IN THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai

Before Shri Pramod Kumar, Vice President
and Shri Ravish Sood, Judicial Member

ITA No.6310/Mum/2014
(Assessment Years: 2010-11)

M/s GCO Technologies Centre Private Limited, Office No. 227, 2nd Floor, Hari Om Plaza, M.G. Road, Borivali (E) Mumbai – 400066 PAN – AADCG4414E	Vs.	ITO-9(1)(4) Mumbai
(Appellant)		**(Respondent)**

Appellant by: Shri Devendra Jain, A.R
Respondent by: Shri Akhtar Hussain Ansari, D.R

Date of Hearing: 21.10.2020
Date of Pronouncement: 05.11.2020

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-15, Mumbai, dated 14.07.2014, which in turn arises from the assessment order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 04.03.2013 for A.Y. 2010-11. The assessee has assailed the impugned order on the following effective grounds of appeal before us:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the disallowance of expenditures amounting to Rs.12,26,063/- incurred during the period from 20/04/2009 to 31/07/2009 by treating them as pre commencement expenditure and in the nature of Capital Expenditure.

2. Without prejudice to ground no. 1, the Ld. CIT(A) has erred in allowing the above mentioned expense of Rs.12,26,063/- as deduction u/s 35D as

1/10th of the expense over a period of 10 years instead of 1/5th of the expenses over 5 years.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition u/s 92C of The Income Tax Act, 1961 of Rs. 8,10,171/- by taxing the margin © 13.15% of total cost in relation to transactions with M/s Global Conference Organisers B.V, Netherlands without considering our contention of not to exclude the comparable company Cethar Consultancy Services Pvt. Ltd. while calculating the arm's length price.

4. Without prejudice to above, the Ld. CIT(A) has erred in not excluding the comparable company M/s. En Pointe Technologies India Pvt. Ltd. while calculating the arm's length price.

5. On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not making risk adjustment of 2% while computing the arm's length price u/s 92C.

6. Without prejudice to the ground no 3,4 and 5 the Ld. AO has erred in calculating adjustment u/s 92C at 13.15% of the sale turnover i.e. Rs. 94,87,509/- instead of 13.15% of cost i.e. Rs. 90,48,051/-

7. Without prejudice to ground no. 1 and ground no. 2, in calculating the operating profit, the Ld. AO has erred in not excluding Rs. 12,26,063/- from the total cost of Rs. 90,48,051/- which has been held as capital expenditure."

2. Briefly stated, the assessee company which is engaged in the business of providing software outsourcing services exclusively to its parent company viz. M/s Global Conference Organizers, B.V, Netherland, had filed its return of income on 05.10.2010, declaring its income at Rs. Nil. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the assessee filed its revised return of income on 24.03.2011, which was processed under Sec. 143(1) on 30.03.2012, determining its loss at Rs.1,09,393/-, as returned. Thereafter, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had entered into a service agreement with its parent company viz. M/s Global Conference Organizers, B.V, Netherland on 01.08.2009. However, as observed by the A.O, the assessee in its profit and loss account had booked expenses for the period prior to 01.08.2009 i.e for the period of 20.04.2009 to 30.07.2009, aggregating to an amount of Rs.19,78,700/-. On a perusal of the records, it was gathered by the A.O that the aforesaid expenses

included an amount of Rs.7,52,637/- that was reimbursed by the parent company i.e M/s Global Conference Organizers, B.V, Netherland, on the basis of the invoices which were raised by the assessee company. In the backdrop of the aforesaid facts, the A.O called upon the assessee to explain as to why the expenses made prior to the commencement of its business amounting to Rs.12,26,063/- [Rs.1,78,700/- (-) Rs.7,52,637/-] may not be disallowed being in the nature of pre-commencement expenses. In reply, it was submitted by the assessee that as the infrastructural facilities were set up, business assignments were explored/negotiated and manpower was recruited by 02.05.2009, therefore, its aforesaid claim of expenses incurred during the period 20.04.2009 to 30.07.2009 was in order and allowable as deduction u/s 37(1) of the Act. However, the A.O not finding favour the aforesaid claim of the assessee disallowed the aforesaid expenses of Rs. 12,26,063/-(net of reimbursement), by treating them as pre-commencement expenses within the meaning of Sec.35D of the Act. Apart from that, it was observed by the A.O that the assessee during the year under consideration had entered into an international transaction with its Associated Enterprise (AE), viz. M/s Global Conference Organizers, B.V, Netherland, in respect of the I.T services rendered to its AE. On a perusal of 'Form 3CEB' filed by the assessee company, it was noticed by the A.O that the assessee had provided software outsourcing services exclusively to its parent company viz. M/s Global Conference Organizers, B.V, Netherland, aggregating to Rs.94,87,508/-. The assessee had benchmarked the aforesaid services under the Transactional Net Margin Method (TNMM). Adopting OP/Sales as the Profit Level Indicator (PLI), the assessee had shown a mark up of 4.85% in respect of the I.T. Services rendered to its AE. For the purpose of benchmarking its international transactions the assessee had adopted 6 comparable companies whose arithmetic mean margin worked out at 7.88%, as under:

Sr. No.	Final list of comparable from both the data bases	OP/TC %
1.	Asia H.R. Technologies Ltd.	-2.44
2.	Cethar Consultancy Services Pvt. Ltd.	-18.48

3.	En Pointe Technologies India Pvt. Ltd.	31.18
4.	Kals Information Systems Ltd. (Seg.)	19.89
5.	Solix Technologies Ltd.	10.61
6.	Chakkilam Infotech Ltd.	6.53
	Aritmetic Mean (average)	7.88
	OP/Sales (%) of the company	4.85

In the backdrop of its aforesaid working, it was submitted by the assessee that its international transactions with its AE viz. M/s Global Conference Organizers, B.V, Netherland, were within arm's length. On a perusal of the records, it was observed by the A.O that a perusal of the financials of one of the comparable, viz. M/s Cethar Consultancy Services Pvt. Ltd, therein revealed that it was a persistent loss making company for three years, as under:

Sr. No.	Particulars	For the year ending 31.03.2008	For the year ending 31.03.2009	For the year ending 31.03.2010
A.	**Income**			
1.	Sales	2.07	2.12	1.50
2.	Change in stock	-	0.21	-
3.	Total Income	2.07	2.33	1.50
B.	**Expenses**			
4.	Operating Expenses	2.06	2.20	1.77
5.	Depreciation	0.11	0.11	0.07
6.	Write Off	-	0.02	-
7.	Other Expenses	-	0.01	-
8.	Total Expenses	2.17	2.34	1.84
C.	**Operating profit**	(0.10)	(0.01)	(0.34)
D.	**OP/TC**	**-4.61**	**-0.43**	**-18.48**
E.	**OP/Total Income**	-4.83	-0.43	-22.67
F.	**OP/Sales**	-4.83	-0.47	-22.67

On the basis of the aforesaid facts, the A.O called upon the assessee to explain as to why the aforesaid comparable company may not be excluded from the final list of the comparables. In reply, it was submitted by the assessee that the aforesaid comparable company was not a persistent loss making company and had made profits during the year ending 31.03.2009. Further, the assessee called upon the A.O for a working capital adjustment of 2.5% and risk adjustment of 2%. Also, the assessee asked for a further 2% adjustment for the difference of the financial period of 8 months of the tested party as against that of 12months of the comparables. However, the A.O was not persuaded to subscribe to the aforesaid claim of the assessee. As regards the claim of the assessee that the comparable company viz. M/s Cethar

Consultancy Services Pvt. Ltd. had made profits for the year ending 31.03.2009, it was noticed by the A.O that the fact was that the said company during the said year had incurred a loss of 18.48%. Adverting to the claim of the assessee that the aforesaid company had made a profit during the year under consideration, it was observed by the A.O that the assessee while so concluding had considered write off (bad debts) as a non-operating expense. Observing, that the write off (bad debts) could not be considered as a non-operating expense as incurring of bad debts was a regular routine expenses in any business, the A.O declined to subscribe to the said claim of the assessee. It was observed by the A.O that after claiming the write off (bad debts) as an operating expense, the margin of the aforesaid comparable company turned out to be negative. On the basis of his aforesaid observations, the A.O treating M/s Cethar Consultancy Services Pvt. Ltd. as a consistent loss making company excluded it from the final list of comparables. As regards the assessee's claim for working capital adjustment of 2.5% and risk adjustment of 2%, it was observed by the A.O that the assessee had neither in the TP study report nor in its submissions quantified the aforesaid adjustments. Accordingly, the plea of the assessee for working capital adjustment and risk adjustment was rejected by the A.O. Insofar the claim of the assessee that 2% adjustment be allowed for the difference of the financial period of 8 months of the assessee as in comparison to that of 12 months of the comparables, it was observed by the A.O that as the margin was computed in terms of percentage provided, thus, the said claim of the assessee did not merit acceptance. On the basis of his aforesaid deliberations, the A.O worked out the average PLI of the comparables (after excluding M/s Cethar Consultancy Services Pvt. Ltd.) at 13.15%, as under:

Sr. No.	Final list of comparable from both the data bases leaving behind M/s Cethar CSPL	OP/TC%
1.	Aisa H.R. Technologies Ltd.	-2.44
2.	En Pointe Technologies India Pvt. Ltd.	31.18
3.	Kals Information Systems Ltd. (seg.)	19.89
4.	Solix Technologies Ltd.	10.61
5.	Chakkilam Infotech Ltd.	6.53

	Arithmetic Mean (average)	13.15

Applying, the average PLI of 13.15% to the amount of the transactions of Rs.94,87,508/- carried out by the assessee with its AE (as reported in Form No. 3CEB), the A.O worked out the Arm's Length Profit (ALP) at Rs.12,47,607/-. As the assessee had reflected a profit of Rs.4,37,436/-, the A.O, therefore, carried out an adjustment of Rs.8,10,171/- [Rs.12,47,607/- (-) Rs.4,37,436/-]. On the basis of his aforesaid observations the A.O worked out the total income of the assessee company at Rs.19,26,840/-.

3. Aggrieved, the assessee assailed the assessment order in appeal before the CIT(A). As regards the disallowance of the pre-commencement expenses of Rs.12,26,063/- by the A.O, the CIT(A) principally upheld the same. However, taking cognizance of the fact that the said expenses would be squarely covered by Sec. 35D of the Act, the CIT(A) directed that 1/10th of the aforesaid expenditure be allowed to the assessee for each 10 successive previous beginning from the year under consideration. Insofar the TP adjustment of Rs.8,10,171/- made by the A.O was concerned, the CIT(A) finding no infirmity in the view taken by the A.O upheld the same. Resultantly, the CIT(A) partly allowed the appeal of the assessee.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorised Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted, that the assessee company which was engaged in the business of providing software outsourcing services exclusively to its parent company viz. M/s Global Conference Organizers, B.V, Netherland, was incorporated on 20.04.2009 and thus, the year under consideration was its first year of operation. It was submitted by the ld. A.R that the business of the assessee company was set up on 01.05.2009, and prior to entering into an agreement with its parent company viz. M/s Global Conference Organizers, B.V, Netherland, on 01.08.2009, it had during the year interregnum period i.e 20.04.2009 to 31.07.2009 incurred expenses towards directors remuneration,

employees salary, lease rentals, professional fees, technical fees and other administration expenses, viz. telephone charges, electricity etc. In the backdrop of the aforesaid facts, it was submitted by the ld. A.R that as the assessee company had 'set up' its business, therefore, its claim of expenses incurred wholly and exclusively for the purpose of its business, though prior to the commencement of the business was allowable under Sec. 37(1) of the Act. In support of his aforesaid contention, the ld. A.R had relied on the judgment of the Hon'ble High Court of Delhi in the case of Omnigloble Information Tech India (P) Ltd. Vs. CIT (2014) 369 ITR 1 (Del). It was the claim of the ld. A.R, that as the assessee was into service sector, therefore, the date of recruitment of manpower, installing of computers and setting up of adequate infrastructure were the relevant factors for determining the date of 'setting up' of it business. Accordingly, it was the claim of the ld. A.R that the lower authorities had erred in disallowing the assessee's claim of expenditure of Rs.12,26,063/- (net of reimbursement) that was incurred wholly and exclusively for the purpose of its business after the setting up of its business. Alternatively, it was submitted by the ld. A.R, that as the expenditure under Sec. 35D is to be spread over a period of 5 years, therefore, the CIT(A) was in error in directing the A.O to allow the said expenditure over a period of 10 years. As regards the TP adjustment of Rs.8,10,171/- that was worked out by the A.O by taking the average PLI @ 13.15%, it was submitted by the ld. A.R that the lower authorities had erred in excluding one of the comparables company i.e M/s Cethar Consultancy Services Pvt. ltd. while benchmarking its international transactions for the year under consideration. Apart from that, it was submitted by the ld. A.R, that the A.O while working out the ALP had erred in not making any adjustment towards working capital adjustment, risk adjustment and adjustment as per Rule 10B. Rebutting the observations of the A.O, it was submitted by the assessee that he had erred in not considering M/s Cethar Consultancy Services Pvt. Ltd. as a comparable company, on the basis of a misconception that the said company was a persistent loss making company. It was submitted by the ld. A.R that the aforesaid comparable

company viz. M/s Cethar Consultancy Services Pvt. Ltd. had made a profit of (+) Rs.0.01 crore for the year ending 31.03.2009. Accordingly, it was the claim of the ld. A.R that though the aforesaid comparable had suffered lossea for two years i.e loss of Rs.(-) 0.1 crores for the year ending 31st March, 2008 and a loss of Rs.(-)0.35 crores for the year ending 31st March, 2010, however, as it had made a profit during the financial year 2008-09, therefore, the lower authorities were incorrect in concluding that the said company was persistently making losses for three years. It was stated by the ld. A.R that as the aforesaid comparable company was functionally comparable and not a perpetual and persistent loss making company, it was, thus, rightly included by the assessee in its TP study report for benchmarking its international transactions. In support of his aforesaid contention the ld. A.R had relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Goldman Sachs (I) Securities (P) Ltd. (2016) 69 taxman.com 19 (Bom). Alternatively, it was submitted by the ld. A.R, that now when the A.O had rejected one of the comparable company on the ground that it was a loss making company, therefore, on similar lines he ought to have excluded another comparable, i.e M/s En Pointe Technologies India Pvt. Ltd, for the reason, that the latters margin was substantially highly pitched at 31.18%. In support of his aforesaid contention the ld. A.R had relied on the order of the ITAT, Pune bench in the case of Songaurd Solutions (I) Pvt. Ltd. Vs. ADIT (2016) 68 taxman.com 89 (Pune). In the backdrop of his aforesaid contentions, it was submitted by the ld. A.R that as the international transactions of the assessee company were at arm's length, therefore, no adjustment was called for in its case.

5. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that the CIT(A) had rightly upheld the disallowance of the pre-commencement expenses incurred by the assessee i.e for the period 20.04.2009 to 31.07.2009, and had restricted the assessee's claim for deduction as per Sec. 35D of the Act. As regards the TP adjustment of Rs.8,10,171/- carried out by

the A.O, it was submitted by the ld. D.R that the A.O after duly recasting the final list of the comparables had rightly worked out the adjustment in the hands of the assessee company.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements which had been pressed into service by them to drive home their respective contentions. We shall first advert to the claim of the assessee that the lower authorities had erred in disallowing its claim for deduction of expenses incurred during the period 20.04.2009 to 31.07.2009, by wrongly treating it as pre-commencement expenditure within the meaning of Sec. 35D of the Act. On a perusal of the records, we find, that the assessee company had during the period May, 2009 to July, 2009 inter alia incurred expenses towards viz. (i) salaries of the employees (Rs.3,76,038/- per month); (ii) electricity expenses (nominal amount); (iii) internet expenses; (iv) office expenses; (v) office rent; (vi) staff welfare expenses; and (vii) technical consultancy fees etc., which therein irrefutably proves that the assessee company, an entity belonging to service industry, had 'set up' or in fact established its business which was ready for commencement. In this regard, it would be relevant to point out, that as the assessee company which was engaged in the business of providing software development services exclusively to its parent company belonged to the service industry, therefore, the incurring of the aforesaid expenditure i.e payment of rent, salary expenses, electricity expenses, etc., therein reveals, that its business during the aforesaid period under consideration was though 'set up' but had yet not commenced. To sum up, the period i.e 02.05.2009 to 01.08.2009 (date on which the assessee had entered into a service agreement with its parent company for rendering of Software Development Services), can safely be held to be the interval between 'setting up' of the business and its commencement. In our considered view, all expenses which are incurred by an assessee during the interregnum period between 'setting up' of its business and commencement of the business, are permissible as a

deduction under Sec. 37 of the Act. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Axis Private Equity Limited [ITA No. 1204 of 2014, dated 30.01.2017]**. In its aforesaid order, the Hon'ble High Court relying on its earlier judgment in the case of **Western India Vegetables Products Ltd. Vs. CIT(1954) 26 ITR 151 (Bom)**, had held, that business is said to have been 'set up' when it is established and ready to commence. As observed by the High Court, there may be an interval between a business which is 'set up' and a business which is commenced. However, all expenses incurred during the interregnum period between 'setting up' of business and commencement of business would be permissible deductions. Observing, that the assessee before them had 'set up' its business, which, however, was disallowed by the A.O on the ground that the assessee had not yet commenced its business, the High Court had upheld the view taken by the Tribunal which had allowed the assessee's claim for deduction of the expenses incurred during the interregnum period. In fact, we find, that the Hon'ble High Court in its aforesaid order had referred to an order of the Tribunal in the case of HSBC Securities India Holdings Pvt. ltd. [ITA No. 3181/Mum/1999, dated 28.11.2001] (Mum), wherein the assessee's claim for business expenditure incurred after 'setting up' of business prior to its commencement was allowed by the Tribunal. The counsel for the revenue had stated before the Hon'ble High Court that the revenue had accepted the aforesaid decision of the Tribunal in HSBC Securities India Holdings Pvt. ltd. (supra), and had not carried the matter any further in appeal. In the backdrop of the aforesaid facts, it can safely be concluded that the expenses incurred by an assessee after 'setting up' of its business and prior to the commencement of the same would be allowable as deduction for the purpose of computing its taxable income. Our aforesaid view is further fortified by the order of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. E-Funds International India (2007) 162 Taxman 1 (Del).** In the said case, the assessee was engaged in the business of software development and I.T enabled services. The assessee after setting up of its infrastructure and

employing of the technical employees had claimed deduction for the expenses, on the ground, that it had 'set up' its business. However, the A.O disallowed the assessee's claim for expenses, for the reason, that it had not earned any income during the year under consideration. On appeal, the Hon'ble High Court observing, that the assessee's business was 'set up', therein, allowed its claim for deduction of expenses incurred after setting up of its business, despite the fact that the business had yet not commenced. Also, reliance is placed on the order of the ITAT, Delhi in the case of **Whirlpool of India Vs. JCIT (2008) 114 TTJ 211 (Del)**. In the said case, the assessee company was engaged in the business of providing financial services. The business of the assessee company was set up on 01.11.1995 i.e immediately after the key employees were appointed viz. loan manager etc. However, the A.O was of the view that the business of the assessee was to be taken to have been 'set up' only when the bank account was open by it. On appeal, the Tribunal therein observed, that the business of the assessee was to be taken to have been 'set up' when the directors were appointed, regional and branch manager were appointed and their salaries were paid, and computers for carrying on the business were installed. In the case of **Styler India (P) Ltd. Vs. JCIT (2008) 116 TTJ 333 (Pune)(TM)**, the assessee was engaged in service and consultancy sector and was into the business of supplying knowledge and technology to its customers. It was the claim of the assessee that its business was to be taken to have been 'set up' when the infrastructure was set up (i.e technical staff was appointed etc), and initially contacts were made with the prospective customers. Rebutting the aforesaid claim of the assessee, the A.O was of the view that the aforesaid activities of the assessee would not be sufficient to bring the business in "ready to commence" position. On appeal, the ld. Third Member concurring with the view taken by the ld. accountant member decided the issue in favour of the assessee. Similarly, in the case before the **Hon'ble High Court of Madras** in the case of CIT Vs. **Club Resorts P. Ltd. (2006) 287 ITR 552 (Mad)**, the assessee was engaged in the business of selling time share units at places of tourist interest. It was

the claim of the assessee that when the canvassing staff for promoting the assessee's business was appointed and the sales personnel were sent from the operating office to solicit customers and publicity campaign was launched, then, despite the fact that the construction of the project was at nascent stage, its business was to be taken to have been 'set up'. However, the A.O observed, that the business of the assessee company to be taken to have been 'set up' only when the construction of the project was completed. On appeal, the CIT(A); ITAT and the Hon'ble High Court upheld the assessee's claim. In light of the aforesaid judicial pronouncements, we are of the considered view that in the case before us, as the assessee company which is engaged in the business of providing software development services exclusively to its parent company, had purchased the computers and recruited the staff, it could, thus, in the backdrop of the nature of the business of the assessee, be safely concluded, that its business was though 'set up' but was yet to commence. Accordingly, we are of a strong conviction that the expenses which were incurred during the interregnum i.e between the setting up of the business and commencement of the same, was rightly claimed as an allowable deduction by the assessee. Accordingly, in terms of our aforesaid observations, we 'set aside the order of the CIT(A) in context of the aforesaid issue under consideration and vacate the disallowance of Rs.12,26,063/- made by the A.O while framing the assessment.

7. We shall now take up the claim of the assessee that the A.O had erred in making a TP adjustment of Rs.8,10,171/- under Sec. 92C of the Act. As observed by us hereinabove, the genesis of the controversy primarily hinges around the aspect that the A.O while working out the ALP had excluded one of the comparable company viz. M/s Cather Consultancy Services Pvt. ltd. that was included by the assessee's company in the list of the comparables in its TP study report for benchmarking the international transactions. It is the claim of the assessee, that the lower authorities had erroneously held the aforesaid comparable i.e M/s Cather Consultancy Services Pvt. ltd as a persistent loss making company and thus, excluded the same from the final list of the

comparables. As observed by us hereinabove, it is the claim of the ld. A.R that though the aforesaid comparable company had suffered a loss of Rs. (-) 0.1 crore for financial year ending 31.03.2008 and a loss of Rs. (-)0.35 crores for the year ending 31.03.2010, however, it had made profit of (+) Rs.0.01 crore for the year ending 31.03.2009. It is the claim of the assessee before us that the lower authorities had erred in stamping the aforesaid comparable company as a persistent loss making company for three years. It is in the backdrop of its aforesaid claim, that the ld. A.R had tried to impress upon us that the authorities below were in error in excluding the aforesaid comparable from the final list of comparable companies while benchmarking its international transactions. On the contrary, we find, that the A.O in the assessment order had observed that the difference in the working of the margins had arisen because the assessee had considered write off (bad debts) as a non-operating expense. It was observed by the A.O had that after treating the bad debts as an operational expense, the margin of the aforesaid company was negative for all the three years. At this stage, we may herein observe that the assessee had neither rebutted the said observation of the A.O before the lower authorities nor any contention to dislodge the same had been made before us by the ld. A.R.

8. We have deliberated at length on the aforesaid issue under consideration and are unable to persuade ourselves to subscribe to the projection of the aforesaid comparable company viz. M/s Cather Consultancy Services Pvt. Ltd by the assessee as a profit making company during the financial year 2009-10. As observed by us hereinabove, the assessee had tried to wriggle out of the fact that the aforesaid comparable company was a persistent loss making company by treating bad debts as a non-operational expenditure. In our considered view, the writing back of bad debts being a normal incident of a business operation which is carried everywhere in accounts to have a true picture of profits of the relevant party, thus, cannot be held to be a non-operational expenditure. Accordingly, we do not find any justification for exclusion of the bad debts written off by the aforesaid

comparable company in its accounts, for the purpose of computing its margins for the aforesaid three years. To sum up, the margins of the aforesaid comparable viz. M/s Cather Consultancy Services Pvt. Ltd. after excluding the bad debts as a non-operating expenditure by the assessee cannot be accepted. Our aforesaid view is fortified by the order of the **ITAT, Hyderabad** in **Hyudai Motor India Engineers Pvt. Ltd. Vs. DCIT [ITA No. 87/Hyd/2017, dated 08.06.2018]** and M/s **Kenexa Technologies Pvt. Ltd. Vs. DCIT [ITA No.243/Hyd/2014, dated 14.11.2014]**. In the backdrop of the aforesaid facts, we are of a strong conviction that as the aforesaid comparable company, viz. M/s Cather Consultancy Services Pvt. Ltd. can safely be held to be a persistent loss making company for three years, therefore, the A.O had rightly excluded it from the final list of comparables for the purpose of benchmarking the international transactions of the assesee for the year under consideration. Accordingly, finding no infirmity in the view taken by the A.O, we uphold his order to the said extent. The **Ground of appeal No. 3** raised by the assessee is dismissed.

9. As regards the claim of the assessee that the CIT(A) ought to have excluded M/s En Pointe Technologies India Pvt. Ltd., for the reason, that it had a high profit margin of 31.18%, we are afraid that the same does not find favour with us. We may herein observe that the aforesaid comparable company i.e M/s En Pointe Technologies India Pvt. Ltd. was selected by the assessee as a comparable in its TP study report for the year under consideration. Apart from that, the said comparable i.e M/s En Pointe Technologies India Pvt. Ltd, cannot be excluded from the final list of comparables on the standalone basis that of its high margin. Admittedly, in case the assessee is able to demonstrate that the higher margin of a company was backed by certain extraordinary events, then, there would be a basis for rejecting the same as a comparable for the purpose of benchmarking the international transactions of the assessee. However, as it is not the case of the assessee that the higher margin of the aforementioned company was due to certain extraordinary circumstances prevailing in its case, therefore, we are

unable to concur with the seeking of the exclusion of the said company from the final list of comparables. The **Ground of appeal No. 4** is dismissed.

10. We shall now advert to the claim of the assessee that the lower authorities had erred in not making risk adjustment of 2% while computing the ALP under Sec. 92C of the Act. It is the claim of the assessee, that as it is a captive unit of its parent company viz. M/s Global Conference Organizers, B.V, Netherland, therefore, it operates in an environment which is free of risk, and thus, the resultant margin of profit is also on the lower side. In the backdrop of its aforesaid contention, it is the claim of the assessee that the lower authorities had erred in not making a risk adjustment of 2% while computing the ALP under Sec. 92C of the Act. On the contrary, it was observed by the A.O that as the assessee had not quantified the risk adjustment either in the TP study report or in its submissions, therefore, its plea of risk adjustment was liable to be rejected. We have deliberated at length on the aforesaid issue under consideration and find substantial force in the claim of the assessee. Admittedly, the assessee being captive unit of its parent company viz. Global Conference Organizers, B.V, Netherland, therein operates in an environment which is free of risk, and resultantly, its margin of profit for the said reason is on the lower side. In our considered view, the claim of the assessee for the risk adjustment while benchmarking its international transactions in the backdrop of the financial of the comparables companies merits acceptance. Accordingly, we herein restore the issue to the file of the A.O, with a direction to consider the assessee's claim for risk adjustment for benchmarking its international transactions. The **Ground of appeal No. 5** is allowed for statistical purposes.

11. We shall now take up the claim of the assessee that the AO had erred in calculating the adjustment under Sec. 92C at 13.15% of the sale turnover i.e Rs.94,87,509/- instead of 13.15% of cost i.e Rs.90,48,051/-. Admittedly, the ALP of the international transactions of the assessee had been worked out by the A.O at 13.15%. In our considered view, the arm's length profit in the

hands of the assessee was to be worked out on its cost and not on its sale turnover of Rs.94,87,509/-. Accordingly, in terms of our aforesaid observations, we herein restore the matter to the file of the A.O, who is directed to rework out the adjustment by applying the average PLI of the comparables to the cost of the international transactions carried out by the assessee during the year under consideration, and not on its sale turnover of Rs.94,87,508/-. The **Ground of appeal No. 6** is allowed for statistical purpose.

12. As we have allowed the assessee's claim for deduction of Rs.12,26,063/-, therefore, the **Ground of appeal No. 7** having been rendered as infructuous is dismissed.

13. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 05.11.2020

Sd/-	Sd/-
Pramod Kumar	Ravish Sood
(VICE PRESIDENT)	(JUDICIAL MEMBER)

Mumbai, Date: 05.11.2020
PS: Rohit

Copy of the Order forwarded to :
1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "K" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai