

आयकर अपीलीय अधिकरण  
दिल्ली पीठ "एच", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER  
आअसं.3091/दिल्ली/2024(नि.व. 2020-21)  
ITA No. 3091/DEL/2024 (A.Y.2020-21)

Aristocrat Technologies India P. Ltd.,  
8th to 10<sup>th</sup> Floor, Tower-11A, Plot No. 20 & 21,  
Candor Techspace, IT/ITes SEZ Complex, Sector-135,  
Noida, UP 201304

PAN: AAHCA-9200-G

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,  
Circle-5(1)(1), Noida, UP

..... प्रतिवादी/Respondent

Assessee by : Shri Atul Jain, Chartered Accountant  
Ms. Nishi Bhutani & Ms.Preeti Agnihotri,  
Chartered Accountants

Department by : S/Shri S.K. Jhadav, CIT(DR) & Rajesh Kumar Dhaneshta, Sr.DR

सुनवाई की तिथि/ Date of hearing : 04/04/2025

घोषणा की तिथि/ Date of pronouncement: : 03/07/2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 27.05.2024 passed u/s. 143(3) r.w.s. 144C(13) r.w.s 144B of the Income Tax Act,1961(hereinafter referred to as 'the Act').

2. The facts of the case in brief as emanating from records are: The assessee is engaged in providing Design and Development Services to its Associated Enterprises (AE's). The assessee is also rendering Global IT Services to its AE's

only. Thus, the assessee is a captive service provider. During the period relevant to assessment year under appeal the assessee entered into following international transactions with its AE's:-

- (i) Provision of software and other services;
- (ii) Provision of Global IT Services;
- (iii) Purchase of fixed assets;
- (iv) Sale of fixed assets; &
- (v) Payment towards Artistocrat Super Share Plan on behalf of employees.

In the instant appeal the assessee has assailed adjustment made in respect of provision of software and other services. The assessee applied Transactional Net Margin Method (TNMM) to benchmark international transaction. The method applied by the assessee was accepted by the Transfer Pricing Officer (TPO). The margins of the assessee i.e. OP/OC is 15.59% which has been again accepted by the TPO. The assessee by way of ground no. 4 & 5 of appeal has assailed inclusion/exclusion some of the comparable companies while finalizing the list of comparables by the TPO. The assessee is seeking exclusion of Cybage Software P. Ltd., Sagarsoft (India) Ltd. and Nihilent Ltd. on the ground that they are functionally different. The assessee is seeking inclusion of two comparable companies i.e. R Systems International Ltd. and Infomile Technologies Ltd., which were originally included in the list of comparables by the assessee in Transfer Pricing Study Report (TPSR) but were excluded by the TPO on the ground of different Financial Year ending and functional disparity, respectively. Apart from above the assessee is also assailing adjustment made on account of delay in recovery of outstanding receivables.

3. Shri Atul Jain, appearing on behalf of the assessee submitted at the outset that the assessee in appeal has raised as many as thirteen grounds, the assessee is not pressing ground no. 6 and 12 of appeal, ground of appeal no. 1 to 3 are general, ground no. 11 of appeal relating to charging of interest u/s. 234B and 234C of the Act is consequential and ground no. 13 of appeal is against initiation of penalty proceedings u/s. 270A of the Act and is pre-mature at this stage. Thus, the effective grounds of appeal are ground no. 4, 5 and 7 to 10.

3.1. The Id. Counsel for the assessee submits that the TPO has accepted TNMM as most appropriate method for benchmarking the transaction and has also not raised any dispute with regard to margins i.e. OP/OC reported by the assessee. The TPO proposed adjustment of Rs.47,191,801/- pertaining to the provision of software and other services after modifying the list of comparables. In ground no. 4 of appeal the assessee is seeking exclusion of Cybage Software P. Ltd., Sagarsoft (India) Ltd. and Nihilent Ltd. The companies selected by the TPO are functionally different, hence, are liable to be rejected.

3.2. In respect of Cybage Software P. Ltd. he submitted that the company is a product company and develop a platform/product ExcelShare. The company carries out product intensive engineering and hence, is not comparable to the assessee which is engaged only in development and testing of certain modules of software based on the directions/requirements of the AE. He contended that Cybage Software P. Ltd. is also providing services, however, no segmental data of revenue from product and services is available in public domain. Hence, the revenue from services cannot be compared with that of the assessee which is purely providing services. To substantiate his contention, he refers to financial

statement of Cybage Software P. Ltd. for the period 01.04.2019 to 31.03.2020 at pages 322 to 329 of the paper book.

3.3. In respect of Nihilent Ltd. he submitted that the company is engaged in diversified activities including software services, business consultancy in the area of enterprise transformation, change and performance management and is also providing IT related services. No segmental information is available in public domain with regard to activities carried out by the company. He refers to financial statement of the company for the period 01.04.2019 to 31.03.2020 at pages 38 to 47 of the paper book to buttress his argument that no segmental data is available in public domain. He further pointed that during the relevant period the company acquired business of Hypercollective Creative Technologies P. Ltd. an advertising agency.

3.4. In respect of Sagarsoft (India) Ltd., the Id. Counsel submits that as the company is providing end to end Hi-Tech Software-as-a-Service and other services which include creation of complete software and delivering created products to and customers the company cannot be selected as comparable due to difference in functionality. Further segmental information between products and services are not available. He further pointed that a perusal of financial statement would show that overseas travelling expenses of the said company are as high as 21.16%, whereas travelling expenses in the case of assessee are mere 1.23%. This shows that Sagarsoft (India) Ltd. is engaged in on site services which is not in the case of assessee.

4. For inclusion of R Systems International Ltd. the Id. Counsel submits that the TPO has rejected the said company as comparables on the ground that the company has different Financial Year. The Id. Counsel submits that merely for the

reason that the company is having different Financial Year cannot be rejected, if it is functionally comparable and quarterly audited results are available. In support of his contention, he placed reliance on various decision including in the case of CIT vs. Mckinsey Knowledge Centre India Pvt. Ltd. 94 taxmann.com 508 (Delhi) and Mercer Consulting India Pvt. Ltd. vs. DCIT in ITA No. 966/Del/2014. He further submitted that the company is engaged in providing technology, Artificial Intelligence, RPA services & solutions along with Knowledge Services. Hence, the activities carried out by the company are similar to that of the assessee.

4.1. In respect of Infomile Technologies Ltd., the Id. Counsel submitted that the TPO, excluded the company for the reason of functional difference. The said company is engaged in the business of software consulting services which included data services, outsourced solutions, mobile applications, web-enabled data bases and application solutions etc., hence, functionally comparable to the assessee.

5. With respect to the ground of appeal no. 7 & 8 considering outstanding receivables as separate international transaction, the Id. Counsel submits that working capital adjustment takes into account outstanding receivables accordingly no separate adjustment is warranted for imputing interest on outstanding receivables beyond agreed credit period. He further pointed that working capital adjustment has already been allowed by the DRP which was duly given effect by the TPO in the order giving effect to DRP directions passed u/s. 144C of the Act dated 24.05.2024. He further placed reliance on the decision rendered in the case of Kusum Healthcare P. Ltd. vs. Asstt. CIT 62 taxmann.com 79 (Delhi-Trib.) to contend that no further adjustments on account of outstanding receivables is required where working capital adjusted has been done.

6. With regard to ground no. 9 of appeal, the Id. Counsel submits that the assessee is a debt free company. The assessee does not pay interest on account of any delayed payment made to third party operational creditors. No inference can be drawn that any funds carrying interest was utilized to grant extra credit period to the AE's.

7. In respect of ground no. 10 of appeal relating to computation of alleged interest on outstanding receivables. The Id. Counsel submits that the TPO has erred in computing interest on outstanding receivables on each invoice ignoring the fact that there were instances where the payments was received much prior to the credit period allowed by the TPO itself. The assessee had provided detailed working, however, the TPO ignored the working and computed the notional interest on outstanding receivables. Without prejudice to the primary argument, the Id. Counsel submits that outstanding receivables cannot be characterized as loan and advances to AE's. Even, if an adjustment is warranted and notional interest is to be imputed on a LIBOR base rate then an appropriate markup should be arrived at through proper bench marking analyses. The Id. Counsel further pointed that the weighted average credit period of the assessee is 27 days, whereas, the TPO has considered average period of 30 days. The industry norm is 45 to 60 days.

8. Per contra, Shri S.K. Jhadav representing the department vehemently defending the assessment order and directions of the DRP submitted that the TPO has excluded R Systems and Infomile Technology Ltd. from the list of comparable companies as they are functionally different. He placed reliance on findings of the TPO and the DRP for not including said companies in the list of comparables. In so far as exclusion of Nihilent Ltd., Sagarsoft (India) Ltd. and Cybage Software P. Ltd.,

the Id. DR placed reliance on the decision of TPO and the directions of the DRP to retain these companies in the list of comparables.

9. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee in appeal has raised as many as 13 grounds. The ground no. 1 to 3 of appeal are general, hence require no separate adjudication.

10. In ground no. 4 of appeal, the assessee has assailed exclusion of Cybage Software P. Ltd., Nihilent Ltd., and Sagarsoft (India) Ltd. from the list of comparable companies. The TPO has included the said companies on the premise that the companies are functionally similar to the assessee. Our findings on exclusion of said companies is as under:-

**Cybage Software P. Ltd:-**

The assessee is an engaged in providing Software Development Services and Global Information Technology Services to its AE's. The assessee is a captive service provider. Whereas, Cybage Software P. Ltd. is a product company unlike the assessee i.e. engaged only in development and testing module of certain software and its AE's only. The company Cybage has developed a sophisticated data-science drawn platform ExcelShare. It is further contended that no segmental data is available with regard to revenue from product and services. A perusal of financial statements of Cybage Software P. Ltd. for the period ending 31.03.2020 at pages 321 to 337 of the paper book shows that the said company has declared income from Software Services with segmental bifurcation of Export Turnover and Domestic Turnover. But there is no segmental data of income from Services and Products. Since, no segmental data of Revenue is available Cybage

cannot be treated as comparable. Hence, the TPO/AO is directed to exclude said company for the list of comparables.

**Sagarsoft (India) Ltd:-**

The TPO included said company in the list of comparables for the reason that since the company is also engaged in software services it is comparable. Whereas, according to the assessee the said company is not comparable as the company is engaged in creation of complete software and delivering created products to end customers. Further no segmental information regarding products and services is available in public domain. The assessee further pointed that overseas travelling expenses are as high as 21.16%, whereas the assessee, has travelling expenditure of 1.23% of the total turnover. Referring to the traveling expenses, the argument of Id. Counsel is that Sagarsoft (India) Ltd. is engaged in on-site services, which is not in the case of the assessee. A perusal of Financial Statements of Sagarsoft (India) Ltd. for the Financial Year ending on 31.03.2020 at pages 303 to 315 shows that the company is only engaged in software development and consultancy activities, hence, no segmental reporting by the assessee. As per the Financials there is no product development by the company. From perusal 24<sup>th</sup> Annual Report relating to Financial Year 2019-20 of the company, it is not emanating that there is any product development or closing stock of any product. Hence, the contention of the assessee that the company is engaged in product development is unsustainable, hence, rejected. The assessee has further pointed that overseas travel expenditure of Sagarsoft (India) Ltd. is as high as 21.16% of the total expenditure. To contend that the said company is providing on-site services, apart from the inference drawn from the travel expenditure there is no other document to show that the said company is

providing on-site services. In light of above findings, we are not in agreement with the assessee that Sagarsoft (India) Ltd. is not a good comparable.

**Nihilent Ltd:-**

The TPO has included the company in the list of comparables as the said company is stated to be engaged in providing software and other services and functionally similar to that of the assessee. The assessee is seeking exclusion of Nihilent Ltd. as it is engaged in diversified activities including Software Services, Business Consultancy and Performance Management and Providing IT related services. It is further argued that segmental information with regard to the revenue from various activities is not available. It is further contended that during the period relevant to assessment year under appeal, the company has acquired business of Hypercollective Creative Technologies P. Ltd. an advertising agency which shows that the company has expanded its operations beyond software services. The assessee has placed on record the financials of Nihilent Ltd. at pages 28 to 248 of the paper book. A perusal of the financial statements reveals that the company is engaged in providing consultancy and IT Solutions. The assessee is also engaged in providing product engineering, DevOps and Scaled Agile Framework TM besides conventional IT programs. However, no segmental information is available with respect to diversified services offered by the said company. Further, there is an extra ordinary event of acquisition of business by the said company during the FY 2019-20. Therefore, in our considered view the said company is not an idle comparable to be selected in the final list of comparables. Therefore, TPO/AO is directed to exclude the company from the list of comparables.

Thus, in light of above findings, ground no. 4 of appeal is partly allowed.

11. In ground no. 5 of appeal, the assessee has prayed for inclusion of R Systems International Ltd. and Infomile Technologies Ltd.

**R Systems Ltd:-**

R Systems Ltd. was rejected by the TPO for the reason that the company is having different financial year ending. If a company is functionally comparable, the same cannot be rejected merely for the reason that it has different Financial Year ending. If, quarterly results are available the same can be considered to have financial data of congruent period. If calenderization is done and financial data is aligned with the tested party's fiscal year, the company can be selected as comparable. The Hon'ble Delhi High Court in the case of CIT vs. Mckinsey Knowledge Centre India Pvt. Ltd. (supra) approved the decision of the Tribunal holding that if the comparable is that if the comparable is functionally same as that of tested party then same cannot be rejected merely on the ground that data for entire financial year is not available. If from the available data on record, the results for financial year can reasonably be extrapolated then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. Similar view has been expressed in various decision by the Tribunal from different Benches viz. American Express Services India (P) Ltd. vs. DCIT 126 taxmann.com 308 (Delhi-Trib.) and Rampgreen Solutions (P) Ltd. vs DCIT 154 taxmann.com 541 (Delhi-Trib.) The TPO/AO is thus, directed to include R. Systems Ltd. in the list of comparables, subject to our above observations.

**Infomile Technologies Ltd:-**

Infomile Technologies Ltd. was excluded from list of comparables by the TPO being functionally different. The company is engaged in providing software

consultancy services which includes software services such as Data Services, Outsource Solutions, Mobile Applications, Application Management, Custom Designed, Web Enabled Database and Application Solutions. We are not in agreement with the findings of the TPO and the DRP that the company are functionally different. The assessee and Infomile Technologies Ltd. both are rendering software development services, the area of operation may differ. Therefore, in our considered view the said company is a suitable comparable. The TPO is directed to include the company in the final list of comparables.

In the result, ground no. 5 of appeal is allowed.

12. The Id. Counsel for the assessee made a statement at Bar, that he is not pressing ground no. 6 of appeal, hence, the same is dismissed as not pressed.

13. Ground no. 7 to 10 of appeals are taken up together as they broadly relate to same issue. The aforesaid grounds are in respect of outstanding receivables. The AO made adjustment qua outstanding receivables. TPO charged interest on delayed receivables beyond 30 days, by applying 6 months LIBOR plus 400 Basis point on invoice by invoice basis. It is argued that working capital adjustment subsumes the effect of credit period, hence, separate adjustment is not required. Reliance is placed on the decision rendered in the case of Kusum Healthcare Pvt. Ltd. v. ACIT, 62 taxmann.com 79 (Delhi-Trib.). The Coordinate Bench of the Tribunal while dealing this issue held as under:-

*“7. We have heard rival submissions and perused the material on record. An uncontrolled entity will expect to earn a market rate of return on its working capital investment independent of the functions it performs or products it provides. However, the amount of capital required to support these functions varies greatly, because the level of inventories, debtors and creditors varies. High levels of working capital create costs either in the form of incurred interest or in*

*the form of opportunity costs. Working capital yields a return resulting from a) higher sales price or b) lower cost of goods sold which would have a positive impact on the operational result. Higher sales prices acts as a return for the longer credit period granted to customers. Similarly in return for longer credit period granted, a firm should be willing to pay higher purchase price which adds to the cost of goods sold. Therefore, high levels accounts receivable and inventory tend to overstate the operating results while high levels of accounts payable tend to understate them thereby necessitating appropriate adjustment. The appropriate adjustments need to be considered to bring parity in the working capital investment of the assessee and the comparables rather than looking at the receivable independently. Such working capital adjustment takes into account the impact of outstanding receivables on the profitability. In this regard, the reliance is placed on the following rulings wherein the need to undertake working capital adjustment has been appreciated by the Hon'ble Tribunals :*

- *Mercer Consulting (India) (P.) Ltd. v. Dy. CIT [2014] 47 taxmann.com 84/150 ITD 1 (Delhi)*
- *Mentor Graphics (Noida) (P.) Ltd. v. Dy. CIT [2007] 109 ITD 101 (Delhi)*
- *E-Gain Communication (P) Ltd. v. ITO [2009] 118 ITD 243 (Pune)*
- *Sony India (P.) Ltd. v. Addl. CIT [2012] 21 taxmann.com 224/51 SOT 96 (URO) (Delhi)*
- *Capgemini India (P.) Ltd. v. Asstt. CIT [2013] 33 taxmann.com 5/[2014] 147 ITD 330 (Mum.)*

*8. In view of the above, a working Capital adjustment appropriately takes into account the outstanding receivable. Therefore, the assessee has undertaken a working capital adjustment to reflect these differences by adjusting for differences in working capital and thereby, profitability of each comparable company. Accordingly, while calculating the working capital adjusted, operating margin on costs of the comparable companies, the impact of outstanding receivables on the profitability has been taken into account. If the pricing/profitability of the assessee are more than the working capital adjusted margin of the comparables, then additional imputation of interest on the outstanding receivables is not warranted."*

*[Emphasized by us]*

The decision of Tribunal has been affirmed by the Hon'ble Delhi High Court in Pr. CIT v. Kusum Healthcare Pvt. Ltd. 173 taxmann.com 58 (Delhi) holding as under:

*11. The court finds that the entire focus of the Assessing Officer was on just one assessment year and the figure of receivables in relation to that assessment year can hardly reflect a pattern that would justify a Transfer Pricing Officer concluding that the figure of receivables beyond 180 days constitutes an international transaction by itself. With the assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterised the transaction. This was clearly impermissible in law as explained by this court in CIT v. EKL Appliances Ltd 345 ITR 241(Delhi)."*

In light of aforesaid decisions, we direct the AO/TPO to examine that if while making working capital adjustment outstanding receivable have been factored no separate adjustment is warranted for outstanding receivables as separate international transaction.

14. In ground no. 11 of appeal, the assessee has assailed levy of interest u/s. 234B and 234 C of the Act. Charging of interest under aforesaid sections is consequential and mandatory, hence, ground no. 11 of appeal is dismissed.

15. The Id. Counsel for the assessee made a statement at Bar, that he is not pressing ground no. 12 of appeal. In light of statement made by Id. Counsel for the assessee, ground no. 12 of appeal is dismissed as not pressed.

16. In ground no. 13 of appeal, the assessee has assailed initiation of penalty u/s. 270A of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground of appeal no. 13 is dismissed.

17. In the result, appeal of the assessee is partly allowed in the terms aforesaid  
Order pronounced in the open court on Thursday the 03<sup>rd</sup> day of July, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 03/07/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Asstt. Registrar) ITAT, DELHI