IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.6508/Mum/2010
(**Assessment Year :2005-06**)

Income Tax Officer - 10(3)(4) R.No.452 Aayakar Bhavan Mumbai-400 020	Vs.	M/s. Excult Client Services I P Ltd. Building A-4, Sector-1 Millenium Business Park, TTC Industrial Area, Mahape-400 710
PAN/GIR No.AABCE1333Q		
(Appellant)	..	**(Respondent)**

Assessee by	None
Revenue by	Ms. Shilpa N.C.
Date of Hearing	**01/01/2024**
Date of Pronouncement	**10/01/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue vide order dated 07/06/2010 passed by CIT(A)-15, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2005-06.

2. In the grounds of appeal, Revenue has raised following grounds:-

"1) On the facts and in the circumstances of the case as well as in law, the Id CIT(A) has erred in deleting the addition of Rs. 4,45,29,090/- made by the AO to the appellant's income based on the provisions of section 92(1) of the Act.

2) On the facts and in the circumstances of the case as well as in law, the Id.CIT(A) has erred in accepting comparable who are either engaged in difference types of operations on the dealing with different products and rejecting the comparables selected by the TPO which actually have performed similar business in the period similar to assessee's business period

3) The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal."

3. The brief facts qua the issue of transfer pricing adjustment of Rs.4,45,29,090/- is that, assessee is engaged in the business of providing range of back office support services. It is a captive service provider for its group entities. During the year, assessee had entered following international transactions with its AEs.

Sr. No.	Nature of transactions	Value of transaction (Rs.)
1	Provision of back office support services (ITES)	30,29,93,009
2	Provision of software development services (IT)	7,39,80,534

4. In the TP study report assessee has benchmarked the above transaction for ITES and IT services by adopting TNMM as Most

Appropriate Method. The PLI was net cost plus and computed the operating margin under the BPO/ITES segment at 11.78% and Software/IT segment at 14.87%. The assessee in so far as ITes is concerned has chosen 10 comparables with arithmetic mean of 9.74% and in so far as software services segment, assessee has taken 29 comparables with arithmetic mean of 15.74%. The ld. TPO in so far as ITES segment is concerned has rejected all the comparables and selected his own 11 comparables with arithmetic mean of 29.30%. In so far as IT segment is concerned, out of 29 comparables chosen by the assessee, ld. TPO rejected 24 comparables and accepted only 5 comparables. He further introduced 15 additional comparables and finally worked out arithmetic mean at 27.11% under the IT segment and accordingly, maid upward adjustment in both the segments.

5. Before the ld. CIT (A) apart from raising various objections for inclusion and exclusion of various comparables, one important submission which was made that, even if one goes by the filters adopted by the ld. TPO, then based on those filters, the comparables selected by the ld. TPO fails the comparability analysis and at the very threshold they cannot be included. It was submitted that criteria followed by the ld. TPO for rejection of comparables of the assessee and adopting his own comparable were as under:-

*(*A) Related Party Transactions (RPT) > 25%

(B) Export Income NIL

(C) Salary 1.15% of turnover

(D) Lack of Segmental Data

(E) Consistent/ chronically loss making.

(F) Exceptional/Extra-ordinary event.

(G) Software Development comparables used as Back office support comparables.

6. It was further submitted that the ld. TPO himself was not consistent in adopting the same yardstick while rejecting assessee's comparables and introducing his own comparables for the purpose of benchmarking the ITES and IT segment. The comparables chosen by the ld. TPO in IT segment were as under:-

Sr.No	Name of the Company	Operating Margin (%)
1	Allsec Technologies Ltd	28.07
2	Tulsyan Technologies Ltd (Cosmic Global)	18.75
3	Saffron Global	24.97
4	Wipro BPO Solutions Ltd	23.40
5	Vishal Information Technologies Ltd	51.25
6	Ace Software Exports Ltd	14.55
7	Asian Cerc Information Technology Ltd (Segmental)	24.50
8	Airline Financial Support Services (1) Ltd	26.80
9	Goldstone Teleservices Ltd (Segmental)	15.95
10	Transwork Information Services ltd	02.00

11	Cepha Imaging (Pvt) ltd	48.35
Arithmetic Mean		**25.30**

6. Further, the five comparables accepted by the ld. TPO out of assessee's comparables and introducing his own 15 additional comparables were as under:-

Sr.No	Name of the Company	Operating Margin (%)
1	Bodhtree Consulting Ltd.	24.85
2	Akshay Software Technologie Ltd	07.72
3	Lanco Global Systems Ltd	13.78
4	Exensys Software Solutions Ltd	70.68
5	Sankhya Infotech Ltd	27.35
6	Sasken Network Systems Ltd	16.64
7	Gebbs Infotech Ltd	16.52
8	VJIL Consulting Ltd	06.68
9	Four Soft Ltd	24.70
10	Thirdware Solution Limited	66.11
11	Tata Elxsi Limited (Segmental)	24.35
12	Flextronics (Segmental)	32.19
13	L & T Infotech Ltd.	11.72
14	Infosys Ltd	43.49
15	Compulink Systems Ltd	43.62
16	Geometric Software Solutions Co. Ltd.	20.34
17	Visual Soft Technologies Ltd (Segmental)	23.52
18	Sasken Communication Technologies Ltd. (Segmental)	14.42
19	Satyam Computer Systems Ltd.	30.31
20	Zensar Technologies Ltd.	08.76
Arithmetic Mean		**27.11**

7. Before the ld. CIT (A) assessee had pointed out ld. TPO's error in applying his own criteria in rejecting and choosing his own comparables in the following manner:-

1) Back Office Support Service Segment (ITES)

(A) Related Party Transactions > 25%

(Spanco Telesystems and Solutions Ltd.

The TPO has rejected this company on page number 2 of the TP order and has provided the reasons for rejection of the comparable as "Fails related party filters" and in the next column on the same page TPO has contradicted it by stating "No RP" (meaning no Related Party) in the column of "% of revenue from related party to total revenue". Further, TPO has not provided % of related party transactions.

In this connection, we wish to submit that, the related party transaction is only 1.55%, which is less than filter of 25% adopted by the TPO. We have attached herewith the working of RPT, profit & loss account along with related party disclosure schedule as Annexure 1 Since, RPT of the company is below 25%, this company should be accepted as comparable.

Airline Financial Support Services (India) Ltd.

The TPO has selected this company as comparable on page number 3 of the TP order.

In this connection, we wish to submit, that on review of the Annual Report of the company, it is seen that the company has related party transactions of 31.75% of its revenues. We have attached herewith the working of RPT, profit & loss account along with related party disclosure schedule as Annexure 2.

Since, RPT of the company is above 25%, this company should not be accepted as comparable.

<u>(B) Export Income NIL</u>

The TPO has rejected MCS Ltd with no export income under ITES segment, as mentioned on page number 2 of the TP order. In this context, we want to place on record the inconsistent stand adopted by the TPO in selecting his own comparable.

Goldstone Teleservices Ltd.

The TPO has selected this company as comparable on page number 3 of the TP order.

In this connection, we wish to submit that page no. 35 of the Annual Report of the company indicates that the company has not earned any export revenues from rendering software services. The company has reported foreign exchange earnings of Rs 54,775 during the year and that too on account of export of goods and not from IT enabled services. We have attached herewith the Profit & loss Account and Foreign Exchange Earnings of the company as Annexure

Since, the company, does not have any export income under ITES, this company should be rejected.

(C) Salary 1.15% of turnover

The TPO has rejected Orient Information Technology Ltd with meager salary expenditure at 1.15% of sales, under IT segment as mentioned on page number 6 of the TP order.

In this context, we want to place on record the inconsistent stand adopted by the TPO in selecting his own comparable.

Vishal Information Technologies Ltd.

The TPO has selected the company on page number 4 of the TP order and has prvided the reasons for selection of the comparable as "Engaged in information technology enabled services"

In this connection, we wish to submit that employee cost as a percentage of sales is only 0.95% (Which is less than 1.15% of sales). We have attached herewith the working along with the *profit and loss account as Annexure 4. S the salary expenses is less than 1.15%, this company should be rejected.*

(D) Lack of Segmental Data

Mphasis BFL Ltd.

The TPO on page number 2 of the TP order has provided the reasons for rejection of the comparable as "engaged in software development and software products and information technology enables services, ***segmental break up of information technology enabled services is not available****".*

Page no. 55 of the annual account of the company, clearly indicates IT and BPO as two segments of the company. The data of each of the segments are available as per attached Annexure 5. The BPO segment profitability (NCP) of the company works out to 13.71%. Since, the profitability based on the segmental data is available, this company should be accepted as comparable.

CS Software Enterprises Ltd.

The TPO on page number 2 of the TP order has provided the reasons for rejection of the comparable as "engaged in software development & information technology enabled services, no segmental data available" and "no turnover break up available".

In this connection, we are providing the Annual report from which it is evident that the Company is engaged in providing only IT enabled services. This fact is elucidated through the following printouts

On page no. 47 of the annual report in Clause 8 of the notes to accounts of the company states as follows:

The company is engaged in providing Information Technology Enabled Services which in the context of Accounting Standard -17 issued by ICAI are considered to constitute one single segment."

On page no. 14, in the Management Discussion Analysis (MDA) report, the breakup of income from operations of the company is *depicted by the graph (labeled IT BPO services) which shows that the company's income is from BPO services of Utilities (Rs. 247 Lakhs), e-Governance (Rs. 435 Lakhs) and Forms processing (Rs. 185 Lakhs).*

On page no. 15, a review of the Profit & Loss account shows that the total income of the company during the year is Rs 866 Lakhs which is equivalent to the total revenues from BPO services in the graph in the MDA report.

On page no. 13, as per the Para B of MDA report, under the head 'Key strengths of the company' it is clearly stated that "the company is a leading IT BPO service provider with a clear focus on specific verticals and business process areas."

On the same page no. 13, as per Para E of MDA report, under the head 'Risks due to competition' it speaks that "the company has the highest standards and due to its ability it could wrest major contracts from large IT BPO companies."

On the same page no. 13, as per Para C, the Industry analysis in MDA report describes about the current trends in IT BPO service industry. This is a clear indicator that the company operates in IT BPO service industry." We have attached herewith the above pages as Annexure 6.

Since, the company is only into providing BPO services, this company should be accepted as comparable.

***<u>CMC Ltd</u>**. The TPO on page number 2 of the TP order has provided the reasons for rejection of the comparable as "**<u>engaged in trading in computer peripherals, system integration services</u>**.*

Page no. 67 of the annual account of the company, clearly indicates IT and BPO as two segments of the company. The data of each of the segments are available as per attached Annexure 7. The BPO segment profitability (NCP) *of the company works out to 1.46%. Since, the profitability based on the segmental data is available, this company should be accepted as comparable.*

(E) Consistent/ chronically loss making

Online Media Solutions Ltd

*The TPO on page number 3 of the TP order has provided the reasons for rejection of the comparable as "**consistently loss making**".*

In this connection, we submit as under:

From the transfer pricing study submitted to the transfer pricing officer, it is seen that the margins of Online Media for FY 2002-03, FY 2003-04 and FY 2004 05 are as follows:

Year	*Netcost plus mark up)*
FY 2002-03	*5.95*
FY 2003-04	*4.62*
FY 2004-05	*(-) 10.10*

The copy of the annual report for the year ended 31 March 2005 along with comparative working of profit and loss account for the above mentioned three financial years is attached herewith as Annexure 8. It is thus evident from the above table, that Online Media is not a consistently loss making company as claimed by the TPO and TPO's ground of rejection is erroneous. Since, the company is not consistent loss making, this company should be accepted as comparable.

(G) Software Development comparables used as Back office support comparables

Cepha Imaging Private Ltd

The TPO on page number 3 of the TP order has accepted this company as comparable under ITES segment.

However, page no. 12 and clause 2(a) and clause (14) to the annual reports attached as Annexure 9, indicates that the company is only into software port sales and rendering software development services. It is stated that "the company' main business is that of development of software and as such, there are no inventory of finished goods and raw material except software development in process, which is taken into account periodically."

In view of the above, the company cannot be accepted in ITES segment.

Ace Software Exports Ltd

The TPO on page number 3 of the TP order has provided the reasons for selection of the comparable as "Engaged in information technology enables services"

However, page no. 10, clause 1 (01) of notes to account to the annual report attached as Annexure 10, states that "revenue from the sale of software is recognized when the sale has been completed with the passing of title". Thus, it indicates that the company is only into sale of software development services and it is an IT segment company.

In view of the above, the company cannot be accepted in ITES segment

(2) Software Development Services Segment (12)

***(A) Related Party Transactions > 25**%*

Blue Star Infotech Ltd.

The TPO has rejected this company on page number 5 of the TP order and has provided the reasons for rejection of the comparable as "Related party transaction more than 25%.

In this connection, we submit as under:

The related party transaction is only 3.44% which is less than the 25% criterion adopted by the TPO. We have attached herewith the working of RPT, profit & loss account along with related party disclosure schedule and working as Annexure 11.

Since, RPT of the company is below 25%, this company should be accepted as comparable.

(D) Lack of Segmental Data

Thirdware Solutions Limited (IT)

The TPO on page number 9 of the TP order has provided the reasons for acceptance of the comparable as "engaged in software development" In this connection, we wish to submit that Schedule 12 of the annual report of the company indicates that the company is engaged in the business of software services, software products, exports and revenue from subscription. The data pertaining to revenue as per Schedule 12 is tabulated below for your reference.

Particulars	***Amount (In Rs.)***
Sale of License	*27,202,087*
Software Services	*80,602,781*
Export	*147,425,780*
Revenue from Subscription	*35,939,678*
Total	***291,170,326***

However, no information on the profitability of each function/ segment for each of this service is available. The profit and loss account and annexure evidencing the same is attached as Annexure 12.

In the absence of segmental data of software services, this company should be rejected.

Mphasis BFL Ltd.

*The TPO on page number 2 of the TP order has provided the reasons for rejection of the comparable as "engaged in software development and software products and information technology enables services, segmental break up **of information technology enabled services is not available**".*

*Page no. 55 of the annual accounts of the company, clearly indicates IT and BPO as two segments of the company. The data of each of the segments are available as per attached **Annexure 13.** The IT segment profitability (NCP) of the company works out to 18.33%.*

Since, the profitability based on the segmental data is available, this company should be accepted as comparable

CMC Ltd.

The TPO on page number 2 of the TP order has provided the reasons for rejection of the comparable as "engaged in trading in computer peripherals system integration services. Page no. 67 of the annual accounts of the company, clearly indicates IT and BPO as two segments of the company. The data of each of the segments are available as per attached Annexure 14. The IT segment profitability (NCP) of the company works out to 10.10%. Since, in this case profitability based on the segmental is available, this company should be accepted as comparable.

Computech International Ltd.

*The TPO on page number 5 of the TP order has rejected this company as "**engaged in computer hardware and components and sale of software product**."*

On perusal of the page no. 45 of the annual report, it is evident that company has three segments of operation. For the purpose of comparability analysis wherever segmental financials are available, the most relevant segments should be selected for analysis.

a) Hardware division

b) Software division (IT)

c) Register division

Since, software division is functionally comparable the segment relating to software should be considered while benchmarking IT transaction. The data of each of the segments are available as per attached Annexure 15. The software division (IT) profitability (NCP) of the company works out to 8.98%. Since, the profitability of IT segment is available, this company should be accepted as comparable. I

(E) Consistent/ chronically loss making

ASM Technologies Ltd.

The TPO on page number 7 of the TP order has provided the reasons for rejection of the comparable as "consistently loss making".

On review of the annual report of the company it is seen that the company has positive net cost plus mark up of 9.27%. The copy of the relevant pages of annual report is attached herewith as Annexure 16 It is thus evident that ASM Technologies Ltd. is not a consistently loss making company and TPO's

ground of rejection is erroneous. Since, the company is not consistent loss making, the company should be accepted as comparable.

Astro Bio Systems Ltd.

The TPO on page number 7 of the TP order has provided the reasons for rejection of the comparable as "consistently loss making".

On review of the annual report of the company for the year ended March 2003 and March 2004, it is seen that the company has a positive net cost plus mark up of 18.29% and 4.21% respectively. It is only for the year ended March 2005, the company has a negative net cost plus mark-up of (-) 2.66 percent. The copy herewith as Annexure 17. It is thus evident that the company is not a consistently loss making company as claimed by the TPO and TPO's ground of rejection is erroneous. Since, the company is not consistent loss making, this company should be accepted as comparable.

Megasoft Ltd.

The TPO on page number 6 of the TP order has provided the reasons for rejection of the comparable as "consistently loss making" For the year ended December 2003, Megasoft has a positive net cost plus mark up of 5.83%. It is only for the year ended December 2004, the company has a negative net cost plus mark-up of (-) 5.33 percent. Hence, Megasoft has incurred loss only for one year ie. for the year ended December 2004.

Further, for the later years ended 2005 and 2006, Megasoft has earned PBT of Rs. 20.88 crores and Rs. 35.19 crores respectively. The copy of the relevant pages of annual report for above three years is attached herewith as Annexure 18. It is thus evident that Megasoft Ltd is not a consistently loss making company as claimed by the TPO and TPO's ground of rejection is erroneous Since the company is not consistent loss making, the company should be accepted as comparable.

RS Software Ltd

The TPO on page number 7 of the TP order has provided the reasons for rejection of the comparable as "consistently loss *making". For the year ended March 2003 and March 2004, company has a negative net cost plus mark up of -15.86% and 2.62%. However for the year ended March 2005, the company has a in fact a positive net cost plus mark-up of 7.61 percent. Further page 12 of the Annual Report is reproduced below for your easy reference: The Company's marketing strategy to reposition the company as a domain fused player has started to pay off already and as the company develop more competencies, the company is hopeful of winning some strategic clients in the payment system domain during the fiscal year." The copy of the relevant pages off annual report is attached herewith as* ***Annexure 19****.*

Since company is not a consistent loss making company the company should be accepted as comparable.

(F) Exceptional/Extra-ordinary event

The TPO has rejected Melstar Information Technologies Ltd. having Exceptional/ Extra-ordinary event, as mentioned on page number 6 of the TP order.

In this context, we want to place on record the inconsistent stand adopted by the TPO in selecting own comparable.

Satyam Computer Ltd.

*The TPO on page number 9 of the TP order has provided the reasons for acceptance of the comparable as "****The company recognizes its income from software services only****"*

In this connection, we wish to submit that the annual accounts of the company are not reliable due to the financial fraud scam which has been discovered in the case of this company. In fact, all the financial statements are being under reconstruction. Further, the auditors of Satyam Computers have withdrawn their audit report pursuant to the confessions to the financial fraud made by the chairman of the company. The supporting to above is attached as Annexure 20.

Since, the data of the company is influenced by exceptional/ extraordinary event, this company should be rejected as comparable.

Exensys Software Solutions Ltd.

The TPO on page number 8 of the TP order has selected this company as comparable.

On perusal of the annual report at page no. 16 it is seen that company itself have admitted as under:

*"as "**exceptional year of operations**" due to the fact that another company (Holool India Limited) has amalgamated with the company with effect from April 01, 2004, which has had a material / significant impact on the results of expenses for the financial year ended March 31, 2005"*

On page 16 of the annual report, it is mentioned in the Director's report under the "Performance Review" and "Operational Review" that-

"During the year under review your company had earned an income of Rs 737.79 lacs which consists of an Export Turnover of 691.76 Lacs. This was possible with the Amalgamation of Holool India Limited with the company

M The Company entered into a scheme of amalgamations with M/s Holool Andia Limited to get benefit by the advanced latest technical expertise on . various technology domains and to gain business/market reach especially in the Middle East where Transferor Company has execution many projects successfully."

Thus, it is evident that amalgamated company has impacted the profit of the company selected by the TPO.

Further, in this regard we would like to draw reference to various extracts of the annual report:

On page 19 of the annual report, it is mentioned in the Management Discussion and Analysis Report under the "Future Outlook" that-

"The company's outlook for the next year is to achieve a positive growth in solutions segment of the business in line with the industry growth rates, to consolidate and grow in the BPO segment, and to expand strategic customer relationship and leverage the existing relationship to achieve the desired growth rates."

As per the website of the company (www.exensys.com), it is mentioned that the company has an ERP product of its own and is also engaged in rendering BPO services. On review of the annual report of FY 2004-05 and the company's website, we have observed that the company is engaged in multiple activities, Including software products, software services and BPO services. In this regard, the supporting is attached as Annexure 21.

Since the data of the company is influenced by exceptional/ extraordinary event, this company should be rejected as comparable.

8. The ld. CIT(A) after perusing the reasoning given by the ld. TPO and the submissions made by the assessee and material placed on record has deleted the adjustment after observing and holding as under:-

5.9. I have perused the Assessment order, the TPO's order and verified the documents filed along with the submissions.

5.10. At the outset it needs to be mentioned that once, the TPO has adopted certain criteria/yardsticks for accepting/rejecting a company, he is bound to uniformly apply the same criteria while selecting his own set of source of financial information from the database. He should have referred comparables. The fundamental weakness of the TPO's order has been in adopting an inconsistent approach while applying the accept/reject filters of the comparables. It appears that the TPO has confined itself to the primary to the secondary source of information also like annual *accounts/ Directors report/ website the company etc. to ensure that filters /criteria it had adopted applies equally to the comparables selected by it. As is evident from the detailed examination of comparables there are inconsistencies which cannot be ignored. Transfer Pricing is a fact intensive judgmental exercise and cannot be done in a cursory manner. Transfer Pricing cases typically require a more in depth analysis of the facts and underlying economics of a particular related party transaction compared to other tax issues.*

5.11 In fact while verifying the facts it was seen that in respect of one of the comparables rejected by the TPO on the ground of Consistent loss making viz. ASM Technologies Ltd., it is seen that the company is in fact having NCP of 9.27% for the single year 2005. The same is true in case of RS Software Ltd., which the TPO has also rejected on the ground of consistent loss making company, whereas it is seen that the company is making profit of NCP at 7.61% for the single year 2005.

Since, the TPO himself has considered single year margin, he ought not to have rejected these comparables especially when these companies have made profit in the current year;

In nutshell it is seen that the TPO has not been consistent in his approach in accepting /rejecting the comparables for the purpose of benchmarking the International Transactions of the Appellant Company. Since, TPO has failed to do so in respect of some of the Comparables the same therefore requires to be remedied.

5.12 Based on the above discussion and after applying the filters adopted by the TPO consistently, the final set of comparable companies under ITES and IT segment is as under:-

Sr.No.	**Name of the company**	**Operating Margin %**
1	Spanco Telesystems and Solutions Ltd	14.22
2	CS Software Enterprises Ltd	10.03

3	CMC Ltd	01.46
4	Mphasis BFL Ltd	13.71
5	Online Media Solutions Ltd	40.10
6	Asian Cere Information Technology Ltd	24.50
7	Wipro BPO Solutions Ltd	23.40
8	Tuisyan Technologies Ltd. (Cosmic Global)	18.75
9	Allsea Technologies Ltd	28.07
10	Saffron Global Limited	24.97
11	Transworks Information Services Ltd	02.00
	Arithmetic Mean	**13.73**

Sr. No.	**Name of the company**	**Operating Margin %**
1	Geometric Software Solutions Ltd	20.34
2	Sasken Communication Technologies Ltd	14.42
3	Visualsoft Technologies Ltd	23.52
4	Zensar Technologies Ltd	8.76
5	Blue Star Infotech Ltd	13.18
6	Mphasis BFL	18.33
7	CMC Ltd	10.10

8	Computech International Ltd	8.98
9	ASM Technologies Ltd	12.68
10	Astro Bio Systems Ltd	-2.66
11	Megasoft Ltd	-5.23
12	R S Software Ltd	7.61
13	Goldstone Technologies Ltd	3.76
14	Cepha Imaging Pvt Ltd	48.35
15	Ace Software Exports Ltd	14.55
16	Akshay Software Technologies Ltd	7.72
17	Bodhtree Consulting Ltd	24.85
18	Compulink Systems Ltd	43.62
19	Flextronics Ltd	32.19
20	Four Soft Ltd.	24.70
21	Gebbs Infotech Ltd	16.52
22	Infosys Ltd	43.49
23	L & T Infotech Ltd	11.72
24	Lanco Global Systems Ltd.	13.78
25	Sankya Infotech Ltd	27.35
26	Sasken Network Systems Ltd.	16.64
27	Tata Elxi Ltd.	24.35
28	VJIL Consulting Ltd.	6.68

	Arithmetic Mean	**17.51**

5.13 Based on my detailed discussion on selection of comparable companies, the arm's length operating margin to be taken in respect of the software services and IT enabled services are as under:

Particulars	*Operating Margin*
IT Enabled services	*13.73%*
Software Services	*17.51%*

The corresponding ALP which is worked out after applying the 5% range in respect of ITEs comes to Rs. 29,28,59,642 (-5%) and it is Rs. 32,36,86,978/-(+5%). The appellants price is Rs. 30,29,93,009/- is within this Range under proviso to Sec. 92C(2).

Whereas in the software services the corresponding ALP worked out after applying 5% range comes to Rs. 7,18,98,974 / (-5%) and Rs. 7,94,67,787(+5%). The appellants price at Rs. 7,39,80,534/- is within the range under proviso to Sec. 92C(2). As such there is no scope for any adjustments.

9. None appeared on behalf of the assessee. Since it is an old matter, therefore, we are deciding the appeal on merits after hearing the ld. DR.

10. After considering various documents placed before us in the form of paper book and finding given by the ld. TPO and ld. CIT (A), we find from the assessee’s contention before the ld. CIT(A) regarding inclusion of comparables by the ld. TPO and the exclusions of other comparables on merits as incorporated above, that ld. TPO had adopted certain criteria for rejection of

comparables which has been highlighted above. If those criteria itself are adopted on the comparables which has been chosen by the ld. TPO and applying the filters adopted by him on the final set of comparables selected by him under ITES and IT segment, then as noted by the ld. CIT (A) the arithmetic mean in ITES segment comes to 13.73% and in IT segment comes to 17.51%. In that case, in ITES segment margin shown by the assessee and margin which has been determined falls within the tolerance limit of +/- 5% as provided in *proviso* to Section 92CA which was applicable prior to 01/10/2009, then assessee's price of Rs. 30,29,93,009/-, which is well within the tolerance range, because -5 comes to Rs. 29,28,59,642/- and +5% comes to 32,36,86,978/-. Thus, ld. CIT (A) has correctly held that in such a case, no adjustment is called for.

11. Similarly, in software services, the assessee's price is Rs.7,39,80,534/- whereas +/-5% range comes between Rs.7,18,98,974/- to Rs.7,94,67,787/-. Accordingly, no adjustment can be made. Thus, we do not find any infirmity in the order of the ld. CIT (A) and the same is confirmed. Accordingly, the appeal of the Revenue is dismissed.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced on 10th Jan, 2024.

Sd/-	**Sd/-**
(S RIFAUR RAHMAN)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 10/01/2024
KARUNA, *sr.ps*

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy// BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai