

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2229/Del/2015
(Assessment Year: 2010-11)

Transcend MT Services Pvt. Ltd, (formerly known as Heartland Information and Consultancy Services Pvt. Ltd), Plot No. 1/1, Arakere, Bannerghata Road, Bangalore PAN: AABCH2275E	Vs.	The Deputy Commissioner of Income Tax, Circle-25(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Vishal Kalra, Adv Shri Ankit Saini, Adv Shri S Tomar, Adv
Revenue by:	Ms Nidhi Sharma Sr Dr
Date of Hearing	21/08/2020
Date of pronouncement	18/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by TRANSCEND MT SERVICES PRIVATE LIMITED (formerly known as Heartland Information And Consultancy Services Private Limited) (referred to as the Assessee/Appellant) against the order of THE DEPUTY COMMISSIONER OF INCOME TAX, Circle 25 (2), New Delhi (The AO) passed u/s 143 (3) read with Section 144C (13) of The Income Tax Act, 1961 (The Act) for assessment year 2010 – 11, wherein pursuant to the direction of the learned Dispute Resolution Panel [The ld DRP] the total income of the assessee was assessed at Rs 55,806,130/- against the returned income of Rs. 23,564,600/- , wherein the only adjustment is made with respect to the arm's-length price of the International Transactions pursuant to the order of THE LEARNED ADDITIONAL COMMISSIONER OF INCOME TAX, TRANSFER PRICING OFFICER – I (2), New Delhi [The Ld TPO] passed u/s 92CA (3) of The Act on 9/1/2014, which was subject to the direction of the Learned Dispute Resolution Panel dated 2/12/2014

wherein the arm's-length price of the transaction of the assessee of Rs 360,154,748/- was determined at Rs 378,162,485/- and thereafter an adjustment was made of ₹ 32,241,526/-.

2. The assessee has raised the following grounds of appeal:-

- “1. That on the facts and circumstances of the case and in law, the AO has erred in completing the assessment of the Appellant under section 143(3) read with section 144C(13) of the Act, at an income of Rs. 5,58,06,130 in pursuance to the directions issued by the DRP, as against returned income of Rs. 2,35,64,600.*
- 2. That on the facts and circumstances of the case and in law, reference made by the AO to the TPO is void ab-initio and bad in law as the AO failed to provide copy of approval granted by the Commissioner of Income tax and affording any opportunity of being heard to the Appellant, in violation of the principle of natural justice.*
- 3. That on the facts and circumstances of the case and in law, the AO/ Transfer Pricing Officer (“TPO”) / DRP have erred in making an upward TP adjustment of Rs. 3,22,41,526 in respect of the transaction pertaining to provision of back office medical transcription services to its associated enterprises (“AEs”), alleging that the same were not at arm’s length.*
- 4. That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 (“Rules”) for determination of the arm’s length price (“ALP”) of provision of back office medical transcription services to AEs.*
 - 4.1 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in ignoring the provisions of Rule 10B(4) of the Rules which allows use of multiple year data of comparable companies for the purpose of determination of the ALP.*
 - 4.2 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting / modifying the search process and filters adopted by the Appellant for the benchmarking its international transactions of provision of back office medical transcription services to AEs.*
 - 4.3 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in arbitrarily rejecting the comparable companies selected by the Appellant applying arbitrary / subjective search filters.*
 - 4.4 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in selecting functionally dissimilar companies with high turnovers, abnormally high margins / super profits, abnormal or peculiar circumstances and/or substantial related party transactions during the given year.*
 - 4.5 That on the facts and circumstances of the case and in law, the AO / DRP / TPO erred in not providing appropriate economic adjustments on*

account of differences in risk profile between the Appellant and the comparable companies.

5. *That on the facts and circumstances of the case and in law, the AO / DRP/ TPO failed to understand and appreciate intent and spirit of Rule 10B(1)(e)(ii) of the Rules.*
 6. *That on the facts and circumstances of the case and in law, the AO / DRP/ TPO erred in not allowing Appellant benefit of 5 percent range as provided under the proviso of section 92C(2) of the Act.*
 7. *That on the facts and in the circumstances of the case and in law, the AO has erred in charging interest under sections 234B of the Act.”*
3. Brief facts of the case shows that assessee is a company wherein 99.99% of the shareholding is held by a Mauritius parent and 0.01% by a US company. It is engaged in providing medical transcription services to its associated enterprise and had centers in Bangalore and Delhi. It has responsibility for transcribing medical data and information services. During the previous year assessee provided back office medical transcription services to its associated enterprise amounting to Rs 360,138,248/- at the markup of 22.18% on total operating cost. Incorporating the same, assessee filed its return of income on 27/9/2010 declaring an income of ₹ 23,564,600/-. The case of the assessee was picked up for scrutiny and the international transactions were referred to the learned Transfer Pricing Officer for determining arm's-length price.
4. The assessee benchmarked its transaction using Transactional Net Margin Method [TNMM] as the Most Appropriate Method [MAM] using Operating Profit/Total Cost [OP/TC] as the Profit Level Indicator [PLI] selecting six comparable companies where their average margin was 11.86% using the multiple year data, assessee computed its own margin at 22.19% and stated that its international transactions are at arm's-length.
5. The learned Transfer Pricing Officer examined the transfer pricing study report of the assessee, issued show cause notice challenging the benchmarking analysis and accept / reject metrics along with filters used by the assessee. Learned TPO proposed new filters using single year data (current year data), proposed to reject all five other comparables only retaining one comparable i.e. cosmic global Ltd. After considering the submissions of the assessee, learned transfer pricing officer selected five other comparable whose average margin was 33.83% using single year data and determined arm's-length price of the international transactions of Rs

360,154,748 at ₹ 39,44,29,873 and proposed an adjustment u/s 92CA of The Act dated 9/1/2014 of ₹ 34,275,125/-. Consequently the draft assessment order was passed on 6 March 2014 where the income of the assessee was computed after including the above adjustment at ₹ 57,839,720/-.

6. Assessee approached the Dispute Resolution Panel who passed its direction on 2 December 2014, disposing the objections of the assessee directing the learned TPO to modify the adjustment. Consequently, the learned TPO finally computed the adjustment to the ALP of international transaction at ₹ 32,241,526 whereby following six comparable companies was selected having mean margin of 33.14% of PLI of operating profit/operating cost.

Serial number	company	OP/OC (percentage)
1	Accentia technology Ltd	42.52
2	cosmic global Ltd	16.65
3	Fortune InfoTech Ltd	22.80
4	I Gate global Ltd	24.42
5	Infosys BPO Ltd	31.21
6	TCS E serve Ltd	61.22
	Mean margin	33.14%

Above margin was applied to the total operating cost incurred by the assessee of ₹ 294,724,556/- and arm's-length price was determined at Rs. 392,396,274/- against the price charged by the assessee of Rs. 36,01,54,748/- proposing an adjustment to be made of ₹ 32,241,526/-. The assessment order u/s 143 (3) read with Section 144C (13) of the act was passed on 30 January 2015 determining the total income of the assessee at ₹ 55,806,130/-. This resulted into grievance to the assessee and therefore this appeal is filed.

7. At the time of the hearing the assessee has raised an additional ground of appeal as per application dated 8 August 2018 is Under:-

“That on the facts and circumstances of the case and in law, the order passed by the transfer pricing Officer (TPO) the

consequential transfer pricing adjustment made including the assessment order passed by the assessing officer is bad in law and liable to be quashed, as the order dated January 9, 2014 passed Under 92CA of the act, has been passed by an officer not having jurisdiction to act as TPO Under Chapter X of the act.”

With respect to the above ground, it was stated that it is a jurisdictional, legal ground, which can be raised at any point of time during the pendency of the appeal, goes to the root of the matter, does not require any investigation of facts; therefore, it may be admitted.

8. The learned departmental representative vehemently objected to the same stating it is not raised before either TPO / DRP & AO. There is no justification for it.
9. On careful analysis of additional ground raised, we find that it goes to the root of the matter, legal in nature challenging the jurisdiction and the validity of order passed by the transfer-pricing officer; therefore, there can be no fetters in admitting the same. Hence, we admit the same.
10. The assessee submitted that the case of the assessee was selected for scrutiny by the assessing officer and same was referred to the transfer pricing officer for determination of the arm's-length price of the international transaction. The ADDITIONAL COMMISSIONER OF INCOME TAX, transfer pricing officer – 1 (2), New Delhi who was acting as Transfer Pricing Officer, as per order dated 9 January 2014, determined arm's-length price of the international transactions pertaining to provision of the medical transcription services amounting to ₹ 360,138,248/- to markup of 22.18% on the total operating cost and made an upward adjustment of ₹ 34,275,122 to the income of the assessee. It was submitted that the provisions of Section 92CA provides that only Joint Commissioner, Deputy Commissioner or Asst Commissioner can be appointed as TPO. He further referred to the explanation to Section 92CA which defines the Transfer Pricing Officer which means a Joint Commissioner or Deputy Commissioner or Asst Commissioner authorised by the board to perform all or any of the functions of an assessing officer specified in Section 92C and 92D in respect of any person or class of persons. Thus, it was stated that in the present case ,

order of the TPO is ultra-virus, bad in law and liable to be quashed as the officer passing the transfer pricing order i.e. Additional Commissioner Of Income Tax, is not covered under the definition of the Transfer Pricing Officer.

11. The learned departmental representative vehemently submitted that there is no infirmity in the order passed by the learned transfer pricing officer as he is authorised to pass such an order. He otherwise submitted that the Joint Commissioner is defined under The Income Tax Act, which also includes the Additional Commissioner. Therefore, the order passed by the learned Transfer Pricing Officer is with proper jurisdiction and authority under the law.
12. We have carefully considered the rival contentions. In the present case, The Additional Commissioner of Income Tax has passed the TP order. Assessee is challenging that Additional Commissioner is not empowered to pass an order for determining the arm's-length price as Section 92CA has an explanation which defines that for the purpose of the provisions of Section 92CA where reference is to be made to the Transfer Pricing Officer, The Transfer Pricing Officer means a Joint Commissioner Or Deputy Commissioner Or Asst Commissioner authorised by the board to perform all or any of the functions of an assessing officer specified u/s 92C and 92D in respect of any person or class of persons. It needs to be clarified that assessee is not arguing that there is no authority from the board in favour of the learned transfer pricing officer i.e. the Additional Commissioner Of Income Tax who passed the order u/s 92CA (3) of the act. The challenge of the assessee is that that Additional Commissioner as a class of officers, are not included in the definition of the Transfer Pricing Officer u/s 92CA of the Act. The Joint Commissioner of Income Tax has been authorised to pass an order u/s 92CA of the Act. The Joint Commissioner has been defined u/s 2 (28C) of the Act wherein the Joint Commissioner means a person appointed to be a Joint Commissioner Of Income Tax Or An Additional Commissioner Of Income Tax Under subsection (1) of Section 117 of the Act. Therefore the definition of the Joint Commissioner includes the Additional Commissioner also. In view of this, additional ground raised by the assessee does not have any merit. Hence dismissed.

13. Adverting to the various other grounds of appeal raised by the assessee, the learned authorised representative submitted a chart and stated that it is challenging the comparability analysis and selection of following comparables by the learned TPO appealing for the exclusion of:-
 - a. Accentia technologies Ltd
 - b. I Gate global Ltd
 - c. Infosys BPO Ltd
 - d. TCS E serve Ltd
14. It is also challenging the exclusion of a comparable selected by the assessee of R systems international Ltd by the learned transfer pricing officer.
15. The learned authorised representative submitted a detailed chart wherein he mentioned about all these above four comparable to be excluded challenging them on various counts. He also relied upon the several judicial precedents with respect to each of the comparable wherein the above comparable companies were directed to be excluded in some other cases.
16. Similarly, the learned departmental representative also relied upon the order of the learned transfer pricing officer and direction of the learned dispute resolution panel for the reasons supporting why the above comparable companies are included in the comparability analysis.
17. With respect to the first comparable i.e. **Accentia technologies Ltd** to be excluded, the learned authorised representative, submitted that
 - a. During financial year, 2009 – 10 one company was amalgamated with the impugned comparable company and the same has impacted the figures of the impugned company for the financial year ended on 31st of March 2010.
 - b. It was further stated that this comparable was excluded by the learned Dispute Resolution Panel for assessment year 2007 – 08 on the direction of the coordinate bench, it was excluded wherein it has held to be not comparable on account of extraordinary events.
 - c. It was further stated that the comparable company owns significant intangible assets, which are sufficient impact the profitability of the comparable compared to the assessee. He referred to the annual report of the company placed on page number 663 of the paper book

and stated that appellant on the other hand does not own any non routine intangibles.

- d. He further stated that it is not functionally comparable as according to him at page number 594 of the paper book the comparable company has classified itself as a knowledge process outsourcing company wherein it has been stated that it is the fastest-growing healthcare receivable cycle management company and is now also ventured into legal process outsourcing, data process outsourcing and high-end software services delivery besides offering software as a services (SAAS).
 - e. It was further stated that it has only a single segment as healthcare receivable management and there is no segmental data available from the new ventures like legal process outsourcing, data process outsourcing and high-end software services delivery, whereas the learned transfer-pricing officer has considered the profitability of the comparable company at an overall entity level, which is incorrect.
 - f. The learned authorised representative referred to the series of judgments wherein the above comparable company has been directed to be excluded on account of extraordinary event of amalgamation, on account of significant intangibles, functionally different being engaged in development of software products for healthcare and being engaged in diverse activities of KPO – LPO and for the reason of nonavailability of segmental financial statements.
18. The learned departmental representative vehemently supported the order of the learned TPO as well as the learned DRP. He submitted that the learned TPO has held that merger has no impact on the profitability of the company as it is in the similar line of activity. It was further stated that there is no intangible assets of major significance and therefore this comparable is a good comparable.
19. We have carefully considered all the reasons submitted by the learned authorised representative. To examine the relevant arguments raised it is necessary to look into the financial statement of the above comparable company which is placed at page number 592 – 697. However this is the complete annual report of the comparable company for the year ended on

31st of March 2010. It includes four subsidiaries of the company in United States of America, one in UAE and one in India. Therefore the consolidated financial statements are not relevant to be considered, which is also not been considered by the learned transfer pricing officer. What is relevant for comparability analysis is to look at the standalone financial statement of the above company, which is placed at page number 655 – 674 of the paper book (annual report page number 64 – 83). It is only to be seen whether this comparable is similar to the functions performed by the assessee or not. At schedule 10 (B) (9) the company is engaged in only one activity namely healthcare receivable management and therefore it is not at all engaged in any other business. Looking at schedule 8 the assessee has major revenue only from medical transcription, billing and collections and from coding. Therefore healthcare receivable management is the only function performed by the assessee. The reliance by the learned and authorised representative is on page number 50 onwards of the “management discussion and Analysis’ which talks about the legal process outsourcing and knowledge process outsourcing by the company on consolidated level. Even otherwise the management discussion and analysis only shows the status of the business outlook of LPO and other activities. In the standalone balance sheet there are no such activities carried on by comparable company, hence the argument of the learned authorised representative that it is functionally not comparable is not acceptable and rejected.

20. The second argument is that there are extraordinary events during the year wherein some company was amalgamated with the comparable company and it has impacted the figures [profitability] of the impugned company for the financial year ended on March 31, 2010. To examine this argument it is necessary to look into the notes on account (schedule 10 (B) (1)) wherein the brief note on the amalgamation of merged company with comparable company is mentioned. According to that note, the effective date of amalgamation is 1 April 2008 and according to that scheme, it has been given effect to in the accounts of the year. Therefore, it is apparent that the accounts of the assessee are recast from 1 April 2008. In fact, we are in financial year 2009 – 10; therefore, it is apparent that there is no amalgamation during this year. It does not impact the profitability of the

comparable. Further, it is not the case of the assessee that the merged company is carrying on any different business than the comparable company. In fact as there is no functional dissimilarity pointed out between the merged company and comparable, we do not find that it has any impact on the comparability analysis. Even otherwise looking at that note placed at page number 78 of the annual report (page number 669 of the paper book) merged company is also engaged in the same business of medical transcription and coding which is carried on by comparable. In view of this the comparable's entering into merger with other entity carrying on same business, which are functionally similar, does not have any impact on the margins of the comparable company for the year as the effective date of merger is 1 April 2008 and the first financial year of the merger would have been 2008 – 09, wherein we are in 2009 – 10. Therefore, there is no impact of any extraordinary event during the year on the financials or operating margins of the comparable company. Further, exclusion by the learned Dispute Resolution Panel of this comparable in any earlier year cannot automatically lead to exclusion of this comparable this year also without showing that there are extraordinary events during the year in the comparable company's financial statements, which has impacted its profitability margins adversely. Hence, this argument is rejected. The next argument raised by the learned authorised representative is that the comparable company owns significant intangible assets which are sufficient to impact the profitability. In preferences of the schedule 4 read with (B) (1) the goodwill on acquisition of the company has been shown as goodwill/brands/IPRs. Naturally the goodwill has been generated on acquisition of the assets of the merged company being difference in the value of assets acquired and liability is assumed on the basis of 'pooling of interest method' as per Accounting Standard 14. Therefore, we do not find any reason that an intangible asset of that company, which is merely an accounting entry of Goodwill, has impacted any differentiation in the comparability analysis. The last argument with respect to the use of segmental data, as we have already stated that the standalone balance sheet of the company showing that it is engaged only in one segment and therefore there is no requirement of any segmental information. The learned

transfer-pricing officer has also compared the same standalone balance sheet, which has only one segment. In view of this, that argument is also rejected. Coming to the various judgments relied upon by the learned authorised representative, we have already analyze that there is no extraordinary event of amalgamation during the year which has impacted the financial statements of the assessee, because it is pertaining to merger with effect from 1 April 2008 and of similar line of business. With respect to the significant intangible, we have read detailed note given in the annual accounts of the standalone balance sheet wherein the only goodwill on amalgamation/merger is accounted for, therefore it cannot have any impact as it is merely an accounting entry. The functional dissimilarity is not shown by the assessee such as LPO/KPO of business of the comparable company with its revenue stream, which we have noted that this the reference in the business management discussion and analysis pertaining to the overall consolidated operations of the assessee company and not on the standalone balance sheets of the company. When the comparable company is taken as good comparable, only requirement is to seen the functional operations of the standalone balance sheet. There are various issues which are mentioned in the management discussion and analysis of the consolidated accounts of the comparable company which are not at all relevant for the comparability analysis s it does not reflect in the annual accounts of the comparable company on standalone basis. Even otherwise, the revenue streams of the comparable also do not show that it earns any revenue from its LPO business or KPO business. Therefore several judgments relied upon on this aspect does not apply to the facts of the case. Further comparable company is also engaged in only one segment as held by us earlier, there is no requirement of any segmental analysis, therefore for this year; at least those decisions do not apply. In view of this, we hold that Accentia technologies Ltd, in absence of any other argument by the learned authorized representative, is held to be comparable and action of the learned transfer pricing officer and learned dispute resolution panel by including the above comparable company in the comparability analysis is upheld.

21. The second comparable which has been included by the learned transfer pricing officer and upheld by the learned dispute resolution panel argued by the assessee for its exclusion is **I Gate global Ltd.** The argument of the learned authorised representative is that it has extraordinary events during the year as the only one subsidiary merged with the comparable company. The second argument that the comparable company has huge turnover of Rs 932 crores as compared to the turnover of the assessee of only ₹ 36 crores which is 30 times more than the assessee company and therefore it should be excluded. Assessee also stated that comparable company is engaged in the business of software development and services, contract service and ITeS whereas the assessee is a captive service provider in medical transcription only. Therefore it was submitted that it is functionally dissimilar. The learned authorised representative also referred to several judicial precedents wherein this comparable company has been excluded on account of extraordinary events during the impugned year in case of some other entities' assessment. It was also directed to be excluded in case of assessment of other entities on account of huge turnover.
22. The learned departmental representative supported the order of the learned assessing officer and TPO/DRP. He referred to para number 6.1.3 of the order of the learned transfer pricing officer where the assessee objected about the inclusion of the above company only on the functionally different as it is engaged in software development services, the learned transfer pricing officer has held that the above comparable is merely an ITeS company and he referred to the notes to the accounts in schedule wherein it is stated that the company considers all of the services to be related to one segment i.e. IT enabled services and concluded that it operates in singles segment with respect to products and services. Therefore, he submitted that same should be included in the comparability analysis. With respect to the other arguments he submitted that same were not raised before the learned transfer pricing officer. He further referred to page number 7 of the direction of the Dispute Resolution Panel where this comparable was held to be includible in comparability analysis as there is no functional dissimilarity, even on the issue of high turnover and extraordinary event in case of the comparable.

23. We have carefully considered the rival contentions and perused the orders of the learned Transfer Pricing Officer/direction of the learned DRP. The assessee at page number 717 – 817 of the paper book submits the annual report of the above comparable company. Standalone financial statements are available at page number 17 of the annual report wherein at page number 32 it is stated that comparable company offers information technology and IT enabled operations offshore outsourcing solution and services to large and medium-sized organization using off site /on-site model. The financial also shows revenue stream at page number 23, which only includes these services. Therefore, we do not find that this company is functionally dissimilar to the functions performed by the assessee. At the cost of repetition, we once again state that the reference is made with respect to the functions performed by the comparable as per Management Discussion and Analysis, which is related to the consolidated financial statement, nothing was shown to us that it is reflected in the Financial on standalone basis of comparable company. The learned TPO has compared the standalone financial statements of the comparable companies. There is no infirmity that this comparable on standalone basis as per the notes to accounts as per schedule and the profit and loss statement is functionally comparable to the assessee. The second issue that has been raised is that there is an amalgamation of one Malaysian company with the comparable with effective date from 1 April 2009. However, it has been stated that operation of the Malaysia Company is similar functionally to that of the comparable company and all the shares of that company is owned by the comparable. Therefore, for the whole year, as there is no functional dissimilarity between the amalgamating companies with the amalgamated company, the event of amalgamation does not have any impact with respect to the profitability margins. Thus, it is not an extraordinary event which impacts the profitability of the comparable company. Therefore, for this reason this comparable cannot be excluded. The last reason stated by the learned authorised representative is that the revenue as per the profit and loss account of the comparable company is Rs. 932 crores whereas the revenue of the assessee is merely Rs 36 crores. Naturally this makes the comparable company 26 times larger in revenue. As such there cannot be

any criteria laid down that how much big comparable can be used for the comparability analysis of the assessee. But, as per the past judicial precedents of the honourable High Court, we can have some clue. In (381 ITR 216) CIT versus Pentair water Ltd Honourable Bombay High Court held that a comparable company having a turnover of Rs 260 crores (HCL commet Ltd] cannot be compared with the assessee having only ₹ 11 crores turnover. Thus, the honourable Bombay High Court upheld the exclusion of the comparable which is having turnover 23 times of the assessee. Here we are pitched to compare a comparable which is having turnover 26 times larger than the assessee. Therefore on this ground, we accept the argument of the assessee that such a large comparable cannot be used to determine ALP of an international transaction of the assessee. Therefore respectfully following the criteria laid down by the honourable Bombay High Court, we direct the learned transfer pricing officer to exclude **I gate global Ltd.**

24. Similarly, the assessee has also argued for exclusion of **Infosys BPO Ltd**, which is having the turnover more than 31.29 times, and **TCS E serve Ltd** having turnover of 62 times larger than the assessee does. Therefore, for the reasons given by us for exclusion of I gate global Ltd, we also direct the learned transfer-pricing officer to exclude Infosys BPO Ltd and TCS E Serve Limited from the comparability analysis.
25. Assessee does not have any dispute with respect to inclusion of Fortune InfoTech Ltd and Cosmic global Ltd.
26. The assessee has also raised an issue that **R system international** limited included by the assessee, has been excluded by the learned transfer pricing officer for the reason that this comparable has different financial year as its accounting period. In fact, this comparable follows the calendar year as the accounting period whereas; the assessee follows the financial year as its accounting year. There is no dispute that it is functionally comparable. However, the assessee to be a listed entity, which follows the SEBI guidelines for disclosure of its financial results on quarter-to-quarter basis, states the comparable company. Therefore, though R Systems International Ltd follows calendar year as its accounting year, its financial for the financial year can be recast by considering its quarterly financial results. Several coordinate benches have taken this view therefore, we also direct

the assessee to reconstruct the financial results of this comparable by producing credible information with respect to eliminating and includible quarter before the learned transfer-pricing officer.Ld TPO is directed to examine the same and if found in order, include this comparable in the comparability analysis.

27. No other grounds are pressed by assessee before us. Therefore, accordingly, appeal of the assessee is allowed partly to that extent.

28. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 18/11/2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 18/11/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	18.11.2020
Date on which the typed draft is placed before the dictating member	18.11.2020
Date on which the typed draft is placed before the other member	18.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	18.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	18.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	18.11.2020
Date on which the final order is uploaded on the website of ITAT	18.11.2020
date on which the file goes to the Bench Clerk	18.11.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	