

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

<b>IT(TP)A Nos. &amp; Assessment Years</b>	<b>Appellant</b>	<b>Respondent</b>
303/Bang/2015 2010-11	M/s. Autodesk India Pvt. Ltd., Level – 111, A4, ‘A’ Wing, 2 <sup>nd</sup> Floor, Diyashree Chambers, Langford Road, Bengaluru – 560 025. <b>PAN : AABCA 6924 B</b>	Dy. Commissioner of Income Tax, Circle 1(1)(1), 5 <sup>th</sup> Floor, R. P. Bhavan, Nrupathunga Road, Bengaluru – 560 001.
422/Bang/2015 2010-11	Dy. Commissioner of Income Tax, Circle 1(1)(1), Bengaluru.	M/s Autodesk India Pvt. Ltd., Bengaluru. <b>PAN : AABCA 6924 B</b>

Assessee by	:	Shri. T. Surya Narayana, Advocate
Revenue by	:	Shri. C. H. Sundar Rao, CIT-DR-I

Date of hearing	:	30.05.2018
Date of Pronouncement	:	08.06.2018

**ORDER**

***Per Sunil Kumar Yadav, Judicial Member***

These cross appeals are preferred by the assessee as well as the revenue against the order of the AO passed consequent to the directions of DRP. Since the issues involved in these appeals are interconnected, we heard these appeals together and are being disposed off through this consolidated order. During the course of hearing, assessee has submitted the revised grounds of appeal. Accordingly, revised grounds of appeal replaced the original grounds. For the sake of reference, we extract the grounds raised in these appeals as under:

**2. IT(TP)A No. 303/Bang/2015**

*“The grounds stated here-under are independent of and without prejudice to one another.  
The Appellant submits as under:*

**1 Assessment and reference to Transfer Pricing Officer are bad in law**

- a) *The final order issued by the Deputy Commissioner of Income-tax — Circle 1(1)(1) ['DCIT' or 'AO'], is bad on facts and in law, and is in violation of the principles of natural justice.  
Without prejudice to the above, the order issued by the AO is bad in law insofar as the fact that the AO did not issue to Autodesk India Private Limited ('the Appellant or 'the Company'), a show cause notice, as per proviso to section 92C(3) of the Income-tax Act, 1961 ['the Act'].*
- b) *The AO has erred in law in making a reference to the Deputy Commissioner of Income-Tax, (Transfer Pricing) - IV ['TPO'], inter alia, since he has not recorded an opinion that any of the conditions in section 92C(3) of the Act, were satisfied in the instant case.*
- c) *The directions issued by the Dispute Resolution Panel ['DRP] and the order passed by the AO/ TPO is without jurisdiction, inter alia, in so far as it purports to give effect to an invalid order of the TPO.*
- d) *On the facts and in the circumstances of the case and in law, the learned TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the TPO in not demonstrating that the motive of the Appellant was to shift profits outside of India by manipulating the prices charged in its international transactions which is a pre — requisite condition to make any adjustment under the provision of Chapter X of the Act.*
- e) *On the facts and circumstances of the case and in law, the Ld. AO/ TPO erred in not providing the Appellant an opportunity of being heard which is against the principles of natural justice.*

**2 Determination of arm's length price**

- a) *The TPO erred in rejecting the value of international transactions as recorded in the books of accounts as the arm's length price. The Ld. DRP erred in upholding the actions of the AO/ TPO.*
- b) *The AO/ TPO erred on facts and in law in conducting a fresh benchmarking analysis using non contemporaneous data and substituting the Appellant's analysis with fresh benchmarking analysis on his own conjectures and surmises and in doing so determined a new arm's length price. Thus the Appellant prays that the fresh benchmarking analysis conducted by the learned AO/ TPO is liable to be quashed. The Hon'ble DRP erred in upholding the actions of the AO/ TPO.*
- c) *The AO/ TPO erred in rejecting the comparable companies arrived at in the Transfer Pricing Study for the technical support services segment such as Akshay Software Technologies Ltd and Evoke Technologies Pvt. Ltd. without considering the functional and risk analysis of the Appellant. The Hon'ble DRP erred in upholding the same.*

**3 Comparability analysis adopted by the TPO for determination of arm's length price**

- a) *The AO/TPO grossly erred in benchmarking the transaction of provision of technical support services of the Appellant with companies operating as full-fledged entrepreneurs such as Larsen & Toubro Infotech Ltd. and Tata Elxsi Ltd. without considering the differences in the functions performed, assets employed and risks undertaken by the Appellant vis-a-vis the said companies.*
- b) *The AO/TPO grossly erred in benchmarking the transaction of provision of marketing support services of the Appellant with Asian Business Exhibition & Conferences Ltd., a company operating as full-fledged entrepreneur, without considering the differences in the functions performed, assets employed and risks undertaken by the Appellant vis-à-vis the said company.*
- c) *The TPO erred on facts by not analysing the functional and risk profile of Appellant vis-a-vis comparables selected in the Transfer Pricing Order.*
- d) *The AO/TPO erred in law in applying arbitrary filters to arrive at a fresh set of companies as comparables to the Appellant without establishing functional comparability.*
- e) *The AO/TPO also erred on facts in arbitrarily accepting companies without considering the turnover and size of the Appellant and comparables.*
- f) *The AO/TPO grossly erred in law in deviating from the uncontrolled party transaction definition as per the Income tax Rules and arbitrarily applying a 25% related party criteria in accepting companies such as Larsen & Toubro Infotech Ltd.*
- g) *The AO/TPO also erred on facts and in law in arbitrarily rejecting companies with different year ending (i.e. other than 31 March 2010) and inconsistently applying such filter.*
- h) *The AO/TPO also erred on facts in arbitrarily rejecting companies based on their financial results without considering the comparability.*
- i) *The AO/TPO also erred on facts and in law in excluding the foreign exchange gain or loss while calculating the net margins of the comparable companies.*

#### **4 Erroneous data used by the TPO**

- a) *The AO/TPO has erred in law and the Hon'ble DRP further confirmed in using data, which was not contemporaneous and which was not available in the public domain at the time of conducting the transfer pricing study by the Appellant.*
- b) *The AO/ TPO erred in law and the Hon'ble DRP further erred in confirming non-application of multiple-year data while computing the margin of alleged comparable companies as such data had an influence in determining the transfer pricing policy of the Appellant.002E*

#### **5 Non-allowance of appropriate adjustments to the comparable companies, by the TPO**

*The AO/TPO erred in law and on facts in not allowing appropriate adjustments under Rule 1013 to account for, inter alia, differences in (a) accounting practices, (b) marketing expenditure, (c) research and development expenditure, (d) risk*

*profile between the Appellant and the comparable companies and (e) working capital adjustment.*

**6 Variation of 5% from the arithmetic mean**

*The AO/TPO erred in law in not granting the benefits of proviso to section 92C(2) of the Act available to the Appellant.*

**7 Directions issued by the DRP**

a) *The DRP has erred in law and facts in not taking cognizance of the objections filed by the Appellant in relation to the draft assessment order issued by the AOTIP order.*

b) *The DRP erred in facts and law in confirming the draft order of the AOTTPO.*

**8 Initiation of penalty proceedings**

*The AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

**9 Relief**

a) *The Appellant prays that directions be given to grant all such relief arising from the above grounds and also all relief consequential thereto.*

b) *The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, the above grounds of appeal, at any time before or during the hearing of the appeal*

c) *The Appellant further prays that the adjustment in relation to Transfer Pricing matters made by the Learned AO/TPO and upheld by the Honourable DRP be deleted.”*

**3. IT(TP)A No. 422/Bang/2015**

1. *The order of the Dispute Resolution Panel is opposed to law and the facts and circumstances of the case.*

2. *The DRP erred in holding that foreign exchange loss / gain is operating in nature without ascertaining the nexus of the forex gain / loss with the business activity of the taxpayer and without appreciating that such loss / gain though attributable to the operating activity is not derived from the operating activity and.*

3. *The DRP erred in concluding that forex gain / loss are to be treated as operating in nature without appreciating that though they may be incidental to the operating activity, they cannot be deemed as operating in nature since, they are not critical to operational activities of the business conducted by the taxpayer.*

4. *The DRP erred in directing the AO to exclude M/s. KALS Information Systems Ltd., M/s. ICRA Techno Analytics Ltd., M/s. Persistent System Ltd from the list of comparables as being functionally different without appreciating the fact that these companies qualify all the qualitative and quantitative filters applied by the TPO.*

5. *The DRP erred in holding that M/s. Infosys Ltd cannot be taken as comparable, being functionally different, big brand by relying on the decision of Bangalore ITAT*

*in the case of Logica Pvt Ltd and Delhi ITAT in the case of Agnity India Pvt Ltd (Supra) and few other cases without appreciating the fact that the company qualify all the qualitative and quantitative filters applied by the TPO.*

*6. The DRP erred in holding that M/s. Sasken Communication Technologies Lid cannot be taken as comparable for the reason that no segmental information available and also functionally uncomparable without appreciating the fact that the company qualify all the qualitative and quantitative filters applied by the TPO.*

*7. The DRP erred in holding that Mjs Persistent Systems & Solutions Ltd cannot be taken as comparable for the reason that it does not have segmental results pertaining to Software Development Service without appreciating that the company qualify all the qualitative and quantitative filters applied by the TPO.*

*8. The DRP erred in directing the TPO to apply Onsite filter on Software development segment and to exclude M/s.R.S.Software (India) Ld as comparable without appreciating that the directions to the AO amounts to setting aside the issue which is outside the purview of the DRP under the provis on of Section 144C as the DRP is not empowered to set aside the issue in terms of Section 144C(8) of the Act.*

*9. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the DRP be reversed and that of the Assessing Officer be restored.*

*10. The appellate craves leave o add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.*

4. Though various grounds are raised in these appeals, but they all relate to determination of the arm's length price in software development service segment and marketing service agreement. We therefore, adjudicate the issue of arm's length price segment wise.

**5. Software development service segment:**

The facts in brief borne out from the record are that the assessee is engaged in the profession of providing technical support and marketing services to its AEs as a capital service provider. The assessee is compensated on total cost plus market basis for rendering these services. Assessee made a transfer pricing study for determination of the ALP for software development service segment

which was considered by the TPO and he finally has taken the following 11 comparables for determination of the arm's length ALP:

- i. ICRA Techno Analytics Ltd. (seg)
- ii. Infosys Ltd.
- iii. Kals Information Systems Ltd.
- iv. Larsen & Toubro Infotech Ltd.
- v. Mindtree Ltd., (Seg)
- vi. Persistent Systems & Solutions Ltd.
- vii. Persistent Systems Ltd.
- viii. R S. Software (India) Ltd.
- ix. Sasken Communication Technologies
- x. Tata Elxsi (Seg)
- xi. Thinksoft Global Services Ltd.

6. The assessee filed an objection against these comparables before the DRP. The DRP has excluded 7 comparables and retained 4 comparables out of the 11 comparables selected by the TPO. The comparables retained by the DRP are as under:

- i. Mindtree Ltd.
- ii. Thinksoft Global Services Ltd.
- iii. Tata Elxsi
- iv. Larsen& Toubro Infotech Ltd.

7. The Revenue as well as the assessee are against the exclusion of R S Software (India) Ltd., made by the DRP. Since both the parties have agreed for the inclusion of the R S Software (India) Ltd., we direct the TPO to include R S Software (India) Ltd., in the list of comparables for determination of the arm's length price.

8. The assessee is against the inclusion of Larsen & Toubro Infotech Ltd., and the Tata Elxsi Ltd. With respect to Larsen & Toubro Infotech Ltd., the learned Counsel for the assessee has contended that this company earns the Revenue from both services and product and no breakup is available in its Annual Report. The company has high ownership of intangibles and has significant brand value. The exclusion of this company was examined by the Tribunal in the case of DCIT Vs. Novell Software Development India Pvt. Ltd., in IT(TP)A No. 281/Bang/2015, CO No.101/Bang/2015 for assessment year 2010-11 and DCIT Vs. Electronics for Imaging India P. Ltd., [(2016) 70 taxmann.com 299 (Bang.Trib)] for assessment year 2010-11. Copy of these orders are placed on record. The learned Counsel for the assessee further contended that in the case of Novell Software Development India Pvt. Ltd., the Tribunal has relied upon the order of the Tribunal in the case of Electronics for Imaging India P. Ltd., (supra) wherein the Tribunal has examined the profile of Larsen & Toubro Infotech Ltd., and directed the AO/TPO to verify the details of revenue earned by this company and if the revenue earned by this company consists of software development services as well as the product, then in the absence of segmental data this company cannot be considered as functionally comparable to the software development service segment of the assessee.

9. The learned DR on the other hand has contended that in the case of Electronics for Imaging India P. Ltd., (supra), the Tribunal has restored the matter to the TPO/AO, therefore, he has no objection if the matter is resorted to the TPO/AO for reconsideration. He further contended that the Tribunal held that in normal circumstances, the tolerance range for RPT should not be more than 15%. But in that case, the availability of comparable is not an issue and therefore the Tribunal did not agree with the view taken by the coordinate benches of the Tribunal where the threshold limit of tolerance range was considered to be 15% of RPT. In the instance case also there is no shortage of comparables. Therefore, this company cannot be excluded on the ground of RPT.

10. Having carefully examined the order of lower authorities in the light of submissions of the rival parties, we find that this comparable cannot be excluded on the ground of RPT as it was having 18.66% RPT. So far as the segmental information is concerned, the complete details are not available. Therefore, following the order of the Tribunal in the case of Electronics for Imaging India P. Ltd., (supra), we set aside the order of the DRP and restore the matter to the TPO/AO to examine the details of the revenue earned by this company and if the revenue earned by this company during the year consists of software development services as well as product and segmental information is available, the same may be included in the final list of comparables and in the absence of segmental information, this company may be excluded from the list of comparables.

11. With regard to Tata Elxsi Ltd., the learned Counsel for the assessee has contended that the segment selected by the TPO comprises of the diverse activities including product design service, innovation design, engineering service, visual computing labs, etc. It is also engaged in the provision of niche product and development services which are dissimilar to those provided by the assessee. The learned Counsel for the assessee further placed a reliance upon the order of the Tribunal in the case of DCIT Vs. Electronics for Imaging India P. Ltd., (supra) with the submissions that profile of this company was examined by the Tribunal and it was held to be excluded from the list of comparables.

12. The learned DR on the other hand has contended that this company is engaged in the software development services and if the segmental information is available, the same may be considered as a good comparable. He also has invited our attention to the annual reports with the submissions that the detailed activities of this company are not clear from the annual report. Moreover, this company is involved in the software development services. Therefore, it should be retained in the final list of comparables.

13. Having carefully examined the orders of the lower authorities in the light of rival submissions, we find that Tribunal has examined the profile of Tata Elxsi in the case of DCIT Vs. Electronics for Imaging India P. Ltd., (supra) and has categorically held that even within the software segment this company is engaged in diverse activities. Therefore, it cannot be included in the list of comparables. Accordingly, the Tribunal has excluded this company from the list of comparables. For the sake of reference, we extract the order of the Tribunal in the case of Electronics for Imaging India Pvt. Ltd., as under, in order to understand as to how this company was excluded from the list of comparables:

*“(6) Tata Elxsi Ltd.*

30. *The assessee has raised objections against this company on the ground that the company is functionally different from the assessee. Though the TPO has considered the software development and services segment of this company as comparable to that of assessee, however, the assessee contended that even within the software segment, this company is engaged in diverse activities. The assessee placed reliance on the information in the annual report under the Directors Report and submitted before the DRP that even under the software development services segment, this company is engaged in various diversified activities including product design service, innovation design, engineering service, visual computing labs, etc. The assessee also placed reliance on the decision of Mumbai Bench of the Tribunal in the case of Telcordia Technologies India (P) Ltd. Vs. Asstt. CIT [2010] 137 ITD 1/22 taxmann.com 96.*

31. *The DRP found that this company is not functionally comparable with assessee company as it is engaged in diversified activities even in the software development services. The DRP has followed the decision of the Mumbai Bench of the Tribunal in the case of Telcordia Technologies India (P.) Ltd., (supra).*

32. *We have heard the Id. DR as well as Id. AR and considered the relevant material on record. We find that this company even in the software development segment is engaged in diversified activities of product design services, innovation design, engineering services, visual computing labs, etc. We further note that in the case of Telcordia Technologies India (P.) Ltd., (supra), the Mumbai Bench of the Tribunal vide its order dated 11.5.2012 in para 9.7 has held as under:*

*7.7 From the facts and material on record and submissions made by the learned AR, it is seen that the Tata Elxsi is engaged in development of niche product and development services which is entirely*

*different from the assessee company. We agree with the contention of the learned AR that the nature of product developed and services provided by this company are different from the assessee as have been narrated in para 6.6 above. Even the segmental details for revenue sales have not been provided by the TPO so as to consider it as a comparable party for comparing the profit ratio from product and services. Thus, on these facts, we are unable to treat this company as fit for comparability analysis for determining the arm's length price for the assessee, hence, should be excluded from the list of comparable parties.*

33. *No contrary view has been brought to our notice regarding comparability of this company with that of a pure software development service provider. Accordingly, in view of the decision of the Mumbai Bench of the Tribunal in the case of Telcordia Technologies India (P.) Ltd., (supra), we do not find any reason to interfere with the finding of the DRP."*

14. Since the profile of Tata Elxsi Ltd., has already been considered by the Tribunal in the aforesaid case and it was held therein that even within the software segment this company is engaged in diversified activities of product design services, innovation design, engineering services, visual computing labs, etc., therefore it cannot be held to be a good comparable. Accordingly, we direct the TPO/AO to exclude this company from the list of comparables.

15. The assessee further sought the inclusion of 2 comparables i.e., Akshay Software Technologies Ltd and Evoke Technologies Pvt. Ltd. Though the learned Counsel for the assessee has contended that in the case of Novell Software Development India Pvt. Ltd., (supra), this company was considered to be the good comparable for software service development segment, but in the case of ACIT Vs. CGI Information System & Management Consultant Pvt. Ltd., in IT(TP)A No.346/Bang/2015, authored by one of the Members of the Bench (Mr. Inturi Rama Rao), it was held that this company cannot be included in the list of comparables. The relevant observation of the Tribunal in the case of CGI Information System & Management Consultant Pvt. Ltd., (supra) is extracted hereunder for the sake of reference:

*“24. We heard the rival submissions and perused the material on record. It is undisputed fact that company has incurred expenditure in foreign currency of Rs.9.57 crore out of total expenditure of Rs.11.33 crores. It indicates that it is engaged in the onsite development of software, whereas the assessee company is only an offshore service provider. When the entity i.e., Akshay Software Technology Ltd., was operating outside India having a different geographical market, cost of labour, etc., would earn the returns which are commensurate to those economic conditions. Thus, the assets and risk profile, pricing as well as prevailing marketing conditions were different in a company which is engaged in onsite development software from the companies engaged in the offshore development of software like the assessee company. Therefore, this company cannot be compared with that of the assessee company and we uphold the rejection of this company from the list of comparables. This view is also supported by the decision of the coordinate bench in the case of Trilogy E-Business Software V. DCIT[TS 748 ITAT 2012(Bang) TP].*

16. Since the profile of Akshay Software Technologies Ltd., has already been examined by the Tribunal and it was held that this company cannot be included in the list of comparables for software development services, we find no merit in the contentions of the assessee for its inclusion. Accordingly, we hold that this company cannot be included in the final list of comparables. So far as Evoke Technologies Pvt. Ltd., is concerned, the learned Counsel for the assessee has contended that at the relevant point of time, the relevant data were not available before the TPO. Now it is available, therefore this comparable may be examined by AO/TPO in the light of segmental information available. This argument was not objected to by the Revenue and we accordingly hold that this company may be re-examined by the TPO/AO and if segmental information are available, the same can be included in the final list of comparables otherwise the AO/TPO may act in accordance with law.

**17. Marketing Service Agreement:**

Under this segment, the TPO has taken 5 comparables for determination of the ALP which was retained by the DRP after rejecting the claim of exclusion of certain comparables raised by the assessee. The comparables retained by the DRP are as under:

- i. Asian Business Exhibition & Conferences Ltd.,
- ii. Cyber Media Research Ltd.,
- iii. HCCA Business Services Pvt. Ltd.,
- iv. ICC International Agencies Ltd.,
- v. Killick Agencies & Mktg. Ltd.,

18. Out of these 5 comparables, assessee sought exclusion of Asian Business Exhibition & Conferences Ltd., on the ground that this company is functionally not comparable and has high profits. It was also contended that it had abnormal financial circumstances, therefore it may be excluded from the list of comparables. It was further contended that profile of this company was examined by the Tribunal in the case of Electronics for Imaging India Pvt. Ltd.

19. In the light of rival submissions, we find that profile of the Asian Business Exhibition & Conferences Ltd., was examined by the Tribunal in the light of detailed evidences and has come to the conclusion that this company is mainly engaged in the organization of exhibition and events as well as conducting conferences on behalf of the variout clients. The Tribunal has categorically held, having relied upon the order of the Tribunal in the case of DCIT Vs. Quark Systems (P) Ltd., (2010) 132 TTJ (Chd) (SB) that this company cannot be considered to be a good comparable. Relevant observation of the order of the Tribunal is extracted hereunder for the sake of reference:

*50. The assessee has raised various objections in the CO. However, we find that the only effective ground raised by the assessee in the marketing support segment is regarding Asian Business Exhibition & Conference Ltd., a comparable selected by the TPO and retained by the DRP.*

51. The assessee objected against this company on the ground that this company is functionally different as it is engaged in organizing exhibitions and conferences. The DRP did not accept the contention of the assessee and held that this company received income in the nature of consultancy for organizing exhibitions and events. Therefore this company is functionally similar to the functions carried out by the assessee.

52. Before us, the Id. AR of the assessee has submitted that functional comparability of this company has been examined by the Mumbai Bench of the Tribunal in the case of RGA Services India Pvt. Ltd. vide order dated 20.11.2015 in ITA No.22/Mum/2015 and submitted that the Mumbai Tribunal has held that the operation of organizing exhibition and events is not comparable with support services provided by the assessee to its AE in respect of reinsurance and actuarial activities. Thus, the Id. AR has submitted that this company cannot be considered as functionally comparable with the assessee's activity of providing sales and marketing services to its AE.

53. We have considered the rival submissions and considered the relevant material on record. As it is clear that the assessee is providing sales and marketing services to its AE which includes identifying potential customers by conducting road shows, presentation and the like, the working also includes educating potential users of the benefit and features of the AEs range of products. However, products for which the assessee is providing sales and marketing services is only software/information technology products. Therefore, Asian Business Exhibition & Conference Ltd. which is mainly engaged in the organization of exhibitions and events as well as conducting conferences on behalf of the various clients for their various products and businesses. The functions of this company are entirely different from the assessee who is providing sales and marketing support services to its AE for software/IT products. The Mumbai Bench of the Tribunal in the case of RGA Services India Pvt. Ltd. (supra) while considering the functional comparability of this company has held at paras 11 and 12 as under:-

"11. We have considered the submission of the parties and perused the relevant material on record. On perusal of the order passed by the TPO it is noticed that the TPO while dealing with assessee's objection with regard to selection of Asian Business Exhibition and Conferences Limited as a comparable has admitted that the nature of function performed by this company is event management. It is further relevant to observe, on perusal of annual report of this company it is seen that as per directors report, the main operation is organizing exhibition and events. Further, schedule 12 of the profit and loss account as well as notes to the accounts reveals, revenue earned by the company is from sponsorship, delegates attending conferences, events and entry fees charged from visitors for visiting exhibition, sale of stall place etc.

12. Thus, on overall analysis of facts and materials placed on record it is very much clear that the business model of the assessee and Asian Business Exhibition and Conferences Limited are totally different. While assessee undoubtedly is providing support services to its overseas AE's, Asian Business Exhibition and Conferences Limited is primarily and fundamentally engaged in event management. Thus, under no circumstances it can be considered as a comparable to the assessee. Therefore, for the aforesaid reasons the DRP, in our view, was justified in excluding this company as a comparable. As far as the contention of learned DR that reasons on which this company was excluded equally applies to other comparables retained by the DRP, we may observe, such argument of learned DR is not at all relevant as the issue raised by the department in the present appeal is confined to exclusion of Asian Business Exhibition and Conferences Limited as a comparable. As far as objection of learned departmental representative that assessee itself has selected this company as a comparable, we may observe, that cannot be the sole criteria to reject assessee's objection with regard to selection of a comparable. At the time of preparing T.P. Study report assessee had selected some comparables by considering multiple year data and information available at the relevant time. However, subsequently on the basis of information available in public domain it is found on the basis of functionality or some other reason a company is not at all comparable, assessee cannot be precluded from objecting to selection of the company as a comparable. This legal proposition is fairly well settled by the decision in case of DCIT V/s. Quark Systems (P) Ltd. (2010)132TTJ(Chd)(SB)1 as well as decisions relied upon by the counsel for the assessee. In view of the aforesaid, we do not find any infirmity in the directions of DRP in excluding Asian Business Exhibition and Conferences Limited as a comparable. The ground raised is therefore dismissed."

54. In view of the above facts as well as decision of the Mumbai Bench of the Tribunal, this company cannot be considered as a good comparable with the assessee "

20. Since the profile of Asian Business Exhibition & Conferences Ltd., is examined by the Tribunal, we find no justification to re-examine it for taking a contrary view. We, therefore, hold that the Asian Business Exhibition & Conferences Ltd., cannot be held to be the good comparable. Accordingly, we direct the AO/TPO to exclude it from the list of comparables. Accordingly, the TPO/AO is directed to recompute the arm's length price of both the segments in terms indicated above.

21. In the result, appeal of the assessee is partly allowed for statistical purposes.

*Pronounced in the open court on this 08<sup>th</sup> June, 2018.*

Sd/-  
**(INTURI RAMA RAO)**  
**Accountant Member**

Sd/-  
**(SUNIL KUMAR YADAV)**  
**Judicial Member**

Bangalore.

Dated: 08<sup>th</sup> June, 2018.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. DR, ITAT, Bangalore.
5. Guard file

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore

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