IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

IT(**TP**)A No.390/Bang/2021
Assessment year : 2009-10

Continental Automotive Components India Pvt. Ltd., Plot No.53B, Bommasandra Industrial Area, Hosur Road, Attibele Hobli, Anekal Taluk, Bengaluru – 560 099. **PAN: AAKCS 9578C**	Vs.	The Deputy Commissioner of Income Tax, Circle 2(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri T. Suryanarayana, Advocate
Respondent by	:	Shri Sunil Kumar Singh, CIT-2(DR)(ITAT), Bengaluru.

Date of hearing	:	26.07.2023
Date of Pronouncement	:	17.08.2023

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

This appeal is against the final assessment order dated 20.04.2021 passed u/s. 143(3) r.w.s. 144C r.w.s. 254 of the Income-tax Act, 1961 [the Act] for the assessment year 2009-10 on the following grounds:-

"The grounds of appeal are as under:-

The grounds mentioned hereinafter are without prejudice to one another:

1. The order passed by the Deputy Commissioner of Income Tax, Circle — 2(1)(1), Bangalore (hereinafter referred to as the "Learned AO") under section 143(3) r.w.s 144C of the Income-tax Act, 1961 ("the Act") in so far as it relates to the additions/adjustments made is contrary to law and facts of the case.

Transfer pricing grounds

2. The learned Transfer Pricing Officer ("TPO"), Learned AO/ Hon'ble DRP erred in rejecting the economic analysis performed by the Appellant in the transfer pricing documentation and adjusting the transfer price of the Appellant by an amount of INR 55,055,083/- under Section 92CA of the Act.

3. The Learned TPO/ Learned AO/ Hon'ble DRP erred in rejecting the comparability analysis undertaken by the Appellant in the TP documentation and in conducting a fresh comparability analysis by applying additional filters to determine the arm's length margin in the services segment.

4. The learned TPO/ Learned AO/ Hon'ble DRP has grossly erred in not rejecting the following companies from the list of comparable companies:

- Bodhtree Consulting Limited
- Infosys Limited
- Larsen & Toubro Infotech Limited
- Mindtree Limited
- Persistent Systems Limited
- Sasken Communication Technologies Limited
- Tata Elxsi Limited
- KALS Information Systems Limited

5. The learned TPO/ Learned AO/ Hon'ble DRP grossly erred in rejecting companies that ought to have been included as comparable companies:

- VMF Softech Limited

6. The learned TPO/ Learned AO/ Hon'ble DRP erred in not applying the upper limit on turnover while selecting the comparable companies.

7. The learned TPO/ Learned AO/ Hon'ble DRP erred in not appreciating the fact that since the lower limit on turnover has already been applied mutually by the Appellant as well as the learned TPO while carrying out their respective comparability analysis, upper limit on turnover should also have been provided based on the similar principle.

8. The learned TPO / Learned AO erred in rejecting the use of multiple year data by the Appellant in the Transfer Pricing documentation despite Rule 10B(4) of the Rules providing for the use of such data.

9. The learned TPO/ Learned AO erred in applying export earning filter of 25% of the total sales, leading to a narrower set of comparable companies.

10. The learned TPO/ Learned AO/ Hon'ble DRP erred in not applying the upper limit on turnover while selecting the comparable companies.

11. The Learned AO/ Learned TPO/ Hon'ble DRP erred in applying different financial year ending filter while selecting the comparable companies.

12. The learned TPO/ Learned AO/ Hon'ble DRP erred in not appreciating the fact that since the lower limit on turnover has already been applied mutually by the Appellant as well as the learned TPO while carrying out their respective comparability analysis, upper limit on turnover should also have been provided based on the similar principle.

13. The learned TPO/ Learned AO erred in applying service income filter of 75% instead of 50% of the total sales, leading to a narrower comparable set.

14. The Learned AO/Learned TPO/Hon'ble DRP erred in rejecting companies having ratio of employee cost to sales of less than 25%.

15. The learned TPO/ Learned AO/ Hon'ble DRP has erred in not rejecting companies which have been earning abnormal profits. The learned TPO/ Learned AO ought to have appreciated that while companies which were incurring consistent losses were rejected mutually by the Appellant as well as the learned TPO/AO, companies earning super-normal profits should also have been rejected based on the same principle.

16. The learned TPO/ Learned AO/ Hon'ble DRP has erred in not appreciating that there exist a difference in the level working capital of the Appellant and the comparable companies and thereby erred in not providing an adjustment on account of working capital differences between the Appellant and the comparable companies.

17. The learned TPO/ Learned AO/ Hon'ble DRP erred in not allowing appropriate adjustment towards to the risk differential between the Appellant vis-à-vis independent comparable companies.

Corporate tax grounds

Disallowance of provision for warranty:

18. The learned Assessing officer ("learned AO") and the Hon'ble Dispute Resolution Panel ("Hon'ble DRP") have erred in disallowing the provision for warranty considering it to be a contingent/ unascertained liability, without appreciating that the Appellant has consistently recognized provision for warranty and the same is in accordance with the principles laid down by the Hon'ble Supreme Court in the case of Rotork Controls India (P) Ltd. ([2009] 180 TAXMAN 422 [SC]), hence, ought to be allowed as deduction under section 37 of the Act.

19. The learned AO having stated that the Appellant has provided calculation of methodology for creating provision for warranty, has erred in contending that Appellant has failed to furnish the details. Further, the Hon'ble DRP erred in contending that the provision created is not scientific, without providing any basis or reasons for such conclusion.

The learned AO and the Hon'ble DRP ought to have appreciated that submissions and explanations furnished from time to time by the Appellant substantiates that provision for warranty was created on scientific basis.

20. The Hon'ble DRP has erred in holding that the provision for warranty created has no relationship with the amount actually incurred in earlier years, without appreciating that the Appellant creates provision for warranty for each product, considering the data of actual sales and actual warranty claims incurred in the past 24 months.

Disallowance of Royalty expenses:

21. The learned AO and the Hon'ble DRP have erred in disallowing royalty expense on the basis that it is capital in nature, without appreciating that royalty was paid as a percentage of sales, for use of technical know-how of the group companies, and hence, ought to be allowed under section 37 of the Act.

22. The learned AO and the Hon'ble DRP have erred in concluding that the expenditure incurred by the Appellant would give enduring benefits to the Appellant, without appreciating that royalty expense incurred in question does not give rise to any enduring benefit in the capital field in order to be categorized as capital expense.

23. The learned AO and the Hon'ble DRP ought to have appreciated that the royalty expenditure has not been incurred by the Appellant for the purpose of bringing into existence any asset or advantage of capital nature but for running the business with a view to generate profits and hence the same is a revenue expenditure.

24. The learned AO and the Hon'ble DRP have erred in contending that proper evidences of the nature of expenses were not submitted and further, grossly erred in stating that except for the copy of agreement, no other details were furnished, without appreciating the fact that Appellant had submitted all the requisite details (such as copy of agreements, detailed submission and necessary explanations from time to time) substantiating the nature of expense and the benefits obtained by the Appellant.

25. The learned AO ought to have appreciated the fact that the term Research & Development ("R&D") used in the agreements is only a nomenclature and the Appellant has incurred royalty for use of intellectual property ("IP") (i.e. technical know-how developed and maintained by the group companies).

26. The learned AO has erred in concluding that there is no rationale for making royalty payment in addition to capital expenditure incurred on technical know-how provided by the AE, without appreciating that these two are distinct transactions and the Appellant has substantiated the business rationale for payment of royalty expenses through evidences and submissions.

27. The Hon'ble DRP erred in contending that Appellant has been granted license to manufacture and sell the products, and further erred in making other related contentions, without appreciating the fact that license was granted for use of EP or technical know-how, by the group companies.

28. The Hon'ble DRP has erred in contending that Appellant has been given right on patent/ technical know-how, patents, drawings and other rights mentioned in the agreement, without appreciating that Appellant has been granted only the license to use such technical know-how and it does not have any rights over such technical know-how and there is no absolute transfer of ownership of technical know-how to the Appellant.

29. The Hon'ble DRP has erred in contending that the know-how remains with the Appellant even after the termination of the agreement and a permanent platform is built, without appreciating the fact that the group companies continuously

develop the know-how and make it available for use on a recurring basis during the term of the agreement.

30. The Hon'ble DRP has erred in relying on judicial decisions which are either not applicable or distinguishable from the Appellant's case.

31. The Hon'ble DRP failed to appreciate that government approval has not been prescribed as a condition for claim of capital expense relating to R&D under section 35(1)(iv) of the Act.

32. Notwithstanding and without prejudice to the above, the learned AO has erred in not following the directions of the Hon'ble DRP by not granting depreciation under section 32 of the Act on the amount of royalty expenditure considered as capital in nature.

33. Notwithstanding and without prejudice to the above, the final assessment order passed by the learned AO under section 143(3) read with section 144C and 254 of the Act, disregarding the directions of Hon'ble DRP is bad in law and void ab-initio.

Short grant of credit for Tax Deducted at Source ("TDS") and foreign tax credit ("FTC"):

34. The learned AO has erred in short granting tax credits (TDS and FTC) i.e., only to the extent of INR 16,01,166 as against INR 1,26,92,220 claimed by the Appellant in its return of income.

Short grant of interest under section 244A of the Act:

35. Notwithstanding and without prejudice to the above ground No. 34, the learned AO has erred in short granting interest under section 244A of the Act on the amount of refund determined.

Arithmetical error in computation of refund amount:

36. Notwithstanding and without prejudice to the above ground No. 34 and 35, the learned AO has erred in computing the total of tax refund (INR 16,01,166) and interest on refund

(INR 2,56,107) at INR 18,04,660 instead of INR 18,57,273, which is an arithmetical error.

The appellant craves leave to add, alter, rescind and modify the grounds herein above or produce further documents, facts and evidence before or at the time of hearing of this appeal.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided."

2. The Appellant is a wholly owned subsidiary of Continental Automotive GmbH, Germany. It is engaged in the manufacturing of components and systems for vehicles. It filed its return of income for AY 2009-10 on 30.09.2009, declaring the loss at Rs. 56,47,88,366/-. The return of income was selected for scrutiny assessment and reference was made to the TPO. Thereafter, a draft assessment order was passed on 11.03.2013 u/s. 143(3) r.w.s. 144C of the Income Tax Act, 1961 ("the Act").

3. The Appellant filed its objections before the DRP which issued its directions on 30.12.2013. In line with the DRP directions, the Assessing Officer ('AO') passed the final assessment order u/s. 143(3) r.w.s.144C of the Act on 30.01.2014 computing the loss at INR 48,29,16,189/-. Aggrieved, both the assessee and the revenue preferred appeals before this Tribunal. The Tribunal remanded the matter back to the file of the AO/ TPO.

4. In the second round of proceedings, the TPO passed an order dated 24.09.2019 under Section 92CA of the Act determining the TP adjustment of Rs. 5,04,05,469/- with respect to SWD services segment.

Thereafter, a draft assessment order dated 31.12.2019 came to be passed by the AO in which the aforesaid TP adjustment was incorporated, apart from the additions made to the income on account of disallowance of provision for warranty and annual license fees.

5. Aggrieved, the Appellant filed its objections before the DRP which, vide its directions dated 09.03.2021, rejected most of the Appellant's objections insofar as the TP adjustments made by the TPO were concerned. As regards provision for warranty, the DRP upheld the order of the Assessing Officer and as regards expenditure incurred towards annual license fees, the DRP held that since the expenditure incurred was capital in nature, the Appellant would be entitled to depreciation under Section 32 of the Act.

6. Pursuant to the directions of the DRP, the AO passed the final assessment order dated 20.04.2021 in which the TP adjustment and disallowance of provision of warranty was retained. With regard to expenditure incurred on annual license fees, the Assessing Officer has not followed the directions issued by the DRP in allowing depreciation. Aggrieved, the Appellant has preferred this appeal before this Hon'ble Tribunal in the second round.

7. The assessee has entered into the following international transactions:-

Sl. No.	Particulars	Amount in Rs.
1.	Export of finished goods	6,69,81,587
2.	Rendering of research and development engineering support services	29,66,04,344
3.	Import of raw material, consumables and other supplies for manufactured goods	12,22,59,618
4.	Import of trade goods	82,37,18,163
5.	Payment towards technical know-how	7,86,10,914
6.	Payment towards networking charges, training expenses, IT support and technical and miscellaneous services	17,70,68,187
7.	Payment towards purchase of tangible assets	3,32,89,103
8.	Interest on loan	25,02,981
9.	Reimbursement of expenses	1,54,09,665

8. The net mark-up on cost earned by the assessee as per TP order is as follows:-

Operating Income	Rs. 29,99,21,836/-
Operating Cost	Rs. 29,17,94,808/-
Operating Profit (Op. Income – Op. Cost)	Rs. 1,81,27,034/-
Operating/Net mark-up (OP/OC)	**6.43%**

9. The comparison of the TP study of the assessee and the TPO are as follows:-

	Appellant	**TPO**
Methodology adopted	TNMM	TNMM
Profit Level Indicator (PLI)	OP/TC	OP/OC
Database used	PROWESS & CAPITALINE PLUS	PROWESS & CAPITALINE PLUS
Comparables selected	4	11

10. The comparables selected by the assessee and its arithmetic mean is as follows:-

Sl. No.	Name of the company	Weighted Average margin (%)
1.	CSS Technergy Ltd.	17.36
2.	Chakkilam Infotech Ltd.	7.39
3.	Geometric Ltd.	8.26
4.	HDO Technologies Ltd.	10.11
Arithmetical Mean		10.78

11. The final comparables after the DRP directions are as follows:-

SI. No.	Name of the Company	Margin
1.	Kals Information Systems Ltd.	13.89%
2.	Akshay Software Technologies Ltd.	8.11%
3.	Bodhtree Consulting Ltd.	62.27%
4.	RS Software (India) Ltd.	9.97%
5.	Tata Elxsi Ltd. (seg)	20.28%
6.	Sasken Communication Technologies Ltd.	27.91%
7.	Persistent Systems Ltd.	41.40%
8.	Mindtree Ltd.	5.52%
9.	Larsen and Toubro Infotech Ltd.	24.72%
10.	Infosys Ltd.	45.61%
AVERAGE		25.97%

12. The computation of arm's length price and the TP adjustment made by the revenue is as under:-

Arm's Length Mean Mark-up	23.65%
Operating Cost	28,17,94,808
Arm's Length Price @129.40% of cost	35,03,27,305
Price Received	29,99,21,836
Shortfall being adjustment u/s. 92CA	**5,04,05,469**

13. The assessee has taken 36 grounds of appeal, but the during the course of hearing ld AR of the assessee has filed written synopsis relating to the arguments advanced by him which are accordingly considered us for adjudication.

14. The ld. AR submitted that vide **ground No.4**, the assessee seeks exclusion of Bodhtree Consulting Ltd, Tata Elxsi Ltd., Sasken Communication Technologies Ltd., Persistent Systems Ltd., L&T Infotech Ltd. and Infosys Technologies Ltd. on the ground that they fail the test of comparability. In this regard, the submissions are as follows:-

Bodthree Consulting Limited (Bodthree)

15. It is submitted that Bodthree is functionally not comparable to the Appellant. The company is engaged on providing open and end to end solutions, design and development of solutions and software consultancy. It follows a revenue recognition method, which is not comparable to the model followed by the Assessee. Consequently, Bodhtree's profit margin fluctuates significantly on a year-on-year basis, with the result that it cannot be considered as comparable to the Assessee. Furthermore, Bodhtree is also engaged in the provision of software solutions developed in-house by the company. E.g. MIDAS, ShareTree, TeleTree, SecureTree, AppsScale. However, the Assessee is only a captive software development service provider that does not design/develop/sell software products and does not own IPs. Based on the above, Bodhtree is functionally dissimilar to the Assessee. Detailed submissions in this regard are placed at pages 282-284 of the paperbook.

Tata Elxsi Ltd.

15.1 The ld. AR submitted that the company is functionally dissimilar to the Assessee given that it is engaged in embedded product design, industrial design and engineering, animation and visual effects and visual computing labs and systems integration services. Further the software development and services segment of the company comprises of hardware, software and animation services without availability of segmental break-up and no segmental details are available in the annual report of the company. In contrast, the Assessee is a captive software development service provider which does not develop/design/sell software products. Also, Tata Elxsi has a huge turnover of 419 crores whereas the Appellant's turnover is only 29.99 crores. Thus, the company is not comparable to the Appellant. Detailed submissions in this regard are placed at pages 284-286 of the paperbook.

Persistent Systems Ltd.

15.2 The Assessee submits that the said company is engaged in Outsourced Product Development services for independent Software Vendors and enterprises. It offers complete product lifecycle services from end-to-end. It is mainly engaged in licensing of products and sale of products and no segmental information is available. The website of the company also mentions that the company is specialised in developing and distributing its own software products and technology innovation. The company also has substantial intangibles. In contrast, the Assessee is a captive software development service provider and

provides services to its AEs based on requirement analysis and directions provided by the AEs. The Assessee does not undertake development or sale of software products and in turn does not own intangible assets. The said company is also being consistently excluded from the list of comparables in the case of other assessees similar to the Assessee. Also, Persistent has a huge turnover of 520 crores whereas the Appellant's turnover is only 29.99 crores. Thus, the company is not comparable to the Appellant. Detailed submissions in this regard are placed at pages 288-292 of the paperbook.

Infosys Ltd.

15.3 The ld. AR submitted that the company is a giant in the area of development of software and having its own software products such as Finacle. It is engaged in research and development that has led to creation of intellectual property. Its brand value and ownership of intangibles have led to the company being consistently excluded as a comparable in the case of assessees similar to the Assessee. The company has a significantly high turnover of Rs. 20,264 crores, and is not at all comparable to the operations of the Assessee. Detailed submissions in this regard are placed at pages 303-308 of the paperbook.

15.4 In respect of the above 4 companies, reliance is placed on the decision of this Tribunal in the case of Sonus Networks India Pvt. Ltd. v. DCIT (order dated 14.10.2020 passed in IT(TP)A No. 396/Bang/2019 dated 14.10.2020) for AY 2009-10, where it was

excluded from the list of comparables in the case of an assessee performing similar functions as that of the Assessee.

16. The ld. DR relied on the orders of lower authorities.

17. We have heard both the parties and perused the material on record. This issue of exclusion of the above 4 companies i.e., (i) M/s Bodhtree Consulting Ltd, (ii) Tata Elxsi Ltd., (iii) Persistent Systems Ltd. and (iv) Infosys Ltd. was considered by the coordinate Bench of the Tribunal in the case of *Sonus Networks India Pvt. Ltd. (supra)* and it was held as under:-

> "9. We heard the rival contentions and perused the record. In the case of M/s. Schneider Electric IT Business India Pvt. Ltd. (supra), the above said 6 companies have been discussed by the Tribunal in paragraph 10 to 12 of its orders and has held that these are not good comparables. For the sake of convenience, we extract below the said paragraphs:
>
> > "10. As far as the appeal of the Assessee is concerned, the first aspect is with regard to exclusion of some of the comparable companies chosen by the TPO and retained by the DRP as comparable companies. The learned counsel for the Assessee submitted before us that the comparability of the following 5 comparable companies out of the 13 companies that remain after the order of the DRP viz., (i) Kals Information Systems Ltd., (ii) Bodhtree Consulting Ltd., (iii) Tata Elxsi Ltd., (iv) Persistent Systems Ltd. and (v) Infosys Ltd. was considered by the Tribunal in the case of Infinera India (P.) Ltd. v. ITO [2016] 72 taxmann.com 68 (Bang-Tribunal). The said decision was also in relation to AY 2009-10. In the aforesaid decision the issue raised was against including the aforesaid five companies as comparable companies. The plea of the Assessee was that the aforesaid five companies are not functionally comparable with the Assessee who was engaged in the business of providing SWD services to AE. It is also not in dispute before us that the functional profile of

the Assessee in this appeal and the Assessee in the decision rendered in the case of Infinera India (P.) Ltd. (supra) are identical. In the case of Infinera India (P.) Ltd. (supra) this Tribunal held that the aforesaid 5 companies are not functionally comparable with a company rendering SWD services. The learned DR could not point out any difference in facts. Hence, we hold these 5 companies be excluded from the list of comparable companies as functionally not comparable with the Assessee company.

11. Similarly one of the comparable company chosen by the TPO and retained by the DRP viz., Sasken Communication Technologies Ltd. was held to be functionally dissimilar with an Assessee who was engaged in the business of providing SWD services to AE such as the Assessee, in the case of VM Ware Software India (P.) Ltd. (supra). The learned DR could not point out any difference in facts. Hence, we hold this company be excluded from the list of comparable companies as functionally not comparable with the Assessee company.

12. Similarly one of the comparable company chosen by the TPO and retained by the DRP viz., Larsen & Toubro Infotech Ltd., was held to be not comparable company for the reason that the related party transaction to sales of this company was more than 15 per cent by this Tribunal in the case of VM Ware Software India (P.) Ltd. (supra). The learned DR could not point out any difference in facts. Hence, we hold this company be excluded from the list of comparable companies as the related party transactions to sales was more than 15 per cent."

10. We notice that the coordinate bench has followed the decision rendered by another coordinate bench in the case of M/s. Infinera India Pvt. Ltd. (supra), wherein following discussions have been made in respect of four of the above said comparable companies, viz., (i) M/s Bodhtree Consulting Ltd, (ii) Tata Elxsi Ltd., (iii) Persistent Systems Ltd. and (iv) Infosys Ltd.

"(2) M/s Bodhtree Consulting Ltd., For exclusion of this company also, reliance has been placed on the same Tribunal order rendered in the case of Cisco Systems (Ind.)(P.) Ltd. (supra) and in particular, our attention was drawn to para-26.1 available on page no.98 to 99 of Case Law Compendium. In this

case, it is noted by the Tribunal that this company is in the business of software product and was engaged in providing open and end to end web solutions software consultancy and design and development of software using latest technology and therefore, the same cannot be considered as a comparable in the case of companies rendering software development services, as in the present case. Therefore, by respectfully following this Tribunal order, we hold that this company is also excluded from the list of final comparables.

(3) M/s Tata Elxsi Ltd., For exclusion of this company also, reliance has been placed on the same Tribunal order rendered in the case of Cisco Systems (India)(P.) Ltd. (supra) and our attention was drawn to para 26.4 to 26.5 of the order available on pages 103 to 105 of the case law compendium. For the sake of ready reference these paras are reproduced hereunder;

'26.4 Tata Elxsi Ltd.:- As far as this company is concerned, it is not in dispute before us that in assessee's own case for the A.Y. 2007-08, this company was not regarded as a comparable in its software development services segment in ITA No.1076/Bang/2011, order dated 29.3.2013. Following were the relevant observations of the Tribunal:-

II. UNREASONABLE COMPARABILITY CRITERIA :

19. The learned Chartered Accountant pleaded that out of the six comparables shortlisted above as comparables based on the turnover filter, the following two companies, namely (i) Tata Elxsi Ltd; and (ii) M/s. Flextronics Software Systems Ltd., deserve to be eliminated for the following reasons :

(i) Tata Elxsi Ltd., : The company operates in the segments of software development services which comprises of embedded product design services, industrial design and engineering services and visual computing labs and system integration services segment. There is no sub-services break up/information provided in the annual report or the databases based on which the margin from software services activity only could be computed. The company has also in its response to the notice u/s.133(6) stated that it cannot be considered as comparable to any other software services company because of its complex nature. Hence,

Tata Elxsi Ltd., is to be excluded from the list of comparables. ……

……

21. We have heard the rival submissions and considered the facts and materials on record. After considering the submissions, we find that Tata Elxsi and Flextronics are functionally different from that of the assessee and hence they deserve to be deleted from the list of six comparables and hence there remains only four companies as comparables, as listed below:"

26.5. Following the aforesaid decision of the Tribunal, we hold that M/S. Tata Elxsi Ltd. should not be regarded as a comparable'.

15. Since ld. DR of the revenue could not point out any difference in facts, respectfully following these Tribunal orders, we direct the AO/TPO to exclude this company also from the list of final comparables.

(4) Persistent Systems Ltd., For exclusion of this company, reliance has been placed on the Tribunal order rendered in the case of Unisys India (P.) Ltd. IT(TP) Appeal No.67(Bang) of 2015, copy available on pages 210 to 246 of case law compendium and in particular, our attention was drawn to para 36 to 37 of the Tribunal order. These paras are reproduced as under:—

'36. As far as Persistent Systems Ltd. a comparable by the assessee in his TP study but was objected by the assessee before the TPO as not comparable, this Tribunal in the case of IT(TP)A No.108(Bang)/21014 order dated 12-12-2014 in the case of Yodlee Infotech Pvt. Ltd. v. ITO held as follows:

"5.12…… This Tribunal in the case of 3DPLM Software Solutions Ltd. v. Dy. CIT (IT(TP) A No. 1303(Bang)/2012 dated 28-11-2013) has also held that Persistent Systems Pvt. Ltd., was in product designing services and into software product development. In the same decision it was also held that M/s Infosys Technologies Ltd., had considerable intangibles like IPR, and was also into software product development. It was also held

that M/s Tata Elxsi Ltd., was developing niche products and into product designing services. Hence, these companies would in any case have to be excluded from the comparables being functionally different".

37. Following the said decision, we direct that Persistent Systems Ltd., be excluded from the final list of comparable companies chosen by the TPO'.

The ld. DR of the revenue supported the orders of the authorities below;

16. We have considered the rival submissions. We find that in this case, the Tribunal has followed another Tribunal order rendered in the case of Yodlee Infotech Ltd. v. ITO [IT(TP) Appeal No. 108 (Bang) of 2014]. The relevant portion of that Tribunal order is re- produced above and as per the same, this company i.e. M/s Persistent Systems Ltd., was in product designing services and into software product development. Since the present assessee company is only providing software development services to the AE, this company cannot be considered as a comparable in the present case. Since the ld. DR of the revenue could not point out any difference in facts, by respectfully following this Tribunal order, we direct the AO/TPO for exclusion of this company from the final list of comparable.

16.1 M/s Infosys Technologies Ltd., For exclusion of this company, reliance has been placed on the judgment of the Hon'ble Delhi High Court rendered in the case of CIT v. Aginity India Technologies (P.) Ltd. [2013] 36 taxmann.com 289/219 Taxman 26 (Delhi) and in particular, our attention was drawn to para-6 of the judgment as available inpage-386 of the case law compendium and the same is reproduced hereunder:—

"6. Learned counsel for the revenue has submitted that the Tribunal after recording the aforesaid table has not affirmed or given any finding on the differences. This is partly correct as the Tribunal has stated that Infosys Technologies Ltd., should be exclude from the list of comparables for the reason latter was giant company in the area of development of software and it assumed all risks leading to higher profits, whereas the respondent assessee was a captive unit of the parent company and

> assumed only a limited risk. It has also stated that Infosys Technologies Ltd. cannot be compared with the respondent-assessee as seen from the financial data etc. to the two companies mentioned earlier in the order i.e. the chart. In the grounds of appeal the Revenue has not been able to controvert or deny the data and differences mentioned in the tabulated form. The chart has not been controverted".
>
> 17. From the above para of the judgment of the Hon'ble Delhi High Court, it is seen that this company is a giant company in the area of software and it assumed all risks leading to higher profits, whereas the assessee company was a captive unit of the parent company and assumed only a limited risk. In the present case also, the assessee company is providing services to the parent company and therefore, assuming only limited risk and hence, respectfully following this judgment of the Hon'ble Delhi High Court, we direct the AO/TPO to exclude this company also from the list of final comparables."

> 11. Following above said the decision rendered by the Tribunal in the case of M/s. Schneider Electric IT Business India Pvt. Ltd (supra) and M/s. Infinera India Pvt. Ltd. (supra), we direct exclusion of (i) M/s Bodhtree Consulting Ltd, (ii) Tata Elxsi Ltd., (iii) Persistent Systems Ltd. and (iv) Infosys Ltd."

17.1 Following the order of the coordinate Bench of the Tribunal in the case of *M/s. Sonus Networks India Pvt. Ltd. (supra)*, we direct exclusion of (i) M/s Bodhtree Consulting Ltd, (ii) Tata Elxsi Ltd., (iii) Persistent Systems Ltd. and (iv) Infosys Ltd. from the list of comparables.

Sasken Communication Technologies Ltd

18. It was submitted that the company is engaged in high-end software products and services that are not similar to the services rendered by the Assessee. It develops and owns several patents and earns returns on the same while the Assessee neither develops nor

owns any patents. Moreover, the company incurs significant expenditure on research and development activities and hardware. However, the Assessee is a captive software development service provider and does not undertake development or sale of software products and in turn does not own intangible assets. The company is therefore not comparable to the Assessee. Also, Sasken has a huge turnover of 480 crores whereas the Appellant's turnover is only 29.99 crores. Thus, the company is not comparable to the Appellant. Detailed submissions in this regard are placed at pages 286-288 of the paperbook.

18.1 The ld. AR placed reliance on the decision of this Tribunal in assessee's own case for AY 2014-15 and Sonus Networks India Pvt. Ltd. (supra) for AY 2009-10.

19. The ld. DR relied on the orders of the lower authorities.

20. After hearing both the sides and perusing the material on record, we note that the assessee has argued that this company has high turnover of Rs.480 crores, whereas the assessee's turnover is only Rs. 29.99 Crores which is near about 16 times more and other arguments were also made which are extracted as above. However, various Benches of the Tribunal has decided the upper turnover limit should be fixed by the TPO if there is lower turnover filter of Rs. 1 Crore applied. In this case, the assessee's turnover is Rs.29.99 crores, which is less than Rs.200 crores turnover of the comparable company. The coordinate Bench decision in the case of *Triology E-Business Software*

India (P) Ltd. v. DCIT, [2021] 127 taxmann.com 285 (Bangalore Trib.) directed exclusion of this company. The relevant part of the decision is as follows:-

"8. The Ld.AR seeks exclusion of following comparables on turnover filter:
Tata Elxsi
Sasken Communication Mindtree Ltd…….

9. The Ld A.R submitted that the Ld.TPO has applied filter of minimum service revenue of Rupees One crore. However, he has failed to fix any upper limit on the turnover/service revenue. She submitted that the turnover of the assessee is Rs. 22.50 crores and hence the assessee falls under the category of companies having turnover between Rs. 1.00 crore to Rs. 200 crores. She submitted that the coordinate bench has held in the assessee's own case related to *Autodesk India (P.) Ltd.* v. *Dy. CIT* [2018] 96 taxmann.com 263 (Bang. - Trib.) and also in the case of *Tavant Technologies India (P.) Ltd.* v. *Dy. CIT* [2020] 120 taxmann.com 122/185 ITD 309 has held that the companies having turnover of more than Rs. 200 crores could not be taken as comparable companies for an assessee having turnover of less than Rs. 200 crores. The Ld A.R submitted that, on application of above said upper turnover filter, the above said three companies would be excluded. Accordingly he prayed for application of upper turnover filter and exclusion of above said three companies.

10. He submitted that in assessee own case for assessment year 2007-08, *Trilogy E-Business Software India (P.) Ltd.* v. *Dy. CIT* [2013] 29 taxmann.com 310/140 ITD 540 (Bang. - Trib.), coordinate bench of this Tribunal applied turnover filter to exclude comparables. This Tribunal observed and held as under:
'The ld. counsel for the assessee as well as the ld. DR made rival submissions on various aspects of the adjustment made by the TPO. These objections will be dealt with under different heads.

(1) Turnover Filter
11. The ld. counsel for the assessee submitted that the TPO has applied a lower turnover filter of Rs. 1 crore, but has not chosen to apply any upper turnover limit. In this regard, it was submitted by him that under rule 10B(3) to the Income-tax Rules, it was necessary for comparing an uncontrolled transaction with an international transaction that there should not be any difference between the transactions compared or the enterprises entering into such transaction, which are likely to materially affect the price or cost charged or paid or profit arising from such transaction in the open market. Further it is also necessary to see that wherever there are some differences such differences should be capable of reasonable accurate adjustment in monetary terms to eliminate the effect of such

differences. It was his submission that size was an important facet of the comparability exercise. It was submitted that significant differences in size of the companies would impact comparability. In this regard our attention was drawn to the decision of the Special Bench of the ITAT Chandigarh Bench in the case of *Dy. CIT* v. *Quark Systems (P.) Ltd.* [2010] 38 SOT 207, wherein the Special Bench had laid down that it is improper to proceed on the basis of lower limit of 1 crore turnover with no higher limit on turnover, as the same was not reasonable classification. Several other decisions were referred to in this regard laying down identical proposition. We are not referring to those decisions as the decision of the Special Bench on this aspect would hold the field. Reference was also made to the OECD TP Guidelines, 2010 wherein it has been observed as follows:—
"Size criteria in terms of Sales, Assets or Number of Employees: The size of the transaction in absolute value or in proportion to the activities of the parties might affect the relative competitive positions of the buyer and seller and therefore comparability."

12. The ICAI TP Guidelines note on this aspect lay down in para 15.4 that a transaction entered into by a Rs. 1,000 crore company cannot be compared with the transaction entered into by a Rs. 10 crore company. The two most obvious reasons are the size of the two companies and the relative economies of scale under which they operate. The fact that they operate in the same market may not make them comparable enterprises. The relevant extract is as follows [on Rule 10B(3)]:
"Clause (*i*) lays down that if the differences are not material, the transactions would be comparable. These differences could either be with reference to the transaction or with reference to the enterprise. For instance, a transaction entered into by a Rs. 1,000 crore company cannot be compared with the transaction entered into by a Rs. 10 crore company. The two most obvious reasons are the size of the two companies and the relative economies of scale under which they operate."

13. It was further submitted that the TPO's range (Rs. 1 crore to infinity) has resulted in selection of companies like Infosys which is 277 times bigger than the Assessee (turnover of Rs. 13,149 crores as compared to Rs. 47.47 crores of Assessee). It was submitted that an appropriate turnover range should be applied in selecting comparable uncontrolled companies.

14. Reference was made to the decision of the ITAT Bangalore Bench in the case of *Genisys Integrating Systems (India) (P.) Ltd.* v. *Dy. CIT* [2012] 53 SOT 159/20 taxmann.com 715, wherein relying on Dun and Bradstreet's analysis, the turnover of Rs. 1 crore to Rs. 200 crores was held to be proper. The following relevant observations were brought to our notice:—

"9. Having heard both the parties and having considered the rival contentions and also the judicial precedents on the issue, we find that the TPO himself has rejected the companies which are (*sic*) making losses as comparables. This shows that there

is a limit for the lower end for identifying the comparables. In such a situation, we are unable to understand as to why there should not be an upper limit also. What should be upper limit is another factor to be considered. We agree with the contention of the learned counsel for the assessee that the size matters in business. A big company would be in a position to bargain the price and also attract more customers. It would also have a broad base of skilled employees who are able to give better output. A small company may not have these benefits and therefore, the turnover also would come down reducing profit margin. Thus, as held by the various benches of the Tribunal, when companies which arc loss making are excluded from comparables, then the super profit making companies should also be excluded. For the purpose of classification of companies on the basis of net sales or turnover, we find that a reasonable classification has to be made. Dun & Bradstreet & Bradstreet and NASSCOM have given different ranges. Taking the Indian scenario into consideration, we feel that the classification made by Dun & Bradstreet is more suitable and reasonable. In view of the same, we hold that the turnover filter is very important and the companies having a turnover of Rs. 1.00 crore to 200 crores have to be taken as a particular range and the assessee being in that range having turnover of 8.15 crores, the companies which also have turnover of 1.00 to 200.00 crores only should be taken into consideration for the purpose of making TP study."

15. It was brought to our notice that the above proposition has also been followed by the Honourable Bangalore ITAT in the following cases:

- *Kodiak Networks (India) (P.) Ltd.* v. *Asstt. CIT* [2012] 51 SOT 191/18 taxmann.com 32 (Bang.)
- *Genesis Microchip (I) (P.) Ltd.* v. *Dy. CIT* [2012] 135 ITD 533/20 taxmann.com 237 (Bang.)
- *Electronic for Imaging India (P.) Ltd.* v. *Dy. CIT* [ITA No. 1171/Bang/2010), dated 31-1-2012]

It was finally submitted that companies having turnover more than Rs. 200 crores ought to be rejected as not comparable with the Assessee.

16. The ld. DR, on the other hand pointed out that even the assessee in its own TP study has taken companies having turnover of more than Rs. 200 crores as comparables. In these circumstances, it was submitted by him that the assessee cannot have any grievance in this regard.

…….
…….

20. In this regard we find that the provisions of law pointed out by the ld.counsel for the assessee as well as the decisions referred to by the ld. counsel for the assessee clearly lay down the principle that the turnover filter is an important criteria in choosing the comparables. The assessee's turnover is Rs. 47,46,66,638.

It would therefore fall within the category of companies in the range of turnover between 1 crore and 200 crores (as laid down in the case of Genisys Integrating Systems (India) (P.) Ltd. (*supra*). Thus, companies having turnover of more than 200 crores have to be eliminated from the list of comparables as laid down in several decisions referred to by the ld. counsel for the assessee. Applying those tests, the following companies will have to be excluded from the list of 26 comparables drawn by the TPO *viz.*,

	Turnover Rs.
(1) Flextronics Software Systems Ltd.	848.66 crores
(2) iGate Global Solutions Ltd.	747.27 crores
(3) Mindtree Ltd.	590.39 crores
(4) Persistent Systems Ltd.	293.74 crores
(5) **Sasken Communication Technologies Ltd**.	343.57 crores
(6) Tata Elxsi Ltd.	262.58 crores
(7) Wipro Ltd.	961.09 crores.
(8) Infosys Technologies Ltd.	13149 crores.

In present facts, assessee contests following comparables for exclusion by using turnover filter;

Tata Elxsi	378.43 crores
Sasken Communication	405.30 crores
Mindtree Ltd	793.22 crores
Larson&Tubro Infotech	1950.83 crores
Infosys Technologies Ltd	20264 crores
Zylog Systems Ltd.	734.94 crores

Respectfully following the view taken by this Tribunal in assessee's own case for assessment year 2007-08, and decisions relied by the Ld.AR herein above, we direct exclusion of these comparables final list of comparables for failing turnover filter.'

20.1 Respectfully following the above decision of the Tribunal, we direct the AO/TPO to exclude this company from the comparables because this company fails the turnover filter.

L&T Infotech Ltd.

21. The ld. AR submitted that this company is not functionally comparable to the Assessee given that it is engaged in application development, application outsourcing, architecture services, business process services, SAP services, data warehousing SAP, infrastructure management services etc. During the financial year 2008-09, the company had launched new service lines which are in the nature of both IT and IT enabled services as can be seen from page 3 of its annual report. The company has also taken measures with regard to branding its trademark and logo. The company is therefore functionally not comparable to the Assessee. Also, the L&T Infotech has a huge turnover of 1951 crores whereas the Appellant's turnover is only 29.99 crores. Thus, the company is not comparable to the Appellant. Detailed submissions in this regard are placed at pages 295-296 of the paperbook.

21.1 Further, it is submitted that L & T Infotech Ltd should be excluded as a comparable as it has a RPT% greater than 15%. The computation of RPT % of L&T Infotech Ltd. as per its annual report is as under:

L&T Infotech Particulars	Amount (Rs.)
Sale of service	603,167,826
Purchase of services	1,166,381,507
Overheads charge paid	595,634,700
Overheads charge received	850,505,832
Lease rent paid	25,608,987
Total	3,241,298,852
Sales	19,508,381,374
RPT%	16.61%

21.2 The ld. AR placed reliance on the decision of this Tribunal in assessee's own case for AY 2014-15 and Sonus Networks India Pvt. Ltd. (supra) for AY 2009-10.

22. The ld. DR relied on the orders of the revenue authorities.

23. We have heard both the parties and perused the material on record. The coordinate Bench of the Tribunal in the case of *DCIT v. Informatica Business (P) Ltd. for AY 2009-10 [2019] 106 taxmann.com 354 (Bangalore - Trib.).* excluded L&T Infotech Ltd. from the comparables by observing that it fails turnover filter. The turnover of this company is more than Rs.200 crores. The relevant part of the order is as under:-

> **7.** …….
>
> '14. Remaining grounds i.e. 12 to 15 are in respect of assessee's claim for exclusion of various comparables i.e.
>
> (1) ….
>
> (2) ……
>
> (3) ……..
>
> (4) …….
>
> (5) ……)
>
> (6) Larsen and Toubro Infotech Ltd.

(7) ……..

…….. Regarding Larsen & Toubro Infotech Ltd., it was submitted that this comparable company fails turnover filter because onsite revenue of this company is only about 55%. The ld. DR of revenue supported the order of AO and DRP.

…….

II. UNREASONABLE COMPARABILITY CRITERIA :

19…….

16. …….. Regarding assessee's request for exclusion of **Larsen & Toubro Infotech Ltd**., we find that regarding this comparable company, page no. 24 of the DRP directions is relevant. We find that on page no. 24 of its directions, it is noted by DRP that this was the claim of the assessee before DRP that turnover of this company is Rs. 2081.49 Crores whereas the assessee's turnover is Rs. 33.94 Crores. It was also the objection before DRP that about 55% of total exports of this company are from onsite services whereas in the present case, the transactions with the AE are on offshore model. Regarding high turnover of this company **Larsen and Toubro Infotech Ltd**. of Rs. 2081.49 Crores as against turnover of assessee company of Rs. 33.94 Crores and in view of this fact that 55% of total exports in that case are from onsite services whereas in the present case the export to AE is on offshore model, we find force in the contention of ld. AR of assessee that this is not a good comparable and therefore, we direct the AO/DRP to exclude this comparable Larsen and Toubro Infotech Ltd. also. Hence these six comparables are excluded. Accordingly ground nos. 12 and 13 are allowed and ground no. 14 is partly allowed.'

8. We have gone through these paras of the Tribunal order and we find that in the facts of present case, this Tribunal order is applicable and in this Tribunal order, exclusion of following six comparables is approved.

(*i*) ……..

(*ii*) ……

(*iii*) ……...

(*iv*) ……..

(*v*) …….

(*vi*) Larsen and Toubro Infotech Ltd.

Respectfully following this Tribunal order, we hold that in the present case also, these six comparables should be excluded from the final list of comparables.

23.1 In view of the above decisions of the coordinate Bench of the Tribunal, we direct exclusion of L&T Infotech Ltd. from the comparables because it fails turnover filter. Since we have taken the view that L&T Infotech Ltd. should be excluded on the basis of turnover filter, therefore the other arguments of the assessee for exclusion of this company on other grounds are not considered. The AO/TPO is directed to exclude this company.

23.2 The ld. AO/TPO is directed to compute the arithmetical mean of the working capital adjusted mean of the final comparable companies in the light of above directions and examine whether such arithmetical mean would fall within the +/- 5% range of assessee's NCP margin to be arm's length.

Ground Nos. 18 to 20 - Disallowance of provision for warranty : Rs. 10,88,018

24. During the year, the Appellant had debited a sum of Rs. 1,09,46,000/- towards warranty expenses which included Rs.

98,57,982/- being an amount of actual claim by the customers made during the year and Rs. 10,88,018/- being the amount of provision for warranty. The movement in provision for warranty as accounted for by the Appellant for the year under consideration till assessment year 2019-20 is as under:-

A.Y.	Opening balance (A)	Provision debited to P&L (B)	Actual expenditure (C)	Closing balance	Net Provision (B-C)
2008-09	1,49,29,932	59,78,651	31,92,102	1,77,16,481	27,86,549
2009-10	1,77,16,481	1,09,35,490	98,57,982	1,87,93,989	10,77,508
2010-11	1,87,94,000	87,37,867	1,95,32,000	79,99,867	(1,07,94,133)
2011-12	79,99,867	5,28,64,672	1,66,77,339	4,41,87,200	3,61,87,333
2012-13	4,41,87,200	7,83,67,911	2,62,34,907	9,63,20,204	5,21,33,004
2013-14	9,63,20,204	1,66,55,739	5,88,40,832	5,41,35,111	(4,21,85,093)
2014-15	5,41,35,111	94,97,052	2,61,22,163	3,75,10,000	(1,66,25,111)
2015-16	3,75,12,432	4,10,30,636	3,84,30,238	4,01,12,830	26,00,398
2016-17	4,01,12,831	8,46,53,034	9,04,03,141	3,43,62,723	(57,50,107)
2017-18	3,43,62,723	15,42,67,415	6,62,43,531	12,23,86,607	8,80,23,884
2018-19	12,23,86,607	5,92,84,235	10,89,18,707	7,27,52,135	(4,96,34,472)
2019-20	7,27,52,135	1,38,44,824	2,93,18,763	5,72,78,196	(1,54,73,939)

24.1 For the year under consideration, the amount debited to the profit and loss account included actual warranty expenses to the extent of Rs. 98,57,982. The AO disallowed the provision for warranty contending the same to be contingent liability/ created on estimate basis. The DRP upheld the disallowance proposed by the AO and rejected the Appellant's objections.

24.2 The ld. AR submitted a note on the method of provision for warranty as follows:-

Note on method of creating provision for warranty

We submit that the company follows following methodology for creating provision warranty:

1. The Quality department of the company maintains the record/data for goods return from the customer for the purpose of warranty claims.

2. This compilation would have details relating to each product for which warranty has be claimed and the month in which such products are manufactured.

3. Based on these data, the company would arrive at a percentage of warranty that needs be created for each product. This is explained in the following manner:

   a) As the warranty period provided by the company is 24 months, the company v consider the data relating to past 24 months.

   b) Thus, the company considers the sale for the past 24 months and the goods return for the purpose of warranty claim during that period. For example if the compa wants to arrive at percentage of provision that needs to be created as on April 201 would consider the following data:

Warranty Analysis

Customer :ABC Ltd.

Product: XYZ

Part Number: Various

SI No.	Month	Qty despatched	Qty Returned	Outstanding Warranty Period	Elapsed months
1	May-08	6614	87	1	23
2	Jun-08	5921	76	2	22
3	Jul-08	1574	23	3	21
4	Aug-08	1827	12	4	20
5	Sep-08	6283	28	5	19
6	Oct-08	8386	31	6	18
7	Nov-08	9131	32	7	17
8	Dec-08	7133	17	8	16
9	Jan-09	5815	13	9	15
10	Feb-09	5969	14	10	14
11	Mar-09	7029	21	11	13
12	Apr-09	5879	13	12	12
13	May-09	7592	10	13	11
14	Jun-09	7308	14	14	10

15	Jul-09	6840	12	15	9
16	Aug-09	5279	5	16	8
17	Sep-09	6169	4	17	7
18	Oct-09	7056	2	18	6
19	Nov-09	5027	6	19	5
20	Dec-09	6022	0	20	4
21	Jan-lO	4716	0	21	3
22	Feb-l0	4008	14	22	2
23	Mar-l0	3240	22	23	1
24	Apr-l 0	2904	10	24	0
TOTAL		137,722	466	-	-

c) The above table depicts actual sale for each of the month and quantity returned against the sales made during those month.

d) Based on these actual data, percentage of likely warranty claim is arrived as follows:

Step 1:
Estimated future quantity likely to return is arrived in the given formula
= Quantity returned x O/s Warranty Period
Elapsed Months

Step 2:
Total quantity returned is arrived in the given formula
= Actual Quantity returned +Estimated Future Quantity likely to return (as per Step 1)

Step 3:
Percentage of likely warranty claim in respect of product is arrived in the following formula
= Total Quantity returned (as per step2)
Total quantity despatched

The table below depicts the results after following the above steps:

Sr No.	Month	Qty dispatched	Qty Returned	Pending months	Elapsed months	Estimated Future Qty	Total Qty	Warranty %
1	May-08	6614	87	1	23	3.78	90.78	1.37%
2	Jun-08	5921	76	2	22	6.91	82.91	1.40%
3	Jul-08	1574	23	3	21	3.29	26.29	1.67%
4	Au_g_-08	1827	12	4	20	2.40	14.40	0.79%
5	Sep-08	6283	28	5	19	7.37	35.37	0.56%
6	Oct-08	8386	31	6	18	10.33	41.33	0.49%
7	Nov-08	9131	32	7	17	13.18	45.18	0.49%
8	Dec-08	7133	17	8	16	8.50	25.50	0.36%
9	Jan-09	5815	13	9	15	7.80	20.80	0.36%
10	Feb-09	5969	14	10	14	10.00	24.00	0.40%
11	Mar-09	7029	21	11	13	17.77	38.77	0.55%
12	Apr-09	5879	13	12	12	13.00	26.00	0.44%
13	May-09	7592	10	13	11	11.82	21.82	0.29%
14	Jun-09	7308	14	14	10	19.60	33.60	0.46%
15	Jul-09	6840	12	15	9	20.00	32.00	0.47%
16	Aug-09	5279	5	16	8	10.00	15.00	0.28%
17	Sep-09	6169	4	17	7	9.71	13.71	0.22%
18	Oct-09	7056	2	18	6	6.00	8.00	0.11%
19	Nov-09	5027	6	19	5	22.80	28.80	0.57%
20	Dec-09	6022	0	20	4	-	-	0.00%
21	Jan-l0	4716	0	21	3	-	-	0.00%
22	Feb-l0	4008	14	22	2	154.00	168.00	4.19%
23	Mar-l0	3240	22	23	1	506.00	528.00	16.30%
24	*A_pr-l0*	2904	10	24	0			0.34%

							10.00	
	TOTAL	137,722	466			864	1,330	0.97%

e) Similar exercise is done for each product to arrive a percentage of likely warranty claims.

f) This percentage is applied for the purpose of creating provision against sales of each month.

4. It is to be noted that in this industry, where a provision for warranty claim made, in most of the cases such claim is towards replacement of the product and not a case of repairing and returning back to the customer.

Hence, provision for warranty created based on the most likely percentage of warranty that could arise against the sales made would be a scientific method of arriving at warranty liability.

24.3 The ld. AR submitted that the warranty provided by the Appellant is for 24 months and the company considers the data relating to past 24 months. It is submitted that the Appellant creates provision for warranty on the percentage on sales as fixed by the quality centre for each product. The quality centre based on the past experience and historical trend of the performance of each product arrives at a percentage based on which provision for warranty is created by all the entities across the globe, including India. Thus, the company considers the sale for the past 24 months and the goods returned for the purpose of warranty claims during that period. Based on this actual data, percentage of likely warranty claim is arrived at. This percentage is applied for the purpose of creating provision against sales of each month. Thus after following the said method, the company has created the provision for general warranty. The Appellant follows the specific methodology of creating provision for warranty consistently over the

years. The said methodology has been submitted before the AO during the course of assessment proceedings. The Appellant submits that it creates provision for warranty on a scientific basis. Based on the above, expenses incurred by it towards warranty expense are allowable under section 37 of the Act. Detailed submissions in this regard are placed at pages 634-733 of the paperbook. He further submitted that the said issue is squarely covered by the decision of this Tribunal in assessee's own case for AY 2014-15 wherein it is held that the provision for warranty has to be allowed as a deduction.

24.4 The ld. DR supported the orders of lower authorities and submitted that the assessee has not adopted any scientific method for creating the provision for warranty. Therefore the judgment of Hon'ble Supreme Court in the case of *Rotork Controls India P. Ltd. (180 Taxman 422) (SC)* will not apply in the case of the assessee. During the course of proceedings before the DRP, the assessee was unable to produce as to how the provision for warranty has been made on any scientific basis. The provision for warranty is recognized as per the observation of the ld. DRP in the following 3 situations relying on the above judgment:-

(a) An enterprise has a present obligation as a result of a past event;
(b) It is probable that an outflow of resources will be required to settle the obligation;
(c) A reliable estimate can be made of the amount of obligation.

24.5 The ld. DR submitted that the assessee has furnished the data from 2008-09 to 2019-20, but the impugned AY is 2009-10. The

assessee has furnished the data only for one prior AY 2008-09. From the table submitted by the assessee, the figures arrived are not on any scientific method, it is only estimated by the assessee on the basis of turnover made and hence the AO has rightly allowed the actual expenditure incurred. The provision for warranty created by the assessee are not in terms of the sales made by the assessee and unutilised provisions are not adjusted/recorded in the books of the assessee.

25. After hearing both the sides and perusing the entire material on record, we note that this is second round of proceedings. During the year the assessee has debited to P&L account Rs.1,09,46,000 towards warranty expenses provision and the actual expenditure incurred is Rs.98,68,481 and there was opening balance of Rs.1,77,16,481 resulting in the closing balance of provision of warranty of Rs.1,87,94,000. The assessee produced copy of ledger account of actual warranty expenses incurred which is also placed in the PB at pages 639 to 677 which has been allowed by the AO. In the first round of proceedings, the Tribunal directed the assessee to provide the basis of making the provision for warranty, but the assessee failed to establish it before the AO. During the course of DRP proceedings, the assessee was asked to prove with necessary evidence as to how the decision of Hon'ble Apex Court in the case of Rotork Controls India P. Ltd. (supra) is applicable. However, the assessee failed to explain or prove the same. The Hon'ble Apex Court in the case of Rotork Controls India P. Ltd. (supra) has laid down certain principles

regarding allowability of provision for warranty. The Hon'ble Supreme Court in Rotork Controls India (P.) Ltd. (supra), held that when *warranty* costs are integral part of the sale price, then assessee has to provide for such *warranty* costs in its account for the relevant year, otherwise the matching concept fails. The Hon'ble Apex Court pointed out that a liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits. A detailed assessment of the warranty provisioning policy is required particularly if the experience suggests that warranty provisions are generally reversed if they remained unutilized at the end of the period prescribed in the warranty. Thus, the Hon'ble Apex Court pointed out that the provision has to be made based on reliable estimation of the obligations. Unless the three conditions recognising the liability are satisfied, the claim could not be automatically allowed as a provision made on a historical trend.

25.1 In the present case the assessee is providing warranty for 24 months on automotive products sold by it on the basis of percentage on sales as fixed by the quality centre for each product. The assessee has not produced any credible evidence/calculation as to how the provision for warranty has been arrived relating to different products before the authorities below. A specific query was asked to the ld. AR regarding the unutilised provision for warranty in the books of accounts to which the ld. AR replied that in such case it represented increase in the closing balance of the year adjusted in future warranty

claims and no separate entry is made for unutilized warranty provision and he referred to the details of provision for warranty in the table extracted above. Before us, the ld. AR produced the basis for calculation of provision for warranty extracted hereinabove and he also submitted that that in remand proceedings by the co-ordinate bench for the assessment year 2010-11, the AO has accepted the provision for warranty expenses debited into profit & loss account. Further in assessee's own case the co-ordinate bench of the Tribunal has decided the issue in ITA No. 129/Bang/2019 for the AY 2014-15 in which it has been held as under :-

> *107. We have carefully considered the submissions and are of the view that provision for warranty created is based on past experience and historical trend of each product and at a percentage. The claim made by the Assessee that the method followed for creating provision for anticipated liability on account of warranty stands vindicated by the fact that the actual liability on account of warranty expenses is always on the higher side. The reasons given by the DRP for not accepting the claim of the Assessee is that the provision is created as a percentage of sale, ignoring the fact that past experience is also the basis for creation of provision for warranty. We are therefore of the view that the provision for warranty has to be allowed as a deduction, as the provision created satisfies the requirements for claiming provision as a liability, as laid down in the judicial precedents referred to above. We hold and order accordingly and allow the relevant ground of appeal of the Assessee.*

Considering the above facts of the assessee's own case for the AYs 2010-11 & 2014-15 we allow the ground No. 18 to 20.

Grounds 21-33:Disallowance of annual licence fee of Rs.2,16,76,616

26. The assessee had incurred an amount of Rs. 2,16,76,616 towards payments of annual license fees by entering into an agreement

with its group company i.e., Continental Automotive GmbH, Germany ("CA GmbH"). The compensation for the aforesaid agreement has been agreed to be paid by the Appellant as an annual royalty in percentage terms of net sales on account of use of intellectual property generated from basic R&D and prescribed percentage on net sales on account of use of intellectual property generated from old application R&D. The said expense being incurred for the purpose of business, has been claimed as deduction by the Appellant under section 37 of the Act. The AO disallowed the above contending it to be capital in nature and also that it is not a genuine expenditure while passing the draft order, on the basis that no evidences were submitted supporting the same. The DRP has upheld the disallowance proposed by the AO by observing that the fixed percentage of expenditure incurred by the assessee was in the nature of royalty and it was capital in nature after relying on the judgment of Hon'ble jurisdictional High Court in the case of *Telco Construction Co. Ltd. v. ACIT (TS-628-HC-2020(KAR)* and also observed that the assessee has acquired the right over the technical know-how, patent, drawings and other rights mentioned in the agreement and expenditure incurred on such technical know-how gives enduring benefit to the assessee. However, the DRP held that since the expenditure incurred was capital in nature, the Appellant would be entitled to depreciation under Section 32 of the Act, after relying on the judgment of the Hon'ble Supreme Court in the case of *Honda Siel Cars India Ltd. (2019) 101 Taxmann 322 (SC)* in which it has been

held that royalty is treated as capital expenditure. thus accepting that the expenses were genuine.

26.1 The ld. AR of the assessee submitted that under the aforesaid agreement, CA GmbH grants a non-exclusive, non-transferable license to use intellectual property owned by it as well as the technical information, to the Appellant for development, manufacturing and sale of automotive products. Compensation for the aforementioned license has been agreed to be paid by the Appellant as an annual royalty of 3% of net sales on account of use of intellectual property generated from basic R&D and 2% on net sales (which shall decrease by 0.25% during every calendar year after 2009) on account of use of intellectual property generated from old application R&D. [Basic R&D is Product related research and development for the general benefit of the company in manufacturing of the automotive products and Application R&D is Customer specific product related research and development].

26.2 Further, it is submitted that the term "R&D" was just a nomenclature used by the Appellant for the purpose of accounting such expenditure and the nature of expense as clearly laid out in the agreements was royalty. The Appellant submits that the annual license fee incurred by it was for the use of technology of the Continental Group for manufacturing and sales of the products.

26.3 It is submitted that the annual license fee is payable for making use of licensed intellectual property and/ or technical information owned by the Continental Group. Such payments are made only

towards "access" to technical knowledge and not absolute transfer of technical knowledge or information. The expenses were incurred by the Appellant for increasing profitability relating to products manufactured by the Appellant by applying new methods of manufacture/ technology provided under the aforementioned agreements. The object of the aforementioned agreements was to obtain the benefit of technical knowledge available with the licensors, for running the business of the Appellant. Further, the license fee is calculated as a percentage of sales, hence, it is recurring in nature and there is no enduring benefit derived by the Appellant in this regard. The Appellant submits that the annual license fee incurred by was for the use of technology of the Continental Group for manufacturing and sales of the products. Such expenditure should be allowed under section 37(1) of the Act based on following submission:-

i. Section 37 of the Act is a residual clause for claiming deduction for any expenditure incurred for the purposes of the business.
ii. For the purpose of claiming deduction under section 37 of the Act, the following conditions should be fulfilled:
    - The expenditure must be revenue in nature and should not be covered by any express deductions under sections 30 to 36 of the Act.
    - The expenditure should not be personal in nature.
    - The expenditure should be incurred wholly and exclusively for the purposes of the business or profession.
iii. Such payments are made only towards "access" to technical knowledge and not absolute transfer of technical knowledge or information.
iv. Such expenses were incurred by the Appellant for increasing profitability relating to products manufactured by the Appellant by applying new methods of manufacture/ technology provided under the aforementioned agreements.

v. The object of the aforementioned agreement was to obtain the benefit of technical knowledge available with the licensors, for running the business of the Appellant.
vi. Further, the license fee is calculated as a percentage of sales, hence, it is recurring in nature and there is no enduring benefit derived by the Appellant in this regard. Accordingly the same should be considered as revenue in nature and should be allowed as deduction under section 37(1) of the Act, since it satisfies all the aforementioned conditions.
vii. In this regard, reliance is placed on following decisions:
- Kanpur Cigarettes (P.) Ltd. v. CIT 147 Taxman 428 (Allahabad High Court)
- CIT v. Kirloskar Tractors Ltd [1998] 231 ITR 849 (Bombay HC)
- Alembic Chemical Works Co. Ltd. v. CIT [1989] 43 Taxman 312 (SC)
- J.K. Synthetics Ltd. v. CIT[2009] 176 Taxman 355 (Delhi High Court)
- DCIT v. Honda SIEL Power Products Ltd I.T.A .No. 1579/DEL/2017 (A.Y 2012-13) & S. A No. 217/Del/2017 in ITA No. 1579/Del/2017
- CIT v. Luwa India Ltd. ([2012] 18 taxmann.com 365 (Kar.))

26.4 Based on above judicial decisions, the factors to be considered and conditions to be satisfied are summarized below:

Factors to be considered	Conditions to be satisfied
License period and termination	License period and termination
Restriction on creation of further rights/ assignment	The licensee has restricted rights to create further rights/ assign the license in favor of third parties
Confidentiality	The arrangement prohibits parting with confidential information
Confidentiality	The arrangement prohibits parting with confidential information
Nature of royalty	Royalty paid as a percentage of sales is linked to sales achieved by the assessee and hence, is considered as cost in earning the same

26.5 Given the above, the ld. AR submitted that the agreements under which the annual license fees was paid, satisfies the aforementioned conditions as under:

Factors under consideration	**Whether the conditions are satisfied?**	**Clause reference in the Agreement**
License period and termination	Yes. The licenses are granted for a limited period. The agreement can be terminated at the discretion of both parties.	Clause 6.1.2
Restriction on creation of further rights/ assignment	Yes. The Appellant can sub-license only on receipt of prior written approval from the Licensor.	Clause 2.2
Confidentiality	Yes. The Appellant is obligated to hold in confidence all the information provided under the agreement.	Clause 8
Degree of transfer	Yes. The scope of the license is only to grant right to use licensed intellectual property. There is no transfer of absolute ownership of any intellectual property.	Clause 2.1
Nature of royalty	Yes. Royalty was paid based on a percentage of net sales as provided in the agreement	Clause 5.1

26.6 It is submitted that for the above expenses, the Appellant receives a wide array of assistance, services, support and guidance on a recurring basis. It can be said that these royalty payments made are commensurate to the benefits obtained by the Appellant on a year on year basis. The broad key areas of support/ assistance/ service provided by Continental global to Appellant is described below in detail:-

Standard Practices:

(a) Continental global provides access to standard procedures, methodologies, best practices, knowledge updates, etc. relating to manufacturing process of a

product. These are provided largely through software platforms used by Continental group on a standardized basis across the world. These are continuously updated and the latest versions of the same are made available through portals/tools.

(b) The global team works on the upgradation of current technologies and products. It also avoids parallel work of a similar kind among the group entities. The sharing of best practices on technical know-how, manufacturing processes and techniques is the foundation for Continental group's business as an organization as they aim to serve the customer's requirements in a standardized manner. The Appellant being part of the group benefits out of such knowledge sharing and technical guidance and support.

(c) Some of the key benefits out of the above support to the Appellant includes timely business planning, optimum resource utilization, and meeting customer's requirements where the expectation is always to deliver as per global standards, gaining competitive advantage, and running the business smoothly and efficiently.

(d) Corporate Project Management Manuals and Standards – CPMMs and CPMS provided by Continental global aid in project management. Further, the Appellant refers to the standard document provided by Continental global in planning introduction of a new product, which provides basic guideline for innovation introduction. Continental group provides the latest updates relating to development of key manufacturing technologies. This helps the Appellant to upgrade its business including the manufacturing process to the latest available technology.

(e) Relevant Snapshots of the manuals, emails and standard documents demonstrating the rendering of these services are produced before this Hon'ble Tribunal at pages 777-929 of the paperbook.

Access to various tools/platforms

(f) There are numerous tools/ software platforms that are made available by Continental global to the Appellant for the purpose of its business. These tools are developed in-house by Continental global or developed by third party and customized for use by Continental group. These tools/software platforms are primarily online tools/platforms and shared drives which facilitate various technical support including:

- Sharing of best practices/ standard procedures (discussed above).
- Real-time production control and monitoring.
- Planning/ forecasting the material and labor requirements.
- Survey the customer's demands/ requirements.
- Tracking and overall management of the project on real-time basis.
- Integration of costing software and accounting software (SAP).

Various tools like tech.net, prod.net, log.net, camline etc are provided to the Appellant and some of the key tools in use by the Appellant are discussed below:

Sl. No.	Tool Name	Tool/ platform description	Benefit to 'Continental India'
1	*Tech.Net*	It is a platform which provides access to latest technical information, standard practices, procedures, etc. Tech.Net members possess highest level of education (PHd) and provide support centrally to each location whenever a problem cannot be resolved locally.	Appellant uses *Tech.net* (manufacturing technology network) to gain access to the technical information, standard practices and documents, and applies/ implements the same for its manufacturing process, testing process, etc. As mentioned earlier, this information and support is a catalyst for the Appellant's business.
2	Collaborative robots ("Cobot")	Cobot is an advanced version of robots which focuses on safety and cost reduction. This is easy and	Cobot helps the Appellant in reducing dependency on man power, suppliers of raw material. This

		simple to program as per the user requirement.	enhances overall performance with possible savings in terms of lead time and increase in efficiencies.
3	Camline	Camline is an internal customized software for monitoring and tracking of the line performance of the machinery/ equipment in the plant during the process of manufacturing.	Camline analyses performance of the machineries over a period and provides quality rates, performance rates. It also records the equipment status and provides report of the unplanned errors occurred.
4	Space planning tool	LFPT tool is another tailor-made tool from Continental global for management of manufacturing floor space, logistics floor space etc.	This helps the Appellant in planning as well as optimum utilization of available resources.
5	Manufacturing execution systems ("MES")	MES is an auxiliary bundle of software that work hand-in-hand with Camline software/ platform and provides real time production monitoring.	MES is integrated with the SAP system in a way that MES provides automatic data to SAP. It counts automatically how many units were built, how many tests failed, how many units were shipped, what product routing (recipe) was used. These provide basic information for cost absorption calculation. It's a smart software that makes machines closer to Industry 4.0 smart equipment (industry standard).

Assistance in sourcing:

(a) Continental global has a global strategic sourcing approach i.e. strategy for obtaining raw material/ resources across the world in a standardized manner, which can achieve economic advantages in terms of obtaining significant discounts. Continental global locates suppliers, seeks samples from them and tests their products. Upon satisfaction about the quality of the product,

Continental global provides such information of suppliers located across the globe, to the group. It also negotiates for bulk discounts and set quality standards for the suppliers. This in turn helps the Appellant in procuring quality raw materials at best price without any efforts.

Provision of designs, procedures and layouts

(a) Every product that the Appellant manufactures is unique and complex. Continental global develops and shares its designs, layouts and drawings relating to products, manufacturing process, etc. with the Appellant. The requirement of the customers varies from country to country and therefore, Continental global provides customized versions of its designs, layouts and drawings to the Appellant which are best suited for the Indian market.

Training

(a) Continental global conducts online courses, training through video conferencing, live training workshops etc. to equip its people with updated technologies, products and solutions, and specifically focus on measures and guidelines for implementation of standards, new technology etc. These trainings are facilitated from the global experts of the Continental group. This contributes to enhanced productivity.

Validation

(a) Continental global validates the complete product layout/ design as submitted to it by local teams for its feasibility and then provides a "go-ahead" to the local team for its implementation. This is prepared and submitted in the form of a project matrix.

(b) Continental global, due to their expertise could uncover any issues at an initial stage itself. Therefore, the above process aids Continental India to prevent any

issues, avoid duplication of efforts and ensures timely response to the issues beforehand.

Testing

(a) A crucial aspect of any manufacturing process is testing. The Appellant undertakes testing of the products/ components as per the guidance and set standards by Continental global. Continental global releases guides/ standard practices to be followed by the Appellant for testing purposes on continuous basis.

(b) Where the existing testing procedures have not been helpful or the local team is unable to render the testing equipment/ software for testing purposes, the appellant requests the assistance of Continental global. A screenshot of the source code shared with the Appellant in one such instance is produced under cover of the application for additional evidence.

(c) Sometimes, the technical support would be provided through emails. These are facilitated by the experts and generally entails steps and action points for the Appellant. Sample email communications are also part of the application for additional evidence.

Problem resolution

(a) The Appellant seeks the help of Continental global to resolve issues in cases where the Appellant is unable to do so. Continental global provides the appellant with necessary technical support on call and through emails.

(b) Continental global also voluntarily takes initiatives to mitigate the issues at every plant location across the world. If the issues are highly vulnerable and needs personal monitoring by the experts, the global team send experts to that particular location to address the specific and routine issues and bring down the occurrence of quality incidents.

Other assistance

(a) Continental global enters into centralized agreements for procuring certain techniques, technical services. This helps the Appellant to improve the product quality. The aforesaid assistance received from Continental group helps in improving the technological performance of the Appellant's operations in terms of quality and cost and also helps in optimum utilization of resources in an efficient manner. It also creates synergy among the group entities including the Appellant and ensures access to latest technical information.

Project R&D

(a) The technical service, support and guidance received from Continental Group is essential for the uninterrupted conduct of Appellant day to day business activities. Continental Global invests their efforts for providing the said services on a continuous basis.

27. The objections of the AO and Appellant's submission is tabulated below:

Sl. No.	AO's contention	Appellant's submission	Reference by the appellant
1.	No proper evidences furnished	The Appellant had submitted the following details to the learned AO: 1. Copy of the agreement entered into with Continental Automotive GmbH, Germany 2. Copies of Form 16A's 3. Detailed submission evidencing the benefits obtained by the Assessee.	
2.	Nomenclature used in the agreement in R&D	The Assessee submits that R&D is only a nomenclature used by the Assessee on the agreements since its	

		group companies	
3.	Expenses is capital in nature since it provides enduring benefits and the Assessee has obtained far reaching benefits	The Appellant submits that the impugned expense is not a capital expenditure, as there is no enduring benefit derived by the Appellant. The same is related to the business of the Appellant.	The judicial precedents discussed above supports the case of the Appellant that expense is not capital in nature.
4.	No rationale for praying royalty since there are import of raw materials, consumables and other supplies.	The import of raw material, consumables and other supplies from the group companies and payment of royalty are two distinct transactions and the Assessee has substantiated the business rationale for the payment of royalty through evidence and submissions. Payment of royalty is towards use of technology of Continental Group, technical information and other assistance that helps facilitate the manufacturing activity of the Appellant.	Reliance in this regard is placed on below judicial decisions, where it has been observed that "AO cannot take managerial decision and conclude what expense needs to be incurred by the business and what not". DCIT *vs.* International Institute of Planning & Management (P.) Ltd. [2015] 41 ITR(T) 733 (Delhi - Trib.) CIT *vs.* Dalmia Cement (P.) Ltd. [2002] 254 ITR 377 (Delhi) – this was affirmed by the Hon'ble Supreme Court [2007] 288 ITR 1 (SC)

27.1 Based on the above, the Appellant submits that the impugned expense is revenue in nature and the same is allowable under section 37 of the Act.

27.2 Without prejudice, it is submitted that the DRP on treating the said expenses as being capital in nature, had allowed depreciation in terms of Section 32 of the Act. However, the Assessing Officer failed to follow the directions issued by the DRP. It is therefore submitted that the Assessing Officer be directed to grant depreciation in terms of the directions issued by the DRP.

27.3 It is therefore prayed to allow the appeal and set aside the final assessment order, in the interests of justice and equity.

28. The ld. DR strongly supported the order of the ld. DRP. The ld. DR further referred to the order of the DRP at para 2.19.13 and strongly supported that the Hon'ble jurisdictional High Court in the case of *Telco Construction Co. Ltd. v. ACIT (TS-628-HC-2020(KAR)* (supra) has decided similar issue in favour of revenue and the ld. DRP has examined this issue in detail in line with the judgment. He further submitted that in this judgment, there is slight difference for the period. In the assessee's case the period of agreement was initially for one year from the effective date, thereafter the agreement shall automatically renew for additional term of one year each unless terminated by any party giving written notice with a period of six months before the end of initial term or the then current additional terms. He submitted that the case law relied by the ld. AR is not applicable in the present facts of the case.

29. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, We note that the

assessee has paid royalty on a fixed percentage of revenue generated from the R&D activities. Before the AO in the second round of proceedings, the assessee was unable to produce the credible evidence in support of its expenditure, except the agreement, copy of Form 16A and benefits obtained by the assessee. The AO did not allow the claim of assessee u/s. 37(1) as revenue expenditure and also the depreciation for want of genuineness of expenses. Before the DRP, the assessee filed objections and in support of its claim submitted detailed submissions. The ld. DRP allowed the claim of depreciation treating it as a capital asset after relying on certain judgments. On perusal of the agreement we note that the "Licensed IP" were presently owned and acquired by CA Gmbh or to which the license is granted to CA Gmbh with right o sub-license. The Licensed IP shall comprise all intellectual property generated from basic R&D as well as from application R&D before 1st January, 2009 [hereinafter referred to as "old application R&D"]. The assessee was granted license non-exclusive non-transferrable to the extent CA Gmbh is entitled to grant such license to use licensed IP in the licensed territory for the development, manufacturing, sale, offer for sale, import, export, use, possession of automotive products for the term of the agreement. The initial term was for one year and it was made on 1st January, 2009 and thereafter it shall automatically renew for the additional term of one year each unless terminated by any of the party giving written notice with a period of six months notice before the end of initial term or the current additional term. As per clause 5.1 & 5.2 of agreement, there

was a royalty at fixed rate of 3% of all net sales per year from sales of automotive products for making use of IP generated from basis R&D and it was in the first year 2% of all net sales and it will be decreased in the amount of 0.25% every year. The royalty payment shall be paid to the end of June of each current year in the full amount of a full year forecast for the current year and at the end of the year if there is any difference it shall be adjusted. The currency was in Euro. We further note from pg. 204 of PB, the following services were obtained by the assessee from its group companies:-

(a) Standard practices
(b) Access to various tools/platforms
(c) Assistance in sourcing.
(d) Provisions of design, procedure and layouts.
(e) Training
(f) Validation,
(g) Testing
(h) Problem resolution; and
(i) Other assistances.

29.1 The agreement was made on 1st January, 2009 for one year and it was automatically renewable unless terminated. This is the second round of proceedings. There is nothing to show that there is termination of the agreement and hence the agreement is still in force. Further on perusal of the order of the ld. DRP at para 2.19.5 the assessee could produce only the copy of agreement with it AEs. It was the primary duty of the assessee to establish whether the expenditure incurred was not enduring benefit and it was recurring expenditure with credible evidence. But the assessee has failed to do so by merely submitting the copy of agreements, TDS certificate and benefit

received. The assessee is also not eligible for claim of deduction u/s. 35(1)(iv) of the Act since it has not fulfilled the conditions as specified in the section. From the above, we are of the view that the ld. DRP has examined the issue in detail from para 2.19.1 to 2.19.16 and we do not find any infirmity in the order of the ld. DRP. The AO is directed to grant depreciation as per the order of the ld. DRP.

Ground No. 34: Short grant of credit for Tax Deducted at Source and foreign tax credit

30. It is submitted that the Appellant had claimed an amount of Rs. 1,26,92,220/- in its return of income. However, the AO erred in not granting the full credit for the taxes deducted. In thig regard, it is submitted that the Appellant had filed an application for rectification before the AO along with the TDS certificates. Therefore, it is humbly prayed that the Appellant be granted full credit of the TDS deducted.

31. We have heard both the parties. The ld. DRP has given direction to the AO for giving TDS credit after verification. We direct accordingly.

32. **Ground No.35** is dismissed as not pressed.

Ground No.36: Arithmetical error in computation of refund amount

33. It is submitted that the AO has erred in computing the total refund amount and interest on refund at Rs. 18,04,660/- as against 18,57,273/ which is an arithmetical error. This issue is remitted to the AO for verification and correct computation.

34. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 17th day of August, 2023.

Sd/-	Sd/-
(GEORGE GEORGE K) VICE PRESIDENT	(LAXMI PRASAD SAHU) ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th August, 2023.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.