

IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No. 5060/Mum/2024
Assessment Year: 2020-21
&
I.T.A. No. 5086/Mum/2024
Assessment Year: 2020-21

Varian Medical Systems International (India) Private Limited Unit No 9A, 9 th Floor, North Tower, Godrej One, Pirojshanagar, Eastern Express Highway, Vikhroli East, Mumbai- 400079 PAN: AADCV0767H (Appellant)	Vs.	Assistant Commissioner/ Dy. Commissioner of Income Tax Circle (3)(3)(1) Aayakar Bhawan, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai-400020 (Respondent)
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Appellant by	Shri. Ajit Jain/Siddesh Chaugule
Respondent by	Shri. Asif Karmali, SR. D.R.

Date of Hearing	30.01.2025
Date of Pronouncement	28.02.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The Present appeals filed by the assessee arises out of final assessment order dated 30/07/2024 passed by the Assessment Unit of Income Tax department under section 143(3) r.w. section 144C(13) r.w. section 144B of the act, on following grounds of appeal:

“Ground No. 1: Transfer Pricing

- 1.1. On the facts and in the circumstances of the case and in law, the learned Assessing Officer/National Faceless Assessment Centre (Ld. AO) and the learned Transfer Pricing Officer (Ld. TPO), erred in making an addition of INR 6,45,17,464 in respect of provision of software development support and related services and Interest on overdue receivables to the Appellant's total income.*
- 1.2 The Ld. AO/TPO erred in not considering the decisions of the Hon'ble Income Tax Appellate Tribunal (ITAT) passed in favour of the Assessee for prior years (AY 2017-18 and AY 2018-19) for similar issues under consideration.*
- 1.3 The Ld. AO/TPO erred in not providing the Assessee a copy of the 'Giving Effect Order' passed by the Ld. TPO, thereby causing grave injustice to the Assessee by not providing any opportunity to verify the application of the directions of the Hon'ble DRP by the Ld. AO/TPO in the Final Assessment Order. Further the same renders the entire Assessment proceedings to be void, bad in law and the adjustment made thereto is liable to be quashed.*
- 1.4 Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld. AO /TPO has erred in not passing the final assessment order dated 30 July 2024 as per the directions of the Hon'ble DRP Panel as prescribed in section 144C (10) and 144C (13), thereby rendering the assessment order being null & void and liable to be quashed.*

Ground No. 2: Transfer Pricing Provision of Software Development Services and related support services

- 2.1 On the facts and in the circumstances of the case and in law, the learned Assessing Officer (Ld. AO)/ National Faceless Assessment Centre (NFAC) and the learned Transfer Pricing Officer (Ld. TPO), erred in making an addition of INR 4,31,38,063*

in respect of provision of software development support and related services to the Appellant's total income and the Hon'ble DRP further erred in upholding/confirming the action of the Ld. AO/TPO.

- 2.2 *The Ld. AO/TPO erred in rejecting functional comparable companies as selected by the Assessee based on the contemporaneous data in the transfer pricing study report maintained as per section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules') applying arbitrary filter of turnover range.*
- 2.3 *The Ld. AO/TPO erred in arbitrarily accepting additional companies as comparables without evaluating the functional comparability of the said companies. Further the Ld. AO/TPO erred in accepting companies which are functionally non-comparable, having significant intangible assets, earns abnormal margins, unavailability of segmental data and extraordinary events.*
- 2.4 *Without prejudice to the above, the Hon'ble DRP panel erred in not providing any directions and further the Ld. AO/TPO erred in not considering the submissions made by the Assessee in relation with*
- The company 'Maveric Systems Limited' is rejected by the Ld. TPO based on failure of sales filter without considering the submission of the Assessee that it passes the aforesaid filter applied by the Ld. TPO.*
 - The company 'Techwave Infotech Private limited' is accepted by the Ld. TPO as additional comparable company without considering the submission of the Assessee that the company has significant Related Party Transactions, and hence cannot be considered as a valid comparable company.*
- 2.5 *Erred in not allowing appropriate adjustments on account of differences in working capital and other differences.*
- 2.6 *Further, the Ld. TPO erred in not disposing off the rectification application filed dated 9 February 2024 by rectifying the order passed by him in respect of 10 times sales filter, profit making filter and significant related party transactions.*

Ground No. 3: Transfer Pricing - Interest on Outstanding Receivables

- 3.1 *On the facts and in the circumstances of the case and in law, the Ld. AO/Ld. TPO erred in making an adjustment of INR 2,13,79,401 and the Hon'ble DRP further erred in confirming the actions of the Ld. AO/TPO, whereby treating outstanding receivables from inter-company transaction of recovery of expenses as an international transaction and*
- Re-characterizing the same as loan granted by the Appellant to the Associated Enterprise ('AE');*
 - Arbitrarily imputing an interest based on LIBOR plus 400 basis points, without any basis*
- 3.2 *Erred in imputing interest on outstanding receivables separately than the underlying international transactions.*
- 3.3 *Erred in failing to appreciate that Appellant is a debt free company and thereby erroneously alleging that interest bearing funds were used to pass on the benefit in the form of extended credit period to AE.*
- 3.4 *The Ld. AO/Ld. TPO failed to appreciate that the Appellant has net payable position and therefore the question of charging interest does not arise. Further, the learned AO/TPO failed to recognize that no interest was charged by the AE to the Appellant on such payables.*
- 3.5 *Erred by not following any of the methods prescribed under Section 92C(1) of the Act for benchmarking the said alleged international transaction and thereby, the order be quashed.*
- 3.6 *Without prejudice to the above grounds, on the facts and in the circumstances of the case and in law, the Ld. AO/Ld. TPO erred in ignoring the fact that Assessee has not charged any interest on outstanding receivables from Independent third parties and hence no interest is required to be computed on outstanding receivables of the AEs.”*

Brief facts of the case are as under:

2. Assessee is engaged in the business of installations and service of medical & radiotherapy equipment and software development services in India. For the year under consideration, it filed its return of income on 15/02/2021 declaring taxable

income of Rs.20,51,18,280/-. The case was selected for scrutiny to verify the amount claimed as deduction in schedule BP, imports, international exports and international transactions. Statutory notices under section 143 (2) and notice under section 142 (1) of the act was issued, calling upon assessee to furnish various details. In response to statutory notices assessee furnished various details as called for.

2.1. Ld.AO noted that, the assessee had international transaction with its associated enterprise (hereinafter referred to as AE) exceeding the threshold limit for the year under consideration and therefore reference was made to the transfer pricing officer (hereinafter referred to as Ld.TPO) for computing arm's-length price (hereinafter referred to as ALP) of the international transactions between assessee and its AE's.

2.2. The Ld.TPO on receipt of the reference, called for economic details of international transactions entered into by the assessee with its associated enterprise in Form 3 CEB. On receipt of the details filed by the assessee, the Ld.TPO observed that assessee had following international transaction with its associated enterprise during the year under consideration:

<i>Sr. No.</i>	<i>Nature of transaction with the assessee</i>	<i>Amounts in INR</i>	<i>Method adopted for benchmarking</i>
1	Purchase of spare parts	1,216,091,813	Transactional Net Margin Method
2	Provision of software development and support services	1,796,819,482	Transactional Net Margin Method
3	Rendering of warranty	580,633,440	Transactional Net

	<i>services</i>		<i>Margin Method</i>
4	<i>Rendering of Project and installation services</i>	<i>330,147,690</i>	<i>Transactional Net Margin Method</i>
5	<i>Availing of project and installation services</i>	<i>37,917,115</i>	<i>Transactional Net Margin Method</i>
6	<i>Rendering of sales and marketing service</i>	<i>402,207,281</i>	<i>Transactional Net Margin Method</i>
7	<i>Purchase of assets</i>	<i>2,962,521</i>	<i>Transactional Net Margin Method</i>
8	<i>Purchase of software license (Firewall, NetApp etc.)</i>	<i>67,456,046</i>	<i>Comparable Uncontrolled Price Method</i>
9	<i>Purchase of software license (Software VMWARE)</i>	<i>1,709,635</i>	<i>Other Method</i>
10	<i>Allocation of Microsoft Azure License Cost</i>	<i>20,144,898</i>	<i>Transactional Net Margin Method</i>
11	<i>Recovery of Expenses</i>	<i>454,032,201</i>	<i>Comparable Uncontrolled Price Method</i>
12	<i>Reimbursement of expense paid</i>	<i>129,897,046</i>	<i>Transactional Net Margin Method</i>
13	<i>Reimbursement of expenses paid</i>	<i>14,838,543</i>	<i>Comparable Uncontrolled Price Method</i>
14	<i>Amount collected on behalf of AE</i>	<i>6,325,000</i>	<i>Other Method</i>
15	<i>Closing outstanding receivable</i>	<i>915,545,480</i>	<i>Other Method</i>
16	<i>Closing outstanding payables</i>	<i>2,283,881,902</i>	<i>Other Method</i>

2.3. The Ld.TPO noted that, the assessee used transactional net margin method (hereinafter referred to as TNMM) with the profit level indicator (hereinafter referred to as PLI) as operating profit to operating cost (hereinafter referred to as OP/OC). The Ld.TPO noted that, the assessee computed its margin at 18.16%. It was submitted that assessee used following 18 comparable having a median of 9.86%.

Sr. No.	Company name	Margin (OP/OC)			
		2019-20	2018-19	2017-18	Weighted Average
1	Toxsl Technologies Pvt. Ltd.	2.04%	4.04%	-8.57%	0.31%
2	Harbinger Systems Pvt Ltd	-4.59%	0.98%	6.88%	0.70%
3	Kireeti Soft Technologies Ltd	4.32%	0.69%	NA	2.28%
4	Evoke Technologies Pvt Ltd	4.19%	3.50%	2.86%	3.62%
5	Isummation Technologies Pvt Ltd	5.58%	5.27%	-0.19%	3.83%
6	Leewayhertz Technnologies Pvt Ltd	3.75%	6.25%	1.69%	3.86%
7	Infomile Technologies Ltd	1.39%	9.64%	8.64%	7.34%
8	Iflair Web Technologies Private Limited	9.82%	6.61%	7.28%	8.15%
9	Mindtree Limited	11.58%	4.19%	13.71%	9.41%

10	Indianic Infotech Limited	8.89%	10.57%	11.98%	10.31%
11	ACS Infotech Pvt Ltd	19.89%	9.64%	7.77%	13.06%
12	Maveric Systems Ltd	9.68%	19.22%	10.23%	13.13%
13	e-Zest Solutions Ltd	16.37%	9.72%	22.45%	15.89%
14	Orion India Systems Private Limited	13.40%	14.93%	20.26%	16.56%
15	Orion India Systems Private Limited	17.75%	20.11%	14.31%	17.86%
16	Hotcocoa Software Pvt Ltd	7.17%	39.64%	4.29%	18.35%
17	Sagarsoft (India) Ltd.	8.53%	26.17%	29.06%	20.75%
18	C G V A K Software & Exports Ltd.	29.08%	29.43%	13.61%	24.96%
	35 th Percentile				7.34%
	Median				9.86%
	65 th Percentile				13.13%

The assessee thus treated its transaction with the AE's at arm's-length.

2.4. Dissatisfied with the comparable selected by the assessee, the Ld.TPO selected set of following 18 comparables by retaining 8 comparable selected by the assessee and computed median at 20.89%.

Sr. No.	Company Name	PLI
1.	Harbinger Systems Pvt. Ltd.	0.70%
2.	Evoke Technologies Pvt. Ltd.	3.62%
3.	Sagarsoft (India) Ltd.	8.53%
4.	Indianic Infotech Limited	10.31 %
5.	Orion India Systems Private Limited	13.40 %
6.	e-Zest Solutions Ltd	16.37 %
7.	Sasken Technologies Ltd.	18.51 %
8.	Great Software Laboratory Pvt. Ltd.	20.11 %
9.	Caliber Interconnect Solutions Pvt.	20.53 %
10.	Daffodil Software Pvt. Ltd.	21.25 %
11.	Techwave Infotech Private Limited	22.77 %
12.	Comviva Technologies Ltd.	23.34 %
13.	Virinchi Ltd	24.40 %
14.	X S Cad India Pvt. Ltd.	24.92 %
15.	Nihilent Ltd.	25.31 %
16.	C G V A K Software and Exports Ltd.	29.08 %
17.	Moonfrog Labs Pvt. Ltd.	44.34%
18.	Cybage Software Pvt. Ltd.	46.66 %
	35 th Percentile	18.51
	65 th Percentile	23.34
	Median	20.89
	Assessee's ALP	18.16

The Ld.TPO thus proposed in an adjustment of Rs. 4,14,65,376/- being the shortfall.

2.5. The Ld.AO further noted that, the assessee had outstanding receivables from its AE's for which no interest was charged. The

Ld.TPO thus computed notional interest by adopting LIBOR rate 400 basis point and proposed adjustment at Rs.21,379,401/-.

2.6. The Ld.TPO thus proposed without adjustments we handsomely assessee:

Sr. No.	Nature of Transaction	Adjustment(Rs.)
1	Adjustment on account Provision of software development services and purchase of software licenses	4,14,65,376/-
2	Adjustment on account of interest on outstanding receivable	2,13,79,401/-
	Total	6,28,44,777/-

3. On receipt of the transfer pricing order order, the Ld.AO passed the draft assessment order on 18/09/2023.

3.1. On receipt of the draft assessment order, assessee preferred objections before the DRP.

The DRP passed is direction upholding the adjustments proposed by the authorities below.

4. On receipt of the DRP directions, the Ld.AO passed final assessment order making addition in the hands of the assessee at ₹6,45,17,464/-.

Aggrieved by the final assessment order, assessee is on appeal before the *Tribunal*.

5. At the outset the Ld.AR submitted that assessee filed 2 appeals being IT number 5086/M/2024 and 5060/M/2024

arising out of the same impugned order dated 30/07/2024. It is submitted that ITA 5060/M/2024 was electronically filed and ITA 5086/M/2024 was filed manually. He submitted that, both these appeal has been filed within the period of limitation. The Ld.AR submitted that assessee thus wish to withdraw ITA number 5086/M/2024.

Accordingly IT No.5086/M/2024 is dismissed as infructuous.

ITA No. 5060/M/2024

6. The Ld.AR submitted that, the assessee is seeking exclusion of 3 comparables and inclusion of one comparable under the software development service segment.

Comparable sought for exclusion:

1. Cybage software Private Limited
2. Nihilent limited
3. Techwave Infotech Private Limited

Comparable sought for inclusion

1. Maverick Systems Ltd

6.1. Before we undertake compatibility analysis, it is *sine qua non* to understand the functions performed, assets owned and risk assumed by the assessee under software development service segment.

“c. Functions performed by Varian India

i Software Support!?”

27.3 Varian India is responsible for providing software development as per the scope of work provided by Varian AEs within the agreed time. After developing the software as per specifications, Varian India exports the same to Varian AEs through data communication links or any other mode as specified by the AEs from time to time.

ii. Quality Testing

27.4 Varian India is also responsible to identifying bugs and conducting debugging of the same in the software codes.

General Administrative and Management

27.5 Varian India also performs the required general administration and management functions like finance, accounting, legal etc. to carryout its day-to-day business operations in India.

D. Functions performed by Varian AEs

27.6 The functions performed by Varian AEs are elaborated below:

i Varian AEs are responsible for understanding the requirement of software. Based on the agreement with customers, Varian AEs provide software support services.

ii. Accordingly, Varian AEs instruct Varian India to develop or test the software accordance w the instruction and specification.

iii. Further Varian AEs are also responsible for review of software developed by Varian India and ensure that the software received from Varian India are free of error(s) and confirms to the required designs and specifications on a test basis.

iv. Varian AEs being the contracting entity and front ending entity is responsible for raising the invoices and collecting the payments from the customer.

v. General administrative and management functions like finance, accounting and legal are performed by Varian AEs to carry out their business operations on a day to day basis.

E. Assets Owned - Tangible and Intangible

27.7 Varian India possesses all necessary assets to for its businesses. Please refer paragraph 7.21 to 7.24 for assets owned by Varian India.

28.1 This section provides a discussion of the risks that Varian India and Varian AEs assume through their business operations for the international transactions under consideration. An understanding of the elements of risk is important as it helps to characterize the companies, a necessary step in understanding what type of benchmarking data is required. The degree of risk depends on several factors including the service provided and parties involved, the markets targeted, competition and other general business risks.

Varian India	Varian AEs
<p>1. 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.</p>	
<p>Varian India does not undertake market risk since Varian India is responsible for providing software support services to Varian AEs.</p>	<p>Varian AEs undertake the market risk on account of change in demand of patterns and needs of customers, inability to develop / penetrate in a market, etc.</p>
<p>2. Product Liability Risk Risks associated with product/service failures including non-performance to generally accepted or regulatory standards. This could result in product recalls and possible injuries to end-users.</p>	
<p>Varian India does not undertake product liability risk as it has been appointed to provide software support services.</p>	<p>Varian AEs being the entrepreneurs undertake the product liability risk on account of failure of the product to meet standards.</p>
<p>3. Service Liability Risk Risks associated with product/service failures including non-performance to generally accepted or regulatory standards. This could result in product recalls and possible injuries to end-users.</p>	
<p>Varian India provides software development services to Varian AEs. Hence, Varian India bears the service liability risk to the extent of service rendered by it to Varian AEs.</p>	<p>Since Varian AEs being the contracting entities, are responsible for service liability risk.</p>
<p>4. Credit Risk This is the risk arising from non-payment of dues by customers.</p>	
<p>Since Varian India is appointed to provide software support services and it directly bills to Varian AEs, hence it does not bear credit risk of non-payment by customers</p>	<p>Varian AEs are responsible for collection and billing activities for their respective customers. Hence, they bear the credit risk for non-payments and bad debts.</p>
<p>6. Technology Risk This risk arises if the market in which the Company operates in is sensitive to introduction of new products and technologies. Hence, in that case, business units may face loss of potential revenues due to inefficiencies arising from obsolete infrastructure and tools as well as obsolescence of manufacturing processes.</p>	
<p>Varian India does not face technology risk as it performs</p>	<p>It is Varian AEs responsibility to ensure use of upgraded versions</p>

<i>services outsourced to them by Varian</i>	<i>and processes and therefore any risk arising out of obsolescence of technology is borne by Varian AEs. Hence, Varian AEs were the technology risk.</i>
6. Foreign Exchange Risk	
<i>This risk relates to the potential impact on profits that rates. may arise because of changes in foreign exchange</i>	
<i>Varian India is compensated on a cost plus basis and its costs include losses on foreign exchange fluctuation, hence it assumes no foreign exchange risk.</i>	<i>As Varian AEs compensate Varian India on co plus basis, hence they undertake the entire foreign exchange risk.</i>
7. Manpower Risk	
<i>This risk relates to scarcity of skilled professionals and high labour turnover in the industry that affects the fortunes and operations of any company</i>	
<i>Varian India undertakes manpower risk as it assumes the responsibility of recruiting, training and opportunity costs of its employees. It bears the risk of attrition and training cost.</i>	<i>Varian AEs also undertake significant manpower risk with respect to the recruitment and training of their employees.</i>
8. General Business Risk	
<i>This risk relates to certain general business risks such as ownership of property/ plant and equipment, compliance with legal/contractual/statutory provisions, in their respective countries.</i>	
<i>Both Varian India and Varian AEs undertake general business risk in relation to the operations in their respective territory.</i>	

28.2 Summary of the risk analysis for Varian India's international transactions with Varian AEs with respect to the international transactions:

<i>Sr. No.</i>	<i>Risks</i>	<i>Varian India</i>	<i>Varian AEs</i>
1	<i>Market Risk</i>	--	✓✓✓✓
2	<i>Product Liability Risk</i>	--	✓✓✓✓
3	<i>Service Liability Risk</i>	✓✓	✓✓
4	<i>Credit Risk</i>	--	✓✓✓✓
5	<i>Technology Risk</i>	--	✓✓✓✓
6	<i>Foreign Exchange Risk</i>	--	✓✓✓✓
7	<i>Manpower Risk</i>	✓✓	✓✓
8	<i>General Business Risk</i>	✓✓	✓✓

Legend; ✓✓✓✓ Significant; ✓✓✓ High; ✓✓ Moderate Low; ✓ - Indicates no responsibility

Summary of the functional and Risk Analysis of Varian India and Varian AEs:

28.3 Based on the foregoing discussion it can be concluded that:

- Varian India performs all the normal functions in relation to software development and related services;*
- Varian India does not own any non-routine intangibles; and*
- Varian AEs face market risk, credit risk, product, service liability and contract risk, technology risk and manpower risk for their business.*

Characterisation

29.3 Considering the functions performed, assets owned and risk assumed Varian India's activities are limited only to the extent of providing off shore support for software development services. Varian India does not own any intangibles. Accordingly, Varian India can be characterized as a limited risk service provider engaged in providing off shore software development services and undertaking limited manpower risk and service liability risk for its activities in India.”

7. Based on the above, we shall undertake the comparability analysis of the companies sought for inclusion/exclusion by the assessee.

A. Cybage Software Pvt.Ltd

The Ld.AR submitted that this comparable is not functionally similar with that of assessee as it is providing IT consulting and related support services. It is also submitted that this comparable undertakes R&D activities involving developing new technologies under the software segment.

A.1 Referring to the annual report the Ld.AR submitted that, this company has R& D activities which are incorporated with software development process with the object of devising efficient method of product development. It is submitted by the Ld.AR that

this comparable owns huge intangibles due to the R&D activities undertaken by it. It is also submitted that this comparable has a huge turnover of 7,000 crores and therefore is an entrepreneur by itself which cannot be compared with the limited risk service provider like assessee.

A.2 Nihilent Ltd.

The Ld.AR submitted that this comparable is not functionally similar with that of assessee as it is engaged in providing advanced analytics, artificial intelligence, block chain, business intelligence, data signs, cloud services etc. It is also submitted that segmental financials of this company are also not available, and thus this company is to be excluded from the list of comparables.

A.3 The Ld.AR submitted that, both the above companies were excluded by coordinate bench of this *Tribunal* for assessment year 2017-18 in *Varian Medical Systems International (India) (P.) Ltd. vs. DCIT reported in (2024) 158 taxmann.com 84* .

A.4 On the contrary, the Ld.DR relied on orders passed by authorities below.

We have perused the submission advanced by both sides in light of records placed before us.

A.5 It is noted that *Varian Medical Systems International (India) (P.) Ltd. vs. DCIT(supra)* for assessment year 2017-18 excluded both these companies by observing as under:

33.4 Cybage Software Private Limited is not functionally comparable since it is a technology consulting company specializing in outsourced product engineering services.

.....

33.10 Nihilent Ltd. is not functionally comparable since it is engaged in rendering diversified services including software services, business consulting in the area of enterprise transformation, change and performance management and providing related IT services.

A.6 Admittedly there are no factual differences in FAR of the assessee for the year under consideration vis-à-vis assessment year 2017-18. The Ld.DR has not brought anything on record to distinguish the above observations of the coordinate bench of this *Tribunal* is assessee's own case. Respectfully following the same we direct the Ld.AO/TPO to exclude these comparables from the final list.

C. Techwava Infotech Pvt.Ltd

The Ld.AR submitted that this company is not comparable with that of the assessee. It is submitted that, this company is engaged in providing business process outsourcing services, enterprise information management services & enterprise performance management services. It is also submitted that, this company has significant related party transaction exceeding 38%. Whereas the assessee is limited risk service provider engaged in providing off shore software development services and undertaking limited manpower risk and service liability risk for its activities in India.

C.1 On the contrary, the Ld.DR placed reliance on the orders passed by the authorities below.

We have perused the submission advanced by both sides in light of records placed before us.

C.3 It is noted that this company is more into business process outsourcing support services, management services etc, which

are not akin to software development and related services provided by the assessee.

We therefore direct exclusion of this comparable with that of assessee.

D. Mavric Systems Ltd.

The Ld.AR submitted that this company is functionally similar to the assessee. However the Ld.TPO rejected it by observing that this company does not pass through the turnover filter range of 1/10times to 10 times.

D.1 The Ld.AR submitted that this company has a turnover of Rs.159.49 crores. And the turnover of the assessee is 1,79,68,19,482/- he submitted that, 10 times range of assessee turnover is Rs.17.96 crores to 1796.82 crores. He thus submitted that this company satisfies the turnover filter and thus sought for its inclusion.

D.2 On the contrary, the Ld.DR placed reliance on the orders passed by the authorities below.

We have perused the submission advanced by both sides in light of records placed before us.

D.3 Based on the submissions advanced by both sides, we direct this comparable to be remanded to the Ld.AO/TPO to verify the above and to include this company in the final list if the submissions of the Ld.CIT(A),Ld.AR are found correct.

Accordingly this company is remitted to the Ld.AO/TPO for verification as directed herein above.

Accordingly Grounds 2.1 to 2.6 stands allowed as indicated herein above.

7. Ground No. 3 raised by the assessee is on the notional interest computed by the Ld.AO/TPO on outstanding receivables.

7.1 The Ld.CIT(A).AR submitted that the Ld.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. The Ld.TPO did not consider the outstanding payables which were less than 20 days in respect of some AE's. In respect of the AE's whose outstanding payables were less than 365 days, the interest was calculated for weighted average number of actual outstanding days. In respect of the AE's whose details were not furnished, the interest was worked out and charged for full year. TP Adjustment was thus computed at Rs.2,13,79,401/-

7.2 The Ld. AR before this *Tribunal* submitted that, the 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. Since, it is debt free company, no adjustment can be made towards notional interest on receivables. Without prejudice to above, the Ld. AR submitted that LIBOR has to be adopted. He submitted that the Ld.TPO presumed assessee's average maturity period of receivables and computed the adjustment which is not in accordance with the transfer pricing principles.

7.3 On the contrary, the Ld.DR submitted that the argument of the assessee cannot be accepted by virtue of the decision of the

Hon'ble Kolkotta Special Bench in the case of *Instrumentation Corpn. Ltd. v. Asstt. DIT* reported in (2016) 71 taxmann.com 193, 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 held that, once it is an international transaction, TP adjustment is to be made by 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.

We have perused the submissions advanced by both sides in light of records placed before us.

8. No doubt there should be TP adjustment on this count after making proper TP study by the Ld.TPO by considering the period of credit enjoyed by the comparables and also applicable LIBOR rate in the place of AE's, for benchmarking the rate of interest to arrive at the ALP. 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 of RBI Master Circular is as under:-

Average maturity period of the loan on invocation	All-in-cost ceilings over 6 month LIBOR
Up to 3 years	200 basis points
3 years and up to 5 years	300 basis points
More than five years	500sis points

8.1 The Ld.AR submitted that the assessee has not undertaken any working capital adjustment. In this context, we also refer to the decision of *Hon'ble Delhi Tribunal* in case of *Orange Business*

Services India Solutions (P.) Ltd. v. Dy. CIT reported in (2018) 91 *taxmann.com* 286, observed that:

"There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors Pvt. Ltd. vs. DCIT (2017) 398 ITR 120 (Del). Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital of the assessee. Applying the decision in Kusum Health Care (supra), the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterized as international transactions."

8.2 In view of the above, we deem it appropriate to set aside the impugned order on this issue and remit the matter to the file of the Ld.AO/TPO for deciding it in conformity with the above referred judgment. We also direct the Ld.TPO that in the event the WCA subsumes the outstanding receivables, no separate characterisation is to be made. However for those receivables that fall out of the WCA pertaining to year under consideration, then, the rate of interest to be charged must be LIBOR + 300 basis points which is in accordance with the principles laid down by *Hon'ble Delhi High Court in case of CIT v. Cotton Naturals (I) (P.) Ltd.*, reported in (2015) 55 *taxmann.com* 523 considering a credit of 90 days.

Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings.

Accordingly, ground 3.1 to 3.6 raised by assessee stands partly allowed for statistical purposes.

In the result the appeal filed by the assessee in ITA No. 5060/Mum/2024 stands partly allowed and appeal in ITA No. 5086/Mum/2024 stands dismissed as infructuous.

Order pronounced in the open court on 28/02/2025

Sd/-

**(OMKARESHWAR CHIDARA)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai:
Dated: 28/02/2025
Poonam Mirashi/Dragon
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai