

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(TP)A No. 294/Bang/2022</b>
<b>Assessment Year : 2017-18</b>

M/s. Atos IT Services Pvt. Ltd., 5 <sup>th</sup> Floor, Campus-B, Plot 8B, RMZ Centennial, ITPL Main Road, Whitefield, Bangalore – 560 048. <b>PAN: AAACX1727G</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Dhanesh Bafna, CA & Ms. Riddhi Maru, CA
Revenue by	:	Ms. Neera Malhotra, CIT-DR

Date of Hearing	:	23-03-2023
Date of Pronouncement	:	27-03-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against the order dated 24.02.2022 passed by the NFAC, Delhi for A.Y. 2017-18 on the following revised grounds of appeal:

*“The grounds mentioned herein by the Appellant are without prejudice to one another.*

*Ground No. 1: Assessment order is bad in law*

*1. On the facts and in the circumstances of the case and in law, the order passed by the Deputy Commissioner of Income-tax, National Faceless Assessment Centre, Delhi (the 'Assessing Officer' or the 'Learned AO') under Section 143(3) read with section 144C(13) and section 143(3A) and*

*section 143(3B) of the Income-tax Act 1961 ('the Act') dated February 24, 2022, to the extent prejudicial to the Appellant, is bad in law, and is liable to be quashed as the Appellant inter alia did not receive any authenticated copy of the notice (issued u/s 92CA(2) and 92D(3) of the Act) on the registered email address of the Appellant and the date of service of said notice on the income tax portal appeared blank (Corresponding to Original Ground No. 1).*

*Ground No. 2: Transfer Pricing ('TP') adjustment in relation to provision on software development services*

*2. On the facts and in the circumstances of the case, the Learned DRP/ Learned AO/ Learned TPO erred in making TP adjustment with respect to the transfer price of the software development services amounting to INR 24,41,14,101/-. While doing so, the Ld. DRP/ Learned AO/ Learned TPO erred in:*

*2.1. Rejecting the value of international transaction of provision of software development services as recorded in the books of account, as the arm's length price;*

*2.2. Rejecting the TP documentation maintained by the Appellant under Section 92D of the Act, in good faith and with due diligence;*

*2.3. Rejecting the comparability analysis carried out by the Appellant in the TP documentation and conducting a fresh comparability analysis for software development services based on application of addition filters/ modified filters in determining the arm's length price;*

*2.4. Disregarding certain filters applied by the Appellant in the selection of comparable companies at the time of TP documentation;*

*2.5. Applying/ modifying certain filters while undertaking the comparability analysis;*

*2.6. Modifying the computation mechanism of related party transaction filter;*

*2.7. Computing incorrect operating mark-up of certain comparable companies;*

*2.8 Including the following companies even though these companies are functionally different from the Appellant:*

*a) Larsen & Toubro Infotech Ltd.*

*b) Mindtree Ltd.*

*c) Persistent Systems Ltd.*

*d) OFS Technologies Ltd.*

*e) Infosys Ltd.*

*2.9 Excluding certain comparable companies even though they are functionally comparable to the Appellant;*

*2.10. Not providing an adjustment for the differences in working capital of the Appellant and the comparable companies;*

2.11. Not providing suitable adjustment to account for differences in the risk profile of the Appellant s-a vis the comparable companies; and

2.12. Not considering certain expenses as operating in nature on the premise that these are not the routine operating costs in determining the operating mark-up of the comparable companies.

The Appellant humbly prays the benchmarking study and computation of the arm's length price as per the TP documentation maintained by the Appellant be accepted and consequently, the TP adjustment be deleted (Corresponding to Original Ground No.2).

Ground No. 3: Notional Interest on outstanding receivables

3. On the facts and in the circumstances of the case and in law, the Learned AO/ Learned TPO erred in considering overdue receivables from Associated Enterprises ('AEs') as a separate international transaction under the provisions of section 92B of the Act and making a TP adjustment of INR 63,51,032/-as interest on outstanding receivables from AEs and while doing so the Ld. AO/Ld. DRP/Ld. TPO erred in not appreciating the following:

3.1. not considering that the working capital adjustment will appropriately take into account the delayed/outstanding receivables from the AEs and separate TP adjustment thus will not be warranted.

3.2. Without prejudice to above, the Ld. AO/ Ld. DRP/Ld. TPO erred in computing notional interest on overdue foreign currency receivables at SBI short term deposit rate instead of foreign currency denominated rate i.e. LIBOR rates.

The Appellant humbly prays that the TP Adjustment on account of notional interest on delayed receivables from the AEs ought to be deleted (Corresponding to Ground No. 3).

Ground No. 4: Interest under section 234A of the Act

4. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234A of the Act.

The Appellant prays that Ld. AO be directed to kindly delete the consequential interest under section 234A of the Act.

Ground No. 5: Interest under section 234C of the Act

5. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying excess interest under section 234C of the Act.

*The Appellant prays that Ld. AO be directed to kindly delete the consequential interest under section 234C of the Act.*

*That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein below or produce further documents before or at the time of hearing of this Appeal.”*

**2. Brief facts of the case are as under:**

2.1 The assessee is a company engaged in provision of software development services and sales support services to its associated enterprises. For the year under consideration, the assessee filed his return of income on 28.06.2018 disclosing total income of ₹ 33,56,77,070/-. The return was processed under section 143(1) of the Act, and the case was selected for scrutiny. Statutory notices were issued to assessee, in response to which, various details were filed by the authorised representative. The Ld.AR from the details filed noted that assessee had international transaction with its associated enterprises that exceeded ₹ 15 crores and therefore reference was made to the Ld.TPO for determining the arms length price of the international transaction.

2.2. On receipt of the reference, the Ld.TPO called for the economic details of the international transactions entered between the associate with a informed 3 CEB. From the details filed, the Ld.AO noted that following were the transactions assessee had with its associated enterprise: -

Sl.No.	Description of the international transactions	Amount (INR)
1.	Provision of software development services	2628756030
2.	Intra-Group Services	110119288
3.	Payment of trademark fees	654197
4.	Deemed international transaction	17072538

2.3. The Ld.TPO noted that assessee used TNMM as most appropriate method and OP/OC has a PLI to determine its arms margin at 13.64% for software development services. The Ld.TPO noted that for SWD segment, assessee selected 16 comparables. As the mean median of the comparables selected by assessee were within 13.82%. The assessee thus treated the international transactions to be at arms length.

Sr. No.	Name of the Company	Data Source	Adjusted OP/TC
1.	C G-V A K Software & Exports Ltd.	P	13.05%
2.	Cigniti Technologies Ltd.	P	18.13%
3.	E-Zest Solutions Ltd.	P	10.01%
4.	Melstar Information Technologies Ltd.	P	2.35%
5.	Nintec Systems Ltd.	P	14.60%
6.	Sagarsoft (India) Ltd.	P	4.98%
7.	Tata Elxsi Ltd.	P	26.44%
8.	InfoBeans Technologies Ltd	C	27.10%
9.	Isummation Technologies Pvt Ltd	C	5.97%
10.	Rheal Software Ltd	C	3.47%
11.	Yudiz Solutions Pvt Ltd	C	5.26%
12.	R Systems International Ltd.	P-Seg	29.51%
13.	Sasken Technologies Ltd.	P-Seg	38.92%
14.	Happiest Minds Technologies Pvt Ltd	C-Seg	14.78%
	Count		14
	Median		13.82%
	35 <sup>th</sup> Percentile		5.97%
	65 <sup>th</sup> Percentile		18.13%

2.4. The Ld.TPO dissatisfied with the analysis carried out by assessee shortlisted new set of comparables for ITeS and SWD segment which are as under:

SWD segment

Sl.No.	Company Name	F.Year wise OP/OC (%)			Wt. Average
		2016-17	2015-16	2014-15	
1.	Rheal Software Pvt. Ltd.	-12.27	3.28	3.01	-1.85
2.	Kals Information Systems Ltd	1.37	3.97	5.77	3.62

3.	Infomile Technologies Ltd.	10.22	9.91	11.12	10.43
4.	Harbinger Systems Pvt Ltd.	12.28	12.69	17.18	14.1
5.	C G-V A K Software & Exports Ltd.	11.65	16.95	17.3	15.09
6.	Larsen & Toubro Infotech Ltd.	20.78	19.21	23.98	21.14
7.	Great Software Laboratory Pvt. Ltd.	27.18	20.24	10.67	21.24
8.	Mindtree Ltd.	20.12	26.11	27.51	24.17
9.	R Systems International Ltd.	16.74	31.05	26.44	24.40
10.	Persistent Systems Ltd.	25.05	23.95	30.39	26.17
11.	Tata Elxsi Ltd.	24.90	29.13	24.45	26.19
12.	Infobeans Technologies Ltd.	23.89	34.98	20.46	26.44
13.	Aptus Software Labs Pvt. Ltd.	24.83	27.67	26.72	26.46
14.	Nihilent Ltd.	34.26	24.46	30.80	29.82
15.	OFS Technologies Ltd.	19.88	26.47	67.57	29.93
16.	Cygnnet Infotech Pvt. Ltd.	25.24	30.45	36.61	30.19
17.	Infosys Ltd.	38.79	38.30	41.40	39.50
18.	ThreesixtyLogica Testing Services Pvt. Ltd.	36.63	48.46	42.02	41.94
19.	Cybage Software Pvt. Ltd.	41.89	62.90	68.68	57.82
20.	Consilient Technologies Pvt. Ltd.	54.85	71.82	69.51	65.14
	35 <sup>th</sup> Percentile				21.24
	Median				26.18
	65 <sup>th</sup> Percentile				26.46

2.5. The Ld. TPO proposed adjustment as under: -

Sl.No.	Description	Adjustment u/s. 92CA (In Rs.)
1.	Software development segment	291,005,739
2.	Interest on delayed receivables	1,373,806,559
	Total adjustment u/s. 92CA	1,664,812,298

The Ld.TPO proposed further adjustment in respect of interest on receivables by benchmarking the transaction at 5.975% being 6 month LIBOR rate.

3. On receipt of the transfer pricing order, the Ld.AO passed the draft assessment order by incorporating the proposed transfer pricing addition.

3.1. On receipt of the draft assessment order, the assessee preferred objections before the DRP. The DRP passed directions by accepting the contentions of the assessee in respect of some of the comparables. On the issue of computation of notional interest on taxes additions, the DRP upheld the observations of the Ld. AO.

3.2. On receipt of the DRP direction, the Ld.AO passed the impugned order. The Ld.AO restricted the transfer pricing upward adjustment under SWD segment and notional interest on outstanding receivables.

Aggrieved by the order of the Ld. AO, the assessee filed the present appeal before this *Tribunal*.

4. The Ld.AR submitted that, in **Ground No.2.8**, the assessee wish to seek exclusion of only one comparable being Infosys Ltd. The Ld.AR submitted that all of the comparables may be kept open considered in an appropriate circumstances.

Accordingly we only adjudicate for exclusion of Infosys Ltd in Ground number 2.8 as under:

Before we undertake the comparability analysis, it is *sine qua non* to understand the FAR of assessee.

**Functions performed by Atos IT**

a. Provision of services

Atos IT provides IT services to its AEs as per the specifications and requirements provided by the AEs. The services provided by Atos IT primarily include:

- IT software/ application development services;
- Product lifecycle management services which include implementation activity, upgrades for various applications, platform migration, managing customized application, etc;

- Upgrading existing systems, optimizing existing systems to improve value; and
- Enterprise infrastructure services which include support services related to the IT infrastructure including servers, workstations, networks, etc.

b. Delivery of service & quality assurance

Atos IT is responsible to its AEs for meeting with the service level requirements and quality standards agreed with its AEs. The AEs would have recourse to Atos IT, if the quality of the services provided by Atos IT does not meet the quality standards agreed between them.

c. Training of personnel

Atos IT is responsible for training its personnel so as to meet with the client's requirements and the quality standards of the AEs.

Atos IT has availed certain intra-group services from its AEs which enable the company to provide IT services. A detailed discussion of the intra-group services is provided in Chapter 4.

### Assets employed

Tangibles owned by Atos IT

Atos IT utilises its computers and peripherals, office premises, communication facilities, furniture and fixtures etc. for the purpose of its business.

Intangibles

Atos IT does not own any significant intangibles and does not undertake any research and development on its account that leads to the development of non-routine intangibles. Atos IT uses the trademarks, processes, software, operating/ quality standards etc. developed/ owned by the AEs.

### Risks assumed

The risk profile of Atos IT vis-à-vis its AEs is provided in Table 2 below:

Table 2: Risk Profile

Risk Category and Description	Exposure to Atos IT	Exposure to AEs
Market Risk: Market risk arises for a business due to increased competition and relative pricing pressures, change in demand patterns and needs of customers, inability to develop/penetrate in a market, etc.	Atos IT is exposed to limited market risk, since it provides services to AEs and is remunerated on a total cost plus arm's length mark-up basis.	As the AEs are responsible for obtaining new business from third party customers, they face significant market risk.
Service Liability/ Workmanship Risk: Risks associated with service failures	Atos IT is required to meet the service level requirements agreed with the AEs. However,	The AEs are responsible to the client if services do not meet delivery

<p>including non-performance to generally accepted or regulatory standards. This could result in product recalls and possible injuries to end-users.</p>	<p>cost of any rework (if identified by the AEs) forms part of the total cost-base for the purpose of charging a mark-up. Hence, Atos IT does not bear the service liability risk. Further, in case where Atos IT's services do not meet the delivery standards and the AEs is penalised for such errors, then the AEs shall have the right to recover the penalty amount (as mutually agreed) from Atos IT. In such cases, the re-work cost and penalty does not form part of the cost-base for the purpose of charging cost plus markup.</p>	<p>standards and accordingly face the risk in this regard. However, if the services rendered by Atos IT do not meet the delivery standards, the AEs have recourse to Atos IT.</p>
<p>Capacity Utilisation Risk: This risk arises on account of under-utilisation of manufacturing/service facility/personnel</p>	<p>Atos IT is entitled to an arm's length mark-up on its total operating costs, including the costs in relation to idle time of personnel. Accordingly, Atos IT does not bear capacity utilization risk.</p>	<p>Since the AEs compensate Atos IT on a cost plus model, the AEs face the risk arising on account of under-utilisation of capacity.</p>
<p>Research &amp; Development ('R&amp;D') risk: Represents risk that R&amp;D activities performed by an enterprise may not be successful.</p>	<p>Atos IT does not undertake any R&amp;D activity and thus it bears no risk in this regard.</p>	<p>All of the significant R&amp;D activities is undertaken by the AEs. Hence, the risk arising out of failed R&amp;D is borne by the AEs.</p>
<p>Manpower Risk: Any enterprise which is largely dependent, for its success, upon quality personnel with superior technical knowledge is faced with</p>	<p>Atos IT is a part of the IT industry which is exposed to high manpower attrition rates and accordingly faces this risk.</p>	<p>The AEs face indirect manpower risk, as any significant manpower attrition faced by Atos IT may affect delivery schedules in cases where the AEs have</p>

<p>this risk. Competitive market forces expose such an enterprise to the risk of losing its trained personnel.</p>		<p>availed of the services of Atos IT.</p>
<p>Credit Risk: This is the risk arising from non-payment of dues by customers.</p>	<p>Credit risk is limited when Atos IT provides services to the AEs.</p>	<p>The AEs face risk in this regard, as they provides services to third party customers.</p>
<p>Foreign Exchange Risk: This risk relates to the potential impact on profits that may arise because of changes in foreign exchange rates.</p>	<p>Atos IT invoices its AEs in foreign currency. The net realised gain/loss is appropriately considered in the cost plus remuneration model in the AEs segment; thus, the risk is mitigated.</p>	<p>The AEs bear the foreign exchange fluctuation risk arising from transactions with Atos IT, in case if the invoice is not in their functional currency.</p>

### **Characterisation**

Based on the facts as presented in the above analysis of functions performed, assets employed and risks assumed, Atos IT is characterised as an IT service provider, which assumes limited risks associated with carrying out such business.

It is pertinent to note that besides providing IT services to its AEs, Atos IT also provides IT services to third party customers (negligible 1% of revenue) in the capacity of an entrepreneur. While providing these services to third parties, Atos IT undertakes wider functions (including marketing, client management, etc.) as compared to the IT services rendered to AEs. Here, it assumes normal market risk, service liability risk, capacity utilisation risk, credit risk, as well as foreign exchange risk. Accordingly, the services to third party customers are not comparable with the services rendered to its AEs.

**5. M/s Infosys Technology Ltd.:** At the outset it is submitted that this company is functionally dissimilar to the Assessee on various counts and therefore it ought to be rejected from the final list of comparables. It is submitted that the TPO and DRP erred in not appreciating the contentions of the Assessee and consequently erred in upholding the inclusion of the company in the final list of comparables.

5.1. It is submitted that Infosys renders services like infrastructure management, business process management, and other high end services like analytics and digital transformation,

apart from sale of products and therefore is a full fledged risk bearing entrepreneur who cannot be compared to the Assessee who renders routine IT services. It is submitted that this company earns income from both rendering software services and development of products, there are no segmental details in respect of the services rendered. Further, the services rendered by the company are not functionally comparable to the routine SWD services rendered by the Assessee. The company owns seven Edge products/platforms and six other product based solutions. The company leverages on its premium banking solution 'Finnacle ®'. Also, the company has significant intangibles as a part of its fixed assets in the nature of intellectual property. The company owns significant brand value, and focuses immensely on brand building. For this purpose it incurs significant brand building expenses, which goes to help the company have a premium pricing for its services. The company has also incurred significant selling and marketing expenses. The company derives more than 50.4% of its revenue from onsite activities and places high reliance on the onsite activities as they generate higher revenue when compared to services performed at their own facilities. The company also heavily focuses on research and development activity and incurs significant expenditure for this account. For the concerned financial year the company has incurred research and development expenses of Rs. 605 crores. The company for the relevant financial year has earned abnormally high profit with margin of 38.61%, which makes it incomparable to the Assessee. In any event, the turnover of the company is much higher when

compared to the Assessee's, and hence it ought to be excluded from the list of comparables. Detailed submissions in this regard are placed at pages 638-661 and 1140-1159 of the paper book. In view of the above difference, the company ought to be excluded from the final list of comparables.

5.2. It is submitted that this company is consistently excluded from the final list of comparables in cases of assesseees placed similar to the Assessee. The Ld.AR relied on the *decision of coordinate bench of this Tribunal in the cases of Yahoo Software Development India Pvt. Ltd. v. JCIT by order dated 28.02.2020 passed in IT(TP)A No. 2365/Bang/2019*, wherein the company was directed to be excluded from the final list of comparables.

5.3. Our attention was also drawn to the decision of the *Hon'ble Delhi High Court* in the case of *CIT v. Agnity India Technologies Pvt. Ltd.* reported in (2013)36 taxmann.com 289, wherein *Hon'ble Court* after considering the risk profile, nature of services, revenue, ownership of branded/proprietary products, onsite v. Offshore revenue's, expenditure on advertising/sales promotion and brand building, expenditure on research & development of M/s Infosys Ltd. (supra) with software service provider by name M/s.Agnity India Technologies (P.) Ltd. (supra) cannot be compared with a small service software provider.

5.4. On the contrary, the Ld. DR relied on the observations of the DRP/TPO.

We have considered the rival submissions by both sides.

5.5. We note that this company owns intellectual properties, incurs significant R&D costs & onsite activity. We also note that it is engaged in diversified business activities, and involved in

development of software products in addition to software services. For the annual report we observe that this company owns products such as Finacle, Edge Verve and other product based solutions and commands substantial brand value. There is no segmental profit & loss account not available. Even otherwise the turnover of this company is Rs.59,257 crores and therefore exceeds the upper limit of the turnover filter of Rs.200 crs. For all the above reasons we do not find this company to be comparable with a captive service provider like that of the assessee before us.

**Accordingly this ground of assessee stands partly allowed.**

**6. Ground no. 2.10 – Working Capital Adjustment on actuals.**

raised by assessee is for providing with appropriate working capital adjustment that was not granted while computing the margins.

6.1 It has been submitted by Ld.AR that working capital and risk adjustment has been denied to assessee on the ground that assessee failed to demonstrate such differences could have any impact on assessee's profit. It has been submitted by Ld.AR that the submissions advanced by assessee demonstrating computational impact has not been considered by the Ld.AO/TPO.

6.2 Before us, Ld.AR submitted that it is an accepted principle upheld in various decisions of this *Tribunal* that working capital adjustment should be allowed on actual. It has been submitted that all relevant details for computation of working capital was provided to AO/DRP which has been disregarded. He placed reliance upon the decision of coordinate bench of this *Tribunal* in case of *Huawei Technologies India (P.) Ltd. v. Jt. CIT* reported in

(2019) 101 taxmann.com 313, wherein it has been held that the working capital has to be granted in actual.

6.3 On the contrary, Ld.CIT DR placed reliance upon orders passed by authorities below.

6.4 We have perused submissions advanced by both sides in light of records placed before us including the decision relied upon by Ld.AR in case of *Huawei Technologies India Pvt. Ltd. (supra)*.

6.5 A reading of Rule 10B(l)(e)(iii) of the Rules read with sec. 92CA of the Act, would clearly shows that the net profit margin arising in comparable uncontrolled transactions has to be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, which could materially affect the amount of net profit margin in the open market.

6.6. Chapters I and III of OECD Transfer Pricing Guidelines contain guidelines on comparability analyses for transfer pricing purposes. Guidelines on adjustments to be provided is found in paragraphs 3.47-3.54 and in the Annex to Chapter III. The guidelines must be followed for computing arm's length principle, and for comparing comparable uncontrolled transactions. Reasonably accurate adjustments should be made to eliminate effect of any such differences.

6.7. Paragraphs 13 to 16 of OECD guidelines, emphasizes need for working capital adjustment in terms of receivables and payables as under:

*"13. In a competitive environment, money has a time value. If a company provided, say, 60 days trade terms for payment of accounts, the Price of the goods should equate to the price for immediate payment plus 60 days of interest on the immediate payment price. By carrying high accounts receivable a company is allowing its customers a*

*relatively long period to pay their accounts. It would need to borrow money to fund the credit terms and/or suffer a reduction in the amount of cash surplus which it would otherwise have available to invest. In a competitive environment, the price should therefore include an element to reflect these payment terms and compensate for the timing effect.*

*14. The opposite applies to higher levels of accounts payable. By carrying high accounts payable, a company is benefitting from a relatively long period to pay its suppliers. It would need to borrow less money to fund its purchases and/or benefit from an increase in the amount of cash surplus available to invest. In a competitive environment, the cost of goods sold should include an element to reflect these payment terms and compensate for the timing effect.*

*15. A company with high levels of inventory would similarly need to either borrow to fund the purchase, or reduce the amount of cash surplus which it is able to invest. Note that the interest rate July 2010 Page 6 might be affected by the funding structure (e.g. where the purchase of inventory is partly funded by equity) or by the risk associated with holding specific types of inventory)*

*16. Making a working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential comparables, with an assumption that the difference should be reflected in profits. The underlying reasoning is that:*

- A company will need funding to cover the time gap between the time it invests money (i.e. pays money to supplier) and the time it collects the investment (i.e. collects money from customers)*
- This time gap is calculated as: the period needed to sell inventories to customers + (plus) the period needed to collect money from customers - (less) the period granted to pay debts in suppliers"*

6.8. The reverse applies to huge accounts payable. By having high accounts payable, a company is benefitting from a relatively long period to pay its suppliers. It would need to borrow less money to fund its purchases and/or benefit from an increase in the amount of cash surplus available to invest. In a competitive environment, the cost of goods sold should include an element to reflect these payment terms and compensate for the timing effect. A company with high levels of inventory would similarly need to

either borrow to fund the purchase, or reduce the amount of cash surplus which it is able to invest. Making a working capital adjustment is an attempt to adjust for the differences in time value of money between the tested party and potential comparables, with an assumption that the difference should be reflected in profits. Methodology to compute working capital adjustment is given in Paragraphs 13 to 16 of the aforesaid *OECD Guidelines (supra)*. These guideline also indicate factors that needs to considered like;

6.9. The point in time at which the Receivables, Inventory and Payables should be compared between tested party and comparables, and whether it should be the figures of receivables, inventory payable at the yearend or beginning of the year or average of these figures that should be considered;,

6.10. In the matter of determination of Arm's Length Price, it cannot be said that the burden is on the assessee or the Department to show what is the Arm's Length Price. The data available with the assessee and Department should be the starting point and depending on the facts and circumstances of a case, further details can be called for. As far as the assessee is concerned, the facts and figures with regard to its business must be furnished. In so far as applying inventory, receivables and payables for computing working capital adjustment alleged by DRP/TPO in case of certain comparables, *Hon'ble Delhi Bench* in case of *ITO v. E Value Servc.com* reported in (2016) 75 *taxmann.com* 195 held that, insisting on daily balances of working capital requirements to compute working capital adjustment is not proper, as it will be impossible to carry out

such exercise and that working capital adjustment has to be based on the opening and closing working capital deployed.

6.11. It must not be forgotten that transfer pricing analysis is estimation and not an exact science. One has to see that, reasonable adjustment must be made where ever it is needed, so as to bring both comparable and test party on same footing. In present facts of case, DRP may be correct in denying working adjustment due to unavailability required data, however there is no merit in observations of DRP/TPO as supported by Ld.CIR DR, in denying working capital adjustment due to absence of details for working out adjustments in comparable companies chosen. If we appreciate the argument advanced by Ld.CIT.DR, there would remain no comparables for the purpose of comparability analysis to determine ALP of an international transaction, and this would be fatal to entire exercise of transfer pricing analysis.

6.12. Regarding comparable companies, one has to fall back upon only on information available in public domain. If that information is insufficient, it is beyond the power of the assessee to produce correct information about comparable companies. Revenue on the other hand has sufficient powers u/s.133(6) to compel production of required details from comparable companies. If this power is not exercised to find to get information required, then it is no defense to say that Assessee has not furnished required details to deny any adjustment on account of working capital differences. Therefore this objection of DRP is not sustainable. Therefore in, endeavor should be made to bring in comparable companies for the purpose of broad

comparison and working capital adjustment claimed by Assessee should be analysed, keeping in mind, OECD guidelines (supra).

6.13. Based on the above discussions, and respectfully following decision of coordinate Bench of this *Tribunal* in the case of *Huawei Technologies India (P.) Ltd. (supra)*, we direct working capital adjustment to be computed and to allow as per actual, after considering exclusion/inclusion of comparable companies in the final set of comparables as discussed hereinabove.

**Accordingly this ground raised by assessee stands allowed.**

**7. Ground no. 3 – Interest on delayed receivables.**

7.1 On the issue of Interest on trade receivables, the TPO treated the outstanding receivables from AE as advancement of loan and computed the arm's length interest adopting 6-month LIBOR plus 400 basis points at 4.3836%. TP Adjustment was computed at Rs. 3,27,21,491/- The DRP directed the TPO to adopt prevailing Short-term Deposit interest rate of SBI as arm's length interest rate. Accordingly, the TPO has adopted the SBI interest rate and TP adjustment has been enhanced to Rs. 5,73,74,255/-.

7.2 Aggrieved by the above, the assessee is in appeal before us with respect to TP adjustment on notional interest on receivables. In this regard, the ld. AR submitted that the assessee is a debt free company. It is a wholly owned subsidiary of CFCL Ventures Ltd, Cayman Islands. The assessee is fully funded by the parent company for its operations in India. The assessee has no borrowed funds. Therefore, the assessee does not bear any working capital risk since it has been fully funded by its AE and has no working capital contingencies.

7.3 It was further submitted that assessee is a zero debt company and it does not have any borrowings, except for meagre amount towards finance lease obligations on assets acquired on lease. No borrowed funds are used to pass on any presumed benefit to AE. The assessee also does not pay any interest to its creditors or suppliers on delayed payments. Since, it is debt free company, no adjustment can be made towards notional interest on receivables.

7.4 In support of above contention, reliance was placed on the following decisions:

<b>Case law</b>	<b>Page no. of PB</b>
Bechtel India Pvt. Ltd. v. DCIT I.T.A .No. 1478/Del/2015 [TS- 638-ITAT-2015(DEL)-TP] (pages 365 to 387 of PB-II)	Findings at page 385, para 15.1
PCIT v. Bechtel India Pvt. Ltd. ITA 379/2016 [TS- 508-HC- 2016(DEL)-TP] (pages 388 to 389 of PB-II)	Findings at page 389, para 4
Inductis (India) (P.) Ltd. Vs. ITO [2018] 99 <a href="http://taxmann.com">taxmann.com</a> 167 (Delhi - Trib.)	Findings at page 393, para 11 and 12

7.5 The ld. AR submitted that as the assessee is a debt free company, and therefore following the ratio of above decisions, TP adjustment relating to notional interest on receivable should be deleted.

7.6 Without prejudice to above, the ld. AR submitted that LIBOR has to be adopted. In the Order u/s 92CA, the TPO has presumed that the assessee's average maturity period of receivables is between 3 to 5 years and added 300 basis points to

LIBOR based on RBI Master Circular. The TPO further added 100 basis point for currency risk.

7.7 In this regard, it is submitted that weighted average maturity period of assessee's receivables from AE's is 167 days (page 107 of appeal papers). As per the RBI Master Circular no. 8/2010-11 dated 1.7.2010, for average maturity period upto 3 years, the maximum cost ceiling is LIBOR plus 200 basis points. The relevant extract from page 24 of the RBI Master Circular is given below:-

Average maturity period of the loan on invocation	All-in-cost ceilings over 6 month LIBOR*
Up to 3 years	200 basis points
Three years and up to five years	300 basis points
More than five years	500 sis points

\* for the respective currency of borrowing or applicable benchmark

7.8 It was therefore submitted that the TPO's approach of computing ALP for interest is not correct. The DRP rejected the approach of the TPO and directed to adopt Short-term Deposit interest rate of SBI. The assessee submits that the receivables from the AEs are denominated in US dollars. Therefore USD-LIBOR rate should be considered to benchmark the rate of interest in computation of arm's length rate. The ld. DR submitted that the DRP's direction to adopt Short-term Deposit interest rate of SBI should be quashed. In support of the contention that LIBOR should be adopted and domestic interest rate cannot be adopted, he relied on the following decisions:-

- *CIT Vs. Cotton Naturals (I) Pvt. Ltd ITA No. 233/2014 [TS-117-HC-2015(DEL)-TP1*
- *Indegene Lifesystems (P.) Ltd [2017]185 taxmann.com 60 (Bangalore - Trib.),*
- *DCIT v Tech Mahindra Limited ITA No. 1176/Mum/2010;*
- *Tata Autocomp Systems Ltd [2012] 121 taxmann.com 6 (Mum)*

7.9 With respect to interest rate to be adopted, the Appellant relies on the following decisions:-

Particulars	Case law	Page no. of PB II
Only LIBOR to be adopted without mark up	CIT Vs. COTTON NATURALS (I) PVT. LTD ITA No. 233/2014 [TS-117-HC-2015(DEL)-TP]	423 — 429
	Siva Industries & Holdings Ltd. Vs. ACIT [2012] 26 <a href="http://taxmann.com">taxmann.com</a> 96 (Chennai)	433 — 434
LIBOR 100bps +	KPIT Cummins Infosystems Limited. v. ITO ITA No. 1510/PN/2011 [TS-109-ITAT-2016(PUN)-TP]	Page 445, para 11
LIBOR +	ITO v Genpact Infrastructure (Hyderabad) Pvt. Ltd, ITA No. 2063/Del/2015	Page 462 463, para 11
LIBOR 200bps +	CIT v. Aurionpro Solutions Ltd. [TS-47 2017(BOM)-TP]	Page 456, para 8

7.10 The ld. AR submitted that varying rates have been adopted in various judicial decisions. It was submitted that the rate favourable to the assessee should be adopted. The prevailing LIBOR rate without any additional basis points should be considered for benchmarking the rate of interest on the outstanding receivables especially in the light of the fact that the assessee is a debt free company, not subjected to any working capital risk.

7.11 As regards Reasonable Credit Period, the TPO calculated interest from the date of invoice. The ld. AR submitted that in the commercial world, every person would give reasonable time to the debtor for payment. Therefore, interest cannot be charged from the date of invoice. The assessee has outstanding receivable from its AE for the year under consideration. Therefore, there are no internal comparable and that reasonable period for receivable

should be considered based on the decided judicial precedents and FEMA Regulations. The details are tabulated below:

<b>Particulars</b>	<b>Case law</b>	<b>Page no. of PB II</b>
<i>9 — months credit period</i>	<i>As per FEMA notification number FEMA 23 (R)/2015- RB, dated 12-01-2016 [GSR 19(E), dated 12-01-2016</i>	<i>Page 517, para 9(1)</i>
<i>6 months / 180 days credit period</i>	<i>GSS Infotech Ltd. v. DCIT [2018] 89 taxmann.com 153 (Hyderabad - Trib.)</i>	<i>Page 479, para 45 to 48</i>
	<i>C3i Support Services Vs. DCIT I.T.A. 503/HYD/2017</i>	<i>Page 493</i>

7.12 The ld. AR submitted that a view favourable to the assessee should be adopted and credit period of 9 months should be considered as reasonable credit period. Accordingly interest should be charged only for receivable beyond 9 months.

7.13 It was further submitted that interest should be computed only for the relevant year. In case of opening outstanding receivables from AE, the TPO has computed the interest from the date of invoice till the date of receipt of amount. The TPO has therefore computed interest for months falling before the beginning of the current previous year.

7.14 Similarly, for invoices raised during the year, the TPO has computed the interest from the date of invoice till the date of receipt of amount. The TPO has therefore computed interest for months falling beyond the end of the current previous year.

7.15 In this regard, the ld. AR submitted that only income of current year can be assessed by the AO/TPO. The methodology adopted by the TPO to compute the interest for months before the beginning of the current previous year and for months beyond

the current previous year is not sustainable in law. The impugned assessment is for FY 2013-14. Therefore, interest, if at all, should only be computed for the period April 1, 2013 to March 31, 2014. It was prayed accordingly.

7.16 On the other hand, the ld. DR submitted that the issue is squarely covered by the decision of the *Hon'ble Special Bench* in the case of *Instrumentation Corporation Ltd.* in *ITA Nos. 1548 & 1549/Kol/2009* dated 15.7.2016 wherein it was held that outstanding sum of invoices is akin to loan advanced by assessee to foreign AE, hence it is an international transaction as per Explanation to section 92B of the Act. Further, it was submitted that once it is an international transaction, TP adjustment is to be made on applying LIBOR rate as applicable to the country where the AE is situated and for the excess period of credit allowed to AE for realisation of invoices. For this purpose, she relied on the following case laws:-

1. *Swiss Re Global Business Solutions India Pvt. Ltd. Vs DCIT IT(TP)A No.3181/Bang./2018 dated 21/05/2020 (Bang.Trib.) (Pg. 24-29, Para 23)*
2. *Arrow Electronics India Pvt. Ltd. Vs DCIT, IT(TP)A No.140/B/2014 dtd. 23.10.2019 (Bang.Trib.) (Page 16-19, Para 14 - 17)*
3. *The DCIT Vs M/s CGI Information Systems Management Consultation Pvt. Ltd., IT(TP)A No.505/B/16, IT(TP)A No.626/B/16 & CO No.146/B/18 dtd. 30.01.2020 (Bang.Trib.)(Page 27-32, Para 3.5.1 - 3.5.8).*

7.17 We have heard both the parties and perused the material on record. The ld. AR fairly conceded that outstanding amount on account of sales/services billed to AE akin to loan advanced by assessee is an international transaction. As held by the *Hon'ble Delhi High Court* in the case of *Avenue Asia Business Advisors (P.) Ltd. v. DCIT* reported in [2017] 398 ITR 120, there should be TP adjustment on this count after making proper TP study by the TPO after considering the period of credit enjoyed by the

comparables and also applicable LIBOR rate in the place of AEs for benchmarking the rate of interest to arrive at the ALP. With these observations, we remit the issue in dispute to the file of AO/TPO to benchmark the interest rate in the light of the decisions cited by Id. DR. Further, we make it clear that the TPO should compute the interest only for the relevant assessment year after going through the relevant agreements entered by the assessee with AEs while computing the ALP.

**Accordingly, this ground raised by assessee stands allowed for statistical purposes.**

8. The Ld.AR submitted that apart from the above grounds and the one comparable discussed in ground no. 2.8, all other issues may be left open in the present appeal.

We grant liberty to the assessee to consider the issues/comparables that has not been argued in the present appeal, in appropriate circumstances.

**In the result, the appeal filed by the assessee stands partly allowed.**

**Order pronounced in the open court on 27<sup>th</sup> March, 2023.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 27<sup>th</sup> March, 2023.  
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore