



आयकर अपीलिय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE

BEFORE SHRI R.K.PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1768/PUN/2024

निर्धारण वर्ष / Assessment Year: 2020-21

Jade Global Software Private Limited, 7 th Floor, Nyati Tech Park, Digamber Nagar, Wadgaon Sheri, Pune – 411014.	V s	The Assessment Unit, National Faceless Assessment Centre, Pune.
PAN: AACCCJ7690L		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Harsha M – AR
Revenue by	Smt Nilu Jaggi – CIT(DR)
Date of hearing	13/02/2025
Date of pronouncement	13/05/2025

आदेश/ ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is against the Assessment Unit, Income Tax Department, passed under section 143(3) r.w.s 144C(13) read with section 144B of the Income Tax Act, 1961; dated 05.07.2024 for Assessment Year 2020-21. The assessee has raised the following grounds of appeal :

"1. *Incorrect rejection of TP Study by the Transfer Pricing Officer.*



1.1 *The TPO erred on facts and in law in rejecting the Transfer Pricing documentation (TP Study) maintained by the Assessee stating that the filters applied by the Assessee for selection of comparable companies are inappropriate and basis which the TPO erred in rejecting the Arm's Length analysis carried out in the TP Study.*

2. *Erroneous re-computation of Net Cost plus Mark-up earned by the Assessee.*

2.1 *The TPO erred on facts in re-computing the Net Cost-plus Mark-up earned by the Assessee :*

- *considering foreign exchange gain and other income as non-operating income.*
- *treating Interest and Penalties as operating expenses instead of non-operating*

3. *Determination of arm's length price by the TPO*

3.1 *The TPO erred on facts and in law in conducting a fresh benchmarking analysis using non contemporaneous data and substituting the Assessee's analysis with fresh benchmarking analysis on his own conjectures and surmises. Thus the Assessee prays that the fresh benchmarking analysis conducted by the learned TPO is liable to be quashed*

3.2 *The TPO erred on facts in rejecting comparables selected and the TP analysis undertaken by the Assessee on unjustifiable grounds. The TPO has erred in rejecting following companies selected by the Assessee as comparables :*

- *CES Lid*
- *Lexicon Infotech Ltd*
- *Orangescape Technologies Ltd.*

3.3 *The TPO erred on facts in arbitrarily rejecting companies with gross intangibles greater than 25% of operating revenue.*



3.4 *The TPO erred on facts in arbitrarily applying decreasing revenue filter.*

3.5 *The TPO erred on facts in selecting inappropriate comparables even though they are not comparable in terms of functions performed, assets utilized, risks assumed, related party transactions greater than 25% etc. The TPO erred in adopting the following companies as comparables*

- *Sasken Technologies Ltd*
- *Daffodil Software Pvt. Ltd*
- *Sagarsoft (India) Ltd.*
- *Nihilent Ltd.*

4. *Erroneous data used by the TPO*

4.1 *The TPO has erred in law in using data, which was not contemporaneous and which was not available in the public domain at the time of conducting the transfer pricing study by the Assessee.*

5. *Relief*

5.1 *The Assessee desires leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of objections, at any time before or during the hearing.”*

Findings and Analysis :

2. We have heard both the parties and perused the records.

2.1 The Assessee Company is wholly owned subsidiary of Jade Global Inc USA. TPO in the order has mentioned that the assessee company is engaged in Software Development, System Integration



and IT services. During the year the assessee entered into the following International transactions with its Associated Enterprises (AE) :

<i>Nature</i>	<i>Amount Rs</i>	<i>Most Appropriate Method applied by Assessee</i>
<i>Software Development Services</i>	<i>Rs.87,20,22,767/-</i>	<i>TNMM</i>
<i>Recovery of expen</i>	<i>1,38,05,898/-</i>	<i>Other</i>
<i>Remuneration to Director</i>	<i>40,00,000/-</i>	<i>Other</i>
<i>Total</i>	<i>88,98,29,665/-</i>	

2.2 The Transfer Pricing Officer (TPO) rejected assessee's Transfer Pricing Study report. While he accepted some comparables, he rejected certain other comparables and conducted fresh search for comparables. He accordingly, selected fresh comparables. Then, the TPO claims to have conducted some search for comparable and arrived at different comparable. Based on the comparables margin the TPO proposed adjustment to the international transaction of Software Development Services of the assessee of Rs.6,59,01,734/-.

2.3 Assessee filed objections before the Dispute Resolution Panel (DRP). The DRP upheld the order of the TPO. The assessing officer passed the Assessment Order u/s 143(3) r.w.s 144C(13) of the Act



incorporating the adjustments proposed by TPO and upheld by DRP. Aggrieved by the Assessment Order, the Assessee filed appeal before this Tribunal.

2.4 The only issue involved in the appeal is Adjustments made to Software Development Services of the assessee.

2.5 In this case, the TPO rejected assessee's TP study for following reasons :

TPO has claimed that following filters have not been applied by the Assessee while carrying out the search on the data bases for comparables.

(i)	<i>Companies with income from services > 75% of the operating revenue segmental revenue are selected</i>
(ii)	<i>Companies with less than 75% earnings from exports rejected</i>
(iii)	<i>Companies with related party transactions less than 25% are selected</i>
(iv)	<i>Persistent Loss making and negative net worth Companies are rejected</i>
(v)	<i>Companies with Peculiar and extra ordinary Economic Circumstances are rejected</i>
(vi)	<i>Companies that are functionally different from you or working in peculiar economic circumstances after giving valid reasons were excluded.</i>
(vii)	<i>Companies having turnover of less than 10 times and More than 10 times of assessee have been excluded</i>
(viii)	<i>Companies having different accounting year are rejected</i>
(ix)	<i>Companies with employee cost less than 25% have been</i>



	<i>rejected</i>
<i>(x)</i>	<i>Companies with Forex spending greater than 75% of operating cost are rejected</i>
<i>(xi)</i>	<i>Companies with gross intangibles greater than 25% of operating revenue rejected.</i>
<i>(xii)</i>	<i>Companies for which data for FY 2017-18 to 2019-20 is not available are rejected.</i>
<i>(xiii)</i>	<i>Companies whose revenue is decreasing in last 3 years are rejected</i>
<i>(xiv)</i>	<i>Companies which are not having 12 months in a financial year are rejected.</i>
<i>(xv)</i>	<i>Companies having receivables of more than 4 months of Operating Revenue are rejected</i>

2.5.1 The TPO accepted some of the comparables selected by the assessee and rejected some of the comparable.

3. It is noted that the TPO has accepted the comparable Harbinger Systems Pvt. Ltd stating that after carrying out working Capital Adjustment, the said comparable becomes comparable to the assessee. Similarly, the TPO has carried out Working Capital Adjustment for Assessee's comparable Evoke Technologies Pvt. Ltd. However, it is noted that the TPO has not provided working of the impugned Working Capital Adjustment. The TPO has not provided any reason for carrying out Working Capital Adjustment for only two comparables. However, it is not clear from the order of the TPO, whether such Working Capital Adjustment has been made in the comparables selected by the TPO and if not the reasons for the



same. On perusal of the submission of the assessee it is noted that the Assessee had asked for the details of Working capital Adjustment but the TPO has not provided it. This shows that TPO is selective in applying the criteria.

3.1 The TPO has failed to explain how the comparables selected by the Assessee failed to satisfy the filters applied by the assessee.

3.2 As per the submission of the assessee which is at page 70 of the Paper Book, the assessee had also applied the filter “*Related party Transaction more than 25%*”. The Transfer Pricing Officer(TPO) has not discussed the exact value or percentage of the Related party Transaction in the comparable ‘Infobeans Technologies Ltd’. This shows that the TPO has rejected the comparable selected by the Assessee without proper analysis and reasons.

3.3 Orangescape Technologies Ltd was selected as comparable by the assessee and TPO rejected it for following reason –“***comparable with gross intangible greater than 25% of Operating Revenue***”
Ld.TPO has not brought on record how and why said filter should be applied. Ld.TPO should have demonstrated that by having



‘substantial intangibles’ the comparable gets an advantage over the others and it affects profits of the comparable hence it cannot be a comparable. Ld.TPO had to explain how Intangibles were applied as Asset by the impugned comparable which changed the profit of the impugned comparable.

3.4 This explains that the TPO’s approach is unscientific and not as per the provisions of the Act.

Analysis done by Assessee :

4. The Assessee filed a Transfer Pricing Study Report (TPSR) before the TPO, copy filed before ITAT also. In the TPSR the assessee claimed that Assessee had carried out elaborate search for the comparables in public domain on the data bases called Prowess and Capitaline.

4.1 The Functions of the Assessee mentioned in the TPSR are as under :

“6.16 Jade USA carry out requirement analysis functions, which involve a study of the existing systems of the client and analysis of the compatibility of the existing systems with the software system to be developed. In performing the requirement analysis Jade USA on need basis would involve the consultants from Jade India, even though the Jade USA assume the overall responsibility. Based on the requirement analysis the Jade USA lays down the broad specifications of the functionalities of the software to be designed.



.....

6.18 *The high level design (HLD) of the software application is formulated by the engineers at Jade USA in consultation with Jade India.*

.....

6.21 *jade India is responsible for the management of the off-shore projects undertaken by it. Jade India interacts regularly with Jade USA, and project tracking happens in coordination with Jade USA.*

.....

6.23 *Jade India broadly undertakes development of software relating to application development, product enhancement and maintenance. The various functions performed by Jade India for its development projects, are explained as follows:*

a) Low Level Design (LLD): Once the HLD is agreed with the client, it is translated into a LLD. LLD provides the detailed specifications and the various modules of the software system. The final design document gives the details of the architecture of the actual code and documents the testing methodology/plan to be used

b) Coding: The design is then coded based upon the technology requirements of the software system during the coding stage. This involves writing the actual set of instructions which would help in performing the various functions/ operations as required by the client

c) Quality Assurance/ Testing: This is to ensure that the product meets the required standards. This involves ensuring that the deficiencies and defects in the software developed by Jade India are corrected. This is an ongoing process and exists at various levels of the product cycle.

.....

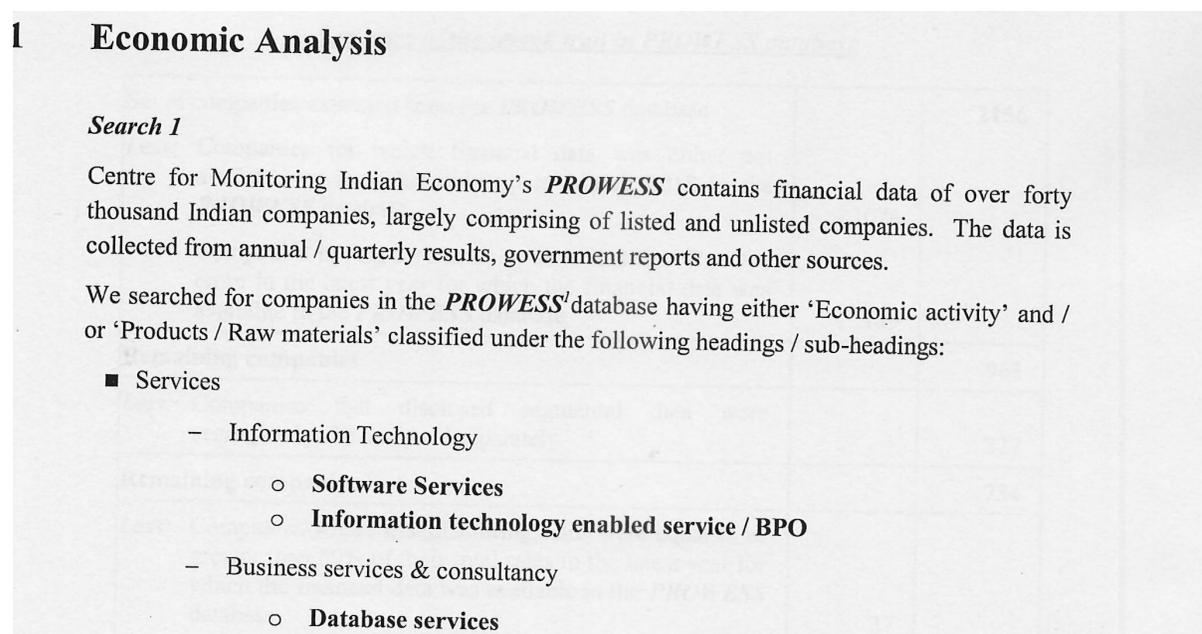
A) Technical Support/after sales services

6.27 *The customer needs and queries are directed to Jade India. However, Jade USA assist customers in the preliminary levels of issue resolution. The team designated coordinates the technical support with the customers and identifies matters in effectively providing post sales technical support to clients. Jade India maintains a constant interaction with the client through Jade USA. Jade India steps in if it requires flaws*



in the software to be corrected and identifies whether the issue is a software bug or whether it is fit as an upgrade.”

4.2 The page 227 of the TPSR gives details of the search process and the words used in search. The screen shot of the search process as appearing on page 227 is as under :



4.2.1 Thus, the assessee searched for

- Software Services
- ITES (BPO)
- Data base services

4.3 The Functions of the Assessee is Software Development Services where in assessee develops design, do coding as per the requirement of the clients. The functions claimed by assessee have been already reproduced in earlier paragraph, however erroneously the Assessee has searched for the companies engaged in ITES/BPO.



The FAR of companies engaged in ITES/BPO is absolutely different from a company which is engaged in Software Development. Thus, the assessee also took a wrong search in the data base.

4.4 The Assessee has given following Table on page 234 of the TPSR:

Jade Global Software Private Limited
Transfer Pricing Report for the financial year ended March 2020
Annexure III

Arm's Length Range

The final set along with the weighted average Net Cost Plus Mark-up (NCP) using three year financial data i.e. of FYs 2017-18, 2018-19 and 2019-20 (to the extent available) are listed below:

NCPs of the Comparable Companies

Sr. No.	Company Name	NCP 2020 (%)	NCP 2019 (%)	NCP 2018 (%)	Weighted Average (%)
1	C E S Ltd.	(2.85)	(2.03)	0.53	(1.40)
2	Harbinger Systems Pvt. Ltd	(2.88)	1.29	6.86	1.46
3	Evoke Technologies Pvt. Ltd.	3.37	3.17	2.97	3.20
4	Isummation Technologies Pvt. Ltd.	4.97	4.82	-	3.51
5	Lexicon Infotech Ltd.	-	5.03	5.32	5.18
6	Orangescape Technologies Ltd.	-	0.79	12.44	5.76
7	Infomile Technologies Limited	5.16	9.64	8.64	8.20
8	Agnicient Technologies Private Limited	-	13.54	1.62	8.63
9	Ksolves India Ltd.	14.33	5.04	6.25	9.56
10	E R P Soft Systems Ltd.	(0.97)	16.50	19.35	10.62
11	Goldstone Technologies Ltd.	11.91	15.90	11.68	13.36
12	Mindtree Ltd.	11.58	15.14	13.71	13.37
13	Unify Technologies Pvt. Ltd.	20.68	7.26	8.05	14.00
14	R Systems International Ltd	-	18.20	11.67	15.28
15	E-Zest Solutions Limited	20.09	8.26	21.83	16.68
16	Inteq Software Pvt. Ltd	-	23.38	10.91	17.74
17	Great Software Laboratory Pvt. Ltd.	18.72	20.16	16.61	18.67
18	Infotech Enterprises Information Technology Services Pvt. Ltd.(IEITSPL)	-	26.98	20.07	23.89
19	CG - VAK Software & Exports Ltd	29.11	29.35	11.09	24.17
20	Infobeans Technologies Limited	28.28	24.73	27.66	26.88
	35th Percentile				8.20
	65th Percentile				14.00
	Median				10.62

*Segmental
NA - Not Available

Based on three years' data i.e. FYs 2017-18, 2018-19 and 2019-20, the arm's length range of weighted average NCP earned by 20 broadly comparable independent companies ranges from 8.20 per cent (at 35th Percentile) to 14.00 per cent (at 65th Percentile) with a median of 10.62 per cent.



4.5 As it can be seen in many of the cases the Financial Data for particular year is not available, in spite of that the Assessee has included those companies in Comparable List in absence of Financial Data.

4.6 The Assessee in TPSR has mentioned that it had rejected Companies whose financial data for three years was not available in spite of this policy, in the Final List of Comparable the Assessee Selected Companies whose financial data was not available.

4.6.1 This demonstrates that the TPSR is defective and Assessee has also not carried out the Transfer Pricing Analysis in fair way.

4.7 In these facts and circumstances of the case, we are of the considered opinion that TPO and Assessee has not carried out the analysis as per the provisions of the Act hence we set aside the order of the TPO to TPO for denovo adjudication. The assessee shall file all necessary documents before the TPO. The TPO shall provide opportunity to the assessee.



5. In the result, the Appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the open Court on 13 May, 2025.

Sd/-
(R.K.PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13 May, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.