

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH :: COCHIN**

**BEFORE SHRI INTURI RAMA RAO, AM &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1071/Coch/2024
(Assessment Year: 2021-22)**

And

S.A.No. 66/Coch/2025

UST Global Technology Services Appellant
(India) Private Limited,
Leela Infopark, Inforpark Sez,
Kusumagiri, Kakkanad,
Cochin, Kerala-682030
[PAN: AABCU 1636 Q]

vs.

Deputy Commissioner of Income Tax Respondent
Corporate Circle-2(1), Cochin.

Appellant by: Shri Rajakannam, Advocate
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 22.08.2025
Date of Pronouncement: 08.09.2025

ORDER

Per Inturi Rama Rao, AM:

This is an appeal filed by the Assessee-company directed against the final assessment order dated 23/10/2024 passed u/s. 1433 r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (for short, 'the Act') for Assessment Year (AY) 2021-22.

2. Brief facts of the case are that the appellant is a company duly incorporated under the provisions of Companies Act, 1956. It is engaged in the business of providing IT services to its associated enterprises (AEs) and it is a subsidiary of USIPL. The return of income for the A.Y. 2021-22 was filed on 23/10/2022 declaring income of Rs. 11,83,12,700/-. The appellant company also reported the following international transactions in Form 3CEB:-

Nature of International transactions	Amount (in INR)	Method used
Provision of IT services	156,47,13,486	TNMM
Corporate guarantee provided to the Assessee by the AEs	Nil	Other Method

3. The appellant-company also submitted TP study by adopting by adopting Transactional Net Margin Method (TNMM) as most appropriate method and sought to justify the international transactions are at arm's length price (ALP). On noticing the above international transaction, the AO referred the matter, under the provisions of section 92CA(1) of the Act, to the Transfer Pricing Officer (TPO) for the purpose of determination of ALP in respect of the above international transaction.

4. The TPO vide order dated 09/10/2023 passed u/s. 92CA(3), suggested the TP adjustment in respect of software development agreement of Rs. 12,84,50,000/- and also interest on delayed receivables of Rs. 5,97,26,729/- u/s. 92CA of the Act. While doing

so, the TPO rejected the TP study report submitted by the appellant company and proceeded with the benchmarking of the transaction by adopting the following filters:-

- a. Use of current year data wherever available.
- b. Companies having different financial year ending (i.e. not March 31, 2021) or data of the company which does not fall within 12 month period i.e. 01/04/2020 to 31/03/2021, were rejected.
- c. Companies whose income was less than Rs. 1 crore were excluded.
- d. Companies whose Software Development Service/ITES income is less than 75% of its total operating revenues were excluded.
- e. Companies who have more than 25% related party transactions of the sales were excluded
- f. Companies who have export service income less than 75% of the sales were excluded
- g. Companies with employee cost less than 25% of turnover were excluded

5. Based on the above filters, the TPO adopted the following comparables:-

SI No	Name of Company	FY 2020-21	FY 2019-20	FY 2018-19	Weighted Avg
1	Hurix Systems Pvt Ltd.	1.00%	-4.25%	18.47%	4.57%

2	Evoke Technologies Ltd.	9.47%	6.39%	5.43%	7.45%
3	Indianic Infotech Ltd.	10.51%	9.56%	11.39%	10.44%
4	Orion India Systems Ltd	14.14%	15.24%	15.40%	15.00%
5	Mindtree Ltd.	22.88%	12.84%	16.20%	17.24%
6	Sagarsoft (India) Ltd.	19.24%	8.16%	26.92%	17.98%
7	Great Software Laboratory Pvt Ltd.	18.70%	20.62%	20.89%	19.95%
8	Nihilent Ltd	17.55%	14.31%	31.45%	20.89%
9	Larsen & Toubro Infotech Ltd.	25.09%	22.93%	26.20%	24.68%
10	Wipro Ltd	29.78%	23.53%	23.26%	25.49%
11	Net4Nuts Ltd.	37.09%	41.93%	-0.60%	26.87%
12	Tata Elxsi Pvt. Ltd.	37.58%	25.60%	33.17%	32.14%
13	Infosys Ltd.	36.54%	31.50%	32.35%	33.54%
14	CG-VAK Software & Exports Ltd.	42.17%	29.98%	27.23%	33.76%
15	Aptus Software Labs Pvt Ltd	34.20%	Fails Export Turnover Filter	40.62%	37.83%
16	TCS	39.13%	38.92%	37.36%	38.46%

17	Cybage software Pvt. Ltd.	54.47%	48.92%	52.44%	51.98%
				35th percentile	17.98%
				Median	24.68%
				65th percentile	32.14%

6. The TPO suggested the TP adjustment of Rs. 12,84,50,000/- in respect of IT segment and Rs.5,97,26,729/- in respect of interest receivables on delayed realization of debts from the appellant's AEs and computed the ALP as under:-

SOFTWARE DEVELOPMENT SEGMENT		
Formula	Particulars	Amount (in Lakhs) as per audited financials
A	Operating Revenue (OR)	15,647
B	Operating Cost (OC)	13580
C=A-B	Operating Profit (OP)	2,085
D=C/B	OP/OC	15.22%
G	ALP OP/OC	24.68%
H=G*B	ALP OP	3,347
I=H+B	ALP OR	16,931
J=I-A	Adjustment	1,284.5

7. The TPO also suggested TP adjustment of Rs. 5,97,26,729/- in respect of interest on delayed receivables from AEs.

8. On receipt of TPO's order, the draft assessment order was passed by the AO u/s. 144C(1) of the Act on 18/12/2023 for the A.Y. 2021-22 after proposing the addition on account of TP addition suggested by the TPO of Rs. 18,81,76,729/-. On receipt of draft assessment order, several objections were raised by the appellant before the Dispute Resolution Panel (DRP). The DRP had dismissed all the objections raised by the appellant. After receipt of the directions issued by the DRP, the final assessment order was passed vide order dated 23/10/2024 passed u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Act at a total income of Rs. 30,64,89,430/-. While doing so, the AO made the addition of Rs. 18,81,76,729/- u/s. 92CA of the Act.

9. Being aggrieved, the appellant is in appeal before us in the present appeal raising the following grounds of appeal:-

“1. The Order/Directions are bad in law and on facts

1.1 The assessment order passed by the Ld. AO, under Section 143(3) read with Section 144C(13) and 144B of the Act is without jurisdiction, bad in law and on facts and is in violation of the principles of natural justice.

Without prejudice to the generality of the above, the order issued by the Ld. AO is bad in law in so far as the fact that the Ld. AO did not issue to the Appellant, a show cause notice for such reference, as per proviso to Section 92C(3) of the Act.

1.2 The Ld. AO/ Ld. TPO/ Ld. Panel have erred in not demonstrating that the motive of the Appellant was to shift profits outside of India by manipulating the prices charged in its international transactions, which is a pre-requisite condition to make any adjustment under the provision of Chapter X of the Act.

2. Re-computation of the segment margin by the Ld. TPO

2.1 The Ld. AO/Ld. TPO/Ld. Panel have erred in facts by considering the foreign exchange loss as operating expenses;

2.2 The Ld. AO/ Ld. TPO/ Ld. Panel have erred in facts by considering the depreciation of Right to use ('RTU') of assets as operating expenses;

3. Disregarded the TP study and non-contemporaneous data used by the Ld. TPO

3.1 The Ld. AO/ Ld. TPO/Ld. Panel have erred in facts and in law, in making an addition to the total returned income of the Appellant, on account of TP matters, by re-determining Arm's Length Price ('ALP') for the provision of IT services.

3.2 The Ld. AO/ Ld. TPO/ Ld. Panel have erred in law by selecting the final list of alleged comparable companies solely based on financial data for FY 2020-21; and the companies from such list were further evaluated for comparability in either or both of the preceding two financial years (FY 2019-20 and FY 2018-19).

3.3 The Ld. TPO/ Ld. AO/ Ld. Panel erred in facts and in law, by arbitrarily rejecting the TP study (including the benchmarking analysis, filters applied, and comparable companies selected therein) maintained by the Appellant without giving due regard to the facts and circumstances of the business of the Appellant.

4. Comparability Analysis adopted by the Ld. TPO for determination of arm's length price

4.1 The Ld. TPO/ Ld. AO/ Ld. Panel erred in law and in facts, by rejecting companies with different financial year ending (i.e., other than 31 March).

4.2 The Ld. TPO/ Ld. AO/ Ld. Panel while applying the turnover filter rejected companies having turnovers less than INR 1 crore, however, erred in not applying an appropriate upper limit to reject high turnover companies and thereby, erred in accepting companies without considering the turnover and size of the Appellant and comparables.

4.3 *The Ld. TPO/ Ld. AO/ Ld. Panel erred in law and in facts, by rejecting companies having service revenue less than 75 percent of total operating revenue.*

4.4 *Without prejudice to the TP study maintained, the Ld. TPO/ Ld. AO/ Ld. Panel erred in law and in facts, by applying 25 percent related party criteria in accepting/ rejecting comparables.*

4.5 *The Ld. TPO/ Ld. AO/ Ld. Panel erred in rejecting comparable companies having export earnings less than 75 percent of the total sales.*

4.6 *The Ld. AO/ Ld. TPO/ Ld. Panel erred in facts and in law by benchmarking the transactions of provision of IT service of the Appellant with companies operating as full-fledged entrepreneurs thereby not considering the differences in the functions performed, assets employed, and risk undertaken by the Appellant vis-à-vis the companies selected as being comparable.*

5. *Erroneous acceptance of comparable companies*

5.1 *Objections/contentions against the erroneous acceptance of companies by the Ld. TPO/Ld. AO/Ld. Panel as comparable to the international transaction of provision of IT services.*

1. *Mindtree Ltd.*
2. *Sagarsoft (India) Ltd*
3. *Nihilent Ltd.*
4. *Larsen & Toubro Infotech Ltd.*
5. *Wipro Ltd.*
6. *Net4Nuts Ltd*
7. *Tata Elxsi Pvt Ltd.*
8. *Infosys Ltd.*
9. *Tata Consultancy Services Ltd.*
10. *Cybage Software Pvt. Ltd*
11. *Aptus Software Pvt. Ltd.*
12. *CG-VAK Software & Exports Ltd.*

6. *Erroneous rejection of comparable companies*

6.1 *Objections/contentions against the erroneous rejection of comparable companies by Ld.TPO/Ld. AO/Ld. Panel with respect to the international transaction of IT services.*

1. *Orangescape Technologies Limited*
2. *E-Zest Solutions Ltd*
3. *R Systems International Ltd. - Information Technology Services & Products segment.*
4. *Informile Technologies Ltd*
5. *Isummation Technologies Pvt Ltd.*

7. *Erroneously computed the margins of the companies selected as comparable*

7.1 *The Ld. AO/ Ld. TPO/ Ld. Panel erred in facts and in law in erroneously computing the margins of following companies identified as comparable by the Ld. TPO.*

1. *Mindtree Limited*
2. *Larsen and Toubro Infotech Limited*
3. *Wipro Ltd*
4. *Net4Nuts Ltd.*
5. *Tata Elxsi Ltd.*
6. *Infosys Ltd.*
7. *CG-VAK Software & Exports Ltd.*
8. *Cybage Software Private Limited*
9. *Hurix Systems Pvt. Ltd.*
10. *Indianic Infotech Ltd*
11. *Orion India Systems Pvt. Ltd.*
12. *Evoke Technologies Pvt. Ltd.*
13. *Great Software Laboratory Private Limited*

8. *Non-allowance of appropriate adjustment to the comparable companies by the Ld. Panel and Ld. AO/Ld. TPO*

8.1 *The L.d. AO/ Ld. TPO/ Ld. Panel erred in law and on facts in not allowing appropriate adjustments under Rule 108 to account for, inter alia, differences in (i) accounting practices, (ii) marketing expenditure adjustment, (iii) research and development expenditure adjustment, (iv) working capital, and (iv) risk profile between the Appellant and the comparable companies.*

10. *Computation of Interest on delayed receivables*

9.1 *The Ld. AO/Ld. TPO/ Ld. Panel erred in law and in facts, by considering inter-company trade receivables outstanding beyond*

60 days, as a separate international transaction without appreciating that such outstanding receivables are intrinsically linked to the primary international transaction of provision of IT service, which has already been held to be at arm's length.

9.2 The Ld. AO/ Ld. TPO/ Ld. Panel erred in law and in facts by characterizing the delayed intercompany trade receivables as a loan extended by the Appellant to its AEs, without appreciating that the said outstanding receivables have only arisen as a result of the primary international transaction and are not in the nature of a capital financing arrangement.

9.3 The Ld. AO/ Ld. TPO/ Ld. Panel erred in law and in facts, by not appreciating that since such outstanding receivables are closely linked to the main international transaction, the arm's length price determination is already subsumed within the arm's length price determination of the principal international transaction itself, which has been held to be at arm's length by the Ld. TPO himself.

9.4 The Ld. AO/ Ld. TPO/ Ld. Panel erred in law and in facts, by not following a consistent approach as compared to previous FY 2019-20, where credit period was accepted as 180 days.

9.5 The Ld. AO/ Ld. TPO/ Ld. Panel erred in law and in facts, by not considering the business reasons for delay in collection of trade receivable, including delay in collection from the ultimate customer.

9.6 The Ld. AO/ Ld. TPO/ Ld. Panel erred in law and in facts by considering Comparable Uncontrolled Price ('CUP') as the most appropriate method to benchmark the alleged international transaction, without appreciating that CUP requires exact and highest level of comparability, which the Ld. TPO has failed to demonstrate. The Ld. AO/Ld. Panel erred in confirming the same.

9.7 Without prejudice to the other Grounds, The Ld. AO/Ld. TPO/Ld. Panel erred in law and in facts by proceeding to compare the alleged international transaction to a foreign currency denominated loan (referred in the RBI circular) without acknowledging that such alleged loan by the Appellant to AE lacks fundamental attributes of the ECB, such as agreement, terms, etc.

10. Consequential levy of interest under Section 234A and 234B of the Act

10.1 On the facts and in the circumstances of the case and in law, the learned AO has erred in computing interest under section 234A and 234B of the Act.

11. Initiation of penalty proceedings

11.1 The Appellant submits that based on the facts and circumstances of the case, there was no basis for the Ld. AO to initiate proceedings under section 270A and 271AA of the Act.”

11. At the outset, learned counsel for the appellant submits that the TPO ought to have applied upper turnover limit having adopted the lower turnover limit of Rs. 1.00 crore filter for the purpose of choosing the comparables. We find merit in the submissions made by the learned counsel. We are of the considered opinion that the TPO having adopted the lower turnover filter ought to have applied appropriate upper turnover limit filter. Thus, the exercise of benchmarking the international transaction undertaken by the TPO is flawed. Since by adoption of upper turnover filter, may undergo change in the entire complexation of the matter, we are of the considered opinion that the matter requires remand to the AO/ TPO for the purpose of undertaking the fresh exercise of benchmarking the international transaction by adopting the upper turnover filter. We make it clear that all other contentions raised before us by the appellant-company, are kept open before the AO/TPO for fresh consideration. Thus, this appeal filed by the Assessee stands partly allowed for statistical purposes.

12. Since we have decided the appeal in ITA No. 1071/Coch/2024, the stay application filed by the appellant is dismissed as infructuous.

13. In the result, appeal filed by the assessee stands partly allowed for statistical purpose and the stay application is dismissed as infructuous.

Order pronounced in open Court on 8th September, 2025.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 8th September, 2025

vr/-

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin