

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1035/MUM/2016
Assessment Year: 2011-12

Lanxess India Pvt. Ltd.,
Lanxess House, Plot NO.
A/162-164, Road No. 27,
Wagle Estate, Opp. ITI College,
MIDC, Thane (West)-400 604.
PAN No. AACCB 3880 A
Appellant

Vs.

Dy. CIT, Circle-1,
Room No. 22, 6th floor, B
Wing Asher IT Park, Road,
16-Z, Wagle Industrial
Estate, Thane (West)-400604.
Respondent

ITA No. 1697/MUM/2016
Assessment Year: 2011-12

Dy. CIT, Circle-1,
Room No. 22, 6th floor, B Wing
Asher IT Park, Road, 16-Z,
Wagle Industrial Estate, Thane
(West)-400604.
Appellant

Vs.

Lanxess India Pvt. Ltd.,
Lanxess House, Plot NO.
A/162-164, Road No. 27,
Wagle Estate, Opp. ITI
College, MIDC, Thane (West)-
400 604.
PAN No. AACCB 3880 A
Respondent

CO No. 89/MUM/2016
(Arising in ITA No. 1697/MUM/2016)
Assessment Year: 2011-12

Lanxess India Pvt. Ltd.,
Lanxess House, Plot NO.
A/162-164, Road No. 27,
Wagle Estate, Opp. ITI College,
MIDC, Thane (West)-400 604.
PAN No. AACCB 3880 A

Vs.

Dy. CIT, Circle-1,
Room No. 22, 6th floor, B
Wing Asher IT Park, Road,
16-Z, Wagle Industrial
Estate, Thane (West)-400604.



Appellant

Respondent

Assessee by : Shri Dhanesh Bafna/Chandni
Shah/Riddhi Maru
Revenue by : Ms. Samruddhi Hande, DR
Date of Hearing : 01/02/2023
Date of pronouncement : 10/02/2023

ORDER

PER OM PRAKASH KANT, AM

These cross-appeals by the assessee and Revenue and cross-objection by the assessee are directed against final assessment order dated 28.01.2016 passed by the Ld. Dy. Commissioner of Income-tax, Circle-1, Thane (in short 'the Assessing Officer') for assessment year 2011-12, pursuant to the order of Ld. Dispute Resolution Panel-1, Mumbai (in short 'the DRP').

2. The grounds raised by the assessee are reproduced as under:

1. On the facts and circumstances of the case and in law, the learned Dy. Commissioner of Income Tax, Circle - 1, Thane ('the AO') / Jt. Commissioner of Income Tax, Transfer Pricing Officer - 2(3), Mumbai (the TPO) erred in making an adjustment to the arm's length price of the international transaction of export of finished goods under Manufacturing segment D using Internal TMM and thereby in computing transfer pricing adjustment of Rs.2,77.11,082/- in respect of Nagda Plant and Rs. 14,96,781/- in respect of Jhagadia Plant.



It is prayed that the learned AO/TO be directed to consider the international transaction of the Assessee as arm's length and accordingly the transfer pricing adjustment of Rs.292,07.863/- should be deleted.

The Appellant prays that the aforesaid additions be deleted.

2. On the facts and circumstances of the case and in law, the AO erred in granting short credit for Advance Tax (Rs. 1,50,00,000/-) and TDS (Rs. 44,881/-).

The Appellant prays that the credit for Advance Tax and TDS be granted.

3. On the facts and in the circumstances of the case and in law and in law, the AO erred in not giving effect to the rectification application letter dt. April 6, 2015 with respect to Ground no. 2 while passing the order under section 143(3) r.w.s. 144C(13) of the Act.

2.1 The grounds raised by the Revenue are reproduced as under:

1.1 Whether on the facts and in the circumstances of the case, and in law, the DRP was justified in directing the Assessing Officer to include MIs. Microgenetics Systems Pvt Ltd & Mis. e4e Health care business services Put. Ltd as comparables despite the fact that 'medical transcription' and 'health care outsourcing' activities cannot be functionally comparable with the activity of providing technical support (IT) services for the purpose of installation & implementation of the Axapta ERP licenses software.

1.2 Whether on the facts and in the circumstances of the case, and in law, the DRP was justified in directing the Assessing Officer to include M/s. Jindal Intellicom Pvt. Ltd. As comparables despite the fact that 'call centre services' activity cannot be functionally comparable with the activity of providing technical support (IT) services for the purpose of installation & implementation of the Axapta ERP licenses software.

1.3 Whether on the facts and in the circumstances of the case, and in law, the DR was justified in directing the



Assessing Officer to include MIs. Jindal Intellicom Pvt. Ltd. as comparable despite the fact that there was substantial expansion of the capacity of said comparable during the relevant year, which has direct impact on the profitability of the said comparable company during the relevant period.

2. Whether on the facts and in the circumstances of the case, and in law, the DRP erred in not confirming addition of Rs. 97,50,004/- in respect of unexplained differences in the credit balances of two purchase parties despite the fact that the assessee failed to explain even after repeated opportunities during the assessment proceedings. In fact the assessee could not explain the differences even during proceedings before the DR (para 4.1 on page 16 of order of DRP.

3. The directions of the DR may be vacated and that of the Assessing Officer may be restored.

2.2 The grounds raised in the cross-objection are reproduced as under:

“1. On the facts and circumstances of the case, and in law, the Hon'ble DRP / Ld. AO erred in retaining Accentia Technologies Limited as comparable company in its comparability analysis which is functionally dissimilar to the cross-objector / respondent.

It is therefore prayed that Accentia Technologies Limited ought to be excluded from the final set of comparable companies since it is functionally not comparable to the cross-objector / respondent.

2. On the facts and circumstances of the case, and in law, the Hon'ble DRP / Ld. AO erred in retaining Acropetal Technologies Limited (IT segment) as comparable company in its comparability analysis which is functionally dissimilar to the cross-objector / respondent.

It is therefore prayed that Acropetal Technologies Limited (IT segment) ought to be excluded from the final set of



comparable companies since it is functionally not comparable to the cross-objector / respondent.”

3. Briefly stated, facts of the case are that the assessee-company is a subsidiary of Lanxess Deutschland GmbH. During the year under consideration, the assessee-company was engaged in the business of manufacturing and trading of chemical and chemical intermediaries, through three plants located at Nagada (Madhya Pradesh), Jhagadia (Gujarat) and Madurai (Tamil Nadu). The assessee filed return of income on 28.11.2011 which was revised at loss of (-) Rs.116,34,73,438/- on 13.09.2012. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short ‘the Act’) were issued and complied with. In view of various international transactions reported by the assessee, the matter of determination of arm’s length price of those international transactions, was referred to the Ld. Transfer Pricing Officer (TPO). The Ld. TPO vide his order dated 27.01.2015 in terms of section 92CA(3) of the Act, proposed transfer pricing adjustment to manufacturing segment and technical support service. Under manufacturing segment, the Ld. TPO computed adjustment for Nagada plant at Rs.2,77,11,082/- and for Jhagadia Plant at Rs.14,96,781/-. In this manner, total adjustment to manufacturing segment was worked out at Rs.2,92,07,863/-. The adjustment to technical support services was proposed at Rs.1,22,69,002/-. In this manner, the Ld. TPO proposed total adjustment of Rs.4,14,76,865/-. In the Draft



Assessment Order passed on 24.03.2015, the Assessing Officer proposed the transfer pricing adjustment computed by the Ld. TPO and also proposed an addition of Rs.97,50,004/- for being difference in amount of the creditors appearing in the ledger account of the assessee and ledger account of the two parties namely 'Trans Tech Turnkey Pvt. Ltd.' and 'Ray Engineering Pvt. Ltd.' Against the draft assessment order, the assessee filed objection before the Ld. DRP. The Ld. DRP after considering the submission of the assessee, on the issue of adjustment to manufacturing segment followed finding of the Ld. DRP for immediately preceding assessment year i.e. 2010-11. In respect of adjustment to technical support service, the Ld. DRP admitted additional evidence under Rule 46 of the Income-tax Rules, 1962 (in short 'the Rules') and after considering report from AO/TPO, accepted three comparables namely Microgenetics Systems Ltd., E4e Healthcare Business Services Pvt. Ltd. and Jindal Intellicom Pvt. Ltd. The Ld. DRP also accepted inclusion of the certain comparables by the Ld. TPO including Accentia Technologies Ltd. and Acropetal Technologies Ltd. The Ld. DRP deleted the addition for difference in credit balance of two companies. Pursuant to the direction of the Ld. DRP dated 15.12.2015, the Ld. Assessing Officer passed impugned assessment order, wherein he upheld the transfer pricing adjustment to manufacturing segment whereas transfer pricing adjustment in respect of technical support service was deleted. The



addition in respect of discrepancy/difference in credit amount of two parties was also deleted pursuant to the direction of the Ld. DRP.

4. Aggrieved with the impugned assessment order passed by the Ld. Assessing Officer, the parties are before us by way of cross-appeals and cross-objections.

5. Before us, the Ld. Counsel of the assessee has filed a paper book in two volumes.

6. As regard to the ground No. 1 of the appeal of the assessee, the Ld. Counsel of the assessee submitted that issue-in-dispute is covered by the order of the Tribunal for assessment year 2010-11 in ITA No. 971/M/2015. The Ld. DR also could not controvert this fact.

7. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. Before the Ld. TPO, the assessee computed transfer pricing adjustment by way of comparing margins of segment of export sales to third parties with segment of export sales to associated enterprises, in respect of the each plant whereas the Ld. TPO compared the margin of non-AE's segment (export as well as domestic sales) with the segment of export to AE's. We find that the Ld. DRP following its predecessor uphold the Ld. TPO observing as under:



“Since there is no change in the facts of the case, following the decision of the DRP in the case of the assessee for A.. 2010 - 11 objection of the assessee is hereby rejected. So far as our alternative plea of the assessee seeking range benefit prescribed under section 92C(2) of the IT Act is concerned, we are not in agreement with the working made by the assessee. The suo motto adjustments made by the assessee have been considered as part of operating income in this working which is incorrect. The TO has correctly worked out the adjustments required to be made under TNMM and after giving set off for the adjustments made by the assessee on its own, the TO has arrived at the correct amount of final adjustments. Therefore, alternative plea of the assessee is also rejected.”

7.1 We find that in assessment year 2010-11, the Tribunal (supra) has rejected this approach of the Ld. DRP and directed to accept comparison of margin using internal TNMM for comparison of export sales made to AE's with the export sales made to 3rd parties (non-AE's). The relevant finding of the Tribunal (supra) is reproduced as under:

“11. We have considered the rival submissions and perused the material on record. The only grievance raised by the Appellant before DRP was that while applying internal TMM for benchmarking the international transactions of export of goods from Thane Plant, the TO had compared OP/OC from total sales to non-AEs (i.e. domestic sales as well as export sales) which stood at 11.90% with the OP/OC of export sales from Thane Plant which stood at 3.56%. It was contended on behalf of the Appellant that the segment of export to AEs should have been compared with the segment of export to non-AEs since the data was available and the margins were not disputed. Under TNMM broad similarity in FAR is acceptable since the net margins, which are tested, are more tolerant to the



differences. Contention of the Appellant before Assessing Officer and DR was that exports made to different geographical location to non-AEs could be considered to benchmark export sales to AEs by adopting internal TNMM method since the transactions undertaken with the AEs and Non-AEs were in the same industry, and had high level of similarity with respect to products, cost of goods sold, manufacturing processes, etc. In our view, the DRP erred in adopting the aforesaid reasoning given by the Appellant to include even the domestic sales made by the Appellant for benchmarking the export sales made to AEs from Thane Plant. Accordingly, we set aside the transfer pricing addition of IN 54,62,391/- and direct TPO/Assessing Officer to re-compute ALP of the international transaction of export of goods from Thane Plant by taking OP/OC of the export sales to non-AEs. In view of the aforesaid directions, Ground No. 1 raised by the Appellant allowed.”

7.2 Since, the issue-in-dispute in the year under consideration is identical to issue in assessment year 2010-11, therefore, respectfully following the finding of the Tribunal (supra) on the issue-in-dispute, we direct the Ld. AO/TPO for computing the transfer pricing adjustment to the manufacturing segment for each plant separately using internal TNMM as most appropriate method, comparing the margin of export sales to third parties with the export sales to the AE's. The ground of appeal of the assessee is accordingly allowed for statistical purposes.

8. The ground Nos. 2 and 3 of the appeal were not pressed by the assessee as the Ld. Counsel submitted that necessary relief has already been granted by the Assessing Officer in rectification



proceedings. Accordingly, the ground Nos. 2 & 3 of the appeal of the assessee are dismissed as infructuous.

9. In ground Nos. 1.1 to 1.3 of the appeal of the Revenue, the Revenue is agitated by way of inclusion of three comparables namely Microgenetics Systems Ltd., E4e Healthcare Business Services Pvt. Ltd. and Jindal Intellicom Pvt. Ltd.

10. Brief facts qua the issue-in-dispute are that during the year under consideration, the assessee provided technical support services to its associated enterprises and received payment of Rs.7,02,74,760/-. The assessee benchmarked the international transaction of technical support services using the Transaction Net Margin Method ('TNMM') and taking operating profit/operating cost (OP/OC) as the profit level indicator (PLI). The assessee applied certain filters which were partly rejected by the Ld. TPO. The Ld. TPO characterized as the assessee has providing Information Technology enabled Services (ITeS services). The Ld. TPO rejected comparables selected by the assessee and chosen his own comparables and mean margin of those comparables was worked out to 35.8% as against assessee's margin of 15%. The list of final comparables and their margin is reproduced as under:

"7.6 Hence that final comparables of the TPO are as under:

Sl. No.	Name of the comparable	Margins (%)	Comparable as per
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		OP/TO	
1.	Accentia Technologies Ltd.	29.18%	TPO
2.	Acropetal Technologies Ltd. (Segmental)	23.95%	TPO
3.	TCS e-Serve Ltd.	69.31%	TPO
4.	Infosys BPO Ltd.	17.86%	TPO
	Mean	35.08	TPO
	Assessee's Margin	15.00	

The mean margin of 35.08% as per the departmental comparables is applied in the case of the assessee.”

10.1 The Ld. TPO then worked out adjustment of Rs.122,69,022/- as under:

“7.7 Adjustment: *The OP/TC of Technical Support services is 15.00% is lesser than that OP/TC of 35.08% earned by comparable companies. The OP/TC of the software development segment is outside the 5% range available under the regulations. It can thus be concluded that the international transactions of the assessee are not at arm's length price, and therefore an adjustment of Rs. 1,22,69,002 /- is made as per the below working:*

Working of TP adjustment

Particulars	P&L A/c	ALP @ 35.05%
Revenue	7,02,74,760	8,25,43,762
Total Cost	6,11,07,316	6,11,07,316
Operating Profit	91,67,444	2,14,36,446
OP/TC	15.00%	35.08%

International Transaction (IT)	7,02,74,760
Arm's Length Price	8,25,43,762
ITx1.05	8,66,70,950
ITx0.95	7,84,16,574
Adjustment	1,22,69,002

In view of the above, the assessee will suffer an adjustment of Rs.1,22,69,002/- in respect of fees received by provision of ITES.”



11. Before us, the dispute is in respect of three comparables admitted by the Ld. DRP, as additional evidence *inter alia* namely Microgenetics Systems Ltd., E4e Healthcare Business Services Pvt. Ltd. and Jindal Intellicom Pvt. Ltd.

11.1 Regarding Microgenetics Systems Ltd., the Ld. DRP rejected the contention of the Ld. TPO for rejection on the ground of turnover of the assessee being seven times, as TPO himself observed that the high turnover is no criteria for rejection of a company. As regard objection of company engaged in the medical transcription services, the Ld. DRP accepted that the company as engaged in ITeS industry.

12. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. Before us, the Ld. DR could not controvert medical transcription is one of the stream of ITeS Industry as included for the purpose of Safe Harbor Rules i.e. Rule 10TA of the Income-tax Rules. The relevant part of the Rule is reproduced as under:

“10TA(e) information technology enabled services” means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:

- i. back office operations;*
- ii. call centres or contact centre services;*
- iii. data processing and data mining;*
- iv. insurance claim processing;*
- v. legal databases;*



- vi. creation and maintenance of medical transcription excluding medical advice;**
- vii. translation services;
- viii. payroll;
- ix. remote maintenance,
- x. revenue accounting
- xi. support centres
- xii. website services:
- xiii. data search integration and analysis;
- xiv. remote education excluding education content development; or
- xv. clinical database management services excluding clinical trials.

but does not include any research and development services whether or not in the nature of contract research and development services.”

12.1 We also agree with the contention of the Ld. Counsel of the assessee that ‘Accentia Technology Ltd.’ which is engaged in providing medical transcription has been accepted by the Ld. TPO as valid comparable, then the AP/TPO is not for exclusion of Microgenetics as justified, there is no reason to object inclusion of Microgenetics on the ground of being engaged in the medical transcription services i.e. functional dissimilarity. We accordingly, uphold the finding of the Ld. DRP on the issue-in-dispute.

12.2 Regarding E4e Healthcare Business Services Pvt. Ltd. also the Ld. DRP has rejected the objection of the Ld. TPO of functionally dissimilarity being engaged in the healthcare services. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. In view of our finding on the comparable Microgenetics Pvt. Ltd., the contention of the Ld.



DR of functionally dissimilarity are rejected and finding of the Ld. DRP on the issue-in-dispute is upheld.

12.3 Regarding Jindal Intellicom Pvt. Ltd., finding of the Ld. DRP is reproduced as under:

“Jindal Intellicom Pvt. Ltd.:

The TPO in its remand report rejected this company on the ground that it is engaged only in call centre services. Further the company did major expansion and increased its capacity by 45% which is one of the extraordinary events. The assessee has argued that call centre services are covered under the definition FITS industry as mentioned in the safe harbour rules. The assessee has also argued that mere expansion of the capacity cannot be a reason to exclude a functionally comparable company. The TO has also not demonstrated that the expansion in capacity has any impact on the profit/loss of the company.

We have considered the facts of the case and the submissions made. We agree that mere capacity expansion cannot be a reason to reject an otherwise functionally comparable company. The company is functionally comparable and has passed all TPO filters. TO is directed to accept it as comparable. The objection is therefore accepted.”

13. We have heard rival submission of the parties and perused the relevant material on record. The objection of the Ld. DR that call centre activity cannot be characterized as ITeS is rejected in view of safe harbor Rules (reproduced above), where call centre activity is included as one of ITeS activity. Therefore, we agree with the finding of the Ld. DRP that company cannot be rejected for comparison on



this ground. Accordingly, we uphold the finding of the Ld. DRP on the issue-in-dispute.

13.1 In view of the above discussion, the ground No. 1.1 to 1.3 of the appeal of the Revenue are dismissed.

14. As regard to ground No. 2 of the appeal of the Revenue is concerned, we find that the Ld. Assessing Officer in draft assessment order worked out negative difference of Rs.97,50,004/- in ledger of two parties, which is reproduced as under:

“5. Issue of discrepancies found on verification by issuing notices u/s 133(6) of the I.T. Act, 1961:

The assessee company has claimed expenses by debiting to Profit & Loss account under that head purchases expenses. The authorized representative furnished the partywise details giving name, address and amount. To verify the genuineness and reasonableness of these transactions, notices u/s 133(6) of the Act, were sent to certain parties. The analysis of the responses received from various parties was done and a letter issued to the assessee company vide letter dated 03.02.2015 to reconcile the same with their books of accounts and produce the parties alongwith the documentary evidences to prove the genuineness of transactions. The letter dated 03.02.2015 is reproduced below:

Kindly refer to the above.

2. During the course of assessment proceedings to verify the genuineness of Sundry creditors as shown by you, information u/s 133(6) of the I.T. Act, was called for from some of the creditors on test check basis. Details of the same are tabulated as under:

Sr. No.	Name of the Party	Reply	Sundry	Sundry	Difference
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	(Creditor)	Received	Balance as per the assessee	balance as per reply of the party	
1.	Grasim Industries Ltd.	Yes	3,44,83,559	Closing balance not	
2.	Crescent Organics Pvt. Ltd.	Yes	3,42,33,938	3,42,31,435	2,503
3.	Trans Tech Turnkey Pvt. Ltd.	No	2,07,71,597	--	
4.	Jupiter Dyechem Pvt.	Yes	1,51,11,000	1,54,41,840	(-)3,30,840
5.	H.J. Arochem (P) Ltd.	Yes	1,10,79,478	1,00,06,359	10,73,119
6.	Grasim Industries Ltd. S. F.	Yes	86,23,085	1,27,02,374	(-)40,79,289
7.	Philips Carbon Black Ltd.	Yes	77,21,250	25,17,322	42,03,928
8.	Time Technoplast Ltd.	No	70,04,093	--	
9.	Noble Resources and Trading Pvt. Ltd.	No	67,94,167	--	
10.	Turbomach India Pvt. Ltd.	Yes	67,29,890	69,85,000	
11.	Onshore Construction Co. Pvt. Ltd.	No	36,94,367	--	
12.	Abhilasha Tex Chem Pvt. Ltd.	No	34,08,543	--	
13.	ICICI Lombard General Insurance Co. Ltd.	Returned back	34,08,543	--	
14.	Poonam Enterprises	Returned back	31,70,030	--	
15.	Bayer Cropscience Ltd.	Yes	28,46,734	31,40,115	(-)2,93,381
16.	Acord Shipping Agencies (India) Pvt. Ltd.	Yes	15,13,107	17,79,355	(-)2,66,248
17.	Cox and Kings India Ltd.	No	14,32,475	28,21,763	(-)13,89,288
18.	Ray Engineering Pvt. Ltd.	No	13,08,718	52,08,888	(-)39,00,170
19.	Hindustan Chemicals Co.	Yes	12,99,444	--	
20.	Paras Commercial Centre Pvt. Ltd.	No	10,13,971	--	



As discussed above, you are requested to kindly reconcile the same along with supporting necessary documents on or before 10/02/2015 positively.

The authorized representative of the assessee company has attended on 10.02.2015 and filed the reconciliation in respect of certain parties vide submissions dated 10.02.2015 and 19.03.2015.

After going through the submissions of the assessee, it is seen that in two cases in which the notices u/s 133(6) of the I.T. Act, 1961 were sent on the addresses furnished by the assessee company, there are negative differences i.e. party has confirmed more amount than shown by the assessee company. The total amount of such transactions are summarized as under:

Sr. No.	Name of Sundry Creditors	Balance as per the assessee	Balance as per the reply of the party	Differences
1.	Trans Tech Trunkey Pvt. Ltd.	20,771,597	26,621,431	-5,849,834
2.	Ray Engineering Pvt. Ltd.	1,308,718	5,208,888	-3,900,170
	Total Negative differences			-9,750,004

Although the assessee company has established the identity of these two parties, it has failed to establish the genuineness of the transactions to the extent of Rs.97,50,004/-. Therefore, the transactions are considered as not genuine to the extent of discrepancies found. Hence, the difference amounts of Rs.97,50,004/- is added to the income of the assessee company as income from undisclosed sources. Penalty proceedings u/s 271(1)(c) of the Act, are hereby initiated separately for furnishing inaccurate particulars of income.”

14.1 The Ld. DRP however deleted the addition observing as under:

“4.3 Discussion and Directions of DRP:

We have considered the submission made by the assessee and the reasons recorded by the AO. We are of the opinion that in this case no addition was called for because there are only two possible reasons for a creditor showing more amount as receivable from



the assessee than shown by the assessee. The first possibility is that some payment made by the assessee is not reflected in the books of the creditor for the money has been diverted somewhere else and shown as payment to the creditor. In this case since the source of money is explained no addition may be called for. The second possibility is that some bill raised by the creditor has not been recorded by the assessee in its books of account. In this situation also, no addition is called for because there is no allegation of any unexplained payment for the expenditure. Accordingly, addition of Rs.97,50,004/- made by the AO is hereby deleted.”

15. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. It is undisputed that balances appearing in the ledger account of the assessee in respect of those two parties and balances of the assessee in the ledger accounts of those two respective parties, are different. The Ld. DRP has presumed possible reasons for differences however this is the issue of verification from those two parties as to the reason for the difference in balances and the onus was on the assessee to reconcile those differences. The Assessing Officer also did not make effort by way of inquiring from those parties for the reasons of difference. In the facts and circumstances, we feel appropriate to restore this issue back to the file of the Assessing Officer for verifying from those parties for the reason of discrepancy in the ledger balance appearing in the books of account of the assessee and then decide the issue in accordance with law. The ground No. 2 is accordingly allowed for statistical purposes.



16. As far as ground raised in the cross-objection are concerned the Ld. Counsel of the assessee submitted that in case finding of the Ld. DRP on the inclusion of the three comparables namely Microgenetics Systems Ltd., E4e Healthcare Business Services Pvt. Ltd. and Jindal Intellicom Pvt. Ltd. is accepted then he would not press the ground of cross-objection. Since, we have upheld the order of Ld. DRP in respect of those comparables, the ground of cross-objection of the assessee are accordingly dismissed as infructuous.

17. In the result, the appeal of the assessee and Revenue are partly allowed for statistical purposes and cross-objection of the assessee is dismissed.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 10/02/2023.**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 10/02/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai



6. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai