आयकर अपीलीय अधिकरण, मुंबई "के" खंडपीठ

Income-tax Appellate Tribunal "K"Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य

Before S/Sh. Rajendra,Accountant Member & Amarjit Singh, Judicial Member

आयकर अपील सं./I.T.A./1670/Mum/2015, निर्धारण वर्ष /Assessment Year: 2010-11

M/s.Bristlecone India Limited, 2nd Floor, Techniplex I, Techniplex Complex, Off Ceer Savarkar Flyover, Goregaon West, Mumbai – 400 062. **PAN: AAACM5186E**	Vs.	A.C.I.T, Circle-2(1)(1), Aayakar Bhavan, M.K.Road, Mumbai- 400 020.

(अपीलार्थी **/Appellant**) (प्रत्यर्थी / **Respondent**)

Revenue by: Shri V.Jenardhanan

Assessee by: Shri H.P.Mahajani

सुनवाई की तारीख / **Date of Hearing: 10/11/2017**

घोषणा की तारीख / **Date of Pronouncement: 24/01/2018**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार/ PER RAJENDRA, AM-

Challenging the order of the assessing officer (AO), dated 20.01.2015, passed u/s.143(3) r.w.s 144C(13)of the Act,the assessee has filed the present appeal.Assessee-Company,engaged in rendering software services,filed its original return on 29.09.2010, declaring total income of Rs. 72.92 lakhs.Later on,a revised return was filed on 17.03.2011.The AO completed the assessment, determining its income at Rs.5.84 crores.

2.Effective ground of appeal is about transfer pricing adjustment of Rs.4.81 crores During the assessment proceedings, the AO found that the assessee has entered into International Transac - tions(IT.s)with its Associated Enterprises(AE).He made a reference to the Transfer Pricing Officer(TPO)to determine arm's length price(ALP) of the IT.s for the year under consideration. After receiving the order of the TPO the AO issued a draft order proposing upward adjustment as suggested by the TPO.Aggrieved by the draft order, the assessee filed objections before the Disputed Resolution Panel(DRP)-1,Mumbai.Vide its order dated 26.12.2014, the DRP rejected all the objections raised by the assessee.Accordingly,the AO made an adjustment of Rs.4,81,37, 790/-to the total income of the assessee.

3.During the Transfer Pricing(TP)proceedings,the AO found that the assessee was a global provider of customised scalable enterprise in e-business solutions,that it operated through development-centers located at Mumbai,Pune,Bangalore etc.,that it was the national implementa -tion partner for SAP in India rendering software services/software development customisation and trading in software/hardware,that it is a subsidiary of Bristlecone India Ltd.(BIL)of Cayman Islands,that the ultimate holding company was Mahindra and Mahindra Limited,that it had provided software services to its associated enterprises that it has charged an aggregate amount of Rs.40.51 crores,the cost of sales was shown at Rs.37.76 crores, that the operating profit was Rs.2.75 crores,the PLI was shown as OP/OC,that it had benchmarked the IT.s by using TNMM as most appropriate method,that it had selected 12 comparable companies for determining the ALP,that the average arithmetic mean of f the comparables was 8.64% as against the margin of 7.28% earned by the assessee.As the arithmetic mean was within the range +/(-)5%,so the assessee claimed that IT.s,entered into to by it,were at arm's length.

The TPO,after considering the TP study report,held that comparables having the year-end as March only should be taken as valid comparables,that comparable having an export revenue of more than 50% of the total revenue should be accepted,that comparables having related party transactions(RPT)less than 25% of total sales were to be considered,that as per Rule 10B (4) companies having financial data for the FY.2009-10 should be taken as valid comparable.On account of above filters applied by the TPO,six companies namely Helios and Matheson Information Technology Ltd.(HMITL), Silverline Technologies Limited (STL),Aarman Software Private Ltd(ASPL),Sagarsoft India Pvt.Ltd.(SIPL),R Systems International (RSI) and Compulink Systems Ltd.(CSL)were excluded from the final list.He observed that first two comparables and RSL had different year ending, hat data for ASPL and CSL for the FY.2009-10 were not available,that in the case of SIPL the RPT were less than 25%. He directed the assessee to show cause as to why following ten(10)companies should not be considered for benchmarking as follows :

1. *FCS Software Solutions Ltd.*(FSSL)
2. *Infosys Technologies Ltd.*(Infosys)
3. *KALS Information Systems Ltd.*(KALS)
4. *Larsen and Toubro Infotech Ltd.*(L &T)
5. *Persistent Systems Ltd.*(PSL)
6. *Sasken Communication Technologies Ltd.*(SCTL)
7. *Sonata Software Ltd.*(SSL)

8. *Thirdware Solutions Ltd.*(TSL)
9. *Wipro Ltd.*(Wipro)
10. *Bodhtree consulting Ltd.*(BCL)

4.After considering the submission of the assessee,he analysed the functions of the above mentioned comparable vis-à-vis the filters applied by him.He rejected Wipro and considered the balance nine comparable companies along with the remaining six comparables of the assessee to arrive at the arithmetic mean of 20.30%.Accordingly,he computed the ALP of the IT.s @ Rs.45. 33 crores for the year under consideration and suggested an upward adjustment of Rs.4.81 crores.

5.Aggrieved by the draft-order of the AO the assessee filed objections before the DRP,the assessee made detailed submissions about various comparables and relied upon certain case laws.After considering order of the TPO/AO,submissions of the assessee and the documents placed before it,the DRP held that the services rendered by the assessee could be broadly divided into five parts namely integrated-supply-chain,integrated-sourcing and procurement,informa tion-management,managed-services and technology and integration,that for any comparability analysis the comparable should largely similar to the assessee,that the TPO had applied different filters,that the march year end filter was perfectly in order,that assessee had objected to the above filter,that it had not elaborated the objections,that it had not given the names of comparable having March year end to the TPO or the DRP.

6.Before us,the Authorised Representative(AR)argued that the TPO had applied ad-hoc filters for rejecting the comparables selected by the assessee without any valid basis,that he cherry picked comparables and had not adopted a scientific search process,that he included certain companies, viz,L&T,PSL,SCTL,SSL and TSL as comparables though they failed on RPT filter,that PSSL, Infosys,KALS,L&T,PSL,SCTL and SSL were not functionally comparable. He further argued that the TPO was not justified in excluding the comparables only for the reason that their account -ing year did not end on 31/03/2010,that he should have done a plus/minus on the basis of the published information and arrived at 12 months financial informa -tion.In his support,he relied upon the case of RR Dononelley India Outsource Pvt Ltd.(ITA/678/Mds/2015).He contended that the TPO had identified additional comparables without providing the complete search analysis,that he had rerun the search in 2011,for finding out the data of FY.2009-10,that he did not use contemporaneous data,that the filters applied by the assessee were more scientific than the filters of the assessee,**.**

With regard to 'product development' by the assessee,the AR stated that the products referred to in the Annual report were not products developed by the assessee,that it was not selling the products nor did it own the IPR in respect of such products,that the role of the assessee vis-a-vis the products was to implement them once the client would decides to obtain a license for any given product,that it would give pre-sale advice to the clients on which product would suit his requirements,that thereafter it would be involved in post-buy discussion for planning and custo - misation and implementation of licensed software,that the companies developing software products could not be considered valid comparables.

The AR further stated that that the assessee inadvertently had not provided for the working capital adjustment during the course of assessment proceedings,that the DRP failed in not directing the TPO/AO to provide working capital adjustments,that working capital adjustment could not be denied to the assessee only on the ground that it had not made any claim in the TP study.The working capital adjustment for the comparable companies is required,as it impact the profitability of the companies.

The AR relied upon the cased of Barclays Technology Centre India P.Ltd.(ITA 2279/PN/2012-A.Y.2008-09);3DPLM Software Solutions Ltd.(ITA/1303/Bang/2012-AY.08-09);PTC Software India Pvt.Ltd.(ITA 336/PN/2014)(A.Y.09-10);Equant solutions Private Ltd.(ITA/1202/Del/ 2015 AY.10-11);Telecordia Technologies India Pvt. Limited(137 ITD 1);Sunlife India Services Centre (P.)Ltd.,(ITA/750/2015/Del;AY.10-11);Lionbridge Technologies Pvt.Ltd.(ITA/1303/Bang/2012, -AY.08-09),Parexcel International(India)P.Ltd.(ITA/1918/Hyd/2014,AY.10-11-dated,8/1/2016) ; TIBCO Software(India)Pvt.Ltd.(ITA/94/PN/2014,A.Y.09-10-dtd.10/4/15);Actis Global services Pvt.Ltd.(ITA/6175/Del/2015,AY.11-12dated29/7/2016);Pegasystems Worldwide India Pvt.Ltd. (ITA/1758/Hyd/2014;1936/Hyd/2014;AY.10-11dtd.16/10/2015);M/s.Lionbridge Technologies Pvt. Ltd.(ITA/668/Mum/2014-AY.09-10,dated 18/11/2015);and M/s. Broadcom India Research Pvt. Ltd. (ITA/348/Bang/2015 A.Y.2010-11,dated 13/07/2016).

6.1. The Departmental Representative(DR) argued that the assessee company itself was involved in Software product development in addition to software development services.He referred to pages 241-243,260-261,364-368 and 427-436 of the paper book in his support.It was further argued that if the 8 comparables were to be removed,based on the objections of the assessee, then four other comparables namely RS Software India Ltd.(RSIL)LGS Global Ltd (LGL) Akshay Software Technology Ltd.(ASTL)and Quintegra Solutions Ltd (QSL)selected by the assessee and accepted by the TPO would have to be removed utilising the same parameters.

He contended that the argument of the assessee-that QSL,RSIL and LGL were engaged only in software development services-was without any basis,that **QSL** was engaged in software product (Para.4 of the Annual Report of AY.2010-11),that it was engaged in R &D also(Pg.6 of the Annual report),that it incurred huge loss due to take over of some companies(Pg.5 of the Annual report),that it was an extra ordinary event,that it had huge intangible/copyright value of Rs.2, 71,75,655 and soft-ware value of Rs.17,55,39,829 as intangible assets(Schedule 5 of Pg.20 of the Annual report),that QSL had claimed Rs.4,16,79,943/- as write off during the year under appeal (Sch.18 of page 22 of the Annual report),that write off was an extra ordinary event.

With regard to **LGL**,he argued that the comparable company was engaged in Research and Deve -lopment(Pg.11 of the Annual report for the AY.2010-11),that it was engaged in development of software product (Pg.11, page 14 and page 16 of the Annual report) ,that it had huge intangible value of Rs.92,85,323/-and computer product value of Rs.9,09,57,100/- in India,that it had intangibles of Rs.17,21,62,190/- in USA(Schedule 5 of Pg.43 of the Annual report).

Referring to **RSIL**,the DR stated that it was engaged in Research & Development (R&D)and Innovation,that it owned Security & IP Protection,that it was in software products also,(Pg.9 and 12 of the Annual report).

About **ASTL**,he contended that it was engaged in software product(Pg.2 of the Annual report), that it was engaged in SAP-B1 a software product(Pg.3 of the Annual report),that it had huge fluctuating margin between the last 3 FY.s including the FY.2009-10.He relied upon the cases of M/s. Panasonic AVC Networks India Co Ltd.(ITA/4620/Del/2011-AY.2004-05 and M/s.All scripts India Private Ltd.(ITA/240l/Ahd/2013.AY.2008-09.)

The DR also referred to the sections on Business Review and Capabilities Overview at Paras 2.3.1 and 2.3.2 of the TP Study report and canvassed the view that the assessee was also in the business of product development and not only rendering software services.

He relied upon the cases of International SOS Services India P.Ltd.(ITA/1631/Del/ 2014, AY. 2009-10-dated 8/12/2015);All -scripts India Pvt. Ltd.(ITA 2401/Ahd./2013 A.Y. 08-09 dated 28/

6/2013)and Panasonic AVC Networks India Co.Ltd.(ITA 4620/Del/2011 A.Y. 04-05 dated 21/2/ 2014).

7.We have heard the rival submissions and perused the material before us.We find that the assessee had adopted TNMM for determining the ALP of the IT.s.,that it had selected 12 compa -rables,that the TPO rejected some of the comparables selected by it,that he selected 10 comparables,that the DRP rejected one of the comparable introduced by the TPO,that it endorsed the exclusion of the comparables made by the TPO, that following the directions of the DRP,the AO made an upward adjustment of Rs.4.81 crores.

7.1. Before proceeding further,we would like to refer to the matter of Vodafone India(368 ITR 1).In that matter the Hon'ble jurisdictional high court has discussed the background of introduce -tion of section 92 of the Act and the procedure to be followed in TP matters in following words:

> *"The arm's length price is meant to determine the real value of the transaction entered into between associated enterprises. It is a recomputation exercise to be carried out only when income arises in case of an international transaction between associated enterprises. …..Chapter X is invoked to ensure that the transaction is charged to tax only on working out the income after arriving at the arm's length price of the transaction. This is only to ensure that there is no manipulation of prices/consideration between associated enterprises. …the entire exercise of determining the arm's length price was only to arrive at the real income earned, i.e., the correct price of the transaction, shorn of the price arrived at between the parties on account of their relationship, viz., associated enterprises. …. section 92(2) of the Act deals with a situation where two or more associated enterprises enter into an arrangement whereby they are to receive any benefit, service or facility in which case the allocation, apportionment or contribution towards the cost or expenditure is to be determined in respect of each associated enterprise having regard to the arm's length price."*

In the case of Alstom Projects India Ltd. (394 ITR 141)the Hon'ble Bombay High Court has held as under:

> *"that the mandate in Chapter X of the Income-tax Act, 1961, whereunder transfer pricing adjustment done was only to redetermine the consideration received or given to arrive at the income arising from the international transactions with associated enterprises.*

From the above,it is clear that the chapter X of the Act stipulates that adjustments can be made to determine the fair market value of the good sold or purchased or services offered or availed.If the price paid/charged to/from the AE.s is equal to the price paid or charged to/from Non-AE entities,then the transactions have to be considered at arm's length.Keeping these broad parameters in mind,we will now proceed further.

7.2. We are of the opinion that two basic question to be decided by as us are as to i)whether the comparables selected by the TPO can be used for determining the ALP of the IT.s. and ii)as to whether the four comparables namely,QSL,RSIL,LGL and ASTL can be excluded from the list of valid comparables,if 8 of the comparables,selected by the TPO,are to be rejected,as they are also suffering from the same deficiencies as that of the four comparables.

We find that the assessee had agreed to treat **ASTL** an invalid comparable,considering the fact that it was engaged in engaged in the business of software products.Therefore,we hold that it is not a valid comparable for determining ALP of the IT.s entered in to by the assessee.

7.3. We would like to deliberate upon the remaining three comparables,selected by the assessee namely,QSL,RSIL and LGL.Before us,the AR had contended that the financials of the three comparables revealed that assertions made by the DR were factually incorrect.The DR had relied upon the annual reports of these comparables and referred to the section titled segment wise or product wise performance under management discussion and analysis.We find that phrase in question i.e.'segment wise or product wise performance' finds place in the annual report because of the circular issued by the SEBI of 21.02.2000.SEBI had constituted a committee to promote and raise the standard of corporate governance in respect of listed companies.After considering the recommendation of the said committee SEBI advised the corporate entities to incorporate a new clause(clause 49)in listing agreement.We are reproducing the relevant portion of the circular and it reads as under:

> *V. Management*
> *The company agrees that as part of the directors' report or as an addition there to, a Management Discussion and Analysis report should form part of the annual report to the shareholders This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:*
> *Industry structure and developments*
> *Opportunities and Threats*
> *Segment-wise or product-wise performance.*
> *Outlook*
> *Risks and concerns.*
> *Internal control systems and their adequacy*
> *Discussion on financial performance with respect to operational performance.*
> *Material developments in Human Resources / Industrial Relations front, including number of people employed.*
> *Disclosures must be made by the management to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the_interest of the company at large (for eg dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)*

From the above,it is clear that the reporting has to in a particular format for all the corporate entities.So,the terminology used in the Annual Report is not enough to prove or disprove the existence or absence of a fact-it is mere a format.So,in our opinion,what has to be seen is as to whether the comparable companies were actually engaged in R & D in a particular year.The whole exercise of determining the ALP of the IT.s is to find suitable comparables,if TNMM has to be applied,for that year.It may be possible that in earlier or subsequent years the assessee may carry out a particular activity or discontinue it.But,that should not and cannot be basis for deciding the issue for the particular year.Facts of each AY.s. have to be compared independently and for that matter financials of only that year have to be examined.

7.4. Companies(Disclosure of Particular in the Report of Board of Directors)Rules,1988 prescribe various norms to be included in the report.As per rule 2 of the above Rules,the Companies are required to furnish form B.The form reads as under:

Research and Development(R&D).

1. *Specific areas in which R&D carried out by the company .*
2. *Benefits derived as a result of the above R&D*
3. *Future plan of action*
4. *Expenditure on R&D :*
   (a)Capital
   (b) Recurring
   (c) Total
   (d) Total R&D expenditure as a percentage of total turnover

After going throuugh the above,we hold that form B is the right source to find out about incurring of expenditure under the head R & D.Reference of R & D activities in the Annual report,in our opinion,is not a decisive factor.Annual Report or the report of the Directors highlights the general things.Details of various activities carried out by the assessee and expenses incurred by it in that AY.are available in the schedules of the financials and as well as in the forms prescribed by the Rules.The DR has not referred to both these vital documents.We find that R & D expenses do not appear in the financials/disclosures of the three comparables.In the case of QSS it has been specifically mentioned in the financials that 'no expenditure was incurred on R&D in current year'(Anenex.2 to the Director's report).In the case of net Hawk networks India P Ltd.(supra)the Tribunal has held that QSS was engaged in the business of software development services.

Considering the above,we hold that for the year under consideration they i.e. all the three entities,had not carried out any R & D activity.Thus,the argument advanced by the DR fails that the three comparables should be excluded from the list of comparables as they were also incurring expenses on R & D.

7.5. We would also deal with the issue of intangible assets.Presence of intangible assets in the financial statements of QSL,RSIL and LGL only indicate they were owner of certain intangible assets.But,existence of such assets,ipso facto,does not prove that they were in the business of software products.As far as extra ordinary events,affecting profitability in the case of QSS,is concerned we would like to state that the assessee had raised objections about fluctuating profit of some of the comparables selected by the TPO-it had not objected to any extra ordinary events.As far write off is concerned,we would like to mention that similar write off was claimed in the earlier year also.We do not see any reason to hold that writing off of bad debts for the year under consideration was an extra ordinary event.Secondly,take over of companies did not take place during the year under appeal.

8.Now,we would like to refer to the pages relied upon by the DR to support the view that QSS,LGL and RSIL should be excluded from the final list of valid comparables.Pgs.8,19,22 and 26 of the annual report of **QSS** do not suggest that the assessee was manufacturing software products.Pg.8 talks of QSS being a leading IT services and consulting company delivering services through innovative and customized services.It also mentions that the assessee was offering ‘software services’.Pg.19 and 22 suggest that it was into software services.Quantitative details at Pg.26 mentions that QSS was engaged in ‘development and maintenance of computer software’.P&L Account for the year shows income from software service of Rs. 37,38,47,298/-.It does not show any income under the head software product.Schedule 12 talks of overseas and domestic income from software services only.We find that in the earlier two AY.s.the TPO had accepted QSS as a valid comparable.

In the case of **LGL** we do not find any mention of company being involved in manufacturing of software products.As stated earlier,in the financials of any of the three companies,including LGL,there is any reference of R & D expenditure for the AY.under appeal.At pg.51 of the Annual report generic name of product or service has been shown as Software services and Pg.11

does not prove that LGL was in to software production business.On Pg.14 of the Annual Report the assessee describes itself as an innovative technology service provider and on the same page it has been mentioned that it offers services and solutions to diverse enterprise companies.On page 16 there is no mention of software product development.As per the Accounting policies followed by the assessee(Pg.47)it was earning income only from software services and not from software products.We would again emphasise that presence of intangible assets in financial statements in itself is an good indicator but is not a reliable proof to draw an acceptable and positive conclusion.Financials of the assessee,for the AY.under consideration,show income from software services only.So,we hold that in spite of the facts that intangible assets are appearing in the balance sheet,it cannot be held that the assessee was in engaged in the business of software products.Both the activities are totally different.In the cases relied upon by the assessee,LGL has been accepted a valid comparable for companies providing software services and TPO has also accepted it a valid comparable in earlier years.

As far as **RSIL** is concerned,we would like to mention that we have gone through pages 8,9, 12,22 and 31 of the Annual Report.We find that the financials of the company do not prove that it had incurred R &D expenses for the year under appeal,that it was earning income from software development services and not from software products.

Considering the above discussion,we hold QSS, LGL and RSIL are valid comparables for determining the ALP of the IT.s entered into by the assessee for the year under appeal.

8.1. The assessee had objected inclusion of 7 comparables in the final list of the TPO.We would now,take up all those comparables to find out as to whether same could be considered valid comparables.First of them is **FCS**.It is found that it was involved in various activities like e-learning,digital consulting,IT-consulting, application-support.As per the website,FCS was also involved in product development(Pg.84).It had undertaken R & D activities during the year under consideration(Pg.84).As per Report on Corporate Governance,it spent a lot lime in brand building(Pg.85).No segmental information for the year is available(Pg.87).Clearly,FCS is engaged in to product development and therefore it cannot be held to be a valid comparable.

As far as **Infosys** is concerned,we want to mention that it owned proprietary software(Page 94) and was carrying out R & D activities.It had also filed patent application.The turnover of Infosys was 216 times of the turnover of the assessee.After excluding Wipro Ltd.from the list of the comparables why did the TPO included Infosys in the final list of comparables is beyond comprehension. Both are in the same league.He should have either included or excluded both the companies for benchmarking purposes.Considering the factors like significant presence of brand, expenditure incurred on advertising and brand building as well as on R & D,we hold that Infosys should have been treated as an invalid comparable for the year under appeal.

KALS is engaged in development of software products and providing related services(Pg.104-107).Besides,perusal of Pg.107-108 reveals presence of significant inventory.As it was mainly engaged in product development and therefore was not comparable to the assessee-a software services company.

In the case of **L&T** it is found that it was engaged in development of software products and providing related services(Pg.114-115).Presence of significant intangibles/IPRs/Brand building (Pg.115-117)lead to the conclusion both cannot be compared.In this case segmental information is also not available.In short,L & T is a giant company that assumed all risks leading to higher profits,so it is not comparable with a limited risk company i.e.the assessee.

As per Pg.126,**PSI** was engaged in development of software-products and was providing related services.It was also involved in brand building and was offering diversified range of Services.

In the case of **SCTL,**it is found that as per the financial statements it has significant presence of intangible assets in the form of technical knowhow, contractual rights and non-compete fee (Pg. 34-135).It is an IP driven producer company (Pg.501-502).We hold that SCTL a company owning intangibles cannot be compared to a low risk service provider i.e. the assessee.

SSL,one of the comparables is engaged in development of software products and providing related services.Financials of the company prove presence of IPR.It is also found that it was carrying out significant R & D activities during the year under consideration.(Pg.141-143).

In the case of **TSL** it is found that Segmental information is not available and it is also engaged in product development,trading on software and giving licenses for use of software.Considering the fact that it is mainly engaged in product development and giving licences,we are of the opinion that it is not a valid comparable.

From the above,it clear that above 7 comparables,selected by the TPO,were mainly engaged in product development/giving licences/brand building or their segmental datas were not available, or they were engaged in R & D or that they were very huge companies as,far as turnover is concerned,compared to the assessee.Therefore,we hold that they cannot be compared with it i.e. a software services company having a turnover of 97crores(app.)and not having any brand or not carrying out R & D activities.The TPO himself had excluded Wipro from the final list, therefore, we are left with only one comparable and that is **BCL** and the AR had stated that he had no objection if BCL was included in the list of the valid comparables.

9.We find that if the comparables selected by the assessee and approved by us and BCL are considered for benchmarking,the arithmetic average mean would be within the plus/minus 5% limit.In other words,the IT.s entered into by the assessee for the year under appeal would be at Arm's length.Therefore,we can say that no TP adjustment was required.

9.1. We also find that the assessee was not given benefit of working capital adjustment.In the case of Capgemini India (P.)Ltd.(3 Taxmann.com.5),it was held that working capital adjustment cannot be denied to the assessee only on the ground that the assessee had not made any claim in the TP study if it is possible to make such adjustment as working capital adjustment will improve the comparability.In our opinion,the claim made by the assessee should have been considered.

In view of the above ,we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the assessee stands allowed. .

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 24th January, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 24 जनवरी, 2018 को की गई ।

Sd/- **Sd/-**

(अमरजीत सिंह / Amarjit Singh) (राजेन्द्र / **RAJENDRA)**

न्यायिक सदस्य / **JUDICIAL MEMBER** **लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated :24.01.2018.

JV, Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

5.DR " K " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**