

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' B '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

I.T. (T.P) A. No.409/Bang/2016  
(Assessment Year : 2011-12)

M/s. GT Nexus Software Pvt. Ltd.,  
The Sirius, 69/3, Millers Road,  
Bangalore-560 052.

.... Appellant.

Vs.

Dy. Commissioner of Income Tax,  
Circle 3(1)(2), Bangalore.

..... Respondent.

I.T. (T.P) A. No.31/Bang/2016  
(Assessment Year : 2011-12)  
(By Revenue)

Assessee By : Shri Padamchand Khincha, C.A.

Respondent By : Ms. Neera Malhotra, CIT (DR) (ITAT)-2, Bengaluru.

Date of Hearing : 23.02.2017.

Date of Pronouncement : 18.04.2017.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

These cross appeals are directed against the assessment order dt.16.11.2015 passed under Section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (in short 'the Act') in pursuant to the directions of the Dispute Resolution Panel (in short 'DRP') in the month of October, 2015 (as no specific date is given) for the Assessment Year 2011-12. There is a

delay of 51 days in filing the appeal by the assessee. The assessee has filed application for condonation of delay which is supported by an Affidavit.

2. We have heard the learned Authorised Representative as well as learned Departmental Representative and carefully perused the petition for condonation of delay. The assessee has explained the cause of delay as stated in the Affidavit that the assessee company has been acquired by an American Company **M/s. Infor Inc.** and the acquisition formalities completed on 18.9.2015. Due to the acquisition there has been a restructuring of team in USA which responsibility reassigned to new management and the process of transition was in progress at the time when the appeal had to be filed. Since transition process was in progress therefore the assessee could not file the appeal within the period of limitation and consequently there was a delay of 51 days in filing the appeal. Thus it is pleaded that the delay in filing the appeal is neither intentional nor deliberate but due to the unavoidable circumstances which were beyond the control of the assessee.

3. Having considered the explanation of the assessee, we are satisfied that the assessee was having sufficient cause for not presenting this

appeal within the period of limitation. The assessee has given all the relevant details of acquisition of the assessee company by an American Entity therefore there was a change in the management and due to the process of transition of management the assessee could not file the present appeal. In the facts and circumstances of the case and in the interest of justice, we condone the delay of 51 days in filing the appeal.

4. The assessee is a wholly owned subsidiary of GT Nexus Inc., USA. The assessee has set up offshore development centre for catering to the software development and maintenance need of the group in the global trade and logistic domain. Therefore the assessee is providing software development services to its AE. The financial results for the year under consideration as well as international transactions reported by the assessee are reproduced by the TPO in paras 3 & 3.1 as under :

### 3. FINANCIAL RESULTS FOR THE FY 2010-11 AS PER THE P & L A/C

Total In come	187826736
Less: Other income	47652
<b>Operating Income</b>	<b>187826736</b>
Total expenditure	166218350
Less: exchange loss	47652
<b>Operating expenditure</b>	<b>166170698</b>
Operating profit	21656038
OP/OC	13.03%

#### 3.1 International Transactions (as mentioned in the 92 CE report)

Particulars	Amount (Recd / receivable) Rs.
SOFTWARE DEVELOPMENT SERVICES	187826736
Total :	187826736"

To bench mark its international transactions, the assessee selected 7 comparables having mean margin of 11.90% in comparison to the assessee's profit margin of 13.42%. Thus the assessee claimed its international transactions at arm's length. The TPO rejected the TP Analysis of the assessee and carried out a fresh search. The TPO has selected 13 comparable companies as under :

Sl.No.	Name of the Company	Operating Margin on Cost	Adjusted Margin on Cost
1	Acropetal Technologies Ltd (seg)	31.98%	28.41%
2	E-Zest Solutions Ltd	21.03%	18.69%
3	E-Infochips Ltd	56.44%	55.82%
4	Evoke Technologies	8.11%	7.71%
5	I C R A Techno Analytics Ltd.	24.83%	22.54%
6	Infosys Technologies Ltd.	43.39%	43.16%
7	Larsen & Toubro Infotech Ltd.	19.83%	19.57%
8	Mindtree Ltd. (seg)	10.66%	8.97%
9	Persistent Systems & Solutions Ltd.	22.12%	20.89%
10	Persistent Systems Ltd.	22.84%	21.34%
11	R S Software (India) Ltd.	16.37%	15.93%
12	Sasken Communication Technologies	24.13%	24.22%
13	Tata Elxsi (seg)	20.91%	18.66%
	<b>Arithmetic Mean</b>	<b>24.82%</b>	<b>23.72%</b>

After allowing the working capital adjustment of 1.10%, the TPO has computed the adjusted mean margin at 23.72% and accordingly proposed an adjustment under Section 92CA of Rs.1,77,59,652. The assessee challenged the action of the TPO before the Disput Resolution Panel (DRP). While deciding the objections of the assessee, the DRP has rejected 10 companies out of the set of 13 comparables selected by the TPO. The DRP has applied certain filters to reject these companies. Thus both the revenue as well as assessee have challenged the directions of the DRP and raised the following grounds :

### **Revenue's Grounds**

1. The directions of the Dispute Resolution Panel are opposed to law and facts of the case.
2. In the facts and in the circumstances of the case, whether the Hon'ble Dispute Resolution Panel is correct in holding that M/s E-zest Solutions Ltd., M/s Inforsys Technologies Ltd., M/s Tata Elxsi Ltd., and M/s ICRA Techno Analytics Ltd., cannot be taken as a comparable being functionally different when it satisfies all the qualitative and quantitative filters applied by the TPO.
3. Whether a comparable may be considered as engaged in Software Product business merely because it has developed software product by following software development process without having legal ownership on such software product.
4. Whether the Hon'ble DRP Bangalore instead of relying on the decision of the ITAT ought to have decided the comparability of these companies on the basis of specific facts brought on record by the TPO in the case of the assessee.
5. Whether the Hon'ble DRP was right in seeking exact comparability while searching for comparable companies of the assessee under TNMM method whereas requirement of law and international jurisprudence require seeking similar comparable companies.
6. Whether on the facts and circumstances of the case, the Hon'ble DRP is right in holding that M/s R.S.Software Pvt Ltd., M/s Acropetal Technologies Ltd., , M/s Mindtree Ltd., and M/s L&T Infotech Ltd., M/s Evoke Technologies Ltd., cannot be taken as a comparable when it satisfies all the qualitative and quantitative filters adopted by the TPO.
7. Whether while seeking the exact comparability as mentioned above the DRP was right in fact and in law in imposing condition beyond law where the requirement of law is to acknowledge only those differences that are likely to materially affect the margin.

08. Whether on the facts and circumstances of the case, the DRP was right in following the ratio laid down by the Hon'ble High Court in the case of M/s Tata Elxsi Ltd., in 349 ITR 98.

09. Whether on the facts and in the circumstances of the case the Dispute Resolution Panel was right in holding that expenses reduced from Export Turnover has to be reduced from Total turnover also, since no provision u/s 10A provides for exclusion of such expenses.

10. For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.

11. The appellant craves leave to add, alter, amend and /or delete any of the grounds mentioned above.

### **Assessee's Grounds.**

1. *“ The Orders passed by learned Deputy Commissioner of Income Tax Circle–3(1)(2), Bangalore (hereinafter referred to as ‘Assessing Officer’), learned Deputy Commissioner of Income Tax TP-1(3)(1), Bangalore (hereinafter referred to as ‘Transfer Pricing Officer’) and Honorable Dispute Resolution Panel (hereinafter referred to as ‘DRP’) are bad in law and liable to be quashed.*
2. *The learned Assessing officer has made reference to TP officer in a mechanical manner and that there was no requirement of referring an international transaction to the TPO merely because the value of the international transaction is above a particular limit and further where the assessee enjoys 10A benefit where the tax rate in the country of the Associated Enterprises is higher than the rate of tax in India and hence the establishment of tax avoidance or manipulation of prices or establishment of shifting of profits is not possible.*
3. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in*
  - a. *Making transfer pricing adjustment of Rs. 1,51,50,722/-*
  - b. *Passing the order without demonstrating that appellant had motive of tax evasion.*
  - c. *Passing the orders without considering all the submissions and/or without appreciating properly the facts and circumstances of the case and the law applicable.*

#### **GROUND ON COMPARABLE COMPANIES AND REJECTION OF TRANSFER PRICING ANALYSIS OF THE APPELLANT**

4. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in:*
  - *Rejecting the comparable companies arrived at by the appellant on unjustifiable grounds and introducing new set of comparable companies and disregarding the objections to these new comparable companies, by the appellant.*

GROUNDNS RELATING TO TRANSFER PRICING ANALYSIS OF THE TRANSFER PRICING OFFICER:

5. *The learned Assessing Officer, learned Transfer Pricing Officer and Honorable DRP have erred in:*
- a. *Conducting a fresh transfer pricing analysis despite absence of any defects in the transfer pricing analysis submitted by the Appellant*
  - b. *Applying the turnover filter of Rs. 1 crore to infinity, without appreciating that the appellant is small service provider having a turnover of Rs.55.92 crores.*
  - c. *Adopting companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, etc.;*
  - d. *Not making proper adjustment for enterprise level and transactional level differences between the appellant and the comparable companies, including the differences in functions performed, assets employed, risks undertaken and Working Capital employed;*
  - e. *Not making any adjustments for qualitative and quantitative difference between the business of the assessee and those of the comparable companies;*
  - f. *Not recognizing that the assessee was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account;*
  - g. *The revised list of Comparable Companies of Transfer Pricing Officer/Assessing officer after Dispute Resolution Order of a mere 2 Comparable Companies cannot be deemed to representative of the software industry as a whole and hence the list merits rejection.*  
*[Reliance is placed on on SAP LABS India (P.) Ltd Vs. ACIT, Circle-12(3), Bangalore 398 and 418 ( Bang.) of 2008]*

*The appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law. The appellant prays accordingly."*

5. Ground Nos.1 to 3 of assessee's and Ground No.1 of the revenue's appeal are general in nature and does not require any specific adjudication.

6. Ground Nos.4 & 5 of the assessee's appeal and Ground Nos.2 to 7 of revenue's appeal are regarding the comparability of the companies

selected by the TPO. Therefore we will deal with this issue simultaneously.

7. The learned Authorised Representative of the assessee has pointed out that though the DRP has applied different filters however an identical set of 13 companies was selected by the TPO in the case of **Applied Materials India Pvt. Ltd. Vs. ACIT** in IT(TP)A Nos.17 & 39/Bang/2016 for the same Assessment Year 2011-12 and this Tribunal vide order dt.21.9.2016 has dealt with the identical set of 13 comparables. Thus the learned Authorised Representative has submitted that the issue of comparability of these companies is now covered by the decision of this Tribunal in the case of **Applied Materials India Pvt. Ltd. Vs. ACIT**. The learned Authorised Representative has pointed out that the DRP has applied the turnover filter of Rs.1 Crore to Rs.200 Crores whereas this Tribunal has taken a view that 10 times of the assessee's turnover would be an appropriate parameter for selection of the companies. He has further submitted that if the 10 times of the assessee's turnover is applied then 7 companies have to be excluded from the set of comparables.

8. On the other hand, the learned Departmental Representative has submitted that cherry picking of filter cannot be allowed at this stage when the TPO has not applied such a filter. He has further submitted that **E-Zest Solutions Ltd.** was found to be comparable by the Delhi Bench of ITAT in the case of **Saxo India Pvt. Ltd. Vs. ACIT** vide order dt.5.12.2016 in IT(TP)A No.6148/Del/2014.

9. Having considered the rival submissions as well as the relevant material on record, at the outset we note that an identical set of 13 comparables was considered by the co-ordinate bench of this Tribunal in the case of **Applied Materials India Pvt. Ltd. Vs. ACIT** (supra) in paras 9 to 21.2 as under :

“ 9. The next ground in the assessee's appeal is regarding seeking exclusion of 4 comparable companies retained by the DRP. We will deal with the comparability of these 4 companies as under :

(i) **E-Just Solution Ltd.**

9.1.1 The learned Authorised Representative has submitted that the assessee raised the objection before the DRP for exclusion of this company from the set of comparables but the DRP has not adjudicated the objections of the assessee. He has referred the objections raised before the DRP at page No. 1373 of the paper book as well as referred the relevant part of the Annual Report of this company at page Nos.39, 42 & 50 of the Annual Report. The learned Authorised Representative has submitted that this company is engaged in the diversified activity and reported the income under only one segment. Therefore it cannot be

considered as a comparable of the assessee's software development services segment. He has relied upon the decision of the co-ordinate bench of this Tribunal dt.22.4.2016 in the case of **Electronics for Imaging India Pvt. Ltd. Vs. DCIT** in IT(TP)A Nos.227 & 285/Del/2013.

9.1.2 On the other hand, the learned Departmental Representative has submitted that the main activity of this company is software development services. Therefore the insignificant variation in activity if any cannot be a determinative factor while computing the ALP under Transactional Net Margin Method (TNMM). He has relied upon the decision of the Delhi Bench of ITAT in the case of **Toluna India Pvt. Ltd. Vs. ACIT** (2014) 151 ITD 177.

9.1.3 We have considered the rival submissions as well as the relevant material on record. We find that the assessee has raised objections against this company before the DRP. However the DRP did not adjudicate the objections raised by the assessee. The decision of this Tribunal in the case of M/s. Electronics for Imaging India Pvt. Ltd. Vs. DCIT (supra) relied upon by the learned Authorised Representative is based on two aspects. (i) The information received under Section 133(6) of the Act was considered by the TPO without sharing with the assessee and (ii) nature of the activity is KPO. It is pertinent to note that the question of BPO and KPO is relevant only in ITES segment and not for software development services segment. On the contrary, the decision in the case of Toluna India Pvt. Ltd. Vs. ACIT (supra), pertains to the Assessment Year 2007-08, therefore the facts of the different year cannot be applied without verification. Accordingly, we set aside this issue of comparability of **E-Just Solution Ltd.** to the record of the Assessing Officer / TPO for deciding the same after verification of the relevant facts as well as considering the objections of the assessee.

(ii) **Persistent Systems and Solutions Ltd.**

(iii) **Persistent Systems Ltd.**

9.2.1 These two companies were part of the TP Study analysis however the assessee raised objections against these companies before the TPO as well as DRP.

9.2.2 Before us, the learned Authorised Representative of the assessee has submitted that these companies are functionally not comparable to the assessee as these are engaged in diversified activity i.e. rendering of software development services and licensing, royalty of software products. Thus without having the separate segmental details and data these diversified activities cannot be compared with the assessee. He has further pointed out that the company Persistent Systems Ltd. also engaged in developing products and therefore the activities are not comparable with that of the assessee. In support of his contention, he has relied upon the decision of this Tribunal dt.24.2.2016 in the case of **DCIT Vs. Electronics for Imaging India Pvt. Ltd.** (supra) and submitted that this company was found to be not comparable with the software development services provider. He has further pointed out that in assessee's own case for the Assessment Year 2010-11, the DRP vide its order dt.24.11.2014 has excluded **Persistent Systems and Solutions Ltd.** from the list of comparables by holding that this company is not comparable to the assessee.

9.2.3 On the other hand, the Id. DR has submitted that the TPO as well as DRP has examined the functional comparability of these companies and found that these companies are comparable with the assessee. These two companies have satisfied all the filters applied by the TPO and DRP therefore the minor variation in the activity would not render these companies non-comparable when a comparable price is considered under TNMM.

9.2.4 We have considered the rival submissions as well as the relevant material on record. At the outset we note that the functional comparability of these two companies have examined by the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) in para 60 and 61 & paras 24 to 26 as under :

" Persistent Systems & Solutions Ltd.

60. The assessee has the grievance against rejection of this company by the DRP. The Id. AR has submitted that assessee did not raise any objection against this company, however, the DRP has rejected the said company. Therefore, the said company should be retained in the list of comparables.

61. Having considered the rival submissions as well as relevant material on record, at the outset, we note that the DRP has examined the functional comparability of this

company by considering the relevant details as given in the annual report of this company. The DRP has given the finding that the entire revenue has been earned by this company from the sale of software services and products and in the absence of segmental details, it cannot be considered as comparable with software services segment. We find that this company has shown the income from sale of software services and products to the tune of Rs.6.67 crores. We further note that as per Schedule 11, the entire revenue has been shown under one segment i.e., sale of software services and products. Therefore, no separate segment has been given in respect of software services. Accordingly, the composite data of revenue as well as margins of this company pertaining to the sale of software services and products cannot be considered as comparable with the software development services segment of the assessee. In view of the above facts and circumstances, we do not find any error or illegality in the directions of the DRP in excluding this company from the list of comparables. This ground of CO is dismissed.

(4) Persistent Systems Ltd.

24. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. The assessee raised objections against selection of this company on the ground that this company is functionally not comparable as engaged in the product development. The segmental information for services and product is not available. Further, the assessee has also pointed out that there was an acquisition and restructuring during the year under consideration.

25. The DRP has noted the fact that this company has reported the entire receipt from sales and software services and product. Therefore, no segmental information was found to be available for sale of software services and product. Further, the DRP has noted that as per Note 1 of Schedule 15, this company is predominantly engaged in outsource software development service. Apart from the revenue from software services, it also earns income from licence of products, royalty on sale of products, income from maintenance contract, etc. These facts recorded by the DRP has not been disputed before us.

26. Therefore, when this company is engaged in diversified activities and earning revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, etc., the same cannot be considered as functionally comparable with the assessee. Further, this company also earns income from outsource product development. In the absence of any segmental data of this company, we do not find any error or illegality in the findings of the DRP that this company cannot be compared with the assessee and the same is directed to be excluded from the set of comparables.”

We further find from the Annual Report that there is no change in the activity and functions of these companies during the year under consideration in comparison to the Assessment Year 2010-11. Accordingly, following the decisions of the co-ordinate benches of this Tribunal (supra), we direct the A.O./TPO to exclude these two companies from the set of comparables.

**(iv) Sasken Communication Technologies Ltd.**

9.3.1 The Id. AR of the assessee has submitted that this company is engaged in the development of software products as it has inventories, intangible assets as well as high expenditure on R&D. Therefore this company is functionally not comparable to the assessee. The Id. AR has referred to the Annual Report of this company and submitted that it derives income from software products specifically new products launched called 'Vyaparaseva' during F.Y. 2010-11. Thus this company is engaged in product development cannot be compared with the assessee when segmental details are not available. He has relied upon the decision dt.24.2.2016 of the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra).

9.3.2 On the other hand, the learned Departmental Representative has submitted that the inventory shown at page 70 of the report is very negligible. The product launched is for future period and not generated any revenue during the year under consideration. He has relied upon the orders of authorities below.

9.3.3 We have considered the rival submissions as well as the relevant material on record. The co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) has considered the comparability of this company in paras 27 to 29 as under :

“(5) Sasken Communication Technologies Ltd.

27. The assessee raised objection that this company has revenue from software services, software products and other services. The DRP has come to the conclusion that this company earned revenue from 3 segments. However, no segmental information is available. Accordingly, the DRP directed the AO to exclude this company from the comparables.

28. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. The DRP has reproduced the break-up of revenue in the impugned order as under:-

Amount in Rs. lakhs

	Year ended March 31, 2010	Year ended March 31, 2019
Software Services	37,736.22	40,531.20
Software products	2,041.00	6,146.43
Other services	372.77	1,297.05
Total revenues	40,150.89	47,974.68

29. Thus, there is no dispute that this company earns revenue from 3 segments. However, the segmental operating margins are not available. Therefore, in the absence of segmental relevant data and particularly operating margins, this composite data cannot be considered as comparable with the assessee for software development services segment. Accordingly, we do not find any error or illegality in the findings of the DRP.”

We further note that the DRP has not adjudicated the objections of the assessee whereas for the Assessment Year 2010-11, the DRP rejected this company as comparable. Accordingly, we set aside this issue to record of the A.O./TPO to verify the relevant facts and compare with the facts recorded by the Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) for the Assessment Year 2010-11 and then decide the issue after giving an opportunity of hearing to the assessee.

11. The next ground of assessee's appeal is regarding seeking inclusion of some of the comparables in the set of comparable companies which are as under :

- (i) Akshay Software Technology Ltd.
- (ii) Powersoft Global Ltd.
- (iii) R Systems International Ltd.

(i) **Akshay Software Technology Ltd.**

12.1 This company was selected by the assessee in the TP Study however the TPO rejected this company on the ground that its functions appear to be more in the nature of support services or ITES. The DRP has confirmed the rejection on a different ground by applying a filter that the expenditure in foreign currency was higher when compared to its total revenue. Thus DRP was of the view that this company was predominantly engaged in the 'on site' development of software. The Id. AR has submitted that such filter was neither applied by the TPO nor sought to be applied by the assessee. Therefore the DRP was not asked to apply this filter. Secondly the DRP did not arrive at the finding that the said company was in fact engaged in 'on site' development of software. The finding of the DRP are based mainly on the assumption that because of its expenditure in foreign currency was high it must have been engaged in the 'on site' development of software. The Id. AR has further contended that this filter of 'on site' development services have been applied by the DRP without giving an opportunity of filing its objections to the assessee. Thus the Id. AR has submitted that the rejection of the said company by applying a filter not applied by the TPO is liable to be set aside. He has relied upon the decision of this Tribunal dt.29.6.2015 in the case of **M/s. Arowana Consulting Ltd. Vs. ITO** in IT(TP)A No.235/Bang/2015.

12.2 On the other hand, the learned Departmental Representative has referred to page Nos.15 and 20 of the Annual Report and submitted that this company has shown product and stock in the accounts

therefore in the absence of segmental reporting it cannot be considered as functionally comparable with the assessee.

12.3 We have considered the rival submissions as well as the relevant material on record. As regards the decision of the co-ordinate bench in the case of Arowana Consulting Ltd. Vs. ITO (supra), the Tribunal has dealt with only one objection of employee cost in paras 8 & 9 as under :  
08. What is left for consideration is assessee's grievance regarding M/s. Akshay Software Technologies Ltd. DRP directed exclusion of the said company for a reason that its employee cost was more than 89% of its total operating expenditure. We find that assessee had employee cost in excess of 90% of its operating expenditure. In our opinion, it is normal to have a high percentage of employee cost in a software development company, especially so, when the company is involved in development of software for clients at the site of the clients. Reason given by the DRP, in our opinion, was not correct. Higher employee cost is a normal feature for a software development company for the simple reason that it is a skill oriented business. The skill-set required for the employees in the case of the assessee, required knowledge of Arabic also, making it all the more scarce. In any case, for A. Y. 2009-10, M/s. Akshay Software Technologies Ltd was considered as a proper comparable and not excluded. In his order dt.07.01.2015 for A. Y. 2009-10, after applying the onsite revenue filter of 50%, TPO himself had considered M/s. Akshay Software Technologies Ltd, as a proper comparable. As to the argument of the Ld. DR that Related Party Transaction, volume of M/s. Akshay Software Technologies was not provided by the assessee, leading to its rejection, we find that assessee had at para 5.172 and 5.173 of its objections before DRP, submitted that RPT of the said company was 4.33% only, compiling the figures from previous years' data available in Annual Report of Financial Year 2010-11 of the said company. This working stands un rebutted. We are, therefore of the opinion that the assessee has to succeed in its claim that M/s. Akshay Software Technologies Ltd, is a proper comparable. We direct the TPO to include the said company as a comparable along with the two comparables, namely, M/s. R. S. Software (India) Ltd and M/s. Thinksoft Global Services Ltd, and rework the mean PLI. ALP adjustment, if any, required shall be based on such mean PLI, after considering the working capital adjusted. Ordered accordingly. Ground 12 of the assessee is allowed.

09. Vide its ground 13, we find that assessee is aggrieved that DRP had directed treatment of foreign exchange loss/gain as non-operating in nature. We find that DRP had at para 2.9 of its directions dated

26.11.2014 directed inclusion of foreign exchange gain / loss as part of the operating expenditure and not the other way. Therefore, the said ground is ill conceived and dismissed.ö

Therefore other than the employee cost the issue of functional similarity was not before the Tribunal in the said case. However, we note that as per the financial results reported in the Annual Report at page 2 and 15, the income shown in the profit and loss account is from software services and products. Further as per the schedule 10 at page 20 of the Annual Report this company has reported income from sale of product. Similarly as per Schedule 12, this company has shown goods purchased for resale as well as opening stock. Therefore in the absence of segmental results and operation margin, this company cannot be considered as functionally comparable. Accordingly, we reject this ground of assessee.

(ii) **LGS Global Ltd.**

13.1 The TPO rejected this company on the ground that the Annual Report did not give break up of employee cost and thus he could not compute its employee cost factor. The DRP upheld the rejection on the basis that the separate details of employee cost were not available.

13.2 Before us, the Id.AR of the assessee has submitted that this company has shown purchase and employee cost under a composite head which is 83.91% of the sale. Therefore this company satisfied the employee cost of 25% of total sales. The learned Authorised Representative has pointed out that in case of service provider the major component is employee cost and there is hardly any purchases therefore even if the employee cost is not separately reported, the composite of purchase and employee cost constitute 83.91% of sales. Thus he has submitted that this company should be included in the list of comparables.

13.3 On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below and submitted that there is no dispute that this company has not reported employee cost separately and therefore it is not possible to ascertain the employee cost and to apply employee cost filter. Further this company has also shown its goodwill in its balance sheet and therefore the intangible assets renders this company non-comparable to the assessee.

13.4 We have considered the rival submissions as well as the relevant material on record. This company has shown the purchases and

personnel cost at page 39 of the Annual Report as a combined expenditure as under :

Purchases & Personnel Cost : Rs.250,61,55,607.

Therefore the cost of employee is not separately reported by this company. Further it is not clear whether the goodwill is self-generated or acquired intangible asset. Accordingly, this issue is set aside to the record of the Assessing Officer/TPO to verify the relevant facts to ascertain the employee cost and then decide the functional comparability. Needless to say the information under Section 133(6) may be obtained for the purpose of ascertaining the annual employee cost of this company.

14. The assessee is also seeking inclusion of couple of companies which were selected by the TPO but rejected by the DRP as under :

- (i) Evoke Technology Ltd.
- (ii) R S Software (India) Ltd.

14.1 We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. These two companies were selected by the TPO in the set of comparables however the DRP has rejected these companies on the ground that the company Evoke Technology Ltd. is having low margin and the company R S Software (India) Ltd. is engaged in 'on site' activity. Both the assessee as well as revenue are seeking inclusion of these companies in the list of comparables. Accordingly, when the assessee as well as revenue are seeking inclusion of these two companies, we direct the TPO to include these two companies in the list of comparables.

15. The revenue is also seeking inclusion of some of the companies in the list of comparables which were reflected by the DRP. We will deal with the issues one by one as under :

(i) **Acropetal Technologies Ltd.(Seg.)**

16.1 The DRP rejected this company on the ground of employee cost filter. The Id. DR has submitted that the TPO has applied the employee cost filter and this company satisfies the same.

16.2 On the other hand, the learned Authorised Representative of the assessee has submitted that the total employee cost of this company is 11.51 of the total operating revenue therefore it fails the employee cost filter of 25%. Further he has pointed out that this company also fails the software development services revenue filter of 75%. He has referred

the details at page Nos.39 and 53 of the Annual Report and submitted that the income from software development is Rs.81.40 Crores out of total revenue of Rs.141 Crores. Therefore this company fails this filter.

16.3 In a rejoinder the Id. DR has submitted that the TPO has considered only Information Technology transactions segment and therefore it satisfies software development services income filter as well as employee cost filter.

16.4 We have considered the rival submissions as well as the relevant material on record. As per the segmental reporting at page 53 of the Annual Report the income from Information Technology Services is Rs.81.40 Crores out of the total income of Rs.141 Crores. Therefore the revenue from Information Technology transactions services is less than 75% and consequently this company does not satisfy the filter of information technology revenue applied by the TPO itself. Accordingly, we do not find any reason to interfere with the order of the DRP for this issue.

**(ii) Icra Techno Analytic Ltd.**

17.1 We have heard the learned D.R. as well as learned A.R. and considered the relevant material on record. The DRP has rejected this company by recording the fact as under :

*“ We examined the annual report from which it is evident that the entire revenue has been shown under service segment which indicates that the revenue from software development, consultancy, licensing and sub-licensing, annual maintenance charges for software support. WEB development and hosting has been reported in one segment, thus in absence of segmental information, we concur with the view of the DRP in preceding year and accordingly direct the Assessing Officer to exclude this company from comparables.”*

17.2 We further note that the Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) has considered the comparability of this company in paras 14 to 16 as under :

*“ (1) ICRA Techno Analytics Ltd. (seg)*

*14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, this company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:-*

*“Having heard the contention, on perusal of the annual report, it is noticed by us that the segmental information is available for two segments i.e., services and sales. However, it is evident from the*

*annual report that the service segment comprises of software development, software consultancy, engineering services, web development, web hosting, etc. for which no segmental information is available and therefore, the objection of the assessee is found acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables.”*

15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when this company is engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing, then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.

16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider.”

Nothing has been brought before us to show that the facts recorded by the DRP as well as by the co-ordinate bench of this Tribunal are not correct. Accordingly, in view of the decision of the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra), we do not find any error or illegality in the order of the DRP on this issue.

(iii) **Infosys Ltd.**

18. We have heard the learned D.R. as well as learned A.R. and considered the relevant material on record. At the outset, we note that the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) has considered this issue in para 17 as under :

“(2) **Infosys Ltd.**

*17. The assessee objected against the selection of this company on the ground that this company has a big name and brand value and therefore it has a bargaining power. It also contended that the turnover of this company is Rs.21,140 crores, which is 442 times higher than the assessee.”*

Following the decision of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) , we do not find any reason to interfere with the directions of the DRP on this issue.

(iv) **L&T Infotech Ltd.**

19. We have heard the learned D.R. as well as learned D.R. and considered the relevant material on record. The DRP rejected this company by recording the facts at page 15 as under :

On perusal of schedule to the notes of the accounts, it is noticed by us that expenses incurred in foreign currency are 938.94 crore (48.84%), out of the total expenses of ₹ 1920.46 crore debited in profit and loss account, these expenses include the sub contracting expenses to the extent of ₹ 118.01 crore, which indicates that the company has the on-site revenue of about 50%, it is also noticed by us that in the profit and loss account, the revenue has been shown from software development services and products, in the segmenting account it is mentioned that the segment revenue include sales directly identifiable with/allocable to the segment. In Schedule 18, the revenue have been shown from 3 segments i.e. financial services, manufacturing and telecom. However, in paragraph 23, it is mentioned that the company is mainly engaged in the business of software development. The assessing officer has considered entire revenue from 3 segments from the software development services. Out of the software development expenses of ₹ 1,488.30 crore debited in profit and loss account, salary to overseas staff is ₹ 1200.28 crore which also indicates that the company is predominantly engaged in development of software on-site. In view of the above differences, in our view the above company cannot be retained as comparable, the assessing officer is accordingly directed to exclude the above company from comparable.

We further find that the comparability of this company has been considered by the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) in paras 62 to 65 as under :

62. The assessee has raised objection against this company on the basis of high turnover in comparison to the assessee. It was also contended that related party transaction (RPT) of this company is 18.66%. The DRP rejected objections of the assessee on the ground that TPO has applied 25% filter of RPT and annual report of the company does not show any other services rendered other than software development services provided by this company. Thus the DRP held that software development segment is comparable to the assessee and therefore this company has to be retained as comparable.

63. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The Id. AR has submitted that this company is having 18.66% RPT and further this company earns revenue from both services and products. Thus, the Id. AR submitted this company is also in the software products and therefore cannot be considered as good comparable. He has further contended that in a series of decisions, the Tribunal has applied 15% RPT filter and since this company is having more than 15% RPT, the same cannot be considered as a good comparable.

64. On the other hand, the Id. DR has submitted that TPO has applied RPT filter of 25% and therefore only for this company, the RPT cannot be reduced to 15%. Further, the DRP has examined annual report of this company and found that this company earns revenue from software development services and accordingly is comparable.

65. We have considered the rival submissions and relevant material on record. We find that in the normal circumstances the tolerance range of RPT should not be more than 15%. In the case of the assessee, the availability of the comparable is not an issue and therefore we do agree with the view taken by the coordinate Benches of the Tribunal that the threshold limit of tolerance range should not exceed 15% as far as RPT revenue is concerned. Therefore, we direct the AO/TPO to apply 15% RPT filter in respect of all the comparables.+

In view of the facts recorded by the DRP as well as the decision of the co-ordinate bench, we do not find any reason to interfere with the directions of the DRP.

(v) **Tata Elxsi Ltd. (Seg.)** :

20. We have heard the learned Departmental Representative as well as learned Authorised Representative and considered the relevant material on record. The DRP has rejected this company by discussing the fact at page 16 as under :

<p>Directed to exclude as per paragraph 2.7 of the order, further, on perusal of annual report, it is noticed by us from page 14 that software development and services consist of embedded product design, industrial design and visual computing labs which are not comparable to the software development services provided by the assessee and therefore, we direct the assessing officer to exclude the above company from the comparables.</p>
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We further note that the DRP has also recorded the fact that export revenue of this company is 73.30% which is less than 75% applied by the TPO. Therefore this company does not qualify the export earning filter applied by the TPO. Further the co-ordinate bench of this Tribunal in the case of DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra) has considered this issue in paras 30 to 33 as under :

30. The assessee has raised objections against this company on the ground that the company is functionally different from the assessee. Though the TPO has considered the software development and services segment of this company as comparable to that of assessee, however, the assessee contended that even within the software segment, this company is engaged in diverse activities. The assessee placed reliance on the information in the annual report under the Directors Report and submitted before the DRP that

even under the software development services segment, this company is engaged in various diversified activities including product design service, innovation design, engineering service, visual computing labs, etc. The assessee also placed reliance on the decision of Mumbai Bench of the Tribunal in the case of *Telcordia Technologies Pvt. Ltd. v. ACIT, 137 ITD 1 (Mum)*.

31. The DRP found that this company is not functionally comparable with assessee company as it is engaged in diversified activities even in the software development services. The DRP has followed the decision of the Mumbai Bench of the Tribunal in the case of *Telcordia Technologies Pvt. Ltd. (supra)*.

32. We have heard the Id. DR as well as Id. AR and considered the relevant material on record. We find that this company even in the software development segment is engaged in diversified activities of product design services, innovation design, engineering services, visual computing labs, etc. We further note that in the case of *Telcordia Technologies Pvt. Ltd. (supra)*, the Mumbai Bench of the Tribunal vide its order dated 11.5.2012 in para 9.7 has held as under:-

ö7.7 From the facts and material on record and submissions made by the learned AR, it is seen that the Tata Elxsi is engaged in development of niche product and development services which is entirely different from the assessee company. We agree with the contention of the learned AR that the nature of product developed and services provided by this company are different from the assessee as have been narrated in para 6.6 above. Even the segmental details for revenue sales have not been provided by the TPO so as to consider it as a comparable party for comparing the profit ratio from product and services. Thus, on these facts, we are unable to treat this company as fit for comparability analysis for determining the arm's length price for the assessee, hence, should be excluded from the list of comparable parties.ö

33. No contrary view has been brought to our notice regarding comparability of this company with that of a pure software development service provider. Accordingly, in view of the decision of the Mumbai Bench of the Tribunal in the case of *Telcordia Technologies Pvt. Ltd. (supra)*, we do not find any reason to interfere with the finding of the DRP.ö

In view of the facts recorded by the DRP as well as the decision of the Tribunal in the case of *DCIT Vs. Electronics for Imaging India Pvt. Ltd. (supra)*, we do not find any error or illegality in the directions of the DRP to exclude this company from the set of comparables.

21. The revenue is also seeking inclusion of the following companies which were rejected by the DRP.

- (i) Evoke Technology Pvt. Ltd.
- (ii) Mindtree Limited (Seg.)
- (iii) R S Software India Pvt. Ltd.

21.1 At the time of hearing, the learned Authorised Representative of the assessee has submitted that the assessee has no objections if these three companies are restored to the set of comparables as the assessee did not raise any objection before the DRP but the DRP rejected this company suo moto.

21.2 In view of the fact that both the revenue as well as the assessee are seeking inclusion of these companies in the set of comparables, we set aside the directions of the DRP qua these comparables and restore these three companies to the set of comparables.”

Therefore even if we apply the 10 times tolerance range of assessee's turnover in respect of the comparable companies then by considering the turnover of assessee of Rs.18.18 Crores, the companies which are having the turnover less than Rs.1.8 Crores and more than Rs.181 Crores will be excluded. Accordingly, apart from the functional dissimilarity, the following companies will be excluded by applying this parameter of turnover tolerance range of 10 times of assessee's turnover on both sides :

1. Infosys Technology Ltd. Rs.25,385 Crores.
2. L&T Infotech Ltd. Rs.2,331.81 Crores.

3. Mindtree Limited (Seg.) Rs.871.30 Crores.
4. Persistent Systems Rs.610 Crores.
5. R S Software Ltd. Rs.188.26 Crores.
6. Sasken Communications Ltd. Rs.394.20 Crores
7. Tata Elxsi Ltd. (Seg.) Rs.358.20 Crores.

It is pertinent to note that the DRP has applied the turnover filter and the revenue has challenged the same therefore, the issue of turnover filter has been a subject matter in these appeals. Accordingly, these 7 companies are directed to be excluded.

10. Further in view of the functional comparability has been considered by this Tribunal in the case of Applied Materials, the following companies namely (i) **Acropetal Technologies Pvt. Ltd. (Seg.)** and (ii) **ICRA Techno Analytics Ltd.** are found to be functionally not comparable.

11. As regards the **E-Zest Solution Ltd**, the issue of comparability has been remitted to the record of the TPO. Accordingly by following the earlier order of this Tribunal, the functional comparability of **E-Zest Solution Ltd.** has been remitted to the record of the TPO/A.O.

**E-Infochips Limited.**

12. The functional comparability of this company has been considered by the Delhi Bench of the Tribunal in the case of **Saxo India Pvt. Ltd. Vs. ACIT** (supra) in para 10.1 to 10.2 as under :

“ (i) E-Infochips Limited:

10.1. The Transfer Pricing Officer included this company in the list of comparables. On being called upon to explain as to why it should not be considered as a comparable, the assessee contended that there was functional dissimilarity inasmuch as this company was engaged in software development and IT enabled services and also Products. The Transfer Pricing Officer observed that the revenues of this company from Products was only 15% of total revenue and hence the same qualified to be eligible for comparison. The DRP did not allow any relief.

10.2. After considering the rival submissions and perusing the relevant material on record, we find that the Annual report of this company is available in the paper book with its Profit and loss account at page 1025. Schedule of Income indicates its operating revenue from software development, hardware maintenance, information technology, consultancy etc. Revenue from hardware maintenance stands at Rs. 3.92 crore, which has been considered by the Transfer Pricing Officer himself as sale of products. Such sale of products constitutes 15% of total revenue. There is no segmental information available as regards the revenue from sale of products and revenue from software development segment. As the assessee is simply engaged in rendering software development services and there is no sale of any software products, this company, in our considered opinion, ceases to be comparable. It is obvious that from the common pool of income from both the streams of software products and software services, one cannot deduce the revenue from software services and no one knows the impact of revenue from Products on the overall kitty of profit, which may be significant. Since no segmental data of this company is available indicating operating profit from software development services, we order to exclude this company from the list of comparables.”

Accordingly following the order of the Delhi Bench of ITAT, we direct the TPO/A.O. to exclude this company from the set of comparables.

13. After excluding these 11 companies from the set of comparables only 2 companies are left viz. **Evoke Technologies Ltd.** and **Persistent Systems & Solutions Ltd.** which are not disputed by the assessee. We find that the DRP has rejected the company **Evoke Technologies Ltd.** and the revenue is seeking inclusion of this company therefore when the assessee has no objection in inclusion of this company, this company is restored to the set of comparables. Accordingly, the TPO/A.O. is directed to recompute the ALP on the basis of remaining companies.

14. The Ground Nos.8 & 9 of the revenue's appeal is regarding exclusion of the expenditure incurred in foreign currency from export turnover as well as total turnover while computing the deduction under Section 10A of the Act.

15. We have heard rival submissions as well as carefully considered the material on record and the judicial decision cited. On perusal thereof we find that the issue before us for adjudication i.e. if expenditure incurred in foreign currency attributable to the delivery of computer software abroad is reduced from export turnover an equal

amount should also be reduced from total turnover while computing the deduction under section 10A of the Act, is covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in the case of Tata Elxsi Ltd. (supra). In this order, the Hon'ble Court held –

*“ The Bombay High Court had an occasion to consider the earning of the word ‘total turnover’ in the context of section 10A, in the case of CIT Vs. Gem Plus Jewellery India Ltd. (2011) [330 ITR P. 175 (Bom)] (2010-TIOL-456-HC-MUM-IT). Interpreting sub-section (4) of section 10A, it is held as under :*

*“Under sub-section (4) the proportion between the export turnover in respect of the articles or things, or as the case may be, computer software exported, to the total turnover of the business carried over by the undertaking is applied to the profits of the business of the undertaking in computing the profits of the business of the undertaking in computing the profits derived from export. In other words the profits of the business of the undertaking are multiplied by the export turnover in respect of the articles, things or, as the case may be, computer software and divided by the total turnover of the business carried on by the undertaking. The formula which is prescribed by sub-section (4) of section 10A is as follows :*

<i>Profits derived from export of articles or things or computer software.</i>	<i>Profits of the business of the undertaking.</i>	<i>Export turnover in respect of the articles or things or computer software.</i>
		<i>Total turnover of the business carried on by the undertaking</i>

*The total turnover of the business carried on by the undertaking would consist of the turnover from export and the turnover from local sales. The export turnover constitutes the numerator in the formula prescribed by sub-section (4). Export turnover also forms a constituent element of the denominator in as much as the export turnover is a part of the total turnover. The export turnover, in the numerator must have the same meaning as the export turnover which is constituent element of the total turnover in the denominator. The legislature has provided a definition of the expression "export turnover" in Expln.2 to s.10A which the expression is defined to mean the consideration in respect of export by the undertaking of articles, things or computer software received in or brought into India by the assessee in convertible foreign exchange but so as not to include inter alia freight, telecommunication charges or insurance attributable to the delivery of the articles, things or software outside India. Therefore in computing the export turnover the legislature has made a specific exclusion of freight and insurance charges. The submission which has been urged on behalf of the revenue is that while freight and insurance charges are liable to be excluded in computing export turnover, a similar exclusion has not been provided in regard to total turnover. The submission of the revenue, however, misses the point that the expression "total turnover" has*

*not been defined at all by Parliament for the purposes of s.10A. However, the expression "export turnover" has been defined. The definition of "export turnover" excludes freight and insurance. Since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula. Undoubtedly, it was open to Parliament to make a provision which has been enunciated earlier must prevail as a matter of correct statutory interpretation. Any other interpretation would lead to an absurdity. If the contention of the Revenue were to be accepted, the same expression viz. 'export turnover' would have a different connotation in the application of the same formula. The submission of the Revenue would lead to a situation where freight and insurance, though these have been specifically excluded from 'export turnover' for the purposes of the numerator would be brought in as part of the 'export turnover' when it forms an element of the total turnover as a denominator in the formula. A construction of a statutory provision which would lead to an absurdity must be avoided."*

*The Special Bench of the Tribunal, in the case of ITO Vs. Sak Soft Ltd. (2009) 313 ITR (AT) 353 (Chennai) (SB) (2009-TIOL-187-ITAT-MAD-SB) also had an occasion to consider the meaning of the word 'total turnover'. After referring to the various judgments of the High Court as well as the Supreme Court held as under :*

*"53. For the above reasons, we hold that for the purpose of applying the formula under sub-section (4) of section 10-B, the freight, telecom charges or insurance attributable to the delivery of articles or things or computer software outside India or the expenses, if any, incurred in foreign exchange in providing the technical services outside India are to be excluded, both from the*

*export turnover and from the total turnover, which are the numerator and the denominator respectively in the formula.....”*

*The formula for computation of the deduction under section 10A would be as under :*

*Profits of the business x export turnover / Total turnover*

*From the aforesaid judgments, what emerges is that, there should be uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports. In the case of combined business of an assessee, having export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business and domestic business, the legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was accepted as a method of arriving at export profits. In the case of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component or part of a denominator, the other component being the domestic turnover. In other words, to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other words, if the export turnover in the*

*numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover cannot be different. Therefore, though there is no definition of the term 'total turnover' in section 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. Though when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, 'export turnover' is defined, and when the 'total turnover' includes export turnover, the very same meaning given to the export turnover by the legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means, then, when the total turnover includes export turnover, the meaning assigned by the legislature to the export turnover is to be respected and given effect to, while interpreting the total turnover which is inclusive of the export turnover. Therefore the formula for computation of the deduction under section 10A, would be as under :*

*Profits of the business of the undertaking x Export turn  
over*

*(Export turnover + domestic turn over)*

*Total Turnover*

*11. In that view of the matter, we do not see any error committed by the Tribunal in following the judgments rendered in the context of section 80HHC in interpreting section 10A when the principle underlying both these provisions is one and the same. Therefore, we do not see any merit in these appeals. The substantial question of law framed is answered in favour of the assessee and against the revenue."*

Respectfully following the aforementioned decision of the Hon'ble High Court of Karnataka in the case of Tata Elxsi Ltd. (supra), we uphold the finding of DRP in directing the Assessing Officer to reduce the expenditure incurred in foreign currency from both export turnover and total turnover for the purpose of computing the deduction under section 10A of the Act in the case on hand. Consequently this ground raised by revenue is dismissed.

16. In the result, the assessee's appeal is allowed and revenue's appeal is partly allowed.

Order pronounced in the open court on the 18th day of April, 2017.

Sd/-

**(S. JAYARAMAN)**

Accountant Member

Sd/-

**(VIJAY PAL RAO)**

Judicial Member

Bangalore,  
Dt.18.04.2017.

\*Reddy gp

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Assistant Registrar  
Income Tax Appellate Tribunal  
Bangalore.