indeed India is a subsidiary of Indeed Singapore and Indeed Netherlands B.V. The ultimate holding company is Recruit Holdings.”

2.3. The assessee company filed its return of income for the assessment year on 29.11.2016 admitting total income of Rs.2,57,70,480/- and deemed total income u/s 115JB of the Act was admitted at Rs.2,37,23,775/-. The return filed was taken up for scrutiny and subsequently notice u/s 143(2) of the Act was issued on 31.07.2017. Notices u/s 142(1) of the Act were also issued from time to time calling for certain information. On verification of the information submitted by the assessee electronically, it was found that in from 3CEB filed by the assessee, the aggregate value of the international transactions of the assessee with its Associated Enterprises are to the tune of Rs.31,16,01,563/-. Hence, reference was made to the Transfer Pricing Officer u/s 92CA on 16.10.2018 with the prior approval of the PCIT.

The TPO after considering the submissions of the assessee passed an order u/s 92CA(3) on 26.10.2009 computing the software development segment at Rs.77,30,356/- and interest on receivables at Rs.9,50,811/-, total adjustments at Rs.86,81,347/-. Further found that the assessee company has not remitted the employees' contribution of Provident Fund

amounting to Rs.7,91,043/- within the due date, hence, the same was disallowed and added back to the income. Accordingly, completed the assessment u/s 144C of the Act vide order dt.18.12.2019.

Aggrieved with the draft order, assessee filed objections before the Dispute Resolution Panel and the DRP vide order dt.05.02.2021 granted certain reliefs to the assessee. In view of the directions issued by Hon'ble DRP through order u/s 144C(5) of the Act and order giving effect by the TPO, the income of the assessee was recomputed u/s 143(3) r.w.s. 144C(13) of the Act. Finally, assessment was completed u/s 143(3) r.w.s. 144C(13) of the Act and total income was assessed at Rs.3,31,60,388/- for A.Y. 2016-17.

3. Aggrieved with the assessment order dt.30.03.2021, assessee is now in appeal before us.

4. Before us Ld.AR for the assessee submitted that the main dispute is with respect to T.P. adjustment under two heads namely, (i) Provision of software development services at Rs.73,30,140/- and (ii) Interest on delayed receivables at Rs.9,50,811/-, in total Rs.81,80,951/- and further submitted that they are not in dispute with the other international transactions.

5. First of all with respect to exclusion of five comparables companies mentioned in the letter of the assessee vide ground No.4, ld.AR has drawn our attention to the order passed by the co-ordinate Bench of the Tribunal in the case of ADP Ltd. Vs. DCIT in ITA 227 and 228/Hyd/2021 whereby the co-ordinate Bench of the Tribunal has decided the issue in favour of the assessee therein.

L & T INFOTECH LTD (Segmental):

6. Ld.AR for the assessee submitted that the first comparable namely, L & T Infotech Ltd is required to be excluded, as the said company is not having brand value which is clear from page 478 of the paper book and also in view of the happening of extra ordinary event i.e., amalgamation during the year under consideration which is clear from page 551. In fact, on account of the amalgamation of Information Systems Resource Center (P) Ltd. (ISRC) from 04.09.2015 and also GDA Technologies Limited into the assessee company, the profitability of the assessee company had been affected. On this aspect, the finding of the TPO is that L & T is functionally different and it was into computer programming, consultancy and other activities. Besides that the intangible assets of L & T are internally developed and it is also in trading of goods. Besides that it was also submitted that the turnover of the assessee is 8.66 millions with respect to the software development services limited wherein the turnover of L & T is Rs.55,695.20 million. Ld.AR further submitted that its segmental details are incomplete, and computation of correct margin is not possible. It was further submitted that due to unallocable expenses of L & T at Rs.1391.65 billion (Page 76 of the Paper Book – Volume – 1) and also on account of huge difference in turnover, this L & T is required to be excluded. In this connection, ld.AR had relied upon the decision of the co-ordinate Bench of the Tribunal and also on the decision of Hon'ble Delhi High Court whereby the courts have excluded the company having the huge turnover difference.

7. On the other hand, ld.DR supported the order of lower authorities and submitted that this company is engaged in rendering of software services and hence, functionally comparable to the assessee company.

8. We have heard the rival submissions and perused the material on record. On observation of the financial statements filed by the Id.AR, in particular P.478/ Page 3 of AR Paper Book Volume 1, we found that due to the amalgamation of ISRC and GDA Technologies Limited, the profitability of the assessee company had affected. When an extraordinary event takes place by way of amalgamation, then that company cannot be considered as a comparable as held by this co-ordinate Bench in ITA Nos.227 & 228/Hyd/2021 dt.03.02.2022 which is to the following effect :

"4.3. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. We find substance in the submissions of the Id. AR and on going through the financial statements of Larsen & Toubro Infotech Ltd., in particular at page Nos. 1249 of paper book - Volume - 3 disclosure under the [Companies Act](#), 2013, we observe that the company information system resource centre Pvt. Ltd. (ISRC) was amalgamated with the company with effect from September, 21, 2015 and the appointed for the scheme was October, 17 2014, which reads as under:

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

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

4.4 From the above observations, which were extracted from the financial statements, the company named ISRC amalgamated with the company (Larsen & Toubro) and profitability with this amalgamation will impact. Therefore, If an extraordinary event has taken place by way

of amalgamation in a company, that company cannot be considered as a comparable as held by the coordinate bench of ITAT, Pune, in the case of Entercoms Solutions (P.) [Ltd. v. Assistant Commissioner of Income-tax](#) [2022] 134 taxmann.com 59 (Pune - Trib.). Accordingly, we direct the AO/TPO to exclude this company as comparable from the list of comparables.

We following the same, direct the AO / TPO to exclude this company as comparable from the list of comparables.

9. **TATA ELXI LTD (Segmental)**

9.1. Ld.AR for the assessee submitted that the second comparable namely, Tata Elxi Limited is required to be excluded, as the said company is functionally different and it renders high-end KPO Services i.e., digital content creation, technology & product engineering, chip design, embedded product design and visual computing lab and that the existence of inventory in Profit and Loss account and its credit is at Rs.2.89 crore in particular at page 49 / page 137 of AR Paper Book Volume 1 and its intangibles are internally developed and is also in sale of traded goods and further submitted that its segmental details are incomplete and not possible to calculate correct PLI. Its unallocable expenses are Rs.30.03 crore and unallocable liabilities are Rs.96.54 crore in particular at pages 68 and 69 of A.R. / Pages 156 and 157 of Paper Book filed by the AR, Volume – 1. Hence, the same may be excluded as comparable in the comparable list for determining ALP. He relied on various decisions of ITAT including the decision of this co-ordinate Bench in ITA Nos.227 and 228/Hyd/2021 (supra).

9.2. On the other hand, ld.DR supported the order of lower authorities and submitted that this company is engaged in rendering of software services and hence, functionally comparable to the assessee company.

9.3. We have heard the rival submissions and perused the material on record. The co-ordinate Bench of this Tribunal in ITA Nos.227 & 228/Hyd/2021 (supra) directed the AO/TPO to exclude this company from the final list of comparables holding that this company is functionally different and engaged in diversified activities. Since the Revenue could not controvert the said decision nor brought any contrary decision. In the said decision, it was held as under :

*“5. **Tata Elxsi Ltd. (Segmental):** The ld. AR of the assessee submitted that this company renders high -end KPO services i.e. digital content creation, technology and product engineering, chip design, embedded production design, visual computing lab, AI design services. He further submitted that this company earns revenue from sale of trades goods of Rs. 33.74 crore and the same corroborated by existence of inventory in P&L statement about Rs. 2.89. He, therefore, submitted that this company may be excluded as comparable in the comparable list for determining ALP. He relied on various decisions of ITAT including the decision in ITA No. 2233/Hyd/2018 for the assessment year 2014-1515 wherein this company is excluded as comparable.*

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

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

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

a) The Company is functionally not comparable. It is engaged in selling of the following: i. Software products (IP);

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

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

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

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

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

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

9.4. Accordingly following the above noted decision, we direct the AO / TPO to exclude this company as comparable from the list of comparable.

10. **PERSISTENT SYSTEMS LIMITED :**

10.1. The Id.AR of the assessee submitted that this company is a product development company. It is mainly engaged in providing licensing and sale of products and also earns royalty income and that functionally it is different to compare with the assessee company and that it is specializing in software products, services and technology innovation. Ld.AR further submitted that as this company is engaged in diversified businesses, relevant information on segmental details are not available in the public domain and hence, the same cannot be considered as comparable company to the assessee. It has earned revenue from product at Rs.238.80 crore and that it has research and development approval by CSIR. He, therefore submitted that this company may be excluded as comparable to the assessee company for determining the ALP. He relied on various decisions of ITAT including the decision of this co-ordinate Bench in ITA Nos.227 and 228/Hyd/2021 (supra).

10.2. On the other hand, Id.DR supported the order of lower authorities and submitted that this company is not a product based company.

10.3. We have heard the rival submissions and perused the material on record. The co-ordinate Bench of this Tribunal in ITA Nos.227 & 228/Hyd/2021 (supra) directed the AO/TPO to exclude this company from the final list of comparables holding that this company is functionally different and engaged in diversified activities. Since the Revenue could not controvert the said decision nor brought any contrary decision, following this decision, we direct the AO/TPO to exclude this company from the final list of comparables. The relevant portion of this

Tribunal's order in ITA No.227 & 228/Hyd/2021 (supra) is reproduced below :

"6. Persistent Systems Ltd.:

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

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

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

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

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

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

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

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

i) Corporate Information "Tata Elxsi Ltd was incorporated in 1989. The Company provides product design and engineering services to the

consumer electronics, communications and transportation industries and systems integration and support services for enterprise customers. It also provides digital content creation for media and entertainment industry"

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

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

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

10.4. Accordingly following the above noted decision, we direct the AO / TPO to exclude this company as comparable from the list of comparable.

11. **INFOSYS LIMITED.**

11.1 With respect to exclusion of Infosys Limited company as comparable, the Ld.AR submitted that it has huge turnover of Rs.53,983/- crore whereas the turnover of the assessee is 8.66 millions and that it is functionally different and has engaged in diversified activities such as Artificial intelligence, Product services, Platforms and consulting etc and that it has extra ordinary event of business transfer and that it is leading provider of consulting technology, Out sourcing and next generation services and that its onsite revenue is 52.7%. This company also provides offerings in big data analytics, cloud and digital transformation. It offers end to end business solutions including product support, product engineering and lifecycle solutions, artificial intelligence, software products etc. He, therefore

submitted that this company may be excluded as comparable to the assessee company for determining the ALP. He relied on various decisions of ITAT including the decision of this co-ordinate Bench in ITA Nos.227 and 228/Hyd/2021 (supra).

11.1. On the other hand, ld.DR supported the order of lower authorities and submitted that under TNMM comparable transactions needs to be broadly similar with this company and significant product diversity and some functional diversity between the controlled and uncontrolled parties are acceptable.

11.2. We have heard the rival submissions and perused the material on record. The co-ordinate Bench of this Tribunal in ITA Nos.227 & 228/Hyd/2021 (supra) directed the AO/TPO to exclude this company from the final list of comparables for determining the ALP and since the Revenue could not controvert the said decision nor brought any contrary decision. The relevant portion of this Tribunal's order in ITA Nos.227 & 228/Hyd/2021 (supra) is reproduced below :

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

1. The specific characteristics of the property transferred or services provided in either transaction

2. The functions performed taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions

3. The contractual terms of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions.

4. Conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size

of the markets the laws and govt orders in force, cost of labour and capital in the markets, the laws and government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

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

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

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

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

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

that Infosys Technologies Ltd. cannot be taken as a comparable in the present case. This leaves L&T Infotech Ltd. which gives us the figure of 11.11 % , which is less than the figure of 17% margin as declared by the respondent-assessee. This is the finding recorded by the Tribunal. The Tribunal in the impugned order has also observed that the assessee had furnished details of workables in respect of 23 companies and the

mean of the comparables worked out to 10%, as against the margin of 17% shown by the assessee. Details of these companies are mentioned in para 5 of the impugned order".

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

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

11.3. Accordingly following the above noted decision, we direct the AO / TPO to exclude this company as comparable from the list of comparable.

12. **THIRDWARE SOLUTIONS LIMITED :**

12.1 The next company sought for exclusion as comparable is Thirdware Solutions Limited. With respect to the same, ld.AR submitted that this company is functionally different to assessee company and that it is engaged in diversified activities that are not similar to the software development services rendered by the assessee. Ld.AR pointing to annual report submitted that this company has earned revenue from sale of software products. Ld.AR further submitted that no segmental details between software services and consultancy services was provided and that its unallocable expenses are Rs.2.16 crore and that the same has not possible to calculate the same. It got revenue from subscription & training at Rs32.59

lakhs. It also earned revenue from subscription and training and sale of licenses. Accordingly, this company cannot be taken as a comparable to the assessee which is providing software development services and that the same view has been upheld in various judicial precedents including the decision of this Tribunal in ITA Nos.227 and 228/Hyd/2021 (supra), wherein the company was excluded from the set of comparables.

12.2. On the other hand, ld.DR supported the order of lower authorities and submitted that this company is engaged in rendering of software services and hence, functionally comparable to assessee.

12.3. We have heard the rival submissions and perused the material on record. The co-ordinate Bench of this Tribunal in ITA Nos.227 & 228/Hyd/2021 (supra) directed the AO/TPO to exclude this company from the final list of comparables for determining the ALP and since the Revenue could not controvert the said decision nor brought any contrary decision, following the same we direct the AO/TPO to exclude this company from the final list of comparables. The relevant portion of this Tribunal's order in ITA No.227 & 228/Hyd/2021 (supra) is reproduced below :

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

1. This company earns revenue from sale of products, evident from purchases of stock in trade of Rs. 39.88 crore as per P&L Account.

2. It is engaged in diversified activities, i.e. professional, technical and business and services and IT consulting services.

3. The segmental details between software services and consultancy services are not available.

4. It has revenue from subscribing and training R.s. 32.59 lakhs and also income from licensing amounting to Rs. 8.77 lakhs and, therefore, functionally not comparable.

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

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

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

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

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

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

xi) THIRDWARE SOLUTIONS LTD.

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

ITA No 2233 of 2018 ADP Private Ltd Hyderabad

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

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

- iii) *LSI Technologies India Pvt. Ltd. vis ITO, [2015] 60 taxmann.com 405;*
- iv) *PCIT vis S. T. Ericsson India Pvt. Ltd. ITA no.821/2017, dated 31.01.2018;*
- v) *S. T. Ericsson India Pvt. Ltd. vis ACIT, ITA no.1672/Del./ 2014;*
- vi) *Dialogic Networks India Pvt. Ltd. vis ACIT, ITA no. 7280/Mum/ 2012, dated 27.07.2018; and*
- vii) *Accenture Services Pvt. Ltd. vis ACIT, [2018] 96 taxmann.com*

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

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

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

12.4. Accordingly following the above noted decision, we direct the AO / TPO to exclude this company as comparable from the list of comparable.

12.5. **Thus, Ground No.4 is partly allowed.**

13. Ground Nos. 5 and 6 - Sought for inclusion of companies to the list of comparables.

(i) **EVOKE TECHNOLOGY (P) LIMITED.**

13.1. As regards to ground No.5, the ld.AR of the assessee had requested for inclusion of two companies namely, Evoke Technology (P) Limited and Sagarsoft (India) Limited to the list of comparables.

13.2. With respect to inclusion of Evoke Technology (P) Limited, assessee had submitted that it is functionally comparable with it and that it was accepted in earlier years as comparable and also submitted that as per Directors report, there is no change in nature of business and engaged in IT design and development services. He further submitted that in ITA No. 227 & 228/Hyd/2021 (supra), this coordinate bench included this company as comparable for determining ALP.

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

13.4. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. This coordinate bench in ITA 227 & 227/Hyd/2021 for AY 2016-17, directed the AO to include this company as comparable to the assessee for determining ALP by observing as under:

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

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

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

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

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

13.5 it is noticed from the order passed by the TPO , that this company was excluded by the TPO on account of the nonavailability of the current year data at the time of preparation of the TP study by the assessee .DRP has rejected the inclusion of this company, on account of the fact that various companies were excluded only on account of nonavailability of the information at the relevant time . Though it is correct that the tribunal in

the above cited order had directed to include Evoke Technologies, as comparable however in the present case there is no examination of the profile of the Evoke Technologies on the parameters laid down by Rule 10 B of Income Tax Rules 1962, with the assessee. In the light of the above we deem it appropriate to remand back the inclusion of evoke technologies to the file of TPO with the direction to consider whether this company is functionally similar on the touchstone of the parameters laid down in the rule 10 B of the Rule or not. However, in case the assessing officer / TPO had rejected the inclusion of other similarly situated companies while connecting the TP study on the ground of nonavailability of the current year data, then it will be open for the TPO /assessing officer to examine any other company for the purposes of benchmarking the international transaction. With the above said directions the ground raised by the assessee is allowed for statistical purposes.

SAGARSOFT (INDIA) LIMITED

14. With respect to ground No.6, the ld.AR of the assessee had requested for inclusion of Sagarsoft (India) Limited to the list of comparables.

14.1. With respect to inclusion of Sagarsoft (India) Limited, assessee had submitted that it was accepted as comparable in earlier assessment year i.e., A.Y. 2015-16 and that it is functionally comparable and that it has passed all filters of the Transfer Pricing Officer and that it was treated as software services company in earlier years and hence, the same can be included to the list of comparables for determining ALP.

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

14.3. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. This coordinate bench in ITA 227 & 227/Hyd/2021 for AY 2016-17, directed the AO to include this company as comparable to the assessee for determining ALP.

14.4 It is noticed from the order passed by the TPO, that this company was excluded by the TPO on account of the nonavailability of the data at the time of preparation of the TP study by the assessee in prowess data base. DRP has rejected the inclusion of this company, on account of the fact that various companies were excluded only on account of nonavailability of the information at the relevant time. Though, it is correct that the tribunal in the above cited order had directed to include SAGARSOFT (INDIA) LIMITED, as comparable however in the present case there is no examination of the profile of the SAGARSOFT (INDIA) LIMITED on the parameters laid down by Rule 10 B of Income Tax Rules 1962, with the assessee. In the light of the above we deem it appropriate to remand back the inclusion of SAGARSOFT (INDIA) LIMITED to the file of the transfer pricing Officer with the direction to consider whether this company is functionally similar on the touchstone of the parameters laid down in the rule 10 B of the Rule or not. However, in case the assessing officer / TPO had rejected the inclusion of other similarly situated companies while connecting the TP study on the ground of nonavailability of the current year data in prowess data base, then it will be open for the

TPO /assessing officer to examine any other company for the purposes of benchmarking the international transaction. With the above said directions, the ground raised by the assessee is allowed for statistical purposes.

14.5. **Thus, Ground Nos. 5 and 6 are partly allowed.**

15. **Ground 10 to 12 are with respect to interest on outstanding receivables:**

15.1 The ld.AR for the assessee had submitted that interest computed by the lower authority on the outstanding receivable was Rs.9,50,811 as against the trade receivables from AE as on 1.4.2015 was Rs.1,47,99,409-/. The ld.AR submitted that the DRP had bench marked the international transaction by taking the Short Term deposit rate of SBI.

15.2 The learned AR had submitted that instead of SBI Short Term deposit rate, LIBOR Plus is to be taken as the receivables are in foreign currency. Further it was submitted that the interest should be calculated for the delayed period only. He had relied upon the decision of the Tribunal in the case of ADP (P) Ltd ITA No.161/Hyd/2019 A.Y. 2015-16.

16. On the other hand, ld.DR relied upon the paragraphs 2.32.12 and 2.32.17 and submitted that the order passed by the lower authorities is in accordance with law. With respect to charging of interest at the SBI Short Term deposit rate, he had submitted that the carrying cost of outstanding receivables amount beyond the period of 30 days were not factored into the prices charged by assessee from its AE. In view thereof outstanding receivable beyond the period of 30 days is required to be bench marked. Assessee being situated in India would be arranging the equivalent amount

of outstanding dues either in foreign currency or Indian currency from financial institutions situated in India and would be paying the interest to the financial institutions, in case amount is required in its business activities. However in case the outstanding amount is received in time and is surplus than either assessee would use said amount in business in the form of working capital or in alternative assessee would deposit the surplus amount in the Bank for a short period so as to earn interest thereon. Since the assessee is situated in India and is not depositing/ receiving the amount with the London Bank, therefore, the Bank rate interest of London Bank or LIBOR Plus on such outstanding amount cannot be charged. In short, the order of DRP is reasonable to compensate the assessee for the period, for which the assessee was deprived from using the outstanding amount.

17. We have heard the rival contentions of the parties and perused the material available on record. The DRP in paragraph 2.32.12 had restricted the charging of interest for the delayed period after allowing the reasonable period of 30 days. Accordingly, the Assessing Officer / TPO was directed to recompute the interest based on delay period. We do not find any error in the said finding recorded by the DRP.

18. With respect to the rate of interest, the assessee had raised the alternative argument of applying the Libor plus as the outstanding amount is receivable in foreign currency. In the present case, the receivable from A.E. was Rs.1,47,99,409/-, which is almost 1/8th of the total turnover of the assessee. In view of the above and respectfully following the decision of the hon'ble Delhi High Court in the case of Kusum Health Care, we restrict the levy of interest on outstanding receivables to Libor plus 250 points. The other arguments raised by the Revenue supporting the charging of bank rate interest on the short term deposit is left open to be decided in appropriate case. Accordingly, these grounds are partly allowed.

19. No other ground / issue has been raised by the assessee in the present appeal.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 10th August, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 10th August, 2022.

Copy to:

S.No	Addresses
1	Indeed India Operations Private Limited, Ground Floor, Block C, Divyasree Omega, Hitech City Road, Kondapur, Hyderabad – 500084.
2	The Deputy Commissioner of Income Tax, Circle – 2(1), Hyderabad.
3	Addl/Jt/Deputy/ACIT/ITO, National e-Assessment V
4	Principal Commissioner of Income Tax – 4, Hyderabad.
5	DR, ITAT ‘A’ Bench, Hyderabad.
6	Guard File

By Order