

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “B”, BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

IT(TP)A No.149/Bang/2020 : Asst.Year 2010-2011

M/s.EF Information Systems Private Limited, #9, 3 <sup>rd</sup> Floor Salarpuria Cambridge Mall Cambridge Layout, Ulsoor Bangalore – 560 008. <b>PAN : AACCE0126G.</b>	v.	The Dy.Commissioner of Income-tax, Circle 11(3) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Sumeet Khurana, CA  
Respondent by : Sri.Muzaffar Hussain, CIT-DR

<b>Date of Hearing : 26.08.2021</b>	<b>Date of Pronouncement : 01.09.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 11.11.2019. The relevant assessment year is 2010-2011.

2. All the grounds raised relate to transfer pricing adjustment. The assessee has raised four grounds and various sub-grounds. The learned during the course of hearing had only pressed ground No.2.8, 2.10 and additional ground (The additional ground was raised vide petition dated 04.03.2021. The ground Nos.2.8 and 2.10 and additional ground reads as follow:-

*“2.8. Including the following comparable companies even though they are functionally different from operational profile of the appellant:*

- (a) Infosys Technologies Limited.*
- (b) Persistent Systems Limited*
- (c) ICRA Techno Analytics Ltd.*
- (d) KALS Information Systems Ltd.; and*

(e) *Tata Elxsi Ltd.*

*2.10. Computing the working capital adjustment and in limiting the working capital adjustment while determining the arm's length price.*

*Additional Ground:*

*On the facts and in the circumstances of the case and in law and without prejudice to the grounds of appeal already filed by the appellant:*

*5. The Hon'ble Commissioner of Income Tax (Appeals) [CIT(A)] in pursuance of the order of the learned Assessing Officer (AO) and learned Transfer Pricing Officer (TPO) erred in law and facts in including Larsen & Toubro Infotech Limited in the set of comparables determined by the learned TPO whereas the same should have been excluded for the reason that it is functionally dissimilar.*

*The Appellant craves leave to add, alter, amend or withdraw all or any of the Ground of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing. Further, this ground of appeal is independent of the grounds of appeal already filed by the Appellant."*

2.1 In the additional ground, the assessee is seeking to exclude Larsen & Toubro Infotech Limited on account of multiple reasons including the turnover filter. In this context, the learned AR relies on the following ITAT orders:-

- (i) *Mformation Software Technologies (I) (P.) Ltd. in IT(TP)A No.632 and 658/Bang/2015 (order dated 12<sup>th</sup> February, 2020)*
- (ii) *Broadcom Communications Technologies (P.) Ltd. in IT(TP)A No.1929/Bang/2017 (order dated 14<sup>th</sup> June, 2019)*
- (iii) *Autodesk India (P.) Ltd. in IT(TP)A No.540, 541, 616 & 617/Bang/2013 (order dated 31<sup>st</sup> January, 2013).*

2.2 It was submitted by the learned AR that the assessee could not raise this ground before the lower authorities for the reason that the law on the issue was evolving and the same was not settled earlier. It was stated that the issue raised in the additional ground is decided in favour of the assessee by the recent judicial pronouncements. Therefore, it was requested that the additional ground may be admitted in the interest of justice and equity.

2.3 The additional ground does not require investigation of new facts. The Hon'ble Apex Court in the case of CIT v. S.Nelliappan reported in 66 ITR 722 (SC) had held that "*In hearing an appeal the Tribunal may give leave to the assessee to urge grounds not set forth in the memorandum of appeal, and in deciding the appeal the Tribunal is not restricted to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal.*" In view of the above judgment of the Hon'ble Apex Court since no new facts is required to be examined for adjudication of the additional ground, we take the same on record and proceed to adjudicate the additional ground.

We shall adjudicate the above grounds as under:

**Ground No.2.8 and Additional Ground**

3. In the above grounds, the assessee is seeking to exclude following companies from the list of comparables.

- (a) Infosys Technologies Limited.
- (b) Persistent Systems Limited
- (c) ICRA Techno Analytics Ltd.
- (d) KALS Information Systems Ltd.; and
- (e) Tata Elxsi Ltd.
- (f) Larsen & Toubro Infotech Limited.

## 4. Brief facts of the case are as follow:-

The assessee is a company. It is a subsidiary of Signum International, Luxemburg. The assessee-company provides software development services (SWD) and I.T. enabled services (ITES) to its AEs. The financial results of the assessee-company for the year ending 31.03.2010 as per the transfer pricing document are as follow:-

Operating Revenue	Rs.15,59,11,881
Operating Expenses	Rs.14,30,86,997
Operating (Profit / Loss)	Rs.1,28,24,884
Op profit on cost %	8.96%

## 4.1 The assessee had entered into international transaction with its AEs for the relevant assessment year as under:-

Sl. No.	Type of transaction	Amount (Rs.)
1.	Revenue from IT services and development	15,59,11,881
2.	Revenue from Backend support (ITES)	57,90,782
	Total	16,17,02,663

## 4.2 The Arm's Length Price (ALP) adjustment was made only in respect of SWD segment. The ALP adjustment made by the TPO are as follows:-

Arm's length mean margin on cost	22.71%
Less : Working capital adjustment (as per annexure C)	1.47%
Adjustment margin	21.24%
Operating cost	Rs.14,30,86,997
Arms Length Price (ALP) (121.24% of Operating cost)	Rs.17,34,78,675
Price Received	Rs.15,59,11,881
Shortfall being adjustment u/s 92CA	Rs.1,75,66,794

4.3 The assessee in its TP study had taken 21 companies as comparables. The TPO rejected the TP study and undertook fresh selection of comparables. The final list of comparables selected by the TPO are as under:-

Sl. No.	Name of companies – SWD segment	Markup on Total Cost
1.	ICRA Techno Analytics Ltd. (Seg.)	24.94%
2.	Infosys Limited	44.98%
3.	KALS Information Systems Ltd.	34.41%
4.	Larsen & Tubro Infotech Ltd.	19.33%
5.	Mindtree Limited	14.83%
6.	Persistent Systems & Solutions Ltd.	13.38%
7.	Persistent Systems Limited	30.35%
8.	RS Software India Limited	10.29%
9.	Sasken Communication Technologies	17.36%
10	Tata Elxsi (Seg.)	20.93%
11	Thinksoft Global Services Ltd.	17.05%
	Average	22.71%

4.4 Aggrieved by the transfer pricing adjustment in SWD segment, the assessee preferred an appeal to the first appellate authority. The CIT(A) upheld the transfer pricing adjustment made by the AO / TPO. The CIT(A) did not specifically dealing with the objections of the assessee with regard to the exclusion of each of the comparables. The relevant findings of the CIT(A) are as follows:-

*“As there is no infirmity in determining the arm’s length price of the international transactions entered into by the taxpayer by using the TNMM as most appropriate method and the PLI of the comparables based on the financial results of the companies for F.Y.2009-10 as mandated under rule 10B(4) of the Income-tax rules, I hereby uphold the order of the TPO.”*

4.5 The assessee being aggrieved is in appeal before the Tribunal. As mentioned earlier, the assessee is seeking to exclude six comparables from the comparable lists. We shall

deal with each of the comparables, which the assessee is seeking to exclude, as under:-

**(a) ICRA Technology Analytics Limited**

5. The assessee is seeking to exclude ICRA Technology Analytics Limited from the comparable list on account of functional dissimilarity. According to the assessee, ICRA Technology Analytics Limited is into diverse of IT solutions. It provides IT solutions like business analytics, IT Engineering, business process outsourcing, web development, analytics and hosting, etc. The learned AR had relied on the order of Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. v. ACIT (IT(TP)A Nos.505 and 508/Bang/2015 – order dated 15<sup>th</sup> April, 2021) reported in (2021) 127 Taxmann.com 62.

5.1 The learned Departmental Representative supported the orders of the AO / TPO.

5.2 We have heard the rival submissions and perused the material on record. For the assessment year 2010-2011, the Bangalore Bench of the Tribunal in Cisco Systems (India) (P.) Ltd. had held that ICRA Techno Analytics Limited is not functionally comparable to an assessee which is captive service provider for its AEs and into software development. The relevant finding of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. (supra) reads as follow:-

*7.1.1 We have heard rival submissions and perused the material on record. We find that this issue was considered by the Co-ordinate Bench of the Tribunal in the case of DCIT v. M/s.Electronics for Imaging India Pvt. Ltd. In IT(TP)A No.212/ Bang/ 2015 for assessment year 2010-2011, vide order dated 24.02.2016, wherein the Tribunal held as under:-*

*“14. At the outset, we note that apart from having the related party revenue at 20.94% of the total revenue, this company was also found to be functionally not comparable with software development services segment of the assessee. The DRP has given its finding at pages 13 to 14 as under:-*

*“Having heard the contentions, on perusal of the annual report, it is noticed by us that the segmental information is available for two segments i.e., services and sales. However, it is evident from the annual report that the service segment comprises of software development, software development, software consultancy, engineering services, web development, web hosting, etc. for which no segmental information is available and therefore, the objection of the assessee is found acceptable. Accordingly, Assessing Officer is directed to exclude the above company from the comparables.”*

*15. We find that the facts recorded by the DRP in respect of business activity of this company are not in dispute. Therefore, when this company is engaged in diversified activities of software development and consultancy, engineering services, web development & housing and substantially diversified itself into domain of business analysis and business process outsourcing, then the same cannot be regarded as functionally comparable with that of the assessee who is rendering software development services to its AE.*

*16. In view of the above facts, we do not find any error or illegality in the findings of the DRP that this company is functionally not comparable with that of a pure software development service provider.”*

*7.1.2 In view of the decision of the Co-ordinate Bench, cited supra, we direct the AO/TPO to exclude the comparable on similar reasons.”*

5.3 Since the assessee is a capital service provider, catering the needs of AEs in the SWD segment, ICRA Techno Analytics Limited cannot be functionally compared to the assessee in view of the order of the Tribunal in Cisco Systems (India) (P.) Ltd. (supra) (wherein ITAT had considered identical assessment year, namely, assessment year 2010-2011).

**(b) Infosys Limited**

6. The assessee is seeking to exclude the above company from the final list of comparables since its turnover is almost

1356 times the turnover of the company. It is also have diversified activities and income from sale of products. In this context, the assessee relies two orders of the Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. v. ACIT (supra) and Marlabs Innovations (P.) Ltd. v. ACIT reported in (2020) 116 taxmann.com 725.

6.1 The learned Departmental Representative was duly heard.

6.2 We have heard rival submissions and perused the material on record. The Bangalore Bench of the Tribunal in Cisco Systems (India) (P.) Ltd. had held that Infosys Limited is not functionally comparable to an assessee which is capital service provider for its AEs since it having diversified activities and income from sale of products. The relevant finding of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. (supra) reads as follow:-

*“7.2.2 After hearing both the parties and perusing the relevant material on record, we find that this issue also considered by the Co-ordinate Bench of the Tribunal in case of DCIT v. M/s.Electronics for Imaging India Pvt. Ltd. in IT(TP)A No.212/Bang/2015 (supra), wherein the Tribunal held as under:-*

*“19. We have heard the ld.DR as well as ld.AR and considered the relevant material on record. We note that in the case of Agnity India Pvt. Ltd. (2015) 58 taxmann.com 167 (Delhi-Trib.), the Delhi Bench of the Tribunal has considered the comparability of this company and the findings of the Delhi Bench of the Tribunal has been confirmed by the Hon'ble Delhi High Court. The Hon'ble Delhi High Court has observed that this company having brand value as well as intangible assets cannot be compared with an ordinary entity provide captive service. We further note that this company provides end to end business solutions that leverage cutting edge technology thereby enabling clients to enhance business performance. This company also provides solutions that span the entire software lifecycle encompassing technical consulting, design, development, re-engineering, maintenance,*



*systems integration, package evaluation and implementation, testing and infrastructure management service. In addition, the company offers software product for banking industry. Thus, this company is engaged in diversified services including design as well as technical consultancy, consulting, re-engineering, maintenance, systems integration as well as products fro banking industry.*

20. *In view of the above facts that Infosys Ltd. Having a huge brand value and intangibles as well as having bargaining power, the same cannot be compared with the assessee who is providing services to its AE."*

7.2.3 *In view of the decision of the Co-ordinate Bench, cited supra, we direct the AO/TPO to exclude Infosys Limited as comparable, on similar reasons."*

6.3 In view of the aforesaid order of the Co-ordinate Bench of the Bangalore Tribunal in the case of Cisco Systems (India) (P.) Ltd. (supra), we hold that Infosys Limited cannot be stated to be functionally comparable to the assessee. Therefore, we direct the AO / TPO to exclude Infosys Limited from the final list of comparables.

**(c) KALS Information Systems Limited**

7. The assessee is seeking to exclude KALS Information Systems Limited from the list of comparable companies for the reason that the said company is functionally different from that of the assessee, as KALS Information Systems Limited is engaged in development of software products such as shine ERP softwsare, Docuflow, Virtual Insure, etc. It was also contended that it was having significant inventory, approximately 27% of total current asses. In this context, the assessee relied on the order of the Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. v. ACIT (supra).

7.1 After hearing both the parties and perusing the material on record, we find that the Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd. (supra) had held that KALS Information System Limited is not functionally comparable to an assessee. The relevant finding of the Tribunal, reads as follow:-

*“7.3.2 We have heard rival submissions and perused the material on record. We find that the Tribunal in the case of DCIT v. M/s.Electronics for Imaging India Pvt. Ltd (supra) has excluded KALS Information Systems Limited as comparable, by holding as under:-*

*“23. We have heard the ld.DR as well as ld.AR and considered the relevant material on record. The ld.DR has not disputed the fact that comparability of this company has been examined by this Tribunal in a series of decisions including in the case of Trilogy e-business Software India Ltd. ITA No.1054/Bang/2011 dated 23.11.2012. We further note that in the balance sheet of this company as on 31.3.2010, there are inventories of Rs.60,47,977. Therefore, when this company is in the business of software products, the same cannot be compared with a pure software development services provider. Accordingly, we do not find any error or illegality in the impugned findings of the DRP.””*

7.2 In view of the aforesaid order of the Co-ordinate Bench of the Bangalore Tribunal, we direct the AO / TPO to exclude KALS Information Systems Limited from the final list of comparable companies.

**(d) Larsen & Toubro Infotech Limited**

8. The assessee is seeking to exclude Larsen & Toubro Infotech Limited from the list of comparable companies as the said company is functionally different from that of the assessee. According to the assessee, Larsen & Toubro Infotech Limited has high turnover, i.e., greater than 10 times the turnover of the assessee (113 times the turnover of the assessee). It is further submitted that the said company is

functionally dissimilar as there is no bifurcation between revenue earned from software products and software development services. It is also contended that the said company owns intangible assets. Thus, it is prayed that the above company may be excluded from the final list of comparables. The assessee has also relied on various orders of the Bangalore Bench of the Tribunal, including the order in the case of Marlabs Innovations (P.) Ltd. v. ACIT reported in 116 taxmann.com 725.

8.1 The learned Departmental Representative supported the orders of the AO / TPO.

8.2 We have heard both parties. We find that the Bangalore Bench of the Tribunal in the case of Marlabs Innovations (P.) Ltd. v. ACIT (supra) had held that Larsen & Toubro Infotech Limited is not functionally comparable to the assessee. The relevant finding of the Tribunal, reads as follow:-

*“12.3. We have perused submissions advanced by both sides in light of records placed before us.*

*We note that Ld.AO/TPO has applied filter of more than Rs.1 crore but did not put an upper limit to the filter. This Tribunal in case of Genesis Integrating Systems India Pvt Ltd vs DCIT reported in (2012) 53 SOT 159 and various other decisions have held that, companies having turnover in excess of 200 crores cannot be compared with companies having turnover less than Rs.200 crore. This proposition has been accepted by Hon'ble Bombay High Court in case of CIT vs Pentair Water Pvt.Ltd., by order dated 16/09/2015 in ITA No. 18/2015. Hon'ble court upheld rejection of companies having turnover holding that turnover is a relevant factor in considering comparability of companies.*

*12.3.1. The objection raised by Ld.CIT.DR by placing reliance upon decision of Hon'ble Delhi High Court in case of Chris Capital (supra) has been dealt with by this Tribunal in case of Autodesk India Pvt.Ltd. vs DCIT in (2018) 96 taxmann.com 263 for assessment year 2005-06. This Tribunal reviewed gamut of case laws to consider, whether companies having turnover more than Rs.200 crores should be regarded as*

*comparable with a company having turnover less than Rs.200 crore. This Tribunal held as under:*

17.7 We have considered the rival submissions. The substantial question of law (Question No.1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) Pvt. Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the learned counsel for the Assessee the observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of obiter dictum. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a nonjurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of Pentair Water India (P.) Ltd. (supra) has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we respectfully follow the view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.

17.8 In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating Systems (I) (P.) Ltd. (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India (P.) Ltd. (supra) are to be regarded as per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of NTT Data (supra), Societe Generale Global Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing

Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra).

*Based upon above discussions we are of opinion that objection raised by revenue cannot withstand the test of law.*

*Accordingly, we do not find any infirmity in excluding Infosys Ltd., Larson & Tubro Infotech Ltd., Mindtree Ltd., Persistent Systems Ltd., Sasken Technologies Ltd., Infosys Ltd., and TATA Elxsi Ltd., for having high turnover as compared to a captive service provider like assessee."*

8.3 In view of the aforesaid order of the Co-ordinate Bench of the Bangalore Tribunal, in the case of Marlabs Innovations (P.) Ltd. v. ACIT (supra) and also for the reason that Larsen & Toubro Infotech Limited's financials does not bifurcate between revenue earned from software products and software development services, and also it owns intangible assets, we direct the AO / TPO to exclude Larsen & Toubro Infotech Limited from the final list of comparables.

**(e) Persistent Systems Limited**

9. The assessee is seeking to exclude Persistent Systems Limited from the list of comparable companies as the said company is functionally different from that of the assessee, as the said company is engaged in rendering outsourced product development services, offers complete product life cycle services. Further, it had 3000 plus product releases in the

last five years. The said company is also develops products like ChemLMS, VieMOR, CLAP, TLALOC. Thus, it is prayed that the above company may be excluded from the final list of comparables. In this context, the learned AR relied on the order of the Bangalore Bench of the Tribunal in the case of Cicso Systems (India) (P.) Ltd. (supra).

9.1 The learned Departmental Representative supported the orders of the AO / TPO.

9.2 We have heard both parties. We find that the Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd.(supra) had held that Persistent Systems Limited is not functionally comparable to the assessee. The relevant finding of the Tribunal, reads as follow:-

*“7.4.1 After hearing both the parties and perusing the material on record, we find that Persistent Systems Limited has been excluded from the list of comparables by the Tribunal in the case of CGI Information Systems and Management Consultants Private Limited v. ACIT in IT(TP)A No.586/Bang/2015 & 183/Bang/2017 for assessment years 2010-2011 and 2012-2013 (order dated 11.04.2018) for the purpose of arriving at the arithmetic mean of comparable companies for the purpose of comparison with the profit margin. Therefore, in view of the order of the Co-ordinate Bench of the Tribunal (supra), we direct to exclude Persistent Systems Limited from the final list of comparables.”*

9.3 In view of the order of the Co-ordinate Bench of the Tribunal in the case of Cisco Systems (India)(P.) Ltd. (supra), we find that Persistent Systems Limited cannot be compared with the assessee company, and thus, we direct the AO / TPO to exclude the said company from the final list of comparable companies.

**(f) Tata Elxsi Limited**

10. The assessee is seeking to exclude Tata Elxsi Limited from the list of comparable companies as the said company is functionally different from that of the assessee. According to the learned AR, the said company is engaged in product design services, innovation design engineering and visual computing labs. Thus, it is prayed that the above company may be excluded from the final list of comparables. The assessee has also relied on the order of the Bangalore Bench of the Tribunal in the case of Cicso Systems (India) (P.) Ltd. (supra).

10.1 The learned Departmental Representative supported the orders of the AO / TPO.

10.2 We have heard both parties. We find that the Bangalore Bench of the Tribunal in the case of Cisco Systems (India) (P.) Ltd.(supra) had held that Tata Elxsi Limited is not functionally comparable to the assessee. The relevant finding of the Tribunal, reads as follow:-

*“7.5.2 After hearing both the parties and perusing the material on record, we find that Tata Elxsi Limited has been excluded from the list of comparables by the Tribunal in the case of CGI Information Systems and Management Consultants Private Limited v. ACIT in IT(TP)A No.586/Bang/2015 & 183/Bang/2017 for assessment years 2010-2011 and 2012-2013 (order dated 11.04.2018) for the purpose of arriving at the arithmetic mean of comparable companies for the purpose of comparison with the profit margin. Therefore, in view of the order of the Co-ordinate Bench of the Tribunal (supra), we direct to exclude Tata Elxsi Limited from the final list of comparables.*

*7.5.3 In views of the aforesaid reasonings, we are of the opinion that the learned DRP is justified in excluding the above five comparable companies from the final list of comparables. Accordingly, this ground of appeal by the Revenue is dismissed.”*

10.3 In view of the order of the Co-ordinate Bench of the Tribunal in the case of Cisco Systems (India)(P.) Ltd. (supra), we find that Tata Elxsi Limited cannot be compared with the assessee company, and thus, we direct the AO / TPO to exclude the said company from the final list of comparable companies.

### **Ground No.2.10 (Working Capital Adjustment)**

11. The working capital adjustment claimed by the assessee was restricted to 1.98% by the TPO (refer para 12.1 of TPO's order). The view taken by the TPO was affirmed by the CIT(A), by observing as under:-

*“The working capital adjustment is computed as per the formula given in Annexure to the OECD Guidelines, 2009. In this case, the average PLR. adopted by SBI, the largest scheduled bank, for short term working capital loans for the relevant FY 2009-10 is considered. The average PLR of 11.75% p.a. was adopted by the TPO while computing the working capital adjustment. The working capital adjustment is restricted to the average working capital component of the comparables which is 1.98%.”*

11.1 The assessee being aggrieved, is in appeal before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities. The learned AR submitted that as per Rule 10B of I.T.Rules, Arm's Length Price is required to be adjusted to account for difference between the international transaction and the comparable uncontrolled transaction which could materially effect the price in the open market. He submitted that the difference in working capital will materially effect the price in the open market and hence working capital adjustment is being made on the margins of the tested parties. In the instant case, the Assessing Officer



has restricted the working capital adjustment to 1.98%, however, the Rule does not authorize to put an upper limit in respect of working capital adjustment. Accordingly, he prayed that the working capital adjustment be reduced on the tested parties on actual basis.

11.2 The learned Departmental Representative supported the order of the AO / TPO.

11.3 We have heard rival submissions and perused the material on record. We find merits in the submissions made by the learned AR. There is no dispute with regard to the fact that the difference in working capital would materially effect the price charged for the services rendered. We have noticed that the TPO / AO himself has granted working capital adjustment at 1.98%. The grievance of the assessee is that the TPO should have allowed working capital basis on actual basis without placing an upper limit on the said adjustment. We also noticed that Rule 10B of the I.T.Rules does not provide for restricting the adjustment. Accordingly, we direct the TPO / AO to grant working capital adjustment on actual rate. It is ordered accordingly.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 01<sup>st</sup> day of September, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 01<sup>st</sup> September, 2021.  
Devadas G\*

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Asst.Registrar/ITAT, Bangalore