

**IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 8972/Mum/2010
(निर्धारण वर्ष / Assessment Year:2006-07)

M/s Deutsche Networking Services Private Limited (Through their successor: DBOI Global Services Private Limited) Logitech park, MV Road, Sakinaka, Andheri (East), Mumbai- 400 072	बनाम/ Vs.	The Deputy Commissioner of Income Tax-6(2), Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN No. AABCD7378L		
(अपीलार्थी / Assessee)	:	(प्रत्यर्थी / Revenue)

अपीलार्थी की ओर से / Assessee by	:	S/shri Arvind Sonde & Harsh Kothari, A.Rs
प्रत्यर्थी की ओर से/ Revenue by	:	S/shri V. Jenardhanan & Saurabh Deshpande, D.Rs

सुनवाई की तारीख / Date of Hearing	:	29.06.2018
घोषणा की तारीख / Date of Pronouncement	:	14.09.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the A.O under Sec. 143(3) r.w.s. 144C(5) of the Income Tax Act 1961(for short ‘Act’), dated 28.10.2010 for AY 2006-07. The assessee

assailing the assessment order passed by the A.O has raised before us the following grounds of appeal:

“Each of the following grounds are independent of, and without prejudice to one another:

- (1) On the facts and in the circumstances of the case and in law, the learned Transfer Pricing Officer (TPO) and the learned Assessing Officer (AO) under directions issued by the Hon’ble Dispute Resolution Panel (‘DRP’), erred in making an addition of Rs.4,75,65,420/- to the Appellant's total income based on the provisions of Chapter X of the Income-tax Act, (‘the Act’).*
- (2) On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon’ble DRP further erred in upholding / confirming the action of the TPO of disregarding the benchmarking analysis and comparable companies selected by the Appellant based on the contemporaneous data in the transfer pricing study report maintained as per section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 (‘the Rules’) and the various submissions made by the Appellant.*
- (3) On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon’ble DRP further erred in upholding/confirming the action of the TPO of conducting a fresh benchmarking analysis using non contemporaneous data and substituting the Appellant's analysis with fresh benchmarking analysis on his own conjectures and surmises. Thus the Appellant prays that the fresh benchmarking analysis conducted by the learned TPO is liable to be quashed or alternatively ignored.*
- (4) On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon’ble DRP further erred, in upholding / confirming the action of the TPO of adopting a arbitrary search strategy for selection of alleged comparable companies during the course of assessment proceedings in violation of the principles of natural justice. Thus the Appellant prays that the fresh benchmarking analysis conducted by the learned TPO be quashed or alternatively ignored.*
- (5) On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon’ble DRP further erred in upholding / confirming the action of the TPO in rejecting the without prejudice contention of the Appellant to compute the margin of alleged comparable companies based on multiple year financial data.*
- (6) On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon’ble DRP further erred in upholding / confirming the action of the TPO in not allowing risk / working capital/marketing cost /bad debts adjustments in accordance with the provisions of Rule 10B of the Income Tax Rules, 1962 to account for difference between international transactions and the alleged comparable uncontrolled transactions selected by the learned AO/TPO.*

- (7) *On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the TPO in denying the benefit / reduction of 5 percent from the arithmetic mean as provided in proviso to Section 92C(2) of the Act, while computing the adjustment to the total income of the Appellant.*
- (8) *On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the TPO in not accepting the Global pricing policy followed by the Appellant in respect of back office support services transaction.*
- (9) *On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in confirming the action of the TPO in not stating any reasons to show that either of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied before making an adjustment to the income of the Appellant.*
- (10) *On the facts and in the circumstances of the case and in law, the learned TPO erred and the Hon'ble DRP further erred in upholding/confirming the action of the TPO in not demonstrating that the motive of the Appellant was to shift profits outside of India by manipulating the prices charged in its international transactions which is a pre - requisite condition to make any adjustment under the provision of Chapter X of the Act.*

The Appellant prays that the adjustment in relation to transfer pricing matters made by the learned AO/ TPO and upheld by the Hon'ble DRP be deleted.

The appellants pray that the AO be directed suitably in the matter.

The appellants crave leave to add to, alter, amend, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised."

2. Briefly stated, the assessee company which is a 100% subsidiary of Deutsche Asia Pacific Holdings Pte Limited, Singapore is a captive entity engaged in providing data processing and back office support services including payment processing, data processing, documentation processing, investigation related services and trade central processing services to its overseas group entities viz. Deutsche Bank Group Entities, had filed its return of income for A.Y 2006-07 on 28.11.2006 declaring total income at Rs.1,95,61,220/-. The return of income was processed as such under Sec. 143(1) of the Act on 20.01.2008. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings the A.O observing that the assessee had during the year under consideration entered into various international transactions with its Associated Enterprises (for short AEs) aggregating to Rs.65,09,05,912/-, thus referred the matter to the Transfer Pricing Officer-1(2), Mumbai (for short 'TPO') for determination of the Arm's length Price (for short 'ALP') of the said international transactions entered into by the assessee.

4. The TPO during the course of the proceedings observed that the assessee has a processing centre in Bangalore, registered under the Software Technology Park Scheme (for short 'STP') for handling DB's Global payment processes. It was noticed by him that the assessee had entered into a Service Level Agreement (for short 'SLA') with its AEs which contemplated providing multiple services viz. (i) payment processing; (ii) payment collection; (iii) data processing; (iv) documentation processing; (v) investigation related services; and (vi) trade central processing function. The assessee submitted before the TPO that it had performed a detailed functional analysis based on which a comprehensive comparable search process were under taken to review the arm's length nature of its international transactions. The TPO observed that the assessee had adopted Transactional Net Margin Method (for short 'TNMM') as the Most Appropriate Method (MAM). It was noticed by the TPO that the assessee adopting the Net Cost Plus [operating profit/operating cost] (for short 'NCP') as its Profit Level Indicator (PLI), had therein benchmarked the back office support services provided to its AEs. It was noticed by the TPO that the assessee had in its Transfer Pricing Study Report (for short 'TPSR') worked out its NCP mark up at 12.68%. It was further observed by the TPO that the assessee had in his TPSR adopted 11 comparables the arithmetic mean NCP mark up on multiple year basis of which was shown at 10.38%. Still further, the single year NCP mark up of the said comparables worked out at 12.23%. However, the TPO rejected 8 out of 11 comparables and after selecting 10 additional comparables made a final set of 13 comparables for benchmarking the international transactions of the assessee, as under:

Sr. No.	Company Name	Sales (Rs. cr.)	OP to Total Cost%
1.	Ace Software Exports Ltd.	4.97	7.72
2.	Allsec Technologies Ltd.	92.25	28.51
3.	Apex knowledge Solutions Pvt. Ltd.	4.92	20.48
4.	Asit C Mehta Financial Services Ltd (Earlier Known as Nucleus Netsoft & GIS (India) Ltd)	5.68	34.52
5.	Cosmic Global Ltd. (Seg.)	3.11	16.03
6.	Datamatics Financial Services Ltd. (Seg.)	2.31	24.99
7.	Flextronics Software Systems Ltd (Seg.)	21.41	14.54
8.	Goldstone Infratech Ltd (Seg.) (Earlier Known as Goldstone Teleservices ltd)	5.03	29.01
9.	Maple eSolutions Ltd.	7.43	32.66
10.	R Systems International Ltd (Seg.)	9.17	15.11
11.	Spanco Ltd. (Seg.) (Earlier known as Spanco Telesystems & Solutions Ltd.)	82.32	20.86
12.	Transworks Information Services Ltd.	163.3	19.56
13.	Vishal Information Technologies Ltd.	25.64	48.03
	Arithmetic mean		24.00%

The single year average margin of the final set of 13 comparables prepared by the TPO worked out to 24%. On the basis of the aforesaid deliberations, the TPO made a transfer pricing adjustment of 5,77,27,640/- as regards the back office support services rendered by the assessee to its AEs.

5. The A.O on receipt of the order passed by the TPO under Sec. 92CA(3) of the Act, dated 30.10.2009, therein passed a draft assessment order on 29.12.2009 incorporating the adjustments as determined by the TPO.

6. Aggrieved, the assessee filed objections before the Dispute Resolution Panel-1, Mumbai (for short 'DRP') under Sec. 144C of the Act. The DRP after deliberating on the objections accepted the claim of the assessee that as one of the comparable viz. M/s Vishal Information Technology Ltd. was functionally different, hence the same had wrongly been selected by the TPO as a comparable for benchmarking the international transactions of the assessee. However, the selection/rejection of the other comparables by the TPO was upheld by the DRP. Further, the objection of the assessee as regards using of a single year data by the TPO as against the multiple year data used by the assessee did not find favour with the DRP. The DRP was

also not impressed with the claim of the assessee that the risk adjustment, working capital adjustment and market cost adjustments had also wrongly not been allowed by the TPO. However, the DRP finding favour with the claim of the assessee for allowing the benefit of plus/minus 5% variations while determining of its ALP observed, that in case the ALP so determined falls within the plus/minus 5% variation then no adjustment would be called for in the hands of the assessee.

7. The A.O vide his order passed under Sec. 143(3) r.w.s. 144C(5) of the Act, dated 28.10.2010, as directed by the DRP excluded M/s Vishal Information Technologies Ltd. from the final list of comparables and recasted the average mean profit of the remaining 12 comparables. On the basis of the aforesaid deliberations the A.O after making an adjustment of Rs.4,75,65,420/- to the ALP assessed the income of the assessee at Rs.6,71,26,640/-.

8. The assessee being aggrieved with the order passed by the A.O under Sec. 143(3) r.w.s. 144C(5) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') submitted that the assessee is a 100% subsidiary of Deutsche Asia Pacific Holding Pte. Ltd, Singapore and was incorporated on 24th March, 2003. It was submitted by the ld. A.R that the assessee which is a captive entity is engaged in providing data processing and back office support services including payment processing, data processing, documentation processing, investigation related services and trade central processing services to its AEs. It was submitted by the ld. A.R that the authorities below had wrongly rejected the comparables selected by the assessee and had most arbitrarily selected certain companies as comparables, despite the fact that the same were found to be functionally not comparable. We shall cull out the facts pertaining to the said respective comparables, contentions of the authorized representatives to buttress their respective claims and our observations as regards the same, as under:-

(I). APEX KNOWLEDGE SOLUTION PVT. LTD:

9. The ld. A.R submitted that the aforesaid company which is engaged in rendering software development activities and is thus functionally incomparable to the assessee had wrongly been selected as a comparable by the TPO. The ld. A.R drew our attention to the directors report of the aforementioned company viz. M/s Apex Knowledge Solution Pvt. Ltd. (Page 428) of the assesses 'Paper Book' (for short 'APB'). On a perusal of the 'directors report' it was discernible that the said company had generated revenue from software exports amounting to Rs. 4,92,16,221/-. The ld. A.R further took us through relevant extracts of the Profit and loss account of the aforesaid company, which revealed that its mainstream of revenue generation was from export of software and related technical services. Further, taking us through the significant accounting policies of the said company, the ld. A.R drew our attention to the fact that under the note "Revenue recognition" it was specifically stated that income from sale of software and allied services was recognized on fulfilment of contractual applications with customers and/or as per the terms of agreement with the customers. The ld. A.R further submitted that against the generic name of three principal products/services of the company in the "balance sheet abstract and companies general business profile" (Page 435 of 'APB') the same was stated to be "Software solution & IT Enabled Services". It was further averred by the ld. A.R that the aforementioned comparables viz. Apex Knowledge Solution Pvt. Ltd. did not form part of the TPO's search for ITeS Companies in Prowess and Capitalline Plus data base, but rather was identified when the search for the companies was expanded by him to software development services companies. The ld. A.R taking support of the aforesaid facts submitted that the very search process in itself evidenced that the aforesaid company was primarily a software development company. It was further the contention of the ld. A.R that now when the TPO had rejected the comparables selected by the assessee on the ground that they were found to be engaged in providing software development activities and

no segmental data was available, thus it would not be permissible on his part to have selected a Software development service company as a comparable. Per contra, the Id. D.R relied on the orders passed by the A.O/TPO. It was submitted by the Id. A.R that the TPO only after necessary deliberations finding the aforesaid party as functionally comparable with the assessee had included the same in the final list of comparables.

10. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the aforesaid company viz. M/s Apex Knowledge Solution Pvt. Ltd. We have deliberated at length on the contentions advanced by the Id. A.R in the backdrop of the material available on record and find substantial force in the same. We find from a perusal of the 'Annual report' of the aforesaid company for Financial year 2005-06 that it was primarily engaged in rendering software development activities. The aforesaid fact that M/s Apex Knowledge Solution Pvt. Ltd. was into export of software and related technical services can safely or rather inescapably be gathered from a bare perusal of the directors report, Profit and loss account Schedule 13 forming part of accounts and the abstract of the companies general business profile to which our attention was drawn by the Id. A.R during the course of hearing of the appeal. We are further in agreement with the claim of the Id. A.R that now when the aforementioned concern viz. M/s Apex Knowledge Solution Pvt. Ltd. was identified by the TPO as a comparable when the search for companies was expanded to software development service companies, thus the same in itself evidences that the said comparable was primarily a software development company. Still further, we are also persuaded to subscribe to the contention of the Id. A.R that now when the TPO had rejected comparables selected by the assessee on the ground that they were engaged in providing software development activities and no segmental data was available, thus an inconsistent approach in selecting the aforementioned party viz. M/s Apex Knowledge Solution Pvt. Ltd, which is engaged in rendering software development activities as a comparable cannot be sustained. In the backdrop of our

aforesaid observations the AO/TPO is directed to exclude M/s Apex Knowledge Solution Pvt. Ltd. from the final list of comparables.

(II). ASIT C. MEHTA FINANCIAL SERVICES LTD:

(formerly known as: Nucleus Net Soft & Gis (I) Ltd)

11. The ld. A.R submitted that though the aforementioned comparable selected by the TPO is engaged in software development activities as well as ITeS, but no segmental bifurcation for ITeS was available. In order to fortify his aforesaid contention the ld. AR took us through 'Schedule 9' forming part of the balance sheet of the aforementioned comparable (Page 606 of 'APB'). The ld. A.R taking us through the income generated from operations by the aforementioned compaany drew our attention to the fact that against IT enabled services and Software development a consolidate amount of Rs.55,106,523/- was mentioned. It was thus, the contention of the ld. AR that no segmental break up as regards the IT enabled services of the aforementioned company viz. M/s Nucleus Net & GIS (I) Ltd. was available. The ld. A.R further took us through the revenue recognition policy of the aforesaid company at Page 608 of the APB, which read as under:

"Revenue is recognised on accrued basis as under:

- a. Portfolio Management Fees- Income from Portfolio Management Fees is recognized as per the terms of contracts entered with the clients.*
- b. Information Technology Enabled Services (ITES) and Software Development Fees-
Income from services rendered of ITES is recognized on services rendered.
Software development fees are accounted on its completion and acceptance by the customer"*

In order to substantiate his contention that no separate segment for ITeS was available, the ld. A.R drew our attention to the 'Segment data' of the aforementioned comparable at Page 614 of the 'APB'. In the backdrop of the aforesaid contention, it was averred by the ld. AR that as no separate segmental data for ITeS was available in respect of the aforesaid compaany which was engaged in software development activities as well as ITeS, thus the same could not have been selected as a comparable. Alternatively, It was further submitted by the ld. A.R that as during the year under consideration M/s Nucleus Net Soft & GIS (I) Ltd. had amalgamated with M/s Asit C.

Mehta Financial Services Ltd., hence the same being a peculiar economic event which would have affected the business and the financials of the said company, thus on the said count also could not have been considered as a comparable in the year of amalgamation itself. The Ld. AR in order to buttress his aforesaid contention took us through the 'Notes to accounts' at Page 582 of the APB, which revealed that pursuant to sanctioning of the amalgamation by the Hon'ble High Court of Bombay on 22.02.2006 the amalgamation had taken place w.r.e.f. 01.04.2005. Per contra, the ld. D.R relied on the orders passed by the AO/TPO. It was submitted by the ld. D.R that no infirmity did emerge from the selection of the aforementioned comparable viz. M/s Asit C. Mehta Financial Services Ltd. It was the contention of the ld. D.R that as the said comparable was providing Information Technology enabled services, hence after considering all the facts the same had safely been selected as a comparable by the TPO. The ld. D.R further submitted that the mere amalgamation of the company would not be a peculiar economic event that would form a basis for exclusion of the aforesaid company from the final list of comparables.

12. We have heard the authorised representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the aforementioned comparable. We find ourselves to be in agreement with the ld. A.R that no separate segmental data for ITeS is available in respect of the aforementioned comparable viz. M/s Asit C. Mehta Financial Services Ltd. for the year under consideration. We are of the considered view that as the aforesaid company selected by the TPO is engaged in software development activities as well as ITeS, thus in the absence of separate segmental data for ITeS sector no feasible functional comparison as against that of the assessee company would be possible. We thus, in the backdrop of our aforesaid observations are of the considered view that the aforementioned company viz. M/s Asit C. Mehta Financial Services Ltd. cannot be held as a comparable for benchmarking the international transactions of the assessee with its AEs during the year under consideration. The AO/TPO are directed to exclude the

aforementioned company viz. M/s Asit C. Mehta Financial Services Ltd. from the final list of comparables.

(III). COSMIC GLOBAL LTD:

13. The ld. A.R submitted that the aforementioned company viz. M/s Cosmic Global Ltd which during the year under consideration was engaged in the business of providing translation services was substantially at variance as in comparison to the ITeS services provided by the assessee as a captive entity. The ld. A.R taking us through the Profit and loss account of the aforesaid company (Page 444 of APB) submitted that it had during the year under consideration paid a substantial amount of Rs.1,40,72,761/- by way of translation charges to a sub-contractor. It was averred by the ld. A.R that the aforesaid expenditure incurred by the said company worked out to 52.45% of its total cost of Rs.2,68,30,497/-. On the basis of the aforesaid facts, it was submitted by the ld. A.R that as the said company viz. M/s Cosmic Global Ltd., unlike the assessee, had outsourced its translation activities, hence its business model was different from that of the assessee. The ld. A.R in order to fortify his aforesaid contention further submitted that a perusal of the 'Notes' forming part of accounts for the year ended 31.03.2006 (Page 452 of APB) of the aforesaid company viz. M/s Cosmic Global Ltd revealed overseas payment of translation charges of Rs.80,32,952/-, which thus evidenced the fact that the said concern had outsourced its translation work. The ld. A.R further submitted that the fact that the aforesaid company had outsourced a significant portion of its business to others was appreciated by the Tribunal while disposing off the appeal in the assessee's own case for A.Y 2005-06. The ld. A.R drawing our attention to the order passed by the Tribunal in its own case viz. M/s DBOI Global Services Pvt. Ltd. Vs. ACIT (OSD) Circle-2(1), Mumbai (ITA 812/Mum/2012; AY 2005-06, dated 24.08.2016), submitted that on the said count itself the aforementioned company was excluded as a comparable. In the backdrop of the aforesaid contention it was submitted by the ld. A.R that as the fact situation in respect of the aforementioned company remained the same during the year under consideration, thus it

may be excluded from the list of the final comparables. Per contra, the Id. D.R relied on the orders of the lower authorities. It was submitted by the Id. DR that as the aforesaid company being functionally comparable was selected by the TPO after necessary deliberations, thus the same was not liable to be excluded from the final list of comparables.

14. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of selection of the aforesaid company as a comparable by the TPO. We find that it remains as a matter of fact that during the year under consideration significant translation charges of Rs.1,40,72,761/- forming 52.45% of the total cost was incurred by the aforementioned company in respect of the outsourced translation work. We are further in agreement with the Id. A.R that the fact that a payment of Rs.80,32,952/- towards translation charges paid by the assessee in foreign currency, substantiates that the translation activities had been outsourced by the said company during the year. We find that the Tribunal while disposing off the assessee's own appeal for A.Y 2005-06 had excluded M/s Cosmic Global Ltd. from the final list of the comparables, for the reason that it had outsourced part of the business activities to others, whereas the assessee had carried out the entire activities itself. We are of the considered view that as the factual situation continues to remain the same i.e. the aforementioned comparable is found to have outsourced major part of its business activities during the year under consideration also viz. A.Y 2006-07, while for the assessee as in the preceding year viz. A.Y 2005-06, had during the year under consideration also carried out the entire activities itself, therefore, being in agreement with the view taken by the Tribunal in the assessee's own case for A.Y 2005-06 and finding no reason to adopt a divergent view, thus direct the exclusion of the said company from the final list of comparables. The AO/TPO are directed to exclude the aforementioned comparable viz. M/s Cosmic Global Ltd. from the final list of comparables.

(IV). GOLDSTONE INFOTECH LTD. (Formerly known as: Goldstone Tele Services Ltd):-

15. The ld. A.R submitted that the TPO had rejected the comparables selected by the assessee by applying the export filter and had excluded the companies which had an export sale of less than 25%. The ld. A.R in order to fortify his aforesaid contention drew our attention to Page 4 of the order passed by the TPO wherein two comparable selected by the assessee viz. (i) M/s Ask Me Info Hubs Ltd.; and (ii) M/s CMC Ltd. were rejected by him for the reason that their respective export sales were less than 25% of the total sales. In the backdrop of the aforesaid facts, it was the contention of the ld. A.R that the revenue generated by the aforementioned company viz. M/s Goldstone Infratech Ltd. during the year under consideration from export of goods was only to the extent of Rs.4,24,510/- as against its total revenue receipts of Rs.30,89,44,530/-. It was thus submitted by the ld. A.R that the percentage of revenue from export of goods as against the total revenue receipts in the case of the aforesaid company viz. M/s Goldstone Teleservices Ltd. selected as a comparable by the TPO worked out only to the extent of 0.14%. The ld. A.R on the basis of his aforesaid contention submitted that from a perusal of the aforesaid facts it could safely be concluded that the export sales of the said company was substantially less than 25% of its total sales. It was further submitted by the ld. A.R that even if it was to be assumed that the export of goods pertained to the BPO segment only, even then as the revenue of Rs.4,24,540/- generated from export of goods as against the total revenue of the BPO segment amounting to Rs.5,02,71,000/- would hardly work out to 0.84%. In the backdrop of his aforesaid contentions it was submitted by the ld. A.R that the said company was liable to be excluded from the list of comparables considering the export filter applied by the TPO. Per contra, the ld. D.R relied on the orders of the AO/TPO. It was submitted by him that the aforementioned company viz. M/s Goldstone Infratech Ltd. having been found to be functionally comparable was thus rightly selected by the TPO as a comparable for benchmarking the international transactions of the assessee with its AEs.

16. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of the aforementioned company viz. M/s Goldstone Infratech Ltd. selected as a comparable by the TPO. We find from a perusal of 'Schedule 14' of the Profit and loss account of the aforementioned company for the year ended 31st March, 2006, that as against the total turnover of Rs.30,89,44,530/- the export turnover of the said company was only to the extent of Rs.2,29,721/-. We find that the TPO while analysing the comparables which were selected by the assessee had applied the export filter and rejected two of the comparables which were selected by the assessee viz. (i) M/s Ask Me Info Hubs Ltd; and (ii) M/s CMC Ltd., for the reason that their respective export sales were found to be less than 25% of their total sales. We are of the considered view that in the backdrop of the aforesaid fact that the export sales of the aforesaid company viz. M/s Goldstone Infotech Ltd. is found to be substantially less than 25% of its total sales, thus a different basis for selection of the same as a comparable by the TPO in disregard of the export filter which was applied by him while rejecting the comparables selected by the assessee company would not be permissible. We thus, being of the considered view that as the export turnover of the aforementioned company viz. M/s Goldstone Infratech Ltd. is found to be substantially less than 25% of its total sales, therefore, the same as per the export filter applied by the TPO for analysing the functional comparability of the comparables selected by the assessee could not have been taken as a comparable for benchmarking the international transactions of the assessee with its AE's. On the basis of our aforesaid observations we direct the AO/TPO to exclude M/s Goldstone Infratech Ltd. from the final list of comparables.

(V). MAPLE eSOLUTIONS LTD:

17. The ld. A.R. adverting to the functional comparability of the aforementioned company submitted, that it was during the under consideration engaged in sale of software and call centre services for which no separate segmental data was available. The ld. A.R. further submitted

that as the aforementioned company was functionally incomparable, hence on the said count itself the TPO in the assesses own case for A.Y 2008-09 had rejected the same as a comparable, vide his order passed under Sec. 92CA(3). It was further submitted by the ld. A.R that the aforesaid company was also excluded by the CIT(A) from the list of the comparables while disposing off the appeal of the assessee for A.Y 2007-08. The ld. A.R submitted that as the director of the aforementioned company Ms. Sheetal Rastogi had allegedly played a major role in the 'London fraud' and had fled the country a month before RBG resources company was raided, thus it would be unsafe to take the results of the said company for comparison of the profitability of the assessee. The ld. A.R in order to substantiate his aforesaid contention drew our attention to the extract of the news article published in "The Guardian", dated 06.06.2008 (Page 1380-1383 of APB). On a perusal of the aforesaid extract of the news article it emerges that Ms. Sheetal Rastogi who is the director of the aforesaid company viz. Maple eSolutions Limited is alleged to have played a major role in the 'London fraud' and was on the run. The ld. A.R further submitted that in the backdrop of the aforesaid facts, the Tribunal while disposing off the appeal in the assesses own case for A.Y 2005-06, taking cognizance of the fact that the members of the Rastogi Group owning the aforementioned company were under serious indictment, thus being of the view that it would be unsafe to take the results of the said company for benchmarking the international transactions of the assessee company, had excluded the said company from the list of the comparables. On the basis of the aforesaid submissions, it was the contention of the ld. A.R that the aforesaid company viz. M/s Maple eSolutions Limited be excluded from the final list of comparables. Per contra, the ld. D.R relied on the order of the AO/TPO and submitted that merely for the reason that the directors of the company had been indicted in certain criminal cases, the aforesaid company which was otherwise found to be functionally comparable could not be excluded from the final list of comparables. It was the contention of the ld. D.R that as the aforementioned company viz. M/s Maple eSolutions Ltd. was functionally comparable to the assessee, thus it was rightly selected by the TPO as a

comparable for benchmarking the international transactions of the assessee with its AE's.

18. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the issue pertaining to selection of the aforementioned company viz. M/s Maple eSolutions Ltd. as a comparable by the TPO. We find from a perusal of the order passed by the TPO under Sec. 92CA(3) in the case of the assessee for A.Y 2008-09 that the aforementioned company viz. M/s Maple eSolutions Ltd. was rejected as a comparable by him *interalia* for the reason that no separate segmental data in respect of ITeS sector were available. Still further, the CIT(A) while disposing of the appeal of the assessee for A.Y 2007-08, taking cognizance of the fact that there was no change of facts during the year as in comparison to A.Y 2008-09, had thus directed that the said company be excluded from the final set of comparables. We have further perused the order passed by the Tribunal while disposing off the appeal in the assessee's own case for A.Y 2005-06 viz. M/s DBOI Global Services Pvt. Ltd. Vs. ACIT (ITA No. 812/Mum/2012, dated 24.08.2016). We find that the Tribunal in its aforesaid order while adjudicating on the selection of the aforesaid company viz. M/s Safron Global Ltd. as a comparable by the TPO, had therein observed that as the directors of the said company were found to be involved in fraudulent activity, hence, its financial results not being reliable due to fraud committed by the directors, thus could not be considered for comparability analysis. We find that as in the case before us it remains as a matter of fact that the director of the aforesaid company viz. Ms. Sheetal Rastogi is allegedly stated to be involved in a fraudulent activity, thus the veracity of the financial results of the said company would not inspire any confidence. We thus, finding ourselves to be in agreement with the view taken by the Tribunal in the assessee's own case for A.Y 2005-06 that where financial results of a company are not reliable due to fraud committed by the directors, it should not be considered for comparability analysis, thus are of the considered view that it would not be proper to include the said company in the final list of comparables for benchmarking the international

transactions of the assessee with its AEs. In the backdrop of our aforesaid observations, we direct the AO/TPO to exclude the aforementioned company viz. M/s Maple eSolutions Ltd. from the final list of comparables.

(VI). DATAMATICS FINANCIAL SERVICES LTD:

19. The ld. A.R. adverting to the facts pertaining to the aforementioned company selected as a comparable by the TPO submitted, that the latter during the year under consideration viz. A.Y 2006-07 had significant Related Party Transactions (for short 'RPT') of more than 25%. It was submitted by the ld. A.R. that on the very ground of 'RPT' of more than 25% the Tribunal in the case of Stream International Services Pvt. Ltd. Vs. ADIT (International Taxation)-7(2), Mumbai [ITA 8997/Mum/2010; dated 11.01.2013] for AY 2006-07, had excluded the aforementioned company from the final list of comparables. The ld. A.R. in order to fortify his aforesaid contention took us through the order of the Tribunal at Page 1079 of the 'APB'. It was the contention of the ld. A.R. that now when the TPO had applied the RPT filter while analysing the comparables selected by the assessee, therefore, in the backdrop of the fact that the aforementioned company viz. M/s Datamatics Financial Services Limited had a RPT of more than 25%, the same was liable to be excluded from the final list of comparables. Per contra, the ld. D.R. relied on the orders passed by the A.O/TPO and submitted that no infirmity did emerge from selection of the aforementioned company which after necessary deliberations was found to be functionally comparable with the assessee.

20. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of selection of the aforementioned company viz. M/s Datamatics Financial Services Limited as a comparable by the TPO for benchmarking the international transactions of the assessee with its AE's. We find that the Tribunal in its order passed in the case of the M/s Stream International Services Ltd. Vs. ADIT (International Taxation)-7(2), Mumbai [ITA No. 8997/Mum/2010, dated 11.01.2017] for A.Y 2006-07, had observed that as the RPT of the aforementioned company viz. Datamatics

Financial Services Limited was found to be more than 25%, hence the same was directed to be excluded from the final list of comparables. We find that the TPO in the case before us while carrying out comparability analysis of the comparables which were selected by the assessee in its TPSR had applied the RPT filter and excluded the companies where there were significant related party transactions. We are of the considered view that as observed by the Tribunal while disposing off the appeal in the case of Stream International Services Pvt. Ltd (supra) for A.Y 2006-07 that the related party transactions in the case of the aforesaid company viz. M/s Datamatics Financial Services Limited is found to be in excess of 25%, hence we are of the considered view that the said company could not have been selected as a comparable for benchmarking the international transactions of the assessee with its AEs. We thus, in terms of our aforesaid observations direct the AO/TPO to exclude the comparable viz. M/s Datamatics Financial Services Limited from the final list of comparables.

21. We shall now advert to the comparables which were selected by the assessee in its Transfer pricing study report (for short 'TPSR') for benchmarking its international transactions with its AEs, but were rejected by the TPO. We shall cull out the facts pertaining to the said respective comparables, contentions of the authorized representatives to buttress their respective claims and our observations as regards the same, as under:-

(I) CS SOFTWARE ENTERPRISES LTD:

22. The ld. A.R taking us through the facts pertaining to the aforementioned company which was selected by the assessee as a comparable submitted, that the same was rejected by the TPO by observing that it was also engaged in software development services and no separate segmental financial information was available for ITeS/BPO activity in the standalone financial statement. The ld. A.R rebutting the aforesaid observations of the TPO averred that the aforesaid company viz. M/s CS Software Enterprises Limited was predominantly engaged in rendering ITeS services, which was evident from a perusal of the abstract in the 'Notes to accounts' of the said company. In order to buttress his aforesaid contention,

the ld. A.R drew our attention to the 'Annual report' of the said company. The ld. A.R taking us through 'Segment Reporting' of the aforementioned company (Page 733 of APB), which revealed that the said company was engaged in providing information technology enabled services which in context of Accounting Standard-17 issued by ICAI was considered to constitute one single segment. The ld. A.R further submitted that the Tribunal in the assesses own case for A.Y 2005-06 viz. M/s DBOI Global Services Pvt. Ltd. Vs. ACIT (OSD), Circle-2(1), Mumbai (ITA No. 812/Mum/2012, dated 24.08.2016) had observed that a perusal of the annual report of the aforesaid company M/s CS Software Enterprises Limited revealed that it was into ITeS/BPO service. However, being of the view that the functional profile of the company along with assets employed and risk undertaken was required to be examined in detail for coming to a conclusion as to whether the said company was comparable to the assessee, the Tribunal had restored the issue relating to comparability of the aforementioned company to the file of the AO/TPO for deciding the said issue afresh after affording due opportunity of being heard to the assessee. In the backdrop of the aforesaid facts, it was the contention of the ld. A.R that it was incorrect on the part of the TPO to have stated that the aforesaid company viz. M/s CS Software Enterprises Ltd. was not functionally comparable to the assessee. Per contra, the ld. D.R drawing our attention to the directors report of the aforementioned company at Page 702 of APB, submitted that the said company was a strong player in the IT-BPO industry. The ld. D.R relying on the orders passed by the AO/TPO submitted, that as the aforementioned company was found to be functionally incomparable, thus it was rightly excluded by the TPO.

23. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the rejection of the aforesaid company viz. M/s CS Software Enterprises Limited as a comparable by the TPO. We find that the Tribunal while disposing off the appeal of the assessee for A.Y 2005-06 viz. DBOI Global Services Pvt. Ltd. Vs. ACIT (OSD), Circle-2(1), Mumbai (ITA No.

812/Mum/2012, dated 24.08.2016) had after deliberating on the annual report of the company observed that it appeared that the said company was into ITeS/BPO service. However, as the functional profile of the company alongwith assets employed and risks undertaken were required to be examined in detail for coming to a conclusion as to whether the said company was comparable to the assessee or not, the matter in all fairness was restored to the file of the AO/TPO for deciding the same afresh after affording opportunity of being heard to the assessee. We find that as the functional profile of the aforesaid company and that of the assessee had during the year under consideration not witnessed any change, thus in all fairness, finding no reason to take a divergent view we finding ourselves as being in agreement with the view taken by the Tribunal while disposing off the appeal of the assessee for A.Y 2005-06, thus in the same terms restore the matter to the file of the A.O/TPO for fresh adjudication. The A.O/TPO is directed to examine in detail the functional profile of the aforementioned company viz. M/s CS Software Enterprises Ltd. along with the assets employed and risk undertaken for coming to a conclusion as to whether the said company is comparable to the assessee. Needless to say, the A.O/TPO shall during the course of the set aside proceeding afford reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its claim that the aforesaid company was rightly selected as a comparable.

(II) MCS LIMITED:

24. The Id. A.R submitted that the aforesaid company was wrongly rejected by the TPO as a comparable by observing that it was functionally not comparable to the assessee. It was submitted by the Id. A.R that the said company was rejected as a comparable on two grounds viz. (i) that the aforesaid company was into Registrar & Transfer Agent Activities, which were obviously not the activities performed by the assessee; and (ii) that as the activities rendered by the aforesaid company pertained to the domestic segment only, hence the same could not be compared to the services which were provided by the assessee to its overseas customers. It was the

contention of the Id. A.R that as the Registrar & Transfer Agent Activities performed by the aforesaid company viz. MCS Ltd. were akin to the back office functions performed by the assessee, hence it could safely be concluded that it was functionally comparable to the assessee. Per contra, the Id. D.R relied on the orders of the A.O/TPO. It was submitted by the Id. D.R that as the Registrar & Transfer Agent Activities performed by the aforesaid company viz. MCS Ltd. were functionally different in comparison to the back office functions provided by the assessee, hence, no feasible comparison could have been made by selecting it as a comparable. Further, it was the contention of the Id. D.R that even otherwise as the activities performed by the aforesaid company were related to the domestic segment only, whereas the assessee was providing the services to the overseas customers, thus on the said count also no feasible comparable analysis could have been arrived at by selecting the said company viz. MCS Ltd. as a comparable. The Id. D.R taking us through the 'Notes to the accounts' of the aforesaid company viz. M/s MCS Ltd., therein drew our attention to the fact that in its case three business segments were identified viz. (i) Registrar & Transfer Agent Activities (R & T); (ii) Records management activity (Records); and (iii) Payroll & Price Fund Activity (Payroll). It was thus the contention of the Id. D.R that the aforesaid company was rightly excluded by the TPO from the final list of comparables.

25. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of rejection of the aforementioned company viz. M/s MCS Limited as a comparable by the TPO. We have deliberated at length and are of the considered view that the aforementioned company was rejected by the TPO as a comparable for the reason that it was found to be engaged in handling public issue and acting as Registrar and Transfer Agent. We though are persuaded to be in agreement with the contention of the assessee that under Transactional Net Margin Method ('TNMM'), the standard of comparability is relaxed relatively in comparison to the other methods and only broad similarity of functions is required. However, we are

of the considered view that as not only the business model of the aforementioned company is different from that of the assessee, but unlike the assessee which is providing its services to the overseas customers, the aforesaid company viz. MCS Ltd catered only to the domestic segment. We thus, being of the considered view that though the standard of comparability under the TNMM method is relaxed as in comparison to the other methods, but in the backdrop of the fact that the activities of the aforesaid company unlike the assessee are restricted to the domestic segment, thus it had rightly been rejected by the TPO as a comparable and therein excluded from the final list of comparables. We thus uphold the order of the A.O/TPO as regards the exclusion of the aforesaid company viz. M/s MCS Limited from the final list of comparables.

(III) TATA SHARE REGISTRY LTD:

26. The Id. A.R submitted that the aforesaid company viz. M/s Tata Share Registry Limited which was providing services of record management, payroll and Registrar and Transfer Agent which are akin to the back office functions performed by the assessee, being functionally comparable was rightly selected as a comparable for benchmarking the international transactions of the assessee with its AEs. It was submitted by the Id. A.R that the TPO failing to appreciate that the activities performed by the aforementioned company were similar to the activities of the assessee company which was engaged in data processing, documentation processing, document checking, data entry, tracers and submissions, had thus wrongly rejected the said company as a comparable. It was the contention of the Id. A.R that the activities as that of a transfer agent involves maintenance of records and account balances of investors, cancel and issue certificates, process investor mailings and deal with any associated problems i.e. lost or stolen certificates etc., as would be assigned to such agent by a trust company, bank or similar financial institution. It was submitted by the Id. A.R that the services of a transfer agent are availed by certain publicly traded companies, mutual funds and similar entities having many investors who own a small portion of the organization, require accurate records and

have rights regarding information provision. The ld. A.R submitted that though some corporations choose to act as their own transfer agents, but most of them choose a third-party financial institution to fill the role. It was thus submitted by the ld. A.R that as the aforementioned company was functionally comparable, hence the same had wrongly been excluded by the TPO from the final list of comparables. Per contra, the ld. D.R relied on the orders of the A.O/TPO. It was submitted by the ld. D.R that the aforementioned company viz. Tata Share Registry Ltd. after necessary deliberations was rightly rejected by the TPO as a comparable. It was submitted by the ld. D.R that as admittedly the aforementioned company was into payroll, record management and registry and transfer agent activities which were obviously not the activities performed by the assessee, hence, it being functionally incomparable with the assessee was rightly rejected as a comparable by the TPO. Further, it was the contention of the ld. D.R that as the activities of the aforementioned company viz. Tata Share Registry Ltd. were related to the domestic segment only, whereas the assessee was providing the services to its overseas customers, hence, on the said count also no feasible comparability analysis of the financial results of the assessee as against those of the aforementioned company could have been carried out.

27. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of the rejection of the aforesaid company viz. M/s Tata Share Registry Ltd. as a comparable by the TPO for benchmarking the international transactions of the assessee with its AE's. We are of the considered view that though certain activities of the aforesaid company and the assessee are found to be overlapping, however, in the backdrop of the fact that while for the activities of the said company viz. M/s Tata Share Registry Ltd. are related to the domestic segment only, whereas the assessee is providing the services to the overseas customers, it can safely be concluded that the business model and the field of operation of the assessee and the aforementioned company are found to be substantially different. We

thus, finding no infirmity in rejection of the aforesaid company as functionally incomparable as against the assessee, thus uphold his order to the said extent.

(IV) ASK ME INFO HUBS LTD:-

28. The ld. A.R adverting to the aforesaid company viz. M/s Ask Me Info Hubs Ltd. which was selected by the assessee as a comparable for benchmarking its international transactions with its AEs, but was rejected by the TPO, submitted that the said company being functionally comparable to the assessee was thus rightly selected as a comparable. It was submitted by the ld. A.R that the aforesaid company had incurred most of its expenses on account of call centre data expenses and business centre charges. In order to fortify his aforesaid contention the ld. A.R drew our attention to the 'Schedule 8' forming part of the Profit and loss account for 31.03.2006 of the aforesaid company (Page 626 of APB). It was further submitted by the ld. A.R that the business description disclosed by the aforesaid company clearly revealed that it was engaged in rendering back office support services with franchisees in Delhi, Jaipur, Chandigarh, Ahmedabad, Pune. The ld. A.R submitted that the aforesaid company was providing services to ICICI Bank, ICICI Home Finance, Hutchison Star Ltd and ICICI Web Trade. It was submitted by the ld. A.R that the aforesaid company had wrongly been rejected by the TPO as a comparable. Per contra, the ld. D.R relied on the orders of the A.O/TPO and submitted that the aforesaid party after necessary deliberations had rightly been rejected as a comparable by the TPO.

29. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of rejection of the aforesaid company viz. M/s Ask Me Info Hubs Ltd. as a comparable by the TPO for benchmarking the international transactions of the assessee with its AEs. We find from a perusal of the order passed by the TPO that the aforesaid company was rejected as a comparable for the reason that its export sales were found to be less than 25% of its total sales. We find that the assessee while assailing the selection

of a comparable by the TPO viz. M/s Goldstone Infratech Ltd. had submitted that as the export sales of the said company were less than 25%, thus keeping in view the fact that for the same reason the TPO had rejected two comparables selected by the assessee viz. (i) Ask Me Info Hubs Ltd; and (ii) CMC Limited, the aforesaid company viz. M/s Goldstone Infratech Ltd. was liable to be excluded from the final list of comparables. We are of the considered view that in the backdrop of the export filter applied by the TPO for selection of the comparables in order to benchmark the international transactions of the assessee with its AEs, the rejection of the aforementioned company viz. M/s Ask Me Info Hubs Ltd. which admittedly had export sales of less than 25% of its total sales cannot be faulted with. We thus, not finding any infirmity in the rejection of the aforesaid company viz. M/s Ask Me Info Hubs ltd. as a comparable by the TPO, thus uphold his order to the said extent.

30. The ld. A.R submitted that though the assessee had claimed adjustment on account of difference in the working capital profile, both before the TPO and the DRP, however, no such adjustment as required under Article 10B(1)(e)(iii) of the Income Tax Act Rules, 1962 was done. The ld. A.R submitted that the TPO had allowed such working capital adjustment in the assessee's own case for A.Y 2005-06, A.Y 2007-08, A.Y 2008-09, A.Y 2009-10, A.Y 2012-13 and A.Y 2013-14. In order to fortify his aforesaid claim, the ld. A.R took us through the relevant extract of the order of the TPO for A.Y 2008-09 (Page 1376 of APB) which revealed that the TPO after observing that there was significant difference in level of working capital deployed by the assessee and the comparable companies for operating their business, had thus accepted the submission of the assessee and accordingly adjusted operating margin of cost reduction by 1.60%. The ld. A.R taking support of the aforesaid facts submitted, that on similar lines keeping in view the difference in level of working capital deployed by the assessee and comparable companies, working capital adjustment may be carried out. Per contra, the ld. D.R objected to the seeking of working capital adjustment by the assessee.

31. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record in context of the issue as regards allowing of working capital adjustment to the assessee. We find that the assessee had unsuccessfully claimed adjustment on account of difference in the working capital profile both before the TPO and the DRP. We find that the TPO was of the view that as a perusal of the 'balance sheet' of the assessee revealed that it was using its own funds in its business, thus the risk of loss of investment would be the same in the case of the assessee as in the case of the comparable companies. In the backdrop of aforesaid conviction the TPO had not allowed the claim of the assessee in respect of the working capital adjustment. Further, the DRP had also declined to allow the working capital adjustment by observing that the A.O had rejected the same after giving a proper reasoning.

32. We have deliberated at length on the issue under consideration and are of the considered view that as the assessee had consistently been allowed working capital adjustment in the aforementioned preceding and the succeeding years by the TPO, hence, without assigning any reason it was incorrect on his part to have denied the same during the year under consideration. We thus, being of the considered view that the matter requires to be readjudicated keeping in view the stand of the department in the preceding and the succeeding years, therefore, restore the same to the file of the TPO. Needless to say, during the course of the set aside proceedings the TPO shall afford reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate its aforesaid claim before the TPO.

33. We shall now advert to the claim of the assessee that the lower authorities had erred in not allowing risk adjustment on account of difference in the risk profile of the assessee as in comparison to the comparables. The Id. A.R in support of his aforesaid contention that the assessee was entitled for risk adjustments relied on the order of the ITAT, Bangalore in the case of M/s Intellinet Technologies India Pvt. Ltd. Vs. ITO

(ITA No. 1237/Bang/2010). The ld. A.R taking us through the aforesaid order of the Tribunal submitted, that it was observed that as risk attributed to the assessee before them (i.e. Single Customer risk) was anticipated risk, whereas risk attributed by the assessee to the comparables was an existing risk, thus in such situation the TPO ought to have given the risk adjustment to the net margin of the comparables for bringing them at par with the assessee company. The ld. A.R further relied on the orders of the ITAT Hyderabad in the case of DCIT Vs. M/s Hello Soft India Pvt. Ltd.(ITA No. 645/Hyd/2009) and M/s DE Saw India Software Pvt. Ltd. Vs. ACIT (ITA No. 2071/Hyd/2011). It was submitted by the ld. A.R that the assessee in its appeal before the Tribunal for A.Y 2005-06 had relied on the aforementioned orders of the coordinate bench of the Tribunal, taking cognizance of which the Tribunal had restored the matter to the file of the TPO for deciding the same afresh, keeping in view the aforesaid decisions of the coordinate benches. Per contra, the ld. D.R objected to the contention of the assessee that in the backdrop of the nature of risk involved in the case of the assessee as against that of the comparables necessary risk adjustment be given to the net margin of the comparables for bringing them at par with that of the assessee company.

34. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. We find that the Tribunal while disposing off the appeal of the assessee for A.Y 2005-06 viz. M/s DBOI Global Services Pvt. Ltd. Vs. ACIT (OSD) Circle-2(1), Mumbai [ITA No. 812/Mum/2012, dated 24.08.2016], had after deliberating on the contentions advanced by the assessee and the claim of risk adjustment of 10.65% which was claimed by the assessee in its TPSR, had restored the issue relating to risk adjustment to the file of the TPO/A.O for deciding the same afresh, keeping in view the decisions relied upon by the assessee and after affording an opportunity of being heard. We are of the considered view that now when the assessee in the case before us had claimed adjustment of 10.29% on account of difference in the risk profile before the TPO and DRP, thus in all fairness, respectfully following

the view taken by the Tribunal in the assessee's own case for A.Y. 2005-06, therein restore the matter to the file of the TPO, in the same terms, for deciding the said issue afresh after considering the decisions relied upon by the assessee. Needless to say, the assessee shall be afforded reasonable opportunity of being heard by the TPO during the course of the set aside proceedings.

35. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 14th September, 2018

Sd/-

(Shamim Yahya)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 14.09.2018

Ps. Rohit

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant: M/s Deutsche Networking Services Private Limited.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai

