

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOS. 1214/MUM/2015 (A.Y: 2010-11)**

M/s. Travelex India Private Limited Paradigm, A Wing, 2 <sup>nd</sup> Floor, Unit No. 201 Mindspace, Malad Link Road Malad, Mumbai - 400064  <b>PAN: AACCR4942B</b>	v.	ACIT – 13(3)(2) Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Paras Savla &amp; Shri Harsh Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Samuel Pitta</b>
<b>Date of Hearing</b>	<b>:</b>	<b>23.08.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>07.11.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. This appeal is filed by the assessee against order of Dispute Resolution Panel–II, Mumbai [hereinafter in short "Ld.DRP"] dated 29.10.2014 for the A.Y. 2010-11 direction passed u/s. 144C(5) of Income-tax Act, 1961 (in short "Act").
2. Brief facts relating to the Transfer Pricing Adjustments were brought to our notice by the Ld. AR and it was submitted that assessee has

selected 15 comparables from search on Prowess and Capitaline data base with the mean operating profit to total cost (OP/OC) @14.27%. The comparables selected by the assessee are given below: -

Sl.No.	Name of the company	Data Source	OP/TC
1	A O K In-House B P O Services Ltd.	Prowess	12.58%
2	Aditya Birla Minacs Worldwide Ltd.	Prowess	8.06%
3	Cameo Corporate Services Ltd.	Prowess	9.77%
4	Cosmic Global Ltd.	Prowess	34814%
5	Delta Services (1) Pvt. Ltd.	Prowess	6.67%
6	Informed Technologies India Ltd.	Prowess	12.01%
7	Infosys B P O Ltd.	Prowess	24.29%
8	K N M Services Pvt. Ltd.	Prowess	13.69%
9	Optimus Global Services Ltd.	Prowess	-1.85%
10	Sparsh B P O Services Ltd.	Prowess	5.97%
11	Crossdomain Solutions Pvt Ltd	Capitaline	28.32%
12	Omega Healthcare Management Services Pvt Ltd	Capitaline	9.34%
13	B N R Udyog Ltd. (Medical Transcription)	Prowess (Segmental)	38.33%
14	In House Productions Ltd. (Healthcare Division)	Prowess(Segmental)	4.32%
15	Timex Group India Ltd. (Timex Global Services)	Prowess (Segmental)	8.38%
	Mean		14.27%

**3.** A reference u/s. 92CA(2) of the Act was made to TPO-II(8), Mumbai and accordingly, TPO called for the relevant information and the basis of selection of comparables. After considering the submissions of the assessee TPO has rejected the same and proceeded to adopt the entity level PLI of the assessee for the purpose of determination of arm's length price of the international transaction of providing IT support, application development and testing (ITES) Services to the AE i.e., M/s. Travelex Ltd UK.

4. The background of the assessee, assessee is part of Travelex group, which is the world's largest foreign exchange specialist and is specialized in the provision of retail, corporate and commercial foreign exchange services. The assessee is a wholly owned subsidiary of Travelex Plc, UK, which is turn, is held by Travelex Holdings Ltd. The assessee's business is divided into four activities

*a. Information Technology services which include Application Development, Testing and IT support.*

*b. Group audit services, which include the performance of various internal audit functions.*

*c. Retail services, which include purchase and sale of foreign currency in its capacity as a licensed full-fledged moneychanger.*

5. As per form 3ECB, the assessee is having following two AES with whom it had international transactions during FY 2009-10:

- (i) Travelex Limited UK*
- (ii) Travelex Limited (Australia)*

6. The international Transactions reported by the assessee in the form of Form 3CEB are as under: -

<b>Transaction</b>	<b>Associated Enterprise</b>	<b>Amount of transaction in Rs.</b>	<b>Method used</b>
IT Support, application development and testing services	Travelex Limited UK	Rs.7,84,44,748/-	TNMM
Insurance Charges	Travelex Limited UK	Rs. 2,24,050/-	

<b>Transaction</b>	<b>Associated Enterprise</b>	<b>Amount of transaction in Rs.</b>	<b>Method used</b>
Reimbursement of Marketing Expenses	Travelex Limited (Australia)	Rs.4,32,140/-	CUP
Reimbursement of Travelling Expenses	Travelex Limited (Australia)	Rs.2,22,294/-	CUP
	<b>Total</b>	<b>Rs.7,93,23,232/-</b>	

7. The TPO after considering the comparables study submitted by the assessee, rejected the international transactions relating to provision of IT support services of ₹.7,84,44,748/- and proceeded to determine the arm's length price adjustment by selecting the following final comparables as under: -

<b>S.NO</b>	<b>The company</b>	<b>The PLI(OP/OC)</b>
(i).	Delta Services (I) Pvt. Ltd	5.17
(ii).	Informed Technologies India Ltd.	26.15
(iii).	Cosmic Global Ltd.	14.97
(iv).	Cameo Corporate Services Ltd.	7.84
(v).	AOK In-house BPO Services Ltd.	0.11
(vi).	Infosys BPO Ltd	31.2
(vii).	Timex segment group India Ltd-Timex Global services	7.49
(viii).	In House Productions Ltd.( healthcare segment)	17.3
(ix).	Sparsh BPO Services Ltd	2.57
(x).	Excel Infoways Ltd.	326.22
(xi).	Fortune Infotech Ltd.	22.8
(xii).	Microland Ltd.,	-3.79
(xiii).	Professional Management Consultants Pvt. Ltd	-12.07

8. TPO determined the PLI of the tested party at 9.22% which is lesser than the requisite mean of the comparables 33.38%. Accordingly, he determined the arm's length price at ₹.9,57,97,111/- and determined arm's length price adjustment of ₹.1,73,52,363/-.

9. Aggrieved assessee preferred objection before DRP-II, Mumbai and DRP after considering the objections of the assessee excluded eight (8) comparables from the comparable selected by the TPO. Against this direction of the DRP, assessee filed an appeal before us.

10. Before us, Assessee has raised following grounds in its appeal: -

*"1. On the facts and circumstances of the case and in law, the learned Transfer Pricing Officer ('TPO') and Assistant Commissioner of Income-tax- 13(3)(2) (AO), under the directions of Hon'ble Dispute Resolution Panel 11 CDRP) erred in determining the arm's length price of the international transaction for provision of Information Technology enabled Services ('ITeS') at Rs. 8,28,54,661 instead of Rs 7.84.44.748 and thereby making an adjustment of Rs. 44,09,913.*

*The Appellant prays that the aforesaid adjustment be deleted.*

*2. On the facts and circumstances of the case and in law, the AO/TPO/ DRP erred in:*

- a. rejecting the search process followed by the Appellant and carrying out a fresh search;*
- b. rejecting multiple year data;*
- c. not considering the Appellant as a low risk captive service provider;*
- d. including certain comparables, which were not comparable;*
- e. considering erroneous margins of the comparable selected;*
- f. not including certain comparables selected by the Appellant in its TP Study;*
- g. rejecting segmental data used by the Appellant to compute the Profit Level Indicator ('PLI) and adopting an entity level PLI; and*
- h. not allowing a working capital adjustment and risk adjustment*

*The Appellant prays that the appropriate relief be granted.*

3. *On the facts and circumstances of the case and in law, the Learned AO has erred in disregarding the directions of the Hon'ble DRP of obtaining necessary clarification from HDFC bank and taking necessary action as mandated by law.*

*The Learned AO made an addition of cash deposits amounting to Rs. 65,85,700 erroneously reported in the AIR information without providing adequate opportunity to the Appellant.*

*The Appellant prays that the aforesaid addition be deleted.*

4. *On the facts and circumstances of the case and in law, the Learned AO has erred in granting short credit of TDS to the extent of Rs. 2,60,503.*

*The Appellant prays that the Learned AO be directed to grant above credit of TDS.*

5. *On the facts and circumstances of the case and in law, the Learned AO has erred in granting short credit of self-assessment tax to the extent of Rs. 35,36,000*

*The Appellant prays that the Learned AO be directed to grant above credit of self-assessment tax.*

6. *On the facts and circumstances of the case and in law, the Learned AO and Hon'ble DRP have erred in levying excess interest under section 234B and 234C of the Act.*

*The Appellant prays that the Learned AO be directed to re-compute interest under section 234B and 234C of the Act.*

7. *On the facts and circumstances of the case and in law, the Learned AO and Hon'ble DRP have erred in initiating penalty proceedings under section 274 read with section 271(1)(c) of the Act."*

11. Ground No. 1 is general in nature, accordingly, the same is not adjudicated.

**12.** With regard to Ground No. 2, Ld. AR pressed only Ground No. 2(d) and 2(g) and rest of the sub-grounds in Ground No. 2 are not pressed, accordingly grounds are dismissed as not pressed.

**13.** Before us, with regard to Ground No. 2(d), Ld. AR submitted that it seeks the deletion of three (3) comparables which was retained by the DRP from the comparables selected by the TPO. Ld. AR submitted that it is seeking relief and exclusion of following three comparables i.e., (i) Cosmic Global Ltd., (ii) Informed Technologies India Ltd., and (iii) Infosys BPO Ltd.,

**14.** In this regard, Ld. AR submitted that Cosmic Global Ltd., is selected by the assessee originally and he brought to our notice Page No. 13 of the TPO order and submitted that majority of the services undertaken by this company are out sourced. He brought to our notice findings of the TPO at Page No. 13 of the TPO order and Page No. 5 of the DRP order wherein the assessee has submitted before DRP that Cosmic Global Ltd., is following different business model and majority of the activities are sub contracted. He brought to our notice translation charges have been paid to the vendors (2.18 crores) to the extent of 37.73% on sales (43.38% of total operating cost). However, DRP rejected objections raised by the assessee and retained the above comparables by rejecting the arguments

of the functional disparity. In this regard he brought to our notice Page No. 179 and 180 of the Paper Book and highlighted that Cosmic Global Limited's major expenditure is translation charges paid and in the current assessment year it has paid ₹.2.18 crores and in previous assessment year ₹.3.00 crores which is substantial expenditure compared to the revenue from operation. Further, he submitted that the salaries and wages are separately charged to the Profit and Loss Account, it shows that Cosmic Global Ltd., is following a different model of operation. In this regard he relied on the decision of the ITAT Pune bench in the case of Aptara Technologies Pvt Ltd., v. ACIT in ITA.No. 259/PN/2015 dated 31.05.2016, Eaton Technologies Private Limited v. ACIT in ITA.No. 519/PUN/2015 dated 16.08.2021 and Brintons Carpets Asia Pvt Ltd., v. DCIT in ITA.No. 1312/PUN/2015 dated 29.03.2019.

**15.** With regard to comparable Informed Technologies India Ltd., this is also originally selected by the assessee and Ld. AR submitted that TPO has retained this comparables. However, DRP has not given any finding. Therefore, he submitted that this comparable also having the same business model of Cosmic Global Ltd., because it also has high translation charges and low employee cost ratio. He further brought to our notice that employee cost to the total cost ratio was 36.79% compared to the 71.28% to the employee cost charged by the assessee. In this regard he relied

on the decisions of the Pune Bench in the case of Aptara Technologies Pvt Ltd., v. ACIT in ITA.No. 259/PN/2015 dated 31.05.2016 Eaton Technologies Private Limited v. ACIT in ITA.No. 519/PUN/2015 dated 16.08.2021 and Brintons Carpets Asia Pvt Ltd., v. DCIT in ITA.No. 1312/PUN/2015 dated 29.03.2019

**16.** With regard to Infosys BPO Ltd., this is also originally selected by the assessee. He submitted that the Infosys BPO Ltd., has huge turnover and brought to our notice that TPO has not applied any turnover filter. Hence he brought to our notice Page No. 14 of the TPO order to highlight the huge revenue declared by them and he also brought to our notice Page No. 6 of the DRP order and submitted that the turnover declared by the Infosys BPO Ltd., is 143 times that of the assessee. He also brought to our notice Page No. 50 of the Paper Book to submit that while selecting the comparables even assessee has not selected the upper and lower limit for turnover filter. Therefore, this comparable has to be excluded considering the huge turnover and brand value of the Infosys BPO Ltd., when compared to the turnover of the assessee i.e., only 7,84,41,868/- in this segment. In this regard he relied on the decision of the Coordinate Bench in the case of Swiss Re Services India Private Ltd v. DCIT in ITA.No. 1898/Mum/2015 dated 06.01.2020. Further, he submitted that

there are extraordinary events recorded in Infosys BPO Ltd., in this regard he brought to our notice Page No. 183 and 184 of the Paper Book.

**17.** Ld. DR objected to the submissions made by the Ld. AR and submitted that with regard to Cosmic Global Ltd., he submitted that assessee has accepted in previous three Assessment Years and assessee itself selected this comparable in previous two Assessment Years and further he submitted that assessee itself not contested before the TPO/DRP for selection of these comparable. With regard to the case laws relied by the assessee of Pune Bench in the case of Aptara Technologies Pvt Ltd., v. ACIT (supra) he submitted that profit alone is not to be compared year wise rather functions has to be compared. He vehemently argued that Cosmic Global Ltd., is a proper comparable to the assessee.

**18.** With regard to other comparables Ld.DR relied on the order of the TPO and further, submitted that the high turnover should not be a criteria for rejection and should not be ended up with cherry picking of the comparables and it has to be compared and analysed based on the functional comparability.

**19.** Considered the rival submissions and material placed on record, we observe that on similar facts the Pune Bench of the Tribunal in the case

of Aptara Technologies Pvt Ltd., v. ACIT in ITA.No. 259/PUN/2015 dated 31.05.2016 adjudicated the identical issue and held as under: -

"23 On perusal of record and the orders of Tribunal in earlier years in assessee's own case and also our order in the paras hereinabove, wherein, we have directed that Cosmic Global Ltd. has to be excluded because of its high transaction charges and low employee cost to the total cost ratio, we find that Informed Technologies Ltd. for the year under consideration is also following different business module and the employee cost to the total cost ratio of the said concern for the year under consideration is 36.79% as against 71.26% of the assessee. Similarly, in the earlier years also, the employee cost ratio of Informed Technologies Ltd. was lower than the said ratio shown by the assessee. The Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. Vs. CIT (supra) have also excluded the concern due to its low employee cost ratio and operational on different business module. Following the same parity of reasoning, we hold that the said concern is to be excluded from the final list of comparables. We hold so.

24. Another aspect relating to the said concern was varying profitability shown by Informed Technologies Ltd. which is as under:-

Particulars	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
OP/OC	-44.21%	34.71%	3.67%	22.61%	26.73%	6.97%	5.12%

25. Where comparable picked up by the TPO for the purpose of benchmarking the international transaction in the hands of assessee is showing such differential profitability earned from year to year, then such a concern cannot be picked up as being functionally similar because of abnormal profitability trend. In this regard, we find that Pune Bench of Tribunal in case of Cummins Turbo Technologies Ltd., UK Vs. DDIT (Int. Tax,) (supra) had also held that Informed Technologies Ltd., because of its abnormal profitability trend, is to be excluded from the final list of comparables. Accordingly, we hold so."

20. Similarly, in the case of Eaton Technologies Private Limited v. ACIT in ITA.No. 519/PUN/2015 dated 16.08.2021 Pune bench of the Tribunal held as under: -

"(ii) *Informed Technologies Ltd. :*

28 *The TPO has discussed this company at page 51 of his order wherein the assessee has objected to the selection of this comparable in ITES segment. The assessee has contended this company should not be selected as comparable because in this case the AMD/sales ratio exceeds 3%. This was however selected as comparable by the TPO. That before the DRP also similar argument were taken by the assessee. The DRP at para 5.7.1 of its order observed that while deciding the comparability of Acropetal Technologies it had been held that filter AMD/sales is not appropriate for the captive companies engaged in the IT/ITES. Therefore, Informed Technologies was treated as functionally comparable with that of the assessee upholding the selection of comparable by the TPO.*

29. *The Id. AR reiterating the submissions made before the Subordinate Authorities took us through the annual report of the said company annexed at pages 247 to 294 in the Paper Book and at page 252 review of the companies has been dealt with. That at page 263 Balance Sheet and at page 264 P&L account has been annexed. Thereafter at page 270 of the Paper Book at Schedule 17 Clause K there is a segment reporting and it is stated therein this company is principally engaged in the business of business process outsourcing which is the only reportable segment as per Accounting Standard 17 issued by the Institute of Chartered Accountants of India on segment reporting. The Id. AR further relied on the decision of the Pune Tribunal in the case of Vishay Components (P.) Ltd. vs. ACIT (2017) 83 taxmann.com 319 (Pune-Trib.) and therein at para 40 the Tribunal has upheld the action of the TPO in correctly excluding Informed Technologies India Ltd. The relevant paras are extracted as follows :-*

*—40. Now, coming to the last two concerns i.e. Aditya Birla Minacs Worldwide Ltd. and Informed Technologies India Ltd., wherein Informed Technologies India Ltd. is providing KPO services.*

*In respect of Aditya Birla Minacs Worldwide Ltd., the learned Departmental Representative for the Revenue has referred to the financial statements of the said concern and pointed out that the business over view talks of the KPO business carried*

*on by the said concern though the DRP says that it is a BPO but the Directors Report shows different functions.*

*The learned Authorized Representative for the assessee on the other hand, pointed out that the said concern was multi tasking but it was accepted as comparable in the last year which was objected by the learned Authorized Representative for the assessee. The learned Authorized Representative for the assessee further pointed out that the said concern was accepted as comparable in assessment year 2009-10 in Mercer Consulting (India) Pvt. Ltd. (supra). Further, the learned Authorized Representative for the assessee fairly pointed out that the financial data for assessment year 2009-10 in respect of Aditya Birla Minacs Worldwide Ltd. are not available.*

*We have already held in the paras hereinabove and following the ratio laid down by the Hon'ble High Court of Delhi in Rampgreen Solutions (P.) Ltd. (supra) that the concerns which are engaged in providing KPO services are not functionally comparable to the concerns which are providing BPO services and have directed the TPO to exclude the same. Applying the said ratio, we hold that the TPO has correctly excluded Aditya Birla Minacs Worldwide Ltd. and Informed Technologies India Ltd. from the final list of comparables. In view thereof, the grounds of appeal No.12, 14 to 16 are partly allowed.”*

*The Id. DR also though relying on the DRP findings principally agreed on the exclusion of this company as decided by the Pune Tribunal (supra).*

*Having heard the parties herein and considering the decision of Pune Tribunal (supra), we direct the Assessing Officer/TPO to exclude Informed Technologies India Ltd. from the final list of comparables in ITES segment in respect of the assessee.”*

**21.** Further, in the case of Brintons Carpets Asia Pvt Ltd., v. DCIT in ITA.No. 1312/PUN/2015 dated 29.03.2019 the Pune Bench of the Tribunal held as under:

*"20. The year under appeal before us is assessment year 2010-11 and the assessee has been showing different profitability from year to year and such a concern cannot be picked up as being*

*functionally similar because of abnormal profitability trend. Accordingly, we direct the Assessing Officer / TPO to exclude Informed Technologies Ltd. from final list of comparables."*

**22.** In the case of Swiss Re Services India Private Limited v. DCIT (supra) the Coordinate Bench of the Tribunal rejected the comparable of Infosys BPO Ltd., observing as under: -

*"21. So far as exclusion of Infosys BPO is concerned, we have seen that the assessee itself included Infosys BPO Ltd. in its TP study and furnished related data about this comparable. For exclusion of this comparable, the assessee raised additional ground of appeal, which we have admitted for adjudication. Before us, the Id. AR of the assessee vehemently submitted that the assessee inadvertently included as a comparable by the assessee itself in its Transfer Pricing Study, and there is no estoppel in law to exclude the comparable, if the same is not comparable with the assessee on functional comparability. Infosys BPO is a giant company with different risk profile and nature of services, has brand value and owns IPs unlike the assessee who broadly provides back office support service and hence not comparable to the assessee. We have seen that the Tribunal in case of Stream International Services (P.) Ltd. vs. ADIT (141 ITD 492 Mum-Trib), while considering the functional similarity/dissimilarity excluded this comparable by taking view that Infosys BPO is a market leader and a giant company with a different risk profile and nature of service, has brand value and hence not comparable to the assessee due to huge difference in the size and scale of the company. Further, we have noted that the TPO himself in A.Y. 2009-10 himself rejected this comparable on account of Multiple Functional Segments with huge allocated items. The Hon'ble Bombay High Court in CIT vs. Pentair Water India (P.) Ltd. (supra) while considering the question of law relating to the exclusion of this comparable on size and turnover filter affirmed the exclusion. The Hon'ble Delhi High Court in Sanvih Info Group (supra) also confirmed the exclusion of Infosys BPO being a giant company. We have further noted that by following the decision of Hon'ble Bombay High Court in CIT vs. Pentair Water India (P.)Ltd. (supra), the co-ordinate bench of Tribunal in Hapag Lloyd Global Services Ltd. vs. DCIT (ITA No. 7539/Mum/2014 held that the turnover of Infosys BPO is very high comparative to tested party and excluded and excluded this comparable. Considering the consistent view of Hon'ble Delhi High Court, Hon'ble Bombay High Court and co-ordinate bench of*

*Tribunal, we are of the view that Infosys BPO is a market leader and a giant company with a different risk profile and nature of service, has brand value and hence not comparable to the assessee due to huge difference in the size and scale of the company. Therefore, we direct the AO to exclude Infosys BPO from final set of comparable as the same is not comparable with assessee, which is providing captive services."*

**23.** Respectfully following the above decisions, we find merit in the submissions of the Ld. AR. We observe from the submissions of the Ld.DR that the assessee itself has selected the above said three comparables. As a prudent way and accepted principal that each year the comparable has to be analysed and compared. Therefore, the selection or rejection in the earlier or subsequent year cannot be a basis to consider in the present assessment year. Therefore we direct the Assessing Officer to exclude the three comparable i.e., Cosmic Global Ltd., Informed Technologies India Ltd., and Infosys BPO Ltd., and recompute the ALP for the present assessment year. Ground No. 2(d) raised by the assessee allowed.

**24.** With regard to Ground No. 2(g), Ld. AR pressed the ground No. 2(g) on rejecting of segmental data use of the assessee to compute the PLI and adopting the entity level PLI by the TPO and he brought to our notice the observation of the TPO for adopting entry level revenue since no segmental data was available with the assessee. In this regard he submitted that the business of the assessee is comprises of money

exchange and ITES and he brought to our notice Page No. 6 of the Paper Book and submitted that income from operation is ₹.15.12 crores and revenue from IT outsource services is only ₹.9.57 crores and he also brought to our notice Page No. 70 of the Paper Book to bring on record results of the twelve months in place of result declared by the assessee for fifteen (15) months in the reported financial statements as on end of 31.03.2010. He submitted that assessee has brought on record and submitted before TPO results of twelve months with a revenue of ₹.7.84 crores and assessee has declared segment profit of ₹.98.56 lacs. In this regard he objected to the objections made by the TPO in his order.

**25.** On the other hand, Ld.DR relied on the orders of the TPO.

**26.** Considered the rival submissions and material placed on record, we observe and noticed that assessee has submitted separate operational results for twelve (12) months which is relevant for comparable purpose before the TPO. However, TPO has not considered this information and proceeded to use the financial results submitted by the assessee for fifteen (15) months and accordingly, he rejected the same. Since assessee has preferred to accept the comparability study made by the TPO and finalized by the DRP and submitted objections only relating to three comparable which we have considered and adjudicated in our above

discussion in this order. Therefore, we do not find any reason to adjudicate this ground at this stage.

**27.** With regard to Ground No. 3, Ld. AR submitted that the Assessing Officer relying on the AIR report and reconciliation made an addition of unexplained cash deposits u/s. 69 of the Act to the extent of ₹.65,85,700/- Even though assessee has made a submission that assessee has not made any cash deposits in its bank account and further, it was submitted that assessee maintains current account. Further, he submitted that the Assessing Officer not only rejected the submissions of the assessee in draft assessment and further Assessing Officer sustained the addition with the observation that HDFC bank has not responded to the notices u/s.133(6) of the Act notices even though DRP has categorically gave direction to verify and reconcile the cash deposits made by the assessee with the HDFC bank. He prayed that suitable direction may be given in this regard.

**28.** On the other hand, Ld. DR relied on the order passed by the Assessing Officer.

**29.** Considered the rival submissions and material placed on record, we observe that Assessing Officer has come across cash deposits in AIR Portal and asked the assessee to file the bank reconciliation to

substantiate the claim of the assessee that assessee has not made any cash deposits. We observed from the record that DRP has accepted the submissions of the assessee and gave a clear direction that assessee has furnished statement of concerned bank account for the relevant period and Assessing Officer was asked to obtain the clarification from the above bank regarding the error in reporting and take a necessary action. Since the Assessing Officer issued the notice to the concerned bank and no clarification received from the bank he proceeded to sustain the addition as made in the draft assessment. This is clearly a violation of direction given by the DRP. We direct the Assessing Officer to delete this addition considering the fact that assessee has filed all the bank statements in support of their claim that assessee has not made any cash deposits. It is the responsibility of the Assessing Officer to substantiate the information reported in the AIR and reconcile with the relevant bank. This wrong reporting by the relevant bank cannot be a reason to punish the assessee without establishing a proper evidence. Accordingly, Ground No. 3 raised by the assessee is allowed.

**30.** With regard to Ground No. 4 and 5 of grounds of appeal wherein assessee has submitted that Assessing Officer has not granted TDS credit to the extent of ₹.2,60,503/- and short credit of self-assessment tax paid by the assessee to the extent of ₹.35,36,000/-. In this regard,

considering the overall merits on the submissions made by the assessee we are inclined to remit this issue back to the file of Assessing Officer with a direction to verify the records submitted by the assessee on merit and as per law. It is needless to say that assessee may be given a proper opportunity of being heard. In the result the issue under consideration is remitted back to the file of Assessing Officer for statistical purpose.

**31.** With regard to Ground No. 6 which is consequential in nature, accordingly, this ground is dismissed.

**32.** With regard to Ground No. 7 which is premature in nature accordingly this ground is also dismissed.

**33.** In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on the 07<sup>th</sup> November, 2022

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 07/11/2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**