IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

IT(TP)A No. 253/Bang/2016
Assessment Year: 2011-12

The Dy. Commissioner of Income Tax, Circle – 3(1)(2), Bangalore.	Vs.	M/s GE India Export Pvt. Ltd., 42/1 & 45/14 Electronic City, Phase – II, Bangalore – 560 100. **PAN – AABCG 1257 B**
APPELLANT		RESPONDENT

IT(TP)A No. 293/Bang/2016
Assessment Year: 2011-12

M/s GE India Export Pvt. Ltd., 42/1 & 45/14 Electronic City, Phase – II, Bangalore – 560 100. **PAN – AABCG 1257**	Vs.	The Dy. Commissioner of Income Tax, Circle – 3(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sachit Jolly, Sr. Advocate & Ms. Viyushti Rawat, Advocate & Shri Aditya Matulli, Advocate
Revenue by	:	Dr. KJ Divya, CIT (DR)

Date of hearing	:	09.12.2025
Date of Pronouncement	:	27.01.2026

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These cross appeals at the instance of the assessee and revenue are directed against the assessment order passed by the Ld. TPO u/s 143(3) r.w.s. 144C(13) of the Act., in pursuant to the directions of the Ld. DRP issued u/s 144C(5) of the Act dt. 28.12.2015.

First, we take up assessee's appeal in IT(TP)A No. 293/Bang/2016

2. In the memo of appeal, the assessee has raised as many as 15 grounds of appeal challenging the addition made on the issue of Transfer pricing adjustment as well as on corporate issues, we for the sake of brevity and convenience are not inclined to reproduce here.

3. The assessee has also filed additional grounds of appeal dt. 30.10.2025, number as additional ground No. 6A, 16 and 17 on the issue of inclusion & exclusion of certain comparables in transfer pricing study while determining the ALP.

4. The assessee, in the application for admission of additional grounds, argued that the issues raised are arising from the appellate order (learned DRP) and for the adjudication of the same, there is no requirement for any fresh examination of facts. The issue raised in the additional grounds are fundamental to the resolution of the case and necessary to correctly assessee the tax liability. Consequently, the assessee's learned AR requested that the additional ground be admitted for adjudication.

5. On the other hand, the learned (DR) opposed the admission of the additional grounds of appeal, arguing that these grounds had not been raised before the lower authorities.

6. We have heard the rival submissions of both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT reported in 229 ITR 383 has held as under:

> *" Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.*

6.1 From the above, it is evident that the view limiting the Tribunal's jurisdiction to the issues arising solely from the appeal before the Commissioner (Appeals) is too restrictive to define the Tribunal's powers. The Tribunal undoubtedly has the discretion to permit or decline the raising of a new ground. Since the issue raised in additional grounds of appeal is necessary to consider for assessing the income of the assessee correctly, and in light of the judgment cited above, we admit the additional ground raised by the assessee. Having admitted the additional grounds of appeal, now we proceed to adjudicate specific issues raised

by the assessee through grounds of appeal and additional ground of appeal.

7 The issues raised by the assessee in Grounds Nos. 1 to 6 and Additional Grounds Nos. 6A, 16 & 17 are interconnected pertain to fresh economic analysis conducted by the TPO and inclusion and exclusion of certain comparables by the TPO and by the learned DRP for computing the ALP of international transactions carried out with the AE.

8. The brief facts of the case are that the assessee, a Private Limited company, is engaged in providing software development services and engineering design services, analytical support services and engineering consultancy services to it associated enterprises. The assessee divided its transactions in three segments namely:

1. SWD Division
2. GEM & GEMHQS Division
3. EA & SE Division.

9. There is no dispute regarding the ALP of the other two division being GEM & GEMHQS Division and EA & SE Division. The dispute is confined to extent of SWD division only. The assessee benchmarked its transaction under SWD segment adopting TNNM as most appropriate method and further PLI as OP/OC which arrived at 13.67%. The assessee for the comparability analysis selected 12 comparables.

9.1 The TPO during the assessment proceedings rejected 6 comparables out of 12 assessee's comparables. The assessee's comparables accepted by the TPO are detailed as under:

1. Mindtree Ltd

2. Persistent Systems Ltd
3. R S Software India Ltd
4. Sasken Communication Technology Ltd
5. Tata Elxsi Ltd
6. Larsen and Tourbro Infotech Ltd

10. Thereafter, the TPO applied own filter and selected 8 additional comparable companies. Thus, the TPO finally proposed 14 comparables to which assessee filed certain objections. Finally, the TPO selected 13 comparables which included 6 assessee's comparables. The final TPO's comparables are detailed as under:

1. Mindtree Ltd
2. Persistent Systems Ltd
3. R S Software India Ltd
4. Sasken Communication Technology Ltd
5. Tata Elxsi Ltd
6. Larsen and Tourbro Infotech Ltd
7. Acropetal Technology Ltd
8. eZest Solution Ltd
9. E-infochips Ltd
10. Evoke Technologies Pvt Ltd
11. ICRA Techno Analytics Ltd
12. Infosys Ltd
13. Persistent Systems & Solutions Ltd

11. The average PLI/margin of the comparable companies computed at 24.82% and after providing working capital adjustment, the adjusted margin of the comparables arrived at 23.76% by the TPO. Accordingly,

an upward TP adjustment was made by the TPO for Rs. 33,74,89,945/- only.

12. The aggrieved assessee preferred to file objection before the learned DRP.

13. Before the learned DRP, it was submitted that the TPO wrongly excluded the comparables, namely Helios & Matheson Information Technology Ltd and R Systems International Ltd. selected by the assessee by holding different accounting year ending. The assessee submitted that these companies are engaged in similar business, facing similar market and economic conditions operated during the same period in which assessee operated. Therefore, these companies cannot be excluded merely for the reason that accounting year ends on different dates.

14. The assessee further objected the selection of additional comparables companies selected by the TPO on different grounds. The assessee also suggested to include certain other comparable such as Silverline Technologies Ltd. contending the company is functionally comparables and satisfy all the filters.

15. The learned DRP after considering the TPO's finding and assessee's submission, rejected the assessee's ground of objection for inclusion of assessee's comparables namely Helios & Matheson Information Technology Ltd and R Systems International Ltd. As such, the learned DRP held that the TPO rightly rejected these two companies which have different financial year ending as in the case of different

accounting period, there may be different economic and market conditions. The learned DRP also rejected the assessee's ground of objection for inclusion of new comparable company, namely Silverline Technologies suggested by the assessee on the same reasoning that the financial year ending is different.

15.1 Furthermore, the learned DRP rejected the assessee's objection for exclusion of TPO's comparables namely Persistent Systems Ltd, Persistent Systems & Solutions Ltd and Sasken Technologies Ltd.

15.2 However, the learned DRP accepted the objection raised by the assessee with respect to certain comparables companies selected by the TPO which are detailed as under:

1. Acropetal Technology Ltd
2. eZest Solution Ltd
3. ICRA Techno Analytics Ltd
4. Infosys technologies Ltd
5. Tata Elxsi Ltd.

15.3 The learned DRP found that the company Acropetal Technology Ltd is engaged in providing services such ERP, IT infrastructure management, cloud services, greenhouse gas management etc which are functionally different from software development services. Further the said company is predominantly engaged in onsite activities. The breakup of export turnover is also not available. Hence, the ld. DRP directed the TPO to exclude the same from the comparable set.

15.4 With respect to e-Zest Solutions Ltd, the learned DRP found that the company is certified product engineering and software development

company. It is engaged in product engineering services as well as outsourced product development services. It specializes in the area such as product design & development, product feature enhancement, software product testing and having special expertise in emerging technologies such as Cloud, SaaS, Business intelligence and mobility. Hence, the said comparable is functionally different. Hence, the ld. DRP directed the TPO to exclude the same from the comparable set.

15.5 Regarding ICRA Techno Analytics Ltd, the learned DRP noted this company is also functionally different as it is engaged in providing software development & consultancy services, engineering services, web development & hosting, business analytics and BPO services. Likewise, the ld. DRP also observed that no segmental information is available. Hence, the ld. DRP directed the TPO to exclude the same from the comparable set.

15.6 Similarly, the learned DRP with respect to Infosys Technology Ltd. found that the said company has numerous patents and has also applied for several patents which are pending for approval. The said company has incurred huge research and development expenditure and having huge intangible assets in the form of intellectual property and brand. Therefore, the said company is functionally different.

15.7 Likewise, Tata Elxsi, it was observed that it is also functionally different for the reason that such company is also in the business of embedded product design, industrial design, visual computing labs etc. which are not comparable to software development.

15.8 In addition to the above, the learned DRP also directed to exclude certain comparable companies for which there was no dispute between the assessee and the TPO which are detailed as under:

1. Evoke Technologies Pvt
2. R S Software India Ltd
3. Mindtree Ltd

15.9 The company Evoke Technologies was directed to be excluded by the learned DRP for the reason that the margin of such company is abnormally low compared to the other companies in the comparable set. Likewise, R S Software India Ltd & Mindtree Ltd, the ld. DRP directed to exclude for the reason that the company is having significant on-site revenue and expenditure. Mindtree was also directed to be excluded on the ground of functional dissimilarities.

16. Being aggrieved by the direction of learned DRP both the assessee and the revenue are in appeal before us. The assessee and the revenue both are in appeal against the direction of learned DRP for exclusion Evoke Technologies Limited, R S Software India Private Limited and Mindtree Limited from the final comparable set. The revenue is in appeal in ITA No. 253/Bang/2016 and vide ground Nos. 1 to 6 and 8 of the memos of appeal.

17. The assessee is separately in appeal against its (assessee's) comparables companies, namely Helios and Matheson Information Technology Ltd., R Systems International Ltd. not included in the final set of comparables as well as in appeal against certain TPO's comparables, namely Persistent Systems and Solutions Limited,

Persistent Systems Limited and Sasken Communication Technologies Limited.

18. Whereas the revenue is separately in appeal against the direction of the ld. DRP for the exclusion of comparables which were included by the TPO.

19. The Ld. AR before us filed a paper book running from pages 1 to 789 and annual report compendium from pages 1 to 1104 and submitted that the ld. DRP excluded Evoke Technologies Limited, R S Software India Private Limited. and Mindtree Limited from the final comparable set. However, the said companies were accepted by both the TPO as well as the Assessee as comparables. In this respect, the ld. AR relied on the jurisdictional ITAT order in the case of M/s Fiber link Software Private Limited reported in IT(TP)A No. 239/Bang/2016 where in the ITAT Bangalore held that when both the Assessee and revenue seek inclusion for the companies, the ld. DRP cannot suo-moto exclude them from comparables. Hence, the learned AR prayed that the said comparables to be included for the benchmarking analysis.

19.1 Further the Ld. AR with respect to assessee's comparables companies namely Helios and Matheson Information Technology Ltd., R Systems International Ltd. and Silverline Technologies Ltd. which rejected by the Ld. TPO/DRP submitted these company were rejected solely on the ground that they do not follow the same accounting year as that of the assessee. The learned AR submitted that the functional comparability of these companies has not been disputed by the revenue authorities.

19.2 The Ld. AR submitted that the assessee has placed on record the quarter-wise financial results of the aforesaid companies in the Annual Report Compendium, which would enable the Ld. TPO to compute the margins for the relevant financial year. Reliance is placed on the judgment of the Hon'ble Delhi High Court in CIT v. McKinsey Knowledge Centre India Pvt. Ltd. reported in ITA No. 217/2014, judgment dated 27.03.2015, wherein it has been held that mere difference in accounting period is not a valid ground for rejection of a comparable when reliable financial data is available. The learned AR further submitted that these very comparables have been considered by this Hon'ble Tribunal in Marlabs Innovations (P.) Ltd. [2022] 139 taxmann.com 558 (Bangalore – Trib.), wherein, on an identical issue, the matter was remanded to the Ld. TPO with a direction to extrapolate the margins based on available quarterly results and thereafter consider as the comparables.

19.3 In view of the above facts and judicial precedents, the learned AR prays that the rejection of the aforesaid comparables merely on the ground of different accounting year ending be set aside and the same be directed to be considered in accordance with law.

19.4 Furthermore the Ld. AR before us requested for exclusion of Persistent Systems and Solutions Limited, Persistent Systems Limited and Sasken Communication Technologies Limited as these companies are engaged in development of software products with software development services. However, there is no segmental information available for the same. The assessee relied on judicial precedence of Harman Connected Services Corporation India (P.) Ltd. vs. Deputy

Commissioner of Income-tax reported in [2022] 140 taxmann.com 68 (Bangalore - Trib.)/[2022] 95 ITR(T) 1 (Bangalore - Trib.) dated [07-02-2022] wherein these three companies were excluded on the grounds that they are into diversified activities and there is no segmental information available for the same.

19.5 In addition to the above, the learned AR supported the finding of the learned DRP with respect to certain TPO's comparables namely Acropetal Technology, eZest Solution, ICRA Techno Analytics, Infosys Technology and Tata Elxsi which was directed to be excluded by the learned DRP on account of functional dissimilarities.

20. On the contrary, the learned DR strongly supported the directions of the Ld. DRP and the orders of the Ld. TPO. The learned DR submitted that the DRP is empowered to examine the correctness of the comparables selected by the TPO and is well within its jurisdiction to exclude companies which, in its considered view, are not appropriate comparables, even if such companies were initially accepted by the assessee or the TPO. It was contended that transfer pricing is not a matter of consent and the mere fact that both parties had earlier accepted certain companies would not prevent the DRP from excluding them if they are found to be functionally dissimilar or otherwise not comparable.

20.1 With regard to the comparables having a different accounting year ending, the learned DR submitted that Rule 10B(4) of the Income-tax Rules mandates the use of data relating to the same financial year in which the international transaction has been entered into. According to

the learned DR, unless complete and reliable data for the relevant financial year is available, companies following a different accounting year cannot be accepted as comparables. It was submitted that extrapolation of margins based on quarterly results may not always reflect the true financial position of the company and, therefore, the rejection of such comparables by the TPO/DRP was justified.

20.2 With respect to the assessee's plea for exclusion of Persistent Systems and Solutions Limited, Persistent Systems Limited and Sasken Communication Technologies Limited, the learned DR submitted that these companies have been consistently considered as comparables in several cases involving software development services. It was contended that merely because the companies are engaged in diversified activities, they cannot be excluded unless it is conclusively demonstrated that such activities materially affect their margins. The learned DR further submitted that the assessee has failed to establish that the absence of segmental information renders these companies incomparable.

20.3 The learned DR further supported the inclusion of the remaining comparables selected by the TPO and submitted that the DRP has already granted substantial relief to the assessee by excluding several companies on the ground of functional dissimilarity. Therefore, according to the learned DR, no further interference is warranted and the directions of the DRP deserve to be upheld.

21. We have heard the rival contentions of both the parties and perused the materials available on record. The assessee is engaged in providing software development services to its associated enterprises.

The dispute before us is confined only to the SWD segment. The assessee adopted TNMM as the most appropriate method with OP/OC as the PLI. Therefore, the core requirement is that the selected comparables should be functionally similar, operate under similar economic conditions, and should not possess significant intangibles, diversified operations, or abnormal risk profiles.

21.1 We first deal with the companies excluded by the learned DRP on functional grounds.

21.2 The learned DRP excluded Acropetal Technology Ltd. on the basis that it is engaged in diversified services such as ERP implementation, IT infrastructure management, cloud services and greenhouse gas management, and is also predominantly involved in onsite activities. Further, the absence of clear export revenue bifurcation renders it incomparable with a captive offshore software development service provider. We find no infirmity in this reasoning and uphold its exclusion. We further note that this company in the case of Microchip Technology (India) Pvt Ltd vs. ACIT reported in 119 taxmann.com 309 and in several other cases has been held as not comparable on similar ground by coordinate bench of this tribunal.

21.3 Similarly, eZest Solutions Ltd. was found to be engaged in product engineering and outsourced product development services with specialization in emerging technologies such as cloud, SaaS, business intelligence and mobility. These activities go much beyond routine software development services. In the absence of segmental data

isolating pure software development services, we agree with the DRP that this company is functionally dissimilar and liable to be excluded.

21.4 In respect of ICRA Techno Analytics Ltd., we note that it is engaged in a wide spectrum of activities including software development, consultancy, engineering services, web development, hosting, business analytics and BPO services. No reliable segmental information is available. In such circumstances, a mixed-function entity cannot be compared with the assessee's SWD segment. Hence, the exclusion of such comparable as directed by the ld. DRP is justified.

21.5 The learned DRP also excluded Infosys Technology Ltd. on the ground that it owns significant intangibles, has substantial brand value, incurs huge R&D expenditure and operates on a large scale which is entirely different from the assessee. We note that Infosys is a market leader with diversified operations, proprietary products, and assumes significant entrepreneurial risks. Consistent judicial view is that such giant companies cannot be compared with captive service providers. Therefore, its exclusion is fully justified. In this regard we find support and guidance from the decision of coordinate bench of this tribunal in the case of DCIT vs. Sharp Software Development (P.) Ltd. reported in 137 taxmann.com 308 wherein on identical reasoning it has been excluded from comparable set.

21.6 Likewise, Tata Elxsi Ltd. was excluded as it is engaged in embedded product design, industrial design, visual computing labs and other high-end services, which are not comparable to routine software

development services. We concur with the ld. DRP that functional dissimilarity warrants exclusion of this company.

Coming Suo Motu Exclusion of Companies Accepted by Both Parties

22. The learned DRP excluded Evoke Technologies Pvt. Ltd., R S Software India Ltd. and Mindtree Ltd., even though these companies were originally accepted by both the assessee and the TPO. The reason assigned was abnormal margins or onsite revenue profile.

23. We find merit in the contention of the assessee that when both parties have accepted certain companies as comparables, the DRP cannot exclude them suo-motu without strong and cogent reasons. Mere presence of onsite revenue or relatively low margins, by itself, is not a valid ground for exclusion unless it is demonstrated that such factors materially affect comparability. Following consistent Tribunal decisions, we hold that the ld. DRP was not justified in excluding these companies in the absence of any objection from either side. Accordingly, Evoke Technologies Pvt. Ltd., R S Software India Ltd. and Mindtree Ltd. are directed to be included in the final set of comparables.

Now coming to Rejection of Assessee's Comparables Due to Different Financial Year

24. We now turn to the assessee's grievance regarding rejection of Helios & Matheson Information Technology Ltd., R Systems International

Ltd. and Silverline Technologies Ltd. solely on the grounds that their accounting year does not coincide with that of the assessee.

24.1 It is an undisputed fact that the functional similarity of these companies has not been questioned by the TPO or the ld. DRP. The only reason for rejection is difference in accounting year. We note that the assessee has placed on record quarterly financial data which enables reliable computation of margins for the relevant financial year. Judicial precedents have consistently held that mere difference in accounting year cannot be a ground for rejection when reliable data is available for extrapolation. The objective of transfer pricing analysis is to arrive at a fair ALP and not to reject otherwise comparable companies on technical grounds.

24.2 The Hon'ble Delhi High Court in CIT v. McKinsey Knowledge Centre India Pvt. Ltd. (ITA No. 217/2014, dated 27.03.2015) has categorically held that difference in accounting year alone is not sufficient to reject a comparable.

24.3 We also note that this Tribunal in the case of Marlabs Innovations (P.) Ltd. reported in [2022] 139 taxmann.com 558 (Bangalore – Trib.) has, on identical facts, directed the Ld. TPO to compute margins based on available quarterly results and to consider such companies as comparables.

24.4 Therefore, we hold that Helios & Matheson Information Technology Ltd., R Systems International Ltd. and Silverline Technologies Ltd. should not be rejected merely due to different

accounting year endings. Accordingly, we direct the TPO to examine the quarterly data and compute margins for the relevant financial year and include them if they otherwise satisfy the comparability criteria.

24.5 The assessee has also sought exclusion of Persistent Systems Ltd., Persistent Systems & Solutions Ltd. and Sasken Communication Technologies Ltd. on the grounds that these companies are engaged in software product development along with software services and no reliable segmental data is available.

24.6 On careful consideration, we find that these companies are involved in diversified activities including development of proprietary software products, platforms and solutions, and assume higher risks than a captive service provider. In the absence of segmental information isolating pure software development services, their margins cannot be reliably compared with the assessee.

24.7 We note that this Tribunal in Harman Connected Services Corporation India (P.) Ltd. v. DCIT reported in [2022] 140 taxmann.com 68 / [2022] 95 ITR (T) 1 (Bangalore – Trib.), vide order dated 07.02.2022, on identical facts, has directed exclusion of Persistent Systems and Solutions Limited, Persistent Systems Limited and Sasken Communication Technologies Limited on the ground that they are functionally dissimilar and lack segmental information.

24.8 Consistent with settled judicial principles, we direct that Persistent Systems Ltd., Persistent Systems & Solutions Ltd. and Sasken

Communication Technologies Ltd. be excluded from the final set of comparables.

24.9 In view of the above discussion, we hold that Companies functionally dissimilar, owning significant intangibles, engaged in diversified or product-based activities, or lacking segmental data are liable to be excluded. Companies accepted by both the assessee and the TPO cannot be excluded suo motu by the ld. DRP without compelling reasons. Mere difference in accounting year is not a valid ground for rejection when reliable quarterly data is available.

24.10 Accordingly, the final set of comparables shall be reconstituted by the TPO in line with the above directions and the ALP shall be recomputed in accordance with law.

25. In the result, the ground of appeal of the assessee is allowed whereas the ground of appeal of the revenue is hereby dismissed.

26. The next issue raised by the assessee through Ground No. 7 and 9 pertaining to working capital adjustment, risk adjustment.

26.1 At the outset, we note the learned AR before us submitted that the assessee is not willing to press this issue. Hence, we dismiss the same as not pressed.

27. The next issue raised by the assessee through Ground No. 8 is that the AO/TPO/learned DRP erred in ignoring the fact that assessee is availing tax holiday under section 10A of the Act therefore no reason or

motive to shift profit outside India which is a basic intervention of TP provision.

28. We have considered Ground No. 8 wherein the assessee contends that since it was eligible for tax holiday deduction under section 10A of the Act, there was no motive to shift profits outside India and therefore the transfer pricing provisions ought not to have been invoked/ adjustment ought not to have been made.

28.1 We are unable to accept this contention. The scheme of Chapter X is clear that transfer pricing provisions are mandatory and get attracted the moment there is an "international transaction" between associated enterprises. Section 92(1) of the Act provides in unequivocal terms that any income arising from an international transaction shall be computed having regard to the arm's length price; the provision does not carve out any exception for undertakings claiming deduction under section 10A of the Act. The requirement of determining ALP is thus a statutory command and not dependent upon the Revenue establishing a tax avoidance motive in a given case.

28.2 Further, the argument that "absence of motive" should exclude application of TP provisions has been specifically negated by the Special Bench in *Aztec Software & Technology Services Ltd.* Reported in 107 ITD 141 wherein it was held that it is not a legal requirement for the Assessing Officer to first demonstrate tax avoidance before invoking Chapter X. The object of Chapter X is to ensure that the taxable profits are computed on an arm's length basis in respect of controlled transactions; the provision operates as a computation mechanism, and

its application cannot be made contingent on subjective inquiries into motive.

28.3 We also note that the legislature has consciously addressed the very situation relied upon by the assessee. The proviso to section 92C(4) provides that no deduction under section 10A/10AA/10B (and certain other provisions) shall be allowed in respect of the amount of income by which the total income is enhanced on account of determination of ALP. This statutory embargo makes it evident that Parliament contemplated TP adjustments even in the case of tax-holiday units and, additionally, intended that the *increment* attributable to ALP adjustment should not enjoy the tax holiday, for the reason that such increment represents notional enhancement to align profits to arm's length and not necessarily profits "actually derived" from the eligible undertaking's operations.

28.4 In this view of the matter, the plea of the assessee that it had "no reason or motive" to shift profits, even if assumed to be factually correct, does not take the case outside the scope of Chapter X, nor does it dilute the obligation to benchmark international transactions and compute income having regard to ALP. The determination of ALP is to be done on the basis of prescribed methods, comparability and reliable data, and not on presumptions of revenue neutrality or absence of motive. Hence, the ground of appeal raised by the assessee is hereby dismissed.

29. The next issue raised by the assessee through Ground No. 10 of the appeal pertains to consideration plus and minus 5% for computation of ALP.

30. At the outset we note that the issue raised by the assessee is consequential in the nature. Hence, we dismiss the same as infructuous.

31. The next issue raised by the assessee through Ground Nos. 11, 12 and 13 pertain the grant of credit for prepaid taxes, tax deducted at source and MAT credit.

32. We have considered the rival submissions and perused the materials available on record. The grievance of the assessee is that the AO has not correctly allowed credit for advance tax/self-assessment tax paid, TDS appearing in the relevant certificates/Form 26AS, and MAT credit available to the assessee, while computing the tax liability.

32.1 At the outset, we observe that grant of credit for prepaid taxes and TDS is a statutory right of the assessee, subject to verification of payment and correlation with the income offered to tax for the year under consideration. Similarly, MAT credit, once validly carried forward and eligible, is required to be allowed in accordance with the provisions of law after due verification of records.

32.2 We find that these issues are largely factual in nature and require verification of challans, TDS certificates, Form 26AS, and records relating to MAT credit entitlement and carry forward. The assessee has contended that all necessary evidences have been furnished or are capable of being furnished before the AO. In our view, denial of such credits without proper verification is not sustainable. Accordingly, we allow Ground Nos. 11, 12 and 13 for statistical purposes and direct the

AO to verify the claim of advance tax/self-assessment tax paid, verify the TDS claimed with reference to Form 26AS and supporting certificates, and verify the eligibility and quantum of MAT credit in accordance with law, and thereafter grant appropriate credit to the assessee as per the provisions of the Act, after affording due opportunity of being heard to the assessee. Thus, Ground Nos. 11, 12 and 13 are allowed with the above directions.

32.3 The next issue raised by the assessee through Ground No. 14 and 15 pertain to levy of interest under 234A, 234B and 234C of the Act and initiation of penalty proceeding under section 271(1)(c) of the Act which are either consequential or premature. Hence we dismiss the same as infructuous.

33. In the result, the appeal of the assessee is hereby partly allowed for statistical purposes.

Coming to Revenue's appeal in IT(TPA)A NO. 253/Bang/2016

34. The issue raised by the Revenue through Ground No. 1 to 6 pertains to exclusion of TPO's comparables by the learned DRP.

35. At the outset, we note that issues raised by the Revenue through caption grounds of appeal have been adjudicated along with the assessee grounds of appeal in IT(TP)A No. 293/Bang/2016. The relevant Grounds of appeal raised by the Revenue have been adjudicated by us vide paragraph Nos. 21 to 25 of this order, wherein we have decided the

issue favouring the assessee and against the Revenue. Hence, the grounds of appeal raised by the revenue are hereby dismissed.

36. The issues raised by the Revenue through Ground Nos. 7 and 10 are general grounds which do not require any separate adjudication. Hence, we dismiss the same as infructuous.

37. The issue raised by Revenue through Ground Nos. 8 & 9 is whether the learned DRP right in holding that the expenses reduced from the export turnover is required to be reduced from total turnover.

38. The relevant facts are that assessee claimed a deduction u/s 10A of the Act to the tune of Rs. 40,55,19,511. While computing the said deduction, assessee excluded an expense of telecommunication amounting to Rs. 1,95,28,265/- from export turnover as well as from total turnover. The assessee also furnished a certificate in Form No. 56F, duly issued by a Chartered Accountant, in support of the claim.

39. The Ld. AO rejected the claim of the assessee and held that, in terms of clause (iv) of Explanation 2 to section 10A, the telecommunication expenses are required to be excluded only from the export turnover. The Ld. AO further contended that there is no corresponding provision under section 10A of the Act for the exclusion of such expenses from total turnover and, accordingly, added back the telecommunication expenses to the total turnover while computing the deduction.

40. Aggrieved by the order of the Ld. AO, the assessee raised objection before the Hon'ble DRP.

41. Before the ld. DRP, the assessee submitted that the AO erred in not reducing the telecommunication expense from the total turnover for computing deduction u/s 10A of the Act.

42. The Ld. DRP upheld the contention of the assessee by relying on the Hon'ble jurisdictional HC decision in the case of CIT Vs Tata Elxsi Ltd reported in 349 ITR 98 wherein the Hon'ble HC affirmed the view that if any expense is excluded from the export turnover, the same shall be excluded from total turnover. The Hon'ble DRP directed the AO to exclude the expenses from total turnover also for computation of deduction u/s 10A of the Act.

43. Aggrieved by the direction of the learned DRP, the revenue is in appeal before us.

44. The learned DR before us relied upon the order of the AO submitted that the expenses excluded from export turnover should not be excluded from total turnover while computing deduction under the relevant provision. It was contended that the statute specifically defines "export turnover" and does not provide for a corresponding exclusion from "total turnover". Therefore, according to the learned DR, the action of the Assessing Officer in restricting the deduction was justified and calls for no interference.

45. On the other hand, the Ld. AR of the assessee submitted that the said issue is now settled by the decision of Hon'ble Supreme Court in the case of Commissioner of Income-tax, Central - III vs. HCL Technologies Ltd. reported in [2018] 93 taxmann.com 33 (SC)/[2018] 255 Taxman 313 (SC)/[2018] 404 ITR 719 (SC)/[2018] 302 CTR 191 (SC)[24-04-2018] where it has been held that expenses excluded from export turnover ought to be excluded from total turnover also, otherwise, any other interpretation makes the formula absurd. Hence the deduction shall be allowed from total turnover as well.

46. We have heard the rival contentions of both the parties and perused the materials available on record. The issue for our consideration is whether telecommunication expenses, which have been excluded from export turnover while computing deduction under section 10A of the Act, are also required to be excluded from total turnover.

46.1 We note that the Hon'ble DRP has rightly relied upon the judgment of the Hon'ble jurisdictional High Court in CIT v. Tata Elxsi Ltd., wherein it was categorically held that whatever is excluded from export turnover has to be excluded from total turnover as well, failing which the computation mechanism provided under section 10A of the Act would become unworkable and lead to distorted results.

46.2 Further, we find that the controversy is now squarely settled by the judgment of the Hon'ble Supreme Court in the case of CIT v. HCL Technologies Ltd. (supra), wherein the Hon'ble Apex Court has affirmed the view taken in Tata Elxsi Ltd. and held that expenses excluded from export turnover must also be excluded from total turnover, as any other

interpretation would render the formula prescribed under section 10A absurd.

46.3 Respectfully following the binding decision of the Hon'ble Supreme Court, we hold that the telecommunication expenses are required to be excluded from both export turnover and total turnover while computing the deduction under section 10A of the Act.

46.4 Accordingly, we find no infirmity in the directions issued by the Hon'ble DRP and direct the AO to compute the deduction under section 10A by excluding the telecommunication expenses from total turnover as well. Hence the ground of appeal raised by the Revenue is hereby dismissed.

47. In the result the appeal filed by the revenue is hereby dismissed.

48. In the combined result, the appeal of the assessee is partly allowed for statistical purposes whereas the revenue appeal is dismissed.

Order pronounced in court on 27th day of January, 2026

Sd/-	Sd/-
(SOUNDARARAJAN K)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 27th January, 2026

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore