

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**ITA No.1214(Bang) 2011
(Assessment year : 2007-08)**

M/s Magma Design Automation India Pvt. Ltd.,
Jupiter (2A) Blok, 2nd Floor, Prestige Tech Park,
Sarajapur, Marathahalli Ring Road,
Kadabeesanahalli Village,
Mangalore-560 103

Pan No.AADCM4542M

Appellant

Vs

The Assistant Commissioner of Income Tax,
Circle-12(1),,
Mangalore

Respondent

**Assessee by : Shri Nageshwar Rao, Advocate
Revenue by : Miss. Neera Malhotra, CIT-DR**

Date of hearing : 26-07-2016

Date of pronouncement : 29-08-2016

ORDER

PER SHRI A.K.GARODIA, AM

This is an assessee's appeal directed against the assessment order dated 23-09-2011 passed by the AO u/s 143(3) r.w.s.144C of the IT Act, 1961 as per the directions of the DRP.

2. The assessee has raised the following grounds;

"Based on the facts and circumstances of the case and in law, Magma Design Automation India Private Limited ("Magma India" or the "Company" or the "Appellant") respectfully craves leave to prefer an appeal under section 253 of the Income-tax Act, 1961 ("Act") against the order passed by Assistant Commissioner of Income-tax-12(I) ("AO") in pursuance of the directions issued by Dispute Resolution Panel ("DRP"), Bangalore dated 22

August 2011 on the following grounds:

General

1. *The order of the learned AO and directions of the Hon'ble DRP are based on incorrect interpretation of law and therefore are bad in law.*
2. *On the facts and in the circumstances of the case and in law and based on the directions of DRP, the learned AO erred in assessing the total income at Rs. 5,80,49,828 as against returned income of Rs.2,32,78,452/- computed by the Appellant.*

Corporate tax matters

3. *On the facts and in the circumstances of the case and in law and based on the directions of Hon'ble DRP, the learned AO erred in holding that the telecommunication expenses (i.e. leased line charges) amounting to Rs.35,41,839 is attributable to the delivery of computer software outside India should be reduced from export turnover while computing the deduction under Section 10A of the Act*
4. *On the facts and in the circumstances of the case and in law and based on the directions of Hon'ble DRP, the learned AO erred in holding that travel expenses amount to Rs. 1,33,99,313 incurred in foreign currency is for providing technical services rendered outside India and hence should be reduced from export turnover while computing the deduction u/s 10A of the Act.*
5. *On the facts and in the circumstances of the case and in law and based on the directions of Hon'ble DRP, the learned AO erred in law by not considering the alternative plea of the Appellant that, if the telecommunication expenses (i.e. leased line charges) and travel expenses incurred in foreign currency attributable to the delivery of computer software outside India are reduced from export turnover, an equal amount should also be reduced from total turnover for computing the deduction u/s 10A of the Act.*

Transfer pricing adjustment

On the facts and in the circumstances of the case and in law:

6. *The learned AO / Transfer Pricing Officer ("TPO") erred in making an addition of Rs. 2,07,96,88\ and Rs. I, \6,34,230, to the total income of the Appellant on account of adjustment in the arm's length price of the software development services and IT enabled services transactions entered by the Appellant with its associated enterprise. .*

7. *The learned AO / TPO erred in disregarding the economic analysis undertaken by the Appellant without proper justification and conducting a fresh economic analysis for the determination of the arm's length price in connection with the impugned international transactions and holding that the Appellant's international transactions are not at arm's length.*

8. *The learned AO / TPO have erred in ignoring the fact that since that Appellant is availing tax holiday u/s IOA of the Act, there is no intention to shift the profit base out of India, which is one of the basic intentions of the introduction of transfer pricing provisions.*

9. *The learned AO / TPO erred in determining the arm's length margin! price using only financial year 2006-07 data, which was not available to the Appellant at the time of complying with the transfer pricing documentation requirements.*

10. *The learned AO / TPO erred in rejecting certain comparables considered by the Appellant in the comparability analysis by applying different quantitative and qualitative filters:*

a. *the learned AO / TPO erred in rejecting certain comparable companies identified by the Appellant where consolidated results had been used for analysis.*

b. *the learned AO / TPO erred in rejecting certain comparable companies identified by the Appellant using turnover < Rs. I Crore as a comparability*

criterion;

c. the learned AO / TPO erred in rejecting certain comparable companies identified by the Appellant as having economic performance contrary to the industry behavior (e.g. companies which showed a diminishing revenue trend);

d. the learned AO / TPO erred in rejecting certain comparable companies identified by the Appellant on the ground that the comparables were having different accounting year (other than March 31 or companies whose financial statements were for a period other than 12 months); and

11. The learned TPO erred in obtaining information which was not available in public domain by exercising powers u/s 133(6) of the Act and relying on the information for comparability analysis.

12. The learned AO / TPO erred in not considering the foreign exchange fluctuation gain (loss) as part of the operating income while computing the operating margin.

13. The learned AO / TPO erred in not making suitable adjustments on account of differences in the risk profile of the Appellant vis-a-vis the comparables, while conducting comparability analysis.

14. The learned AO/TPO erred in computing the arm's length price without giving benefit of +/- 5 percent under the proviso to section 92C of the Act.

Transaction specific grounds of appeal relating to transfer pricing - Software development and related services transaction

15. The learned AO / TPO erred in rejecting certain comparables identified by the Appellant using 'onsite revenues greater than 75% of the export revenues' as a comparability criterion.

16. The learned AO / TPO erred in rejecting certain comparables identified by the Appellant using 'employee cost greater than 25% of the total revenues' as a comparability criterion;

17. *The learned AO / TPO erred by accepting/ rejecting certain companies based on unreasonable comparability criteria.*

18. *The learned AO / TPO erred in wrongly computing the operating margins of some of the comparable companies.*

Transaction specific grounds of appeal relating to transfer pricing - IT enabled services transaction

19. *The learned AO / TPO erred by accepting/ rejecting certain companies based on unreasonable comparability criteria.*

Common grounds of appeal relating to corporate tax and transfer pricing matters

20. *The learned AO erred in levying interest of Rs. 68,88,846 and Rs.1,75,014 U/S 234B and 234C of the Act respectively.*

21. *The learned AO erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.*

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.

3. The assessee has also raised additional grounds as under;

“Without prejudice to ground no. 16

(a) "that the learned TPO / DRP has erred in law and in fact by not applying employee cost filter to ITeS segment when the employee cost filter was applied to Software Segment"

The Petitioner submits that the above additional ground is being by way of abundant caution. The additional ground raise issue which is fundamental to the appeal and the non-admission and non-adjudication of the same would result in an incomplete appreciation and adjudication of the matter. The Petitioner submits that the failure to raise these grounds at an earlier stage is neither wilful nor wanton but due to the reasons stated above. No prejudice would be caused to the Respondent by reason of the above additional grounds being admitted and adjudicated and accordingly the balance of convenience is in favour of such an order being passed by this Hon'ble Tribunal.

The Petitioner states and submits that the issues raised in the additional ground above are legal issues and arise out of the order of the lower authorities. Reliance is based on the decisions of the Hon'ble Supreme Court in the case of Jute Corporation of India vs. C.I.T. (187 ITR 688) and National Thermal Power Corporation vs. C.I.T. (229 ITR 383) as well as the full Bench of the Bombay High Court in the case of Ahmadabad Electricity Co. Ltd. (199 ITR 351).

In the above circumstances the Petitioner prays that this Hon'ble Tribunal be pleased to;

- (i) admit and adjudicate the above additional ground,*
- (ii) pass any other order that may be required in the circumstances of the case and render justice.*

4. In the course of hearing before us, it was submitted by the Id. AR of the assessee that there are two segments of assessee company i.e. Software Services and Customer Support Services. Thereafter, he submitted that in the software services segment, the assessee is having a turnover of Rs.21.69 Crores and the assessee's operative net margin is 12.34% for this segment. Thereafter, he submitted that the TPO has selected 26 comparables, out of which the assessee is requesting for exclusion of 14 comparables and is also requesting for considering correct margin of one comparable i.e. Datamatics

Ltd., He further submitted that the assessee is also requesting for inclusion of two comparables which was rejected by the TPO on wrong basis.

5. Regarding the second segment i.e. Customer Support Services, the ld. AR of the assessee submitted that the assessee is having turnover of 12.74 Crores for this segment and the operating margin of this segment is 17.19%. Thereafter, he submitted that out of 27 comparables adopted by the TPO for this segment, the assessee is requesting for exclusion of 14 comparables on the basis of functional dissimilarity and for this contention, the assessee is placing reliance on the Tribunal order rendered in the case of AOL Online India Pvt. Ltd., as reported in TS-156 ITAT-2016(Bang)-TP for assessment year 2007-08 and he submitted that a copy of the Tribunal order is available in the paper book. Thereafter, he submitted that the assessee is requesting for exclusion of one more comparable i.e. M/s IServices India Pvt. Ltd. on the basis of the Tribunal order rendered in the case of M/s Wills Processing Services (I) Pvt. Ltd., TS-49-ITAT-2013-Mumbai(TP) and further he submitted that this order is also available on paper book. Thereafter, he submitted that the assessee is also seeking exclusion of one more company i.e. M/s Allsec Technologies Ltd., on this basis that this company has intention to carry business in trading of securities (mutual fund units in specific) in this regard, he submitted that this company purchased mutual fund units of the value of approximately three times of its revenue from ITES operation and sold two time of such revenue and in support of his contention he has drawn our attention to the annual report of this company on pages-3353 – 3435 of the paper book.

Thereafter, he submitted that he assessee is also seeking exclusion of ne more company i.e. M/s Apollo Healthstree Ltd., on the basis of the Tribunal order rendered in the case of AOL Online India Pvt. Ltd.,(Supra). Thereafter, he submitted that these two companies rejected by the TPO i.e. M/s R.S.Software Ltd., and M/s Microland Ltd., these companies should be treated as good comparable, because the basis on rejection of this comparable adopted by the TPO Is not proper. He submitted a copy of the annual report of these two companies available on page 3299 - 3352 and 3747 - 3793 of the paper book respectively.

6. Ld. DR of the revenue supported the order of authorities below.

7. We have considered rival submissions. Fist, we take up software services segment. In this segment the TPO had adopted 26 comparables out of which the assessee is seeking exclusion of 14 Marvel India Pvt. Ltd., Vs ACIT in IT(TP)A No.1033(B)/2011 dated 17-06-2016. Copy of this order is furnished along with the chart and it has been pointed out that Para 5 to 7 of this Tribunal order on pages 6 to 9 of this Tribunal order are relevant for exclusion of this comparable. Hence, for the sake of ready reference, we reproduce para-5 to 7 of this Tribunal order as under;

“5. Regarding these four grounds which are being pressed by the ld. AR of the assessee, it was submitted that that out of 28 comparables which are considered by the TPO as can be seen on pages 157 to 158 of the paper book, i.e. page no.2 & 3 of the TPO’s order, it was pointed out that the international transaction in dispute is mainly regarding software development services of Rs.15,03,62,370/-and the

percentage of operating profit on operating cost of the assessee is noted by the TPO at 14.64% and the mean margin of 26 comparables is noted by the TPO at 25.14% before working capital adjustment and 22.74% after working capital adjustment. Thereafter, he submitted that in case of Hewlett Packard (Ind.) Software Operation Ltd., in ITA No.130(Bang)/2011 dated 09-03-2016 for the same assessment year, copy available in compilation of Case Laws paper book also, the same 26 comparables were adopted by the TPO and as per Para 14 of the Tribunal's order rendered in the case of M/s Hewlet Packard (Ind.) Software Operation Ltd., (Supra), the Tribunal has directed to exclude 12 comparables i.e. 1) M/s Avani Cimcon Tech.Ltd., 2) M/s Celestial Labs Ltd., 3)E-Zest Solutions Ltd., 4)Flextronics Software Systems Ltd (Seg.) 5)M/s Helios & Mathesaon Inf.Tech.Ltd.,6) M/s Infosys Tech.Ltd., 7) M/s Ishir Infotech Ltd., 8) M/s Kals Information Systems Ltd (Seg.) 9) Lucid Software Ltd.,10) M/s Megasoft Ltd., 11) M/s Persistent Systems Ltd., and 12) M/s Wipro Ltd.,(Seg.) He further submitted that as per the Tribunal's order rendered in the case of M/s Meritor LVS India (P) Ltd., in IT(TP)A No.1231(Bang)/2011 for the same assessment year, copy available in compilation of case laws also, the same 26 comparables were considered by the TPO and in addition to these 12 comparables which are excluded as per the Tribunal's order in the case of M/s Hewlet Packard (Ind.) Software Operation Ltd., (Supra), three more comparables were directed to be excluded in this case, i.e. 1) M/s Acel Transmatics Ltd (Seg.) 2) M/s Tata Elxsi Ltd.,(Seg.) and 3) Thirdware Solutions Ltd. He submitted that in these two cases also, the assessee company was engaged in the software development services as in the present case and

therefore, these two Tribunal orders are squarely applicable to the present case and hence, these 15 comparables, as per these two Tribunal orders should be excluded in the present case.

6. The ld. DR of the revenue supported the orders of the authorities below.

7. We have considered the rival submissions. We find that in the present case, it is noted by the TPO on page no.2 & 3 of his order that the assessee company is engaged in rendering services to the AE relating to designing of integrated circuits and the testing of integrated circuits along with customer support. It is also noted by the TPO that the international transactions are mainly of Rs.15,03,62,370/- for software services apart from re-imburement of expenses of Rs.21.45 lacs and 22.61 lacs. In the case of M/s Hewlet Packard (Ind.) Software Operation Ltd.(Supra) also, the international transaction included mainly the services rendered as software development services of Rs.5854.51 lacs. Similarly, in the case of M/s Meritor LVS India (P) Ltd., (Supra) also, it was noted by the Tribunal in para-5 of the Tribunal's order that final TP adjustment recommended by the TPO was only on the software development services(Seg.). Hence, in our considered opinion, these two Tribunal orders are squarely applicable in the present case because ld. DR of the revenue failed to point out any difference in facts in the present case and in these two cases. As per para-14 of the Tribunal order in the case of M/s Hewlet Packard (Ind.) Software Operation Ltd. (Supra), the Tribunal held that 11 comparables i.e. M/s Avani Cimcon Technologies Ltd., 2) M/s Celestial Labs Ltd., 3) M/s E-Zest Solutions Ltd., 4) M/s Flextronics Software Systems

Ltd.,(Seg.) 5)M/s Helios & Matheson Information Technology Ltd.,6) M/s Infosys Technologies Ltd., 7) M/s Ishir Infotech Ltd., 8) M/s Kals Information Systems Ltd., 9) M/s Lucid Software Ltd;, 10) Persistent Systems Ltd., and 11)M/s Wipro Ltd., (Seg.) are to be excluded. Regarding M/s Megasoftware Ltd., it was held by the Tribunal that M/s Megasoftware Ltd can be considered for inclusion only after segmentation of its results. For the sake of ready reference, we reproduce para-14 of this Tribunal order is reproduced. In the tribunal order rendered in the case of M/s Meritor LVS India (P) Ltd., (Supra) also, para-14 of the Tribunal order is relevant which is also re-produced hereunder;

“ 14. Accordingly, following the above order, we direct exclusion of Celestial Labs Ltd., E Zest Solutions Ltd., Infosys Technologies Ltd., Kals Information Systems Ltd. (Seg.) Lucid Software Ltd., Wipro Ltd (Seg.) Accel Transmatic Ltd.,(Seg.), Helios & Math4eson Information Technology Ltd., Ishir Infotech Ltd., Persistent Systems Ltd., Sasken Communication Technologies Ltd (Seg.), Tata Elxsi Ltd., (Seg.) and Thirware Solutions Ltd. In so far as Megasoftware Solutions Ltd., is concerned, we direct the AO/TPO to rework its segmental results and consider its comparability only with regard to the software development services segment. Ordered accordingly”.

It can be seen that as per this Tribunal order also, it was held by the Tribunal that in respect of M/s Megasoftware Ltd.,, the AO/TPO were directed to re-work its segmental results and consider its comparability only with regard to software development services (Seg.). It was directed that M/s Accel Transmatic Ltd., (Seg.) M./s Tata Elxsi Ltd., and M/s Thirware Solutions Ltd., should be excluded in addition to

other 11 comparables, which were directed to be excluded as per Tribunal order in the case of M/s Hewlet Packard (Ind.) Software Operation Ltd., (Supra). We therefore, direct the AO/TPO to exclude 14 comparables including 11 comparables as per Tribunal order in the case of M/s Hewlet Packard (Ind.) Software Operation Ltd., (Supra) and three comparables as per Tribunal order in the case of M/s Meritor LVS India (P) Ltd., (Supra), as noted above. One comparable M/s Megasoft Ltd., should be considered for inclusion as per its segmental results only. The AO/TPO should pass necessary order as per law and as per above discussion after providing an opportunity of being heard to the assessee. These four grounds are disposed of in this manner.

From the above paras reproduced from the Tribunal order rendered in the case of M/s Marvel India Pvt. Ltd., (Supra), it is seen that in that case, the company was engaged in software services and it was held by the Tribunal in that case that following 14 comparables should be excluded and for one comparable i.e. M/s Megasoft Ltd., it was directed that this company should be considered for inclusion as per its segmental results only. These 14 companies for which exclusion was directed in that case which are as follows;

- 1) *M/s Avan Cimcon Tech.Ltd.,*
- 2) *M/s Celestial Labs Ltd.,*
- 3) *M/s Ishir Infotech Ltd.,*
- 4) *M/s Lucid Software Ltd.,*
- 5) *M/s Tata Elxsi Ltd., (Seg.)*
- 6) *M/s Kals Information Systems Ltd.,*

- 7) *M/s Infosys Tech.Ltd.,*
- 8) *M/s Helios & Matherson Information Tech.Ltd.,*
- 9) *M/s E - Zest Solutions Ltd.,*
- 10) *M/s Persistent Systems Ltd.,*
- 11) *M/s Wipro Ltd.,*
- 12) *M/s Thirdware Solutions Ltd.,*
- 13) *M/s Accel Transmatics Limited (Seg.)*
- 14) *M/s Flextronics Software Systems Ltd. (Seg.).*

After exclusion of these 14 comparables companies and after considering the correct operative margin of M/s Megasoft Ltd. (Seg.), net margin of the remaining 13 comparables should be worked out and TP adjustment should be made if required as per law after granting benefit as per law in respect of +- 5% benefit as per law in respect of software service segment.

8. Now we take up the second segment i.e. Customer Support service segment. For this segment, the assessee is seeking exclusion of 15 comparables out of 27 comparables selected by the TPO on the basis of Tribunal order i.e. M/s AOL Online India Pvt. Ltd., (Supra) in IT(TP)A No.1036(B)/2011 dated 18-03-2016, copy available on pages 2362 to 2381 of the paper book. As per this Tribunal order, it was held by the Tribunal that the following companies should be excluded from the list of final comparables.

- 1) *M/s Bodhtree Consulting Ltd.,*
- 2) *M/s Eclerx Services Ltd.,*
- 3) *M/s Mold Tek Technologies Ltd., (Seg.)*

- 4) M/s Accentia Technologies Ltd., (Seg.)
- 5) M/s Vishal Information Technologies Ltd.,
- 6) M/s Spanco Ltd., (Seg.)
- 7) M/s Informed Technologies Ltd.,
- 8) M/s Asit C Mehta Financial Services Ltd.,
- 9) Maple E-Solutions Ltd.,
- 10) M/s Triton Corp. Ltd.,
- 11) M/s Accurate Data Converts
- 12) M/s HCL comnet Systems & Services Ltd., (Seg.)
- 13) M/s Infosys BPO Ltd., and
- 14) M/s Wipro Ltd., (Seg.)

Respectfully following this Tribunal order, because the ld. DR of the revenue could not point out any difference in facts, we hold that these 14 companies should not be considered in the final list of comparables.

9. Regarding M/s IServices India Pvt. Ltd., (Supra), reliance has been placed on the Tribunal order rendered in the case of M/s e-4e Business Solutions India Pvt. Ltd., I IT(TP)A No.819(B)/2011 dated 26-05-2015. Para-29 & 30 of this Tribunal order are relevant for this issue. Hence, we reproduce the same herein for the sake of ready reference;

“29. The assessee seeks to challenge the action of the TPO in considering the IServices India Ltd., as a comparable. This company is listed at sl.no.18 of the list of comparables chosen by the TPO. For choosing this company as a comparable, the TPO has made the following observations :-

"33.18 IServices India Pvt Ltd (OP/TO for the FY 2006-07 - 49.47%)

The company was not part of the companies considered by the taxpayer in the accept I reject matrix given as Appendix-D to the TP report. However, the data of the company is available in Capitaline database.

The Annual Report was not available for tile FY 2006-07. RPT information was not available. Thus notice 133(6) notice was issued to the company. As per the reply received from the company and the annual report submitted, it is seen that the company is into IT enabled services and qualifies all the filters applied by the TPO. Thus the company is proposed as a comparable vide this office letter dated 17-05-2010. In response, the taxpayer in its letter dated 28-06-2010 did not offer any comments. Thus the company is considered as a comparable.

However, there is a mistake in the computation of PLI of the company. The same is rectified as under :

<i>Description (Rs)</i>	<i>Amount</i>
<i>Operating Revenues</i>	<i>16,29,20,061</i>
<i>Expenses debited to P&L account</i>	<i>11,11,80,761</i>
<i>Less: Interest .</i>	<i>14,80,537</i>
<i>Less: Exchange difference</i>	<i>6,42,614</i>
<i>Less: Miscellaneous expenses written</i>	<i>55,880</i>

<i>off</i>	
<i>Operating Expenses</i>	<i>10,90,01,730</i>
<i>Operating Profit (PBIT)</i>	<i>5,39,18,331</i>
<i>OP / TC (PLI)</i>	<i>49.47%</i>

Thus the company is considered as a comparable with the above revised PLI of 49.47% on cost."

30. The assessee has not raised any specific ground on adopting this company as a comparable before the DRP. Before us, the learned counsel for the assessee has submitted that the TPO did not furnish the information obtained from this company in exercise of his powers u/s.133(6) of the Act. It was further pointed out that even as per the TPO, the annual report of this company for F. Y. 2006-07 was not available. The TPO has gone by the data available on capita line data base. The learned counsel for the assessee therefore made a prayer that the question of considering the aforesaid company as a comparable should be remanded back to the TPO / Assessing Officer for fresh consideration and the issue decided in the light of the published annual report for F. Y. 2006-07 and also on the basis of the information furnished by this company to the Assessing Officer in response to notice u/s.133(6) of the Act. We have considered the submissions and are of the view that the same deserves to be accepted. The TPO / Assessing Officer will obtain the annual report of the company for F. Y. 2006-07 and also furnish the assessee copies of the same together with the information obtained by the TPO pursuant to issue of notice u/s.133(6) of the Act. The assessee will thereafter furnish its reply as to why this company should not be considered as a comparable company. The TPO / Assessing Officer will thereafter decide the question of considering this company as a

comparable company after affording opportunity of being heard to the assessee.

From the above two paras of this Tribunal order, it can be seen that in that case, the matter was restored back to the file of the TPO for fresh decision. Accordingly, in the present case also, we restore the matter back to the file of the TPO for fresh decision with the same directions as given by the Tribunal in that case.

10. The assessee is also seeking exclusion of one more company i.e. Apollo Healthstreet Ltd. on the basis of same Tribunal order rendered in the case of AOL Online India Pvt. Ltd. and regarding this comparable, the discussion is available on pages 2377 – 2378 of the paper book. The relevant Para is reproduced below;

“ Assessee objects to the above comparable on the reason of RPT filter. Even though RPT filter at 15% is accepted in some of the cases by the Co-ordinate Benches, the RPT filter can be considered up to 25% depending on the facts of the case. As worked out by assessee, RPT filter is only 17.7%. How it is worked out is not available. Since TPO has given valid reasons to include the above comparable, we are of the opinion that same cannot be excluded. Moreover, as seen from the other order also, no other assessee has objected to inclusion of the above company may be on the reason that its margin is a negative margin. Be that as it may, we are of the opinion that there is no need to exclude that comparable from the list of comparables selected by the TPO”.

From the above Para of the Tribunal order, it is seen that it was held by the Tribunal in that case that this company is not required to be excluded from the list of final comparables. Respectfully following this Tribunal order, we decide the issue against the assessee and hold that this company is not required to be excluded from the list of final comparables.

The assessee is also seeking inclusion of two comparables i.e. M/s Ace Software Exports Ltd.. and M/s Microland Ltd., For Ace Software Export Ltd., the TPO has rejected this comparable on this basis that the diminishing profit filter of last three years. In view of this, we find no merit in the claim of the assessee that this company is a good comparable.

11. The second company i.e. M/s Microland Ltd., has been excluded by the TPO on this basis that the segmental information of this company are not available. In view of this, we find no merit in this claim of the assessee for inclusion of this company. We hold accordingly.

12. In the result, the appeal of the assessee stands partly allowed for statistical purposes in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER
Bangalore:
D a t e d : 29.08.2016
am*

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order,
AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....