IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "A" BENCH, HYDERABAD

Before Shri. G.C. Gupta, Vice President and
Shri. Akber Basha, Accountant Member

ITA No. 1495/HYD/2010
(Assessment year 2006-07)

M/s. Four Soft Ltd. Hyderabad PAN: AAACT4464A **Appellant**	Vs	The Dy. Commissioner of Income-tax, Circle 1(3), Hyderabad. **Respondent**

Appellant by: Shri. Rajan Vora
Revenue by: Shri. V. Srinivas

ORDER

Per Akber Basha, Accountant Member:

This appeal by the assessee is against the directions of the Dispute Resolution Panel, Hyderabad, under section 144C [5] of the Income Tax Act, dated 30.9.2010 for the assessment year 2006-07.

2. The grounds of appeal raised by the assessee which are as follows.

> *Based on the facts and the circumstances of the case and in law, the learned Assessing Officer, learned Transfer Pricing Officer and the Hon'ble Dispute Resolution Panel –*
>
> *(1) Erred in rejecting the transfer pricing documentation maintained by the appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 and making adjustment of Rs.4,19,41,501 in relation to the following international transactions with its Associated Enterprises (AEs):*

- *Provision of software services – Rs.13,526,760.*
- *Interest on loans provided to its AEs – Rs.2,235,391; and*
- *Corporate guarantee provided to banks on loans taken by its subsidiary – Rs.26,179,350.*

(2) Erred in computing the correct net margin of the appellant under Transactional Net Margin Method (TNMM) and correctly determining the Transfer pricing and adjustment;

(3) Without prejudice to Ground No. 2 erred in not applying TNMM to the internal uncontrolled transactions for determining the Arm's Length Price (ALP);

(4) Erred in excluding foreign exchange fluctuation in computation of the operating margin under TNMM;

(5) Erred in rejecting the contemporaneous data (i.e., data existing before the due date of filing of return of income) and in undertaking a fresh comparable search during the course of assessment proceedings using information/ data which was not available to the appellant at the time of satisfying the mandatory documentation requirements.

(6) Erred in rejecting the use of multiple year data and using data for the FY 2005-06 only in determination of ALP under TNMM.

(7) Erred in using selective information/ documents obtained by the learned TPO using powers and under section 133(6) of the Act 3which are not available in public domain for determination of ALP of the international transactions of the appellant.

(8) Failed to appreciate that the appellant is eligible for tax holiday benefit under section 10A of the Act, and there is no incentive for shifting of profits.

(9) Erred in inter-alia use of the following additional filters in undertaking the comparative analysis:

- *Rejection of companies having onsite revenue in excess of 75%;*

- *Rejection of companies having different financial year-end.*
- *Rejection of companies having diminishing revenue/loss making filter for the last 3 years.*
- *Rejection of consolidated financial statements of the Indian parent companies;*
- *One side turnover filter (i.e., rejecting companies having turnover less than Rs.1 crore and selecting companies having high turnover);*

(10) Without prejudice to the ground 8, erred in rejecting inter-alia the following comparable companies for determination of ALP under TNMM:

- *VMF Softech Limited.*
- *TVS Infotech Ltd.,*
- *PSI Data Systems Ltd.,*
- *Larsen & Toubro Infotech Ltd.,*
- *Birla Technologies Ltd.,*
- *Goldstone Technologies Ltd., and*
- *Quintegra Solutions Ltd.*

(11) Without prejudice to the ground 6, erred in confirming the selection of the following companies as comparable to the appellant for determination of ALP under TNMM:

- *Accel Transmatic Ltd.; and*
- *Megasoft Ltd.*

(12) Erred in adding the reimbursements received by the appellant to the operating cost for the purpose of determining the ALP;

(13) Erred in determining the arms length interest rate for loans provided to Foursoft BV Netherlands considering USD LIBOR rate at 5.78%;

(14) Erred in determining the ALP on the corporate guarantee provided by the company @ 3.75% on the guarantee amount;

(15) *Erred in discriminating its Netherlands subsidiary in determining the ALP for corporate guarantee provided vis-a-vis similar corporate guarantee provided by companies on behalf of their Indian subsidiaries resulting in violation of Article 24 of India-Netherlands Double Taxation Avoidance agreement.*

(16) *Erred in not taking into account the functional and risk differences between the international transactions of the appellant and the comparable transactions and not adjusting the net margins of the comparable companies for the same in accordance with the provisions of Rule 10B(1)(e) read with Rule 10B(2)(b);*

(17) *Erred in not considering that the adjustment to the transfer price, if any, should be limited to the lower end of the 5 per cent range of the ALP as the appellant had the right to exercise this option under the proviso to section 92C(2) of the Act for the subject assessment year;*

(18) *Erred in deducting the following expenses from the export turnover and further not reducing the same from the total turnover in the computation of deduction u/s. 10A of the Act;*

- *Communication change of Rs.4,167,242 considered as attributable to the delivery of software outside India.*
- *Salaries and implementation expenses of Rs.16,024,557 considered as expenses in foreign currency for providing technical services outside India.*

(19) *Erred in determining the amount of expenditure relating to exempt income and disallowing the same under section 14A.*

(20) Erred in disallowing expenses incurred towards professional and legal fees in relation to its global business and investments;

(21) Erred in the imposition of interest under section 234B of the Act on additional income arising due to the transfer pricing adjustment.

(22) Erred in initiating penalty proceedings u/s. 271(1)(c) of the act.

3. Facts of the case, in brief, are that the assessee company had international transactions with an Associated Enterprise (AE) during the assessment year 2006-07 to an extent of Rs.21,56,22,574 relating to software development services. Besides the above it had other internal transactions as under:

i.	Payment of management allocation expenses	Rs.2,77,76,497
ii.	Reimbursement of expenses (Received)	Rs.13,11,19,575
iii.	Reimbursement of expenses (paid)	Rs.2,29,60,060
iv.	Interest paid on loan	Rs.82,16,457

4. The assessee company filed its return on 23-11-2006 declaring a income of Rs.1,44,43,091/- after claiming deduction under section 10A of the Act. The Assessing Officer selected the case for scrutiny assessment and issued a notice under section 143(2) of the Act. The matter was referred to Transfer Pricing Officer under section 92CA [1] of the Act, for determining the Arms Length Price [ALP] in respect of the international transactions with its Associate Enterprises. The TPO vide order dated 30.10.2009 passed under section 92CA of

the Act determined the value of foreign transactions relating to software services at Rs.100,40,64,698 against the price shown by the assessee at Rs.77,98,59,542 and Rs.46,90,03,746 relating to IT Enabled Services (ITES) against the price shown by the assessee at Rs.41,99,24,368. Thus, there is enhancement in the value of international transactions at Rs.27,32,84,534 as given below:

S. No.	Nature of Revenue	As per accounts (Rs.)	As determined by the TPO (Rs.)	Adjustment (Rs.)
1.	Software development services	77,98,59,542	100,40,64,698	22,42,05,156
2.	ITES	41,99,24,368	46,90,03,746	4,90,79,378
	Total	119,97,83,901	147,30,68,444	27,32,84,534

5. The Assessing Officer after considering the order of TPO and after giving the assessee an opportunity of being heard issued a proposed assessment order under section 144C of the Act on 21.12.2009. The Assessing Officer computed the total income of the assessee at Rs.9,56,79,799/- by proposing the following additions, besides the issue relating to ALP, certain other additions and issues relating to non transfer pricing matters were also considered for assessment in the draft assessment order.

i.	Provision of software services	Rs.2,35,70,348
ii.	Interest on loans provided to its AEs	Rs.2,23,92,553
iii.	Corporate guarantee provided to banks on behalf of the subsidiary	Rs.2,61,79,350
	Total	Rs.7,21,42,251

6. The Assessing Officer reduced the following expenses from the export turnover in the computation of deduction under section 10A of the Act:

i.	Communication charges considered as attributable to the delivery of software outside India	Rs. 41,67,242
ii.	Salaries and implementation expenses considered as expenses in foreign currency for providing technical services outside India; and	Rs. 1,60,24,557
iii.	Export turnover not realised during the year	Rs. 1,41,51,830
	Total	Rs. 3,43,43,629

7. Aggrieved with the adjustments, additions proposed in the draft assessment order, the assessee filed objections before the Dispute Resolution Panel [DRP] on 29-1-2010. The DRP vide its direction under section 144C (5) of the Act on 30-9-2010 had directed to effect certain changes to the adjustments/additions proposed in the draft assessment order.

8. The assessing officer in conformity of the directions of the DRP, completed the assessment under section 144C (13) of the Act and determined the total income of the assessee at Rs.6,39,68,149/-. Aggrieved by the directions of the DRP, the assessee is in appeal before us.

9. The learned counsel for the assessee submitted that the assessee has computed the ALP in accordance with the provisions of the Act read with the Rules. The companies had undertaken a detailed analysis to determine the functions performed, risks assumed and assets utilised by the company and its AE. The TP study was carried out by an independent external consultant. Based on the TP study, the independent external consultant concluded that the price received by the company in respect of its transactions with AE is within the arm's length range under the Indian TP regulations. The learned counsel for the assessee submitted that the Assessing Officer/TPO can determine the price only under the circumstances enumerated in clauses (a) to (d) of section 92C (3) of the Act. In all other cases, the value of the international transaction adopted by the company should be accepted. In this regard the learned counsel for the assessee submitted that the ALP of the assessee's international transactions has been determined by applying the most appropriate prescribed method in accordance with sub-section (1) and (2) of section 92C of the Act. All the relevant information and documents relating to the international transactions have been maintained and submitted to the TPO. The data used in computation of ALP is taken from two widely recognised commercial information databases viz., Prowess and Capitaline. The TPO also used the very same databases. The data used for computation of the ALP is reliable and correct and all the information/ documents required by the TPO during the assessment proceedings were provided in time. The company's analysis was in accordance with the provisions of the Act read with the Rules and based on globally accepted sound TP principles. It is not justified to reject the TP analysis of the international

transactions undertaken by the company in the absence of any information to the contrary. For the purpose the assessee relied on decision of Delhi High Court in the case of Sony India (P) Ltd. v. CBDT reported in 288 ITR 52 (Del) wherein it was held that acceptance of the ALP declared by the assessee is the rule and its rejection is the exception. It is submitted that since the transfer pricing in India being in a nascent stage, that there are varied interpretations as to what is the ALP. This is implicitly recognised the circular 12 of 2001 dated 23.8.2001 issued by the CBDT. For this purpose the learned counsel for the assessee relied on the decision of Delhi ITAT in the case of Mentor Graphics (Noida) (P) Ltd. vs. DCIT reported in 109 ITD 101. The learned counsel for the assessee contended that in the light of the above guidance, it would be against the provisions of the law to reject the TP analysis done by the assessee.

10. The learned counsel for the assessee also submitted that there are errors in computing the net margin of the assessee. He submitted that the TPO computed the adjustments considering the total cost of the assessee (including the cost of transactions with non-AEs). An analysis under TNMM considers only the profit that is attributable to particular controlled transactions. The TPO should have determined the ALP for the international transaction with AE considering only the operating cost allocable to the AE segment. For this proposition, he relied on several decisions cited in its written submissions which includes the case of IL Jin Electronics (I)(P) Ltd. vs. ACIT reported in 30 SOT 227.

11. The learned counsel for the assessee submitted that the TPO rejected the segmental financials prepared by the assessee company for transactions with the AEs. The assessee company computed the operating margin for the transaction with the AEs and non AEs by apportioning the expenses in proportion to sales. However, the TPO not approved the aforesaid apportionment and segmental financials. That resulted in allocating the bad debts and other certain costs, viz, R & D to the AE Segment which is clearly in respect of the third party transaction only and not with the AE's transaction. The learned counsel for the assessee also submitted that the DRP also not made any observation upon the approach of the TPO. The TPO computed the adjustment considering the total cost of the assessee including the cost of transaction with the non AEs. The TPO should have determined the ALP only for the international transaction with the AE after considering the allocable operating cost to the AE Segment. Alternatively, it is submitted that even if the TP adjustment is to be made, it is to be made only on the transactions with the AEs and not on the total transaction. He relied on the several decisions placed in the paper book including that of IL Jin Electronics (supra).

12. The learned counsel for the assessee also submitted that since the assessee company enjoys tax holiday benefit in India under section 10A of the Act, and the tax rates in the AE's jurisdiction is higher than the Indian tax rate, there is no motive to shift the profit from the parent company to the subsidiary company. It is also submitted that the nature of reimbursement transaction has not been

analysed and included in the operating cost for transaction with the AE. Such reimbursements are in respect of payment to consultant for the work undertaken for AEs. Hence, the same should not be included in the operating cost. It is also submitted that even if any of the grounds on the comparables and the filters is allowed by this Tribunal, the assessee's margin would fall within the range of ALP. It is also submitted that the TPO has also not justified in selecting the software product companies, higher turnover companies and higher margin companies as comparables. In the rejoinder, the learned counsel for the assessee submitted that the assessee company vide its submissions before the TPO dated 16-9-2009 has worked out margins separately in respect of AE and non-AE transactions and the TPO simply rejected the claim of the assessee company for the reason that those segmental details are not audited and no books of accounts are maintained separately. It is also submitted that TPO himself followed the segmental financials in respect of comparables like Infosis. Therefore, it is submitted that the plea of segmental financials to be adopted was taken both before the TPO as well as DRP.

13. On the other hand, the learned departmental representative while relying on the order of the AO and directions of the DRP, submitted that the assessee company has not taken the specific ground in the grounds of appeal stating that segmental financials prepared by the assessee company is to be adopted for the purpose of arriving ALP. It is also submitted that the TPO rightly rejected the multiple year data adopted by the tax payer in its TP study. As per Rule 10B[4], the data relating to the financial year in which the international transaction has been entered into to be used in analysing the comparability of an

uncontrolled transaction with an international transaction. With regard to the issue of turnover criteria and high margins comparables, he relied on the decision of the Mumbai Tribunal in the case of Symantec Software Solutions rendered in ITA No.7894/Mum and submitted that the issue is squarely covered in favour of the department and hence the turnover criteria should not be applicable for the company which operates on cost plus model. A comparable company cannot be rejected simply because it has high margins.

14. It is submitted that the assessing officer has to follow only the provisions of the Act and the assessing officer need not go into the intention/motive of the assessee. The TP Provisions have been introduced to protect the tax base of the company in India. He relied on the decision of the Bangalore ITAT in the case of SAP Labs India in ITA No.398/Bang/2008 to support his contention. He also filed written submissions on the issue of plus or minus 5% variation as per section 92C(2) of the Act and submitted that the amendment to the aforesaid section is prospective in nature for which he relied on the judgment of the apex court in the case of Gold Coin Limited 999(304 ITR 308).

15. We have considered the rival submissions and perused the material on record. First, we will take up the issue relating to the adjustments made by the assessing officer in respect of the international transactions with its associated enterprises in the software development services. It is the contention of the assessee that bad debts incurred by the assessee company are in respect of transactions, which are not related to associated enterprises. This contention of the assessee has not been controverted by the Revenue by bringing any material on record before us. It is the contention of the learned counsel for the

assessee that such bad debts cannot be taken into account for computing the margin of the assessee from the transactions with the associated enterprises in respect of software development services. The learned counsel for the assessee has also filed before us a comparative chart explaining the computation of Net Margin, excluding the bad debts and clearly demonstrated before us that if the bad debts/reimbursements are excluded for the purpose of computing the margins on the transactions relating to the associated enterprises, the net margin comes to 19.07%, which is well comparable with the Arms Length Margin of 19% determined by the Transfer Pricing Officer. In our considered view, for computing the net margin of the assessee for the purposes of transfer pricing, only the cost related to the transaction with the Associated Enterprises has to be considered and accordingly, we approve that segmental financials is to be considered for the purpose of arriving at the net margin on the international transaction with the assessee's enterprise in respect of software development services. In that process, bad debts/reimbursements has to be excluded and segmental profitability has to be adopted. We find support in this behalf from various decisions of the Tribunal relied upon by the learned counsel for the assessee duly filing copies thereof in the paper-book, which have been noted hereinabove. That being so, the TPO should have determined the Arms Length Price for the international transactions with associated enterprises considering only the operating cost allocable to the Associated Enterprises segment. Since the assessing officer had no occasion to verify the veracity of the segmental financials prepared by the assessee company, for limited purpose, we direct the assessing officer to verify the segmental financials prepared by the assessee company and adopt the same for arriving at the net margin on the international transaction with AEs in respect of software

development services. We direct accordingly.

16. With regard to the exclusion of gain on account of foreign exchange fluctuation while computing the net margin, as claimed by the assessee, we find that the exchange fluctuation gains arise out of several factors, for instance, realisation of export proceeds at higher rate, import dues payable at lower rate. Since the gain or loss on account of exchange rate fluctuation arises in the normal course of business transaction, the same should be considered while computing the net margin for the international transactions with the associated enterprises of the assessee. Our view in this behalf is fortified by the decisions of the Bangalore Bench of the Tribunal in the case of SAP Labs India Ltd. (supra) and Bombay Bench of the Tribunal in the case of Deutsche Bank A.G. V/s. Dy. CIT reported in 86 ITD 431. If the gain on account of foreign exchange rate fluctuations is to be taken as operating gain in nature, the net margin declared by the assessee for the international transactions with the associated enterprises, goes up still further. Hence, considering both the above two factors, there is no justification for any adjustment to the Price declared by the assessee, since the assessee's margin would fall within the Arms Length range. We therefore, hold that no adjustment is required to be made on the margin declared by the assessee for the international transaction of the associated enterprises in relation to software development services. We direct accordingly.

17. Since the assessee company succeeds in the aforesaid two issues, it appears that no adjustment is required to be made on the margin declared by the assessee company in relation to software development services, the other grounds raised in the present appeal,

related to software development services, i.e., ground Nos.2,3,4,5,6,7,8,9,10,11,12,16 and 17 have become redundant, being only of academic nature, and hence, we are not inclined to go into the merits of the same. They are accordingly disposed off.

18. Now, we will take up the next issue [Ground No.13] relating to loan to its subsidiary company, 4S BV, Netherlands. The learned counsel for the assessee submitted that the DRP has taken the LIBOR at 5.78% for the TP adjustment in respect of loan transactions, whereas the actual average LIBOR rate for the year is only 4.42%. For these propositions, he relied on the decision of the Madras Bench in the case of Siva Industries and Holdings Limited in ITA No.2148/mad/2010 for the same year under consideration and submitted that the Tribunal approved the LIBOR rate at 4.42% as bench mark for determination of the Arms length interest rate. It is also submitted that, in Netherlands, the bank lending rates are based on the European inter-bank offer rates, that is, EURIBOR and hence, the EURIBOR of 2006 at 3.44% is to be considered as the benchmark for determination of the Arms length interest rate for the said transaction. Whereas, the learned departmental representative submitted that the DRP has erred in determining the correct ALP for the loan transaction. It is submitted that the TPO was correct in determining the ALP interest rate by comparing the interest rate on corporate bonds at 14% per annum which is the opportunity cost of such funds since the assessee can earn a higher rate of interest in India.

19. We have considered the rival submissions and perused the materials available on record. We do not find any merit in the arguments of the learned departmental representative as we find that

the ALP is to be determined for the international transaction, that is, on international loan and not for the domestic loan. Hence, the comparable, in respect of foreign currency loan in the international market, is to be LIBOR based which is internationally recognised and adopted. In our considered view, the DRP rightly directed the assessing officer to adopt the LIBOR plus for the purpose of TP adjustment. Our view is fortified by the decision of the Madras Bench in the case of Siva Industries [supra]. We do not find any merit in the arguments of the learned counsel for the assessee that the DRP should have adopted the EURIBOR for the purpose of the TP adjustments, as we find that the mostly used and recognised benchmark rate for international loan is LIBOR based. Hence, the DRP rightly directed the assessing officer to adopt the LIBOR rates. We confirm the directions of the DRP. However, by considering the contentions of the learned counsel for the assessee that the actual LIBOR was 4.42% as against the 5.78% approved by the DRP, we find it proper to restore this issue to the file of the assessing officer, to verify the correctness of the claim made by the assessee company. In view of this matter, we remit this matter to the file of the assessing officer to verify the actual average LIBOR prevailed in the financial year relevant to the assessment year under consideration and adopt the interest rate 4.42% if the claim of the assessee is found correct. The ground raised by the assessee on this issue is partly allowed for statistical purpose.

20. The next issue [Ground No.14 and 15] is with regard to the TP adjustments in respect of the corporate guarantee provided by the assessee company on behalf of its subsidiary. The assessee company provided corporate guarantee to ICICI bank UK and also DCS Group. The TPO held that guarantee is an obligation and if the principal debtor fails to honour the obligation, the guarantor is liable for the same and

hence, the TPO determined a commission at the rate of 3.75% as the ALP under CUP method on the basis of the commission charged by the ICICI bank as bench mark. The DRP confirmed the action of the TPO. Hence, the assessee is in appeal before us. The learned counsel for the assessee submitted that TP legislation provides for computation of income from international transaction as per Section 92B of the Act. The corporate guarantee provided by the assessee company does not fall within the definition of international transaction. The TP legislation does not stipulate any guidelines in respect to guarantee transactions. In the absence of any charging provisions, the lower authorities are not correct in bringing aforesaid transaction in the TP study. The learned counsel for the assessee made elaborate discussions on several points that include normal practice followed by the companies in providing the corporate guarantee to its subsidiary companies, etc. It is also submitted that the subsidiary company has not received any benefit in the form of lower interest rate by virtue of the corporate guarantee given by the assessee company and at the same time, the assessee company significantly benefited from such transaction. He relied on the following decisions.

a] Judgement of the Apex court in the case of S A Builders reported in 288 ITR 1
b] CIT vs. Amalgamation Pvt., Ltd., reported in 226 ITR 188
c] ACIT vs. W S Industries Ltd., reported in 2009 TIOL 783-Mad

Whereas the learned departmental representative relied on the directions of the DRP and the order of the assessing officer and submitted that the guarantee is an obligation and if the principal debtor fails to honour the obligation, the guarantor is liable for such failure. The

TPO rightly determined a commission at the rate of 3.75% as the ALP under CUP method on the considering the commission charged by the ICICI bank as bench mark.

21. We have considered the rival submissions and perused the materials available on record. We find that the TP legislation provides for computation of income from international transaction as per Section 92B of the Act. The corporate guarantee provided by the assessee company does not fall within the definition of international transaction. The TP legislation does not stipulate any guidelines in respect to guarantee transactions. In the absence of any charging provision, the lower authorities are not correct in bringing aforesaid transaction in the TP study. In our considered view, the corporate guarantee is very much incidental to the business of the assessee and hence, the same cannot be compared to a bank guarantee transaction of the Bank or financial institution. In view of this matter, we hold that no TP adjustment is required in respect of corporate guarantee transaction done by the assessee company. Hence, we answer this question in favour of the assessee and allow the grounds raised by the assessee on this issue.

22. The Ground No.18 is with regard to the exclusion of communication charges and implementation expenses from the export turnover and further not reducing the same from the total turnover for the purpose of computation of benefit under section 10A of the Act. We find that this issue is squarely covered in favour of the assessee by the decision of Chennai Special Bench in the case of Sak Soft Limited reported in 313 ITR (AT) 353 and accordingly we held that the telecommunication charges and implementation expenses incurred by the assessee company, which has been excluded by the assessing officer

from export turnover, has to be excluded from the total turnover also, while computing the admissible deduction 10A of the Act. We direct accordingly. Hence, the ground raised by assessee is allowed.

23. The Ground No.19 relates to disallowance of expenditure under section 14A of the Act. This issue is covered by the judgement of the Bombay High Court in the case of Godrej & Boyce vs. DCIT reported in 328 ITR 81 wherein it was held that Rule 8D read with section 14A[2] of the Act is not arbitrary or unreasonable but can be applied only if assessee's method is not satisfactory. Rule 8D is not retrospective in nature and the same has to be applied from the assessment year 2008-09. For the earlier assessment years, disallowance has to be worked out on "reasonable basis" under section 14A [2] of the Act. Accordingly, we restore this issue to the file of the assessing officer to rework the disallowance on reasonable basis in accordance with the ratio laid down by the aforesaid judgement. The ground raised by the assessee is allowed for statistical purpose.

24. The Ground No.20 relates to disallowance of expenses incurred towards professional and legal fees in relation to its global business and investments. The learned counsel for the assessee not pressed this issue. Hence, this ground raised by the assessee is dismissed as not pressed.

25. The Ground No.21 relates to levy of interest under section 234B of the Act.We find that charging of interest under sections 234B is mandatory and merely consequential in nature to the assessed income. Hence, the grounds raised by the assessee on these issues are rejected as such.

26. The last ground No.22 raised by the assessee is with regard to the initiation of penalty proceedings under section 271(1) (c) of the Act. We find that there is no provision in the Act for allowing appeal against initiation of penalty proceedings under section 271 (1) (c) of the Act. Hence, the ground raised by the assessee on this issue is not entertainable and the same is accordingly rejected.

27. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open court on 9th September, 2011.

Sd/-	sd/-
(G.C. GUPTA)	(AKBER BASHA)
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Hyderabad, dated the 9th September, 2011

Jmr*

Copy forwarded to:

1. M/s. Four Soft Limited, 5Q1 A3, Cyber Towers, Hitech City, Madhapur, Hyderabad.
2. The Deputy Commissioner of Income-tax, Circle 1(3), Aayakar Bhavan, Basheerbagh, Hyderabad.
3. The Dispute Resolution Panel, 4A, I.T. Towers, A.C. Guards, Hyderabad-500 004.
4. The Addl. CIT (Transfer Pricing), Hyderabad.
5. The DR, A-Bench, ITAT, Hyderabad.