

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“K” BENCH MUMBAI**

**BEFOREOM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No. 6359/Mum/2024  
(Assessment Year: 2021-22)**

<b>Ebaotech India Private Limited</b> 407, 4 <sup>th</sup> Floor, Inizio, Cardinal Gracious Road, Chakala, Mumbai-400 099	Vs.	<b>DCIT Circle 1(2)(2), Mumbai</b> Aayakar Bhavan, M. K. Road, Mumbai- 400 020
PAN/GIR No. AABCE7013R		
(Applicant)		(Respondent)

Assessee by	Shri Satish Mody, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	27.06.2025
Date of Pronouncement	25.09.2025

आदेश / ORDER

**PER RAJ KUMAR CHAUHAN, JM:**

This appeal is directed against the assessment order dated 18.10.2024 passed by Assessing Officer u/s 143(3) r.w.s. 144C(13) of the Act wherein the Arm's Length Price (ALP) adjustment of Rs. 38,65,046/- was made on the directions given by the Ld. DRP.

2. The brief facts as culled out from the proceeding before the authorities below are that the assessee is a subsidiary company of the eBao Group which is globally diversified in insurance software having its headquarters in Shanghai, China and the operations of the group are located in many countries including India, Australia, China, Malaysia, Japan and Singapore, with extensive coverage in insurance software and technology.

3. During the FY 2020-21, the assessee has entered into international transactions with its AEs as under:-

<b>Sr. No.</b>	<b>Nature of transactions</b>	<b>Amount (in Rs.)</b>	<b>Method used to determine the ALP</b>
1.	Export of software	1,83,08,696	CUP
2.	Export of software	11,65,20,059	CUP
3.	Import of software	1,32,97,644	CUP

4. The assessee company e-filed its original return of income u/s. 139(1) of the Act for the year under consideration dated 18.01.2022 declaring its total income at Rs.33,95,600/- and income u/s. 115JB at Rs. 31,09,856/-The case of the assessee was selected for complete scrutiny on the issue i.e.i) verification of genuineness of expenses and ii) international related party transaction in services. Accordingly, statutory notice u/s. 143(2) of the Act dated 28.06.2022 was issued and duly

served upon the assessee. Further notice u/s 142(1) was issued on 17.11.2022 and in response the assessee has furnished its reply on 23.11.2022 and further a show cause notice issued on 27.10.2023 and in response the assessee has filed reply on 06.11.2023. On perusal of Part A-P&L Account of return of income of the assessee for the year under consideration, it is seen that the assessee has shown large payment as fee for technical services to persons who have not filed returns of income for the relevant assessment year.

5. During the year under consideration, the assessee entered into International Transactions amounting to Rs.14,81,26,399/- with its 'Associated Enterprises' within the meaning of Section 92B of the Act. The case was transferred to the Transfer Pricing Officer (TPO) as per provisions of section 92CA(1) of the Act after taking statutory approval from the prescribed authority for computation of Arm's Length Price (ALP) in relation to the international transactions undertaken by the assessee company during the A.Y. 2021-22. The Ld. TPO had quantified an upward adjustment at Rs.98,57,276/- on international transactions of import of software of the assessee for the year under consideration.

6. How the ALP was determined by the Ld. TPO will become clear from the contents extracted below from page no. 9 to 12 of his report;-

**1. ALP determination of the transaction**

Thus as per the provisions of 92C(1) and 92C(2) of the Income Tax Act, 1961 the benchmarking as done by the assessee using CUP Method is rejected. The TNMM is held as the most appropriate method to determine the Arm's Length Price of the said transaction. The TNMM compares net profitability and thus, taking comparable companies which entail similar transactions as the assessee company can be used to compare the said transaction.

Applying the following filters, the said comparables were identified from the Prowess Database to find the relevant comparable by the TPO:

<b>Database used</b>	:	Prowess
<b>Product Classification</b>	:	Information Technology enabled Services
<b>Filters Applied</b>	:	
<b>Turnover</b>	:	Turnover from 1/10 to 10 times the revenue
<b>RPT Filter</b>	:	Comparables with <25 % RPT selected
<b>Other filters</b>	:	Comparables with service Income >50% selected

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		Positive Net worth companies selected
		Profit making Companies selected (Consistently Loss-making companies for previous 3 FYs rejected)
		Same F.Y. ending as assessee
		Export >75%

Based on the above search, 4 comparable companies were provided by the Prowess Database.

Sr. No	Name of comparable company	OP/OC	OP/OR
1	Celstream Technologies Pvt. Ltd.	-15.07	-17.74
2	Hurix Systems Pvt. Ltd.	4.04	3.88
3	Data Collection Infotech (India) Pvt. Ltd.	9.85	8.97
4	Systango Technologies Ltd.	26.56	20.99
	<b>Average</b>	<b>6.34%</b>	<b>4.025%</b>

As per the segmental data as provided by the assessee, the OP/OR of its import transaction with its AE is -6.24%.

Particulars	Export Turnover (In Rs.)	Other Turnover (Import
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		Transaction) (In Rs.)
	13,48,28,755	9,60,25,997
Direct Expense (Import of Service)	-	1,32,97,644
OC	12,57,24,125	10,20,18,227
OP	91,04,630	-59,92,230
OP/OR	6.75%	-6.24%
OP/OC	7.24%	-5.87%

Thus, based on discussion in the preceding para's the ALP of the international transaction related to Import of Software from the AE's of the assessee is determined as below:

Particulars	Amount in INR
OR	9,60,25,997
OP	-59,92,230
Assessee's OP/OR	-6.24%
Arm's Length OP/OR	4.025%
Arm's Length OP	38,65,046
Arm's Length OC	94,32,598

Amount of adjustment proposed	38,65,046- (-59,92,230) = 98,57,276
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Consequently, the ALP of the Import of Software is determined at RS. 94,32,598/- as against Rs. 1,32,97,644/- as claimed by the assessee. Thus, an adjustment of Rs. 98,57,276/- is made to the international transaction of Import of Software of the assessee.

#### 9.CONCLUSION:

In view of the above, total adjustment of **Rs. 98,57,276/-** is proposed as in determining ALP of all the above-mentioned transactions, the details of which are given below:

Sr. No.	Nature of transaction	Amount of Adjustment Rs.
1	Import of Software	98,57,276/-
	<b>Total</b>	<b>98,57,276/-</b>

AO may initiate penalties as per the provisions of the Income Tax Act.

7. It is hereby clarified that the findings and discussions made in this order are applicable only for Reference received for International Transactions entered into in A.Y 2021-22 and not for subsequent assessment years.

7. Hence, draft assessment order was passed in conformity with the arm's length price as determined by the TPO and accordingly, an amount of Rs. 98,57,276/- was added as per the Transfer Pricing adjustment to arrive at Arm's Length Price of the International Transactions and added to the total income determined at Rs. 1,32,52,876/-.

**Submissions of assessee before Ld. DRP.**

8. The assessee has submitted before the Ld. DRP that; **Firstly**, the order u/s 92CA(3) of the Transfer Pricing Officer is erroneous as the TPO has erred in determining the ALP of the Import of Software at Rs. 94,32,598/- as against Rs. 1,32,97,644/- as claimed by the assessee. **Secondly**, the adjustment of Rs.98,57,276/- is incorrect and the correct amount is Rs. 94,32,598/-. **Thirdly**, the determining of ALP at Rs. 94,32,598/- while selecting the samples for calculation of comparable net margins for TNMM method of the 4 companies i.e.i) CelstreamTechnologies Pvt. Ltd, ii) HurixSystems Pvt.Ltd., iii) Data Collection Infotech (India) Pvt. Ltd and iv) Systango Technologies Ltd. It is stated that Systango Technologies Ltd is a large corporate in the business of development and implementation of software yielding high profit margins of above 25% because of its expertise. Whereas the assessee company on the other hand is in the business of providing support service to its holding company and their associates and assessee is not in the business of development of software because it imports the license of the software from its holding company and their associates who have developed the software. The assessee only assists in providing services to implement the software to meet the client's needs and for this service, the assessee cannot make margins of 26.56%/20.99% shown in the comparable table. Hence, the benchmarking of the TPO for determining the

ALP of the international transaction and making adjustment of Rs. 98,57,276/- was wrong.

9. Since, the Applicant procured software from its Associated Enterprise (AE) and exported software to the same AE, therefore, as per the applicant's Transfer Pricing Study Report (TPSR), the transaction was benchmarked using the Comparable Uncontrolled Price (CUP) Method which was based on the sample invoices to support the benchmarking.

10. Ld. DRP observed that applicant has failed to provide the necessary documentation to explain the benchmarking analysis based on CUP method. Ld. DRP was of the opinion that the data and information base of the applicant do not satisfy the strict comparability criterion under CUP Method for determining ALP for the export and import services to the AEs. It was further observed that the Transactional Net Margin Method (TNMM) uses net profitability levels from comparable transactions to establish an arm's length result against which the profitability of the tested party is compared. Hence, the DRP was of the opinion that the appropriate method as per sub-section 92C(2) was the TNMM with Operating Profit/Operating Cost (OP/OC) and Operating Profit/Operating Revenue (OP/OR) as the Profit Level Indicators (PLI). Accordingly, the TNMM was held to be Most Appropriate Method to determine the ALP of the said transaction.

11. Aggrieved by the impugned order, assessee is in appeal before us and has raised the following grounds of appeal:-

*1) The Learned Assessment Unit, Income Tax Department has erred in their order by making Transfer Pricing Adjustment vide para 4.6 of their order for Rs 38,65,046/- thereby reducing the import price of software to Rs 94,32,598/- as against Rs 1,32,97,644/- claimed by the Appellant.*

*2) Without prejudice to above, The Learned Assessment Unit, Income Tax Department has erred in not allowing MAT Credit of Rs. 10,04,914/- u/s. 115JAA of the I.T.Act, 1961 available for earlier years, since tax was payable at Normal Rates during A.Y. 2021-2022.*

*3) The Appellant reserves right to add to/amend/withdraw the above grounds of appeal.*

12. We have heard Ld. AR and Ld. DR and examined the record. At the very outset, Ld. AR submitted that the objection no. 4 taken before the Ld. DRP wherein the assessee has challenged the order of TPO for determining ALP at Rs. 94,32,598/- being erroneous on the ground that selection of samples for calculation of comparable net margins for TNMM method was incorrect because one of the sample for calculation of comparable i.e. Systango Technology Ltd., which is a large corporate in the business of development and implementation of software yielding high profit margins of above 25% because of its expertise. The assessee company on the other hand is in the business of providing support service to its holding company and their associates and the assessee is not in the business of development

of software as it imports the license of the software from its holding company and their associates who have developed the software. The assessee only assists in providing services to implement the software to meet the client's needs and for this service, the assessee cannot make margins of 26.56%/20.99% shown. Therefore, the order passed by the Ld. TPO was erroneous and required to be rectified and corrected. It is further argued that the assessee has done the benchmarking while following the CUP method arriving at ALP by most appropriate method and the same has been rejected by the Ld. DR without any justified cause /reasons. Ld. AR further argued that the Ld. DRP has wrongly calculated the profit margin with Systango Technology Ltd. Stating that the applicant and Systango Technology Ltd are engaged in enterprise class IT and product engineering services and software solution and **the functional profile are similar**, therefore the Ld. AR sought time to file the information regarding functional profile of Systango Technology Ltd after downloading the same from the net.

13. On the other hand, Ld. DR did not raise any objections to the said submission of the Ld. AR and the Tribunal has permitted the assessee to file the director's report of Systango Technology Ltd. The paper book containing director's report of Systango Technology Ltd. was filed by the assessee on 25.06.2025 and copy of which supplied to the Ld. DR. We have examined the said report and it is not clear whether the said photocopy is duly authenticated or certified documents with respect to the

functional profile of the Systango Technology Ltd. Moreover on perusal of pages 8 & 9 of the paper book containing director's report of Systango Technology Ltd., nothing is discernable about the functional profile of the Systango Technology Ltd. In these circumstances, we have asked the Ld. AR and Ld. DR if the said report without any detail of the functional profile of Systango Technology Ltd. can be considered to find out the utility of Systango Technology Ltd. as one of the comparable in the transfer pricing study by the TPO. Ld. AR on behalf of the assessee submitted that the said report should be considered and the director's report in the form of 9 pages be considered and Systango Technology Ltd. be removed from the comparables which will result into the profit margin which will be less than the profit margin arrived for determining the ALP. Ld. DR on the other hand opposed to the use of the said undocumented or unauthenticated director's report and has opposed the submission of the Ld. AR.

14. The question before us is whether the comparable study for arriving the ALP by using CUP method by the assessee was rightly rejected by the TPO or the comparable used in its Transfer Pricing Study by the TPO while using the TNMM method was correct in the absence of any functional profile of Systango Technology Ltd. as the same is not discussed in the transfer pricing study relied by the TPO? Since the assessee in its **transfer pricing study** has not discussed any empirical or documentary material, therefore the Ld. TPO rejected the TP study of the

assessee. On the other hand, the TP study of Ld. TPO also suffers from lack of proper empirical and documentary analysis in respect of Systango Technology Ltd.

15. In these circumstances, we are of the considered opinion that the matter needs to be restored to the file of Ld. TPO for carrying out the necessary analysis of the functional profile of Systango Technology Ltd. The AO/TPO may collect relevant document establishing functional profile from the Systango Technology Ltd exercising authority u/s 133(6) of the Act. If the functional profile and financial status of Systango Technology Ltd is found comparable to that of the assessee, only then the same may be considered otherwise, the TPO may consider the remaining comparable in its transfer pricing study as find mentioned in the para 3.4 of the order of the Ld. DRP is extracted below:-

*i) The selection of the samples for calculation of comparable net margins for TNMM method is incorrect:-*

<i>Sr. No.</i>	<i>Name of comparable company</i>	<i>OP/OC</i>	<i>OP/OR</i>
1.	<i>Celstream Technologies Pvt. Ltd.</i>	<i>-15.07</i>	<i>-17.74</i>
2.	<i>Hurix Systems Pvt. Ltd.</i>	<i>4.04</i>	<i>3.88</i>
3.	<i>Data Collection Infotech (India) Pvt. Ltd.</i>	<i>9.85</i>	<i>8.97</i>
4.	<i>Systango Technologies Ltd.</i>	<i>26.56</i>	<i>20.99</i>
	<i>Average</i>	<i>6.34</i>	<i>4.025</i>

16. For these reasons, we are of the considered opinion that Ld. TPO has arrived at ALP while using the data pertaining to the financial function of Systango Technology Ltd. without any detail of functional efficiency /comparability of Systango Technology Ltd. with that of the assessee. For these reasons, the matter is restored to the file of Ld. TPO with the direction for consideration of SystangoTechnology Ltd. as a valid comparable for arriving at ALP of the international transaction in dispute. The TPO shall bear in mind and follow the directions and observations made by us in this order and assessee be given effective opportunity of hearing before deciding the question of ALP, afresh.

17. In the result, the appeal is accordingly allowed for statistical purposes in above terms.

Order pronounced in the open court on 25.09.2025.

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 25/09/2025  
Dhananjay, SPS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai