

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.38/Bang/2016
Assessment Year: 2011-12

ACIT Circle-1(1)(1) Bangalore	Vs.	M/s. ABB Global Industries & Services Ltd. 21 st Floor, World Trade Centre, Brigade Gateway Dr. Rajkumar Road Malleshwaram West Bangalore-560 055 PAN No.AADCA3271B
APPELLANT		RESPONDENT

IT(TP)A No.58/Bang/2016
Assessment Year: 2011-12

M/s. ABB Global Industries & Services Ltd. Bangalore-560 055	Vs.	ACIT Circle-1(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Janmayee Rajkumar, A.R.
Respondent by	:	Shri Pradeep Kumar, D.R.

Date of Hearing	:	04.01.2021
Date of Pronouncement	:	04.01.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the assessment order dated 20-11-2015 passed by the assessing officer for assessment

year 2011-12 u/s 143(3) r.w.s 144C of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The assessee has filed revised grounds of Appeal. At the time of hearing, the Ld A.R submitted that she is pressing only Ground No.3(b) and 3(j). Accordingly, all other grounds are dismissed as not pressed. The above said two grounds pressed by the assessee relate to the addition made towards transfer pricing adjustment

3. The revenue is in appeal in respect of following issues:-

(a) Relief granted by Ld DRP in respect of addition made on account of transfer pricing adjustment

(b) Whether the Ld DRP was justified in directing the AO to follow the decision of Karnataka High Court rendered in the case of Tata Elxsi Ltd, i.e., exclusion of expenses incurred in foreign currency from both export turnover and total turnover.

4. The facts relating to the case are discussed in brief. The assessee company was earlier known as “ABB Global Industries & Services Ltd.”. It belongs to M/s ABB group. It is providing software development services to its AE which includes developing software, configuration, testing activity. It also deutes its engineers on need basis for providing IT support. Though the assessee has entered into various types of international transactions with its AEs, we are concerned with Software development activity only, since the TPO has made transfer pricing adjustment in respect of software development services only.

5. Both the parties are in appeal in respect of addition relating to Transfer pricing adjustment. The facts relating to the same are discussed in brief. The assessee has provided software development services to its Associated Enterprises (AEs). The turnover of the

assessee in the segment of Provision of software development services was Rs.333.12 crores. The assessee adopted Transactional Net Margin Method (TNMM) as most appropriate method. It adopted Operating Profit/Operating Cost (OP/OC) as the Profit level indicator (PLI). The assessee declared a margin of 11.30% in the software development segment.

5.1 The assessee had selected 14 comparable companies in its transfer pricing study. The TPO rejected the transfer pricing study of the assessee and he finally selected following 13 comparable companies, whose average margin worked out to 24.82%:-

<i>Sl. No.</i>	<i>Name</i>	<i>Sales</i>	<i>Cost</i>	<i>PLI</i>
1	<i>Acropetal Technologies Ltd. (seg)</i>	<i>81,40,16,893</i>	<i>61,67,54,876</i>	<i>31.98%</i>
2	<i>e-zest solutions (from Capitaline)</i>	<i>11,28,66,098</i>	<i>9,32,55,341</i>	<i>21.03%</i>
3	<i>E-Infochips Ltd.</i>	<i>26,03,84,251</i>	<i>167,64,47,527</i>	<i>56.44%</i>
4	<i>Evoke (from Capitaline)</i>	<i>14,48,69,912</i>	<i>13,39,96,568</i>	<i>8.11%</i>
5	<i>ICRA Techno Analytics Ltd. (in 000)</i>	<i>15,84,01,000</i>	<i>12,68,94,000</i>	<i>24.83%</i>
6	<i>Infosys Ltd</i>	<i>253850000000</i>	<i>177,030,000,000</i>	<i>43.39%</i>
7	<i>Larsen & Toubro Infotech Ltd.</i>	<i>23318122096</i>	<i>19,764, 861,289</i>	<i>19.83%</i>
8	<i>Mindtree Ltd. (seg)</i>	<i>8,783,000,000</i>	<i>7,937,143,242</i>	<i>10.66%</i>
9	<i>Persistent Systems & Solutions Ltd.</i>	<i>189,490,457</i>	<i>155,172,089</i>	<i>22.12%</i>
10	<i>Persistent Systems Ltd.</i>	<i>6,101,270,000</i>	<i>4,971,860,000</i>	<i>22.84%</i>
11	<i>R S Software (India) Ltd.</i>	<i>1,882,638,471</i>	<i>1,617,804,170</i>	<i>16.37%</i>
12	<i>Sasken Communication Technologies Ltd.</i>	<i>3,941,962,000</i>	<i>3,175,616,000</i>	<i>24.13%</i>
13	<i>Tata Elxsi Ltd. (seg)</i>	<i>3,581,985,000</i>	<i>2,962,533,352</i>	<i>20.91%</i>
	<i>AVERAGE MARGIN</i>			<i>24.82%</i>

After deducting working capital adjustment of 1.63%, the TPO arrived at adjusted margin of 23.19%. Accordingly, he made transfer pricing adjustment of Rs.35.74 crores.

5.2 The Ld DRP directed the AO/TPO to exclude following ten companies:-

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- (a) Acropetal Technologies Limited
- (b) E-Zest Solutions Limited
- (c) E-infochips Limited
- (d) ICRA Techno Analytics Limited
- (e) Infosys Limited
- (f) Larsen & Toubro Infotech
- (g) Mindtree Limited
- (h) Tata Elxsi Ltd
- (i) Evoke Technologies Limited
- (j) R S software (India) Ltd

The Ld DRP upheld the selection of following three companies:-

- (a) Persistent Systems & Solutions Limited
- (b) Persistent Systems Limited
- (c) Sasken Communications Technologies Ltd

5.3 The grounds pressed by the assessee seek exclusion of

- (a) Persistent Systems & Solutions Limited
- (b) Persistent Systems Limited
- (c) Sasken Communications Technologies Ltd

and inclusion of

- (a) Akshay Software Technologies Ltd and
- (b) LGS Global Ltd
- (c) R.S Software Ltd
- (c) Mindtree Ltd.
- (d) Evoke Technologies P Ltd.

5.4 The revenue is challenging the decision of Ld DRP in excluding all ten comparable companies listed earlier.

5.5 The Ld A.R submitted that all her submissions are supported by the decision rendered by co-ordinate bench of Tribunal in the case of

- (i) M/s Applied Materials India Pvt Ltd vs. ACIT (IT(TP)A No.17 & 39/Bang/2016)
- (ii) Electronics Imaging India P Ltd vs. DCIT (2017)(85 taxmann.com 124)(Bang.)

5.6 The Ld A.R further submitted that the assessee is now accepting for inclusion of M/s R.S. Software (India) Ltd, M/s Evoke Technologies Ltd and M/s Mind Tree Ltd as comparable companies. He further submitted that the remaining companies have been held to be not good comparable companies by hosts of case laws. Since the comparability of companies depends upon parity of facts and since the said aspect has been examined by the Tribunal, the decisions rendered by the Tribunal may be followed.

5.7 We heard Ld D.R and perused the record. We notice that, out of the ten comparable companies excluded by Ld DRP, the assessee now seeks inclusion of three companies, viz., M/s Evoke Technologies Ltd, M/s R S Software (India) Ltd and M/s Mindtree Limited. Hence the grievance of revenue would now remain with regard to the following seven companies only:-

- a) Acropetal Technologies Limited
- (b) E-Zest Solutions Limited
- (c) E-infochips Limited
- (d) ICRA Techno Analytics Limited
- (e) Infosys Limited
- (f) Tata Elxsi Ltd (seg)
- (g) Larsen & Toubro Infotech

5.8 We have heard rival contentions and perused the record. The Ld A.R submitted that all the above said companies have been directed to be excluded by the co-ordinate bench in the case of Applied Materials India P Ltd (supra) and also in the case of Electronic Imaging (I) Pvt Ltd (supra).

We notice that the co-ordinate bench of Tribunal has followed the decision rendered in the case of Electronic for Imaging (I) P Ltd (supra) while deciding the appeal in the case of M/s LG Soft India P Ltd (IT(TP)A No.52/Bang/2016 and IT(TP)A No.97/Bang/2016 dated 05-08-2020. For the sake of convenience, we extract below the discussions made and the decision taken by the Tribunal in the case of L G Soft India P Ltd (supra):-

“10. With regard to the other 7 comparable companies, whose exclusion is challenged by the revenue in ground No.2 of its appeal, we find that exclusion of these comparables from the list of companies selected by the TPO had come up for consideration before the Bangalore ITAT in the case of Electronic for [Imaging \(I\) Pvt. Ltd. v. DCIT](#) [2017] 85 taxmann.com 124 [Bang. Trib]. ; [Symantech Software & Services \(I\) Pvt. Ltd. v. DCIT](#), ITA No.614/Mds/2016; [DCIT v. Ikanos Communication Pvt. Ltd.](#) in ITA 137/Bang/2015; [Ness Technologies \(I\) Pvt. Ltd. v. DCIT](#) in ITA No.696/Mum/2016 which are also decisions rendered in relation to AY 2011-12 in the case of a companies providing SWD services such as the assessee in the present appeal. It is also relevant to point out that the very same comparable companies chosen by the TPO in the present appeal IT(TP)A Nos.52 & 97/Bang/2016 had been chosen by the TPO as comparable companies in the case of Electronic for Imaging (I) Pvt. Ltd. (supra). The Tribunal in its order dated 14.7.2017 in the aforesaid case dealt with the comparability of these companies.

*11. As far as **Acropetal Technologies Ltd.** is concerned, vide para 8 of the order of Tribunal in Electronics for Imaging (I) Pvt. Ltd. (supra), exclusion of Acropetal was upheld on the ground that this company was into development of computer products. The Tribunal also held that **L&T Infotech Ltd.** had RPT at 18.66% and since the RPT was beyond the threshold limit of 15%, this company was directed to be excluded from the list of comparable companies. The Tribunal further excluded **Tata Elxsi Ltd.** from the list of comparables on the ground that this company was engaged in diversified activities and was not a pure SWD services provider such as the assessee. In para 9 of the aforesaid order, the Tribunal held **e-Infochips Ltd.**, was earning revenue both from the software services*

and software products and though the break-up of revenue from the two segments were available, but the break-up of Operating Cost and Net Operating revenue and segmental details were not available.

*12. As regards **e-Zest Solutions Ltd.**, in the case of [Symantech Software & Services \(I\) Pvt. Ltd. v. DCIT, ITA No.614/Mds/2016](#), this company was held to be engaged in Knowledge Process Outsourcing (KPO) and cannot be regarded as a SWD services company.*

*13. The Tribunal in the case of [DCIT v. Ikanos Communication Pvt. Ltd.](#) in ITA 137/Bang/2015 excluded the company, **ICRA Techno Analytics Ltd.**, on the ground that it was engaged in engineering and consulting services, besides licensing and sub-licensing and no segmental information was available to compare the margins of SWD services segment.*

*14. The Mumbai Tribunal in the case of [Ness Technologies \(I\) Pvt. Ltd. v. DCIT](#) in ITA No.696/Mum/2016 held **Infosys Ltd.** to be not comparable for the reason that this company was engaged in manufacturing of software products and was a giant company assuming various risks. As far as **Larsen & Toubro Infotech Ltd.**, is concerned, vide paragraph-8 page-16 of the order in the case of **Electronics for imaging India Pvt. Ltd.**, (supra) this tribunal excluded this company on the ground of presence of onsite revenue of more than 50% and that the related party transaction was more than 15% (18.66%).*

15. Respectfully following the aforesaid decisions, we uphold the exclusion of the aforesaid 7 companies from the list of comparable companies and ground No.2 raised by the assessee to this extent is dismissed. We may add that the other grounds raised by the revenue in its appeal are purely supportive of ground No.2 and are general grounds with no specific reference to instances of comparables excluded and hence dismissed.”

5.9 With regard to E Zest Solutions Ltd, we notice that the co-ordinate benches have rendered diverse decisions as under:-

(a) In the case of Applied Materials India (P) Ltd (IT(TP)A 17 & 39/Bang/2016 dated 21.09.2016, it was remanded to the file of AO/TPO.

(b) In the case of Saxo India P Ltd (2016)(67 Taxmann.com 155), the Delhi bench of Tribunal has held that M/s E Zest Solutions Ltd is good comparable and accordingly retained the same.

(c) In the case of [Symantech Software & Services \(I\) Pvt. Ltd. v. DCIT, ITA No.614/Mds/2016](#), this company was held to be engaged in Knowledge Process Outsourcing (KPO) and cannot be regarded as a SWD services company. However, in the case of Applied Materials India P Ltd (supra), the co-ordinate bench has expressed the view that the question of BPO and KPO is relevant only in ITES segment and not for software development services segment.

(d) In the case of AMD India P Ltd vs. ACIT (IT(TP)A 1487 & 1496/Bang/2015 dated 06-04-2017), the Tribunal apparently followed the decision rendered in the case of Saxo India P Ltd (supra), but finally it excluded E Zest Solutions Ltd. We noticed earlier that the Tribunal has retained this company in the case of Saxo India P Ltd. Hence, there is an error in the order passed in the case of AMD India P Ltd (supra).

(e) In the case of Electronic Imaging India P Ltd (supra), the decision rendered in the case of AMD India P Ltd (supra) was followed.

In view of diverse of opinions expressed in various cases, we are of the view that comparability of this company requires fresh examination as held in the case of Applied Materials India (P) Ltd. Accordingly, we restore this company to the file of AO/TPO for examining it afresh.

5.10 With regard to remaining six companies, we confirm exclusion of above said seven companies, following the decisions of Tribunal referred above. Since the assessee has sought for inclusion of three companies out of the ten companies excluded by Ld DRP, viz., M/s Evoke Technologies Ltd, R.S software India Ltd, Mindtree Limited, the ground of revenue in respect of above said three companies are allowed.

5.11 In the appeal of the assessee, the assessee seeks exclusion of all the three companies retained by Ld DRP, viz., M/s Persistent Ltd, M/s Persistent Systems & Solutions Ltd and M/s Sasken Communications Ltd.

5.12 The above said three companies, viz., M/s Persistent Ltd, M/s Persistent Systems & Solutions Ltd and M/s Sasken Communications Ltd have been dealt by the co-ordinate bench in the case of LG Soft India P Ltd (supra), in which the decision rendered in the case of Electronic for Imaging (I) P Ltd (supra) has been followed. For the sake of convenience, we extract below the observations made in the case of LG Soft India P Ltd as under:-

“16. Now we shall take up the appeal of the assessee. The assessee in ground No.13 seeks exclusion of 3 companies viz., Persistent Systems & Solutions Ltd., Sasken Communication Technologies Ltd. and Persistent Systems Ltd. Exclusion of these 3 companies was considered by the Tribunal in the case of Electronics for Imaging (I) Pvt. Ltd. (supra). In para 8 of the order, this Tribunal held that Persistent Systems & Solutions Ltd. was a company engaged in SWD services and products with no segmental details and excluded it. Similarly, Persistent Systems Ltd. was also excluded on the ground that it was engaged in diverse activities with no segmental break-up. As far as Sasken Communication Technologies Ltd. is concerned, this Tribunal in the case of Symantech Software & Services (I) Pvt. Ltd. (supra) has excluded this company on the ground of functional IT(TP)A Nos.52 & 97/Bang/2016 dissimilarity viz., dealing with multimedia products and R&D activities with no break-up of segmental information.

17. Following the aforesaid decisions, we direct exclusion of the aforesaid 3 comparable companies. The TPO is directed to compute the ALP of the international transaction in accordance with the directions given above in this order, after affording Assessee opportunity of being heard.”

5.13 Consistent with the view taken by the co-ordinate benches in the above said cases, we direct exclusion of aforesaid three comparable companies.

5.14 The assessee seeks inclusion of five companies, which includes three companies sought to be included by the revenue, viz., M/s

Evoke Technologies Ltd, M/s R S Software (India) Ltd and M/s Mindtree Limited. Since both the parties agreeing for inclusion of above said three companies, we direct the AO/TPO to include above said three companies in the set of comparable companies.

5.15 The remaining two companies, which assessee seeks inclusion are Akshay Software Technologies Ltd and LGS Global Ltd.

5.16 We heard the parties on this issue and perused the record. With regard to M/s Akshay Software Technologies Ltd, the Ld A.R submitted that the same has been considered as good comparable in the assessee's own case in AY 2005-06. However, we notice that the co-ordinate bench of Tribunal has examined this company in the case of M/s Applied Materials India P Ltd (IT(TP)A No.17/Bang/2016 dated 21.09.2016) relating to assessment year 2011-12, i.e., for the year under consideration and held the same to be not a good comparable.

5.17 With regard to M/s LGS Global Ltd, we notice that the co-ordinate bench has remanded the same to the file of AO/TPO in the very same case of M/s Applied Materials India P Ltd (supra). For the sake of convenience, we extract below the relevant observations made by the Tribunal in the case of M/s Applied Materials India P Ltd (supra):-

“11. The next ground of assessee's appeal is regarding seeking inclusion of some of the comparables in the set of comparable companies which are as under : (i) Akshay Software Technology Ltd. (ii) Powersoft Global Ltd. (iii) R Systems International Ltd.

(i) Akshay Software Technology Ltd.

12.1 This company was selected by the assessee in the TP Study however the TPO rejected this company on the ground that its functions appear to be more in the nature of support services or ITES. The DRP has confirmed the rejection on a different ground by applying a filter that the expenditure in foreign currency was higher when compared to its total revenue. Thus DRP was of the view that this company was predominantly engaged in the “on site” development of software. The ld. AR has submitted that such filter was neither applied by the TPO nor sought to be applied by the assessee. Therefore the DRP was not asked to apply this filter. Secondly the DRP did not arrive at the finding that the said company was in fact engaged in “on site” development of software. The finding of the DRP are based mainly on the assumption that because of its expenditure in foreign currency was high it must have been engaged in the “on site” development of software. The ld. AR has further contended that this filter of “on site” development services have been applied by the DRP without giving an opportunity of filing its objections to the assessee. Thus the ld. AR has submitted that the rejection of the said company by applying a filter not applied by the TPO is liable to be set aside. He has relied upon the decision of this Tribunal dt.29.6.2015 in the case of M/s. Arowana Consulting Ltd. Vs. ITO in IT(TP)A No.235/Bang/2015.

12.2 On the other hand, the learned Departmental Representative has referred to page Nos.15 and 20 of the Annual Report and submitted that this company has

shown product and stock in the accounts therefore in the absence of segmental reporting it cannot be considered as functionally comparable with the assessee.

12.3 We have considered the rival submissions as well as the relevant material on record. As regards the decision of the co-ordinate bench in the case of Arowana Consulting Ltd. Vs. ITO (supra), the Tribunal has dealt with only one objection of employee cost in paras 8 & 9 as under :

08. What is left for consideration is assessee's grievance regarding M/s. Akshay Software Technologies Ltd. DRP directed exclusion of the said company for a reason that its employee cost was more than 89% of its total operating expenditure. We find that assessee had employee cost in excess of 90% of its operating expenditure. In our opinion, it is normal to have a high percentage of employee cost in a software development company, especially so, when the company is involved in development of software for clients at the site of the clients. Reason given by the DRP, in our opinion, was not correct. Higher employee cost is a normal feature for a software development company for the simple reason that it is a skill oriented business. The skill-set required for the employees in the case of the assessee, required knowledge of Arabic also, making it all the more scarce. In any case, for A. Y. 2009-10, M/s. Akshay Software Technologies Ltd was considered as a proper comparable and not excluded. In his order dt.07.01.2015 for A. Y. 2009-10, after applying the onsite revenue filter of 50%, TPO himself had considered M/s. Akshay Software Technologies Ltd, as a proper comparable. As to the argument of the Ld. DR that Related Party Transaction, volume of M/s. Akshay Software Technologies was not provided by the assessee, leading to its rejection, we find that assessee had at para 5.172 and 5.173 of its objections before DRP, submitted that RPT of the said company was 4.33% only, compiling the figures from previous years data available in Annual Report of Financial Year 2010-11 of the said company. This working stands

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unrebutted. We are, therefore of the opinion that the assessee has to succeed in its claim that M/s. Akshay Software Technologies Ltd, is a proper comparable. We direct the TPO to include the said company as a comparable along with the two comparables, namely, M/s. R. S. Software (India) Ltd and M/s. Thinksoft Global Services Ltd, and rework the mean PLI. ALP adjustment, if any, required shall be based on such mean PLI, after considering the working capital adjusted. Ordered accordingly. Ground 12 of the assessee is allowed.

09. Vide its ground 13, we find that assessee is aggrieved that DRP had directed treatment of foreign exchange loss/gain as non-operating in nature. We find that DRP had at para 2.9 of its directions dated 26.11.2014 directed inclusion of foreign exchange gain / loss as part of the operating expenditure and not the other way. Therefore, the said ground is ill conceived and dismissed.”

Therefore other than the employee cost, the issue of functional similarity was not before the Tribunal in the said case. However, we note that as per the financial results reported in the Annual Report at page 2 and 15, the income shown in the profit and loss account is from software services and products. Further as per the schedule 10 at page 20 of the Annual Report this company has reported income from sale of product. Similarly as per Schedule 12, this company has shown goods purchased for resale as well as opening stock. Therefore in the absence of segmental results and operation margin, this company cannot be considered as functionally comparable. Accordingly, we reject this ground of assessee.

(ii) LGS Global Ltd.

13.1 *The TPO rejected this company on the ground that the Annual Report did not give break up of employee cost and thus he could not compute its employee cost factor. The DRP upheld the rejection on the basis that the separate details of employee cost were not available.*

13.2 *Before us, the ld.AR of the assessee has submitted that this company has shown purchase and employee cost under a composite head which is 83.91% of the sale. Therefore this company satisfied the employee cost of 25% of total sales. The learned Authorised Representative has pointed out that in case of service provider the major component is employee cost and there is hardly any purchases therefore even if the employee cost is not separately reported, the composite of purchase and employee cost constitute 83.91% of sales. Thus he has submitted that this company should be included in the list of comparables.*

13.3 *On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below and submitted that there is no dispute that this company has not reported employee cost separately and therefore it is not possible to ascertain the employee cost and to apply employee cost filter. Further this company has also shown its goodwill in its balance sheet and therefore the intangible assets renders this company non-comparable to the assessee.*

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13.4 We have considered the rival submissions as well as the relevant material on record. This company has shown the purchases and personnel cost at page 39 of the Annual Report as a combined expenditure as under :

Purchases & Personnel Cost : Rs.250,61,55,607.

Therefore the cost of employee is not separately reported by this company. Further it is not clear whether the goodwill is self-generated or acquired intangible asset. Accordingly, this issue is set aside to the record of the Assessing Officer/TPO to verify the relevant facts to ascertain the employee cost and then decide the functional comparability. Needless to say the information under Section 133(6) may be obtained for the purpose of ascertaining the annual employee cost of this company.”

5.18 We notice that the above said decision has been rendered for AY 2011-12 and hence we prefer to follow the same. Accordingly, following the above said decision, we hold that M/s Akshay Software Technology Ltd is not a good comparable. Following the above said decision, we restore M/s LGS Global Ltd to the file of AO/TPO with similar directions.

5.19 Accordingly, we direct the AO/TPO to compute the ALP of the international transaction in accordance with the directions given above, after affording adequate opportunity of being heard to the assessee.

6. The revenue has raised a ground as to whether the Ld DRP was justified in directing the AO to follow the decision of Karnataka High Court rendered in the case of Tata Elxsi Ltd, i.e., exclusion of expenses incurred in foreign currency from both export turnover and total turnover.

6.1 The Hon'ble Supreme Court has settled this issue in the case of CIT vs. HCL Technologies Ltd (TS – 218 – SC -2018). The relevant observations made by Hon'ble Supreme Court are extracted below:-

“20) Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21. On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover.”

Accordingly, following the decision rendered by Hon'ble Supreme Court, we uphold the order passed by Ld DRP on this issue.

7. In the result, both the appeals of the assessee and revenue are treated as partly allowed.

Order pronounced in the open court on 4th Jan, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 4th Jan, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.