

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, AM  
AND  
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA No.2610/KOL/2024  
(Assessment Year:2021-22)**

**M/s Philips India Limited**  
Rajarhat 4A, 5<sup>th</sup> floor, Ecospace  
Business Park, Premises A4 II,  
New Town, Chakpachuria,  
Kolkata-700156  
West Bengal

**(Appellant)**

**PAN No. AABCP9487A**

**Vs.**

**The DCIT**  
Circle 11(1), Aayakar Bhavan,  
P-7, Chowringhee Square,  
Kolkata-700069, West Bengal

**(Respondent)**

**Assessee by** : Shri Ketan Ved, AR  
**Revenue by** : Shri Praveen Kishore, CIT DR

**Date of hearing:** 23.07.2025  
**Date of pronouncement:** 26.08.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the AP passed after directions by Id. Dispute Resolution Panel (hereinafter referred to as the "Ld. DRP"] dated 13.09.2024 for the AY 2021-22.

2. The issue raised in ground no.1 is general in nature.
3. The issue raised in ground no.2 is in respect of transfer priding adjustment of ₹54,41,41,000/- on account of provision of software development services.

3.1. The facts in brief are that the assessee has been producing/doing software development and software services to its Associated Enterprises. The assessee function as captive software services center for the group and is accordingly characterized as low risk software services provider. During the year the assessee earned markup of 11.8% as has been noted by the Id. Transfer Pricing Officer on page no.192 of the Transfer Pricing order. The method applied for benchmarking these services was Transactional Net Margin Method, which was not disputed by the Id. Transfer Pricing Officer and similarly, the profit level indicator was not disputed by the Id. Transfer Pricing Officer. The Id. Counsel for the assessee submitted that the issue is squarely covered by the decision of the co-ordinate Bench in assessee's own case for A.Y. 2020-21. The Id. Counsel for the assessee submitted that the two comparable namely; Tata Elxsi Limited ("Tata Elxsi") and Sasken Technologies Limited ("Sasken") as appeared in the final list of comparable considered in the final assessment order are excluded then the available margin earned by the comparable companies worked out to 11.91%. Since, the Margin of the appellant is 11.88%, which is in the permissible limit of  $\pm 3\%$ . The Id. Counsel for the assessee therefore submitted that relying on the said order of the Tribunal these comparables may kindly be excluded.

3.2. The Id. DR on the other hand fairly agreed that the Tribunal in assessee's own case in A.Y. 2020-21 has excluded these comparable while calculating the average margin.

3.3. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the decision of the co-ordinate bench in assessee's own case for A.Y.

2020-21, wherein the view has been taken by the co-ordinate Bench holding that these two comparable i.e. Tata Elxsi Limited ("Tata Elxsi") and Sasken Technologies Limited ("Sasken") be excluded while calculating the average margin earned by the comparables. The operative part of the decision in ITA No. 1960/KOL/2024 for A.Y. 2020-21 is extracted below: -

*"07. After hearing the rival contentions and perusing the materials available on record, we find that there are two comparables namely Tata Elxsi Limited, which has the Profit Level Indicator of 28.02% and Sasken Technologies Ltd., which have profit level indicator at 17.20%. The counsel of the assessee argued in detail as to why Tata Elxsi Ltd is not comparable to the assessee as has been held in the following decisions:*

- i. Wipro GE Healthcare (P.) Ltd. vs. ACIT [2023] 154 taxmann.com 97 (Bangalore - Trib.)[17-05-2023]*
- ii. Infineon Technologies India (P.) Ltd. vs. Deputy Commissioner of Income-tax [2024] 159 taxmann.com 245 (Bangalore - Trib.)[10-01-2024]*
- iii. Mavenir Systems (P.) Ltd. vs. Deputy Commissioner of Income Tax [2023] 152 taxmann.com 655 (Bangalore - Trib.)[23-03-2023]*
- iv. Infor (India) (P.) Ltd. vs. Assistant Commissioner of Income-tax [2022] 143 taxmann.com 68 (Hyderabad - Trib.)[25-08-2022]*

*08. Similar in the case of Sasken Technologies Ltd., the assessee submitted that the same should not be considered as comparable for the following reasons:*

*"Functionally not comparable - Sasken is engaged in providing diversified services such as product engineering and digital transformation providing concept-to-market, chip-to-cognition R&D services.*

*Engaged in R&D activities and owns intangible property The company is consistently investing in technology and innovation. During the year, the company has invested to explore the emerging technologies such as computer vision, artificial intelligence, machine learning, blockchain etc. Further, company owns intangible assets in the nature of computer software, unlike the Appellant who does not own any such intangibles.*

*Lack of segmental information No separate data that provides segment wise breakup and revenue from software development services available [Refer page No. 7732 of the Paperbook-Part 11 of 11 and page no. 112 of the annual report*

*Judicial precedence:*

*Mavenir Systems (P.) Ltd. [2023] 152 taxmann.com 655 (Bangalore - Trib.) [AY 2017-18]*

*The Hon'ble ITAT has held that the said company cannot be considered as a comparable for benchmarking transaction in the software development segment due to the reasons identical to those raised by the Appellant before the lower authorities viz. this company is involved in R&D activities and own huge patents which is not akin to a captive service provider.*

*Prayer:*

*In view of the foregoing, we have to request the Bench to direct the TPO to exclude the aforementioned companies from the list of comparable.*

*On exclusion of the aforesaid companies, the average margin earned by the comparable companies will work out to be 11.66%, accordingly, the margin of the Appellant i.e. 9.94% [refer page no. 40 of TP order falls within +/-three percent. Accordingly, there would be no transfer pricing adjustment worked out as under:*

	<b>Name of company</b>	<b>Margin (%)</b>
1	Mindtree Ltd.	12.66%
2	Great Software Laboratory Pvt Ltd.	15.48%
3	Sagarsoft (India) Ltd	19.57%
4	Evoke Technologies Pvt Ltd.	3.18%
5	Infomile Technologies Ltd.	7.40%
<b>Count</b>		<b>5</b>
<b>Average</b>		<b>11.66%</b>
<b>Appellant's margin</b>		<b>9.94%</b>

09.

*We note that the Tata Elexi is engaged in diversified and engineering services to the consumer electronics, broadcast and communications, transport, visualization, provide system integration and support services for enterprise customers unlike business operation of the software development segment of the assessee wherein it is engaged in providing results, information, etc. relevant to the business of the Associated Enterprises generated from such software development activities. We note that the same is not functionally comparable. The said comparable undertakes R&D activities and own the intellectual property in the form of technology and brand and thus cannot be compared with the assessee. The case of the assessee find support from the case of the Wipro GE Healthcare (P.) Ltd. vs. ACIT (supra). Similarly, we note that the second comparable taken by the AO post Dispute Resolution Panel order i.e. Sasken Technologies Limited is also not comparable to the assessee for the reason that the same is not functionally comparable and is engaged in the R&D activities and owns intangible properties which is not there in the case of the assessee. Moreover, the comparable lacks, the segmental information. The case find support from the decision of Mavenir Systems (P.) Ltd. vs. DCIT (supra), wherein the Hon'ble ITAT has held that the company is not functionally comparable due to its*

*having R&D activities and own huge patents which is not akin to captive service provider and the relevant paras no. 4.4 to 6.3 of the same are extracted below:-*

*"4.4 Sasken Communication Technologies Ltd.*

*4.4.1 It is submitted that this comparable has been excluded by the Ld.TPO as it is involved in R&D activities and owns huge patents. We have hereinabove excluded Infosys Ltd., L&T Infotech Ltd. for the reason that they are into research and development activities and owns huge intangibles which is not akin to a captive service provider. Applying the same principle, we do not find any infirmity in exclusion of Sasken Communication Technologies Ltd. by the Ld.TPO.*

*Accordingly, we reject this comparable sought for exclusion by assessee.*

*Accordingly ground no. 1.6 raised by assessee stands partly allowed.*

*5. Ground no. 1.7 has been raised by assessee seeking the correction in the margins of the comparable companies. It is submitted that assessee has filed all the relevant details in respect of the comparables that needs to be verified by the Ld.TPO/AO.*

*We thus direct the Ld.AO/TPO to recompute the margins in accordance with law.*

*Accordingly this ground stands allowed for statistical purposes.*

*6. Ground no. 2 is related to the transfer pricing adjustment with respect to outstanding receivables. Primarily the Ld.AR has objected by submitting that no interest is attributable as the same was not charged by the AEs on any delayed payment by the assessee. However, assessee submitted that only two invoices payment were delayed to be paid by the AE with respect to 15 days and one day. In any event, if at all any interest is to be computed, LIBOR rate is to be applied as submitted by the Ld.AR. The Ld.DR relied on the order passed by authorities below.*

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

*Admittedly attributing interest to the delayed payment is an international transaction.*

*6.1 The Ld.AR submitted that the Ld.TPO proposed transfer pricing adjustment in respect of outstanding receivables in respect of trade creditors being the AEs by using 6 months LIBOR rate and CUP as the most appropriate method. The Ld.TPO thus proposed adjustment at 5.8749% amounting to Rs. 3,37,183/-.*

*6.2 The Assessee wishes to submit that the delayed/outstanding receivables should not be considered as a separate international transaction. Further, it is humbly submitted that determination of ALP in respect of delayed receivables from inter-company transactions is not required since ALP of inter-company*

*transactions of provision of services has been already determined and no separate adjustment is necessary in this regard.*

*6.3 The Ld.AR placed reliance on decision of Hon'ble Delhi Tribunal in Kusum Healthcare (P). Ltd v. Asstt. CIT [2015] 62 taxmann.com 79 deleted addition by considering the above principle, and subsequently Hon'ble Delhi High Court in Pr. CIT v. Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431/[2017] 398 ITR 66, held that, no interest could have been charged as it cannot be considered as international transaction. He also placed reliance upon decision of Hon'ble Delhi Tribunal in case of Bechtel India (P.) Ltd. v. Dy. CIT [2016] 66 taxmann.com 6 which subsequently upheld by Hon'ble Delhi High Court vide order dated 21/07/16 in ITA No. 379/2016, also upheld by Hon'ble Supreme Court vide order dated 21/07/17, in CC No. 4956/2017."*

*010. We note that in case both the above comparables are excluded out of the comparable companies, the average mean of the comparable companies will work out to 11.66%, whereas the margin of the appellant is 9.44% which falls within 3% and therefore, no TP adjustment is required to be made. Accordingly, we direct the Id. Transfer Pricing Officer/ AO to exclude these two companies. The ground no.2 is allowed."*

3.4. Consequently, respectfully following the decision of the co-ordinate Bench in assessee's own case for A.Y. 2020-21, we direct the Id. AO / Transfer Pricing Officer to exclude these two comparables while working out the average margin of comparable. We also note that after exclusion of these two comparables, the margin of the assessee is 11.88% and is within the permissible of  $\pm 3\%$ . Accordingly, the ground no.2 is allowed.

4. The issue raised in ground no.3 is in respect of transfer pricing adjustment of ₹108,79,48,589/- on account of Intra Group Services (IGS) received by the assessee.

4.1. At the outset, the Id. Counsel for the assessee submitted that the issue has been decided in assessee's own case for A.Y. 2009-10 to 2016-17 and 2020-21. Since, the facts of the case in the current assessment year are same, therefore, the ground may be allowed by following the decision of the co-ordinate Bench in the preceding and succeeding assessment years.

4.2. The Id. DR per contra fairly agreed that the issue has been decided by the co-ordinate bench in favour of the assessee.

4.3. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the co-ordinate bench in ITA no. 1960/Kol/2024 for A.Y. 2020-21, vide para no.11 and 12 deciding in favour of the assessee. For the sake of ready reference, we extract the para as under: -

*"011. The issue raised in ground no.3 is against the transfer pricing adjustment of ₹108,79,48,589/- on account of Intra Group Services ('IGS') received by the assessee.*

*012. We note that this is a recurring issue in the case of the assessee which has been decided by the co-ordinate Bench in favour of the assessee in ITA No. 226/KOL/2021, vide order dated 06.09.2022 for A.Y. 2016-17 . The operative part of the decision is as under:-*

*"3. Issue raised in ground no. 2 is against the direction of DRP on determination of arms' length price in respect thereof for intra group services received by the appellant assessee.*

*4. The Ld. Counsel for the assessee at the outset submitted that the issue is recurring one right from A.Y.2009-10 to 2015-16 and is covered in favour of the assessee by the decisions of the Co-ordinate Benches of the Tribunal deciding the issue in favour of the assessee in all the assessment years. The Ld. A.R took the Bench through the decisions attached in the Paper book and prayed that the ground may be allowed following the said decisions of the Co-ordinate Bench in the assessee's own case.*

*5. The Ld. D.R. on the other hand fairly agreed that the issue is squarely covered by the decisions of Co-ordinate Benches in assessee's own case however relied on the order of DRP.*

*6. Having heard rival submissions and perusing the material on record including the decisions of the coordinate benches in assessee's own case in the earlier assessment years, we find that the issue is squarely covered in favour of the assessee. Therefore, taking a consistent view , we allow ground no. 2 by setting aside the direction of the DRP and directing the TPO/AO to delete the adjustment/addition."*

*013. Accordingly, we direct the Id. AO to delete the addition by respectfully following the decision of the co-ordinate Bench in A.Y. 2016-17. The ground no.3 is allowed."*

4.4. Respectfully following the decisions of the coordinate benches in assessee own cases , we direct the Id. AO/ Transfer Pricing Officer to delete the adjustment/ addition.

5. The issue raised in ground No.4 is in respect of transfer pricing adjustment of ₹94,41,22,563/- towards alleged advertisement, marketing and promotion (AMP) expenses.

5.1. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the decision of the co-ordinate Bench in assessee's own case for A.Y. 2010-11 to 2016-17 and A.Y. 2020-21. For the sake of ready reference we extract the operative part of the decision in ITA No. 1960/KOL/2024 for A.Y. 2020-21 as under: -

*"014. Ground no. 4, is against the transfer pricing adjustment of ₹94,41,22,563/- on account of advertisement, marketing and promotion expenses.*

*015. We note that the impugned issue is recurring one and has been decided by the co-ordinate Bench in assessee's own case for A.Y. 2010-11 to 2016-17. The operative part of the decision in ITA No. 226/KOL/2021 for A.Y. 2016-17 is extracted below:-*

*"7. Issue raised in ground no. 3 is in respect of determination of arm's length price and an adjustment made on account thereof towards advertisement, marketing and promotion expenses.*

*8. Having heard rival submission and perusing the material on record we find that issue is squarely covered by the decisions of the Co-ordinate Benches in earlier assessment years in assessee's own case from AY 2010-11 to 2015-16. Accordingly we set aside the DRP direction on this issue and direct the AO/TPO to delete the adjustment made and consequently ground no. 3 is allowed."*

*016. Considering the facts of the instant assessment year being similar to ones as decided by the co-ordinate Bench in assessee's own case, we hold that the advertisement, marketing and promotion expenses do not an international transaction and accordingly, the TP adjustment made by the Id. Transfer Pricing Officer/ AO is directed to be deleted. The ground is accordingly allowed."*

5.2. Consequently, AO/TP adjustment by the Transfer Pricing Officer, is deleted.

6. The issue raised in ground no.5 is in respect of consistency and general in nature.
7. The issue raised in ground no.6 is in respect of transfer pricing adjustment of ₹16,67,57,000/- on account of provision of contract research and development services.

7.1. The facts in brief are that the assessee is engaged in providing the contract research and development services to its Associated Enterprises based on specification provided by the Associated Enterprises and the assessee is compensated for services on cost plus markup of 9.22% of the service agreement. We note that the Id. AO /Transfer Pricing Officer computed the margin of 18.66% by taking six comparables and if we exclude the non-comparable company namely; Aurigene Discovery Technologies Ltd. then the average margin would come to 3.36 which is much lower than the appellate margin of 9.22%. We note that the issue is squarely covered by the decision of the co-ordinate Bench in assessee's own case for A.Y. 2020-21 in ITA No. 1960/KOL/2024 vide order dated 11.03.2025 by Para no.11, wherein the issue has been decided in favour of the assessee. For the sake of ready reference the relevant extract is given below: -

"022. We have considered the submissions of both the parties. The assessee admittedly, doing contract, research and development for medical devices. ADTL, as has been mentioned in its Annual Report is undertaking research relating to contract discovery for its customers and licensing of the intellectual property rights in respect of researched drug discovery. This has nothing to do with any activity which is software related. The activities are purely related to the manufacturing of drugs more specifically, the discovery of new drugs through research and development. It ,admittedly, is not a comparable with the assessee in regard to the functionality. Coming to TCG, it is noticed that TCG is also into early drug discovery and development, which has been, mentioned earlier cannot be considered as the same as a research and development in respect of medical devices. Further, in the case of TCG, the revenue generated from the sale of products are admittedly 80% of the total revenue of TCG which also makes it incomparable with the assessee in so far as

*the supplemental profit and loss in respect of the research and development activity of TCG are not available. Consequently, we are of the view that both ADTL and TCG cannot be taken as a comparable while computing the transfer pricing adjustment in regard to the contract, research and development services. The said two companies are excluded. Admittedly, the average comes to only 10.52% which is well within the 3% margin which is permissible. Consequently, the addition made on account of the said transfer pricing adjustment stands deleted. Consequently, ground nos. 6 the assessee's appeal stand allowed."*

7.2. We therefore respectfully following the decision of the co-ordinate bench direct the Id. AO/ Transfer Pricing Officer to exclude the comparable in the case of Aurigene Discovery Technologies Ltd. Accordingly, the ground no.6 is allowed.

8. The issue raised in grounds no.7 and 8 is in respect of double disallowance of interest paid to MSMED of ₹55,226/- and double addition of deemed income u/s 41(1) of the Act of ₹70,66,297/-.

8.1. After hearing the rival contentions and perusing the materials available and after examining the order dated 23.10.2024, we find that the said interest has been disallowed by the Id. AO in the intimation order passed u/s 143(1) of the Act dated 20<sup>th</sup> October, 2022. Since the assessee disallowed the said interest suo moto while filing the return of income resulting into double disallowance. Similar is the position with regard to deemed income u/s 41(1). Therefore, the issue needs to be looked into at the end of the Id. AO and accordingly, we restore the issue to the file of the Id. AO to decide the same afresh after looking into the facts and also after affording reasonable opportunity of hearing to the assessee. The grounds are allowed for statistical purpose.

9. The issue raised in ground no.9 is against the disallowance of leased rental of ₹86,47,48,620/-.

9.1. The facts in brief are that the Id. AO disallowed the leased rental paid by the assessee in respect of assets taken on finance lease amounting to ₹86,47,48,620/- on the sole contention that the same was disallowed by the Dispute Resolution Panel in the case of the assessee for A.Y. 2013-14 and 2014-15. We note that the issue has been decided by the co-ordinate bench in assessee's own case from A.Y. 2009-10 to 2020-21, by holding that the owner of the assets is entitled to deduction of depreciation and user of asset is entitled to deduction of rent. The operative part of the decision in A.Y. 2020-21 is extracted below: -

*"029. The issue raised in ground no.9 is against the disallowance of lease rental of ₹62,13,65,603/-.*

*030. The facts in brief are that in the computation of income, the assessee has claimed deduction of ₹62,13,65,603/- on account of lease rental of the assets taken on financial lease. The Id. AO accordingly called upon the assessee to file his submission which was filed on 13.01.2022, in which he submitted that the depreciation claimed on the assets taken on lease has been added back while computing the total income and the assessee has correspondingly claimed lease rental from income excluding the interest as allowable deduction while computing the total income. The submission of the assessee did not find in favour of the Id. AO and he added the same to the income of the assessee which was confirmed by the Id. Dispute Resolution Panel.*

*031. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the decision of the co-ordinate Bench in assessee 's own case from AO 200-10 to 2016-17, which are already available in the Paper Book. Accordingly, we set aside the Id. Dispute Resolution Panel direction and direct the Id. AO to delete the addition. Accordingly, the ground no.9 is allowed."*

9.2. Accordingly, we set aside direction of the Id. Dispute Resolution Panel and direct the Id. AO to delete the addition.

10. The issue raised in ground no.10 and 11 is against the wrong levy of interest u/s 234A and 234B of the Income-tax Act, 1961 (the Act).
11. After hearing the rival contentions and perusing the materials available on record, we are of the view that the issue is required to

be examined at the end of the Id. AO and accordingly, we restore the same to the file of the Id. AO with a direction to decide the same afresh as per law by considering the submission of the assessee that the return of income was filed on 4<sup>th</sup> March, 2022, which is within extended the due date of filing the return of income. The grounds are allowed for statistical purpose.

12. The issue raised in ground no.14, is against the short granting of TDS/ TCS credit to the tune of ₹3,73,374/-.
13. After hearing the rival contentions and perusing the facts on record we are of the view that the issue needs to examine at the end of the Id. AO and accordingly, we direct the Id. AO to decide the same afresh after looking into the facts available on record and after affording reasonable opportunity of hearing to the assessee. The ground is allowed for statistical purpose.
14. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26.08.2025.

Sd/-  
(PRADIP KUMAR CHOUBEY)  
(JUDICIAL MEMBER)

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.08.2025

*Sudip Sarkar, Sr.PS*



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata