

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I-2 ": NEW DELHI  
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.926/Del/2014  
(Assessment Year: 2009-10)

&

ITA No.2776/Del/2015  
(Assessment Year: 2009-10)

NEC Technologies India Ltd, (formerly known as NEC HCL Systems Technologies Ltd, 4 <sup>th</sup> Floor, Vijaya Building, 17, Barakhamba Road, New Delhi PAN:AACCN2062Q	Vs.	Addl. CIT, Range-13, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Sh.Ajay Vohra, Sr. Adv Sh. Neeraj Jain, Adv Sh. Puneet Chugh, CA Ms. Nitya Gupta, CA
Revenue by:	Sh. Manu Chaurasia, Sr. DR
Date of Hearing	18/02/2016
Date of pronouncement	22/04/2016

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

**ITA NO ITA No.926/Del/2014**  
**(Assessment Year: 2009-10)**

1. This appeal is filed by the assessee against the order of the ld Assessing Officer passed u/s 143(3) read with Section 144C of the Income Tax Act

NEC Technologies India Ltd vs Addl. CIT  
ITA No 926/Del/2014 & 2776/Del/2015  
A.Y. 2009-10

dated 29.01.2014 in pursuance of directions issued by DRP vide direction 20.12.2013.

2. The assessee is engaged in the business of providing software development and related services to its Associated Enterprises. Assessee filed its return of income on 30.9.2009 declaring total income of Rs.8272250/-. As the assessee has entered into international transactions with its Associated Enterprise ld. Assessing Officer made reference to ld. TPO u/s 92CA of the Income Tax Act for determining ALP of following international transactions:-

No	Nature of transaction	Approach to taxpayer		Value of transaction
1.	Provision of software development services	TNMM	OP/OC	652368738
2.	Payment of outsourcing costs	TNMM	OP/OC	188540410
3.	Availing of management services	BNR	NA	8463788
4.	Payment of lease rent	BNR	NA	5103182
5.	Purchase of fixed assets	CUP	NA	267189
6.	Reimbursement of expenses to AEs	BNR	NA	7256398
7.	Payment of royalty for using brand name	CUP	NA	772629

3. Vide order dated 18.01.2013 ld. TPO computed Arm's length price with respect to software development services of Rs.651522156/- at Rs.736907605/- and proposed an adjustment of Rs.85385449/-. The assessee filed an objection before DRP on 30.04.2013 against the draft assessment order passed by ld. Assessing Officer on 28.03.2013. Ld. DRP issued directions u/s 144C(5) of the Act on 20/12/2013 and pursuant to those directions, order u/s 143(3) read with Section 144C was passed by ld. AO wherein transfer pricing adjustment of Rs.60772255/- was made along with disallowance u/s 14A of Rs.237585/-. Against this order assessee is in appeal before us.

4. The assessee has raised the following grounds of appeal:-

General Grounds:-

1. *That the impugned order of assessment framed by the assessing officer in pursuance of the directions of the Dispute Resolution Panel (hereinafter referred to as 'DRP1') under Section 143(3) read with Section 144C of the Income-tax Act, 1961 ('Act'), is bad in law. violative of principles of natural justice and void ab-initio.*

2. That assessing officer erred on facts and in law in determining income of the appellant at Rs.6,92,82,090 against the total income returned by the appellant of Rs.82,72,250.

**Transfer Pricing Matters:**

3. That the TPO /DRP erred on facts and in law in making an addition of Rs.6,07,72,255 to the income of the appellant, on account of the alleged difference in the arm's length price of the international transactions of rendering software service undertaken during the previous year, on the basis of the order passed under section 92C(3) of the Act by the TPO.
- 3.1 That the TPO / DRP erred on facts and in law by failing to appreciate the commercial expediencies surrounding the international transaction pertaining to provision of software development services.
- 3.2 That the TPO / DRP erred on facts and in law by failing to appreciate the corroborative analysis performed using Comparable Uncontrolled Price ("CUP") Method to establish the arm's length price wherein man-month rates charged by the Appellant to its Associated enterprises were compared with man-month rates charged by HCL Japan from third parties for rendering similar software development services.
- 3.3 That the TPO / DRP erred on facts and in law by failing to consider that return on costs after excluding outsourcing costs of the Appellant should be considered. In the process, the DRP has erred by ignoring the terms of the agreement between HCL Japan and the Appellant which clearly states that all the functions to be performed and associated risks are the responsibility of HCL Japan only.
- 3.4 That the TPO/ DRP erred on facts and in law by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules'1962 ("IT Rules"), and conducting a fresh economic analysis for the determination of the arm's length price ("ALP") of the Appellant's international transactions and holding that the international transactions are not at arm's length.
- 3.5 That the TPO/ DRP erred on facts and in law by arbitrarily applying turnover filter of Rs 5 crores for selecting / rejecting the comparable companies.
- 3.6 That the TPO / DRP erred on facts and in law in adopting additional filter of export sales less than 75% of total sales without demonstrating the difference in profits earned by the/Comparable companies operating in Japan vis-a-vis other geographies.
- 3.7 That the DRP has failed to provide reasons for concluding that use of diminishing revenue trend as a rejection criterion by the TPO is appropriate, thereby ignoring the detailed submissions of the Appellant.
- 3.8 That the TPO/ DRP erred by applying employee cost greater than 25 percent of the total operating costs as a comparability criterion.
- 3.9 That the DRP erred in concluding that no company has been rejected by the Ld. TPO only for failing the employee cost filter without issuing a notice u/s 133(6) to ascertain the functional profile of the company.

- 3.10 That the TPO/ DRP erred on facts and in law in considering CAT Technologies Ltd. in the final set of comparable companies not appreciating that the said company is functionally different from the appellant and complete financial information of the company is not available in public domain for application of filters adopted by him.
- 3.11 That the TPO/ DRP erred on facts and in law in considering CAT Technologies Ltd. in the final set of comparable companies allegedly holding that the medical transcription services provided by the said company is similar to provision of software development services.
- 3.12 That the TPO/ DRP erred on facts and in law in considering following companies in the final set of comparable companies allegedly holding them to be functionally comparable to the appellant:
- (i) Tata Elxi Limited
  - (ii) Infosys Technologies Limited
  - (iii) Tata Consultancy Services Limited
  - (iv) Sasken Communications Technologies Limited
- 3.13 That the TPO / DRP erred on facts and in law in considering Infosys Technologies Limited and Tata Consultancy Services Limited in the final set of comparable companies without appreciating that companies with such high turnover does not satisfy the test of comparability laid down under Rule 10B(2) of the Income Tax Rules, 1962, for being operating in different market conditions and level of competition.
- 3.14 That the TPO / DRP erred on facts and in law in rejecting the following companies, satisfying all the filters, in the final set of comparable companies allegedly holding them to be functionally not comparable to the appellant:
- (i) CG Vak Software & Exports Ltd.
  - (ii) ZylogSystems Limited
- 3.15 That the TPO / DRP erred on facts and in law in rejecting following companies, satisfying all the filters, in the final set of comparable companies allegedly on the ground that these companies have significant onsite revenue whereas the entire revenue of is from offsite operations:
- i. ZylogSystems Limited
  - ii. Maars Software International Limited
- 3.16 That the TPO / DRP erred on facts and in law by disregarding the functional profile of the comparable companies and resorting to cherry picking of the comparable companies in the final set of comparable companies and resorting to selection of companies which are functionally different to the Appellant.
- 3.17 That the TPO / DRP have erred by selecting certain companies which are earning super normal profits as comparable to the Appellant.

- 3.18 That the TPO / DRP erred on facts and in law in not considering foreign exchange gains or loss as part of the operating income or expense for computation of operating profit margin for undertaking benchmarking analysis applying TNMM.
- 3.19 That the TPO / DRP erred on facts and in law in arbitrarily considering-incorrect profit margin of certain comparable companies as well as the Appellant.

Name of the company	Margin considered by TPO	Actual margin
Sasken Communication Technologies	51.44	27.74
Thirdware Solution	37.27	28.33
Goldstone Technologies Ltd.	10.28	-23.26
LGS Global Limited	18.79	18.05
Thinksoft Global Services Limited	16.56	16.27

- 3.20 That the TPO / AO made a computational error in determining the average operating profit margin (OP/OC%) of the comparable companies at 24.44% instead of 21.53%.
- 3.21 That the TPO / DRP erred on facts and in law in rejecting comparability adjustment on account of working capital employed by the appellant vis-a-vis comparable companies, allegedly holding that the onus in this regard was on the appellant to demonstrate the reasons and calculation of working capital adjustment, which was not discharged.
- 3.22 On the facts and circumstances of the case and in law the DRP erred in arbitrarily in assuming that the working capital adjustment has been allowed by the TPO in the order passed under section 92CA(3) of the Act itself.
- 3.23 That the TPO / DRP erred on facts and in law in not allowing appropriate risk adjustment to establish comparability on account of the appellant being a low-risk-bearing captive service provider as opposed to the comparable companies who were independent software service provider, allegedly holding that in absence of robust and reliable data, both of assessee and comparables, risk adjustment cannot be considered for enhancing the comparability.
- 3.24 That on the facts and in the circumstances of the case and in law the TPO / DRP erred in rejecting the contention of the appellant regarding risk adjustment, holding that in absence of robust and reliable data, both for the assessee and for the comparables risk adjustment cannot be considered for enhancing comparability.

**Corporate Tax Matters:**

4. That the assessing officer erred on facts and in law in making disallowance of Rs.2,37,585 being 0.5% of the average investment, invoking provisions of section 14A of the Act read with Rule 8D of the Rules, allegedly holding the same to be expenditure incurred

*for earning of tax free dividend income from investments in mutual fund.*

- 4.1 *That the assessing officer erred on facts and in law in proceeding to make disallowance under section 14A on the basis of method/ formula prescribed in Rule 8D of the Income-tax Rules, without appreciating that preconditions for applying the said rule as prescribed in subsections (2)/ (3) of section 14A of the Act were not satisfied.*
- 4.2 *That the Assessing Officer erred on facts and in law in not appreciating those investments in mutual funds were made out of surplus funds and there was no nexus between any expenditure incurred and exempt dividend income.*
5. *That the assessing officer erred on facts and in law in levying interest under Section 234B and Section 234c of the Act.*

*The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal and consider each of the grounds as without prejudice to the other grounds of appeal.*

5. Ground Nos.1 and 2 are general in nature and therefore they are dismissed.
6. Ground No.3 to 3.24 are related to transfer pricing issue with respect to adjustment of Rs.60772255/-.
7. Brief facts of the case is that in the TP Study report assessee has determined arm's length price of its international transactions applying TNMM method as the most appropriate method and selected 20 comparables adopting operating profit/ cost as the PLI where the arithmetic mean of comparables was 14.13% compared with PLI of the assessee which is 14.23%. . Therefore according to the appellant international transactions were at arm's length. Subsequently, TPO selected 16 comparables whose arithmetic mean of PLI OP/TC was computed at 28.74% and determined adjustment at Rs.85385449/- . On objection before DRP it was directed to ld. TPO to exclude one comparable and rectify the margins of some of the comparables. Based on this arithmetic mean of 15 comparables remain at 24.44% and thereby resulting into an adjustment of Rs.60772255/-.
8. At the time of hearing the ld AR of the appellant submitted that he is contesting following specific issues against the transfer pricing adjustment.
  - a. Consideration of foreign exchange gain or losses to be considered as operating income.

- b. Working capital adjustment to be made from the balance sheets of the comparable and not from the software prowess
  - c. Exclusion of comparables Goldstone Technologies Private Limited
9. On above issues Id AR submitted as under:-
- a. Foreign Exchange gain or loss
 

He submitted that earning from foreign exchange fluctuation is the operating income of the assessee whereas the Id. TPO and Id. DRP has not considered the same as operating income. He submitted that now the issue is squarely covered by the decision Hon'ble Delhi High Court dated 08.02.2016 in Principal CIT Vs. Agilis Information Technologies International Pvt. Ltd. in ITA No.907/2015 wherein following the decision of Pri. CIT Vs. Fiserve India Pvt. Ltd. dated 06.01.2016 wherein Hon'ble Court refused to admit appeal of the revenue against order of Coordinate bench on issue that foreign exchange fluctuation are operating expenses/ income. Therefore he submitted that the issue is now squarely covered in faovur of the appellant.
  - b. Regarding the working capital adjustment he submitted that Id. TPO did not provide the working capital adjustment because according to him the taxpayer did not demonstrate the difference in the level of working capital employed by comparable vis-à-vis by the assessee. On objection before Id. DRP, Id. DRP held that working capital adjustment has been provided by the Id. TPO. The Id. DRP has held that at page no.73 of the order of Id. TPO working capital adjustment has been allowed. He submitted that it is an incorrect statement and he further submitted that in proceedings u/s 154 of the Act Id. TPO has provided the working capital adjustment to the company. Therefore now only grievance remain is that the Id. TPO has taken the figures for working capital adjustment as per the figures available in software 'prowess' and they are not as per the balance sheets of the comparables. Before us he has submitted a chart wherein he has demonstrated that many of the figures taken by the Id. TPO are not according to the balance sheet of the comparable company. Therefore he submitted that working capital adjustment

should be allowed based on the balance sheets of the comparables for the relevant period.

- c. Regarding the comparable of Goldstone Technologies Ltd he submitted that this comparable should be excluded and for this he relied on the order of Hon'ble Delhi High Court dated 28.09.2015 in case of Principal CIT Vs. Pitney Bowes Software India Pvt. Ltd. wherein it has been held that this comparable is to be excluded for the reason that it shows segmental results of its US operation and secondly the basis for allocation of cost and computation of profit of segments are not clear and therefore this comparable is inappropriate. Therefore he submitted that this comparable should be excluded.
10. The ld DR on the above issue relied on the orders of ld. TPO and ld. DRP.
11. We have carefully considered the rival contentions and our decision and their reasons are as under:-
12. The first issue is whether the foreign exchange gain or loss should be considered as operating revenue / operating cost of the assessee or not. Now the issue is squarely covered in favour of the assessee in view of the decision of Hon'ble Delhi High Court in ITA No.17/2016 in Principal CIT Vs. Fiserve India Pvt. Ltd. wherein hon'ble court has held as under:-
- “8. The ITAT has also dealt with the issue of foreign exchange fluctuation as operating income/ expenses and held that this issue is no longer res integra and is in favour of the assessee by the decision of the coordinate bench of ITAT in Westfalia Seprator India Pvt. Ltd. Vs. ACIT (ITA No.4446/Del/2002). Accordingly, the AO/TPO was directed to treat the foreign exchange gain/ loss as an operating item. The AO/TPO was directed to compute the ALP of the international transactions entered into by FIPL with its AEs keeping in view the observation made in the order of the ITAT.”*
13. Further in the assessee's own case ld. DRP for AY 2011-12 while disposing off ground No.7 of the objection for that year has held that foreign exchange fluctuation in the case of the assessee is an operating income. Therefore, respectfully following the decision of Hon'ble Delhi High Court and also for the reason that ld. DRP in the subsequent year has decided the issue in favour of the assessee, we also hold that foreign exchange fluctuation gain earned by the assessee is operating income and therefore ld. TPO/AO is

directed to adjust the margin of the assessee treating foreign exchange gain as operating income of the assessee for determining PLI for comparability analysis.

14. On working capital adjustments In the 154 proceedings the ld. TPO has granted it to the assessee. However, it is submitted before us that ld. TPO has considered incorrect margins as the ld. TPO has taken figures from the data base (prowess) and not from the actual balance sheets of the comparable company. A chart is also submitted before us showing error in the calculation wherein in case of each and every comparable there are certain errors pointed out. As the submission made by the assessee is not possible for verification at this stage therefore we set aside this issue to the file of ld AO for verification of the claim made by the assessee and correct the figures accordingly and then grant working capital adjustment to the assessee.
15. The assessee has objected to the selection to the comparable of Goldstone Technology Ltd relying on the decision of Hon'ble Delhi High Court in case of Principal CIT Vs. Pitney Browess Software India ltd. ITA No.681/2015 wherein it has been held with respect to this comparable for the AY 2009-10 that is the same assessment year as under:-
- “7. Having considered the above submissions and having examined the orders of the TPO the DRP as well as the ITAT, this court is not persuaded that the impugned order of the ITAT suffers from any illegality. The view taken by the ITAT that markets in the IS and the India were fundamentally different and, that the results of the Indian segment of the US operations of Goldstone Technologies constituted an inappropriate a comparable cannot be said to be perverse. The view of the ITAT that basis of allocation of costs and, therefore, the working of the profits was also not clear, is another aspect on which the court is unable to hold that the impugned order of the ITAT is perverse. The ITAT has passed the impugned order after examining all the relevant materials.”*
16. In view of the decision of Hon'ble Delhi High court on the comparable for the same year for which the assessee is in appeal before us, we respectfully following that decision direct the ld. TPO/AO to exclude M/s. Goldstone Technologies Pvt. Ltd. as it is an inappropriate comparable.

17. In view of our above findings, we dispose of ground no 3 of the appeal of the assessee on transfer pricing issues with above directions.
18. The next ground of appeal is on Corporate Tax matter against disallowance of Rs.237585/- made by Id. Assessing Officer u/s 14A of the Income Tax Act. Brief facts of this ground is that during the year assessee has earned dividend income amounting to Rs.161624/- and the Id. Assessing Officer has disallowed an amount of Rs.237585/- u/s 14A of the Act being 0.5 % of the average value of investment of Rs.47517001/-. Assessee in his return of income did not offer any disallowance. The Id. DRP while disposing of the objection No.11 of the assessee has rejected the contention of the assessee and confirmed the disallowance.
19. Before us the Id AR reiterated the same contentions which have been raised before Id. DRP at page No.15 and 16 of the directions.
20. Ld DR relied on the orders of lower authorities.
21. We have carefully considered the rival contentions. One of the arguments raised by the assessee is that in the draft assessment order LD AO has not specifically recorded his dissatisfaction about the correctness claim of the assessee that there is no expenditure incurred in connection with the earning of the exempt income. Ld AO has directly applied the provision of Rule 8D.Hon'ble Delhi High Court has held in the case of I.P. Support Services India (P) Ltd vs. CIT [TS-573-HC-2015-DEL] that AO cannot invoke Section 14A read with Rule 8D (2) without recording his satisfaction and noted that the recording of satisfaction as to why "the voluntary disallowance made by the assessee was unreasonable and unsatisfactory" is a mandatory requirement of the law. Hon'ble Delhi high court in Maxopp Investment (P) Ltd. /TS-668-HC-2011-DEL] & CIT' v. Taikisha Engineering India Ltd.[2015J 229Taxman 143 (Delhi)] wherein same view has been expressed that recording of satisfaction on the correctness of claim of the assessee on disallowance u/s 14A before invoking rule 8 D of the Income tax rules 1962 is mandatory.The language of section 14A provides that AO must record a satisfaction if he was unsatisfied with any incorrect claim of the assessee including non-disallowance. If he failed to record such a

finding then it cannot be said that he rightly invoked provision of section 14A of the act for application of rule 8D. In view of above judicial pronouncement of Hon'ble Delhi High court we direct LD AO to delete the disallowance of Rs. 237585/- u/s 14A of the Act. Therefore ground no 4 of the appeal of the assessee is allowed.

22. Ground No 5 of the appeal of the assessee is against the charging of interest u/s 234B and 234C of the act which are consequential in nature and hence this ground of appeal is dismissed.
23. In the result appeal of the assessee in ITA No 926/ Del /2014 is partly allowed.
24. Now we come to the Appeal of the Assessee in ITA No.2776/Del/2015 which is filed against the order u/s 154 of the Income Tax Act dated 20.04.2015. The brief facts of the case is assessee moved an application before the ld. DRP u/s 154 of the Act on 02.04.2014 requesting rectification of its directions issued on 20.12.2013 of the Act. The mistake apparent from the record pointed out by the assessee and therefore ld. DRP passed an order u/s 154 of the Act on 27.10.2014 wherein it directed the ld. TPO to recalculate the margin of the ALP based on the working capital adjustment. It was further directed to check the margin of comparables given by the assessee and accept the correct margins of comparables. Ld. TPO passed an order u/s 154 vide order dated 11.01.2014 giving effect to the direction of the ld. DRP and computed the working capital adjustment by extracting working capital numbers of the comparables companies from 'prowess' data base instead of computing the margins as per the annual reports of the company. After this exercise it resulted into enhancement of the adjustment to Rs.63863214/- instead of original adjustment of Rs.60772255/-.The ld. Assessing Officer pursuant to the order of the TPO passed an order u/s 154 on 20.04.2015 incorporating the enhancement of ALP to Rs.63863214/- and assessee has filed appeal against that order.
25. The assessee has raised the following grounds of appeal:-

**“General Ground:**

1. *That assessing officer erred on facts and in law in determining income of the appellant at Rs.7,23,73,050 against the total income returned by*

the appellant of Rs.82,72,250 in the order passed under section 154 of the Act.

**Transfer Pricing Matters:**

2. That the assessing officer erred on facts and in law in making an addition of Rs.6,38,63,214 in the order passed under section 154 of the Act as against the addition of Rs 6,07,72,255 on account of the alleged difference in the arm's length price of the international transactions of rendering software services made in the order passed under section 143(3) of the Act read with Section 92C(3) of the Act.
- 2.1 That the assessing officer erred on facts and in law in arbitrarily considering incorrect profit margin of certain comparable companies:

<i>Name of the company</i>	<i>Margin considered by TPO</i>	<i>Actual margin</i>
<i>Goldstone Technologies Ltd.</i>	10.28%	-23.36%
<i>LOS Global Limited</i>	18.80%	18.05%
<i>Tata Elxsi Ltd</i>	20.30%	16.88%
<i>Thinksoft Global Services Limited</i>	16.56%	16.27%

- 2.2 That the TPO/ DRP erred on facts and in law in incorrectly computing the working capital adjusted operating margins of the comparable companies:-

<i>Name of the company</i>	<i>Margin considered by TPO</i>	<i>Actual margin</i>
<i>Akshay Software Technologies Ltd</i>	9.23%	9.12%
<i>Aztechsoft Ltd</i>	28.59%	25.95%
<i>Cat Technologies</i>	35.19%	11.76%
<i>Goldstone technologies</i>	11.54%	-36.30%
<i>Infosys Technologies Ltd</i>	40.61%	39.48%
<i>Larsen &amp; Toubro Infotech Ltd</i>	22.54%	20.45%
<i>LOS Global Ltd</i>	15.10%	13.08%
<i>Mindtree Ltd</i>	28.52%	25.92%
<i>Persistent Systems Pvt Ltd</i>	38.48%	37.46%
<i>RS Software India Ltd</i>	11.96%	11.94%
<i>Sasken Communication Technologies</i>	28.26%	26.40%
<i>Tata Consultancy Services</i>	32.70%	29.43%
<i>Tata Elxsi</i>	20.03%	16.10%
<i>Thinksoft Global Services Ltd</i>	15.08%	14.13%
<i>Thirdware Solutions Ltd</i>	36.85%	35.96%
<i>Average</i>	24.98%	18.73%

- 2.3 *That the TPO / DRP erred on facts and in law by failing to appreciate the commercial expediencies surrounding the international transaction pertaining to provision of software development services.*
- 2.4 *That the TPO / DRP erred on facts and in law by failing to appreciate the corroborative analysis performed using Comparable Uncontrolled Price ("CUP") Method to establish the arm's length price wherein man-month rates charged by the Appellant to its Associated enterprises were compared with man-month rates charged by HCL Japan from third parties for rendering similar software development services."*
26. Before us the Ld. AR submitted that the ld. TPO has computed incorrect profit margin of certain comparable companies as well as incorrectly computed the working capital adjustment to the operating margins of the comparables companies. He submitted that the respective errors are pointed out in para 2.1 and 2.2 of the grounds of appeal itself. He also submitted a chart stating that this error has happened due to the details extracted by the ld. TPO from the 'prowess' data base and not from the annual reports of the company. Such working was also not confronted by ld. TPO to the assessee for its objections if any. He submitted that therefore the ld. TPO may be directed to verify the statements of working capital adjustment and margins of the comparables accordingly.
27. Ld DR submitted that the chart submitted by the ld AR regarding the errors cannot be verified at this stage and therefore these grounds of appeal may be sent back to the ld. TPO/AO for verification.
28. We have carefully considered the rival contentions as well as perused the chart of working capital adjustment submitted before us wherein may corrections with respect to each of the comparables have been pointed out by the ld DR. we have also perused the ground No.2.1 as well as ground No.2.2 of the appeal wherein certain errors are pointed out. Surprisingly when passing the order pursuant to order of ld. DRP if it results in to enhancement in adjustment and not reduction therein, Ld. TPO should have granted an opportunity to verify the correctness of the computation as a principle of natural justice. Therefore in the interest of justice we set aside ground No.2 of the appeal on Transfer Pricing issues back to the file of

ld. TPO with a direction to verify the computation of margins pointed out by LD AR and then correct them for computation of arms length pricing of the international transaction. Needless to say that proper opportunity of hearing for submission of information with respect to computation of margin and for verification of calculation may be granted to the assessee.

29. In the result Appeal No.2776/Del/2014 is allowed for statistical purposes.

**Order pronounced in the open court on 22/04/2016.**

**-Sd/-**

**(RAJPAL YADAV)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 22/04/2016

*A K Keot*

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi