

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-1 : NEW DELHI
(Through Virtual Court Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA Nos.2393 & 5248/Del/2011
Assessment Years: 2003-04 & 2004-05

DCIT,
Circle-3(1),
New Delhi.

Vs Cadence Design Systems (India)
Pvt. Ltd.,
C-2, Atrium Floor,
Hotel Crowne Plaza,
Friends Colony,
New Delhi.
PAN: AAACC1138Q

CO No.202/Del/2012
(ITA No.5248/Del/2011)
Assessment Year : 2004-05

Cadence Design Systems
(India) Pvt. Ltd.,
C-2, Atrium Floor,
Hotel Crowne Plaza,
Friends Colony,
New Delhi.
PAN: AAACC1138Q

Vs. DCIT,
Circle-3(1),
New Delhi.

(Appellant)

(Respondent)

Assessee by	:	Shri Nageswar Rao & Shri S. Chakraborty, Advocates
Revenue by	:	Shri Dinesh Antil, Sr. DR
Date of Hearing	:	17.06.2020
Date of Pronouncement	:	24.07.2020

ORDER

PER R.K. PANDA, AM:

ITA No.2393/Del/2011 filed by the Revenue is directed against the order dated 28th February, 2011 of the CIT(A)-20, New Delhi relating to assessment years 2003-04. ITA No.5248/Del/2011 is directed against the order dated 23rd September, 2011 of the CIT(A)-20, New Delhi, relating to assessment year 2004-05. The assessee has filed cross objection against the appeal filed by the Revenue for A.Y. 2004-05. For the sake of convenience, both the appeals and the CO were heard together and are being disposed of by this common order.

ITA No.2393/Del/2011 (A.Y. 2003-04) (Revenue)

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of development and export of computer software and providing technical support and training services. It filed its return of income on 20.11.2003 declaring total income at Rs.2,36,13,740/-. Since the assessee had entered into certain international transactions with its AE, the AO referred the matter to the TPO u/s 92CA(3) for determination of the Arm's Length Price (ALP) of the international transaction entered into by the assessee. The TPO, during the course of TP assessment proceedings noted that Cadence India is a 100% direct subsidiary of Cadence Design Systems, Inc. (CDS), US. The assessee Company is operating as a 100% Export Oriented Unit (EOU) from the Noida Export Processing Zone and primarily engaged in developing and exporting software to Cadence, USA. The company also provides technical support services to customers of Cadence, Ireland

and technical training services from its Bangalore Office. He noted that the assessee, during the impugned assessment year has undertaken the following international transactions:-

S.No.	Description of transaction	Method	Value (in Rs.)
1.	Provision of research and development services by the company	TNMM	559,962,681.00
2.	Provision of IT back office support service by the company	TNMM	67,890,148.00
3.	Marketing and Technical Support Service	TNMM	73,135,288.00

3. The TPO further noted that for the provision of Research & Development services Cadence, India is compensated with a fee that is equal to actual expenses incurred plus an amount equal to 8% of actual expenses. For the financial year 2002-03, Cadence, India, received a sum of Rs.55,99,62,681/- for providing these services. He observed that the assessee, for demonstrating the arm's length nature of the transactions related to the R&D, has selected TNMM as the most appropriate method with net operating profit computed in relation to operating cost as a Profit Level Indicator. The PLI OP/TC of the assessee from these activities is shown at 7.62%. The average PLI of the companies engaged in similar activity was shown at 8.57%. The TPO noted that for computing PLI of the comparable companies engaged in similar activities, the assessee has selected 16 comparable companies. The TPO retained four comparables from the 16 comparables selected by the assessee and made further fresh analysis and identified three comparable

companies. Accordingly, the TPO considered the following seven companies as comparables to the R&D services of the assessee:-

1.	Infotech Enterprises Limited	Selected by the assessee
2.	Larsen & Toubro Infotech Limited	Selected by the assessee
3.	Mascot Systems Limited	Selected by the assessee
4.	Satyam Computer Services Limited	Selected by the assessee
5.	Birlasoft Limited	Identified by the TPO
6.	HCL Technologies Limited	Identified by the TPO
7.	HP Globalsoft Limited	Identified by the TPO

4. The TPO, accordingly, determined the arm's length margin at 16.81% on cost and made an addition of Rs.8,74,68,916/- to the total income of the assessee. Subsequently, vide, the rectification order dated 23rd May, 2006 passed u/s 154 of the IT Act, the addition was reduced to Rs.4,78,44,820/- as against earlier addition of Rs.8,74,68,916/-.

4.1 Before the CIT(A), the assessee challenged the manner in which the order was passed by the TPO wherein certain comparables were adopted by him without considering the huge RPT, non-granting of working capital adjustment, risk adjustment, etc. Based on the arguments advanced by the assessee and submissions filed before him, the Id.CIT(A) directed the AO to grant working capital adjustment to the assessee on account of difference between the tested party vis-à-vis these comparables. He also directed the AO to exclude HCL Technologies Ltd. and HP Globalsoft Limited on account of huge related party transactions. So far as Satyam Computer Services Ltd., is concerned, the CIT(A) directed the AO to exclude the said comparable company on account of unreliable

financials. The Id.CIT(A) also directed the AO to allow depreciation @ 60% for computer peripherals.

5. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

ñ1. The Id.CIT(A) has erred on facts and in law in deleting addition of Rs.877,68,916/- made by the TPO on account of Arm's length price u/s 92CA(3) of the IT Act as :

a) The Id.CIT(A) has erred in directing to apply working capital adjustment to account for differences between the tested party vis-a-vis comparables for the working capital adjustment employed by them.

b) Ld.CIT (A) has erred in holding that M/s HCL Technologies Ltd. and M/s HP Global Soft Ltd. cannot be considered as comparables and that M/s Satyam Computer Services Ltd. cannot be considered as comparables to the assessee due to falsification in financial accounts.

c) the findings of Ld.CIT(A) that the transaction between the assessee and its AEs in respect of provisions for software development services are considered to be treated at Arm's Length Price is not acceptable. The assessee failed to substantiate that the value of the international transaction has been computed in accordance with the provisions of sub-section 1&2 of section 92C of the I.T. Act.

2. In the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting addition of Rs.2727294/- on account of disallowance of extra depreciation on computer peripherals/accessories ignoring that as per the IT Rules 60% depreciation is allowable only on computer and computer software and not on computer peripherals and accessories.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time.

5.1 The Revenue has also raised the following additional grounds:-

1. The Ld. CIT(A) has erred in accepting fresh material without getting any opportunity to the AO/TPO.

2. The Ld. CIT(A) has erred in accepting assessee's version that HCL Technologies and HP Globalsoft Ltd. has more than 75% related party transaction whereas the TPO in its order at page no. 5 has noted that there are no significant related party transaction.

3. The Ld. CIT(A) has erred in holding that for a more accurate determination of the Arm's Length Price a Working Capital Adjustment should be undertaken on the comparable companies in the instant case. On the basis of working capital adjustment furnished along with the submission made by the Appellant, the operating profit of the comparable companies or the arm's length price was determined at 13.66% on Operating Cost. I, agree with the appellant's contention to apply working capital adjustment to account for differences between the tested party vis-a-vis comparables for the working capital employed by them. However, the TPO in its order held that the adjusted figures are not acceptable since they were not adequately supported by logical assumptions and data reconciliation from annual reports.

6. After hearing both the sides and considering the fact that no new facts are required to be investigated for admission of these additional grounds, the additional grounds raised by the Revenue are admitted.

7. The ld. DR strongly challenged the order of the CIT(A) so far as granting of working capital adjustment is concerned. The ld. DR submitted that this computation should be best left to the AO. Since it is a mathematical computation and due verification is required by the AO of the computation given by the ld. AR. So far as exclusion of the comparable companies on account of RPT is concerned, the ld. DR submitted that this issue also should be restored to the file of the AO/TPO with a direction to verify RPT of HCL Technologies Ltd. and HP Globalsoft Ltd. So far as the exclusion of Satyam Computer Services Ltd. is

concerned, the Id. DR relied on the order of the AO/TPO. Similarly, he also relied on the order of the TPO/AO on account of depreciation on computer peripherals @ 25% as against 60% allowed by the Id.CIT(A).

8. The Id. Counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). So far as granting of working capital adjustment by the CIT(A) is concerned, the Id. Counsel for the assessee, referring to paper book pages 106 to 140, submitted that vide submissions dated 08.08.2006, the assessee had given the full details which were filed before the TPO. The Id.CIT(A), after considering various case laws, has allowed the working capital adjustment. Even in assessment year 2002-03 also, the TPO himself had granted working capital adjustment to the assessee. Referring to the order of the Tribunal in assessee's own case for A.Y. 2005-06, copy of which is placed in the paper book, he submitted that the Tribunal, in assessee's own case, vide ITAs No.1632/Del/2012 and 1619/Del/2012 has allowed working capital adjustment. Relying on various decisions filed in the paper book, the Id. Counsel for the assessee submitted that the coordinate Benches of the Tribunal are consistently granting working capital adjustment. Therefore, the order of the CIT(A) being in accordance with law on this issue, the ground raised by the Revenue should be dismissed.

8.1 So far as rejection of HCL Technologies Ltd. and HP Globalsoft Ltd. on account of huge RPT is concerned, the Id. Counsel for the assessee, referring to various pages of the paper book submitted that HCL Technologies Ltd., has only

RPT of 71.09% and HP Global Soft Ltd. has got RPT of 87.44%. Referring to various decisions filed in the paper book, he submitted that the coordinate Benches of the Tribunal as well as various High Courts have excluded comparable companies where the RPT is more than 25%. Since, in the instant case, the above two comparable companies selected by the TPO have got substantial RPT, therefore, the CIT(A) was fully justified in excluding the two comparables.

9. So far as exclusion of Satyam Computer Services Ltd. by the CIT(A) is concerned, he submitted that the annual reports of Satyam Computer Services Ltd., were falsified and, therefore, unreliable. Referring to the decision of the Delhi Bench of the Tribunal in the case of ACIT vs. Motherson Sumi Infotech & Design Ltd. reported in 155 ITD 8, he submitted that the Tribunal in the said decision has held that where a company admitted financial irregularities and conspiracy hatched and committed by its directors, financial results of the said company cannot be relied upon and the said company cannot be selected as a comparable.

9.1 So far as depreciation @ 60% on computer peripherals is concerned, the ld. Counsel for the assessee, referring to the decision of the Tribunal in assessee's own case for A.Y. 2005-06, vide ITAs No.1632/Del/2012 and 1619/Del/2012, submitted that the Tribunal, following the decision of the Hon'ble Delhi High Court in the case of CIT vs. BSES Yamuna Power Ltd., vide ITA No.1267/2010, has allowed depreciation @ 60% on computer peripherals. He submitted that the Hon'ble Delhi High Court in the case of CIT vs. BSES Rajdhani Yamuna Powers

Ltd. reported in 358 ITR 47, has also held that depreciation at higher rate is allowable on computer peripherals. He accordingly submitted that the order of the CIT(A) being in accordance with law should be upheld and the grounds raised by the Revenue should be dismissed.

10. We have considered the rival arguments made by both the sides and perused the orders of the AO/TPO/CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the original ground No.1 and additional ground No.3 relates to the grievance of the Revenue against the order of the CIT(A) for granting working capital adjustment to the assessee. From the various details filed by the assessee, we find the TPO himself had allowed working capital adjustment for A.Y. 2002-03. We find, the Tribunal, in assessee's own case for A.Y. 2005-06, vide ITAs No.1632/Del/2012 and 1619/Del/2012 has restored the issue to the file of the AO/TPO with the following direction while allowing working capital adjustment:-

14. We have gone through page Nos. 141, 142, 151, 233, 234 and 247 of the TPO'S order in the case of assessee for assessment year 2007-08. We find that learned TPO has granted working capital adjustment to the assessee. Thus, in principles, we do not have any hesitation in concurring with the Learned CIT(Appeals) that working capital adjustment is to be granted to the assessee. Learned DR had also not been able to dispute this proposition. His grievance was that it is not discernible that how Learned CIT(Appeals) has computed the adjustment and brought the arithmetic means of the margin of comparables within the limit of plus/minus 5% of the results shown by the assessee. We find that no such detailed computation is either available in the paper book nor discernible in the Learned CIT(Appeals)'s order. From perusal of the TPO's order in assessment year 2007-08, it reveals that it is a mathematical exercise based on datas. Therefore, we deem it appropriate to set aside this issue for a limited purpose to the file of the learned Assessing Officer. Learned Assessing Officer shall readjudicate this issue. Assessee will

be at liberty to produce complete details showing how much working capital adjustment is to be given to the assessee. Learned Assessing Officer with the assistance of learned TPO may examine those details and thereafter worked out the percentage of any adjustment admissible to the assessee on account of working capital.

11. Since, the TPO, in the instant case, without verification of the working submitted by the assessee at the time of hearing, simply disallowed the same, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the TPO with a direction to verify the working capital adjustment, the details of which has been given by the assessee and allow appropriate working capital adjustment to the assessee after due verification of the same. The ground raised by the Revenue is accordingly allowed for statistical purposes.

12. Ground No.1(b) of the original grounds of appeal and additional ground No.2 relates to the grievance of the Revenue against the order of the CIT(A) in rejecting the two companies, namely, HCL Technologies Ltd. and HP Globalsoft Ltd. on account of substantial RPT.

12.1 From the various details furnished by the assessee, we find HCL Technologies Ltd. has got RPT of 71.09% and HP Global Soft Ltd., has got 87.44% RPT. Although the TPO at page 5 of the order has mentioned that the objection of the assessee regarding related party transactions were not substantiated with any account details, however, from the details furnished by the

assessee in the paper book, we find the assessee had categorically mentioned before the TPO regarding substantial RPT. It has been held by the Delhi Bench of the Tribunal in the case of Agilant Technologies International (P) Ltd. vs. ACIT, reported in (2013) 36 CCH 187 (Delhi-Trib.) that a potential comparable having more than 25% of the related party transactions is to be ignored. The Delhi Bench of the Tribunal in the case of Nokia India Pvt. Ltd. vs. DCIT, reported in (2013) TIL-224-ITAT-DEL-TP has also taken a similar view. Under these circumstances, we do not find any infirmity in the order of the CIT(A) in directing the TPO/AO to exclude the above two comparables on account of huge related party transactions. Accordingly, the ground raised by the Revenue on this issue is dismissed.

13. So far as Satyam Computer Services Ltd. is concerned, we find that this issue had come up before the Delhi Bench of the Tribunal in the case of ACIT vs. Motherson Sumi Infotech & Design Ltd. (supra) wherein the Tribunal, after thoroughly discussing the issue has directed for exclusion of Satyam Computer Services Ltd. by observing as under:-

ñ12.4 It is common knowledge that M/s. Satyam Computers Services Ltd. indulged in fraud and its financial statements cannot be taken as true because it has botched up the financials and doctored it, which led to lodging of several criminal cases against its directors ; and subsequent to the scandal being unearthed the company (M/s. Satyam Computer Services Ltd.) itself has come up with a statement that it's financial results are not reliable, for the relevant assessment year too, comes in that net.

12.5 The Id. CIT (A) has taken note of the Annual Report of M/s. Satyam Computer Services Limited for financial year 2009-10, - Corporate Governance Reports - makes a mention of the fact that the financial statements

of preceding years should not be relied upon. An extract from page no. 23 of the report reads as follows:-

"M/s Price Waterhouse, the erstwhile auditors of the Company communicated vide a letter dated January 13, 2009, that their audit reports issued on the financial statements of the Company from the quarter ended June 30, 2000 until the quarter ended September 30, 2008 should no longer be relied upon. Further, in view of the financial irregularities identified, the statements for the said period furnished under clause 41 of listing agreement with Indian stock exchanges did not reflect the true position. In addition there was a violation of the ESOP Guidelines issued by SEBI in respect of Accounting and Disclosure requirements relating to ASOP-A for which the Company is in the process of seeking condonation."

12.6 We further find that the Ld. CIT(A) has noted that in the case of Agnity Technologies Private Limited vs. Income Tax Officer, Ward 12(1), New Delhi decided by ITAT, Delhi 2010 (IDT2)GJX 1031 - TDEL has upheld the decision of the DRP which had excluded M/s. Satyam from the list of comparables. Ld. CIT(A) further observed that in view of this, M/s Satyam Computers Services Ltd. should be taken out from the list of comparable companies. In the light of the aforesaid facts, Ld. CIT (A) took the decision to exclude M/s. Satyam from the list of comparables, which we uphold since the financial results of the said company is the result of admitted financial irregularities and conspiracy hatched and committed by the directors and cannot be relied upon. So the financial result of the said company cannot be used by the TPO to compute the ALP, which has been rightly done by the Ld. CIT (A), so we concur with his decision to exclude M/s. Satyam from the list of comparables, so the Revenue's ground is dismissed. ñ

14. The various other decisions relied on by the assessee in the case law compilation also support its case that Satyam Computer Services Ltd., cannot be considered as a comparable on account of unreliable financials. Under these circumstances, we do not find any infirmity in the order of the CIT(A) in directing the AO/TPO to exclude Satyam Computer Services Ltd., from the list of comparables. The ground raised by the Revenue on this issue is accordingly dismissed.

15. So far as depreciation on computer peripherals @ 60% is concerned, we find the Tribunal, in assessee's own case for A.Y. 2005-06, has allowed depreciation @ 60% on computer peripherals. The Hon'ble Delhi High Court in the case of CIT vs. BSES Yamuna Power Ltd, reported in 358 ITR 47, has held that computer accessories and peripherals being an integral part of computer system are eligible for depreciation at a higher rate of 60%. The various other decisions placed in the paper book filed by the assessee also support the case that computer peripherals being an integral part of computer systems are eligible for depreciation at a higher rate of 60%. We, therefore, do not find any infirmity in the order of the CIT(A) on this issue. The ground raised by the Revenue is accordingly dismissed.

16. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

IAT No.5248/Del/2011 (A.Y. 2004-05)

17. Ground of appeal No.1 by the Revenue reads as under:-

ñ1. In the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in deleting addition of Rs.561219/- on account of disallowance of extra depreciation on computer peripherals/accessories.ò

18. After hearing both the sides, we find this ground is identical to ground of appeal No.2 in ITA No.2393/Del/2011 for A.Y. 2003-04. We have already decided the issue and held that the assessee is entitled for depreciation @ 60% on

computer peripherals. Following similar reasonings, the ground raised by the Revenue on this issue is dismissed.

19. Ground of appeal No.2 by the Revenue reads as under:-

ñ2. In the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in holding that the software upgradation expenses of Rs.237051/- was expenditure of revenue nature without examining as to whether the original software which has been upgraded now was a capital asset or not.ò

20. After hearing both the sides, we find the assessee has debited an amount of Rs.2,37,051/- in the P&L Account under the head "Miscellaneous expenses." On being questioned by the AO, it was submitted that these expenses were on account of upgradation and renewal of the licence of computer software. However, the AO rejected the contention of the assessee and held that the same is capital asset and allowed depreciation @ 25% on the same. Before the CIT(A), it was argued that these expenses were for upgradation and renewal of the existing software. The original purchase of the software was capitalized by the assessee. Relying on various decisions including the decision of the Hon'ble Delhi High Court in the case of GE Capital Services India Ltd., reported in 300 ITR 420, it was argued that the same is revenue in nature.

21. Based on the arguments advanced by the assessee, the Id.CIT(A) directed the AO to allow the expenses as revenue in nature and, thereby, deleted the addition by observing as under:-

ñ5.2. Reasons for decision:

The software up-gradation expenses incurred by the appellant was not customized software giving enduring benefit to the assessee. Therefore, the facts of the case are similar to the case of GIT vs. GE Capital Services Ltd. decided by the Honñble High Court of Delhi (supra). The relevant portion of this judgment is reproduced below:

ñ3. The only question that has arisen in this case pertaining to the assessment year 1997-98 is that expenditure incurred by the assessee on software was treated by the Assessing Officer as capital expenditure. The Tribunal was of the view that due to technological changes and the need to upgrade the software on a regular basis it cannot be said that the software was of an enduring nature.

4. We are informed that the software for which the expenditure was incurred was MS Office, which is not a custom built software for the assessee and it is common knowledge that this software requires regular upgradation.

5. We can understand that where customized software is prepared, then it could be of an enduring nature, but in this case MS Office is not customized software and it cannot be said that the software does not require frequent upgradation.

6. We are of the view that there is no error committed by the Tribunal in taking the view that it did. ò

In the present case also, the expenses are incurred for up-gradation of software which was not customized software. They were general software available off the shelf. In view of this, following the decision of the jurisdictional High Court, the AO is directed to allow the expenses and addition made on this regard is to be deleted.ò

22. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

23. After hearing both the sides, we do not find any infirmity in the order of the CIT(A). The ld.CIT(A), while deleting the disallowance made by the AO has followed the decision of the Honñble Delhi High Court in the case of CIT vs. G.E.

Capital Services Ltd., reported in 300 ITR 420. The Id. DR could not bring any fresh material so as to take a contrary view than the view taken by the Hon'ble Delhi High Court which has been followed by the Id.CIT(A). In view of the above, the ground raised by the Revenue on this issue is dismissed.

24. Ground of appeal No.3 raised by the Revenue reads as under:-

ñ3. The Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.58580973/- made by the TPO on account of Arm's Length price u/s 92CA(3) of the IT Act.

The Ld.CIT(A) has interalia erred as follows:

a) Has held that working capital adjustments are required to be allowed to the assessee, without comparing the assessee's working capital needs and the working capital needs of comparables. No comparison of the credit risk etc of the assessee vis-a-vis the comparables has been carried out by the Ld.CIT(A). The Ld.CIT(A) has not computed the amount of adjustment to be made on account of working capital.

b) Has given no findings as to why and on what points the arm's length price computed by the TPO/AO was incorrect.

c) In spite of accepting the comparables identified by the TPO and upholding the TPO's decision of using current year's data as compared to multiple years' data used by the assessee in the T.P.analysis, the Ld.CIT(A) has held that the international transactions of the assessee are at arm's length.

25. After hearing both the sides, we find the TPO, in the instant case, proposed an upward adjustment of Rs.5,85,80,973/- being the difference in arm's length price and book value of the international transaction, the details of which are as under:-

S.No.	Description of transaction	ALP	Book Value (in Rs.)	Difference
1.	Provision of software	663,167,962	62,74,67,890	35,700,072

	research and development services			
2.	Provision of IT back office support services	19,32,55,609	17,70,33,264	1,62,22,345
3.	Provision of pre-sales marketing and post-sales technical support services	81,955,706	7,52,97,150	66,58,556
	Total Difference			5,85,80,973

26. We find, the Id.CIT(A) directed the AO/TPO to allow working capital adjustment although he upheld the various objections of the TPO. The grievance of the Revenue is only against granting of working capital adjustment.

27. After hearing both the sides, we find the issue stands decided in favour of the assessee in the earlier paragraphs while deciding the original ground of appeal No.1(a) and Addl. Ground of appeal No.3 of the appeal filed by the Revenue in ITA No.2393/Del/2011. While we have in principle upheld the order of the CIT(A) in granting working capital adjustment, however, we have restored the issue to the file of the AO/TPO for verification of the computation of the same. Following similar reasonings we uphold the order of the CIT(A) in granting working capital adjustment. However, we restore the issue to the file of the AO/TPO with a direction to verify computation of such working capital adjustment and grant appropriate relief to the assessee. This ground of the Revenue is accordingly allowed for statistical purposes.

CO No.202/Del/2012 (ITA No.5248/Del/2011 - A.Y 2004-05)

28. The grounds of Cross Objections filed by the assessee read as under:-

That the Hon'ble Commissioner of Income Tax (Appeals) - XX, New Delhi (Hon'ble CIT (A)) is fully justified in deleting the disallowance of Rs. 561,219 made by the Assessing Officer (learned AO) allegedly on the ground that the Respondent has claimed excessive depreciation on computer peripherals/ accessories.

2. That the Hon'ble CIT(A) is fully justified in deleting the disallowance of software renewal expenses amounting to Rs. 237,051 made by the learned AO allegedly on the ground that these expenses were capital in nature.

3. That the Hon'ble CIT(A) is justified in allowing working capital adjustment to the Respondent in view of differences between working capital position of the Respondent vis-a-vis the alleged comparable companies selected by the Transfer pricing officer (learned TPO). Further, the working capital adjustment undertaken by the Respondent was duly checked and verified by the Hon'ble CIT(A) as the Respondent had filed all the annual reports of comparable companies which were publicly available.

4. That the Hon'ble CIT(A) has erred in law in not accepting that the learned AO did not meet the preconditions for making reference to the learned TPO under section 92CA(1) of the Income Tax Act, 1961 (the Act) and in not providing an opportunity of being heard to the Respondent before referring the transfer pricing issues to the learned TPO.

5. That the Hon'ble CIT(A) has erred in not accepting the economic analysis undertaken by the Respondent in accordance with the provisions of the Act read with the Income Tax Rules, 1962 (the Rules) and instead adopted comparable companies selected by the TPO to determine arm's length price of the international transactions of the Respondent.

6. That the Hon'ble CIT(A) has erred in rejecting the use of multiple year data. Furthermore, the Hon'ble CIT(A) did not give the Respondent an opportunity to submit a fresh comparable companies' search using latest available single year data without prejudice to the Respondent's contention that single year data should not be used to determine arm's length price.

7. The Hon'ble CIT(A) has erred in application of the turnover filter. The Hon'ble CIT(A) rejected companies by applying only one sided turnover filter of 1 crore to reject companies and failed to apply an appropriate upper turnover filter as also laid down in various judicial pronouncements.

8. The Hon'ble CIT(A) has erred in following the learned TPO's approach of rejecting comparable companies identified by the Respondent from the NASSCOM (National Association of Software and Services Companies) website, as a part of its transfer pricing study.

9. The Hon'ble CIT(A) has erred in wrongly rejecting comparable companies by application of incorrect reasoning and unreasonable filters. The following criteria were used to reject companies:

a) Companies pertaining to software R&D segment of the Respondent:

- Companies that had turnover less than INR 1 crore on the assumption that these companies may be starting up operations
- Companies that have negative net worth during the said financial year under consideration

b) Companies pertaining to IT back office services segment of the Respondent:

- Rejection of Compudyne Winfosystems Limited on account of erosion of negative net worth
- Rejection of Twinstar Software Export Limited merely on account of analysis of the geographical segments of the company
- Rejection of Allsec Technologies Limited for being engaged in significant related party transactions and having a different financial year ending

10. The CIT(A) has erred selecting Zigma Software Limited and Tricorn India Limited for the IT back office services segment of the Respondent as these companies are not functionally comparable to the Respondent's business.

11. That the Hon'ble CIT(A) has erred in not accepting that the Respondent was not given a fair opportunity to showcase before making an addition to the total income of the Respondent on account of arm's length price of the international transaction pertaining to the provision of pre-sales marketing and post-sales technical support services thus, grossly violating the principles of natural justice.

12. That the Hon'ble CIT(A) has erred in law and on facts in not accounting for differences in risks assumed by the Respondent vis-a-vis comparable companies while determining the arm's length price for the international transactions of the Respondent and thus, not allowing a risk adjustment to the Respondent.

13. The learned CIT(A) has erred in law by not correctly applying the pre-amended second Proviso to section 92C of the Act by not accepting that the Respondent should be allowed the benefit of fixing the arm's length price of its international transactions at a variance of 5 percent from the arithmetic mean determined by him.

14. That the above cross objections are mutually exclusive & without prejudice to each other.

15. That the Respondent craves leave to add, alter, amend and/ or withdraw any or all of the grounds of cross-objections as the circumstances may warrant on or before the date of hearing.

29. The Id. Counsel for the assessee submitted that the same is merely in support of the order of the CIT(A). Since we have dismissed the appeal filed by the Revenue and have simply restored the issue for verification of working capital adjustment to the file of the AO/TPO, therefore, the grounds raised by the assessee in the Cross Objection become academic in nature and, therefore, the same are not being adjudicated.

30. In the result, the appeals filed by the Revenue both the years are allowed for statistical purposes and the CO filed by the assessee is dismissed.

The decision was pronounced in the open court on 24.07.2020.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated:24th July, 2020

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi