

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2074/Bang/2024
Assessment Year: 2011-12

The Dy. Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.	Vs.	Analog Devices India Pvt. Ltd., Salarpuria Nova, No.1, Varthur Road, Nagavarpalya, Old Madras Road, C.V Raman Nagar, Bangalore - 560 093.  <b>PAN – AABCA 1873 F</b>
APPELLANT		RESPONDENT

CO No.25/Bang/2025
Assessment Year: 2011-12

Analog Devices India Pvt. Ltd., Salarpuria Nova, No.1, Varthur Road, Nagavarpalya, Old Madras Road, C.V Raman Nagar, Bangalore - 560 093.  <b>PAN – AABCA 1873 F</b>	Vs.	The Dy. Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar & Shri Nirmal Mathew, Advocates
Revenue by	:	Dr. Divya K.J, CIT (DR)

Date of hearing	:	27.01.2026
Date of Pronouncement	:	12.03.2026

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The present appeal and the CO have been instituted by the Revenue and the assessee respectively against the order of the Ld. CIT-A passed u/s 250 of the Act dt. 30.08.2024 for AY 2011-12. In the memo of appeal, the Revenue has raised as many as 17 grounds of appeal challenging the deletion of the addition made on the Transfer pricing adjustment, we for the sake of brevity and convenience, are not inclined to reproduce the same here.

2. The issues raised by the revenue in ground Nos. 1, 5, 6, 7, 9, 11, 13, & 17 are general in nature and require no separate and independent adjudication. Therefore, we dismiss the same as infructuous.

3. The issues raised by the revenue in Grounds Nos. 2,3,4,8,10,12, 14, 15 and 16 are interconnected, pertain to the inclusion and exclusion of certain comparables by the Ld. CIT(A) for computing the ALP of the international transactions carried out with the AE by the assessee.

4. The brief facts of the case on hand are that the assessee, a private limited company, is engaged in providing SWD services and Marketing and Sales Support Activities (MSS) to its AEs. The assessee benchmarked its international transactions under SWD Segment & MSS Segment by adopting TNMM as the most appropriate method. The assessee worked out the PLI as OP/TC for both segments, which arrived at 10.89% and 10.12% respectively.

5. The assessee for the comparability analysis of SWD segment for determining the ALP selected 13 comparables detailed as under:

- (i) Akshay Software Technologies Limited
- (ii) Bodhtree Consulting Limited
- (iii) Cat Technologies Limited
- (iv) Comp-U-Learn Tech India Limited
- (v) Helios & Matheson Information Technology Limited
- (vi) Maveric Software Limited
- (vii) Silverline Technologies Limited
- (viii) R S Software (India) Limited
- (ix) L G S Global Limited
- (x) Thinksoft Global Services Limited
- (xi) Quintegra Solutions Limited
- (xii) Compulink Systems Limited (Seg)
- (xiii) Acropetal Technologies Limited (Seg)

5.1 However, the TPO during the assessment proceedings rejected 11 comparables out of 13 assessee's comparables. The assessee's comparables accepted by the TPO are detailed as under:

1. R S Software (India) Private Limited.
2. Acropetal Technologies Limited (Seg)

5.2 Thereafter, the TPO applied own filters and selected 13 comparables which included 2 assessee's comparables. The final list of TPO's comparables is detailed as under:

1. Acropetal Technology Ltd (Seg)
2. eZest Solution Ltd
3. E-infochips Ltd
4. Evoke Technologies Pvt Ltd
5. ICRA Techno Analytics Ltd
6. Infosys Ltd

7. Larsen and Toubro Infotech Ltd
8. Mindtree Ltd
9. Persistent Systems and Solutions Ltd
10. Persistent Systems Ltd
11. R S Software India Ltd
12. Sasken Communication Technology Ltd
13. Tata Elxsi Ltd

5.3 The average PLI/margin of the comparables companies was computed after providing working capital adjustment, at 21.56%. Accordingly, an upward TP adjustment was made by the TPO for Rs. 6,62,30,979/- only to the total income of the assessee.

6. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A).

7. Before the Ld. CIT(A), the assessee submitted the TPO wrongly included the comparables namely Infosys Ltd, Larsen and Toubro Infotech Ltd, Persistent Systems Ltd, Sasken Communication Technologies Limited, Mindtree Ltd and Tata Elxsi Limited on account of High turnover.

7.1 The assessee further submitted that TPO wrongly included comparables namely Acropetal Technologies Limited, e-Zest Solutions Limited, E-Infochips Limited, ICRA Techno Analytics Limited, Persistent Systems and Solutions Limited due to functional dissimilarity, operated in multiple segments, high employee cost filter etc.

7.2 The assessee further contended that the TPO has wrongly excluded Akshay Software Technologies Ltd. citing the reason that the

company is engaged in IT services and not SWD services. However, the assessee was of the view that this comparable satisfies all the filters proposed by the TPO. Therefore, the same should be included in the list of comparable companies.

7.3 Accepting the contentions of the assessee, the Id. CIT(A) directed the exclusion of Acropetal Technologies Limited, e-Zest Solutions Limited, E-Infochips Limited, ICRA Techno Analytics Limited, Infosys Technologies Limited, Larsen and Toubro Infotech Limited, Persistent Systems and Solutions Limited, Persistent Systems Limited, Mindtree Limited, Sasken Communication Technologies Limited and Tata Elxsi Limited, and further directed the inclusion of Akshay Software Technologies Ltd. The List of Comparables after the order of the Id. CIT(A) was as follows:

- (i) Akshay Software Technologies Ltd.
- (ii) R S Software India Ltd
- (iii) Evoke Technologies Pvt Ltd

8. Aggrieved by the order of Ld. CIT(A), the Revenue preferred an appeal before us.

9. The Ld. DR before us through ground Nos. 8 & 10 submitted that the Ld. CIT(A) erred in excluding Infosys Ltd, Larsen and Toubro Infotech Ltd, Persistent Systems Ltd, Sasken Communication Technologies Limited, Mindtree Ltd and Tata Elxsi Limited on account of High turnover. The Ld. DR relied on the decision of ITAT in the case of M/s Yokogawa Technology Solutions India Pvt. Ltd. vs. DCIT in IT(TP)A No. 2328/Bang/2024, where the Tribunal held that while an upper turnover filter should be applied based on the assessee's turnover, but it

is not necessary that the limit must always be ₹200 crores. The Tribunal observed that fixing ₹200 crores as the only upper limit is neither required by law nor does it make any practical sense.

10. On the other hand, the Ld. AR before us submitted a written submissions running from page No. 1 to 41, charts running from pages 1 to 27 with details of comparables companies which ought to be excluded/included, case law compilations and orders of lower authorities. The assessee submitted that application of turnover filter is a relevant criterion in choosing the comparable as differences in scale of operations directly impacts profitability due to economies of scale. According to the Ld. AR, large companies enjoy cost efficiencies and market advantages which are not available to smaller entities due to average cost/unit. It was pointed out that the Assessee's turnover from software development services was Rs. 59.72 crores and, therefore, companies having significantly higher turnover ought to have been excluded. Reliance was placed on the decision of the Bangalore Bench of the Tribunal in Autodesk India (P) Ltd. v. DCIT (2018) reported in 96 taxmann.com 263.

10.1 The Ld. AR invited the attention of this Tribunal to the judgment of the Hon'ble Karnataka High Court in PCIT vs. Robert Bosch Engineering & Business Solutions (P.) Ltd. (ITA No.146/2025), wherein the Hon'ble High Court upheld the order of the Bangalore Bench of the Tribunal (IT(TP)A No. 446 & 593 /Bang/2020) and dismissed the appeal filed by the Revenue. The Ld. AR submitted that the Hon'ble High Court has categorically held that a company having a significantly large turnover cannot be considered comparable with an assessee whose turnover is only a small fraction thereof. It was further held that

comparability has to be examined on the basis of similarity in FAR profile and that the size and turnover of an entity have a direct bearing on the functions performed, assets employed, and risks assumed.

10.2 The Ld. AR further submitted that the Hon'ble High Court has also recognized that large companies enjoy economies of scale and operate under a different risk profile, which makes them unsuitable for comparison with smaller companies. Accordingly, the Ld. AR contended that the application of an upper turnover filter, as upheld by the Hon'ble Karnataka High Court, is fully justified and the high-turnover comparables selected by the TPO deserve to be excluded.

11. Both the Id. DR and AR before us relied on the order of the authorities below as favourable to them.

12. We have heard the rival contentions of both the parties and perused the materials available on record. We find merit in the contention of the assessee that the TPO erred in not applying an upper turnover filter while selecting comparable companies. It is well settled that turnover is a relevant criterion for determining comparability, as the scale of operations has a direct bearing on profitability owing to economies of scale. Companies having significantly higher turnover enjoy cost efficiencies and market advantages which are not available to smaller entities.

12.1 It is pertinent to note that companies with very high turnover operate on a different scale and benefit from economies of scale, better market position and cost advantages, which directly affect their

profitability. Size of the company is a recognized factor for comparability, as differences in turnover and market share influence pricing and margins. Though in our considered view turnover filters cannot be applied mechanically and must depend on the facts of each case, keeping in mind the turnover of the tested entity. The purpose is to select companies with a broadly similar scale of operations, assets and risk profile. This approach is in line with the OECD Transfer Pricing Guidelines in para 3.43 which states that *Size criteria in terms of Sales, Assets or Number of Employees. The size of the transaction in absolute value or in proportion to the activities of the parties might affect the relative competitive positions of the buyer and seller and therefore comparability* and the guidance note on transfer pricing issued by ICAI in para 5.50 which states *under TNMM where margins are to be compared, the margin of a 1,000 crore company cannot be compared with that of a 10 crore company. The two most obvious reasons are the size of the two companies and the relative economies of scale under which they operate.*

12.2 Further paragraph 15.4 of the ICAI Guidance Note on Transfer Pricing emphasizes significant differences in company size and turnover, such as comparing Rs. 1,000 crore entity to a Rs. 10 crore entity materially affects profitability and comparability under Rule 10B(2) of Income Tax Rule.

12.3 In this regard, we note that the coordinate bench of this tribunal in the case of Scancafe Digital Solutions (P.) Ltd. v. Income-tax Officer reported in 94 taxmann.com 515 followed the decision of Mumbai bench order in the case of Willis Processing Services (I) (P.) Ltd. vs. Deputy

Commissioner of Income-tax - 2(3), reported in [2013] 30 taxmann.com 350 (Mumbai). The Mumbai bench held the classification of large, medium and small companies based on turnover of more than 2000, 200 to 2000 crores and 1 to 200 by Dun & Bradstreet was not made in the context of comparables under TP Regulations. It was observed that as per such classification of small, medium and large-scale company-based range of turnover, an entity having Rs. 1 crore of turnover can be compared to the entity having turnover of Rs. 200 crores. But another entity having turnover of Rs. 199 crores cannot be compared with the entity having turnover of Rs. 201 crores. Therefore, it was held by the Mumbai bench that such classification of turnover range cannot be applied for selection or rejection of comparable entity. In addition, the bench also found that in the said case the company having higher turnover had average margin of 30.74% as compared to company having lower turnover having average margin of 31.36%. Hence the Mumbai bench, considering the aforesaid observation rejected the assessee's grounds for exclusion of comparable companies having turnover exceeding Rs. 200 crores, from the comparable set.

12.4 In our considered opinion, the coordinate bench of Mumbai Tribunal in the above-mentioned case more focused on mechanical application of range of turnover for classification of small, medium and large-scale companies. By mechanical application of such range, it was rightly pointed out by the bench that the entity with turnover of Rs. 199 crores will be classified as small scale whereas other entities, with turnover of Rs. 201 crores would be classified as medium scale. However, we beg to differ from the view of Hon'ble Mumbai bench. We agree that upper turnover cannot be applied mechanically as per the

classification of range of turnover as discussed above, but at the same time a company having substantially low turnover such as appellant assessee with turnover of Rs. 59.72 crores with other companies having turnover of 1000 cores or above cannot be compared.

12.5 It is well settled that turnover is a relevant criterion for determining comparability, as the scale of operations has a direct bearing on profitability owing to economies of scale. Companies having significantly higher turnover enjoy cost efficiencies and market advantages which are not available to smaller entities.

12.6 In the present case, the assessee's turnover from software development services is Rs. 59.72 crores, whereas several of the comparables selected by the TPO have substantially higher turnover. In such circumstances, the application of an upper turnover filter becomes necessary to ensure a fair comparison. The tribunal has taken a consistent view that large or medium scale companies with substantially higher turnover cannot be compared. For the ready reference, the view taken by the coordinate bench of this tribunal in Autodesk India (P) Ltd. v. DCIT reported in (2018) 96 taxmann.com 263 reads as under:

*"17.7. We have considered the rival submissions. The substantial question of law (Question No. 1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) (P.) Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the Ld. counsel for the Assessee the observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of obiter dictum. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a non-jurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of CIT v. Pentair Water India (P.) Ltd. Tax Appeal No. 18 of 2015 judgment dated 16-9-2015 has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in*

*transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we respectfully follow the view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.*

*17.8. In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5-8-2011. The decisions rendered by the ITAT Mumbai Benches cited by the Ld. DR before us in the case of Willis Processing Services (supra) and Capegemini India (P.) Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the Ld. counsel for the Assessee supports the plea of the Ld. counsel for the Assessee. The decisions rendered in the case of M/S.NTT Data (supra), Societe Generale Global Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the Ld. DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra)".*

12.7 Further, we find that this tribunal subsequently in the case of Robert Bosch Engineering and Business Solutions Pvt. Ltd. vs. DCIT in IT(TP)A No. 593/Bang/2020 followed the decision in the case of Autodesk India (P) Ltd. (Supra) and excluded the company with turnover exceeding 200 crores from the comparable set. Against the order of the

Tribunal, the revenue filed an appeal before the Hon'ble Karnataka High Court in ITA No.146/2025). In the said case, the Hon'ble High Court did not admit the Revenue's grounds of appeal on this issue by observing as under:

*"10. Indisputably, a company that has a significantly large turnover cannot be considered as a comparable with an assessee, whose turnover is a small fraction of that of the said entity.*

*11. The question whether the entities are comparable is required to be determined on the basis of similar FAR [Functions, Assets and Risks] profile. It would be erroneous to assume that the size of an entity and its turnover has no bearing on the FAR profile. It is erroneous to suggest that a company of a huge size and a large turnover would be subjected to the same risks as that of a smaller entity, whose turnover is a small fraction of the other entity. The entities would also not be comparable when one considers the value of assets. Additionally entities having a large turnover, would have the benefit of economies of scale, which would not be available to companies with a relatively lower turnover.*

12.8 In the light of the above facts, once the order of the Tribunal in the case of Robert Bosch Engineering and Business Solutions Pvt Ltd.(supra) was carried in appeal before the Hon'ble Karnataka High Court in ITA No. 146/2025, and the Hon'ble High Court declined to admit the Revenue's grounds on the turnover filter issue, the doctrine of merger comes into operation. The order of the Tribunal, to the extent it was subject matter of challenge before the Hon'ble High Court and was examined by it, stands merged with the order of the Hon'ble High Court. In other words, the reasoning and conclusion of the Tribunal on exclusion of companies having turnover exceeding ₹200 crores cannot thereafter be viewed as a mere Tribunal view indeed it attains affirmation at the level of the Hon'ble jurisdictional High Court.

12.9 The Hon'ble High Court has categorically observed that a company having significantly large turnover cannot be compared with a small entity and that size and turnover have a direct bearing on FAR

analysis, asset base, risk profile and economies of scale. Once such findings are recorded by the Hon'ble Jurisdictional High Court while dealing with the appeal arising out of the Tribunal's order, the Tribunal's decision on this aspect merges with the High Court's order. The consequence is that the principle laid down on the relevance of turnover filter is no longer open to re-agitation before subordinate authorities within the State.

12.10 Further, under the rule of judicial precedence, the decision of the Hon'ble Jurisdictional High Court is binding on the Tribunal and all lower authorities within its territorial jurisdiction. Therefore, after the High Court's order in ITA No. 146/2025, the issue of exclusion of high turnover companies from the comparable set, on the reasoning approved by the Hon'ble High Court, is settled within the jurisdiction. Any contrary view taken earlier by coordinate benches or relied upon by other jurisdictions cannot prevail over the binding effect of the Hon'ble Jurisdictional High Court's decision.

12.11 Likewise, we also find that the Hon'ble Jurisdictional High Court of Karnataka also taken similar view in the case of CIT vs. **Yodlee Infotech (P.) Ltd.** reported in 111 taxmann.com 121 and has dismissed the revenue ground of appeal on the issue of exclusion of comparable companies with turnover exceeding Rs. 200 cores. The relevant question raised by the Revenue and finding of the bench reads as under:

*(2) Whether on the facts and in the circumstances of the case the Tribunal is right in law in accepting the claim of assessee to adopt turnover filter of Rs.200 Crores following the decision of Co-ordinate Bench in the case of M/s. Genisys Pvt. Ltd v. DCIT reported in 64 DTR page 225 even when said decision has not reached finality and without appreciating that the turnover is not a relevant*

*filter in the software industry, as the size of the turnover and margins are not linked and the Economics of scale are relevant factor only in capital intensive companies which have substantive fixed assets in the form of plant and machinery?*

*Regarding substantial question of law No.2:*

*"20. We have to hold that assessee can seek exclusion of comparables which were a part of its own list, at a later stage, and therefore, we are constrained to reject the line of argument of the Ld. DR. Coming to the arguments of the Ld. AR that M/s Tata Elxsi Ltd., M/s Sasken Communication Ltd., M/s Persistent Systems Ltd., M/s L & T Infotech and M/s Infosys Ltd., had turnover in excess of Rs. 200 Crores and were to be excluded, we are of the opinion that turnover filter can be applied for selection of comparables. This has been the view consistently taken by the Co-ordinate Benches of this Tribunal in a number of cases. In the case of M/s Genisys (P.) Ltd. v. DCIT [2011] 64 DTR 225 it was held by this Tribunal as under at paras-8 to 09 of its order:*

*8. According to Ld. counsel for the assessee size is an important fact of an enterprise level difference. He submitted that comparables should have something similar or equivalent and should possess same or almost the same characteristics. To use a simile, he submitted that a Maruti 800 car cannot be compared to a Benz car, even though both are cars only. He submitted that unusual pattern, stray cases, wide disparities have to be eliminated as they do not satisfy the test of comparability. Companies operating on large scale benefit from economies of scale, higher risk taking capabilities, robust delivery and business models as opposed to the smaller or medium sized companies and therefore, size matters. Two companies of dissimilar size therefore, cannot be assumed to earn comparable margins and the impact of difference in size could be removed by a quantitative adjustment to the margins or price being compared if it is possible to do so reasonably accurately. He submitted that size as one of the selection criteria has also been approved by various Benches of the Tribunal, in the following cases:*

*8.1 He further submitted that size as a criteria for selection of comparables is also recommended by OCED in its TP guidelines. The observation of OCED in para 3.43 of the chapter on guidelines reads as follows:*

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*8.2 The Ld. counsel for the assessee submitted that similar observations were also made by ICAI in para 15.4 of TP guidance note. He submitted that TPO's range of Rs. 1 crore to infinity has resulted in selection of companies like M/s Infosys which is having a turnover of Rs. 9,028 crores which is 1,1007 times bigger than the assessee company which has a turnover of Rs. 8.15 crores. He further submitted that NASSCOM has also categorized the companies based on the turnover as follows:*

*8.3 The Ld. Departmental Representative rebutted this argument and submitted that the Act or Rules does not provide for the turnover filter. He submitted that as rightly pointed out by the TPO in the case of service sector, the size of the company does not matter because, the infrastructure layout is very less and it will not affect the profit ratio in any way. He drew out attention to the particular portion of TPO's order wherein the TPO has the reasoning given for rejecting the turnover filter.*

*9. Having heard both the parties and having considered the rival contentions and also the judicial precedents on the issue, we find that the TPO himself has*

*rejected the companies which are making losses as comparables. This shows that there is a limit for the lower end for identifying the comparables. In such a situation, we are unable to understand as to why there should not be an upper limit also. What should be upper limit is another factor to be considered. We agree with the contention of the Ld. counsel for the assessee that the size matters in business. A big company would be in a position to bargain the price and also attract more customers. It would also have a broad base of skilled employees who are able to give better output. A small company may not have these benefits and therefore, the turnover also would come down reducing profit margin. Thus, as held by the various Benches of the Tribunal, when companies which are loss making are excluded from comparables, then the super profit making companies should also be excluded. For the purpose of classification of companies on the basis of net sales or turnover, we find that a reasonable classification has to be made. Dun & Bradstreet and NASSCOM have given different ranges. Taking the Indian scenario into consideration, we feel that the classification made by Dun & Bradstreet is more suitable and reasonable. In view of the same, we hold that the turnover filter is very important and the companies having a turnover of Rs. 1 Crore to Rs. 200 crores have to be taken as a particular range and the assessee being in the range having turnover of Rs. 8.15 crores, the companies which also have turnover of Rs. 1 to Rs. 200 crores only should be taken into consideration for the purpose of making TP study."*

*The appeal filed by the Revenue against the judgment of the Hon'ble Tribunal in the case of Genisys (P.) Ltd. v. Dy.CIT [2011] 64 DTR 225 has been considered by this Court in ITA No.17/2012 and the same has been dismissed on 09.07.2018 as no substantial questions of law arose for consideration.*

12.12 Accordingly, on the principle of merger and judicial discipline, the view that companies with turnover exceeding ₹200 crores are not comparable with small or medium scale stands affirmed and binding within the jurisdiction of the Hon'ble Karnataka High Court.

12.13 Before parting, we note that the Ld. DR also relied on the decision of ITAT in the case of M/s Yokogawa Technology Solutions India Pvt. Ltd. vs. DCIT in IT(TP)A No. 2328/Bang/2024, where the Tribunal held that while an upper turnover filter should be applied based on the assessee's turnover, but it is not necessary that the limit must always be ₹200 crores. Hence, we note that Tribunal in this case has held that upper turnover filter should apply. Only issue was therein that upper limit of Rs. 200 cannot be applied in each case which we agree. In our

considered view what should be the upper turnover will depend upon the facts and circumstances involved in particular case. In the present case the appellant assessee turnover is of Rs. 59.72 crores only whereas the comparable companies have turnover of Rs. 265 crores to 49 thousand crores which is substantially high and such large-scale companies cannot be compared to the assessee company. Hence the view taken by the Tribunal in M/s Yokogawa Technology Solutions India Pvt. Ltd. (supra) is distinguishable from the present facts of the case.

12.14 In view of the above and following the binding decision of the Hon'ble Karnataka High Court (Supra) affirming the Bangalore ITAT order, we hold that companies having disproportionately high turnover compared to the assessee cannot be considered as valid comparables and are liable to be excluded by applying an appropriate upper turnover filter. With this, we conclude our adjudication on the grounds relating to the Software Development (SWD) segment in favour of the assessee.

12.15 As such the Revenue is directed to exclude the companies from the list of comparable companies namely Infosys Ltd, Larsen and Toubro Infotech Ltd, Persistent Systems Ltd, Sasken Communication Technologies Limited, Mindtree Ltd and Tata Elxsi Limited.

13. Coming to the other comparable companies which are challenged on various other grounds by the Revenue.

14. Regarding the exclusion of the comparable, i.e., Acropetal Technologies Ltd., by the Ld. CIT(A), the Ld. DR submitted that the said company had been incorrectly excluded from the final set of

comparables. The Ld. DR further contended that the assessee itself had accepted Acropetal Technologies Ltd. as a comparable during the proceedings before the TPO and had not raised any objection to its inclusion at that stage. Therefore, according to the Ld. DR, the assessee cannot subsequently seek exclusion of the said company at the appellate stage. Accordingly, it was submitted that the order of the Ld. CIT(A) excluding the said company is not justified.

15. Regarding **Acropetal Technologies Ltd.**, the Ld. AR submitted that the said company is not a suitable comparable as it is functionally different from the assessee. The Ld. AR pointed out that the company earns revenue from three segments, namely, Engineering Design Services, IT Services and Healthcare Services, whereas the assessee is engaged only in providing software development services.

15.1 The Ld. AR further submitted that Acropetal fails the 75% software development services filter applied by the TPO. As per the annual report, the total operating revenue of Acropetal was ₹141,65,28,937, whereas the revenue from software development services was only ₹81,40,16,893, which works out to be 57.46% of the total operating revenue. Therefore, the Ld. AR prayed that Acropetal Technologies Ltd. be excluded from the final set of comparables.

15.2 Further, the Ld. AR contended that Acropetal Technologies Ltd. also fails the employee cost filter of 25%. It was submitted that the total employee cost of Acropetal for the relevant year was Rs. 16,30,45,071, whereas the total operating revenue, as noted supra, was Rs. 141,65,28,937. Accordingly, the employee cost to total revenue works

out to only 11.51%, and therefore the company does not satisfy the said filter.

15.3 Further, the Ld. AR submitted that Acropetal Technologies Ltd. also fails the export revenue filter of 75%. It was contended that the company earns revenue from three segments, as noted supra, but from the annual report it cannot be ascertained whether the export earnings exceed 75% of the total revenues. Therefore, the said company does not satisfy the export filter applied by the TPO.

15.4 The assessee also relied upon various judicial precedents wherein the same company had been categorically excluded by the Hon'ble Bangalore Tribunal. It was therefore submitted that the Ld. CIT(A) had rightly excluded the said company from the final set of comparables, and hence no interference by the Tribunal was called for.

16. We have considered the rival submissions of both the parties and have perused the material available on record. It is an admitted position that the assessee had originally included Acropetal Technologies Ltd. in its transfer pricing study report and the TPO had also accepted the said company as comparable. However, in appellate proceedings, the Ld. CIT(A), upon examining the functional profile and quantitative filters, directed exclusion of the said company. The Revenue is now in appeal challenging such exclusion.

16.1 Before us, it has been submitted that upon a detailed examination of the annual report and in light of subsequent judicial precedents, the assessee no longer presses for inclusion of Acropetal Technologies Ltd.,

as the company appears to fail certain quantitative filters and exhibits functional differences. It is well-settled that transfer pricing determination is to be made on the basis of correct comparability and there is no estoppel against either party from pointing out a mistake in selection of comparables.

16.2 We note that from the annual report, revenue from software development services constitutes only 57.46% of total operating revenue and the employee cost ratio works out to 11.51%, which prima-facie indicates that the company may not satisfy the filters applied by the TPO. Further, segmental clarity regarding export revenue is not apparent in the financial statement of the comparables. In addition to the above we note that the Tribunal in the case of Aspect Technology Centre (Pvt.) Vs. ITO reported in 118 taxmann.com 398 has held as under:

*20. However, as far as Acropetal Technologies Ltd. (Ground No. 4 in Revenue's appeal) is concerned, Acropetal was directed to be excluded by the DRP not only on the ground that it was held to be predominantly engaged in onsite development of software in view of its expenses in foreign currency, but also on the following grounds - (i) that, in the absence of segmental information containing the break-up of its export sales, it was not possible to ascertain if it passed the export earnings filter; and (ii) that, in the absence of segmental information containing the break-up of its employee costs, it was not possible to ascertain if it passed the employee costs filter (Pages 18-20 of the DRP's directions). Revenue vide Ground Nos. 2 to 4 is seeking the inclusion of the company in the final list of comparables. After hearing the rival submission on exclusion of Acropetal from the list of comparable companies, we find that exclusion of this company from the list of comparable companies should be upheld because this company fails the employee cost filter of employee cost being equal to at least 25% of the total operating revenue. From the annual report of the company it can be seen that the employee costs incurred by the company is 11.51% of the total operating revenue. Apart from the above, the Company also fails the TPO's filter of service revenue is excess of 75% as the income from software development activity is Rs. 81.40 Crores out of total operating revenue of Rs. 141 Crores. As it is clear that the company fails TPO's own filters of employee cost in excess of 25% and service revenue is excess of 75%, the company ought to remain excluded from the final list of comparables. We also find that this Tribunal in Applied Materials India Pvt. Ltd. (supra) at paras 16.1 to 16.4 at pages 1606-1607; Finastra Software Solutions (India) (P.) Ltd. v. Asstt. CIT [2018] 93 taxmann.com 460 (Bang. - Trib.) at para 15 at*

*page 1744; Electronic Imaging India (P.) Ltd. v. Dy. CIT [2017] 85 taxmann.com 124 (Bang. - Trib) para 8 at pages 1725-1726 and Commscope Networks (I) (P.) Ltd. (supra) at para 9 on pages 1639-1640 held that this company should be excluded from the list of comparable companies in the case of companies engaged in rendering SWD services such as the Assessee. Thus, Gr. Nos. 4 is dismissed and Gr. Nos. 2 & 3 are also partly dismissed to the extent of exclusion of Acropetal.*

16.3 In view of the above, we do not find any infirmity in the finding of the Id. CIT-A and accordingly, the ground raised by the assessee is hereby dismissed.

16.4 The Ld. DR submitted that the Ld. CIT(A) erred in excluding e-Zest Solutions Ltd. from the final set of comparables. It was contended that the said company is engaged in providing software development services and therefore cannot be regarded as functionally dissimilar to the assessee. The Ld. DR further submitted that merely because the company is involved in certain specialized services or emerging technologies would not render it incomparable, as the core activity remains software development services. Accordingly, the Ld. DR prayed that the said company be restored to the final set of comparables.

17. Further, regarding the exclusion of **e-Zest Solutions Ltd.**, the Ld. AR submitted that the said company is functionally dissimilar to the assessee as it is a product engineering and software development company having special expertise in emerging technologies such as cloud computing, SaaS, business intelligence and mobility. The Ld. AR pointed out that the company is involved in providing a wide range of services such as enterprise solutions, product engineering, consulting, technology services, product design and development, product feature enhancement, software product testing and BPO services.

17.1 The Ld. AR further submitted that the annual report of e-Zest Solutions Ltd. clearly demonstrates that the company is engaged in end-to-end product development, including product design and development. It was also pointed out that the company has significant inventory, amounting to nearly 15% of its operating income, which supports the contention that it is predominantly a product development company and therefore not comparable with the assessee, which is engaged in rendering routine IT services.

17.2 It was further submitted that since no segmental details are available in the annual report for such diverse activities, the Ld. AR submitted that the said company ought to remain excluded from the final set of comparables.

17.3 The Ld. AR also pointed out that the company exhibited an abnormal trend in its profits. It was submitted that while the company earned operating profits of Rs. 139.46 lakhs and Rs. 122.31 lakhs in the financial years 2008-09 and 2009-10, respectively, the operating profit sharply increased to Rs. 326.51 lakhs in the financial year 2010-11, which indicates the existence of peculiar economic circumstances and therefore renders the company unsuitable as comparable.

17.4 The Ld. AR submitted that e-Zest Solutions Ltd. has consistently been excluded by coordinate benches of this Tribunal in the case of similarly placed assessee. Reliance was placed on the decisions in Blue Yonder India P. Ltd. VS DCIT reported in 123 taxmann.com 32, Arcot R&D Software Private Limited reported in [2019] 111 taxmann.com 221

(Bangalore - Trib.), and in the assessee's own case for assessment year 2007-08 reported in [2018] 91 taxmann.com 505 (Bangalore - Trib.).

17.5 In view of the above, the Ld. AR submitted that the exclusion of e-Zest Solutions Ltd. by the Ld. CIT(A) does not call for any interference by this Tribunal.

18. We have considered the rival submissions and perused the materials available on record. The limited issue before us is whether e-Zest Solutions Ltd., which was excluded by the Ld. CIT(A), ought to be restored to the final set of comparables as contended by the Revenue.

18.1 We note that the Ld. CIT(A) excluded the said company after examining the functional profile brought on record by the Ld. AR. From the annual report, it is evident that e-Zest Solutions Ltd. is engaged in end-to-end product development and product engineering activities and provides a wide range of services such as enterprise solutions, product design and development, consulting, technology services, software product testing, web development and BPO services. The company also has specialized expertise in emerging technologies such as cloud computing, SaaS, business intelligence and mobility. In our view, such a functional profile is materially different from that of the assessee, which is admittedly engaged only in rendering routine software development services to its associated enterprise.

18.2 We also find merit in the contention that e-Zest Solutions Ltd. carries significant inventory, amounting to nearly 15% of its operating income, which further supports the conclusion that the company is

engaged in product-oriented activities and not merely in providing captive software development services. Further, no reliable segmental information is available in the annual report bifurcating revenues arising from its diverse activities. In the absence of such segmental data, the said company cannot be accepted as a valid comparable.

18.3 We further take note of the abnormal trend in profitability highlighted by the Ld. AR. The sharp increase in operating profits in the relevant year, when compared with the preceding years, indicates the presence of peculiar economic circumstances, which also renders the company unsuitable for benchmarking purposes.

18.4 Apart from the above factual aspects, we observe that coordinate benches of this Tribunal have consistently directed exclusion of e-Zest Solutions Ltd. in the case of software development service providers. The Ld. CIT(A) has relied upon such judicial precedents, including the decisions in Blue Yonder India P. Ltd. 123 taxmann.com 32, ACIT v. Arcot R&D Software Private Limited reported in [2019] 111 taxmann.com 221 (Bangalore - Trib.) and in the assessee's own case for assessment year 2007-08 reported in [2018] 91 taxmann.com 505 (Bangalore - Trib.). The Revenue has not brought on record any material to demonstrate that the facts for the year under consideration are distinguishable. In view of the above discussion, we find no infirmity in the order of the Ld. CIT(A) in excluding e-Zest Solutions Ltd. from the final set of comparables. Accordingly, the ground raised by the Revenue is dismissed.

18.5 The Id. DR regarding the **e-infochips Ltd.** submitted that the Ld. CIT(A) erred in excluding e-Infochips Ltd. from the final set of comparables. It was contended that the said company is primarily engaged in software development and related IT services and therefore cannot be regarded as functionally dissimilar to the assessee. The Ld. DR further submitted that merely because the company is engaged in product development or certain allied services would not automatically render it incomparable when the predominant activity remains software development. Accordingly, it was argued that the Ld. CIT(A) was not justified in excluding the said company and that it ought to be restored to the final set of comparables.

19. With regard to **e-Infochips Ltd.**, it was submitted that the said company is engaged in diverse activities such as product development and provision of IT enabled services, for which no separate segmental information is available in the annual report. On the contrary, the revenues from software development and IT enabled services are clubbed and reported under a single segment. In the absence of proper segmental details, the company was rightly held to be functionally not comparable with the assessee, which is a captive software development service provider. It was further submitted that the company also maintains inventory and is therefore incomparable to the assessee.

19.1 It was further submitted that even if the income from software development services amounting to Rs. 19.21 crores are considered; the company fails the TPO's filter requiring more than 75% of operating revenue to be derived from software development services.

19.2 It was also submitted that the said company has consistently been excluded by coordinate benches of this Tribunal in the case of similarly placed assessee. Reliance was placed on the decisions in ACIT v. Arcot R&D Software Private Limited (supra) 111 taxmann.com 221, Commscope Networks (India) Pvt. Ltd. v. ITO reported in [2017] 83 taxmann.com 418 (Bangalore - Trib.), Principal Commissioner of Income-tax v. Saxo India (P.) Ltd. reported in [2016] 74 taxmann.com 88 (Delhi), Finastra Software reported in 93 taxmann.com 460 (supra), Aspect Technologies (supra) 118 taxmann.com 398 and Blue Yonder (supra) 123 taxmann.com 32.

19.3 In view of the above, it was submitted that the exclusion of the said company by the Ld. CIT(A) does not call for any interference by this Tribunal and that the grounds raised by the Revenue deserve to be rejected.

20. We have considered the rival submissions of both the parties and perused the materials available on record. The issue before us is whether the company excluded by the Ld. CIT(A) is liable to be restored to the final set of comparables as sought by the Revenue. We note that the Ld. CIT(A) excluded the said company after examining its functional profile. From the annual report, it is evident that the company is engaged in diverse activities such as product development as well as rendering IT-enabled services, and that the revenues from such activities are reported under a single segment without reliable segmental break-up. In the absence of proper segmental information, the company cannot be considered functionally comparable with the assessee, which is a captive software development service provider.

20.2 We also find that the company maintains inventory, which further supports the conclusion that it is engaged in product-oriented activities and is therefore not comparable with a routine service provider.

20.3 Further, we note that even on the quantitative filter applied by the TPO, the company does not satisfy the requirement that more than 75% of its operating revenues should be derived from software development services, since the income from software development services is only Rs. 19.21 crores. This also renders the company unsuitable for inclusion in the final set of comparables.

20.4 We further observe that coordinate benches of this Tribunal have consistently directed exclusion of the said company in the case of similarly placed assesseees, including in ACIT v. Arcot R&D Software Private Limited 111 taxmann.com 221, Commscope Networks (India) Pvt. Ltd. v. ITO reported in [2017] 83 taxmann.com 418 (Bangalore - Trib.), Principal Commissioner of Income-tax v. Saxo India (P.) Ltd. reported in [2016] 74 taxmann.com 88 (Delhi), Finastra Software, Aspect Technologies and Blue Yonder. The Revenue has not brought on record any material to show that the facts for the year under consideration are distinguishable.

20.5 In view of the above discussion, we find no infirmity in the order of the Ld. CIT(A) in excluding the said company from the final set of comparables. Accordingly, the ground raised by the Revenue is dismissed and the cross-objection filed by the assessee on this issue is allowed.

**21.** The Ld. DR before us submitted that the Ld. CIT(A) erred in excluding ICRA Techno Analytics Ltd. from the final set of comparables. It was contended that the said company is engaged in providing software development and related technology services and therefore cannot be regarded as functionally dissimilar to the assessee. The Ld. DR further submitted that the presence of certain additional services would not render the company incomparable so long as the core activity remains within the broad spectrum of software development and IT services. Accordingly, it was argued that the Ld. CIT(A) was not justified in directing the exclusion of the said company from the final set of comparables.

22. With regard to **ICRA Techno Analytics Ltd.**, the Ld. AR submitted that the annual report of the company makes it clear that it is engaged in diverse activities such as software development, engineering services, web development and hosting, business analytics and business process outsourcing, all of which are reported under a single segment. It was further pointed out that the company also earns revenues from licensing fees and annual maintenance charges, which are not in the nature of software development services. The services described on the company's website also indicate functions akin to IT enabled services / KPO services. Since the company performs multiple functions and no reliable segmental information is available to segregate revenues from such activities, the Ld. AR submitted that the company cannot be considered as a valid comparable and ought to remain excluded.

22.1 The Ld. AR further submitted that ICRA Techno Analytics Ltd. has consistently been excluded by coordinate benches of this Tribunal in the case of similarly placed assesseees. Reliance was placed on the decisions in Applied Materials (supra) in ITA Nos. 17 & 39/Bang/2016, Finastra Software (supra), Aspect Technology (supra), Blue Yonder (supra), ACIT v. Arcot R&D Software Private Limited (supra) and NI Systems (India) Pvt. Ltd. v. DCIT reported in [2020] 115 taxmann.com 477 (Bangalore - Trib.).

22.2 In view of the above, the Ld. AR submitted that the exclusion of ICRA Techno Analytics Ltd. by the Ld. CIT(A) does not call for any interference by this Tribunal and that the grounds raised by the Revenue deserve to be rejected.

23. We have considered the rival submissions and perused the materials available on record. The issue before us is whether ICRA Techno Analytics Ltd., which was excluded by the Ld. CIT(A), is liable to be restored to the final set of comparables as contended by the Revenue.

23.1 We note that the Ld. CIT(A) excluded the said company after examining its functional profile. From the annual report, it is evident that the company is engaged in diverse activities such as software development, engineering services, web development and hosting, business analytics and business process outsourcing, and that all such activities are reported under a single segment. The company also earns revenues from licensing fees and annual maintenance charges, which are not in the nature of software development services. Further, the

description of services available on the company's website indicates that it is also engaged in functions akin to IT enabled services / KPO services. In the absence of reliable segmental information to segregate revenues arising from these diverse activities, the said company cannot be considered functionally comparable with the assessee, which is a captive software development service provider.

23.2 We also observe that coordinate benches of this Tribunal have consistently directed exclusion of ICRA Techno Analytics Ltd. in the case of similarly placed assesseees. The Ld. CIT(A) has relied upon such judicial precedents, including the decisions in Applied Materials, Finastra Software, Aspect Technology, Blue Yonder, ACIT v. Arcot R&D Software Private Limited and NI Systems (India) Pvt. Ltd. v. DCIT reported in [2020] 115 taxmann.com 477 (Bangalore - Trib.). The Revenue has not brought on record any material to demonstrate that the facts for the year under consideration are distinguishable.

23.3 In view of the above discussion, we find no infirmity in the order of the Ld. CIT(A) in excluding ICRA Techno Analytics Ltd. from the final set of comparables. Accordingly, the ground raised by the Revenue is dismissed and the cross-objection filed by the assessee on this issue is allowed.

23.4 The Ld. DR before us submitted that the Ld. CIT(A) erred in excluding Persistent Systems and Solutions Ltd. from the final set of comparables. It was contended that the said company is engaged in software development and related technology services and therefore falls within the broad functional profile of companies providing software

development services. The Ld. DR further submitted that the mere fact that the company derives certain revenues from software products, royalty or licensing would not automatically render it incomparable, particularly when the principal activity remains in the field of software development. Accordingly, it was argued that the Ld. CIT(A) was not justified in directing the exclusion of the said company and that the same ought to be restored to the final set of comparables.

23.5 With regard to **Persistent Systems and Solutions Ltd.**, the Ld. AR submitted the said company is functionally dissimilar to the assessee, as it is engaged in outsourced software development activities and also derives revenue from sale of software products, royalty income and licensing of products. While the company offers diverse and dissimilar services, the entire revenue is reported under a single segment, and no reliable segmental information is available in its financial statements. Accordingly, the Ld. AR submitted that the company cannot be considered as a valid comparable to the assessee, which is a captive software development service provider.

23.6 The Ld. AR also submitted that Persistent Systems and Solutions Ltd. has consistently been excluded by coordinate benches of this Tribunal and by various High Courts in the case of similarly placed assesseees. Reliance was placed on the decisions in Principal Commissioner of Income-tax v. Saxo India (P.) Ltd. reported in [2016] 74 taxmann.com 88 (Delhi), Saxo India (P.) Ltd. v. ACIT reported in [2016] 67 taxmann.com 155 (Delhi - Trib.), Applied Material (supra), Finastra Software (supra) and Dell International Services India P. Ltd. v. JCIT in IT(TP)A No. 659/Bang/2016.

23.7 In view of the above, the Ld. AR submitted that the exclusion of Persistent Systems and Solutions Ltd. by the Ld. CIT(A) does not call for any interference by this Tribunal and that the grounds raised by the Revenue deserve to be rejected.

24. We have considered the rival submissions and perused the materials available on record. The issue before us is whether Persistent Systems and Solutions Ltd., which was excluded by the Ld. CIT(A), is liable to be restored to the final set of comparables as sought by the Revenue.

24.1 We note that the Ld. CIT(A) excluded the said company after examining its functional profile. From the material placed on record, it is evident that the company is engaged in outsourced software development activities and also earns revenue from sale of software products, royalty and licensing of products. All such revenues are reported under a single segment, and no reliable segmental information is available to segregate income arising from routine software development services. In our view, such a functional profile is materially different from that of the assessee, which is a captive software development service provider rendering services only to its associated enterprise.

24.2 We also take note of the fact that coordinate benches of this Tribunal as well as the Hon'ble High Court have consistently directed exclusion of Persistent Systems and Solutions Ltd. in the case of similarly placed assessees. The Ld. CIT(A) has relied upon such judicial

precedents, including the decisions in Principal Commissioner of Income-tax v. Saxo India (P.) Ltd., Saxo India (P.) Ltd. v. ACIT, Applied Material, Finastra Software and Dell International Services India P. Ltd. v. JCIT in IT(TP)A No. 659/Bang/2016. The Revenue has not brought on record any material to show that the facts for the year under consideration are distinguishable.

24.3 In view of the above discussion, we find no infirmity in the order of the Ld. CIT(A) in excluding Persistent Systems and Solutions Ltd. from the final set of comparables. Accordingly, the ground raised by the Revenue is dismissed.

**25. Ground No. 12 of Revenue's Appeal: Inclusion of Akshay Software Technologies Ltd. by the Ld. CIT(A).**

26. The relevant facts are that the assessee included Akshay Software Technologies Ltd. in the final set of comparables, as the revenue from software services constituted 99.30% of the total revenue during the year under consideration and the company was engaged in the business of computer software services.

26.1 However, the TPO rejected the said company as comparable on the ground that there was no clarity regarding the nature of its business, particularly whether it was rendering IT enabled services or software development services.

27. Aggrieved by the order of the AO/TPO, the assessee preferred an appeal before the Ld. CIT(A).

28. Before the Ld. CIT(A), the assessee contended that Akshay Software is functionally comparable company and prayed that the same ought to be included in the list of comparables.

28.1 The Ld. CIT(A) accepted the plea of the assessee by placing reliance on the decision in Assistant Commissioner of Income-tax, Circle-1(1)(1), Bangalore vs. ABB Global Industries & Services Ltd. [2021] reported in 125 taxmann.com 88 (Bangalore - Trib.)[04-01-2021] and held that the said company is a valid comparable and ought to be included in the final set of comparables.

29. Aggrieved by the order of Ld. CIT(A), the revenue preferred an appeal before us.

30. The Ld. DR before us submitted that the Ld. CIT(A) erred in directing the inclusion of Akshay Software Technologies Ltd. in the final set of comparables. It was contended that the TPO had rightly rejected the said company on the ground that there was no clarity with regard to the exact nature of its activities, particularly whether the company was engaged in providing IT enabled services or software development services. The Ld. DR further submitted that in the absence of clear functional similarity, the said company ought not to have been included as a comparable. Accordingly, it was prayed that the order of the Ld. CIT(A) on this issue be set aside and the action of the TPO be restored.

31. Per contra, the Ld. AR before us submitted that from a bare perusal of the annual report of the said comparable, it is evident that the

company is engaged in the business of software services. It was further submitted that the revenue from operations has been specifically disclosed as "software services". In support of the said contention, reliance was placed on the decision in the case of Assistant Commissioner of Income-tax, Circle-1(1)(1), Bangalore v. ABB Global Industries & Services Ltd. reported in [2021] 125 taxmann.com 88 (Bangalore - Trib.) dated 04-01-2021.

32. We have considered the rival submissions of both the parties and perused the materials available on record. The issue before us is whether Akshay Software Technologies Ltd., which was directed to be included by the Ld. CIT(A), is liable to be excluded from the final set of comparables as contended by the Revenue.

32.1 We note that the assessee had originally included the said company in the final set of comparables on the basis that 99.30% of its total revenue during the year under consideration was derived from software services. The TPO rejected the company solely on the ground that there was no clarity as to whether it was rendering IT enabled services or software development services.

32.3 On perusal of the annual report placed on record, we find merit in the submission of the Ld. AR that the company is engaged in the business of software services and that the revenue from operations has been specifically disclosed under the head "software services". We further observe that the Ld. CIT(A) directed inclusion of the said company by placing reliance on the decision of this Tribunal in ABB Global Industries & Services Ltd. in IT(TP)A Nos. 38 & 58/Bang/2016,

reported in 125 taxmann.com 88. The Ld. AR has also relied upon the subsequent decision in ACIT v. ABB Global Industries & Services Ltd. reported in [2021] 125 taxmann.com 88 (Bangalore - Trib.), wherein similar objections raised by the Revenue were rejected.

32.4 The Revenue has not brought on record any material to controvert the factual findings recorded by the Ld. CIT(A) or to demonstrate that the functional profile of the said company for the year under consideration is materially different. In the absence of any contrary evidence, we see no reason to interfere with the well-reasoned order of the Ld. CIT(A). In view of the foregoing discussion, we uphold the direction of the Ld. CIT(A) to include Akshay Software Technologies Ltd. in the final set of comparables. Accordingly, the ground raised by the Revenue is hereby dismissed.

33. Ground No. 3 & Ground No. 14 is related to exclusion/inclusions of certain comparables in the segment of Marketing Support Services (MSS).

34. The relevant facts are that the assessee benchmarked its international transactions with the AEs under MSS segment using TNMM Method and OP/OC as PLI which was computed at 8.22% for MSS segment. The adoption of TNMM and PLI are not in dispute.

34.1 Further, the assessee in its comparability analysis initially selected six comparables for MSS segment including the comparable namely Concept Communication Limited. However, the TPO accepted only 1 comparables out of 6 selected by the assessee, the details of the

assessee's comparables and reason for rejection or acceptance of the same are available at pages 26 to 27 of the TPO order in tabular form. Thus, the TPO accepted only one comparable selected by the assessee, as detailed below:

- (i) Cybermedia India Online Limited

34.2 Thereafter, the TPO made fresh comparability analysis and selected 2 new comparables in addition to 1 assessee's comparable accepted. Accordingly, the TPO selected 3 comparables in the final set under MSS segment which are detailed as under:

- (i) Asian Business Exhibition and Conferences Limited
- (ii) Cybermedia India Online Limited
- (iii) ICC International Agencies Limited

34.3 Median of average weighted margin of the above-mentioned comparables arrived at 18.25% and, the TP adjustment of Rs. 45,15,361/- was made by the TPO under the MSS segment.

35. Aggrieved assessee filed an appeal before the Id. CIT(A) who inter-alia accepted the exclusion of the comparable i.e. ICC International Agencies Limited as contended by the assessee. The Id. CIT-A similarly included the comparable i.e. Concept Communications Limited as contended by the assessee.

36. Being aggrieved by the order of the Id. CIT-A, the Revenue is in appeal before us.

37. The Id. DR submitted that ICC International has rightly been considered as a comparable by the TPO as the company is engaged in commission and servicing activities which involve providing support in

sales and related functions. It was contended that such activities are broadly similar to marketing and support services rendered by the assessee. Accordingly, it was argued that ICC International performs functions broadly comparable to the assessee and therefore should not be excluded from the final set of comparables.

38. The Ld. AR before us, with regard to ICC International, submitted that the said company is functionally dissimilar to the assessee, as it is primarily engaged in indenting activities and trading of embroidery accessories and spares. It was explained that indenting activities involve ordering goods under specified conditions of sale, for which an indenting agent generally earns commission on sales. Accordingly, ICC operates partly on a commission-based model dependent upon sales made, which clearly distinguishes its operations and revenue model from that of the assessee.

38.1 The assessee further submitted that from the annual report of ICC for financial year 2010-11, it is evident that the company has reported segmental revenue under the heads "Commission & Servicing Activity" and "Trading Activity". However, no proper break up of segmental financials for commission and service activities has been provided. It was pointed out that as per schedule 8 to the income statement, service revenue accounts for only 9.89% of the "Commission & Servicing" revenue. This, according to the assessee, shows that ICC primarily acts as an agent facilitating sales, which cannot be regarded as marketing support services comparable to those rendered by the assessee.

38.2 In view of the above, the assessee submitted that ICC International is engaged in commission-based and trading activities and therefore ought not to be adopted as comparable. It was further submitted that the said company has consistently been excluded by this Tribunal and by various courts in the case of similarly placed assesseees. Reliance was placed on the decisions in Joint Commissioner of Income-tax (LTU), Bengaluru v. Texas Instruments (India) (P.) Ltd. reported in [2022] 139 taxmann.com 153 (Bangalore – Trib.) and Finastra Software Solutions (India) (P.) Ltd. vs. Assistant Commissioner of Income-tax, Circle (4) (1) (2), Bengaluru reported in [2018] 93 taxmann.com 460 (Bangalore - Trib.) [02-05-2018]

38.3 The Ld. DR before us submitted that the finding of the Ld. CIT(A) with regard to Concept Communication Ltd. is misplaced. It was contended that the Ld. CIT(A) relied on the decision in *Karl Storz (supra)*, wherein the comparable Concept Communication Ltd. was excluded on account of correction in margins and not on the ground of functional comparability. Therefore, according to the Ld. DR, the reliance placed by the Ld. CIT(A) on the said decision is not appropriate.

38.4 With regard to Concept Communication Limited, the Id. AR for assessee submitted that the TPO rejected the said company on the grounds of alleged functional dissimilarity, which is incorrect. It was submitted that, as evident from the annual report for financial year 2010-11, the company is engaged in rendering advertising agency services and that revenue from advertising and publicity constitutes 100% of its total revenue, thereby demonstrating that the company is

comparable to the assessee. The assessee further submitted that the Ld. CIT(A), following the ruling in ACIT v. Karl Storz Endoscopy India Pvt. Ltd. v. DCIT reported in [2023] 148 taxmann.com 467 (Delhi – Trib.), rightly held that the said company is a valid comparable.

39. We have considered the rival submissions of both the parties and perused the materials available on record. From the preceding discussion, we note that that the issue before us relates only to two comparables namely:

i. Exclusion of the comparable i.e. ICC International Agencies Limited as contended by the assessee. This comparable was selected by TPO and Ld. CIT(A) excluded it.

ii. Inclusion of the comparables i.e. Concept Communications Limited: This comparable was rejected by TPO and Ld. CIT(A) included it.

39.1 With regard to ICC International, we note that the company is primarily engaged in indenting and trading activities and earns commission-based income. The segmental disclosures in its annual report show revenues from "Commission & Servicing Activity" and "Trading Activity", without any proper breakup of service-oriented functions. Further, service revenue constitutes only 9.89% of its "Commission & Servicing" segment, which clearly indicates that the company largely operates as an agent facilitating sales and cannot be regarded as functionally comparable with the assessee. We also note that coordinate benches of this Tribunal have consistently directed exclusion of the said company in similar circumstances in Joint

Commissioner of Income-tax (LTU), Bengaluru v. Texas Instruments (India) (P.) Ltd. reported in [2022] 139 taxmann.com 153 (Bangalore – Trib.) and Finastra Software Solutions (India) (P.) Ltd. vs. Assistant Commissioner of Income-tax, Circle (4) (1) (2), Bengaluru reported in [2018] 93 taxmann.com 460 (Bangalore - Trib.) [02-05-2018]. In view of the above, we find no infirmity in the order of Ld. CIT(A) in excluding ICC International, and the ground raised by the Revenue on this issue is rejected.

39.2 In respect of the comparable Concept Communications Ltd. We find that the reliance placed by the Ld. CIT(A) in ACIT vs. Karl Storz Endoscopy India (P.) Ltd. [2023] 148 taxmann.com 467 (Delhi - Trib.) is misplaced. In the said decision, the Tribunal was dealing with the issue relating to correction of the operating margin (OP/OC) of the comparable company and not with the issue of functional comparability of the said company. Thus, the ratio laid down in the said case was confined to the computation of margins and did not adjudicate upon whether Concept Communications Ltd. is functionally comparable to the assessee. In the present case, the controversy before us relates to the functional comparability of the said company with the assessee. Therefore, the decision relied upon by the Ld. CIT(A) does not advance the case of the assessee and is not applicable to the facts of the present case.

39.3 Be that as it may, even though the reliance placed by the Ld. CIT(A) on the decision in Karl Storz (supra) is not strictly applicable, we note from the materials on record that Concept Communications Ltd. is engaged in rendering advertising agency services and derives its entire revenue from such activities. It is pertinent to note that marketing

support services and advertising services are closely related in nature. Both activities involve promotion of products or services, market development, brand visibility, and assisting the principal in reaching potential customers. While advertising services may specifically focus on designing and executing promotional campaigns, marketing support services broadly include activities such as market research, customer outreach, promotional support, and coordination of advertising initiatives. Therefore, in substance, marketing support services are akin to advertising services and operate in the same functional domain of product and brand promotion. Therefore, the said company is functionally comparable to the assessee. Accordingly, the ground raised by the Revenue is rejected.

40. In the result, the appeal of the Revenue is hereby dismissed.

**Coming to CO No. 25/Bang/2025 filed by the assessee:**

41. At the time of hearing, the Ld. AR submitted that he does not wish to press the objections raised in the Cross Objection in the event the assessee succeeds in the Revenue's appeal. In the present case, the Revenue's appeal has been dismissed by us in the preceding paragraph. Accordingly, we are not inclined to deal with the objections raised by the assessee in the Cross Objection. As such, the Cross Objection has become infructuous and is accordingly dismissed.

42. In the result, the Cross Objection is dismissed as infructuous.

43. In the combined result, the appeal of the Revenue as well as the Cross Objection filed by the assessee are dismissed.

Order pronounced in court on 12<sup>th</sup> day of March, 2026

Sd/-

**(KESHAV DUBEY)**

Judicial Member

Bangalore

Dated, 12<sup>th</sup> March, 2026

/ vms /

Sd/-

**(WASEEM AHMED)**

Accountant Member

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