

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ में**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**  
**AND**  
**SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER**

ITA-TP-No.2387/Hyd/2018		
Assessment Year: 2014-15		
M/s. Open Text Technologies India Private Limited, Hyderabad. PAN:AABCV9961D	Vs.	Dy. Commissioner of Income Tax, Circle 16(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Nageswara Rao, Advocate.
Revenue by:		Ms. M. Narmada, CIT-DR
Date of hearing:		12/02/2025
Date of pronouncement:		05/05/2025

**ORDER**

**PER MADHUSUDAN SAWDIA, A.M. :**

This appeal is filed by M/s. Open Text Technologies India Private Limited ("the assessee"), feeling aggrieved with the final assessment order of Learned Assessing Officer ("Ld. AO") passed u/s. 143(3) rws 92CA(3) & 144(C)(1) of the Income Tax Act, 1961 ("the Act") on 29.10.2018 as per the direction of Learned Dispute Resolution Panel ("Ld. DRP") dated 27.08.2018 for the A.Y. 2014-15.

2. The assessee has raised the following grounds of appeal :

**“1. Rejection of transfer pricing documentation maintained and undertaking fresh economic analysis.**

*Rejection of the transfer pricing documentation maintained by the assessee in accordance with the provisions of Act read with the Income Tax Rules, 1962 ('Rules') and undertaking a fresh economic analysis during the course assessment proceedings and thereby making an adjustment of Rs. 16,21,20,521 towards the international transactions with AEs.*

**2. Rejection of use of multiple year data :**

*Rejecting the use of multiple and using data for the FY 2013-14 only in determining the arm's length price.*

**3. Use of additional filters :**

*Inter-alia use of the following additional / modified filters in undertaking the comparative analysis and rejecting comparable companies :*

- (a) 75% Export Revenue Filter.*
- (b) Different Financial Year Filter; and*
- (c) Using one sided turnover filter.*

**4. Selection of additional companies :**

*Not undertaking an objective and consistent comparative analysis and inter-alia selecting the following companies as comparable to the services of the assessee ignoring the fact that the same are not functionally comparable to the assessee.*

- (a) Tata Elxsi Limited (Seg.)*
- (b) Mindtree Limited*
- (c) R S Software (India) Limited*
- (d) E-Infochips Ltd.*
- (e) Larsen & Toubro Infotech Limited*
- (f) Infosys Ltd.*
- (g) Persistent Systems Limited*
- (h) Infobeans Technologies Limited*
- (i) Thirdware Solutions Limited.*

### **5. Rejection of Comparables :**

*Not undertaking an objective and consistent comparative analysis and inter-alia rejecting the following comparable companies:*

- (a) Akshay Software Technologies Limited.*
- (b) Caliber Point Business solutions Limited (Seg)*
- (c) Maveric Systems Limited*
- (d) Sasken Communication Technologies Ltd (Seg)*
- (e) Sagar Soft India Ltd.*
- (f) Kellton Tech Solutions Ltd.*
- (g) Goldstone Technologies Limited*
- (h) CAT Technologies Limited*
- (i) Helios & Matheson Information Technology Ltd.*
- (j) R Systems International Limited (Seg)*
- (k) TVS Infotech Ltd.*
- (l) Accel Frontline Ltd. (Seg)*
- (m) Infomile Technologies Ltd.*
- (n) Kals Information Systems Limited*
- (o) Sankhya Infotech Limited*
- (p) Zylog Systems Limited*
- (q) Acropetal Technologies Limited.*

**6. Erred in application of persistent loss filter and thereby not following the directions of Hon'ble DRP for including Sagar Soft India Limited in the final list of comparables.**

### **7. Determination of operating margins of comparables.**

*(a) Error in computing segmental margin of Tata Elsi Limited*  
*(b) Considering Provision for Bad and Doubtful Debts (PBDD) as non-operating expenditure in determining the operating margins of companies considered comparable. Which are –*

- 1. E-Infochips Ltd.*
- 2. Larsen & Toubro Infotech Ltd.*
- 3. Infosys Ltd.*
- 4. Persistent Systems Ltd.*

### **8. Working capital adjustments**

*Not adjusting the net margins of comparable companies for functional and risk differences in accordance with the provisions of rule 10B(1)(e) of the Rules.*

**9. Adjustments for risk differences.**

*Not adjusting the net margins of comparable companies for functional and risk differences in accordance with the provisions of rule 10B(1)(e) of the Rules.*

**10. Making TP adjustment and accordingly imputing interest on outstanding receivables as on March 31<sup>st</sup> 2014 relating to provision of software services to AEs :**

*a) Not appreciating that the instant transaction is not covered in the definition of international transaction as defined u/s 92B of the Act in the facts and circumstances of the case.*

*b) Not appreciating the facts and circumstances surrounding the receivables and re-characterising the outstanding receivables as unsecured loans advanced to AEs.*

*c) Not appreciating the fact that under TNMM, the impact of outstanding receivables on the working capital adjustments have already been taken into account in determining the arm's length margin hence there is no need of imputing interest on outstanding receivables again.*

*d) Not appreciating the fact that the receivables are consequential/ closely linked to the principle transaction of provision of IT services and hence have been aggregated for determination of ALP under TNMM.*

*e) Without prejudice to the above, not netting off the outstanding payable of Rs. 23,19,05,520 against outstanding receivables from its AE while determining the interest amount.*

**11. Without prejudice, not undertaking an objective economic analysis and determining the arm's length interest rate on outstanding receivables at SBI term deposit rates by:**

*a) Not appreciating that the receivables due from overseas AE's are in foreign currency and hence interest, if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans.*

*b) Determining the arm's length credit period as 30 days without any basis and imputing interest on credit period provided for the invoices raised relating to provision of services.*

**12. Not following the directions of Hon'ble DRP**

*Not following the directions of Hon'ble DRP in entirety in computing these total adjustment.*

**13. Non-grant of MAT credit available to the Company.**

*Without prejudice to the above grounds, that on facts and circumstances of the case, the Ld. AO has grossly erred in law as well as in facts, in non-grant of MAT Credit available, amounting to Rs. 1,87,46,422, as set-off to the Company against the tax liability determined for the captioned AY.*

**14. Erroneous calculation of interest u/s 234B of the Act.**

*That on facts and circumstances of the Case, the Ld. AO has grossly erred in law as well as in facts in computing the interest u/s 234B of the Act amounting to Rs. 3,11,35,170 and the same is consequential to the above grounds.*

**15. Erroneous calculation of Interest u/s 234C of the Act.**

*That on facts and circumstances of the Case, the Ld. AO has grossly erred in law as well as in facts in computing the interest u/s 234C of the Act amounting to Rs.3,82,808 and the same is consequential to the above grounds.*

**16. Levy of penalty under section 271AA and 271BA of the Act**

*Initiating penalty proceedings under section 271AA and 271BA of the Act.”*

3. The assessee has raised the additional grounds as under :

*“10(c)(a). Choice of CUP as MAM in present case is unjustified. Without prejudice, application of CUP is not in compliance with provisions of Income Tax Act and Income Tax Rules, 1962.”*

4. The additional ground so filed is admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional ground noted above

which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in additional ground are legal in nature for which relevant facts are stated to be emanating from the existing records.

5. The brief facts of the case are that the assessee is a company Software Development and Business support Services, filed its return of income for A.Y. 2014-15 on 30.11.2014 declaring total income of Rs.6,68,89,860/-. In view of the international transactions involved during the year under consideration, for determination of Arm's Length Price ("ALP"), the case was referred to Learned Transfer Pricing Officer ("Ld. TPO"). The Ld. TPO vide his order dt.30.10.2017 suggested upward adjustment of Rs.14,75,16,275/- on account of Provision of Software Development Service ("SDS") and Rs.1,65,98,428/- on account of outstanding trade receivables. Accordingly, the Ld. AO passed draft assessment order on 30.11.2017. Aggrieved with the draft assessment order passed by the Ld. AO, the assessee preferred objections before the Ld.

DRP. In pursuance to the directions of Ld. DRP dated 27.08.2018, the Ld. AO finalized the assessment on 29.10.2018 by making total addition of Rs.16,21,20,521/- on account of upward adjustment of ALP.

6. Aggrieved with the final assessment order of Ld. AO, the assessee is in appeal before us.

7. At the outset, Ld. AR submitted that they are not pressing ground Nos.1 to 3, 6, 7, 9 and 10 of the grounds of appeal and ground nos.14 to 16 are consequential in nature. Therefore, the Ld. AR submitted that these grounds do not need separate adjudication. Accordingly, ground nos. 1 to 3, 6, 7, 9, 10 and 14 to 16 of the grounds of appeal are dismissed being not pressed.

8. Ground no.4 of the assessee is related to the seeking of exclusion of nine companies from the set of comparables namely, Tata Elxsi Limited, Mindtree Limited, R. S. Software (India) Limited, E-Infotech Ltd, Larsen & Toubro Infotech Limited, Infosys Ltd, Persistent Systems Limited, Infobeans Technologies Limited and Thirdware Solutions Limited. As far as the exclusion of all these companies except Mindtree Limited

and R S Software (India) Limited is considered, the Ld. AR invited our attention to Para no.8.1 to 25.1 of the decision of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT in IT(TP)A No.2337/Hyd/2018 for A.Y. 2014-15 dated 15.12.2021 and submitted that, this Tribunal has excluded these companies from the final set of comparables. He further submitted that the functional profile of M/s. Wave Crest Payment Technology Pvt. Ltd. is similar to the assessee. The Ld. AR also submitted that since the functional profile of the assessee and M/s. Wave Crest Payment Technology Pvt. Ltd. are similar and the assessment year under consideration is also the same, the reasoning adopted by this Tribunal in excluding these companies would squarely apply to the present case as well. Therefore, it was urged that these companies be excluded from the final set of comparables in the assessee's case by following the said decision.

8.1 Per contra, Ld. DR relied on the decision of Ld.AO / TPO.

8.2 We have heard the rival contentions and also gone through the record in light of submissions made by either side. In our considered view, the findings of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) will be applicable to the assessee if the functional profile of that company are comparable to the assessee. Accordingly, we have gone through the profile of the assessee which has been captured by Ld. TPO at para No.3 of his order, which is to the following effect :

*"3. The assessee has declared international transaction in 3CEB report / TP document for the year under consideration as under:-*

<i>Name of AE</i>	<i>Nature of transaction</i>	<i>Amount (Rs)</i>
<i>Wave Crest Group Ltd.</i>	<i>Provision of software development and support services</i>	<i>20,19,96,429</i>
<i>Wave Crest Holding Limited</i>	<i>Provision of software development and support services</i>	<i>12,73,47,844</i>
	<i>Total</i>	<i>32,93,44,273</i>

8.3 We have also gone through the profile of M/s. Wave Crest Payment Technology Pvt. Ltd, which has been captured at para No.2 of the order of this Tribunal in the case of M/s. Wave Crest

Payment Technology Pvt. Ltd. Vs. DCIT (supra), which is to the following effect :

*"2. The assessee is engaged in the Software Development Services and filed its return of income for the year under consideration on 25.11.2014 declaring total income of Rs. 05,70,83,190/-. The case was selected for scrutiny through CASS and since the assessee has entered into international transactions during the previous year relevant to the year under consideration. Therefore, the case was referred to the TPO for determination of the Arm's Length price (ALP). The profile of the assessee as taken from the transfer pricing study document and recorded by the TPO in para 3 is as under:-*

*"3. WaveCrest India is a wholly owned subsidiary of WaveCrest Group Ltd. Gibraltar ("WaveCrest Group Ltd. along with its subsidiaries is collectively referred to as "WaveCrest Group"). WaveCrest India provides backend software development and support services to tis associated enterprise (AE in singular and AE's in aggregate). WaveCrest India has responsibility to develop & test new applications/enhancements and provide maintenance support for existing applications. The services are rendered on cost plus, basis, based on the services agreement entered with associated enterprise/s.*

*The taxpayer mentions that as regards the services rendered to WaveCrest Holding Limited are concerned, these are in in the nature of IT support services. Considering that the online utility of the Form 3CEB does not specifically provide for reporting of support services with a specific services description code, the same has been mentioned as BPO services inadvertently."*

8.4 On perusal of profile of M/s. Wave Crest Payment Technology Pvt. Ltd. and the assessee, we found that, the functional profile of the M/s. Wave Crest Payment Technology Pvt. Ltd. as well as the assessee are similar. Therefore, we are of the considered opinion that the findings given by this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs.

DCIT (supra) can be squarely applied to the assessee. We have also gone through para No.8.1 to para No.25.1 of the order of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra), which is to the following effect :

***“8.1 Tata Elxsi Limited***

*The learned AR of the assessee has submitted that this company provides consulting and product design and engineering services to the consumer electronics communication and transportation entry and system integration and support services for enterprise customer. These areas of operations are completely different when compared to the assessee business profile which is a pure Software Development Services provider. He has further contended that the activities of Tata Elxsi Limited are in the nature of KPO Services and hence cannot be considered to be comparable of the assessee. He has relied upon the decision of Delhi Benches of the Tribunal dated 1st May, 2020, in the case of M/s Global Logic India Ltd. vs. DCIT in ITA No. 4740/Del/2018 and submitted that the Tribunal has rejected this company as comparable to a Software Development Company on the ground of functional dis similarity. He has also relied upon the decision of Hyderabad Benches of the Tribunal dated 6.8.2019 in the case of M/s Infor (India) P. Ltd. vs. DCIT in ITA Nos. 161 & 2307/Hyd/2018.*

*8.2 On the other hand, learned DR has submitted that as per annual report of this company, it provides Software Development Services and the activity under this segment is functionally comparable to the assessee and fulfil filters applied by the TPO. The TPO as well as DRP considers the segmental data only in respect of the Software Development Services and not in respect of product sales. He has referred to the directions of the DRP and submitted that the business of this company is primarily Software Development and Services and system integration and support. The Software Development and Services segment comprises of three divisions (a) Embedded Product Design (b) Industrial Design (c) Visual computing lab. Once the segmental financial data is available in the annual report then the other business activity of the company becomes irrelevant. He has relied upon the directions of the DRP.*

*8.3 We have considered the rival submissions as well as relevant material on record. Undisputedly, the Tata ELXSI Ltd., is a market leader in its field of services and having various segments of services as well as product sales. Even in the segment of*

*Software Development and Services, there are various divisions comprising of a services provided for industrial design, visual computing labs and embedded product design. This company is also having R&D to the tune of 2.7% of the total turnover which was not considered as significant by the DRP. Further this company has also having internally generated intangibles of Rs. 5.30 Crores which was also considered as insignificant by the DRP. It is pertinent to note that the size of this company as well as turnover is manifold bigger than the assessee's size and Revenue. The Delhi Benches of the Tribunal in the case of M/s Global Logic India Ltd. vs. DCIT (supra) has considered the functional comparability of this company with a Software Development Services provider in para 8.2 to 8.3 as under:-*

*8.2 We have heard the rival submission of the parties on the issue in dispute and perused the relevant material including ITA No.4740/Del./2018 annual report of the company. The details of revenue from operations available on page 51 of the Annual Report (page 394 of PB-2), reproduced as under:*

18.	<i>Revenue From Operations</i>	<i>Year ended 31<sup>st</sup> March, 2014</i>
	<i>Sale of traded goods [Refer None(i) below]</i>	<i>4,700.51</i>
	<i>Rendering on services [Refer None(ii) below]</i>	<i>72,509.25</i>
	<i>Total</i>	<i>77,209.76</i>
	<i>(i) Sale of traded goods include sales of computers, networking and storage systems.</i>	
	<i>ii. Rendering of services comprises:</i>	
	<i>a) Product Design</i>	<i>66,427.07</i>
	<i>b) Graphics Animation and Gaming</i>	<i>1,843.15</i>
	<i>c) System Integration and Support</i>	<i>4,239.03</i>
		<i>72,509.25</i>

*8.3 Out of the above revenue streams, we find that major revenue has been earned from rendering of product design services. Under Product design, the assessee has carried major project of design and developing of a complete electronic control unit (ECU) including hardware and software for hybrid electric vehicle, designed the control hardware for India's Mars orbiter Mission, worked with GVK to design the experiential services for various consumer touch points at Mumbai International Airport's new integrated terminal-2. The relevant part of the Annual Report has been reproduced by the learned TPO in his order. From the various achievements of the company mentioned in the Annual Report, we are of the opinion that the company has earned revenue from designing using softwares rather than software development services and software maintenance services. The other services of graphic animation and gaming includes major project for animation and*

*visual effects for two feature films, which won the 59th Filmfare award and the star Guild Award 2014 for Best visual effects for it works in film “Dhoom 3”. The company also carried out visual effects for the film “Bhag Milka Bhag”. The services under the revenue from graphics animation and gaming are also different from services of software development.”*

*The Tribunal has noted that the company has earned Revenue from the designing using software than Software Development Services and software maintenance services. The other services of graphic animation and gaming includes major project for animation and visual effects for two feature films which are different from the services of the Software Development. These finding of the Tribunal are based on the factual details and financial data available in the annual report. Similarly, the Co-ordinate Bench of this Tribunal in the case of M/s Infor (India) P. Ltd. vs. DCIT (supra) for the assessment year 2014-15 vide order dated 6.8.2019 in para 77 to 78 has analyzed the functional comparability of this company as under:-*

*"77. As regards Tata Elxsi Ltd, Thirdware Solutions Ltd and Persistent Systems Ltd are concerned, we find that their comparability to the assessee has been considered in the assessee's own case for the A.Y 2007-08 and it is submitted that there is no change of activities of either the assessee or the comparables during the relevant A.Y before us i.e. A.Y 2014-15.*

*78. The learned DR has not rebutted this contention of the assessee. Therefore, respectfully following the decision of the Coordinate Bench at Mumbai in ITA No.520/Mum/2012 dated 4.12.2018, in the case of Infor Global Solutions India (P.) Ltd. v.Deputy Commissioner of Income Tax, we direct the exclusion of these three companies from the final list of comparables. For the sake of ready reference, the relevant paras are reproduced hereunder:*

*"29. We have considered rival submissions and perused materials on record. The primary and fundamental reason on the basis of which assessee seeks rejection of the aforesaid comparable is, it is also engaged in the development of product and segmental details are not available. Notably, in case of LSI Technologies India (P.) Ltd. (supra), the Co-ordinate Bench while examining the comparability of the aforesaid company to a software development service provider, has rejected this company as a comparable considering the fact that it is engaged in product development and product design services. The same view has been reiterated by the Tribunal in the other decisions cited by the learned Authorized Representative. Since, many of these decisions pertain to the impugned assessment year, respectfully following the aforesaid decisions of the Tribunal, we direct the Assessing Officer to exclude this company from the list of comparables.*

*35. We have considered rival submissions and perused materials on record. On a perusal of the documents placed in the paper book it appears that this company is*

*engaged in various activities including development of niche product and development services. Thus, the company is functionally different from the assessee. Considering the aforesaid aspect, the Co-ordinate Bench in case of Telcordia Technologies India (P.) Ltd. (supra), which is for the very same assessment year, has excluded this company as a ITA No. 1689/HYD/2019 and S.A.No.98/Hyd/2020, A.Y.2015-16 M/s Infor (India) Private Limited, Hyderabad comparable. Similar view has also been expressed in the other decisions cited by the learned Authorized Representative. Thus, keeping in view the decisions of the Tribunal referred to above, we hold that this company cannot be a comparable to the assessee.*

*38. We have considered rival submissions and perused materials on record. Though, it may be a fact that the assessee may not have objected to selection of this company before the Transfer Pricing Officer, however, the assessee raised objections against selection of this company before the DRP as well as before us. The grievance of the assessee is, the company being involved in development of products and since no segmental details are available in the annual report, it cannot be treated as comparable. The Co-ordinate Bench in Tech Mahindra Ltd. (supra) having found this company to be involved in development of software product and trading in software licenses has held that it cannot be a comparable to a software development service provider. Similar view has been expressed in the other decisions cited before us by the learned Authorised Representative. Since, many of these decisions relate to very same assessment year, following the ratio laid down in these decisions, we hold that this company cannot be a comparable to the assessee".*

*8.4 Hence, in view of the facts and circumstances of the case and particularly the business activity of Tata ELXSI Ltd., and following the decisions of this Tribunal cited (supra), we hold that this company is not functionally comparable to the assessee and accordingly the TPO is directed to exclude this company from the set comparables for determining the arm's length price.*

**9. e-Infochips Ltd.**

*The Ld. AR of the assessee has submitted that this company is engaged in the business of providing Software Development in ITeS and product which is considered as only reportable business segment. This company is into product engineering and Software R & D Services with more than 500 products developed. It has eight various intellectual properties and therefore, this company is a super profit of 81% therefore, this company cannot be considered as comparable to the assessee. He has relied upon the decision of co-ordinate Bench of this Tribunal dated 20.11.2019 in the case of M/s Kony IT Services Private Limited. vs. DCIT in ITA No. 2304/HYD/2018 as well as in the case of M/s. Infor (India) P Ltd. Vs. DCIT in ITA Nos. 161 & 2307/Hyd/2018.*

9.1 On the other hand, the Ld. DR has submitted that as per the financial of this company and particularly profit and loss account it cannot be seen that the Revenue from sale of product is just 2.5% of the total operating Revenue. Thus, this company is predominantly having Software Services Business and functionally comparable to the assessee. The assessee has not brought any material on record to show that this company is having intellectual property rights/intangibles. The R&D activity does not have any effect on the margins of this company and therefore, in terms of clause (i) of Rule 10B (3) if none of these differences is likely to materially affect the profit arising from such transaction in open market such uncontrolled transactions shall be considered as comparable to an international transaction. He has relied upon the direction of the DRP.

10. We have considered the rival submission as well as relevant material on record. The DRP has accepted this fact that this company is generating Revenue from sale of product though the same is not considered as significant in comparison to the Revenue from Software Development Services. Further the objection of the assessee regarding the R&D activities and I.P./Intangibles were rejected by DRP for want of any supporting material. At the outset we note that the co-ordinate Bench of this Tribunal in the case of M/s. Infor India Pvt. Ltd. vs. DCIT (supra) has considered the functional comparability of this company in para 85 as under:

“As regards E-Infochips Ltd is concerned, the contention of the assessee is that it is functionally different as it is engaged to software development of software products and ITeS and that there no segmental data. The TPO &DRP have rejected the objections of the assessee. The learned Counsel for the assessee has referred to the disclosure of segments explanatory wherein the company has disclosed itself as primarily engaged in software development and ITeS services and products, as reportable as per AS17. Further, at page 897, there is an inventory in the balance sheet and at page 899, there is classification of inventories. However, we do not find any revenue from sale of products. Therefore, it cannot be accepted that this company is into product development. The other objection of the assessee is that it has abnormal profit 79.76% during the relevant A.Y. and therefore, it has witnessed super normal profit of 38% on a year on year basis. This objection of the assessee is acceptable because, in the other cases of the Infosys Ltd. L&T Infotech Ltd. and Mindtree ltd. We have held that not only high turnover but even where the comparables have earned super normal profit, they also have to be excluded this company from the final list of comparables. Thus, the assessee’s grounds of appeal on exclusion of the companies are partly allowed.”

11. Following the earlier orders of the coordinate Bench of this Tribunal, we direct the TPO to exclude this company for the set of comparable while determining the ALP of international transaction of the assessee.

12. Larsen & Toubro Infotech Ltd. The Ld. DR of the assessee has submitted that as per the financials of this company it has shown as substantial number of intangibles in its asset base which constitute 23.37% of total asset. This company has created a brand name for itself in the market which has significantly impacted on profits of this company. He has relied upon the decision of co-ordinate Bench in the case of Infor (India) P. Ltd., M/s. Global Logic India Ltd. and M/s. M/s ARM Embedded Technologies Pvt. Ltd (supra).

12.1 On the other hand, the Ld. DR has submitted that Larsen & Toubro Infotech provides services of application, maintenance, development, ERP data, warehousing Business-intelligence, infrastructure management services which are functionally comparable to the assessee. It has reported 100% operation revenue from Software Development Services. The Ld. DR has further submitted that the DRP has considered Note-2 of the annual report on Revenue recognition where the company recognize the revenue when the services are rendered and related cost is incurred which shows that there is no reference for any product sale or inventory in the financial statements. He has relied upon the directions of DRP.

13. We have considered the rival submissions and as well as relevant material on record. At the outset, we note that the Delhi Benches of the Tribunal in the case of M/s Global Logic India Ltd. vs. DCIT (supra) has considered the functional comparability of this company in para 6.4 to 6.7 as under:

“6.4 We have heard rival submission of the parties on the issue in dispute. The learned Counsel of the assessee submitted that the company owns significant intangibles (Rs.75,04,78,329/-) in the ITA No.4740/Del./2018 form of the software and intangible assets under development. On perusal of fixed assets schedule, available on page S-1245 of the Annual Report ( page 116 of PB-2), we find that at the beginning of the year the assessee owned intangible assets of Rs.153,42,45,196/- which included software of Rs.143,61,95,196 ( 93 %), thus the intangible other than the software are insignificant. During the year, the company has sold/transferred the software and claimed depreciation, which resulted in net block of software at the end of the year to Rs.33,22,11,879/-. The assessee has also shown intangible assets under development of Rs.41,82,66,450/-, which makes the net intangibles owned by the company to Rs.75,04,78,329/- at the end of the year. But no depreciation has been claimed on the under developed intangibles, therefore there is no effect on the profitability of the company on account of the underdeveloped intangibles. Thus, the objection of the assessee of non-comparability of the assets is rejected.

6.5 Further, the learned Counsel submitted that operating expenses amounting to Rs.34,91,74,116/-and Rs.54,82,74,109/- on cost of the software packages for own use and cost of the bought-out items for resale during the year under consideration. Thus, according to the learned Counsel, the company was engaged in sale of the

*product and accordingly not comparable. On perusal of the profit and loss account of the company on page S-1237 of the Annual Report (Page 108 of PB-2), we find that company has shown two revenue streams. First, as revenue from the operations of Rs.46,439,403,178/-from overseas and Second as other income (loss of Rs.81,09,17,799/-). No revenue from sale of product has been shown. As regard to the objection of cost of ITA No.4740/Del./2018 software packages for own use under operating expenses, is concerned in our opinion, for a company engaged in software development, incurring expenses on purchase of the software for own use cannot term the assessee as engaged in sale of the product. Regarding the cost of the items for resale is concerned, the cost of purchase of inventory for resale will not impact on the profit and loss account because when goods are not sold, then it will appear in closing stock and resultant effect on profit and loss account is nil.*

*6.6 The next objection of the assessee is regarding multiple segments. From segment reporting on page S-1258 of the Annual Report (page 129 of PB-2), we find that the assessee has reported three business segments. The first segment is service cluster which includes banking, financial services, insurance, media and entertainment, travel and logistics and healthcare. The second segment industry cluster which includes Hi Tech and consumer electronics, consumer, retail and Pharma, energy and process, auto Mobile and aerospace, plant equipment and industrial machinery, utilities and E &C. The third segment, is telecom segment which refers to product engineering services (PES) which has been discontinued in this year. Regarding the PES, in Director's report, (available on page S-1225 of the Annual Report or page 96 of PB-2), it is reported as under:*

*"TRANSFER OF PRODUCT ENGINEERING SERVICES (PES) BUSINESS TO L&T TECHNOLOGY SERVICES LIMITED (LTTSL) AND WINDING UP OF GDA TECHNOLOGIES INC. (GDA INC.) As part of business restructuring undertaken within L&T Group, it was decided to consolidate the engineering services business under a separate subsidiary of L&T, L&T Technology Services Ltd. (LTTSL). Pursuant to this, the Company initiated and completed transfer of its Product Engineering Services (PES) Business Unit to LTTSL effective January 1, 2014, PES Business Unit was transferred by way of slump sale for total sales consideration of Rs.489.53 crs based on ITA No.4740/Del./2018 fair valuation, GDA Technologies Inc., USA (GDA Inc.), a wholly owned subsidiary of the Company was part of PES business with synergy in terms of the end customers they serve, primarily the semiconductor companies. Over last few years, the performance of GDA Inc. was adversely affected resulting in falling revenues and operational losses. Consequent to the transfer of PES business, certain IPs (Intellectual Properties) owned by GDA Inc. were transferred to LTTSL, the Company was wound up during the year."*

*6.7 In view of the above reporting, it is clear that under the telecom segment, the assessee was engaged in providing engineering services, which is distinct from the*

*services of the software development. Thus, at entity level, the company cannot be considered functionally similar to the assessee. The company cannot be considered comparable at the segment level also because of there are expenses of Rs.205,80,17,445/- ( page 129 of PB-2) , which has not been allocated into three segments, and thus the segmental result are distorted.*

*The Tribunal has noted that during the year this company has sold the Software and claimed the depreciation which resulted into net block of software at the end of the year to Rs. 33.22 Crores. There are also intangible assets under development to the tune of Rs. 81.4 which makes the net intangible owned by this company of Rs. 75.04 Crores at the end of the year. But not depreciation has been claimed on the underdeveloped intangibles. The Tribunal further noted that company has shown two revenue streams one from operations of overseas and second from other income. This company has also provided telecom engineering services distinct from the services of Software Development. The company cannot be considered as comparable even at segmental level because there are common expenses of Rs. 205.80 Crores not allocated into three segments and consequently results are distorted. Further during the year, extraordinary event of demerger of Product Engineering Services business has occurred which has also impacted the profit of the company at entity level. Similarly, the Bangalore Benches of the Tribunal in the case of M/s ARM Embedded Technologies Pvt. Ltd. (supra) has considered the functional comparability of this company at Page 11 and 12 as under:*

*"ii) L & T Infotech Limited - The company is not functionally comparable, as it has high brand value and market leader and also benefit from its parent brand. It has proprietary business and during the year extraordinary events like product engineering services business of the company was transferred to its subsidiary and has incurred expenses in foreign currency being 57.13% of its total expenditure. The company was excluded as comparable in the decision of co-ordinate Bench in the case of EMC Software and Services Pvt. Ltd. Vs. JCIT (supra) at para 6(ii) at page 592 & 593 of Paper Book as under : "*

*6 (ii) L & T Infotech Limited : The company has a margin of 24.61% and has high brand value and is a market leader, high presence and the intangible income in proprietary products. Significant expenditure in foreign currency to the extent of 57.13%. During the year the product engineering business service of the company was transferred to its subsidiary. The company segments are divided into service cluster, industrial cluster and telecom business. As per the Annual Report of the company, the company has a significant capital work-in-progress and the company has developmental products. The comparable was excluded from the final list of comparable in assessee's own case for the Assessment Year 2011-12 by the DRP and further the comparable company was excluded by the co-ordinate Bench of Delhi Tribunal in the case of Pitney Bowes Software India Pvt. Ltd. Vs. ACIT 101*

*Taxman.com 350. The learned Authorised Representative also relied on CGI Information Systems & Management Consultants (P) Ltd. Vs. ACIT (2018) 94 taxman.com 97 and DCIT Vs. Taxman India Pvt. Ltd. (2016) 74 Taxmann.com 88 (Del). We found that the co-ordinate Bench of Tribunal in M.P. No.95/Bang/2019 in IT(TP)A No.3122/Bang/2018 for the Assessment Year 2014-15 has dealt on the issue at page 2 para 4 as under :*

*"4. We heard Ld D.R and perused the record. We find merit in the miscellaneous petition filed by the assessee. Accordingly following paragraph is inserted after IT(TP)A No.3374/Bang/2018 paragraph 10 in the impugned order of the Tribunal, which will adjudicate the issue relating to "L & T Infotech Ltd":-*

*"10A The assessee has sought exclusion of M/s L & T Infotech Ltd on the ground that there were extraordinary events during the year, it possesses brand and intangibles, it has not provided segmental information and it has got sub- contracting expenses. The Ld A.R submitted that the above said company has been excluded by the co-ordinate bench in the case of Metric Stream Infotech P Ltd (IT(TP)A No.1418 & 2735/Bang/2017) relating to AY 2013-14 and also in the case of Electronics for Imaging India P Ltd (IT(TP)A No.1506/Bang/2016 relating to AY 2011-12). The Ld. A.R submitted that there is no change in facts in this year also and accordingly prayed for exclusion of the above said company.*

*10A.1 We heard Ld D.R and perused the record. We notice that M/s L & T Infotech Ltd has been excluded by the co-ordinate bench in the case of Metric Stream Infotech P Ltd (supra) for AY 2013-14 and also in the case of Electronics for Imaging India P Ltd (supra) for AY 2011-12. The Ld A.R submits that there is no change in facts prevailing in the current year vis-a-vis the years considered by the co-ordinate benches in the above said cases. Accordingly, following the above said decisions, we direct exclusion of M/s L & T Infotech Ltd."*

*We considering the functional dissimilarity and judicial decisions and various facts which are not similar to the assessee functional profile. Accordingly, we direct the TPO to exclude M/s. L & T Infotech Limited from the final list of comparable in determining the ALP."*

*14. In view of the facts and circumstances as discussed above as well as following the earlier decisions of the Tribunal on the functional comparability of this Company, we direct the TPO to exclude this company from the set of comparables while computing arm's length price.*

**15. Infosys Ltd.**

*The learned AR of the assessee has submitted that as per the financials of this company, it provides solutions that span the entire software life cycle encompassing*

*consulting, design, development, re-engineering, maintenance systems integration, package evaluation and implementation. In addition, the company develops/owns proprietary products like Finacle, Infosys m-Connect. It has also earned revenue by sale of its products. This company derives substantial portion of its revenue from proprietary products (including its flagship banking product suite Finacle). In the segmental P&L has a segment of software services & products. However, the allocation of income for software services & product is not provided. He has further submitted that the company has created a brand name for it, in the market and this 'brand value' has significant impact on the profits of the company. He has relied upon the following two decisions as under:-*

*i. M/s Kony IT Services Private Limited, I.T.A.T. Hyderabad, ITA No. 2304/Hyd/2018, for A.Y. 2014-15.*

*ii. M/s Infor (India) P. Ltd., I.T.A.T., Hyderabad, ITA Nos. 161 and 2307/Hyd/2018 A.Y. 2014-15.*

*16. On the other hand, learned DR has relied upon the order of the DRP and submitted that the objections raised by the assessee regarding R & D expenditure and brand value are not having any impact on the operating profit of this company being insignificant so far as the quantum of the expenditure is concerned, therefore, this company is functionally comparable.*

*17. We have considered the rival submissions as well as the relevant material on record. At the outset, we note that the co-ordinate Bench of this Tribunal in the case of M/s Kony IT Services Private Limited (supra) has considered the functional comparability of this company at page 16 to 22 as under:- "*

*(iv) M/s. Infosys Limited:*

*(a) From the profitability reported in the P & L Account (Page No. 324, 349 and 357 of PB-II) it is evident that the company had undergone extraordinary events as stated by the Ld. AR and this acquisition had substantial impact on the profitability of the company during the previous year.*

*Extraction from Page 324*

*"Lodestone Holding AG*

*On October 22, 2012. Infosys acquired 100%of the outstanding share capital of Lodestone Holding AG, a global management consultancy firm headquartered in Zurich, Switzerland. The acquisition was executed through a share purchase agreement for an upfront cash consideration of 1,187 crore and a deferred consideration of up to Rs. 608 crore.*

*During the year, we invested in our subsidiaries, for the purpose of operations and expansion, as follows :*

<i>Subsidiary</i>	<i>In foreign currency</i>	<i>Crore</i>
<i>Infosys Americas, Inc.</i>	<i>USD 0.1 million</i>	<i>1</i>

<i>Lodestone Holding AG</i>	<i>CHF 20 million</i>	<i>136</i>
<i>Infosys Public Services, Inc</i>	<i>USD 12.5 million</i>	<i>75</i>
<i>Edgeverve Systems Limited</i>		<i>1</i>

*(1) On April 15, 2014, the Board of Directors of Infosys authorized the Company to execute a Business Transfer Agreement and related documents with Edgeverve (Refer to Note 2.10.2 of the standalone financials).*

*Refer to statement pursuant to Section 212 of the Companies Act,1956 for the summary financial performance of our subsidiaries. The audited financial statements and related information of subsidiaries will be available on our website, www.infosys.com.*

*Extraction from page 349 of PB-II*

#### *2.10.1 Investment in Lodestone Holding AG*

*On October 22, 2012, Infosys acquired 100% of the outstanding share capital of Lodestone Holding AG, a global management consultancy firm headquartered in Zurich, Switzerland. The acquisition was executed through a share purchase agreement for an upfront cash consideration of Rs. 1, 87 crore and a deferred consideration of up to Rs. 608 Cr. The deferred consideration is payable to the selling shareholders of Lodestone on the third anniversary of the acquisition date and is contingent upon their continued employment for a period of three years. The investment in Lodestone has been recorded at the acquisition cost and the deferred consideration is being recognized on a proportionate basis over a period of three years from the date of acquisition. An amount of Rs. 228 Crore and Rs. 85 Cr representing the proportionate charge of the deferred consideration has been recognized as an expense during the years ended March 31, 2014 and March 31, 2013 respectively."*

*Extraction from Page 357 of PB-II*

#### *2.26 Merger of Infosys Consulting India Limited*

*The Honorable High Court of Karnataka sanctioned the scheme of amalgamation of Infosys Consulting India Limited (ICIL) with Infosys Limited with an effective date of August 23, 2013 and an appointed date of January 12, 2012 ICIL was a wholly-owned subsidiary of Infosys Limited and was engaged in software-related consultancy services. The merger of ICIL into Infosys Limited has been accounted for*

*under pooling of interest method referred to in Accounting Standard 14. Accounting for Amalgamation (AS-14).*

*All the assets and liabilities of ICIL on an after the appointed date and prior to the effective date have been transferred to Infosys Limited on a going concern basis. As ICIL was a wholly-owned subsidiary of Infosys Limited, no shares have been allotted to the shareholders upon the scheme becoming effective.*

*11.2. However, in the case of the assessee company there are no such events leading to super profits.*

*(b) The company has a bumper turnover of Rs. 42,531 Crs which cannot be compared with the turnover of the assessee company which is only Rs. 41 Crs.*

*(c) The company has recognised Intellectual property rights (IPRs) for Rs. 59 Crs as evident from Page 348 of PB-II. In the case of assessee company there is no accretion of such kind of assets.*

*(d) The company has spent huge amount on R & D Activities amounting to Rs. 261 Crs during the previous year and also have filed 79 patterns in its name as pointed by the Ld. AR and apparent from the PB-II, page No.304 and 311.*

*Extraction from Page 304 of PB-II*

*"Our research and development efforts focus on the twin goals of improving productivity and quality of our services, alongside working towards technology driven innovation and differentiation that will deliver greater value to our clients. At Infosys Labs, Service innovation is being achieved through enhanced automation, optimization, prevention and effective collaboration among described teams.*

*Infosys Labs has established a set of service innovation groups focused on enhancing quality and productivity of six dominant Infosys services-Business Process Outsourcing; Infrastructure Management Services; Independent Validation Services; Application Development and Maintenance including Large Deals; Consulting and Systems Integration; and Modernization. These groups work on service platforms with a focus on automation, optimization, consolidation, and on enhancing the effectiveness of contextual collaboration for distributed teams.*

*Under its Client Innovation umbrella, Infosys Labs has established six Centres of Excellence (CoE), namely Modernization, Advanced Analytics, Security and Dependability, Advanced Mobility, Experience, and Innovation Co-Creation. The CoEs work towards establishing technology- based client innovation and differentiation through the establishment of Client Innovation Centres, publishing focused technology points of view, implementing proofs of concepts driven by our focus on*

client value, and conducting client workshops. Additionally, we have set up innovation centres with a number of our clients, university partners, and industry research consortia to drive co-creation.

*Infosys Labs focuses on developing significant new intellectual property to enhance the productivity and quality of our services while enabling differentiation in client offerings. During fiscal year 2014, Infosys Labs filed 79 unique patent applications in the United States Patent and Trademark Office (USPTO), the Indian Patent Office and other jurisdictions. On a standalone basis, our research and development expenses for fiscal years 2014, 2013 and 2012 were Rs. 873 crore, Rs. 907 crore and Rs. 655 crore, respectively."*

*Extraction from Page 311 of PB-II*

*"Research and development expenditure*

*The R&D centers of the Company (Finacle and Infosys Labs) located at Bangalore, Bhubaneswar, Chandigarh, Chennai, Pune, Hyderabad, Mysore and Thiruvananthapuram have been accorded approval for weighted deduction by the Department of Scientific and Industrial Research (DSIR) effective November 23, 2011. The eligible R&D revenue and capital expenditure on a standalone basis are Rs 261 crore and Nil respectively for the year ended March 31, 2014 and Rs. 247 crore and Rs. 3 crore respectively for the year ended March 31, 2013. On a standalone basis, the total R&D expenditure, including eligible R&D expenditure discussed above for fiscal years 2014 and 2013 is as follows:*

	<i>In crore</i>	
	<i>2014</i>	<i>2013</i>
<i>Revenue expenditure</i>	<i>873</i>	<i>907</i>
<i>Capital Expenditure</i>	<i>--</i>	<i>6</i>
<i>Total</i>	<i>873</i>	<i>913</i>
<i>R&amp;D expenditure / total revenue (%)</i>	<i>2.0%</i>	<i>2.5%</i>

*(e) It is also apparent from page No.326 of PB-II that the company has incurred huge selling and marketing expenses of Rs. 2,390 Crs.*

*Extraction from Page 326 of PB-II*

*III Results of operations*

The function-wise classification of the Standalone Statement of Profit and Loss is as follows:

	Year ended March 31			
	2014	%	2013	%
Income from software services and products	44,341	100.0	36,765	100.0
Software development expenses	26,738	60.3	21,662	58.9
	17,603	39.7		41.1
Gross profit				15,103
Selling and marketing expenses	2,390	5.4	1,870	5.1
General and administration expenses	2,686	6.0	2,218	6.0
	5,076	11.4	4,088	11.1
Operating profit before depreciation	12,527	28.3	11,015	30.0

While as in the case of the assessee company no such expenses have been incurred as it is catering only to its parent company.

12. Considering the above-mentioned factors, we are of the considered view that M/s. Infosys Limited is not a comparable company with respect to the assessee company for TP Adjustments.

" We further note that the size of the company as well as having brand value and leader in the market has been considered by the Hon'ble Delhi High Court in the case of CIT vs. Agnity India Technologies Pvt. Ltd reported in 36 taxmann.com 289 and held that Infosys Ltd., is not comparable having its giant size and brand value. Accordingly, following the decision of the co-ordinate Bench as well as the decision of Hon'ble Delhi High Court in the case of CIT vs. Agnity India Technologies Pvt. Ltd (supra), we direct the TPO to exclude this company from the set of comparables.

18. Persistent Systems Ltd.,

The learned AR of the assessee has submitted that as per the segmental information in the annual report of the company, it is into Telecom and Wireless. Life science and Healthcare and infrastructure and Systems. Further, it is engaged in rendering "software product development" services to its customers as against the contract software development services provided by the Assessee. No segmental information is available for this company. It has diversified operations, which inter alia includes Intellectual Property ('IP') led business. This company is focusing on product development activities and product vertical contribute significant amount of revenue.

19. On the other hand, the Ld. DR has submitted that as per the annual report of this company, it is specializing in software product services and technology. Though there is revenue from sale of software services however, predominately this company earns revenue from foreign currency from sale of software and there is no reference to sale of products. Thus, this company is mainly engaged in providing software services. The R&D expenditure is very meagre of 0.33% of the operating revenue. Similarly, intangible asset is only 1.36% of the operating revenue therefore, these are not having any significant impact on the operating profits of the company. DRP has followed the decision of the Bangalore Benches of the Tribunal in the case of M/s. Advice America Software vs. Income Tax Officer in ITA No. 2531/Bang/2017, dated 23.05.2018.

20. We have considered the rival submissions as well as relevant material on record. The DRP has accepted this fact that this company is having intangible assets as well as has incurred expenditure towards R&D though the same are not considered in significant. Further, this company is also having revenue from I.P. but the DRP noted that it does not pertain to Indian company. Once, this company is specialized in software products Services and Technology innovation and offers product life style services then these activities cannot be held to be functionally comparable with the assessee. The Coordinate Bench of this Tribunal in the case of M/s Kony IT Services Private Limited vs. DCIT (supra) has considered the functional comparability of the assessee at page 22 to 24 as under:

“(v) M/s Persistent Systems Ltd:-

(a) It is evident from Page No. 533 of PB-II that the company is mainly engaged in three areas such as products (IP Business), platforms (Solutions Integration) and services (Product Engineering) and is also selling its branded products.

Extraction from Page 533 of PB-II

"Business overview

Your company specializes in building computer software products. Your company's business is organized with a focus on the following three areas: Products (IP Business), Platforms (Solutions Integration) AND Services (Product Engineering). Your company has decided to brand the product business separately from the Persistent brand and has named it 'Accelerite' ([www.accelerite.com](http://www.accelerite.com)). Accelerite will be headquartered in the Silicon Vally and will help your Company provide clarity - the Persistent brand is for product development and the Accelerite brand is for products. Your company has organized the development and engineering teams around three strategies. Account-Led, Platform-Led and Product-Led. Further, Account-Led teams are organized as Named Accounts and Growth Accounts.

*Driven by growth in the platform based solutions and IP led business, the consolidated revenue of your Company recorded an increase of 15.2% in the US Dollar terms and 28.9% in the Rupee term during the year under review. The consolidated EBIDTA increased by 28.4% and the net profit after tax went up by 32.9% during the same period."*

*(b) It is also evident from page no.701 of PB-II that the company is also engaged in R & D Activities and has incurred Revenue and Capital expenditure towards the same for Rs. 3.96 Crs.*

*Extraction from Page 701 of PB-II*

*"35. Research and development expenditure.*

*The particulars of expenditure incurred on in-house research and development centre approved by the Department of Scientific and Industrial Research (DSIR) are as follows:*

*For the year ended March 31, 2014 March 31, 2013 Capital 2.43 –*

	<i>For the year ended</i>	
	<i>March 31, 2014</i>	<i>March 31, 2013</i>
<i>Capital</i>	<i>2.43</i>	<i>-</i>
<i>Revenue</i>	<i>37.18</i>	<i>27.87</i>
	<i>39.61</i>	<i>27.87</i>

*(c) Though the company's revenue flows from the three streams viz., products (IP Business), platforms (Solutions Integration) and services (Product Engineering), the main segments disclosed in the Annual Report are Telecom & Wireless, Life- sciences & Health care, and Infrastructure & systems. Thus, the segmental details in the annual report is absent.*

*Extraction from Page 675 of PB-II*

*"(m) Segment reporting*

*(i) Identification of Segment*

*The Company's operations predominantly relate to providing software products, services and technology innovation covering full life cycle of product to its customers.*

*(ii) Allocation of income and direct expenses Income and direct expenses allocable to segments are classified based on items that we individually identifiable to that*

*segment such as salaries and project related travel expenses. The remainder is considered as un-allocable expense and is charged against the total income.*

*(i) Un allocated item Un allocated items include general corporate income and expense items which are not allocated to any business segment. Segregation of assets, liabilities, depreciation and other non-cash expenses into various reportable segments have not been presented except for trade receivables as these items are used interchangeably between segments and the company is of the view that it is not practical to reasonable allocate these items to individual segments and an adhoc allocation will not be meaningful."*

*13. From the above, it is evident that M/s. Persistent Systems Ltd is functionally dissimilar to the assessee company, it also has intangibles unlike the assessee company and further segmental data are not available. Hence, M/s. Persistent Systems Ltd cannot be treated as a comparable company with the assessee company for the purpose of TP adjustments."*

*21. 30 ITA No. 233/H/2018 A.Y. 2014-15 Similarly, in the case of Infor (India) P. Ltd. vs. DCIT (supra), the Tribunal has excluded this company from the comparables of Software Development Service Provider in Para 7.7 as under:*

*"7.7. As regards Tata Elxsi Ltd, Thirdware Solutions Ltd and Persistent Systems Ltd are concerned, we find that their comparability to the assessee has been considered in the assessee's own case for the A.Y 2007-08 and it is submitted that there is no change of activities of either the assessee or the comparables during the relevant A.Y before us i.e. A.Y 2014-15."*

*In view of the decision of the coordinate Bench of this Tribunal in the case M/s Kony IT Services Private Limited, we direct the TPO to exclude this company from the set of comparables.*

*22. Infobeans Technologies Ltd.*

*The Ld. AR has submitted that as per the Financials of the company it has revenue from sale of software products. The company has earnings in foreign exchange by export of goods calculated on F.O.B. basis. Further, the company also has MODVAT and sales tax deposits. Infobeans in engaged in Custom Application Development (CAD), content Management Systems (CMS), Enterprises Mobility (EM) and Big Data Analytics (BDA) which is high end service and distinct from routine software development services. These services also fall within the definition of knowledge process outsourcing (KPO) services as published in the Safe Harbour by CBDT. He has relied upon the decisions as under: (i) M/s Kony IT Services Private Limited. (ii) M/s. Alcatel Lucent India Ltd.*

22.1 On the other hand, the learned DR has submitted that as per the annual report of this company, the entire Revenue derived by this company is from Software Services.

23. We considered the rival submissions as well as the relevant material on record. The co-ordinate Bench of this Tribunal in the case of M/s Kony IT Services Private Limited (supra) has considered the functional comparability of this company at page 15 and 16 as under: “

(iii) M/s. Infobeans Technologies Limited: -

(a) From the Annual Report Page No.276 of the PB-II it is apparent that the assessee has also been engaged in sale of goods along with rendering of services because the turnover is reported on export of goods / services calculated on FOB basis.

(b) The company also has MODVAT deposits and sales tax deposit.

(c) Therefore, the company is functionally dissimilar to the assessee company.

(d) For reference the relevant portion of the Annual Report enclosed in paper book-II, page no.276 is extracted herein below:

<i>Note-27</i>	<i>329,659883</i>	<i>216,854,891</i>
<i>EARNINGS IN FOREIGN EXCHANGE</i>		
<i>a. Export of goods / services calculated on F.O.B. basis</i>		
<i>Total</i>	<i>329,659883</i>	<i>216,854,891</i>
<i>LONG TERM LOANS &amp; ADVANCES</i>		
<i>Security Deposit- Secured considered</i>	<i>9,400</i>	<i>9,400</i>
<i>Good Telephone Deposit</i>	<i>9,153</i>	<i>3,500</i>
<i>Other Deposit</i>	<i>10,000</i>	<i>10,000</i>
<i>Custom Deposit</i>	<i>140,850</i>	<i>73,150</i>
<i>Deposit with MPPKVVCL</i>	<i>10,000</i>	<i>--</i>
<i>Sales Tax Deposit (Kotak FDR)</i>	<i>25,000</i>	<i>25,000</i>
<i>Deposit (M-VAT)</i>	<i>10,121,460</i>	<i>--</i>
<i>M.P.S.E.D.C. Ltd</i>		
<i>Total</i>	<i>10,325,863</i>	<i>121,050</i>

The Tribunal has noted the fact that this company has MODEVAT and Sales Tax deposits. Therefore, this company is engaged in the sale of goods alongwith rendering of services. Accordingly, following the earlier order of this Tribunal, we direct the TPO to exclude this company from the set of comparables while computing the arm's length price.

#### 24. Thirdware Solution Limited

The Ld. AR has submitted that the company earns revenue from development and sale of software products. Further it is also involved in earning revenue from subscription contracts and sale of user licenses for software applications. From the annual report of the company in notes to accounts it can be seen that 100% revenue is derived from sale of products and revenue from sale of service is nil. The company has reported "purchases of stock in trade" amounting to INR 40.21 crores as a cost in P&L A/c. Further, the company has acquired intangibles during the year. He has relied upon the following decisions as under:-

- i. M/s Infor (India) P. Ltd., I.T.A.T. Hyderabad, ITA Nos. 161 & 2307/Hyd/2018
- ii. M/s ARM Embedded Technologies Pvt. Ltd., I.T.A.T. Bangalore, IT(TP)A No. 3374/Bang/2018.

24.1 On the other hand, the learned DR has submitted that as per the annual report of this company it is engaged in the business of Software Development and Consultancy Services. The company's revenue recognition disclosure shows the Revenue from services from Software Development and implementation. Though in the profit and loss account, the company has mentioned the Revenue from sale of products however in the foot note, it is clearly mentioned that the Revenue was on account of export of software services. The Revenue from sale of license is very meagre of 0.03% of total operating Revenue. He has relied upon the directions of the DRP.

25. We have considered the rival submissions as well as relevant material on record. The DRP has not disputed the fact that this company is generating Revenue from various activities which includes export of software services being sale of software and separately on account of software services sales subscription and training. This company has also shown Revenue from sale of licenses. The Bangalore Benches of the Tribunal in the case of M/s ARM Embedded Technologies Private Ltd. vs. Income Tax Officer, Bangalore (supra) has considered the functional comparability of this company at 15 & 16 as under:-

"iv) Third ware Solutions Ltd. - The company is not functionally comparable as it has different diversified activities, and derives income from software development, income from subscription contract and from sale of user licenses. Further, no segmental details are available and has diverse services and also error in computation of margins. The company was excluded as comparable in the decision of co-ordinate Bench in the case of EMC Software and Services Pvt. Ltd. Vs. JCIT (supra) at para 6(iv) pages 594 & 595 of Paper Book as under : " 6 (iv) Thirdware Solutions Ltd. the company is functionally dissimilar and is engaged in rendering software development implementation and support services and engaged in the development of software products and earns revenue from sale of user licenses and

*purchase stock in trade during the year and has intangibles. Further the margins of the company fluctuate year on year basis due to different revenue recognition model which the company has adopted. The above comparable was excluded in assessee's own case on functional dissimilarity in the Assessment Years 2005-06 and 2007-08 and learned Authorised Representative also relied on Lime Labs (India) Pvt. Ltd. Vs. ITO 101 Taxman.com 201 (Delhi Trib.). We found the co-ordinate Bench of the Tribunal in the case of LG Software India Pvt. Ltd. Vs. DCIT in IT(TP)A No.3122/Bang/2018 dt.28.05.2019 for the Assessment Year 2014-15 has excluded the comparable as observed at paras 8 & 8.1 at page 4 as under :*

*"8. We also notice that in A.Y 2008-09, the co-ordinate bench has excluded M/s. Thirdware Solutions Ltd also by following the decision rendered in the case of 3DPLM Software Solutions Ltd (supra), where in it was held that M/s. Thirdware Solutions Ltd. is engaged in product development and earns revenue from sale of licenses and subscription. Further, the segmental details were not available.*

*8.1 It was stated that there is no change in facts. Accordingly, following the decision rendered in the assessee's own case in A.Y 2008- 09, we direct exclusion of M/s. Thirdware Solutions Ltd."*

*The comparable Thirdware Solutions Ltd. has to be excluded as it is predominant in activity and segmental details are not available. Accordingly we direct the TPO/A.O to exclude this comparable from the list of comparables for determining the ALP."*

*25.1 The Tribunal noted that this company is engaged in the development of software products and earns Revenue from sale of user license. There is purchase of stock during the year and also has intangibles. The coordinate Bench of this Tribunal in the case of M/s Kony I.T. Services Private Ltd., vs. DCIT, Hyderabad (supra) has also considered the functional comparability of this company at page 13 to 15 as under:*

*"(ii) Thirdware Solutions Limited:*

*(a) As argued by the Ld. AR it is evident from the Annual Report (page No.235 of PB-II) that the company has derived revenue from sale of products amounting to Rs. 206.75 Crs. Further, there is no revenue from sale of services during the previous year. The assessee has also purchased stock amounting to Rs. 40.21 Crs. While as the assessee company is not engaged into any activity of producing physical goods.*

*Page No.235 of PB-II*

*(b) It is also apparent that the company is receiving revenue from various streams and none of them were pertaining to software development services. As apparent from page 237 of PB-II, the company has received Revenue from training and*

*subscription amounting to Rs. 59.32 lakhs and sale of licenses Rs. 7.98 lakhs. The assessee company is only engaged in ITES. Extraction from page no.237 of PB-II:*

*(c) It is also apparent from page no. 217 of PB-II that the company has not disclosed segmental details between software development services and products. The relevant portion is extracted hereinbelow for reference:-*

*"34) Segment Reporting The Company's cooperation comprises of software development, implementation and support services.*

*Primary segmental reporting is based on geographical areas viz., Domestic = India (Products & Services) and International = Rest of the world (Exports-software services).*

*In primary segment, revenue and all expenses, which relates to a particular geographical segment, are reported. Fixed Assets, Current Assets, Loans and Advances, Current Liabilities and provisions are classified based on specific geographical segment's business. The company maintains separate books of account for the reported segments.*

*Wherever the costs are directly identifiable with the reported segment, it has been booked to that segment. Wherever common expenses are incurred, those expenses have already been considered for allocation and relevant entries in the books of account have been passed. Hence there are no un-allocable expenses.*

*Further, cash, investment (net of provision) and bank balances are reported at the enterprise level. Current assets and current liabilities relating to the specific business segments are identified and reported. Those, which are not identifiable, are reported as common assets / liabilities."*

*(d) As disclosed in the annual account it is also apparent that the company has acquired intangibles during the year. Relevant portion of page 210 of PB-II is extracted hereinbelow for reference:-*

*"d) Intangible Assets and Amortization Acquired intangible assets relating to software purchased for company's internal use are capitalized at the cost of acquisition and is amortized on the straight line method over its estimated useful life of three years, as perceived by the management or useful life of asset as per contract whichever is earlier Depreciation on intangible assets is calculated on pro-rata basis with reference to date of addition over its useful life of three years, as perceived by the management or useful life of asset as per contract, whichever is earlier.*

*The intangible assets acquired by the respective units of Thirdware Solution Limited are used in relation to the operation / services by the respective units only.*

*Intangible assets internally developed by the company are capitalised at the total cost attributable towards the development of the product and is amortized on the straight-line method over its estimated useful life of three years, as perceived by the management." 10.1. In the case of the assessee company neither such expenses are incurred, or any intangibles are acquired during the relevant period.*

*11. Since the assessee company is primarily engaged in custom-built mobile applications and software support and maintenance related services to M/s. Kony Group of Companies, we are of the considered view that M/s. Third-ware Solutions Limited cannot be considered as a comparable company because of the reasons stated hereinabove."*

*Following the earlier orders of this Tribunal, we direct the TPO to exclude this company from the set of comparables."*

8.5 On perusal of the above, we found that, this Tribunal has very elaborately dealt with the issue and not find Tata Elxsis Limited (Seg), E-Infochips Ltd, Larsen and Turbo Infotech Limited, Infosys Ltd, Persistent Systems Limited, Infobeans Technologies Limited and Thirdware Solutions Limited as good comparables and directed the Ld. AO / TPO to exclude the same from the final set of comparables. Respectfully, following the decision of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) , we also hold that, Tata Elxsis Limited (Seg), E-Infochips Ltd, Larsen and Turbo Infotech Limited, Infosys Ltd, Persistent Systems

Limited, Infobeans Technologies Limited and Thirdware Solutions Limited are not good comparables for the assessee. Accordingly, we direct the Ld. AO/TPO to exclude Tata Elexis Limited (Seg), E-Infochips Ltd, Larsen and Turbo Infotech Limited, Infosys Ltd, Persistent Systems Limited, Infobeans Technologies Limited and Thirdware Solutions Limited from the set of comparables.

9. As far as, the exclusion of R S Software (India) Limited (“R S Software”) from the set of comparables is concerned, the Ld. AR contended that R S Software is functionally dissimilar and should be excluded from the set of comparables. The Ld. AR further submitted that R S Software is engaged in activities other than SDS. In support of their submission, the Ld. AR invited our attention to para No.11 of page No.4253 of the Paper Book related to intangible assets forming part of financial statements of R S Software and submitted that, R S Software hold intangibles and is involved in Research and Development, thereby not functionally comparable with a routine SDS Provider like assessee.

9.1 Ld. AR further invited our attention to Annual Statement wherein the company has mentioned line of business in which the company is engaged and submitted that R S Software is engaged in activities vastly different from that of the assessee. It was also submitted that R S Software is involved in providing end-to-end solutions to the electronic payment industry, as evident from the paper book at page no.4226 (Technology Absorption), and its Profit and Loss account at page no. 4245 of the paper book read with the Notes on Accounts at page no. 4247 of the paper book. The existence of proprietary IPR, as seen from page nos. 4153 and 4155 relating to Annual Report of R S Software further indicates that R S Software performs high-end functions and operates with significant intangibles, unlike the captive SDS by the assessee. Page nos. 4156 and 4157 relating to annual report of the said company describes the advanced data analytics tools and different software solutions.

9.2 Ld. AR also submitted that the presence of IPR and development of analytical tools points to ownership of unique

intangibles that materially affect the profitability of R S Software. He further submitted that under Rule 10B(3)(i), even the likelihood of such IPR influencing profits is sufficient ground for exclusion. It was contended that the Ld. TPO erred in requiring a quantified impact in the financials, as proprietary tools and solutions developed internally are often not recorded unless acquired or valued for a particular purpose. The Ld. AR also highlighted that R S Software business model involves full-cycle services and domain specialization, which is not comparable to the low-risk, captive service model of the assessee. Accordingly, the Ld. AR strongly pleaded for exclusion of R S Software from the final set of comparables.

9.3 Per contra, the Ld. DR objected to the submissions of Ld. AR regarding exclusion of R S Software from the final set of comparables. The Ld. DR submitted that R S Software is engaged in SDS and therefore, functionally similar to the assessee. In support of their submissions, Ld. DR invited our attention to para No.21 related to Revenue from Operations of the financial statement of R S Software placed at Page No.4257

of the Paper Book and submitted that the total revenue of the assessee is from SDS only. The Ld. DR also invited our attention to para No.39 of the Notes on accounts of the financial statements placed at Page No.4266 of the Paper Book, wherein the company has specifically mentioned that R S Software is engaged in SDS only. Accordingly, the Ld. DR submitted that mere mention of other line of activity in the annual report cannot be the conclusive evidence of actual functional dissimilarity. It was emphasized that unless it is demonstrated that the company has undertaken such diversified activity during the relevant financial year and unless revenue has been generated from such non SDS activity, the company cannot be said to be functionally different. The Ld. DR further submitted that the entire revenue during the relevant financial year has been derived by R S Software from SDS got fortified from the fact that no such segmental information is available in their financial statements. Accordingly, the Ld. DR reiterated that R S Software is engaged in SDS only and functionally similar to the assessee. Further, as regards the possession of intangibles, the Ld. DR submitted that the intangibles are held by R S Software

for internal use and for regular business functions. Further, R S Software has not earned any revenue which is attributed to licensing or commercial exploitation of such intangibles. The Ld. DR also submitted that the assessee has not demonstrated how the existence of these intangibles will affect the profit margin of R S Software in a manner that would render it not comparable. Accordingly, the Ld. DR submitted that the claim of the assessee for exclusion should be rejected.

9.4 We have heard the rival contentions and also gone through the record in light of submissions made by either side. The reliance placed by the assessee on the existence of IPRs and references to proprietary tools and analytics in the Annual Report is not sufficient to establish functional dissimilarity. Mere possession of intangibles, especially when used solely for internal operational efficiencies and not for commercial exploitation or revenue generation, does not render a company non-comparable to the assessee. Further, the functional profile of R S Software, even if industry-specific (i.e., electronic payments), still falls under the broader classification of SDS. No

material has been brought on record by the assessee to show that such industry focus has resulted in materially different functions, assets, or risks that would warrant exclusion.

9.5 As rightly pointed out by the Ld. DR, the absence of segmental financials, combined with the fact that 100% revenue is from SDS, leads to a reasonable conclusion that R S Software is functionally comparable with the assessee. The Tribunal in multiple decisions has held that unless it is shown that the alleged functional difference translates into differential margins or risk profiles demonstrable through segmental results, mere reference to technical capabilities or internal intangibles cannot be the basis for exclusion.

9.6 In view of the above discussion and considering that the assessee has failed to establish any decisive functional difference backed by financial evidence, we are of the considered view that R S Software is functionally comparable to the assessee and deserves to be retained in the final list of comparables.

Accordingly, the assessee's plea for exclusion of R S Software from the list of comparables is rejected.

10. With respect to exclusion of Mindtree Limited ("Mindtree"), Ld. AR invited our attention to the Annual Report of Mindtree and submitted that the said company is functionally not comparable to the assessee. It was pointed out that page nos. 3966, 3968, and 3970 of the paper book forming part of Annual Report of Mindtree describe the nature of activities undertaken by Mindtree, which include a wide range of IT services beyond mere captive software development. Specific reference was made to the 4th bullet point on page no. 4028 of the paper book forming part of Annual Report of Mindtree, which highlights the company's multi-segment specialization. Further, the para no. 1 of the Notes to Accounts placed at page no. 4046 of the paper book reveal that Mindtree operates in divergent high-end segments such as analytics and information management, business technology consulting etc. It was also submitted that the Profit & Loss account placed at page no. 4044 of the paper book and the segmental information placed at page nos. 4062

and 4063 of the paper book do not provide sufficient clarity to isolate a segment comparable to the assessee. In view of these material functional differences and lack of reliable segmental data, Ld. AR urged for exclusion of Mindtree from the final list of comparable companies.

10.1 Per contra, the Ld. DR objected to the submissions of the Ld. AR regarding exclusion of Mindtree from the set of comparables. The Ld. DR submitted that Mindtree Limited is primarily engaged in SDS, and therefore functionally comparable to the assessee. In support of this submission, the Ld. DR invited our attention to Note No. 2.8.1 related to "Revenue recognition" of the financial statement placed at Page No. 4047 of the Paper Book and submitted that the entire revenue during the relevant financial year is derived from SDS.

10.2 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. The Ld. AR has strongly contended that Mindtree Limited is functionally not comparable to the assessee, which is a captive SDS provider. We have gone through page nos. 3966,

3968, and 3970 of the paper book forming part of the Annual Report of Mindtree and Note 1 of the Notes to Accounts placed at page no. 4046 of the paper book, highlighting the fact that the company undertakes a wide spectrum of IT services, including high-end and diversified activities such as analytics, information management, and business technology consulting. It also underscore Mindtree's multi-segment specialization and operations in high-end segments beyond routine SDS. Further, the Profit & Loss Account placed at page no. 4044, quantitative details at page nos. 4062 and segmental details at page no. 4063 of the paper book do not provide clear revenue bifurcation for isolating a functionally comparable SDS segment. The absence of reliable segmental data, despite disclosures about multiple verticals, renders the functional comparability assessment speculative. Therefore, we are inclined to accept the argument of the Ld. AR. Accordingly, we hold that Mindtree is engaged in diverse and high-end service offerings. The fact that multiple verticals are disclosed, without a clear demarcation of revenues attributable to each segment, indicates that the company's functional profile is not limited to SDS. Moreover, the lack of

reliable and segment-specific financial data makes it unfeasible to reasonably benchmark Mindtree with the assessee's captive SDS operations. Accordingly, in view of the functional dissimilarity and absence of reliable segmental data, Mindtree Limited is directed to be excluded from the final set of comparables.

11. Ground No.5 of the assessee is related to inclusion of 17 companies, however, the Ld. AR submitted that they are pressing for inclusion of only Akshya Software Technologies Limited, Maveric Systems Limited, Sagar Soft India Limited and Sankhya Infotech Limited. As far as the inclusion of Akshya Software Technologies Limited ("Akshya Software") is concerned the Ld. AR invited our attention to para No.7 of the decision of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) and submitted that this Tribunal has considered Akshya Software as a good comparable. Accordingly, the Ld. AR prayed before the Bench to include Akshya Software in the set of comparables in the case of the assessee also.

11.1 Per contra, the Ld. DR relied on the order of Ld. AO / TPO.

11.2 We have heard the rival contentions and also gone through the record in light of submissions made by either side. We have gone through para No.7 of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) which is to the following effect :

*“ 7. We have considered the rival submissions as well as the relevant material on record. So far as the functional comparability of Akshay Software Technologies Limited is concerned, we note that company is engaged in providing Software Development Services and the nature of Services provided by this company is not disputed either by the TPO or by the DRP. However, the TPO and DRP have rejected this company which was part of the set of comparables selected by the assessee on the ground that this company has a different model that of assessee because 85% of the total expenditure pertains to foreign branch expenditure and further the substantial part of the expenditure is incurred towards employees benefit. At the outset, we note that the functional comparable of this company has been considered by the Bangalore Benches of this Tribunal in the case of M/s ARM Embedded Technologies Pvt. Ltd., vs. Income Tax Officer (supra) in para 9 as under:-*

*“(i) Akshay Software Technologies Ltd. - The company is functionally comparable as it has majority of the revenue is from of software related services. The TPO did not apply the on-site development filter and foreign branch expenses are not the same as on-site development of software. There is no difference in the business model adopted by the company and the assessee. The company was included as comparable in the decision of co-ordinate Bench in the case*

*of EMC Software and Services Pvt. Ltd. Vs. JCIT 115 taxmann.com 293 (Bang - Tribunal) at para 7(i) page 595 of Paper Book as under :*

*" 7 (i) Akshay Software Ltd. which has a margin of 8.13%. The income from commission on sale of software license constitute meager 0.5% of total revenue and TPO has not applied transfer development filter. The said company was rejected by the TPO for the reason that the company is engaged in providing provisional services, procurement installation, and employment support of ERP products. The DRP has rejected the comparable without applying the filter and there is no difference in the business model adopted by the company and the assessee. We on perusal of the Annual Report at Page 1373 of Paper Book, found IT(TP)A No.3374/Bang/2018 that major revenues are from operations as per Note 19 being income from software services and commission received on sale of software licenses. The earnings as per Note 28 as per the financial statements, the company has earning from export of software and in the F.Y. 2013-14 which constitute more than 95% of income. Therefore we found these facts are not considered by the TPO or DRP and accordingly we restore this issue to the file of TPO for examination and verification."*

*We found there is a functional comparability in respect of assessee profile and accordingly, we direct the TPO to include the comparable in the final list for determination of ALP.*

*The Tribunal has noted the fact that there is no difference in the business model adopted by this company that of assessee merely because certain expenditure were incurred in respect of foreign branch which are not categorized onsite Development of*

*Software. Further, when the TPO did not apply onsite filter while selecting the comparable then applying the said filter for this company is not justified. Accordingly following the decision of the Bangalore Benches of the Tribunal in the case of M/s ARM Embedded Technologies Pvt. Ltd., vs. Income Tax Officer (supra) we direct the TPO to include this company in the set of comparables for determination of ALP.”*

11.3 On perusal of the above, we found that this Tribunal has held that Akshya Software is a good comparable to M/s. Wave Crest Payment Technology Pvt. Ltd. We have already held that M/s. Wave Crest Payment Technology Pvt. Ltd. is comparable to the assessee. Accordingly, the decision of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) is applicable to the case of the assessee. Therefore, respectfully following the decision of this Tribunal (supra), we hold that Akshya Software is a good comparable and accordingly, we direct the Ld. AO / TPO to include the same in the list of comparables.

12. As far as the inclusion of Maveric System is concerned, we found that, this tribunal at para nos. 26.1 to 28 of its order in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) has dealt with the comparability of Maveric System, which is to the following effect :

*“ 26.1 Maveric Systems Limited The learned AR of the assessee has submitted that the DRP has rejected this company on the ground that it has substantial expenses of 6% of turnover towards R & D which is beyond tolerance limit of 3%. The learned AR has pointed out that as per the financials, this company has not incurred any R&D cost. The annual report of this company shows that it is engaged in the Software Development and Testing Services. The other two companies namely Signity Technologies Limited and R.S. Software (India) Ltd., were included by the TPO in the final list of comparable but the DRP has rejected those two companies. In support of his contention he has relied upon the decision of the Tribunal dated 24.11.2020 in case of M/s ARM Embedded Technologies Pvt. Ltd., vs. Income Tax Officer (supra).*

*27. On the other hand, learned DR has submitted that it is evident from the annual report of this company that it has incurred substantial expenses to the tune of Rs. 6% of the turnover towards R&D which is beyond the generally acceptable tolerance limit of 3% of the Revenue. The DRP has noted that the assessee has not controverted this finding of TPO. He has relied upon the orders of the authorities below.*

*28. We have considered the rival submissions as well as relevant material on record. The TPO and DRP has excluded this company from the set of comparables by applying a filter of R&D expenditure of more than 3%. The assessee has contended that as per the annual report, no R&D expenditure incurred by this company. The learned AR has also relied upon the decisions of Bangalore Benches of the Tribunal in the case of M/s ARM Embedded Technologies Pvt. Ltd., vs. Income Tax Officer (supra), wherein the Tribunal has considered the comparability of the company at pages 20 and 21 as under:-*

*“(vii) Maveric Systems Ltd. - The Company is functionally comparable as it has engaged in software testing and integral part of software development. The DRP erred in upholding the exclusion of the company on the ground that it incurred R&D exp of 6% of turnover, when no filter was applied by the TPO to exclude companies incurring R&D expenses. The company was included as comparable in IT(TP)A No.3374/Bang/2018 the decision of co-ordinate Bench in the case of EMC Software and Services Pvt. Ltd. Vs. JCIT (supra) at para 7(iii) page 595 of Paper Book as under :*

*" 7 (iii) Maveric Systems Limited : This comparable was rejected by the TPO and it was sought for inclusion by the assessee and whereas TPO has rejected without any basis and was excluded on the ground that the company was engaged in R & D activity and expenditure is 6% of total turnover. Similarly, the DRP has upheld the exclusion of the company. The learned Authorised Representative submitted that company's functional profile is comparable and applied the TPO filters. Whereas the DRP has observed that the company has 37 ITA No. 233/H/2018 A.Y. 2014-15 incurred substantial expenses to the tune of 6% of turnover towards R & D and the tolerable limit is 3%. We found the observations of the DRP are without any basis. Accordingly we restore this issue to the file of TPO to give a logical conclusion and findings." We found there is a functional comparability in respect of assessee's profile and accordingly we direct the TPO to include the comparable in the final list for determination of ALP."*

*In the said case, the assessee did not dispute the fact of R&D expenditure incurred to the tune of 6% of the turnover however, the Tribunal has reversed the directions of the DRP to apply the R&D expenditure filter on the ground that the TPO has not applied any filter of R&D expenditure. The Tribunal followed the decision of the coordinate Bench in the case of EMC Software & Services Limited vs. JCIT wherein this issue was restored to the record of the TPO for giving a logical conclusion and finding regarding the R&D filter if any applied by the TPO. In the case in hand, the assessee has not disputed that the TPO excluded this company due to R&D filter breached by this company. Therefore, the decision relied upon by the learned AR would not help the case of the assessee. We further note that the coordinate Bench of this Tribunal in the case of M/s. Infor (India) P Ltd. Vs. DCIT in ITA Nos. 161 & 2307/Hyd/2018 dated 06.08.2019, which has been relied upon by the learned AR while supporting the other comparables has considered the functional comparability of this company in para 71 and 72 as under:-*

*"71. The learned DR, on the other hand, relied on the orders of the authorities below as well as the annual Report of Maveric*

*Systems Ltd., wherein it is reported that 6% of the turnover has been spent towards R&D.*

*72. Having regard to the rival contentions and the material on record, we are satisfied that though this company is functionally similar, it fails the R&D filter of less than three percent of the turnover and hence cannot be taken as a comparable to the assessee.”*

*Accordingly, in view of the fact that this company is having R&D Expenditure equivalent to 6% of the turnover cannot be taken as comparable.”*

12.1 On perusal of the above, we found that this Tribunal has not found Maveric Systems as comparable due to the reason that Maveric Systems is having R&D expenditure of 6% of the turnover. In this order, we have already hold that, M/s. Wave Crest Payment Technology Pvt. Ltd. is comparable to the assessee . Accordingly, the findings of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra) can be squarely applied to the assessee. Therefore, respectfully, following the decision of this Tribunal in the case of M/s. Wave Crest Payment Technology Pvt. Ltd. Vs. DCIT (supra), we hold that Maveric Systems is not comparable to the assessee. Accordingly, we reject the request of the assessee for inclusion of Maveric Systems in the set of comparables.

13. As far as the request of the assessee for inclusion of Sankhya Infotech Limited (“Sankhya Infotech”) is concerned, we found that Sankhya Infotech has R&D expenditure of 5.9% of the turnover. We have already held that due to R&D expenditure of 6% of turnover, Maveric Systems is not comparable to the assessee. On the basis of our discussion and reasoning given for the rejection of Maveric Systems, we hold that Sankhya Infotech is not comparable to the assessee due to its R&D expenditure of 5.9 % of turnover. Accordingly, the request of the assessee for inclusion of Sankya Infotech in the list of comparable is rejected.

14. As far as inclusion of Sagar Soft India Limited (“Sagar Soft”) as comparable is concerned, the Ld. AR invited our attention to Para No.5.1.5 of the order of Ld. DRP, wherein the Ld. DRP has considered Sagar Soft as functionally comparable and directed the Ld. AO / TPO to examine whether it satisfy other filters or not. The Ld. AR also invited our attention to rectification order of Ld. AO / TPO passed in accordance with the direction of Ld. DRP placed at page No.995 of the Paper Book, wherein the Ld.

AO / TPO has rejected the Sagar Soft as a good comparable stating that Sagar Soft fails in persistent loss filter. The Ld. AR also invited our attention to Page No.5224 of the Paper Book and submitted that Sagar Soft is not having persistent loss, however, Sagar Soft has earned operating profit of Rs.68,43,033/- in financial year 2011-12. Accordingly, the observation of Ld. AO / Ld. TPO that Sagar Soft is having persistent loss is not correct. In support of their submission, the Ld. AR invited our attention to para nos. 8 & 9 of the decision of co-ordinate Bench of the Tribunal in the case of KABACE Technologies Pvt. Ltd Vs. DCIT in ITA No.3189/Bang/2018 dated 29.01.2020, wherein the Tribunal has held that, if there is profit in any one of the three financial years considered for analysis, then, that company cannot be excluded on the basis of persistent loss making filter. Accordingly, the Ld. AR prayed before the Bench to include Sagar Soft in list of set of comparables.

14.1 Per contra, the Ld. DR relied on the order of Ld. AO / TPO

14.2 We have heard the rival contentions and also gone through the record in light of submissions made by either side. We have gone through page no.5224 of the paper book, which is to the following effect :

**Sagarsoft PBT working**

Financial Year	2011-12	2012-13	2013-14
Operating Revenue	9,68,35,727	10,28,10,064	11,28,66,549
Operating Cost	8,99,92,694	10,77,20,489	11,59,69,701
Operating Profit	68,43,033	-49,10,425	-31,03,152
OP/OC	7.60%	-4.56%	-2.68%
Add : Non operating income			
Total income	9,99,32,197	10,72,13,264	12,56,45,632
Add : Non operating expenses			
Total expenses	9,02,95,747	10,78,89,481	11,83,39,492
PBT	96,36,450	-6,76,217	73,06,140
As per financials	96,36,450	-6,76,217	73,06,140

14.3 On perusal of above, we found that, Sagar Soft has operating profit of Rs.68,43,033/- in F.Y. 2011-12 which is falling within the bracket of three years which has been considered for analysis. We have also gone through para nos. 8 & 9 of the decision of the coordinate bench of Tribunal in the case of KABACE Technologies Pvt. Ltd Vs. DCIT (supra), which is to the following effect :

*“8. As far as inclusion of 3 companies which was argued before us by the Id. counsel for the assessee, the first company which the assessee seeks for inclusion is Sagarsoft (I) Ltd. This company was rejected by the TPO by applying the RPT filter which was not accepted by the DRP. The DRP directed the TPO to consider the comparability of*

*this company afresh. The TPO while giving effect to the order of DRP, chose to reject this company as a comparable by pointing out that this company fails the persistent loss filter. It was the submission of the Id. counsel for the assessee that that in the light of decision of ITAT Pune Bench in the case of Yezaki (I) Pvt. Ltd., ITA No.621/PUN/2014 AY 2009-10, order dated 11.17.2019, the persistent loss filter can be applied only if there is a loss in 3 successive assessment years and that if there is a profit in any one of the 3 past financial years, then that company cannot be excluded on the basis of persistent loss making filter. It was submitted that all other filters have been accepted by the TPO in the order giving effect and therefore this company deserves to be included as a comparable company.*

*9. We have given a careful consideration to the submissions of the Id. counsel for the assessee and are of the view that if in any of the three previous financial years, if Sagarsoft (I) Ltd. has made a profit, then it shall not be excluded by applying the persistent loss filter. The TPO/AO will verify this aspect and consider inclusion of this company in the final comparables in accordance with law, after due opportunity to the assessee.”*

14.4 On perusal of the above, we found that the Tribunal has categorically held that, if there is profit in one of the three financial years considered for analysis, then, that company cannot be excluded on the basis of persistent loss making filter. As Sagar Soft has profit in F.Y. 2011-12 which is within the bracket of three years, therefore, respectfully following the decision of co-ordinate Bench of the Tribunal in the case of KABACE Technologies Pvt. Ltd Vs. DCIT (supra), we hold that Sagar Soft cannot be excluded from the set of comparables on the basis of persistent loss making filter. Accordingly, we direct the Ld. AO /TPO to include Sagar Soft in the set of comparable.

15. Ground no.8 of the assessee is related to the denial of working capital adjustment (“WCA”) by the Ld. TPO while determining the ALP. The Ld. AR submitted that the Ld. TPO denied WCA on the ground that only year-end figures were available and the assessee failed to furnish detailed working capital cycle data during the year. The Ld. AR further submitted that the assessee is not in a position to obtain granular or daily/monthly working capital data of the uncontrolled comparable companies, as such data is not available in the public domain, and the assessee has no access or right to call for such internal details from third-party comparables. The Ld. AR also submitted that WCA is a legitimate adjustment intended to neutralize the impact of difference levels of working capital between the tested party and the comparables, which affects the margins and profitability. It was also submitted that the WCA may be computed on the basis of average of opening and closing balances as available from the annual reports of comparables, which is consistent with settled principles laid down in multiple judicial precedents. Finally, the Ld. AR prayed before the Bench

that, in order to bring parity in comparison, a working capital adjustment should be granted.

15.1 Per contra, the Ld. DR submitted that the assessee has not furnished the necessary data or workings in support of its claim for working capital adjustment. Specifically, the assessee has not demonstrated whether the comparable companies have met their working capital requirements through borrowed funds or internal sources. The assessee has also failed to establish whether the comparable companies have incurred any actual cost on working capital deployment or the impact of such financing on their profit margins. Therefore, in the absence of any such supporting material, the assessee's request for working capital adjustment is required to be rejected.

15.2 We have considered the rival contentions and perused the material available on record in view of the submissions made by either side. The Ld. AR has submitted that the Ld. TPO denied WCA on the ground that only year-end figures were available and the assessee failed to furnish detailed working capital cycle

data during the year. The Ld. AR also submitted that the assessee is not in a position to obtain granular or daily/monthly working capital data of the uncontrolled comparable companies, as such data is not available in the public domain, and the assessee has no access or right to call for such internal details from third-party comparables. In terms of Rule 10B(1)(e)(iii) of the Income-tax Rules, 1962, the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and comparable uncontrolled transactions which could materially affect the amount of net profit margin. In our view, difference in levels of working capital between the tested party and the comparables have an affects on the margins and profitability. Therefore, the Ld. TPO's approach in insisting upon daily/monthly working capital cycle data of third-party comparables is, in our considered view, unjustified, particularly when such data is admittedly not available in the public domain. The assessee cannot be expected to obtain information which is beyond its reach. Therefore, we are of the considered opinion that, WCA cannot be denied merely due to

the absence of detailed working capital cycle data and the adjustment should be granted based on average of opening and closing balances. Hence, we direct the Ld. TPO to grant appropriate WCA to the assessee while determining the ALP, by adopting the average of opening and closing working capital balances of comparables, as available from their annual reports. Accordingly, the ground No. 8 of the assessee is allowed for statistical purpose.

16. Ground No.10 of the assessee are related to the benchmarking of interest on outstanding trade receivables. The Ld. AR contended that no separate benchmarking is required in respect of interest on trade receivables, as the same forms part of the working capital and is subsumed within the overall pricing of the international transaction.

16.1 Per contra, the Ld. DR opposed this contention and submitted that interest on trade receivables constitutes an independent international transaction, which requires separate benchmarking. In support, the Ld. DR relied on the Explanation

inserted to Section 92B of the Act by the Finance Act, 2012, with retrospective effect from 01.04.2002. The said Explanation clarifies that international transactions shall include capital financing, including receivables, loans, and any other debt arising during the course of business.

16.2 We have considered the rival contentions and perused the material available on record in view of the submissions made by either side. In light of the settled legal position, including the statutory amendment to Section 92B of the Act, we are unable to accept the contention of the Ld. AR that no separate benchmarking is required for outstanding receivables. Accordingly, we hold that the interest on trade receivables constitutes a separate international transaction requiring independent benchmarking, and thus, the assessee's ground on this issue is liable to be rejected.

17. Ground no.11 of the assessee is related to allowability of credit period and applicability of rate of interest for the purpose of benchmarking of interest on trade receivables.

17.1 As far as the applicability of rate of interest for benchmarking of trade receivable is concerned, the Ld. AR submitted that, the Ld. TPO erred in applying the interest rate charged by SBI on short term deposits for benchmarking the interest on outstanding trade receivables relating to sale of services by the assessee to its Associated Enterprises (“AEs”). The Ld. AR further submitted that, this Tribunal in many cases has held that the interest on trade receivables should be benchmarked at LIBOR +200 basis points. Accordingly, the Ld. AR prayed before the bench to direct the Ld. TPO to apply the LIBOR + 200 basis points on trade receivables. As far as the allowability of credit period is concerned, the Ld. AR submitted that the Ld. TPO has allowed credit period of only one month. Therefore, the Ld. AR prayed before the bench for some relaxation in this regards.

17.2 Per contra, the Ld. DR relied on the order of Ld. AO/TPO.

17.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. The core issue before us is to decide the appropriate

interest rate to be applied for trade receivables from foreign AEs.

We find that an identical issue has been dealt by this Tribunal in the case of HARSCO India Private Ltd. v/s DCIT in ITA No. 1041/Hyd/2024 dated 06/03/2025, wherein at para no. 6 to 10 of the order this Tribunal has held as under :

*“6. It is pertinent to note that, not following the decisions of the Tribunal in assessee’s own case amounts to judicial indiscipline on the part of the DRP. However, since the issue has now come up before the Tribunal, therefore, we will discuss the merits of this issue. The basic question before us is, whether for benchmarking the outstanding receivables from AEs, the comparable interest rate should be PLR rate/SBI short term rate or LIBOR rate/LIBOR+ mark up. This issue was considered by the Chennai Special Bench of this Tribunal in case of Shiva Industries & Holdings Ltd. v. Assistant Commissioner of Income-tax reported in 46 SOT 112/11 Taxmann.com 404 (SB) and held in para 11 as under:*

*“11. We have considered the rival submissions. A perusal of the order of the TPO clearly shows that the assessee had raised the funds by way of issuance of 0 per cent optional convertible preferential shares. Thus, it is noticed that the funds raised by the assessee company for giving the loan to India Telecom Holdings Ltd., Mauritius, which is its Associated Enterprises and which is the subsidiary company, is out of the funds of the assessee company. It is not borrowed funds. The assessee has given the loan to the Associated Enterprises in US dollars. The assessee is also receiving interest from the Associated Enterprises in Indian rupees. Once the transaction between the assessee and the Associated Enterprises is in foreign currency and the transaction is an international transaction, then the transaction would have to be looked upon by applying the commercial principles in regard to international transaction. If this is so, then the domestic prime lending rate would have no applicability and the international rate fixed being LIBOR would come into play. In the circumstances, we are of the view that it LIBOR rate which has to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the Associated Enterprises. As it is noticed that the average of the LIBOR rate for 1-4-2005 to 31-3-2006 is 4.42 per cent and the assessee*

*has charged interest at 6 per cent which is higher than the LIBOR rate, we are of the view that no addition on this count is liable to be made in the hands of the assessee. In the circumstances, the addition as made by the Assessing Officer on this count is deleted.”*

7. Thus, a transaction of loan to the AEs in foreign currency is considered as international transaction between the assessee and its AEs, then the transaction would have to be looked upon by applying the commercial principles in regard to the international transactions. Therefore, the domestic prime lending rate or domestic deposit rate would have no applicability on international transaction, but the international rate being London Interbank Offered Rate (LIBOR) or similar rate i.e. Euro Interbank Offered Rate (EURIBOR) would govern the international transactions of lending by the assessee to the AEs. This issue also came up for consideration before the Hon'ble Delhi High Court in the case of *CIT vs. Cotton Naturals (I) Private Ltd*, reported in 276 CTR 445 (Del.) and the Hon'ble Delhi High Court has held in para 35 to 40 as under:

**35.** *The LIBOR rate plus markup or the interest rate prevailing in the United States at that time, i.e. 2003 have not been examined and are not the basis on which the TPO made the adjustment and compute the interest rate for the transaction under consideration. It claimed that the LIBOR rates in the year 2002 varied between 1.447 % to 3.006 % and in the year 2003 between 1.201% to 1.487%. Rates in the year 2004 were again marginal, with the highest at 3.100% and the lowest at 1.340%. The LIBOR rate of 5.224% quoted in the TPO's order, it is pointed out, was the rate received on the investment made during the assessment year in question by the assessed. Thus, it was argued that the present case is of a long-term loan granted to the AE and the rate of interest charged was much higher than the then prevailing LIBOR interest rate. There is no finding of the TPO, the DRP or the Assessing Officer questioning the long-term transaction as such.*

**36.** *Under sub-rule (4) to Rule 10B, the data used for comparability of the uncontrolled transaction should be the data relating to the financial year in which the international transaction has been entered into. The proviso permits consideration of data, not more than two years prior to the financial year, if such data reveals facts which would have influenced determination of transfer price in relation to the transaction being compared. The transaction in question was entered into in the year 2002-03 when the loans were granted to the AE. This was the financial year of the international transaction. Payment of interest is also an international transaction but would have reference to the year in which the loan was granted in case of a long term loan. However, in*

such situations, question may arise whether the case would fall under the second exception mentioned in the case of *E.K.L. Appliances (supra)*, when an AE has the right to recall and ask for repayment of loan. These aspects have not been considered and applied by the TPO, DRP and the Assessing Officer. Neither has this ground been argued before us on behalf the Revenue. We, therefore, would not proceed to examine the said aspect and leave the question open. Similarly, we have not expressed any opinion on the issue or question of "thin capitalization" which does not arise for consideration in the present case.

**37.** We observe that whatever the Revenue argues and submits in the case of outbound loans or for that matter what we have observed would be equally applicable to inbound loans given to Indian subsidiaries of foreign AEs. The parameters cannot be different for outbound and inbound loans. A similar reasoning applies to both inbound and outbound loans. Revenue has erroneously argued that different parameters would apply for inbound and outbound loans, which is not acceptable.

**38.** The DRP referred to the PLR rates fixed in India. It is evident that the PLR rates were not the basis for fixing the arm's length price. Both TPO and the DRP have referred to the PLR rates only by way of analogy so as to state the prevailing interest rates in India, but while applying CUP method for comparability, they had applied LIBOR rates prevailing and had applied a mark-up of 700 points on account of low credit rating of the subsidiary AE and the cost of transaction.

**39.** The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, in our considered opinion, must be answered by adopting and applying a commonsensical and pragmatic reasoning. We have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115 states as under:—

*"The existing differences in the levels of interest rates do not depend on any place but rather on the currency concerned. The rate of interest on a US \$ loan is the same in New York as in Frankfurt-at least within the framework of free capital markets (subject to the arbitrage). In regard to*

*the question as to whether the level of interest rates in the lender's State or that in the borrower's is decisive, therefore, primarily depends on the currency agreed upon (BFH BSt.B1. II 725 (1994), re. 1 § AStG). A differentiation between debt-claims or debts in national currency and those in foreign currency is normally no use, because, for instance, a US \$ loan advanced by a US lender is to him a debt-claim in national currency whereas to a German borrower it is a foreign currency debt (the situation being different, however, when an agreement in a third currency is involved). Moreover, a difference in interest levels frequently reflects no more than different expectations in regard to rates of exchange, rates of inflation and other aspects. Hence, the choice of one particular currency can be just as reasonable as that of another, despite different levels of interest rates. An economic criterion for one party may be that it wants, if possible, to avoid exchange risks (for example, by matching the currency of the loan with that of the funds anticipated to be available for debt service), such as taking out a US \$ loan if the proceeds in US \$ are expected to become available (say from exports). If an exchange risk were to prove incapable of being avoided (say, by forward rate fixing), the appropriate course would be to attribute it to the economically more powerful party. But, exactly where there is no 'special relationship', this will frequently not be possible in dealings with such party. Consequently, it will normally not be possible to review and adjust the interest rate to the extent that such rate depends on the currency involved. Moreover, it is questionable whether such an adjustment could be based on Art. 11 (6). For Art. 11(6), at least its wording, allows the authorities to 'eliminate hypothetically' the special relationships only in regard to the level of interest rates and not in regard to other circumstances, such as the choice of currency. If such other circumstances were to be included in the review, there would be doubts as to where the line should be drawn, i.e., whether an examination should be allowed of the question of whether in the absence of a special relationship (i.e., financial power, strong position in the market, etc., of the foreign corporate group member) the borrowing company might not have completely refrained from making investment for which it borrowed the money."*

**40.** *The aforesaid methodology recommended by Klaus Vogel appeals to us and appears to be the reasonable and proper parameter to decide upon the question of applicability of interest rate. The loan in question was given in foreign currency i.e. US \$ and was also to be repaid in the same currency i.e. US \$. Interest rate applicable to loans granted and to be returned in Indian Rupees would not be the relevant comparable. Even in India, interest rates on FCNR accounts maintained in foreign currency are different and dependent upon the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian Rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extant case. PLR rates are not applicable to loans to be re-paid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply."*

8. *The Hon'ble High Court has answered the question whether the interest rate prevailing in India should be applied for the lender who is an Indian Company/Assessee or the lending rate prevailing in the US, the place of the AE should be applied. The Hon'ble High Court has held that the interest rate should be the market determined rate applied to the currency concerned in which the loan has to be repaid. The interest rate should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of resident of either party. Once the loan or credit is given in foreign currency and also to be repaid in same currency, the interest applicable to loan granted and to be returned in Indian rupee would not be the relevant comparable. The Hon'ble High Court has held that the PLR rate would not be applicable and should not be applied for determining the interest rate in such cases where loan to be repaid in foreign currency. This issue was again considered by the Hon'ble Bombay High Court in the case of CIT vs. Tata Autocomp Systems Ltd reported in (2015) 56 Taxmann.com 206 (Bom.) and the Hon'ble Bombay High Court has upheld the decision of the Tribunal directing the Assessing Officer to benchmark the interest at the prevailing EURIBOR rate instead of rupee loan rate to be computed at Arms' Length on the loan advanced to the AE. The relevant findings of the Hon'ble High Court in para 7 & 8 are as under:*

*“7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of VVF Ltd. v. Dy. CIT [IT Appeal No. 673 (Mum.) of 2006] and Dy. CIT v. Tech Mahindra Ltd. [2011] 12 taxmann.com 132/46 SOT 141 (Mum.) (URO) to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr. Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra) on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). The Revenue not having filed any appeal, has in*

fact accepted the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra).

**8.** *In view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law.”*

9. We further note that, the Pune Benche of the Tribunal in the case of DCIT vs. iGATE Global Solutions Ltd reported in (2019) 109 Taxmann.com 48 (Pune) has again discussed this issue elaborately in Para 4 to 10 as under:

**4.** *We have heard both the sides and gone through the relevant material on record. It is observed from the order passed by the TPO that the assessee advanced loans to its two AEs, one in the USA and the other in Germany. Insofar as loan to Symphoni Interactive LLC, an Associated Enterprise in the USA is concerned, the assessee charged interest @ 6%. The ld. CIT(A) has recorded that the assessee also paid interest to another AE in the USA, namely, iGATE Corporation, USA at 5.9% on its External Commercial Borrowings (ECB). He further recorded in para 57 of the impugned order that the TPO accepted this transaction and made no transfer pricing adjustment on this score, thereby, he also impliedly accepting this transaction at ALP. The viewpoint of the ld. CIT(A) on this point is not fully correct. We have noted above that the TPO worked out the transfer pricing adjustment by considering the loans advanced by the assessee to both of its AEs, including Symphoni Interactive LLC, USA. Be that as it may, it is seen that the ld. CIT(A) also impliedly accepted the interest earned by the assessee from Symphoni Interactive LLC, USA, at 6% as at ALP, against which the Department has no grudge as the assail is only to the application of EURIBOR of 4.42%, which relates to the loan advanced by the assessee to Mascot GmbH, Germany. As such, we are confining ourselves only to international transaction of receipt of interest from Mascot GmbH, Germany. As against the assessee charging interest at the rate of 1.50% from Mascot GmbH, Germany, the TPO determined the arm's length rate of interest at 14%, which the ld. CIT(A) reduced to 4.42% by treating it as the average EURIBOR rate for the year under consideration.*

**5.** *There are two facets of the dispute raised by the Revenue on this issue. The first is that the rate of interest should be considered with reference to the prime lending rate prevalent in India and the second is that the reduction in rate to 4.42% by the ld. CIT(A) is not justified.*

**6.** *As against the TPO's point of view that since the assessee in India advanced loan to its AE in Germany, which if not given, would have fetched interest @14% in India, the ld. CIT(A) has held that interest rate prevalent in the country in which the loan is received, should be*

considered for determining the ALP of transaction of interest received. We find that there is almost judicial consensus ad idem at the higher appellate forums on the question of which country, that is the borrower or the lender, should be considered for determining the arm's length rate of interest on loans advanced to the AEs. The Hon'ble Bombay High Court in *CIT v. Tata Autocomp Systems Ltd.* [2015] 56 taxmann.com 206/230 Taxman 649/374 ITR 516 has held that the ALP in case of loan advanced to AEs should be determined on the basis of rate of interest charged in the country where loan is received. The Hon'ble Delhi High Court in *CIT v. Cotton Naturals (I) (P.) Ltd.* [2015] 55 taxmann.com 523/231 Taxman 401 has also held that the currency in which the loan is to be repaid normally determines the rate of return on the money lent, i.e. rate of interest. The Hon'ble Bombay High Court in *CIT v. The Great Eastern Shipping Co. Ltd.* [2018] 301 CTR 642 has reiterated that the arm's length rate of interest is to be considered with reference to the country in which the loan is received and not from where it is paid. In view of these precedents, it is palpable that the viewpoint of the AO in considering the rate of interest prevalent in India, being, the lender country, as determinative of the ALP of rate of interest charged by the assessee, is not correct. To this extent, we uphold, in principle, the view canvassed by the ld. CIT(A) that the rate of interest prevalent in Germany, being, the country in which the loan was consumed, is determinative of the arm's length rate of interest charged by the assessee-lender.

**7.** Now we espouse the second facet of the dispute relating to the determination of the arm's length rate of interest. It is seen that the ld. CIT(A) has held that average EURIBOR for the A.Y. 2007-08 should be considered as a benchmark. In determining the average EURIBOR at 4.42%, he relied on an order passed by the Tribunal in which the average LIBOR was considered at 4.42%. In other words, the ld. CIT(A) considered EURIBOR as a comparable uncontrolled transaction for the purpose of benchmarking the rate of interest charged by the assessee.

**8.** At this juncture, we consider it expedient to clarify that EURIBOR (Euro Inter-bank Offered Rate) is not a rate of interest, in itself, at which loans are advanced by banks in Euros to borrowers. EURIBOR is a reference rate which is calculated from the average interest rate at which Euro Zone Banks offer lending on inter-bank market. While calculating EURIBOR, 15% of the lowest and 15% of the highest interest rates collected by a panel of European banks are eliminated and the remaining 70% form the basis for its calculation. In such circumstances, EURIBOR, being, not an average rate at which the loans are advanced by European banks to borrowers, cannot per se be characterized as a comparable uncontrolled rate of interest at which loans are advanced in Germany.

**9.** On lines of EURIBOR, there is LIBOR (London Inter-bank Offered Rate), another rate which is applied on behalf of British Bankers Association. Similar to EURIBOR, LIBOR is also a rate at which major global banks lend to one another in the international inter-bank market

*on short-term basis. In calculation of LIBOR, 25% of lowest and 25% of the highest values are eliminated and the remaining 50% are considered for determining LIBOR. Therefore, LIBOR, as such, can also not be construed as a comparable uncontrolled transaction. The Hon'ble Bombay High Court in CIT v. Aurionpro Solutions Ltd. [2017] 99 CCH 70 approved the action of the Tribunal in considering LIBOR +2% as the arm's length rate as against the TPO applying LIBOR plus 3%. Drawing an analogy from this position, we hold that EURIBOR+2% should be considered as arm's length rate of interest for determining the ALP of the international transaction of interest received by the assessee from Mascot Systems GmbH, Germany.*

**10.** *Before parting with this issue, we would like to clarify that the ld. CIT(A) has considered 4.42% as EURIBOR applicable for the assessment year under consideration by relying on an order of the Tribunal, in which the average LIBOR was considered at this level. Equality of LIBOR and EURIBOR could not be substantiated from any material on record. In the given circumstances, we set aside the impugned order and remit the matter to the file of the AO for considering EURIBOR +2% as arm's length rate of interest to be applied on loan advanced by the assessee to Mascot Systems GmbH, Germany. In case EURIBOR +2% turns out to be lower than 4.42% as directed to be applied by the ld. CIT(A) on the understanding of the same being EURIBOR simplicitor, then the addition should be restricted with reference to 4.42% rate of interest, as the assessee is not in appeal on this issue. In the otherwise scenario, the relief allowed by the ld. CIT(A) will be restricted pro tanto.”*

10. *Therefore, we find force in the assessee's case to adopt LIBOR rate for benchmarking the transactions of outstanding receivables from the AEs. Accordingly, the Assessing Officer/TPO is directed to adopt the LIBOR + 200 basis as comparable rate for benchmarking the transaction of outstanding receivables from AEs after allowing a credit period of 60 days as a normal credit period without any interest.”*

17.4 On perusal of above, we found that this Tribunal has adopted LIBOR rate for benchmarking the transactions of outstanding receivables from the AEs. Therefore, respectfully following the decision of this Tribunal in the case of HARSCO

India Private Ltd. v/s DCIT (supra), we hold that, the justice will be served by applying LIBOR + 200 basis points on trade receivables in the case of the assessee. Therefore, we direct the Ld. AO/TPO to apply LIBOR + 200 basis points for benchmarking of interest on trade receivables.

17.5 As far as the allowability of credit period is concerned, we found that the Ld. TPO has allowed credit period of only one month. In our considered view, the justice would be met by allowing a credit period of 60 days. Accordingly, we direct the Ld. AO/TPO to allow the credit period of 60 days for the purpose of benchmarking of interest on trade receivables.

18. With regards to ground no. 13 the Ld. AR submitted that the Ld. AO did not allowed the MAT credit to the assessee. In our considered opinion the eligible MAT credit worked in accordance with the Act must be available to the assessee, which is subject matter of factual verification. Therefore, we direct the Ld. AO to grant the MAT credit to the assessee in accordance with the law after verification from the records of the assessee. Accordingly,

the ground no. 13 of the assessee is allowed for statistical purpose.

19. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 5th May, 2025.

**Sd/-**  
**(VIJAY PAL RAO)**  
**VICE PRESIDENT**

**Sd/-**  
**(MADHUSUDAN SAWDIA)**  
**ACCOUNTANT MEMBER**

Hyderabad.

Dated: 05.05.2025.

*\*TYNM/Reddy gp/sps*

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	M/s. Open Text Technologies India Pvt. Ltd., Unit – 301, 3 <sup>rd</sup> Floor, Building No.14, Mindspace, IT Park, Hitech City, Madhapur, Hyderabad-500081
2.	राजस्व/ The Revenue	:	DCIT, Circle 16(2), Hyderabad.
3.	Director of Income Tax (IT & TP), Hyderabad.		
4.	Dispute Resolution Panel (DRP), Bangalore		
5.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad