

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखक सदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./IT(TP)A No.114/Chny/2024
निर्धारण वर्ष /Assessment Year: 2021-22

Excelacom Technologies Pvt. Ltd.,
No.5/D-5, SPICOT IT Park,
Navalur Post, Siruseri,
Kanchipuram – 603 103.
PAN: AADCA 0097R

The Income Tax Officer,
Vs. Corporate Ward-2(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. T. Banusekar, Advocate
: Mr. ARV Sreenivasan, CIT

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of Pronouncement

: 12.01.2026
: 11.02.2026

आदेश / ORDER

PER PADMAVATHY.S, A.M:

This appeal by the assessee is against the final order of the assessment passed by Assessment Unit (in short "AO") passed u/s. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 (in short "the Act") dated 23.10.2024 for Assessment Year (AY) 2021-22. The assessee raised the following grounds of appeal:

"1. For that the Directions of the Dispute Resolution Panel and consequently the order of the Assessing Officer is without jurisdiction, is contrary to law, facts and circumstances of the case and at any rate is opposed to the principles of equity, natural justice and fair play.

: - 2 - :

Legal Grounds

2. *For that the order of the Assessing Officer passed u/s.143(3) r.w.s.144C(3) r.w.s.144B of the Income Tax Act dated 23.10.2024 is bad in law.*

3. *For that the Assessing Officer completed the assessment vide order passed u/s.143(3) r.w.s.144C(3) r.w.s. 144B of the Income Tax Act dated 23.10.2024 without complying with the statutory requirements of law.*

PLI to be computed by using the operating margin before charging depreciation and amortization

4. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in rejecting the computation of PLI adopted by the appellant and computed the PLI of the appellant by considering the operating margin after charging depreciation and amortization.*

5. *For that the Dispute Resolution Panel and consequently the Assessing Officer failed to appreciate that the impact of software development on revenue would only be seen in the ensuing years.*

Upward adjustment of Revenue of Rs.4,05,93,671/-

6. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in making an upward adjustment of Rs. 4,05,93,671/- to the revenue of the appellant*

7. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in affirming the action of the Transfer Pricing Officer in rejecting the transfer pricing study conducted by the appellant.*

8. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in affirming the action of the Transfer Pricing Officer in conducting an independent search using different selection criteria without proper basis.*

9. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in not applying an upper turnover filter to select comparables.*

10. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in concluding that a functionally comparable company cannot be excluded merely on account of high turnover.*

11. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in applying an arbitrary criteria of employee cost to total cost more than 55% to filter comparables.*

:- 3 -:

12. For that the Transfer Pricing Officer, the Dispute Resolution Panel and consequently the Assessing Officer failed to appreciate that the appellant was in the business of software development and not in ITeS or BPO services.

13. For that the Dispute Resolution Panel erred in not adjudicating the ground that the following comparables were functionally dissimilar to the appellant:

- Anderson Business Solutions Pvt. Ltd.
- Sundaram Business Services Ltd.
- Tech Mahindra Business Services Ltd (Merged)
- Vitae International Accounting Services Private Limited
- Inteq BPO Services Pvt. Ltd.

Levy of interest u/s.234B

14. The appellant objects to the levy of interest u/s.234B of the Income Tax Act.

PRAYER

For these grounds raised and such other grounds that may be raised, may be altered, amended or modified, with the leave of the Hon'ble Tribunal before or during the hearing of the appeal, it is most humbly prayed that the Hon'ble Tribunal may be pleased to:

- a) *Quash the assessment order passed u/s. 143(3) r.w.s. 144C(3) r.w.s. 1448 of the Income Tax Act dated 23.10.2024 and/or*
- b) *Delete the upward adjustment of Rs.4,05,93,671/- to the revenue of the appellant and/or*
- c) *Pass such other orders as the Hon'ble Tribunal may deem fit.”*

2. The assessee is a subsidiary of Allfon LLC, who holds 50.03% of the paid up share capital in the assessee company. The assessee as per the transfer pricing study report (TPSR) is engaged in the business of providing telecoms products solution, consulting services and professional services. The assessee filed a return of income for A.Y 2021-22 on 01.02.2022 declaring loss at Rs.3,37,58,584/- (being unabsorbed depreciation). The case selected for scrutiny and the statutory notices were duly served on the assessee. The A.O

:- 4 -:

made a reference to the TPO to determine the Arms Length Price (in short "ALP") of the international transaction the assessee has entered into with its associated enterprises. The TPO made a TP adjustment of Rs. 4,05,93,671/-. The A.O passed the draft assessment order incorporating the TP adjustment. Aggrieved, the assessee raised objections before the Disputes Resolution Panel (DRP). The DRP rejected the objections and the A.O passed the final assessment order pursuant to the directions of the DRP against which the assessee is in appeal before the Tribunal.

3. In the TPSR, the assessee chose itself as the tested party and as per the Form-3CED filed by the assessee following is international transaction entered into by the assessee during the year under consideration:

4. **Associated Enterprises & details of International Transactions:**

As per Form 3CEB filed by the assessee the following are the international transactions entered into by the company during the financial year 2020-21:

S.No	Nature of the Transaction	Name of the AE	Amount (Rs)	MAM
1	Sale of services	Allfon LLC, USA	259212831	TNMM
	Total		25,92,12,831/-	

4. In the TPSR, the assessee has applied transaction net margin method (TNMM) as the most appropriate method (MAM) to determine the ALP and cash operating margins/cash operating cost i.e., the depreciation and amortization expenses were excluded for the purpose of profit level indicator (PLI). The assessee chose 15 comparables as listed below:

:- 5 :-

PLI Computation - Comparable Companies		
Company Name	OM/OC	Ranking
Ideavate Solutions Pvt. Ltd.	2.28%	1
Rheal Software Pvt. Ltd.	3.01%	2
D R C Systems India Ltd.	5.41%	3
Kireeti Soft Technologies Ltd.	7.25%	4
Acro Technologies (India) Pvt. Ltd.	8.67%	5
G S S Infotech Ltd.	8.98%	6
Toxsi Technologies Pvt. Ltd.	9.98%	7
Indianic Infotech Ltd.	12.50%	8
Silgate Solutions Ltd.	16.17%	9
F C S Software Solutions Ltd.	18.89%	10
True Sparrow Systems Pvt. Ltd.	19.91%	11
I D S Infotech Ltd.	34.86%	12
Savitriya Technologies Pvt. Ltd.	37.25%	13
C G-V A K Software & Exports Ltd.	40.98%	14
Athena Global Technologies Ltd.	126.00%	15
35th Percentile		8.98%
65th Percentile		18.89%

5. The assessee computed its PLI as under:

PLI Computation - Assessee Company

Particulars	Amount (In INR)
Income	
Revenue from operations	25,92,12,831
Total Income	25,92,12,831
Expenditure	
Employee Benefit Expenses	18,36,46,117
Other Expenses	4,04,71,061
Total Expenditure	22,41,17,178
Operating Profit Margin (OM)	3,50,95,653
Operating Cost (OC)	22,41,17,178
OM / OC	15.66

6. Since, the margin of the assessee is within 35th & 65th percentile, the assessee concluded that the international transactions are within arm's length. The TPO rejected eleven of the comparables chosen by the assessee and conducted independent search for comparables. The final list of comparables considered by the TPO is as under:

:- 6 :-

S.NO.	NAME OF THE COMPANY	WT. AVG. OF OP/OC
1	I Services India Pvt. Ltd.	1.34
2	Kcube Consultancy Services Pvt. Ltd.	2.14
3	Ideavate Solutions Pvt Ltd	2.28
4	Datascribe Infotech Pvt. Ltd.	8.21
5	Anderson Business Solutions Pvt. Ltd.	9.61
6	Designed Products Ltd.	11.78
7	Sundaram Business Services Ltd.	11.84

8	Cheers Interactive (India) Pvt. Ltd.	11.93
9	E Care India Pvt. Ltd.	18.14
10	Tech Mahindra Business Services Ltd. [Merged]	18.86
11	Integra Software Services Pvt. Ltd.	22.36
12	Vitae International Accounting Services Pvt. Ltd.	28.16
13	Inteq B P O Services Pvt. Ltd.	29.93
14	IDS Infotech Ltd	34.86
15	C G-V A K Software & Exports Ltd.	40.98
16	T T E C India Customer Solutions Pvt. Ltd.	57.01
17	Athena Global Technologies	126.00
	35TH PERCENTILE (7th)	11.78
	65TH PERCENTILE (12th)	28.16
	MEDIAN	18.14

:- 7 -:

7. The TPO recalculated PLI of the assessee as under:

Particulars	Amount (in INR)
Revenue from operations	25,92,12,831
Total Operating income	25,92,12,831
Total Expenses	25,56,34,508
Less: Non-Operating Expenses	
Foreign exchange rate variation loss (net)	17,38,239
Bank Charges	1,00,018
Other Expenses	7,000
Rates and Taxes	17,030
Operating Cost	25,37,72,221
Operating Profit	54,40,610
Operating Profit to Cost	2.14%

8. The TPO issued a show cause notice to the assessee as to why the TP adjustment cannot be made towards the difference between the PLI margin of 2.14% and the margin of comparables of 18.14%. The assessee raised objection stating that the revised PLI computation of the TPO has included depreciation as an operating expenses which is not correct. The assessee further submitted that the depreciation is treated as non-operating expense by the assessee since in-house developed software on which the depreciation is claimed has not yielded any operating profit to the assessee during the year under consideration. The assessee therefore submitted that depreciation should be excluded for the purpose of computing the PLI. The TPO however did not accept the submissions of the assessee to hold that the software developed in house by the assessee is for use in day to day functions of the assessee and is therefore it is part of normal operations. The TPO further

:- 8 -:

referred to the definition of operating expenses as per Rule 10TA(j) to hold that the operating expenses includes depreciation.

9. The TPO also rejected the submissions of the assessee with regard to inclusion of certain comparables to arrive at the following final list of comparables:

S.NO.	NAME OF THE COMPANY	WT. AVG. OF OI/OC
1	Ideavate Solutions Pvt Ltd	0.63
2	I Services India Pvt. Ltd.	1.34
3	Kcube Consultancy Services Pvt. Ltd.	2.14
4	Datascribe Infotech Pvt. Ltd.	8.21
5	Anderson Business Solutions Pvt. Ltd.	9.61
6	Designed Products Ltd.	11.78
7	Sundaram Business Services Ltd.	11.84
8	Cheers Interactive (India) Pvt. Ltd.	11.93
9	E Care India Pvt. Ltd.	18.14
10	Tech Mahindra Business Services Ltd. [Merged]	18.86
11	Integra Software Services Pvt. Ltd.	22.36
12	Vitae International Accounting Services Pvt. Ltd.	28.16
13	Inteq B P O Services Pvt. Ltd.	29.93
14	IDS Infotech Ltd	30.25
15	C G-V A K Software & Exports Ltd.	33.95
16	T T E C India Customer Solutions Pvt. Ltd.	57.01
17	Athena Global Technologies	60.89
	35TH PERCENTILE (7th)	11.78
	65TH PERCENTILE (12th)	28.16
	MEDIAN	18.14

:- 9 -:

10 Accordingly, the TPO computed the TP adjustment as below:

Proportionate Adjustment		
Sr. No.	Particulars	Amount(in Rs.)
1	Operating Income(A)	25,92,12,831
2	Operating Cost(B)	25,37,72,221
3	Operating profit ©	54,40,610
4	Assessee's Profit Margin (D)	2.14
5	AE Sale (E)	25,92,12,831
6	Proportionate of AE Sale to OI in % (F)=E/A*100	100.00
7	comparable Margin (G)	18.14
8	Expected Profit According to TPO (H)=B*G/100	4,60,34,281
9	ALP of AE Sale (I)=B+H	29,98,06,502
10	Proportionate of AE Sales (J)= I*F	29,98,06,502
11	Adjustment=J-E	4,05,93,671

EXCLUSION OF DEPRECIATION FROM OPERATING COST:

11. The Ld. Authorized Representative (AR) of the assessee with regard to considering depreciation as operating expense submitted that the assessee has developed an in-house project which is a customer relationship management software and the cost incurred to develop the software from 2018 onwards was accumulated by the assessee and capitalized only during the year under consideration. The Ld. AR further submitted that the depreciation charged on the said capitalized software had a huge impact to the tune of Rs. 2,48,61,258/- which is almost 79% of the total depreciation charged by the assessee. The Ld. AR further submitted that the deployment of the software started having effect on the revenue only from AY 2023-24, which is substantiated from the following table:

:- 10 -:

<i>Assessment year</i>	<i>Revenue from operations (in INR)</i>
2020 – 21	25,79,43,376/-
2021 – 22 (Impugned year)	25,92,12,831/-
2022 – 23	35,57,32,486/-
2023 – 24	48,52,78,625/-
2024 – 25	54,19,31,187/-

12. The Ld. AR accordingly submitted that the above table clearly demonstrates that there is a clear link between the utilization of software and the revenue and considering the depreciation as operating expenses when the impact is not resulted in any revenue would skew the margins of the assessee. The ld. AR also submitted that the assessee has not taken a plea to compute the operating margins using the cash PLI for A.Y 2023-24 onwards i.e., year from when the assessee has actually had derived benefit from the deployment of the software. The Ld. AR therefore argued that the A.O is not correct in including the depreciation while re-computing the PLI of the assessee. The Ld. AR in this regard placed reliance on decisions of the coordinate bench in the case of Aerzen Machines (India) (P.) Ltd. v. ACIT [2021] 127 staxmann.com 358 (Ahmedabad-Trib) and Erhardt + Leimer (India) (P.) Ltd. v. ACIT [2017] 78 taxmann.com 258 (Ahmedabad – Trib.).

13. The Ld. Departmental Representative (DR), on the other hand, vehemently argued that the operating expenses have been defined under the rules to include specifically depreciation and therefore, the same cannot be excluded. The Ld. DR further argued that the quantum increasing in the revenue cannot be the deciding factor for exclusion/inclusion of depreciation and therefore, the plea of the assessee on the basis of increase in the revenue cannot be entertained. The Ld. DR also argued that the assessee has claimed

:- 11 -:

depreciation on the basis of the software being put to use which goes to prove that the same is used in the day to day operations of the assessee and accordingly exclusion of the same cannot be allowed.

14. We have heard the parties, and perused the material available on record. The assessee has developed in-house software and has accumulated towards the same from 2018. The assessee has deployed the software during the year under consideration and in the books of accounts claimed depreciation on the same. However for the purpose of computing the PLI, the assessee has treated the depreciation as non-operating i.e. cash margin is considered for the purpose of PLI. The argument of the assessee in this regard is that the use of software has not resulted in any impact in the revenue from operations being the first year of deployment. Accordingly the assessee is contending the depreciation is to be treated as extraordinary item to be excluded from the operating expenses for the purpose of benchmarking. On the other hand the contention of the revenue is that the very basis of claiming depreciation is that the asset is being put to use in the regular course of business and therefore excluding the same for PLI purpose is not correct. The revenue further contends that the Rule specifically provides that the depreciation is to be part of operating cost and therefore excluding depreciation would mean that the PLI computation is not as per the Rules. In this regard it is relevant to note here that the in-house software developed and deployed is customer relationship software and as per the submissions the purpose of the software is to improve the customer relationship which would ultimately result in increasing the revenue of the assessee. From the perusal of the records we notice that the overall depreciation claimed during the year Rs.3,15,17,330/- out of which Rs.2,48,61,255/- pertains to the software. During the course of hearing the ld AR drew our attention to the below table

-: 12 -:

indicating the depreciation as percentage of profit before depreciation of the comparables to submit that the average depreciation percentage of comparables is 15.1% whereas the assessee's depreciation (including depreciation in software) is 83.39%. Accordingly it is argued that depreciation on software is skewing the results of bench marking and therefore should be treated as an extraordinary item for the year under consideration.

COMPARISON OF PERCENTAGE OF DEPRECIATION TO PROFIT BEFORE DEPRECIATION BETWEEN THE APPELLANT AND COMPARABLES

S.NO.	NAME OF THE COMPANY	PLI	FY Ended 31.03.2021			FY Ended 31.03.2020			FY Ended 31.03.2019		
			Depreciation	Profit before Depreciation	%	Depreciation	Profit before Depreciation	%	Depreciation	Profit before Depreciation	%
1	Ideavate Solutions Pvt.Ltd	0.63	21,12,575	10,22,55,590	2%	23,14,025	15,27,06,327	1.52%	22,62,544	75,00,578	30.16%
2	I Services India Pvt. Ltd.	1.34	66,40,590	1,63,32,189	41%	82,89,459	1,27,86,492	25.73%	11,71,981	49,50,736	23.67%
3	Kcube Consultancy Services Pvt. Ltd.	2.14	15,88,761	(4,51,300)	-352%	9,63,277	24,26,819	39.69%	7,36,952	25,49,757	28.90%
4	Datascribe Infotech Pvt. Ltd.	8.21	19,96,304	60,00,372	33%	29,60,823	1,03,07,607	28.72%	36,60,613	47,22,455	77.52%
5	Anderson Business Solutions Pvt. Ltd.	9.61	10,20,132	52,14,482	20%	8,79,959	1,08,57,160	8.10%	13,05,967	65,34,095	19.99%
6	Designed Products Ltd.	11.78	31,65,143	3,89,67,668	8%	33,14,236	2,69,63,385	12.29%	24,87,821	1,75,21,452	14.20%
7	Sundaram Business Services Ltd.	11.84	75,12,000	5,96,94,000	13%	62,20,000	5,63,15,000	11.05%	71,63,000	4,86,55,000	14.72%
8	Cheers Interactive (India) Pvt. Ltd.	11.93	1,06,53,820	11,69,21,902	9%	95,44,680	4,01,06,925	23.80%	84,51,209	3,49,17,890	24.20%
9	E Care India Pvt. Ltd.	18.14	46,49,602	10,87,46,537	4%	44,29,498	7,96,11,921	5.58%	58,48,249	10,25,04,460	5.71%
10	Tech Mahindra Business Services Ltd. [Merged]	18.86	74,20,00,000	2,30,80,00,000	32%	65,00,00,000	1,83,10,00,000	35.50%	24,30,00,000	1,35,30,00,000	17.96%
11	Integra Software Services Pvt. Ltd.	22.36	4,76,96,736	44,88,87,506	11%	2,96,87,617	36,71,74,797	8.09%	3,37,04,306	24,83,41,592	13.57%
12	Vitae International Accounting Services Pvt. Ltd.	28.16	75,23,378	6,57,17,991	11%	65,34,895	7,99,86,380	8.17%	60,88,243	7,48,25,000	8.14%
13	Inteq B P O Services Pvt. Ltd.	29.93	4,55,665	19,37,892	24%	3,14,985	1,56,02,470	2.02%	3,63,569	98,21,819	3.70%
14	IDS Infotech Ltd	30.25	1,47,98,697	24,37,31,108	6%	1,50,52,346	8,59,65,937	17.51%	1,77,72,177	7,11,31,113	24.99%
15	C G-V A K Software & Exports Ltd.	33.95	98,17,345	9,03,94,779	11%	85,72,664	5,16,67,375	16.59%	34,03,283	5,15,06,859	6.61%
16	T T E C India Customer Solutions Pvt. Ltd.	57.01	15,16,10,000	1,30,54,60,000	12%	17,24,60,000	1,29,75,20,000	13.29%	7,55,79,549	1,04,86,90,524	7.21%
17	Athena Global Technologies Limited	60.89	28,70,000	5,09,30,000	6%	22,11,000	10,02,77,000	2.20%	24,40,000	1,11,47,000	21.89%
AVERAGE					15.1%*			15.28%			20.18%
Excelacom Technologies			3,15,17,330	3,52,58,977	89.39%	77,21,204	3,37,21,974	22.90%	98,95,060	2,66,39,993	37.14%
Out of which Software Depreciation			(2,48,61,255)								
Dep % without software depreciation			66,56,075	3,52,58,947	18.88%						

* Excludes depreciation percentage of Kcube Consultancy Services Pvt. Ltd. to avoid skewed data

15. With regard to the issue of whether any extraordinary items could be adjusted for the purpose of determining the ALP under TNMM we will look at the relevant Rule 10B(1)(e) and Rule 10B(3) of the Rules which read as under

"Rule 10B - Determination of arm's length price under section 92C.

(1)(a) to (d) *****

(e) transactional net margin method, by which,-

(i) the net profit margin realised by the enterprise from an international transaction or a specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

:- 13 -:

(ii) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(iv) the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);

(v) the net profit margin thus established is then taken into account to arrive at an arms length price in relation to the international transaction or the specified domestic transaction.”

(3) An uncontrolled transaction shall be comparable to an international transaction ⁹⁶[or a specified domestic transaction] if—

- (i) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or*
- (ii) **reasonably accurate adjustments can be made to eliminate the material effects of such differences.***

(emphasis supplied)

16 A combined perusal of the above rules makes it clear that for the purpose of comparison with uncontrolled transaction a reasonable accurate adjustment towards difference which could materially affect the net profit margin is permitted. Our attention was drawn to the following observations of the Hyderabad Bench of the Tribunal in the case of Qual Core Logic Ltd. v DCIT [2012] 22 taxmann.com 4 (Hyderabad) in this regard –

:- 14 -:

“57. We have heard both the parties on this and perused the material on record. In the present appeal, ALP of transactions carried was to be determined by comparing net profit of the taxpayer (tested party) with mean net profit of comparables. Only receipts and expenditure, having connection with international transactions, were required to be taken into account. Any receipt or expenditure having no bearing on price or margin of profit could not be taken into consideration. It is evident from statutory provisions that it is nowhere provided that deduction of depreciation is a must. Depreciation can be taken into account or disregarded in computing profit depending upon the context and purpose for which profit is to be computed. There is no formula which would be applicable universally and in all circumstances. "Net profit" used in Rule 10B can be taken to mean commercial profit. But depreciation in such profit on commercial principles has to be the "actual" amount by which the assets of business got depleted between the two dates separated by a year. It cannot be depreciation under tax or companies rules or as per policy of the company. In the case in hand, Revenue authorities went wrong in disregarding the context and purpose for which the "net profit" was to be computed. Depreciation, which can have varied basis and is allowed at different rates, is not such an expenditure which must be deducted in all situations. It has no direct connection or bearing on price, cost or profit margin of the international transactions. Object and purpose of the transfer pricing to compare like with the like, and to eliminate differences, if any, by suitable adjustment is to be seen. Therefore, there was justification on the part of the assessee in pleading that profits be taken without deduction of depreciation as depreciation was leading to large differences in margins for various reasons. Contention that depreciation would depend upon type of technology employed, age and nature of machinery used, is quite well-founded. Above, along with size of enterprise and investment in plant/machinery were important factors to be taken into account for comparison and for computing profit. There is considerable support for the contention raised on behalf of the assessee in the OECD Guidelines on Transfer Pricing. The claim of depreciation can lead to great difference in computing profits of comparables as depreciation is permitted depending upon nature of plant/machinery and year of use. Obviously there are differences between the machinery employed by the taxpayer and other comparable concerns which is reflected in amount and percentage of depreciation claimed. How this variation and difference could be ignored under TP Regulations is neither shown nor explained. The assessee has debited high amount/ratio of depreciation. Other enterprises have claimed depreciation at much lower amounts. Size of the assets besides the age of the assets of comparables was leading to difference in the profit margins and in mean margin. On the contrary, claim of depreciation is eating up large chunk of profit in the case of the taxpayer. The CIT(A) has not said a word on "asset" employed and "risks" suffered by the tested party and the comparables. Thus, material differences needing suitable adjustment were ignored and a flawed analysis was carried even in appellate proceedings. Without considering

:- 15 -:

obvious material differences, the contention of the assessee to take profit without depreciation was rejected. This rejection is not sound in law. This ground is allowed. Accordingly, we direct the Assessing Officer to recompute the ALP.”

17. In assessee's case from the perusal of the table as extracted in the earlier part of this order it is factually established that the depreciation on software is materially affecting the profit margin of the assessee and it also establishes the fact that without the adjustment, the comparison with uncontrolled transaction will not be a proper bench marking exercise. It also substantiates the claim that the adjustment of depreciation is reasonably accurate considering that the depreciation as a percentage of profit before depreciation of the comparables is in the range of 15% and the assessee's after adjustment of the impugned depreciation is also in the range of 18%. The other reason as quoted by the assessee that the CRM software did not result in any benefit in terms of the increase in revenue is also supported by the fact that the assessee has stopped making adjustment towards depreciation on software once the same stopped materially affecting the net margins from AY 2023-24. In view of these discussions and considering the facts unique to the present case, we are of the view that there is merit in the contention that the depreciation on software which is materially affecting the net margin needs to be adjusted for the purpose of bench marking. We direct the TPO to recompute the PLI of the assessee accordingly.

EXCLUSIONS FROM COMPARABLES:

18. The Ld. AR prayed for exclusion of the following two companies from the final list of comparables considered by the TPO:

1. Tech Mahindra Business services Ltd.,
2. TTEC India Customer Solutions Pvt. Ltd.,

:- 16 -:

19. The Ld. AR submitted that the above two comparables need to be excluded on the basis of upper turnover filter since the turnover of the assessee is Rs. 25,92,12,831/- cannot be compared to the turnover of Rs.785.50 Cr. of Tech Mahindra Business Services Ltd. and Rs. 343.96 Cr. of TTEC India Customer Solutions Pvt. Ltd. The Ld. AR further submitted that it is a settled position that the upper turnover filter of 10 times/Rs. 200 Cr. is to be applied while selecting the comparables and therefore, the above two comparables which failed the test need to be excluded. The Ld. AR also prayed for exclusion of the following comparables on the ground of functional dissimilarity:

1. Anderson Business Solutions Pvt. Ltd.
2. Sundram Business Services Pvt. Ltd.
3. Tech Mahindra Business services Ltd.,
4. Vitae International Accounting Services Pvt. Ltd.,
5. Inteq BPO Services Pvt. Ltd.

20. The Ld. AR also presented the following table in support of the contention that the above comparables are functionally not similar:

Name of Comparables	Business of the comparable companies
Anderson Business Solutions Pvt. Ltd	The company is primarily engaged in providing back office accounting, book keeping & related data processing services. Page No.83 of the paper book (SCHEDULE 1 - A. Corporate Information forming part of the annual report)
Sundaram Business Services Ltd.	SBS offers accounting, tax, superannuation, mortgage, portfolio administration and other back office services to large and mid-size accounting firms, mortgage aggregators and investment companies in Australia, New Zealand, UK and India. Page No.84 of the paper book (NOTE - 1: Company Overview forming part of the annual report)
Tech Mahindra Business Services Limited [Merged]	Provides voice based call centre services to 'Hutchinson 3G UK Limited' 'TPG Telecom Limited' (formerly known as Vodafone Hutchison Australia Pty Limited), 'Hutchison 3G Ireland Limited' and Tech Mahindra Limited. Page No.85 of the paper book (1. Corporate Information forming part of the annual report)
Vitae International Accounting Services Private Limited	To carry on the business of processing data, handling back office functions and rendering IT Enabled Services to their clients abroad using computer software. Page No.86 of the paper book. (NOTE - 1: Company Overview forming part of the annual report)
Inteq BPO Services Private Limited	Name and Description of main services: Business Process Outsourcing NIC Code of the Service: 620 – Computer programming, consultancy and related activities Page No.87 of the paper book (Form No.MGT-9 – Extract of Annual Return which forms part of Annexure-I to the Board's report)

:- 17 -:

21. The Ld. AR submitted that though the functions of the assessee is treated as consulting, information technology and business process services, the assessee is actually in the business of rendering software development services and the said fact is acknowledged by the TPO (Page 1 of TPO order). The Ld. AR further submitted that the TPO has rejected the exclusion of the above comparables merely on the ground that the assessee in the TPSR has included these comparables without appreciating that the comparables are not functionally similar when the functions of the assessee is that of software development. The Ld. AR also submitted that the assessee during the course of proceedings before DRP during remand proceedings had submitted all evidences to support the claim that the indeed is engaged in rendering software development services which has not been appreciated by the lower authorities.

22. The Ld. DR on the other hand submitted that in the TPSR the assessee has not stated software development as its function and the assessee itself has included the above comparables in the TPSR. The Ld. DR further submitted that the assessee cannot raise a fresh plea completely changing the functional profile to pray for exclusion without proper benchmarking. Accordingly, the Ld. DR supported the orders of the lower authorities.

23. We have heard the parties, and perused the material available on record. The assessee is seeking exclusion of Tech Mahindra Business services Ltd and TTEC India Customer Solutions Pvt. Ltd on the ground that the turnover of the these comparables are significantly high when compared to the turnover of the assessee. From the perusal of the filters applied by the TPO (Page 6 of TPO order) we notice that the TPO has applied only the lower turnover filter of more than Rs.1 crore but has not applied any upper turnover.

:- 18 -:

The filters for selection of comparable companies is applied to identify a reasonable and reliable set of functionally similar entities for benchmarking the tested party and such filters must be applied having regard to the facts of each case to ensure meaningful comparability in terms of functions, assets and risks. Though there is no specific statutory rule prescribing thresholds, the judicial precedence have consistently been holding that the application of upper turnover filter is required while selecting the comparables since the turnover has an impact on the assets deployed and risks assumed. In the given case we notice that the turnover of Tech Mahindra Business Services Ltd. is Rs.785.50 Cr. and that of TTEC India Customer Solutions Pvt. Ltd is Rs. 343.96 Cr. as compared to Rs.25.92 Cr turnover of the assessee. Therefore there is merit in the submission that the comparables fail the upper turnover filter evolved over a period of time i.e. 10 times and also Rs.200 crores. Accordingly we direct the TPO to exclude the above 2 companies from the list of comparables.

24. With regard to exclusions sought by the assessee on the basis of functional dissimilarity, we notice that as per the TPSR the functions of the assessee are mentioned under the following categories -

- (i) Management Functions
- (ii) Strategic Management Functions
- (iii) Corporate Services
- (iv) Marketing/Business Development
- (v) Software Service Functions
 - a) Conceptualisation design of the product
 - b) Functional Specification and requirement analysis
 - c) Coding and Documentation
 - d) Project management
 - e) Quality Control
 - f) Testing
 - g) Acceptance and Development
 - h) Maintenance

:- 19 -:

25. During the course of hearing the Id AR fairly conceded that in the TPSR the functions of the assessee is wider and not restricted to software development. However it is argued that the exclusions now sought by the assessee cannot be denied merely for the reason that the assessee in the TPSR has included these comparables. We further notice from the perusal of the filters applied by the assessee as stated in the TPSR it is not coming out clearly as to the nature of functional filter applied and from the perusal of the TPO order it is noticed that the TPO has applied ITeS filter (page 6 of TPO order) for selecting comparables. We also notice that though the TPO has mentioned software development services as function of the assessee, while rejecting the exclusion sought by the assessee the TPO has not accepted the function of the assessee. It is a settled principle that the exclusion of comparables cannot be rejected only on the ground that the assessee has included the same in the TPSR. Therefore to that extent we see merit in the submissions of the Id AR. However it is relevant to notice that the benchmarking of the assessee in TPSR is based on the functions as listed herein above which is wider not restricted to software development services alone. It is also relevant to notice that the DRP has not considered the submissions of the assessee substantiating the fact that the assessee's income for the year under consideration is from rendering software development services. Considering the overall facts and circumstances, we are of the view that the issue of exclusion of comparables on the ground of functional dissimilarity needs to be examined afresh. Accordingly we remit the impugned issue back to the TPO with a direction to consider the exclusions sought by the assessee by calling for relevant details and decide in accordance with law. The assessee is directed to furnish the necessary details in support of the functions of the assessee and cooperate with the proceedings. It is ordered accordingly.

:- 20 -:

26. Since we have allowed the grounds raised on merits, the legal grounds have become academic and left open accordingly.

27. In result, the appeal of the assessee is allowed.

Order pronounced on 11th day of February, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)

न्यायिक सदस्य / Judicial Member

Sd/-
(पदमवती यस)
(Padmavathy.S)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 11th February, 2026.
EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF