**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ITA No.547 of 2017 (O&M)
Date of Decision : 05.02.2020

The Pr. Commissioner of Income Tax, Gurgaon ...... Appellant

versus

M/s Comverse Network Systems India Pvt Ltd. ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE AVNEESH JHINGAN

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Present: Mr. Tajender K. Joshi, Sr. Standing Counsel
for the appellant.

Shri Deepak Chopra, Advocate
Shri Deepak Agrawal, Advocate
with Shri Rohan Khare, Advocate
for the respondent

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AJAY TEWARI, J. (Oral)

1. The present appeal is directed against the Order of the Income Tax Appellate Tribunal (‘ITAT’), I-2 Bench, New Delhi dated 20.01.2017 for the assessment year 2008-09. The Revenue has raised the following question of law:-

> *“Whether in the facts and circumstances of the case and in law, the Hon’ble ITAT was correct in excluding M/s Avani Cimon Technologies Ltd, M/s Celestial Lab Ltd., M/s Infosys Ltd., M/s KALS Information Systems Ltd., M/s WIPRO Ltd, M/s Alphaoeo India Limited, M/s Mahindra Consulting Engineers Limited, M/s Kirloskar Consultants Limited, M/s Stup Consultants Private Limited and M/s Smac Limited, and included M/s Himachal Futuristic Communication Ltd used as a comparable for determining the ALP in the case of the assessee company, since the TPO had made detailed findings by analyzing functionality, turnover and profile of various comparables considered in his order. Further the ITAT was not justified to consider issues pertaining to earlier years, since each year is a separate assessment year and should be considered*

independently. The comparables has been selected by the TPO by applying suitable and relevant parameters."

2. The Respondent assessee, M/s Comverse Network Systems India Pvt. Ltd. is a wholly owned subsidiary of M/s. Comverse Network Systems Inc., USA. The assessee is engaged in the provision of sales and post-sales support services, software development services, professional and maintenance services to its Associated Enterprises ('AEs').

3. For assessment year 2008-09, the Respondent assessee filed its return of income on 30.09.2008, declaring a loss of INR 6,44,33,875 which was revised to INR 7,28,17,072 on 31.03.2010. The case of the assessee was selected for scrutiny under 'Computerized Assisted Selection of Scrutiny' (CASS) and notice under section 143(2) of the Income Tax Act, 1961 ('Act') was issued and complied with. The Assessing Officer made a reference to the Transfer Pricing Officer ('TPO') under section 92CA(1) of the Act for determining the Arm's Length Price ('ALP') under section 92CA(3) of the Act in respect of the International Transactions entered into by the assessee. According to the transfer pricing study report submitted by the assessee under section 92E of the Act, following services were provided by the assessee to its AE:

Particulars	Sales and post-sales support services	Software development services	Professional services	Maintenance services
Operating Income	144,84,534	37,351,292	160,287,692	24,930,966
Operating Cost	131,466,625	33,212,116	143,567,323	22,747,688
Operating Profit	12,617,909	4,139,176	16,720,370	2,183,278
OP/TC	9.60%	12.46%	11.65%	9.60%

4. The TPO aggregated the results of software development, professional and maintenance services into a single segment namely 'software development'. Thus, ALP was computed by the TPO for two segments namely 'software development' segment and 'sales and post sale support services' segment. The TPO carried out fresh search for both segments having results as under:

A. Software Development Services

The TPO selected 4 out of the 16 comparables selected by the assessee and identified 15 new companies (totalling 19). The TPO computed the average OP/OC of these 19 companies at 26.20 percent, and applying this benchmark against the assessee's margin of 11.54 percent, worked out transfer pricing adjustment of Rs.2,92,33,284/- under this segment.

B. Sales and Post-sales Support Services

The TPO rejected 3 companies which were selected by the assessee and identified 5 companies and computed their average OP/OC at 26.70 percent, as against the assessee's margin of 9.60 percent on cost. By applying this benchmark, the TPO worked out the transfer pricing adjustment for this segment amounting to Rs.2,24,83,680/-

5. The TPO vide his order dated 27.10.2011 determined adjustment/ difference on account of ALP at INR 5,17,16,964/- as under:

1.	Software development service	INR 2,92,33,284/-
2.	Sales and post-sales support services	INR 2,24,83,680/-
	Total	INR 5,17,16,964/-

6. After incorporating the adjustment proposed by the TPO, the Assessing Officer issued a draft assessment order on 23.12.2011 to the assessee. Against the draft assessment order, the assessee filed its objection before the

Dispute Resolution Panel ('DRP'), New Delhi. In compliance to the direction of the DRP vide order dated 06.09.2012, the TPO recomputed the adjustment as under:

1.	Software development service	INR 2,74,97,397/-
2.	Sales and post-sales support services	INR 2,24,83,680/-
	Total	INR 4,99,81,078/-

7. After taking into account the adjustment to ALP, as directed by the DRP, the Assessing Officer passed the impugned order under section 144C read with section 143(3) of the Act on 23.10.2012.

8. Aggrieved by the final assessment order dated 23.10.2012, the assessee preferred an appeal before the ITAT. The ITAT, vide its order dated 20.01.2017, accepted the submissions of the assessee that the comparables chosen by the TPO were functionally dissimilar and were liable to be rejected.

9. Being aggrieved by the impugned order dated 20.01.2017 of the Hon'ble ITAT, the Revenue has preferred the present appeal for consideration.

10. Only one question has been proposed by the Revenue which encompass all the comparables rejected by the Tribunal by analyzing the functionality, turnover and profile of the various comparables now being impugned before us. We may note that apart from generally challenging the rejection of comparables, no grounds of perversity in the order of the ITAT has been raised in the Revenue's appeal. We propose to deal with the same sequentially as under:

SOFTWARE DEVELOPMENT SEGMENT

<u>Avani Cincom Technologies Limited</u>

11. The TPO had adopted Avani Cincom Technologies Limited having an operating profit of 21.65% holding that the company is engaged in software development services. The DRP has rejected the claim of the assessee for its exclusion. Before the ITAT, the assessee submitted that this company is

functionally dissimilar to the profile of the assessee since it was engaged in wide array of services including development software products and back office support services. Additionally, it was submitted that even though Avani Cincom Technologies Limited was engaged in provision of wide arrange of services, it did not maintain separate segmental information. The assessee further submitted that a bare perusal of the Profit & Loss Account would evidence that Avani Cincom Technologies Limited was engaged in sale of products as well as rendition of services.

12. The finding of the ITAT for exclusion of Avani Cincom Technologies Limited is as under:

> "*4.3.3 We have heard the rival submissions on the issue of inclusion/rejection of this comparable. We find that for the assessment year under consideration i.e. AY 2008-09, in the case of Sun Life India Service Centre Private Limited (supra) the comparable has been held to be a software product company having intellectual property rights or some of the products developed by it.*
>
> *4.3.5 We are not in agreement with the contention of the learned CIT (DR) in not allowing the learned counsel to raise objection regarding functional dissimilarity. It is well within his right to raise such issue before the appellate authority. Further, we find that the assessee does not own any intangible/ technical know-how of its own and rendered software development services to its AE on cost plus basis. In view of the above, in our opinion the functions carried out by the comparable are dissimilar and it cannot be included as a comparable. Accordingly, we direct the TPO/AO to eliminate this company from the list of comparables."*

13. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. But the said finding of fact has not been shown to be perverse by the Revenue and thus, the finding of facts that the comparable is functionally dissimilar and in the absence of segmental details of revenue generated from its services and sale of products, has rightly been excluded by the ITAT.

<u>Celestial Labs Limited</u>

14. The TPO has selected this company on the basis that it was engaged in software development activities and passed all the filters applied. The said finding was upheld by the DRP. Before the ITAT, the assessee submitted that Celestial Labs Limited was functionally dissimilar to the profile of the assessee, being a product company engaged in both development of software and bio-informatic products. Additionally, it was submitted before the ITAT that the company being own significant IPR which had let out on license basis. Furthermore, it was submitted before the ITAT that the said company was undertaking significant research and development of products by incurring substantial R&D expenses. The ITAT recorded the following finding while excluding the said comparable:-

> "*4.3.8 We have considered the rival submission of the parties and perused the relevant material on record. On perusal of the Annual Report of the company available on page 423 to page 464 of the Annual Report compilation of the assessee, we find that the company was engaged in the field of IT/bio informatics, biotechnology and consultancy work and offered enterprise resource planning solutions, data warehousing, business intelligence solutions and bio services like clinical data management, gene sequence analysis, molecular modeling, design and development of drug molecules dedicated to health sector to government, institution pharma and biotech companies, hospitals and medical centers. On page 431 of the Annual Report compilation, the intellectual property rights of the company in various software like RATNA, VYASA, DHANVANTRI, SAHKAR are mentioned.*
>
> *4.3.9 From the above, we find that the above company is engaged in diverse field of bio-informatics and related fields in addition to the ERP solutions and, thus, it cannot be said to be functionally similar to the software development segment of the assessee. The relevant finding of the Tribunal is reproduced as under……*

> *4.3.10 In view of the above discussion, we are of opinion that this company cannot be considered as functionally similar to that of the assessee, therefore, accordingly, we direct for elimination of this company from the list of comparables."*

15. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. From the order of the ITAT it is clear that this Company is engaged in diverse field of bio-informatics and related fields in addition to the ERP solutions and is functionally not similar to the software development segment of the assessee. The above finding of fact has not been shown to be perverse in any manner and hence Celestial Labs Limited has rightly been excluded by the ITAT.

Infosys Limited

16. The TPO selected the said company as comparable while stating that it passed all the filters and was engaged in the business of software development services. The said finding was confirmed by the DRP. Before the ITAT, the assessee submitted that Infosys Limited could not be retained as a comparable owing to the fact that the company was engaged in wide range of services from package evaluation and infrastructure management to development of software products. It was further submitted before the Tribunal that Infosys Limited did not have adequate segmentation of the revenue earned from provision of services and sale of products, in addition to the fact that the said services were widely varied and dissimilar to the services rendered by the assessee. Various other contentions such as Infosys only maintain segmental information on the basis of its geographical/industry segment, being an industry leader having significantly large scale of operations (turnover Rs.15,648 crores), having significant brand value, intangible assets were raised before the ITAT. The ITAT while excluding the said comparable has observed as under:

> "*4.3.13 We have heard the rival submissions of the parties and*

perused the relevant material on record. On perusal of the Annual Report of the Company, which is available on pages 465 to 515 of the Annual Report compilation, we find that the company has revenue from software services as well as products and no segmental detail of revenue from software services and sale of software products is available, and thus the result of the comparable company cannot be compared with the software development services segment of the assessee company. Perusal of the Annual Report of the company has also revealed that it has incurred substantial expenditure on the research and development, as against the assessee, who is a captive service provider to its AE. In the case of Sun Life India Services Center India Private Limited for AY 2008-09 (supra), the Tribunal has rejected the Infosys as a comparable to a captive service provider. The relevant finding of the Tribunal is reproduced as under……

…..

4.314 In view of our discussion above, we are of the opinion that the company is functionally dissimilar to the assessee, and accordingly, we direct the AO/Transfer Pricing Officer to exclude the above company from the list of comparables."

17. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. The ITAT has given detailed reasons while passing the order and the said finding of facts has not been shown to be perverse and thus the exclusion of the said comparable is completely justified on facts.

<u>Kals Information Systems Limited</u>

18. The TPO selected the said company at segmental level as it passed all the filters and was engaged in the business of software development activities. The said finding was confirmed by the DRP. Before the ITAT, the assessee whilst referring to various pages of the Annual Report submitted that the segmental details i.e. application software as selected by the TPO also comprised of revenue from both provision of services as well as sale of products and no separate information vis-à-vis bifurcation between the revenue from

products and services was available. The ITAT while directing exclusion of this comparable has observed as under:

> "*4.3.17 We have considered the rival submission of the parties and perused the relevant material on record. On perusal of the Annual Report of the comparable company which is available on page 706 to page 726 of the Annual Report compilation, we find that the company earned revenue from two segments namely application software and training. Further on perusal of clause 2 (b) of schedule No.16 (notes to the financial statement) of the Annual Report, we find that application software segment consisted of both software services and software products. The relevant clause reproduced as under……………*
>
> *4.3.18 Further we find that in the case of Sun Life India Service Center Private Limited (supra) also the revenue under application software segment of comparable company has been held to be consisted of from development of software as well as from sale of software products. The relevant part of the finding of the Tribunal is reproduced as under……*
>
> *4.3.19 In view of the above, we are of the considered opinion that the segment of comparable company, compared with the assessee company is functionally dissimilar and accordingly, we direct the AO/TPO to exclude the above company from the list of comparables."*

19. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. The ITAT has given detailed reasons while passing the order and also relied upon its decision in Sun Life India Service Center Private Limited case. We find no infirmity in the finding of fact by the ITAT since no perversity has been brought to our attention and hence the said comparable was rightly excluded from the list of comparables.

<u>Wipro Limited</u>

20. The TPO selected the said company as an appropriate comparable which finding was confirmed by the DRP. Before the ITAT it was submitted by

the assessee that Wipro Limited, similar to Infosys Limited, was engaged in providing wide range of IT services along with trading of products. Additionally, it was submitted that there was no break-up of profitability i.e. segmental from such activities. The assessee pleaded for the exclusion of Wipro Limited on the ground that it was engaged in significant R&D activities, owning intangible assets and functionally dissimilar to the assessee. The finding of the ITAT for its exclusion are as under:

> "*4.3.22 We have heard the rival submissions and perused the relevant material on record. We find from the Annual Report of the comparable company which is placed on page 516 to 612 of the Annual Report compilation, that the revenue consist of sales and services and no separate segmental results for software development services are available. On perusal of the page 560 of the Annual Report compilation, we find that the company was engaged in research and development and activities having focus to strengthen the portfolio of Centre of Excellence (COE) and innovation projects and part of this focus, over 600 people were engaged. On perusal of page 561 of the Annual Report compilation, we find that the company has been granted 40 registered patent and 62 pending applications. As against the intellectual property rights owned by the company and R&D activities, the assessee was only a captive service provider to its AE. In the case of 3-D PLM Software Solutions (supra), the Tribunal has observed as under……..*
>
> *4.3.23 Since the instant assessee does not own any intangibles, respectfully following the decision of the coordinate bench of the Tribunal in the case of 3-D Software Solutions (supra), we hold that the company cannot be considered as a comparable to the assessee and accordingly we direct the AO/TPO to eliminate this company from the set of comparable company for the year under consideration.*"

21. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations

given by the TPO. The ITAT has given detailed reasons while passing the order and also came to conclusion that as against the intellectual property rights owned by the company and R&D activities, the assessee was only a captive service provider to its AE. The ITAT further followed the decision of the coordinate bench of the Tribunal in the case of 3-D Software Solutions. The said finding of facts have not been shown to be perverse and thus, the exclusion is completely justified on facts.

SALES AND POST SALES SUPPORT SEGMENT

<u>Alphageo India Limited</u>

22. The TPO selected the said comparable while stating that since the assessee had adopted TNMM as most appropriate method, the services rendered by Alphageo "broadly similar" to the technical services provided by the assessee for the valid comparable. The said finding was confirmed by the DRP. Before the ITAT, the assessee contended that Alphageo was functionally dissimilar owing to the fact that Alphageo was an integrated seismic service provider and offers various topographical survey, tape transcription, digitalization, seismic sections and well logs into various formats for oil exploration companies. Additionally it was submitted that Alphageo used advanced technology such as state of the art software for 2D and 3D seismic data interpretation, distortion free 24 sensors and it deployed the latest seismic data analysis with advqanced interactive work stations. It was further submitted by the assessee that the said company had huge asset base of Rs.705 crores, incurring substantial expenses on survey and drilling. The ITAT while directing its exclusion has held as under:

> "*5.7 We heard the rival submissions of the parties and perused the relevant material on record. On perusal of the page 7, of the compilation of the annual reports, we find that M/s Alphageo*

> *India Ltd was engaged in providing 2D and 3D seismic services for design and preplanning of 2-D and 3-D surveys, seismic data acquisition, seismic data processing/reprocessing/special processing, seismic data interpretation, generation, evolution and ranking of prospectus, reservoir data acquisition, reservoir analysis etc. This company has also been held as engaged in seismic research activity by the Tribunal in the case of Syngenta Bioscience Private Limited (supra).*
>
> *5.8………….*
>
> *Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee."*

23. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. The said finding of facts by the ITAT has not been shown to be perverse and thus, the exclusion is completely justified in facts and in law.

<u>Mahindra Consulting Engineers Limited</u>

24. The TPO selected the said company as being functionally comparable to the profile of the assessee which finding was confirmed by the DRP. Before the ITAT the assessee contended that the said company was functionally dissimilar owing to the fact that it was engaged in infrastructure consultancy services and providing services in multi-disciplinary projects such as Special Economic Zone, water supply, sewage, solid waste management, urban infrastructure, agricultural and horticultural infrastructure, social infrastructure, ports, harbor and offshore terminals, industrial infrastructure etc. Additionally, it was submitted by the assessee that the said company owned technical know-how and operated in single business segment. The ITAT recorded the following findings while excluding the said comparable:

> "*5.7…….*
>
> *On perusal of page 119 of the compilation of the annual reports,*

> *we find that M/s Mahindra Consulting Engineers Ltd. is engaged in infrastructure sector by providing consultancy services in the areas of Special Economic Zone, water supply, sewage, solid waste management, urban infrastructure, agricultural and horticultural infrastructure, social infrastructure, ports, harbor and offshore terminals, industrial infrastructure etc.*
>
> *5.8………….*
>
> *Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee."*

25. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. The ITAT has held that the said company was functionally dissimilar owing to the fact that it was engaged in infrastructure consultancy services and providing services in multi-disciplinary projects such as Special Economic Zone, water supply, sewage, solid waste management etc. The said finding of facts by the ITAT has not been shown to be perverse and thus, the exclusion is completely justified in facts and in law.

<u>Kirloskar Consultants Limited</u>

26. The TPO had accepted the said comparable as being appropriate having passed all the filters. The said finding was confirmed by the DRP. Before the ITAT, the assessee submitted that the said company was functionally dissimilar owing to the fact that it was engaged in engineering consultancy, project management services and architectural consultancy services. The Tribunal while directing its exclusion has observed as under:

> "*5.7……………*
>
> *On perusal of page 97 of the compilation of the Annual Report, we find that M/s Kirloskar Consultants Ltd was engaged in the area of engineering consultancy, project management services, architectural consultancy. The major assignment executed by the company are mentioned on page 98 of the compilation of Annual Report, which are reproduced as under……*

> *5.8……..*
> *Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee."*

27. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations given by the TPO. The ITAT has held that M/s Kirloskar Consultants Ltd was engaged in the area of engineering consultancy, project management services, architectural consultancy and thus functionally dissimilar to the assessee. The said finding of facts have not been shown to be perverse and thus, the exclusion is completely justified in facts and in law.

<u>Stup Consultants Limited</u>

28. The TPO selected the said company as being functionally comparable since it was engaged in providing consultancy both in civil engineering and architectural. The TPO further observed that owing to the fact that the said company was deriving majority of its income from professional fee on account of technical consultancy, it was functionally comparable to the assessee. The said finding was confirmed by the DRP. The ITAT while directing its exclusion on account of Stup Consultants Limited being functionally dissimilar observed as under:

> "*On perusal of segment information available on page 148 of the annual report compilation, we find that M/s Stup Consultants Private Limited was engaged in the profession of civil engineering and architectural consultancy. Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee.*
> *5.8……..*
> *Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee."*

29. The said finding of facts have not been shown to be perverse and

thus, the exclusion is completely justified in facts and in law.

Semac Private Limited

30. The TPO selected the said company as being functionally comparable since it derived all its income from professional fee on account of technical consultancy. The said finding was confirmed by the DRP. Before the ITAT it was submitted by the assessee that the said company was functionally dissimilar owing to the fact that it was engaged in providing engineering consultancy services which was absolutely different from the sales and post sales support services rendered by the assessee. The ITAT while directing its exclusion has observed as under:

> "*5.7…………….*
> *Further, on perusal of para-2 of the Annexure to the auditor's report, which is available on page 161 of the compilation of the Annual Report, we find that M/s Semac Pvt. Ltd. was engaged in providing engineering consultancy services.*
> *5.8……..*
> *Accordingly, we direct the AO/TPO to exclude above company from the list of comparables for sale and post sale support segment of the assessee."*

31. The ITAT while concluding on the comparable of the sales and post sales support services held as under:

> "*5.8 Thus, we find that the comparables chosen by the TPO are engaged in the functions altogether different from the functions in the nature of sales and post sales support services. The requirement of human resources competence for providing consultancy in the field of engineering is all together different from the manpower required for providing sales and post sales support services. In view of our discussion. Above, we are of the considered opinion that above five companies chosen by the TPO, cannot be selected as comparables."*

32. The counsel for the revenue relies upon the order passed by the TPO and argued that the ITAT failed to appreciate the findings and observations

given by the TPO. The ITAT has held that the said company was functionally dissimilar owing to the fact that it was engaged in providing engineering consultancy services which was absolutely different from the sales and post sales support services rendered by the assessee. The ITAT further held that the requirement of human resources competence for providing consultancy in the field of engineering is all together different from the manpower required for providing sales and post sales support services. The said finding of facts have not been shown to be perverse and thus, the exclusion is completely justified in facts and in law.

Himachal Futuristic Communication Limited.

33. The next challenge of the Revenue is against the "inclusion" of Himachal Futuristic Communication Limited by the ITAT. The counsel of the assessee drew our attention to para 4.7.7 wherein the Tribunal has held as under:

> "*We have heard the rival submissions and perused the relevant material on record. We find that the assessee has compared the 'turnkey contract and service' segment of the company with the sales and post sales support segment of the assessee company. However, we do not agree with the contention of the assessee that the company segment of turnkey contract & service was functionally similar to the segment of the assessee under comparison. The segment of the company compared is turnkey contract and services. No information is available in respect of the turnkey contract executed by the company and, therefore, the result of turnkey contract and service segment are not comparable with the sales and post sale support services in respect of software products. Normally, the turnkey contracts include executing of all component of contracts, i.e., from start to the end including civil, electrical, transportation etc. kind of work. In the Annual Report of the company, no information in respect of turnkey contract executed by the company, is available. In our opinion, the segment of the company inclusive of turnkey contract, cannot be*

compared functionally with the sales and post sale support segment of the assessee. Further, the argument of the learned counsel that it was considered as comparable in preceding year also cannot be accepted because the functional comparability has to be made in the current year only and preceding year results cannot be precedent in Transfer Pricing comparison. Further, since the company has not been found functionally comparable at segment level, we are not adjudicated on the other arguments argued by the Ld. CIT (DR) on the issue of persistent loss-making company etc. Accordingly, we direct exclusion of the company from the set of comparables."

34. Hence, what is evident from the above is that the Tribunal has upheld the action of the TPO and directed "exclusion" of the said company and not inclusion of the same and the ground of appeal raised by the revenue in respect of this comparable is factually incorrect.

35. Be that as it may, the findings of facts regarding exclusion of the above comparables are upheld and thus do not merit any interference. The question of law are answered against the revenue and in favour of the Assessee. The said factual findings have not been shown to be perverse in any manner nor any material has been placed before us by the revenue to allege any perversity in the decision of the ITAT.

36. We are supported by our decision in the case of **PCIT Vs. M/s. Equant Solutions** India Pvt. Ltd. (ITA No. 419 of 2016 order dated 30.10.2019). Similar view have been taken by the Bombay High Court in the case of **CIT Vs. PTC Software** (395 ITR 176) and in the case of **Principal Commissioner of Income Tax vs. Barclays Technology Centre India Pvt. Ltd.** (409 ITR 108) and by the Karnataka High Court in **Principal Commissioner of Income Tax vs. Softbrands India Pvt. Ltd.** (406 ITR 5013).

37. The appeal stands disposed of in the above terms.

38. Since the main case has been decided, the pending Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

05.02.2020
pooja sharma-I

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No