IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

AND

SHRI. S. JAYARAMAN, ACCOUNTANT MEMBER

I.T(TP).A No.287/Bang/2015
(Assessment Year : 2010-11)

M/s. Logitech Engineering & Design India P. Ltd,
(erstwhile M/s. Lifesize Communication P. Ltd),
Plot No.TS140, Block 2 & 9, Elnet Software City,
Rajiv Gandhi Salai, Taramani,
Chennai 600 013 .. Appellant
PAN : AABCL2081A

v.

Deputy Commissioner of Income-tax,
Circle – 4(1)(1), Bengaluru .. Respondent

I.T(TP).A No.127/Bang/2015
(Assessment Year : 2010-11)

Deputy Commissioner of Income-tax,
Circle – 4(1)(1), Bengaluru .. Appellant

v.

M/s. Logitech Engineering & Design India P. Ltd,
(erstwhile M/s. Lifesize Communication P. Ltd),
Plot No.TS140, Block 2 & 9, Elnet Software City,
Rajiv Gandhi Salai, Taramani,
Chennai 600 013 .. Respondent

Assessee by : Shri. Vishal Kalsa, CA
Revenue by : Smt. Preeti Garg, CIT-DR

Heard on : 03.01.2017
Pronounced on : 03.03.2017

O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

These are cross appeals filed by the assessee and the Revenue against the order passed by the DCIT, Circle -4(1)(1), Bengaluru, dt.23.12.2014, in pursuance to the directions of the DRP, for the assessment year 2010-11.

02. M/s. Logitech Engineering & Designs India P. Ltd is the successor of the erstwhile Lifesize Communications P. Ltd which is a 100 % subsidiary of Lifesize Communications Inc. The assessee is a captive service provider and has been set up as a captive off shore software development centre for catering to the needs of the Lifesize group. Lifesize India is responsible for the research, software development and support services for Lifesize Inc's products and services.

03. The assessee bench marked the software development services selecting Transactional Net Margin Method (TNMM") as the most appropriate method and using Net Operating margins based on cost ("NCP) as the Profit Level Indicator ("PLI). On a set of 4 comparables, it arrived the average NCP at 13.01 percent. Since it had earned NCP of 14.34% in this segment, it considered its transactions are at arm's length. However, out of 4 comparables selected by the assessee , the TPO rejected 3 of them and introduced 10 additional comparables and determined the average margin at 22.71%. After giving working capital adjustment of 1.98%, the TPO proceeded to make an adjustment of Rs.72,25,614 for the software development services. Aggrieved, the assessee filed its objections before the DRP. The DRP upheld the action of the TPO in not accepting the comparables chosen by the assessee . Out of 11 comparables chosen by the TPO , the DRP rejected; 6 comparables on turnover filter, 2 comparables

on RPT filter, 2 comparables on non availability of segmental results and retained only one comparable. It rejected the assessee's objections on the working capital adjustment also.

04. In respect of provision of market support services, the assessee benchmarked this transaction selecting TNMM as the most appropriate method and using Return On Asset Employed ("ROAE") as the PLI. On a set of 4 comparables, it arrived the average ROAE at 20.79 percent. Since, it had earned ROAEE at 21.66% in respect of this segment , it considered that its transactions are at arm's length. However, the TPO rejected all the 4 comparables chosen by the assessee, introduced 4 additional comparables and determined the arm's length mean margin at 17.21%. Accordingly, the TPO proceeded to make an adjustment of Rs.72,25,514 for the software development services. Aggrieved, the assessee filed its objections before the DRP. The DRP upheld the action of the TPO in not accepting the comparables chosen by the assessee . Out of the 4 comparables chosen by the TPO, the DRP rejected; 2 comparables – one on RPT filter and the other on non availability of segmental results and retained the balance 2 comparables. Aggrieved, the assessee filed this appeal. Its effective grounds are as under :

Grounds in relation to software development services:

4. That on the facts and circumstances of the case and in law, the AO / TPO erred in making transfer pricing ("TP") adjustment amounting to INR 72,25,614 in respect of the international transaction pertaining to software development services and the DRP further erred in enhancing the said adjustment, without providing an opportunity of being heard.

5. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting the comparable companies and modifying the comparable set selected by the Appellant in relation to captive software development services, alleging the same to be functionally incomparable.

6. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in selecting companies which were functionally not comparable in relation to captive software development services undertaken by the Appellant.

7. That on the facts and circumstances of the case and in law, the AO / DRP / TPO have erred in holding that *Kals Information System Limited* as a functionally valid comparable for captive software development services.

8. That on the facts and in the circumstances of the case and in law, the DRP has erred in applying arbitrary filters to reject certain comparable companies provided by the Appellant during the course of TP proceedings without providing any opportunity of being heard, thus, the directions are bad in law.

Grounds in relation to market support services:

9. That on the facts and circumstances of the case and in law, the AO / TPO erred in making TP adjustment amounting to INR 24,25,329 in respect of the international transaction pertaining to market support services and the DRP further erred in upholding the approach of the TPO, without providing an opportunity of being heard.

10. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting the comparable companies and modifying the comparable set selected by the Appellant in relation to market support services, alleging the same to be functionally incomparable.

11. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in selecting companies which were functionally not comparable in relation to market support services.

Other Grounds:

12. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in not granting appropriate working capital/ economic adjustments to the Appellant.

13. That on facts and circumstances of the case and in law, the AO / DRP / TPO have erred in ignoring the provisions of Rule 10B(3) of the Income-tax Rules, 1962 and judicial pronouncements, which advocate usage of multiple year data of comparable companies for the purpose of determination of the arm's length price.

14. That on the facts and in the circumstances of the case and in law, the AO / DRP / TPO erred in not allowing the Appellant the benefit of 5 percent range as provided by the proviso of section 92C(2) of the Act.

15. That on the facts and circumstances of the case and in law, the AO have erred in charging interest under sections 234B, 234C and 234D of the Act.

05. Aggrieved by the DRP order, the Revenue also filed an appeal with following grounds :

IT(TP)A.127/Bang/2015 – By the Revenue :

1. The directions of the Dispute Resolution Panel are opposed to law and facts of the case.

2. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in law in holding that the size and turnover of the Company are deciding factors for trading a company as a comparable and accordingly erred in excluding M/s Infosys Ltd., L&T Infotech, Mindtree, Persistent Systems, Sasken Communications, Tata Elxsi, Thinksoft Global, R.S.Software and ICRA Techno as comparables.

3. The Ld. DRP Member erred in excluding uncontrolled comparables having turnover more than Rs.200 crores in the absence of Turnover criterion prescribed in Rule 10B of the Income Tax Rules and also there being no correlation between turnover and profit margin.

The DRP upheld the inclusion for the reason that during the a y 2010-11, there is no other activity other than software development. However, the assessee submitted that this company is functionally different and cannot be compared with provision of software development services as it is :

(a) Engaged in the business of development of software and sale of software products.

(b) Engaged in sale of software products as it is clear from the inventory shown in the books of accounts. Kals is having significant inventory coming to 27% of its current assets. Inventory held by Kals is INR 60,47977.

(c) Segmental information is provided for primary business segments (a) Sale of application software and (b) Training. No segmentals for software development services available

Reliance is placed on the following decisions wherein KALS has been held as not a comparable to the provision of software development services.

- Mercedes-Benz Research & Development India (P) Ltd. vs ACIT: ITA No. 291 & 427/Bang/2015
- Obopay Mobile Technology India (P.) Ltd vs DCIT (2016] 157 ITD 983 (Bang)
- DCIT vs Electronics for Imaging India (P) Ltd ITA No. 212/Bang/2015
- Aptean Software India (P.) Ltd. vs ITO (TA No 392 & 592/Bang/2015
- DCIT vs Ikanos Communication India (P) Ltd. ITA No. 137/Bang/2015
- DClT vs Applied Materials India (P.) Ltd.: ITA No.180/Bang/2015
- Radisys India (F) Ltd. vs ITO ITA No 345 & 371arig/2015

06. On the software development services segment, the A R pleaded for exclusion of one comparable and inclusion of 2 comparables. The gist of his submissions is extracted as under :

1. Kals Information System Ltd (seg) :

2 & 3. RS Software (India) Ltd & Thinksoft Global Services Ltd : The DRP , suo moto , rejected the RPT filter of 25% adopted by the TPO and applied the RPT filter at 0% and rejected these comparables holding that the RPT is above 0%. The assessee submitted that it has been held by Courts in various decisions that 0% RPT of the comparable price is an impossible situation and therefore, a reasonable tolerance range for related party transactions can be considered for selecting comparables. Accordingly, it has been held that RPT up to 25% is considered reasonable in the following cases.

- Philips Software Centre Private Ltd vs ACIT TTJ 721 (Bangalore)
- Sony India Private Limited vs DCIT: [2008]114 ITD 448 (Delhi)
- Global Logic India (P) Ltd. vs DCIT: [2013] 56 SOT 373 (Delhi)
- Actis Advisers Pvt. Ltd. vs DCIT: ITA No 5277 & ITA No. 958/Del/2012
- ACIT vs Hapag Lloyd Global Services (P) Lad ITA No *8499/* Mum/2010
- Thyssenkrupp Industries India (P) Ltd. vs .&.CIT[2013)154 TTJ 689 (Mum)

We heard the rival submissions. As submitted by the assessee, Kals Information System Ltd (seg) has been rejected as a comparable to the mere provider of software development services like this assessee as it is functionally different in the above cases and hence the TPO/AO is directed to exclude it. In connection with the comparables RS Software (India) Ltd & Thinksoft Global Services Ltd, their RPT is 0.96% & 11.09% , respectively. This Tribunal has held in various decisions that 15% RPT filter is proper. Accordingly , we direct the TPO/AO include these companies as comparable.

07. In respect of the Revenue's appeal, the DR submitted on the lines of the grounds of appeal. The AR of the assessee opposed them. The summary of AR 's contentions is extracted as under :

1. ICRA Techno Analytics Ltd (seg) :

The DRP rejected this comparable on the ground that segmental information is not available. The assessee submitted that the ground raised by the Department is not accordance with the directions of the DRP as the said comparable was not rejected on turnover filter but on account of absence of segmental information. In ICRA's annual report, the segmental information is available for two segments i.e. services and sales. It is also evident that the service segment comprises of software development, software consultancy, engineering services, web development, web hosting, etc for which no segmental information is available. Therefore, this comparable is correctly rejected.

2. Persistent Systems & Solutions Ltd : The DRP rejected this comparable on the ground that segmental information is not available. The assessee submitted that the ground raised by the Department is not accordance with the directions of the DRP as the said comparable was not rejected on turnover filter but on account of absence of segmental information. This company provides support in software development, consultancy and system integration services. The DRP held that the company has shown receipts from sale of software services and products without any segmental information for each being separately provided. Thus, in absence of segmental information, the company cannot be retained as a comparable. On the above comparables, reliance is placed on the following cases:

- DCIT vs Ikanos Communications *(ITA* No. 137/Bang/2015 (AY 2010-11)

- ACIT vs Broadcom India Research Private Limited: [2016] 49 ITR(T) 79 (Bangalore) [AY 2010-11]

DCIT vs Electronics for Imaging Pvt. Limited: ITA No. 212/Bang/2015 (AY 2010-11)

- Bearing Point Business Consulting Pvt Ltd. - ITA No. 1124/Bang/2011

- DCIT vs PMC - Sierra India Pvt. Ltd : IT(TP)A No. 882/Bang/203

- Lam Research vs DC IT: IT(TP)A No 1437/Bang/2014

- Telcordia Technologies India (P.) Ltd. vs DCIT: ITA No. 1692 (Mum) of 2014.

We heard the rival submissions. As submitted by the assessee, the DRP rejected them not on turnover filter but on account of absence of segmental information. We do not find any infirmity in the DRP order and hence on these grounds the Revenue's appeal fail.

08. On the following comparables, the AR submitted that the appellant's turnover is just 13.23 crores, while the turn over of each of the comparable is multiple times higher (say from 28 times to 1601 times higher) than its turnover and hence the DRP correctly excluded them. The summary of AR 's contentions on each of the comparable is extracted as under :

1 . Infosys Ltd : The DRP rejected this comparable on the ground that the turnover of the company is very high, INR 21,140 crores which is 1601 times the turnover of the assessee from ITES business . The assessee submitted that Infosys is an industrial giant with an extremely high turnover and has substantial intangible assets. The size, functions performed, stage of business cycle, and growth cycle of Infosys is not comparable with the assessee which is a low risk captive service provider and relied on

- DCIT vs Ikanos Communications: ITA No. 137/Bang/2015 (AY 2010-11)
- ACIT vs Broadcom India Research Private Limited: [2016] 49 ITR(T) 79 (Bangalore) [AY 2010-11]
- Bearing Point Business Consulting Pvt. Ltd. - ITA No- 1124/Bang/2011
- DCIT vs Electronics for Imaging Pvt. Limited: ITA No. 212/Bang/2015 (AY 2010-11)
- Insilica Semiconductors India Pvt. Ltd. vs ITO: [2012]53 SOT 157 (Bangalore)
- Logica Pvt. Ltd. vs ACIT: IT(TP)A No. 1621&1664 (Bang) of 2014
- Orange Business Services India Solutions (P.) Ltd. vs DCII: ITA No. 869

(Delhi) of 2016

- 24/7 Customer.com Pvt. Ltd : ITA No. 227/Bang/2010
- DCIT vs PMC - Sierra India Pvt. Ltd. : IT(TP)A No. 882/Bang/2013
- Lam Research vs DCIT: IT(TP)A No. 1437/Bang/2014
- Telecordia Technologies India Pvt. Ltd. vs ACII: [2012] 137 ITD 1 (Mumbai) CIT vs Agnity India Technologies (P.) Ltd: [2013] 262 CTR 291 (Delhi)

2. Larsen & Turbo Infotech Ltd : The DRP rejected this company on the ground that the turnover of the company is very high i.e. INR 1,777 crores which is 134 times the turnover of the assessee from ITES business and therefore it was correctly excluded from the list of comparables. Reliance is placed on the following decisions:

- Sysarris Software (P.) Ltd. vs SCIT ITA No. 1360/Bang/2011
- ITO vs M/s. Vendio Technologies (k) Pvt. Ltd: ITA No.1374/Bang/2011

3. Mindtree Ltd (seg) : The DRP rejected this company on the ground that the turnover of the company is very high ie INR 698 crores which is 53 times the turnover of the assessee from ITES business and therefore it was correctly excluded from the list of comparables. Reliance is placed on the following decision:

- Bearing Point Business Consulting P Ltd. - ITA No.1124/Bang/2011 –
- Lam Research vs DCIT: IT(TP)A No 1437/Bang/2014

4. Persistent Systems Ltd : The DRP rejected this company on the ground that the turnover of the company is very high i.e. INR 504 crores which is 38 times the turnover of the assessee from ITES business and therefore it was correctly excluded from the list of comparables. Reliance is placed on the following cases:

- ION Trading India (P.) Ltd vs ITO: 1035 (Delhi) of 2015 (AY 2010-11)
- Bearing Point Business Consulting Pvt. Ltd. - ITA No. 1 124/Bang/201 1

- Trilogy E-Business Software India Pvt. Ltd: [2013} 140 ITD 540 (Bangalore)

5. Sasken Communication Technologies : The DRP rejected this company on the ground that the turnover of the company is very high i.e INR 402 crores which is 30 times the turnover of the assessee from ITES business and therefore it was correctly excluded from the list of comparables. Reliance is placed on the following cases:

- Bearing Point Business Consulting Pvt. Ltd. - ITA No.1124/Bang/2011

- DCIT vs Kodiak Networks India Pvt Ltd: ITA No. 532/Bang/2013

- Lam Research vs DCIT: IT(TP)A No. 1437/Bang/2014

- DCIT vs Hellosoft India (P.) Ltd: (2013] 23 ITR(T) 1 (Hyderabad)

6. Tata Elxsi Ltd (seg) : The DRP rejected this company on the ground that the turnover of the company is very high i.e. INR 376.37 crores which is 28 times the turnover of the Assessee from ITES business and therefore it was correctly excluded from the list of comparables. Reliance is placed on the following cases:

- Bearing Point Business Consulting Pvt. Ltd.: ITA No.1124/Bang/2011
- Lam Research vs DCIT : IT(TP)A No-:1437/Bang/2014

However, against the application of the turnover filter, the DR relied on the decision of this Tribunal in LSI Technologies India Private Ltd & LSI Research & Development P Ltd in IT (TP) A No 1380 & 1381 /Bang/ 2010 for ay 2006-07 dt 13.5.2016. We heard the rival submissions. It is seen that the DRP rejected the above comparables based on the turnover filter, size etc relying on various Tribunal decisions Viz Bangalore, Delhi, Hyderabad, Mumbai and Pune. This Tribunal in the case of Obopay Mobile

Technolgy India P Ltd in IT(TP) A Nos 388 & 469/ Bang/ 2015 dt 08.01.2016, after considering the Delhi and Bombay High Court decisions in Chryscapital Investment Advisors India P Ltd 376 ITR 183(Del), CIT vs Pentair Water India P Ltd (Mumb) in tax appeal no 18 of 2015 and Agnity India Technologies P Ltd (Del) 36 taxmann.com 289/219 taxman 26, the principle of judicial discipline etc , following the Bombay High Court decision upheld the DRP order in excluding 6 companies, from the list of comparables chosen by the TPO, on the basis of turnover and size. Following it , we uphold the DRP order in excluding the above 6 companies, from the list of comparables chosen by the TPO, on the basis of turnover and size. Thus, the corresponding grounds of the Revenue fail.

09. On the provision of market support services segment, the assessee sought exclusion of both the comparables. The summary of AR's contentions on each of the comparable is extracted as under :

1. Cyber Media Research Ltd : The DRP upheld the inclusion holding that exact functionally akin comparables are not expected to be available. The TPO's comparable is found to be functionally very close to the assessee. However, the assessee pleaded for exclusion for the following reason :

Functionally different :

(a) Company is engaged in the business of Market Research and Management Consultancy which is identified as the only primary business segment. Company is an information technology, research and advisory firm. The company earns all its income from technical research and survey.

(b) The asset composition of Cyber Media includes both tangible and intangible assets, while the assessee's asset composition comprises of only tangible assets.

Reliance is placed on the case of Microsoft Corporation India P. Ltd v. DCIT [ITA.5766/Del/2011] wherein it was held by the Tribunal that this company cannot be considered as a comparable with the international transaction of 'Provision of marketing support services' since Cyber Media Research Ltd, is an information technology research and advisory firm which earns all its income from technical research and survey.

2. Killick Agencies : The DRP upheld the inclusion holding that the company is providing marketing related support services. The segment in which the service is performed is not a relevant factor for deciding choice of comparables. However, the assessee pleaded for exclusion for the following reason :

(a) Company is acting as an agent for various foreign principals for sale of dredgers, dredging equipments etc., It also offers pre-sales and after sales services. Apart from this, the company is involved in exports of micro switches, engineering items, accounts, items and head sets.

(b) Export income of this company is less than 75% of total revenue unlike the assessee which exports all its services to its AE. This filter has been applied by the TPO in 'software development services' segment.

Reliance is placed on Bangalore Tribunal decision in the case of DCIT v. Electronics for Imaging India P. Ltd [IT(TP)A.212/Bang/2015], wherein it was held that Killick Agencies and Marketing Ltd cannot be considered as a valid comparable to provision of marketing support services on account of differences mentioned at point (a) and (b).

(c) The method of depreciation used by Killick Agencies and Marketing Ltd is WDV, as against SLM used by the assessee.

Reliance is placed on the following decisions where courts have held that depreciation is to be excluded when there is difference on account of calculation method :

- Schefenacker Motherson Ltd v. ITO [(2009) 123 TTJ 509 (Del)

- Pentair Water India P. Ltd v. ACIT [(2014) 164 TTJ 502 (Panaji]

10. We have heard the rival submissions. The relevant portion of the order from this Tribunal in the case of Deputy Commissioner of Income-tax, Circle-3(1)(2), Bangalore v. Electronics for Imaging India (P.) Ltd. for assessment year 2010-11 dated 24.02.2016 in IT(TP)A No 212/ Bang/2015 is extracted as under :

" (2) *Killick Agencies & Marketing Ltd.*

44. The assessee objected against this company on the ground that commission/service charges income of this company is Rs. 2,19,00,000 out of the operating revenue of Rs. 3,39,00,000. Therefore, the commission/service charges income constitute about 65% of the operating revenue which is less than 75% of the operating revenue filter applied by the TPO. In the absence of segmental results, this company was sought to be excluded from the set of comparables.

45. The DRP found that this company conducts business as an agent of the foreign principal and deal in maritime equipments. Further, the receipts are mainly in the nature of commission income and service charges. Therefore, this company was functionally dissimilar to that of assessee.

46. We have heard the ld. DR as well as ld. AR and considered the relevant material on record.

47. The ld. DR has submitted that the TPO has considered the relevant information as reported in the annual report of the company and it was found that this company is acting as an agent for various foreign principals for sale of dredgers, dredging equipment and also offers after sales services. Therefore, this company was found to be in the business of marketing support services which is similar to the assessee.

48. On the other hand, the ld. AR has submitted that this company is engaged in the business of construction equipments and earth moving machinery and is not into marketing support services.

49. Having considered the rival submissions as well as relevant material on record, we note that in the profit & loss account for the year under consideration, this company has shown sales (export of Rs. 1,18,00,000 and commission/service charges of Rs. 2,19,00,000. Therefore, export income revenue of this company is less than 75% of the total revenue, a filter applied by the TPO. Once the TPO has applied a filter of 75% of export sale, then this company which fails the filter applied by the TPO cannot be considered as a good comparable. Further, we note that this company is entirely in a different activity with that of the assessee. Undisputedly, this company is acting as agent for various foreign principals for sale of dredgers, dredging equipment, steerable rudder propulsions and other equipments and machineries. Accordingly, we do not find any error or illegality in the findings of the DRP and direct the AO to exclude this company from the comparables."

11. The relevant portion of order of the Delhi Tribunal in Microsoft Corporation India (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 6(1), New Delhi for assessment year 2007-08 dated 30.06.2015 is extracted as under :

27. We find force in the submission advanced by the ld. DR to the extent of improper examination of the case done by the authorities in not properly appreciating the nature of services performed by the assessee in this international transaction, which led to the acceptance of improper comparables selected by the assessee. It is however, clear from the order of the TPO that he was well aware with a distinct international transaction of provision of marketing support services, which expression has been repeatedly used by him in the order. Thus, it can be seen that after elimination of the above discussed four companies, the only two companies which survive in the list of comparables are IDC Ltd. and ICRA Management Consulting Services Ltd. Annexure III to the TP study report indicates the nature of activity carried out by these companies.

Page 390 of the paper book gives the nature of business done by IDC India Ltd., as under:-

> "IDC (India) Limited is an *information technology (IT) research & advisory firm*. The company provides business insights to providers, builders and users of information technology. The company is focusing on goto-marketing (GTM) services as key area of operations. The company earns *all its income in the form of research and survey income*."

28. As regards ICRA Management Consulting Services Ltd., the assessee's TP study report divulges the nature of activity undertaken by this company as under:-

> "ICRA Management Consulting Services Ltd., was incorporated in 2005 with the objective of taking over the entire business of the Management Consulting Division of ICRA Limited. The operations pertaining to the *Advisory services* division of ICRA Limited during FY 2005-06 have been transferred to ICRA Management Consulting Services Ltd."

29. A careful perusal of the nature of business done by IDC(India) Ltd. transpires that this company is an Information technology research and advisory firm. This company earns all its income in the form of research and survey. We fail to appreciate as to how this company can be considered as comparable with the international transaction of 'Provision of marketing support services' rendered by the assessee to is AE. Similar is the position regarding ICRA Management Consulting Services Ltd., which is providing 'Advisory services'. In our considered opinion, a company providing advisory services can be no match with a company providing actual marketing support services. Despite this clear mismatch of the functional profile of the assessee's international transaction of 'Provision of marketing support services' with the IT research/Advisory services provided by these two companies, we are unable to accept the

contention of the ld. DR to order a *de novo* adjudication. It is patent that the assessee in the instant appeal is aggrieved against the inclusion of the afore discussed four companies from a total set of six companies. It has no issue with the inclusion of IDC Ltd., and ICRA Management Consulting Services Ltd. The Revenue is not in appeal before us. In such circumstances, we are unable to remedy the situation to the advantage of the Revenue inasmuch as it is the TPO who has accepted the comparability of these two companies with the assessee's marketing support services. As such, our hands are tied to hold that the two surviving companies in the final list of comparables which are, in fact, not comparable, be also excluded and a fresh determination of the ALP be done. We are, ergo, leaving this issue here only with the hope that a better and more wiser analysis will be done by the TPOs in the days to come."

Thus, the assessee has made out a case for exclusion of both the above comparables. In the facts and circumstances, we direct the TPO/AO , to conduct a fresh study for determination of the ALP for this segment.

12. The next issue is that the DRP did not grant the working Capital adjustment This Tribunal in Moong Controls India P Ltd ITA 551/Bang/2015 ay 2010 dt 27.11.2015, has directed the TPO to allow actual adjustment towards the differences in the of working capital position between the assessee and the entrepreneurial companies selected as comparable. We direct the TPO to follow this decision. To this extent, the assessee's appeal ground is allowed.

13. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 3rd day of March, 2017.

Sd/-	Sd/-
(SUNIL KUMAR YADAV)	(S. JAYARAMAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

MCN*

Copy to:
1. The assessee
2. The Assessing Officer
3. The Commissioner of Income Tax
4. The Commissioner of Income Tax (A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar