

[2022] 143 taxmann.com 68 (Hyderabad - Trib.)(25-08-2022]

TRANSFER PRICING : A giant company in area of development of software could not be compared with assessee, a routine software services provider

TRANSFER PRICING : A company engaged in product development and product design services was to be excluded from final list of comparables to assessee-software development service provider

TRANSFER PRICING : Where assessee-company was a software development service provider and selected company was involved in development of software products and trading in software licenses, selected company was to be excluded from final list of comparables to assessee-company

TRANSFER PRICING : When parties entered into an agreement in respect of credit period to be allowed, interest relatable to such allowable credit period will be subsumed into price of goods or services, which are subject to ALP examination and it is only period subsequent thereto that has to be considered for calculation of deemed interest



[2022] 143 taxmann.com 68 (Hyderabad - Trib.)

IN THE ITAT HYDERABAD BENCH 'A'

Infor (India) (P.) Ltd.

v.

Assistant Commissioner of Income-tax*

**RAMA KANTA PANDA, ACCOUNTANT MEMBER
AND K. NARASIMHA CHARY, JUDICIAL MEMBER**

IT(TP) APPEAL NO. 228 (HYD) OF 2022

S.A. NO. 13 (HYD) OF 2022

[ASSESSMENT YEAR 2017-18]

AUGUST 25, 2022

I. Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparable, functional similarity - Software

consultancy/Development services) - Assessment year 2017-18 - Whether a giant company in area of development of software could not be compared with assessee, a routine software service provider - Held, yes [Paras 22 &23] [In favour of assessee]

II. Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables, functional similarity - Software consultancy/Development services) - Assessment year 2017-18 - Whether a company engaged in product development and product design services was to be excluded from final list of comparables to assessee-software development service provider - Held, yes [Para 22][In favour of assessee]

III. Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables, functional similarity - Software consultancy/Development services) - Assessment year 2017-18 - Whether where assessee-company was a software development service provider, a company involved in development of software products and trading in software licenses was to be excluded from final list of comparables to assessee-company - Held, yes [Para 22] [In favour of assessee]

IV. Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Adjustments - Interest) - Assessment year 2017-18 - Whether when parties entered into an agreement in respect of credit period to be allowed, interest relatable to such allowable credit period will be subsumed into price of goods or services, which are subject to ALP examination and it is only period subsequent thereto that has to be considered for calculation of deemed interest - Held, yes [Para 25] [Matter remanded]

CASE REVIEW I TO IV

Infor (India) (P.) Ltd. v. Dy. CIT [2019] 109 taxmann.com 435 (Hyd. – Trib.) (para 22) *followed*.

CASES REFERRED TO

Trilogy E-Business Software India (P.) Ltd. v. Dy. CIT [2013] 29 taxmann.com 310/140 ITD 540 (Bang. - Trib.) (para 16), *Autodesk (India) (P.) Ltd. v. Dy. CIT* [IT Appeal No. 1108 (Bang.) of 2010] (para 16), *Yodlee Infotech (P.) Ltd. v. ITO* [2013] 31 taxmann.com 230/57 SOT 457 (Bang. – Trib.) (para 16), *Dy. CIT v. B.P India Service (P.) Ltd.* [2011] 15 taxmann.com 125/133 ITD 255 (Mum.) (para 16), *Chryscapital Investment Advisors (India) (P.) Ltd. v. Dy. CIT* [2015] 56 taxmann.com 417/232 Taxman 20/376 ITR 183 (Delhi) (para 16), *Infor (India) (P.) Ltd. v. Dy. CIT* [2019] 109 taxmann.com 435 (Hyd. - Trib.) (para 19), *CIT v. Agnity India Technologies (P.) Ltd.* [2013] 36 taxmann.com 289/219 Taxman 26 (Delhi) (para 19), *Infor (India) (P.) Ltd. v. ACIT* [IT Appeal No. 1689 (Hyd.) of 2019, dated 19-10-2020] (para 20) and *Infor (India) (P.) Ltd. v. Dy. CIT* [IT Appeal No. 198 (Hyd.) of 2021] (para 21).

Sunil Moti Lala, AR *for the Appellant*. **Solge Jost Kottaram**, CIT-DR *for the Respondent*.

ORDER

K. Narasimha Chary, Judicial Member. - Aggrieved by the order dated 28-2-2022, passed by the Learned Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad ("Ld. AO") in the case of M/s. Infor (India) Private Limited, ("the assessee") for the AY. 2017-18, under section 143(3) r.w.s. 144C of the Income-tax Act, 1961 (for short "the Act"), consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), assessee filed this appeal along with the Stay Application.

2. Brief facts of the case are that the assessee is a company engaged in distribution of software products and related services in India. It also provides software development and related IT services to the group companies apart from rendering shared support services to them. Assessee has got three segments, namely, software distribution, software development (including IT services) and shared services. For the assessment year 2017-18, they have filed the return of income on 30-11-2017 declaring a total income of Rs. 40,80,53,420/- under normal provisions of the Act and Rs. 47,43,51,566/- under 115JB of the Act.

3. In view of the international transactions entered into by the assessee with Associate Enterprises (AEs), the determination of the Arms Length Price ("ALP") of the international transactions was referred to the Ld. Transfer Pricing Officer (Ld. TPO). Ld. TPO by order dated 29-1-2021 suggested certain adjustments in respect of the provision of software development services, allocation of management fee, provision of ITeS, interest on receivables, related IT services and purchase of assets and liabilities taken over and goodwill. Learned Assessing Officer, pursuant thereto passed draft assessment order on 31-3-2021 under section 143(3) of the Act making addition of Rs. 26,53,85,887/- on account of the international transactions and assessed the income of the assessee at Rs. 67,34,39,310/-.

4. Aggrieved, the assessee filed objections before the DRP. Ld. DRP by order dated 29-12-2021 issued certain directions pursuant to which the learned Assessing Officer revised the adjustment on account of international transactions to Rs. 15,15,20,300/-. Giving effect to the same, learned Assessing Officer passed the order dated 28-2-2022 under section 143(3) read with section 144C of the Act making addition of such an amount. Hence the assessee is in appeal before us challenging the final assessment orders pursuant to the directions made by the Ld. DRP.

5. Insofar as this appeal is concerned, grievance of the assessee is directed against the consideration of certain entities as comparables to the assessee in the segment of software development service and related services, levy of interest on receivables, adjustment on account of management fee and the non-grant of credit of tax deducted at source. Grounds No. 1 and 2 and 16 to 18 are general in nature, 3 to 7 are in respect of inclusion/exclusion of comparables, 8 to 10 relate to the interest on receivables, 11 is in respect of the management fee, and whereas 12 to 15 are in respect of the credit of tax deducted at source.

6. Firstly coming to the addition on account of software development and related IT services segment, the assessee has been providing to its AEs the custom development, application management services and installations, performance tuning and training. In their Transfer Pricing Study, the assessee adopted the Transactional Net Margin Method (TNMM) as the most

appropriate method with OP/OC as the Profit Level Indicator (PLI) to reach their margin at 16.83%. The assessee selected ten entities as its comparables and the PLI of the comparables was between 4.17 and 8.88%. While rejecting the entities selected by the assessee as comparables, the learned Assessing Officer conducted fresh study and selected twenty one entities as comparables and computed their PLI at 24.58%. On this score, the learned Assessing Officer suggested an upward adjustment of Rs. 5,87,21,257/-. Ld. DRP, after considering the submissions made on behalf of the assessee, retained the entities - Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd, Cybage Software Private Limited, E-Info Chips Pvt. Ltd, Infobeans Technologies Ltd, Nihilent Ltd., Wipro Ltd., Gwynniebee India Pvt. Limited, Exilant Technologies Pvt. Ltd., Aptus Software Labs Pvt. Ltd., Cygnet Infotech Private Limited, Pagetraffic Web-Tech Pvt. Ltd., Gislen Software Pvt. Ltd., and also rejected the entities Evoke Technologies Private Ltd. and Sasken Technologies Limited from the list of comparables. Assessee is challenging the inclusion and exclusion.

7. It is the submission on behalf of the assessee that none of the entities that are retained in the list of comparables is in fact comparable to the assessee on account of either scale of operations or nature of functions performed. Learned AR submitted that as a matter of fact, in assessee's own case for earlier years, seven of these entities, namely, Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd, Cybage Software Private Limited and E-Info Chips Pvt. Ltd, were found to be non-comparable. He submitted that if such entities which were found to be non-comparable with the assessee in the earlier years, are excluded from the list of comparables then the margins of the assessee and the comparables will be within the acceptable range and no adjustment would be necessary. He further submitted that in such case it would not be necessary for the assessee to insist the inclusion of Evoke Technologies Private Ltd. and Sasken Technologies Limited also.

8. Per contra, learned DR submitted that each assessment year has to be considered independently and the comparability of entities being a fact driven issue, the findings relating to the earlier years will not be *ipso facto* applicable to this year. He heavily relied upon the findings of the authorities below. Learned DR, however, did not dispute the fact that in the earlier assessment years, in assessee's own case, Co-ordinate Benches of this Tribunal dealt with the aspect of comparability of the seven entities mentioned by the learned AR.

9. We have gone through the record in the light of the submissions made on either side. Coming to Infosys Ltd., the assessee objected to this entity before the Ld. TPO on the grounds that this company is functionally different, big data analytics and brand profits are involved, apart from the product base of the company being huge. He also submitted that the segmental information and contemporaneous data are not available. Infosys Ltd., is having huge research and development facility and deriving abnormal profits and does not pass through the turnover range filter. It was further brought to the notice of the Ld. TPO that in assessee's own case for the earlier assessment years, this company was excluded from the list of comparables.

10. Ld.TPO found that this company is, according to the available information, in the business of software development and, therefore, functionally comparable. He further found that the assessee is also a part of multi-national group which has its own brand presence, assessee also incurs

significant expenses towards brand building exercise, assessee also has access to proprietary products and IPs developed by its own group and, therefore, cannot complain against Infosys Ltd., on the basis of brand profits. Ld.TPO further stated that the entire revenue of Infosys Ltd., has been derived from software development service. According to the Ld. TPO where the data relating to the current year is subsequently available at the time of determination of ALP such data shall be used for the determination of ALP. On the aspect of significant R&D activities of Infosys Ltd., *vis-a-vis* the assessee, observations of the Ld. TPO are that R&D expenditure is not a reason for higher profit margins and it is not a ground to exclude the entity from the list of comparables. Lastly, Ld. TPO contended that the sales turnover of a company in the IT industry has no impact on the margins earned. Ld. DRP considered the contentions of the assessee and rejected such contentions in the same lines as that of the Ld. TPO.

11. During the course of arguments it is brought to our notice that the turnover of Infosys Ltd., is Rs. 59,289 Crores whereas the turnover of the assessee is only Rs. 119.70 Crores. It is further submitted that for the assessment years 2014-15, 2015-16 and 2016-17 the Co-ordinate Benches of this Tribunal considered the issue in depth and found that Infosys Ltd., is not at all a good comparable to the assessee.

12. The second entity pleaded to be excluded from the list of comparables is Larsen & Toubro Infotech Limited. Before the Ld. TPO, apart from bringing it to the notice of the Ld. TPO that this company was excluded from the list of comparables in assessee's own case for the assessment years 2014-15, 2015-16 and 2016-17, assessee objected inclusion of this from the list of comparables on the grounds of - functionally not comparable - product company, diversified activities, lack of segmental information, brand profits, significant research and development activities, presence of intangibles, exclude in assessee's own case, non-contemporaneous data and peculiar economic circumstances.

13. Insofar as Tata Elxsi is concerned, before the Ld. TPO assessee raised objections for its inclusion in the list of comparables, basing on functionally dissimilar, significant research and development activities, significant inventory, presence of intangibles and non-contemporaneous data. Ld. TPO, however, did not agree with the contentions of assessee and while referring to the annual report of Tata Elxsi, observed that the said comparable is into the functions of SDS, total R&D expenditure for the year ended 2017 is around Rs. 17 crores which accounts for approximately 1.40% of the company's total revenue, which is insignificant, and also observed that Tata Elxsi has significant inventory, does not directly imply that the company has high profits and clear that the company does not have any inventory in the current assets and as per the expenses closing balance is NIL. Further, the assessee did not demonstrate the impact of intangibles on profit margins. Without prejudice to the same, it is noticed that because the company is independent company, any intangibles getting created in the process of business are getting reflected in the financials as against a controlled cost plus which refuses to recognise the intangible in its own hands and rather gives opportunity to its AE to create such intangibles without having contributed to the same so, the assessee has not stated as to how these two approaches make a difference to the operating margin and that would there be a possibility of any comparables left which are not controlled. Ld. TPO taking the CBDT Notification No. 83/2015 (F.No.142/25/2015-TPL) into consideration, rejected the assessee's argument on contemporaneous

data. Ld. DRP considered the contentions of the assessee and observed that - the assessee submitted that there is error in the margin computation of Tata Elxsi and has not specifically pointed out the error in the Ld. TPO's computation except stating that the Ld. TPO has not adopted the figures as per the annual report. Finally, Ld. DRP considered it appropriate to direct the TPO to verify and adopt the figures as per the annual report and uphold the selection of Tata Elxsi as a comparable.

14. As far as Persistent Systems Limited is concerned, before the Ld. TPO, assessee raised objections for its inclusion in the list of comparables basing on fails related party transactions filter as applied by the TPO, functionally not comparable, product company and diversified activities, lack of segmental data, significant research and development expenses, presence of intangibles, excluded in assessee's own case itself, non-contemporaneous data and peculiar economic circumstances. Ld. TPO, brushed aside the contentions of assessee and while referring to the annual report of Persistent Systems Limited, observed that the ratio of related party income to operating income in case of Persistent Systems Limited is 24.42% and ratio of related party expense to operating expense is 12.37% and concluded that the said company perfectly qualifies related party filters. Ld. TPO also observed that the annual report mentions products at several places, but at most of the places, it refers to product development services being offered for its clients. It has few products of its own. However, the same are very limited and license revenue contribute less than 0.73% of total revenue. This means that the percentage contribution of product revenue to total revenue is 0.73%, which is insignificant and the entire revenue from operations is derived from software development services. It was also observed by the Ld. TPO that because the company is independent company, any intangibles getting created in the process of business are getting reflected in the financials as against the controlled cost plus which refuses to recognize the intangible in its own hands and rather gives opportunity to its AE to create such intangibles without having contributed to the same and the objection of assessee for peculiar economic circumstances, Ld. TPO observed that as seen from the OP/OC margins of the company for the last three years, margin of the company in FY.2015-16 is 30.35% whereas the profit margin for the FY.2016-17 is only 24.43% and decided that no impact of peculiar circumstances. Finally, taking the CBDT Notification No. 83/2015 (F.No.142/25/2015-TPL) also into consideration, Ld. TPO rejected the assessee's argument on contemporaneous data. Ld. DRP considered the contentions of the assessee and observed that as per the annual report of Persistent Systems Limited and the clarification submitted by the company in its reply to the notice under section 133(6) of the Act, it is very clear that the company is predominantly engaged in software product development services and hence it is functionally comparable and uphold the selection of Persistent Systems Limited as a comparable.

15. Comparable company Mindtree Ltd., is concerned, before the Ld. TPO, assessee raised objections for its inclusion in the list of comparables basing on functional dissimilarity, diversified activities, product company, lack of segmental information, significant onsite operations, presence of intangibles, significant research and development activities. Ld. TPO after going through the annual report, did not think it proper to accept the contentions of assessee and observed that it is self-evident that its entire revenue from operations is derived from software development services moreover, Mindtree Ltd., may be offering add on associated services which is integral to the core

services of the software development, that does not vitiate the core operations which still remains software development itself and entire revenue from operations is derived from software development services, no need for segmental arise. Ld. TPO also referred the case of Capgemini of ITAT, Mumbai, wherein it was held that - the Sr. Counsel has also pointed out that the Infosys and Wipro have substantial revenue, 51.7% in case of Infosys, and 45.3% in case of Wipro from on-site work done overseas at the site of clients whereas the onsite work in the case of the assessee is just 5%. It has been pointed out that the employees if sent overseas have certain dead hours, which cannot be properly utilized as can be done in the home country. But, this argument as rightly pointed out by the Ld. CIT-DR does not support the case of higher margin in case of onsite work because dead hours would mean less output with the same employee cost, which would in fact reduce the margin. No material has also been placed before us to show that the margin in case of on-site work is higher. Basing on the same, Ld. TPO rejected Mindtree Ltd., as comparable. Ld. TPO also observed that the assessee has not stated as to how the approach of the assessee to the operating margin and that would there be a possibility of any comparables left, which are not controlled. It was also observed by the Ld. TPO that the assessee did not demonstrate as to how the R&D expenditure being incurred by this company is the reason for the higher profit margins, earned. Although the company may be incurring expenditure on R&D. It does not change the fact that the core business is SWD. Ld. DRP after going through the annual report, judicial precedents and considering the contentions of the assessee, observed that the company is engaged in international information technology consulting and implementation delivering business solutions through global software development and further observed that the company's earnings in foreign currency from software development services was Rs. 42.73 millions. As per the Note on Revenue Recognition, it has stated the principles adopted in recognizing revenue from software development services. Thus, it is evident that Mindtree Ltd., is engaged in software development services and functionally comparable to the assessee.

16. As far as Cybage Software Private Limited is concerned, before the Ld. TPO, assessee raised objections for its inclusion in the list of comparables basing on functionally not comparable - diversified activities, product company, marketing services, presence of intangibles, lack of segmental data, abnormal margins, onsite revenue and non-contemporaneous data. Ld. TPO brushed aside the contentions of assessee and basing on the annual report, observed that the revenue of Cybage Software Private Limited from operations is derived from software development services and also observed that the assessee did not demonstrate the impact of intangibles on profit margins. Further it was observed by the Ld. TPO that over all averaging of profit margins has also been done by taking median of all the weighted average margins. Thus, fluctuation in profit margins cannot be a valid reason for rejecting a comparable when measures to ensure averaging out of fluctuations are already in-built in the overall process. Further, Ld. TPO relying on the decision of ITAT, Mumbai in the case of Capgemini and considering the CBDT Notification No. 83/2015 (F.No.142/25/2015-TPL) rejected the contentions of assessee. Ld. DRP considering the contentions of the assessee and judicial precedents in the cases of *Trilogy E-Business Software India (P.) Ltd. v. Dy. CIT* [2013] 29 taxmann.com 310/140 ITD 540 (Bang. - Trib.), *Autodesk (India) (P.) Ltd. v. Dy. CIT* [IT Appeal No. 1108 (Bang.) of 2010], *Yodlee Infotech (P.) Ltd. v. ITO* [2013] 31 taxmann.com 230/57 SOT 457 (Bang. – Trib.). ITAT, Mumbai in the case of *Dy. CIT v. B.P India Service (P.) Ltd.* [2011] 15 taxmann.com 125/133 ITD 255 (Mum.)

did not reject companies having margin of 75.6% (Datamatics Technologies Limited) and 68.7% (Hinduja TMT Ltd.) and in the case of Exxon Mobil, upheld selection of Alpha Geo India Ltd., having margin of 47.79% and Vimta Lab having margin of 57.68%. The Hon'ble Delhi High Court in its verdict in the case of *Chryscapital Investment Advisors (India) (P.) Ltd. v. Dy. CIT* [2015] 56 taxmann.com 417/232 Taxman 20/376 ITR 183 (the appellant), emphasised functional analysis as the key comparability criterion, and *inter alia* held that - mere earning of high profits/losses could not be a reason to exclude a company as a comparable. In view of the above, Ld. DRP did not find merit in the plea of exclusion of certain companies on the ground of its high profit margin and uphold the selection of Cybage Software Private Limited as a comparable.

17. Insofar as E-Infochips Pvt. Ltd., is concerned, before the Ld. TPO, assessee raised objections for its inclusion in the list of comparables basing on functionally not comparable - diversified activities, lack of segmental details, presence of intangibles and non-contemporaneous data. Ld. TPO after going through the annual report, did not think it proper to accept the contentions of assessee and observed that E-Infochips Pvt. Ltd., is engaged in software development services and entire revenue from operations is derived from software development services. Further, Ld. TPO following on the CBDT Notification No. 83/2015 (F.No.142/25/2015-TPL) rejected the contentions of assessee. Ld. DRP considering the contentions of the assessee and judicial precedents held that E-Infochips Pvt. Ltd., is primarily engaged in software development services and earns the revenue from this activity there is no need of providing segmental information as per AS 17. Further, there is clear break up of revenue streams from software development services, technologies know-how and products. As stated earlier, E-Infochips Pvt. Ltd., earns 96.14% of revenue from software development services only. Hence, Ld. DRP rejected this plea and decided that E-Infochips Pvt. Ltd., is functionally comparable and uphold the selection of E-Infochips Pvt. Ltd., as a comparable.

18. Having considered the findings of the Ld. TPO and Ld. DRP, now we look at the findings of the Tribunal in assessee's own case for the assessment years 2014-15, 2015-16 and 2016-17. In the assessment year 2014-15, the Tribunal considered the comparability of Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd and E-Info Chips Pvt. Ltd and found that such entities are not at all good comparables to the assessee and directed the deletion of the same from the final list of comparables. So also in the assessment year 2015-16, Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd and Cybage Software Private Limited were considered and directed to be deleted. In the same way, for the assessment year 2016-17, the comparability of Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited and Cybage Software Private Limited has come up for consideration and the Tribunal directed the exclusion of the same on the ground of non-comparability.

19. In the order dated 6-8-2019 in *Infor (India) (P.) Ltd. v. Dy. CIT* [2019] 109 taxmann.com 435 (Hyd. - Trib.) *vide* paragraph No. 76, the Co-ordinate Bench excluded Infosys Limited, Larsen & Toubro Infotech Limited and Mind Tree Ltd., in the light of the findings of the Hon'ble Delhi High Court in the case of *CIT v. Agnity India Technologies (P.) Ltd.* [2013] 36 taxmann.com 289/219 Taxman 26. *Vide* paragraph No. 77 of the same order, Tata Elxsi Limited (seg) and Persistent Systems were deleted while following the view taken in assessee's own case for the assessment

year 2007-08. E-Infochips Ltd., is excluded on the ground of super normal profits because, on this ground itself, Infosys Limited, Larsen & Toubro Infotech Limited and Mindtree Ltd., were excluded.

20. In the assessment year 2015-16, by order dated 19/10/2020 in *Infor (India) (P.) Ltd. v. ACIT* ITA No. 1689/Hyd/2019, the Co-ordinate Bench excluded Infosys Limited, Larsen & Toubro Infotech Limited, Mindtree Ltd, Tata Elxsi Limited (seg), Persistent Systems Limited, and Cybage Software Private Limited on the ground that such entities were considered to be un-fit for comparison with the assessee in assessee's own case for the assessment years 2013-14 and 2014-15 and there was no change in the factual matrix of the case.

21. In *Infor (India) (P.) Ltd. v. Dy. CIT* ITA No. 198/Hyd/2021 the Co-ordinate Bench of the Tribunal took the view that Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited and Cybage Software Private Limited are not at all comparable with the assessee while referring to the orders of the Co-ordinate Bench for the assessment years 2014-15 and 2016-17.

22. A perusal of the orders in *Infor (India) (P.) Ltd. case (supra)*, *Infor (India) (P.) Ltd. case (supra)* and *Infor (India) (P.) Ltd.'s case (supra)* therefore, makes it clear that all these seven comparables were found to be not comparable with the assessee consistently for the assessment years 2014-15, 2015-16 and 2016-17 on the ground of either functional dissimilarity or scales of turnover and profits or non-availability of segmental information, where it is necessary. All these entities are excluded from the list of comparables from the assessment years 2013-14 to 2016-17 consistently. Learned DR does not plead any change in the factual position for this assessment year from any of the earlier assessment years. Considering the similarity of the facts and circumstances, and respectfully following the consistent view taken by the Co-ordinate Benches in the assessee's own case, we direct the exclusion of Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd, Cybage Software Private Limited and E-Info Chips Pvt. Ltd from the list of final comparables.

23. In view of the submission of the learned AR that with the exclusion of these seven entities from the list of comparables, the assessee would be within the range with the comparable companies and any discussion in respect of other entities to be included/excluded would only be academic, we do not propose to deal with them. Suffice to direct the learned Assessing Officer/Ld. TPO to exclude the above entities, namely, Infosys Limited, Larsen & Toubro Infotech Limited, Tata Elxsi Limited (seg), Persistent Systems Limited, Mindtree Ltd, Cybage Software Private Limited and E-Info Chips Pvt. Ltd., from the list of comparables. Grounds No. 3 to 7 are allowed accordingly.

24. Now coming to the interest on receivables, the submission of the learned AR is that there is a clause in the agreement about the credit period and, therefore, interest should be calculated only for the period subsequent to the period so prescribed. He submitted that in the agreement, 90 days period is prescribed and, therefore, the Revenue authorities cannot substitute their notions of collectability of interest in this period. He further submitted that this issue was considered by the Co-ordinate Bench of the Tribunal in assessee's case for the assessment years 2013-14 & 2014-15 and it was remanded to the file of learned Assessing Officer/Ld. TPO with a direction to calculate

the interest only on the period exceeding the credit period stipulated in the agreement and if there is no agreement as to such period of credit, then to consider the credit period of 90 days or the industry average credit period. There is no denial of this fact from the side of Revenue.

25. On this aspect, we are of the considered opinion that when the parties entered into an agreement in respect of the credit period to be allowed, the interest relating to such allowable credit period will be subsumed into the price of the goods or services, which are subject to the ALP examination. It is only the period subsequent thereto that has to be considered for calculation of deemed interest. While respectfully following the view taken by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2014-15 *vide* paragraph No. 87, we set aside the assessment order on this aspect and restore the issue to the file of learned Assessing Officer/Ld. TPO, for considering the credit period allowed by way of agreement and in the absence of any such agreed credit period, to consider 90 days or the industry average credit period, as the case may be, for calculating the interest. Grounds No. 8 to 10 are treated as allowed for statistical purposes.

26. On the aspect of management fee, learned AR submitted that in the earlier assessment year, this issue was remanded to the file of learned Assessing Officer/Ld. TPO for verification of facts because the details were not available before the authorities. He further submitted that for this assessment year, the details were submitted and available before the Ld. DRP but the Ld. DRP missed this aspect and did not consider the material available before them. He further submitted that such a material is produced before the Tribunal also and is available *vide* page Nos. 1973 to 2120 *vide* Volume No. 5 of the Paper Book. He, therefore submitted that the matter may be remanded to the file of learned Assessing Officer/Ld. TPO for considering the material and to take a view in the light of the directions given in the earlier assessment years.

27. Considering the facts and circumstances, we are of the considered opinion that it would be in the fitness of things to restore this issue to the file of the learned Assessing Officer/Ld. TPO to consider the material filed by the assessee. Ground No. 11 is accordingly treated as allowed for statistical purposes.

28. Coming to the issue of credit of Tax Deducted at Source and credit of advance tax, the grievance of the assessee is that the learned Assessing Officer failed to consider the grant of credit of Tax Deducted at Source to the tune of Rs. 2,59,029/- and credit of advance tax of Rs. 6.7 Lakhs attributable to Infor (Bangalore) Private Limited and Rs. 1,99,950/- towards credit of Tax Deducted at Source and Rs. 6.7 Lakhs towards advance tax, attributable to Approva Systems Private Limited which are the transferor companies and amalgamated with the assessee with effect from 1-4-2015. It is a matter of verification of record and consequential grant of credit of credit of Tax Deducted at Source and credit of advance tax. Learned Assessing Officer will verify the material and accordingly take a view. Interest under section 234B of the Act is consequential in nature and dependent upon the above.

29. Since we disposed of the appeal on merits, the Stay Application becomes infructuous and the same is accordingly dismissed.

30. In the result, appeal of the assessee is treated as allowed for statistical purposes.

*Partly in favour of assessee.