

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : I-2 : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No.6280/Del/2012
Assessment Year : 2008-09

Fujitsu India Ltd.,
Building No.9A, Phase-III,
DLF Cyber City,
Gurgaon.

Vs. DCIT,
Circle-11(1),
New Delhi.

PAN: AAACF4170D

(Appellant)

(Respondent)

Assessee By : Shri Rohit Tiwari, CA &
Shri Anubhav Rastogi, Advocate
Department By : Shri T.M. Shivakumar, CIT, DR

Date of Hearing : 01.02.2017

Date of Pronouncement : 02.02.2017

ORDER

PER R.S. SYAL, AM:

This appeal by the assessee is directed against the final assessment order passed by the Assessing Officer (AO) u/s 143(3) read with section

144C of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 28.09.2012 in relation to the assessment year 2008-09.

2. The only issue assailed in this appeal is against the transfer pricing adjustment.

3. Briefly stated, the facts of the case are that the assessee is a 100% subsidiary of Fujitsu Ltd., Japan (FJ). The assessee was incorporated in India with the prime objective of consolidating marketing operations of Fujitsu Group in India. Six international transactions were reported in Form No.3CEB. The AO made a reference to the Transfer Pricing Officer (TPO) for determining their arm's length price (ALP). The TPO accepted the ALP of other five transactions except 'Receipts for services rendered' with a transaction value of Rs.6,39,70,166/-. The assessee applied the Transactional Net Margin Method (TNMM) with the Profit level indicator (PLI) of Operating Profit/Total Cost (OP/TC) for demonstrating that this transaction was at ALP. The TPO accepted the application of the TNMM as the most appropriate method. Apart from making certain changes in the determination of the assessee's own PLI

from the international transaction, the TPO also made variations in the companies chosen by the assessee as comparables and also their profitability rates. In the ultimate analysis, the he shortlisted ten companies as comparables with their OP/TC at 21.76% before working capital adjustment and 34.95% after working capital adjustment. By applying such profit rate of 34.95% on total costs incurred by the assessee in provision of the services, the TPO determined ALP at Rs.9.03 crore, which led to the transfer pricing adjustment amounting to Rs.2,63,21,723/-. The AO finalized the draft assessment order on the basis of the TPO's order. Aggrieved thereby, the assessee moved the Dispute Resolution Panel (DRP), which largely echoed the action of the TPO except for giving a direction on the computation of working capital adjustment, which we will discuss *infra*. The TPO, giving effect to the directions given by the DRP, recalculated the average OP/TC of comparable companies by re-examining the calculation of working capital at 31.35%. In this way, the amount of transfer pricing adjustment got reduced to Rs.2.39 crore. The AO, in his final order, made transfer

pricing addition of Rs.2,39,11,122/-, against which the assessee has come up in appeal before us.

4. We have heard the rival submissions and perused the relevant material on record. The assessee has challenged two components, in so far as the computation of its own PLI is concerned, viz., manner of apportionment of unallocable costs and not allowing deduction on account of pass through costs. In so far as the PLI of comparables is concerned, the assessee has challenged inclusion of six companies in the final list of comparables apart from the computation of working capital adjustment by the TPO.

5. Firstly, we will espouse the two aspects of calculation of the assessee's PLI. First is the apportionment of 'Unallocable costs'. In this regard, it is noticed that the assessee made two broader segments, namely, International segment and Domestic segment. The International segment has further been divided into two sub-segments, namely, Services segment and Trading segment. Domestic segment admittedly includes both Services and Trading. Thus, in all, there are three

segments declared by the assessee. The dispute in the present appeal is only against the international transaction of 'Services'. The assessee computed OP/TC from the 'Services' segment at 12.69%, with a loss in domestic segment at 65.77% and the overall entity level OP/TC at (-) 30.06%. This has been tabulated at page 3 of the TPO's order. The assessee apportioned total 'Unallocable costs' of Rs.9.79 crore amongst the three segments in the ratio of 'Head counts', that is, number of employees engaged in each segment. In this way, a sum of Rs.3,13,07,865/- was allocated to the 'Services' segment. The TPO did not accept the manner of apportionment of the combined 'Unallocable costs'. He apportioned these costs in the ratio of gross revenue from the three segments. This led to the apportionment of Rs.5,26,83,863/- to the 'Services' segment which is under dispute. By such allocation, the assessee's positive OP/TC from this segment got converted into negative of (-) 5%. The case of the assessee is that the combined 'Unallocable expenses' amounting to Rs.9.79 crore should have been apportioned in the ratio of head counts.

6. We are unable to countenance the view canvassed by the Id. AR. There can be no rationale in apportioning the costs on the basis of number of persons working in the three segments. A person working at a lower level, such as, a Helper or an Assistant, cannot be compared with a person working at a higher position, such as, a well qualified technician or a marketing expert, drawing more salary. One segment may need more lower staff drawing less salaries and the other segment may have more higher staff with higher salaries. If we consider the number of heads working in each segment, irrespective of their positions etc., and apportion unallocated costs in that ratio, the results are bound to be distorted. At the same time, we are also not agreeable with the apportionment of unallocated costs in the ratio of sales price or, say, gross revenue. It is so for the reason that the 'Trading segment' will, naturally, have more gross revenue representing sale price of goods because it will also include cost of goods sold. On the other hand, the 'Service segment' will be relatively more work-intensive but entailing lower costs because of the absence of cost of material. In our considered opinion, a more logical way of apportioning 'Unallocable costs' is to

divide them in the ratio of gross profit margins (not gross profit rate) earned by the assessee from the three segments. This will present a more realistic way of apportioning the unallocable costs.

7. On a pertinent query, the Id. AR could not adduce the details of 'Unallocable costs' of Rs.9.79 crore, which is not even available in the TPO's order. In the absence of such details, it cannot be precisely ascertained as to how much is really the amount of unallocable costs. Under these circumstances, we set aside the impugned order and remit the matter to the file of AO/TPO for considering the details of Rs.9.79 crore. If some cost included in this amount is directly identifiable with one of the three segments, then, it should be excluded from the common pool to be considered separately under the respective segment. The remaining amount should be apportioned amongst the three segments in the ratio of the amount of respective gross margins. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in this regard.

8. The second issue raised in the computation of the assessee's PLI is non-reduction of Rs.17,13,222/- from its Operating costs, being the amount of sub-contracted maintenance services to third party vendors. The ld. AR contended that the assessee outsourced maintenance services and incurred a sum of Rs.17.13 lac on the same. It was claimed that since the assessee did not perform any value added function on the same, which made them pass through costs and, hence, the same should have been excluded from the total costs. There is no discussion in the TPO's order on this issue though the same was raised before him. The assessee raised objection before the DRP in this regard also, which came to be jettisoned. It was, therefore, prayed before the Tribunal that a sum of Rs.17.13 lac should be excluded from the total Operating costs incurred by the assessee in the computation of its PLI as no profit element is embedded in the same.

9. We are not convinced with the submission advanced on behalf of the assessee. There is no doubt that the pass through cost is to be excluded from the total costs for the purposes of determining OP/TC

under the TNMM. However, the assessee has needlessly stretched the scope of 'pass through cost', which refers to such cost as is directly reimbursed by the other side on which no profit is earned by the assessee. Thus, pass through cost pre-supposes its specific and identifiable recovery as such from its AE without any profit element. If a cost is not separately recoverable from AE, then, it sheds the character of pass through cost. An example of the same can be some material supplied by the AE for use in rendering services by the assessee. In such a situation, the AE may raise a bill on the assessee for supply of such material, which will be separately discharged unconcerned with the overall contract value of service. In the alternative, the assessee may incur such cost with a third party and recover the same as it is from it AE. The essence of the matter is that such cost to be utilized in rendering the overall services should be separately recoverable from the AE without any profit element. If there is no separate reimbursement of such a cost and it is part of the overall contracted value, then the presumption will be that the overall profit element is entrenched in all the costs incurred by the assessee, thereby taking it outside the ambit of pass

through cost. In a nutshell, there should be a separate credit for the equal amount of the debit towards costs incurred.

10. Adverting to the facts of the instant case, we find that the so-called pass through cost amounting to Rs.17.13 lac was incurred *qua* third parties. The otherwise nature of such costs, being, operating, has not been disputed. The third party outsourced services cost has ultimately gone into the rendering of services by the assessee which fetched the contracted revenue. On a specific question about the nature of such costs, it was stated that the assessee did not recover it from its AE and there was no profit element involved in it. This contention automatically shows that the third party outsourced services cost cannot be assigned the character of pass through cost as admittedly it has not been recovered as such from the AE. If the contention of the Id. AR that since there is no profit element in the incurring of such a cost and hence the same be excluded by treating it as a pass through cost, is taken to a logical conclusion, then, all the costs incurred by the assessee to third parties in rendering the services to its AE will find their way out of the

ambit of 'Operating costs', thereby rendering the concept of 'Operating costs' itself meaningless. This is patently erroneous and unacceptable. *Ex consequenti*, we hold that the third party outsourced service cost amounting to Rs.17,13,222/- is rightly includible in the total operating costs incurred by the assessee. The argument of the Id. AR fails on this score.

11. Now, we take up the computation of mean OP/TC of comparables. It can be seen that the TPO computed average OP/TC of ten comparables companies at 34.95% after adjusting it with working capital. When the assessee raised this issue before the DRP that the manner of calculating the working capital adjustment by the TPO was not disclosed, the DRP directed the TPO for redoing the same. In the fresh exercise, the TPO though reduced the adjusted OP/TC of comparable companies at 31.35%, but, still, did not confront the assessee with the computation of working capital adjustment. The Id. AR submitted that the second calculation of working capital adjustment by the TPO is also wrong and the same be suitably amended.

12. It is observed that the TPO has allowed the working capital adjustment in a negative manner by enhancing the profit margin of comparables. There can be no quarrel on the fact that if figures of Inventory, Receivables and Payables warrant a working capital adjustment in a negative manner to the profit margin of the comparables, the same has to be necessarily carried out in the same manner as it is done if the adjustment leads to reduction of the profit margin of comparables. However, it is essential that any adverse calculation should be confronted to the assessee, so that his objection, if any, could be addressed. As the needful has not been done in this case, we set aside the impugned order on this score and remit the matter to the file of TPO/AO for confronting the assessee with the manner in which the adjusted OP/TC of comparables has been computed, so that the assessee may raise objection, if any, to the computation of working capital adjustment.

13. The last issue involved in this appeal is against the selection of comparables. The TPO in the ultimate analysis selected ten companies

as comparable and the assessee is aggrieved against the inclusion of six of such companies. Before embarking upon the comparability or otherwise of these companies, it is essential to understand the nature of work carried out by the assessee under the segment of 'Services.' The TPO has recorded on page 2 of his order that the : `assessee is engaged in market research activities/business development and helps its associated enterprises in identifying new projects and business opportunities in India'. The assessee: `also acts as an intermediary between its AEs and clients'. Further, it: `provides technical support/coordination services to its AEs. The TPO has recorded in his order that in the provision of marketing/business development support services', the assessee undertakes the following activities :-

- a) Provision of reports and information in respect of local market such as latest market trends/developments, supply/demand scenarios, market prices, future market outlook, activities of competitors, etc.;
- b) Provision of information in respect of existing and potential customers;
- c) Act as an interface/co-ordinator between the Fujitsu Group entities and the customers by:

- informing customers about Fujitsu Group's various product offerings;
- informing customers of delivery schedules and any changes to those schedules as advised by the Group Companies; and
- Provision of administrative assistance to Fujitsu Group;
- Coordinating information on and evaluating business/commercial risks including financial, political, technical, environmental, legal, taxation, etc. of operating in India;
- Coordinating information on potential partner/s and coordinating/corresponding/liaisoning/building relationships with them;
- Coordinating/corresponding/liaisoning/building relationships with concerned government authorities; and
- Co-ordination with various contractors, from whom certain services/advice may have been outsourced in relation to health/ safety/ environment matters, government authorities related matters, public relations matters, community development matters, legal matters, etc.

14. On a specific query, the Id. AR did not place on record a copy of the Agreement pursuant to which such services were rendered, that could have facilitated in finding out the correct nature of work done by the assessee for its AEs. It was submitted that no agreement was executed. We are not inclined to accept this submission. It goes without

saying that no work, in the ordinary course, can be carried out between two distinct, even though related, corporate assesses located in different overseas tax jurisdictions without any formal agreement showing, *inter alia*, the nature of work, responsibilities, obligations and mode of compensation/ remuneration. We are leaving this issue here only after making a mention.

15. On going through the Transfer pricing study report of the assessee, whose copy is available in the paper book, it can be seen that the assessee performed functions of marketing and support services to its AEs, which have been outlined in paras 4.3.6 to 4.3.16 as under :-

`Support services rendered to AEs

- 4.3.6 In accordance with its primary objective, FIL is performing the function of general marketing and market research. It also provides information about company's products to potential customers.
- 4.3.7 FIL participates in various tenders in India for supply of telecom equipment and related services. In case of award of the contract, the execution of contract is undertaken by AEs/third parties. In most cases the projects are executed by FJ and fellow subsidiaries with a small portion being outsourced to third party sub-contractors.
- 4.3.8 FJ and its fellow subsidiaries need to be continually aware of the market conditions in India. FIL provides information to AEs

regarding the changes in market place, changes in the government policy, business environment in India, progress on projects and other incidental matters. This information is provided on a regular basis.

- 4.3.9 Fujitsu has immense brand equity in the telecom business and IT market, which gives FIL a great reference list that inspires confidence in potential customers. Accordingly, Fujitsu's brand equity supports FIL's marketing support efforts to a great extent.
- 4.3.10 Fujitsu owns the brand rights whereas FIL does not own any intangible vis-a-vis the products. The marketing of branded products carries with it the stated or implied right to use the supplier's trademark or trade name only for the purpose of promoting the supplier's products. FIL does not have any other additional rights to use or exploit the brand rights owned by Fujitsu.
- 4.3.11 In the telecom industry and IT market, brand recognition plays a vital role in achieving sales volumes. Fujitsu brand has a reputation across the globe as well as in the Indian market. Accordingly, returns attributable to the brand name should accrue to the entity that owns the brand. FIL should only be adequately compensated for the function carried on by it.
- 4.3.12 FIL is also providing website updation and maintenance on Fujitsu's operations in India and providing a link to it at Fujitsu's website. In order to correctly assess the customer needs. FIL also employs technical personnel who support marketing personnel in understanding technical requirements of the customers.

Commission Income from AEs

- 4.3.13 Fujitsu, in order to expand its operations, is always looking for opportunities in the global market and is involved in various biddings and tenders. FJ entered into an agreement with FIL with respect to the India leg of the SEA-ME-WE 4 (South East Asia- Middle East- Western Europe-4) project. The SEA-ME-WE-4 Cable system project is in relation to optical fibers transmission under sea. As per the agreement. FIL provided assistance to FJ in relation to obtaining the supply contract for

the SEA-ME-WE-4 cable system by providing information about Government policies and regulations, competitor analysis, pricing norms etc. FIL was compensated in the form of commission income by FJ, in respect of its various support services with respect to the SE-ME-WE-4 project.

- 4.3.14 Technical support services rendered to Fujitsu Network Solutions Limited Japan (FNETS) are as under:

India Maintenance Support

- 4.3.15 FNETS has supplied transmission equipment to Power Grid Corporation India Ltd. ('PGCIL') in India. As part of the supply contract, FNETS has to provide maintenance services for these equipments. These services are subcontracted to FIL, which has further subcontracted these services to third parties, with all risks transferred back-to-back, after retaining its margin. The scope of services includes problem solving and attending queries. FIL acts as a coordinator between FNETS and the end customer and third party sub-contractor.

SEA-ME-WE 4 Project (South East Asia-Middle East-West Europe 4 Project)

- 4.3.16 The project of SEA-ME-WE 4 Cable System is in relation to optical fiber transmission under sea. SEA-ME-WE is a consortium formed by various countries to expand the horizons of the broadband technology. FJ was engaged in supplying equipment and providing installation and commissioning support for this project. FJ performed the work of equipment supplies and subcontracted the installation and commissioning services part of the contract to FNETS. FNETS subcontracted the entire installation and commissioning services part of the contract to FNETS. FNETS subcontracted the entire installation and commissioning services part to FIL which in turn further subcontracted to Fujitsu Optel Ltd. ("FOTEL") after retaining its margin. The scope of Work includes control and management of implementation, supply of man power for

testing work, safety control and insurance for tester, arrangement of entrance permission at site, supply of test procedure and data sheet form and supply of test equipment.

16. Admittedly no Commission income was earned by the assessee and the above para 4.3.13. appears to be a copy and paste work having no relevance to the actual business activity carried out during the year.

17. The Id. DR argued that the assessee, apart from rendering Marketing support services, was also engaged in providing Technical support services as was apparent from para 4.3.12 and 4.3.14 above. This was controverted by the Ld. AR who submitted that the so-called technical support services were simply in the nature of website updation and maintenance of the Fujitsu's group operations in India, so that the customers could understand the nature of services provided. We find weight in the submission advanced on behalf of the assessee for the obvious reason that, firstly, it is not the case of the TPO that the assessee did render any technical support services to its AE and, secondly, the services of website updation, though designated as technical support services, are, in fact, in the nature of updation and maintenance of the

website of Fujitsu's group, so that the nature of activities done by the group may be made known to the customers in India. Nothing more than that has been brought to our notice.

18. The next contention of the Id. DR was with reference to paras 4.3.15 and 4.3.16 of the Transfer pricing study report. It was submitted that the assessee was not only rendering Marketing support services, but also undertaking Maintenance services. We are, again, not convinced with the Id. DR's submission. As can be seen from para 4.3.15 that FNETS was to provide maintenance services for supply of equipments to Power Grid Corporation of India Ltd. These services were subcontracted to the assessee, which were further subcontracted by the assessee to third party with all risks transferred back to back. Similar position emanates from a reading of para 4.3.16 which shows that FJ was engaged in supplying equipments and providing installation and commissioning support for project of SEA-ME-WE. FJ performed the work of equipments supply and subcontracted the installation and commissioning services part of the contract to FNETS, which

subcontracted the entire installation and commissioning of service part to the assessee, which, in turn, subcontracted the same to FOTEL, another group company. This shows that the assessee did not render any installation and commissioning services or maintenance services at its own, but simply subcontracted the same to other entities, which is nothing, but, co-ordination. Such income can be better described as from mediation in entrusting the work to other entities from sub-letting rather than being characterized as income from providing maintenance support services. It is, therefore, amply clear that the assessee rendered Marketing support services to its AEs as has been accepted by the TPO as well, which are in the nature of providing information in respect of local market etc., existing and potential customers to its AEs and working as an interface between the AEs and customers in India by informing the customers about the group's offerings, delivery schedules, etc. and coordinating various issues concerning the marketing of products. With the above background of nature of services rendered by the assessee in mind, we will now take up the comparability or otherwise of six companies under challenge.

(i) Apitco Ltd.

19.1. The TPO proposed this company as comparable. The assessee objected to the same on account of its functional dissimilarity, which did not find favour with the TPO, who included the same in the final list of comparables.

19.2. Annual report of this company is available on pages 1 onwards of the Paper book having Annual reports of some of the companies. Performance review for the year 2007-08 (equivalent to the AY 2008-09 under consideration) indicates that this company recorded total revenue of Rs.10.66 crore contributed by its major business segments viz., Asset Reconstruction & Management Services Rs.2.01 crore; Project Related Services Rs.2.01 crore; Micro Enterprises Development Rs.1.50 crore; Infrastructure Planning & Development Rs.1.36 crore; Research Studies & Tourism Rs.1.26 crore; Skill Development Rs.1.12 crore; Environment Management Rs.42.08 lac; Entrepreneurship Development & Training Rs.34.79 lac; Cluster Development Rs.24.08 lac; Energy Related Services Rs.16.24 lac; Emerging Areas Rs.5.30 lac; and Other

Income of Rs.15.45 lac. On going through the break-up of revenues from major business segments, it can be seen that this company is engaged in providing Asset reconstruction and management services; Project related services; Micro enterprises development services; Infrastructure planning and development services and Cluster development etc. Apart from the above, this company has also earned revenue from Research studies and tourism amounting to Rs.1.26 crore. From a close look at the activities carried on by this company, it becomes clear that except for 'Research studies', which partly resembles with the assessee's Marketing research activity, there is no match between all the other activities carried out by this company and what the assessee is doing. There is no segmental information available on this business segment and the company has computed profit on a consolidated basis. In view of the patent mismatching functions performed by this company on a holistic basis *vis-à-vis* the assessee, we cannot deem this company as comparable on entity level. This company is, therefore, ordered to be excluded from the list of comparables.

(ii) Best Mulyankan Consultants Ltd.

20.1. The TPO selected this company as comparable. The assessee objected to the same, but the TPO did not concur with the assessee's objections.

20.2. The Id. AR did not press the functional differences of this company with the assessee. The only issue raised was that the TPO had wrongly computed its profit margin at 12.84%. It was, therefore, prayed that a direction may be given for computing the correct PLI of this company. This was not opposed by the Id. DR. Under these circumstances, we direct the AO/TPO to confront the assessee with the working of PLI of this company. If it is not correct, the same should be corrected after confronting the assessee with the same.

(iii) Choksi Lab Ltd.

21.1. The TPO included this company in the list of comparables despite the assessee's objection that it was functionally different.

21.2. We have gone through the Annual report of this company, which is available in the paper book. Note no. 8 to Part B - 'Notes forming part of the accounts' - provides that this company is a commercial testing house engaged in testing of various products and also offers services in the field of pollution control as allied activity. From the above description of the nature of services carried on by this company, it becomes evident that it is basically engaged in providing testing services for various products and also offers services in the field of pollution control. As against this, the services provided by the assessee are purely in the nature of marketing support to its AEs. We fail to appreciate as to how marketing support services can be equated with testing services. When we peruse Schedule of fixed assets of this company, it can be seen that the major asset is 'Instruments.' It is with the help of these instruments that the company is providing services in the nature of testing of various products. By no standard, this company can be considered as comparable with the assessee company. We, therefore, direct the exclusion of this company from the list of comparables.

(iv) Indus Technical and Financial Consultants Ltd.

22.1. The TPO included this company in the list of comparables despite the assessee's objections that the website of this company showed that it was involved in environmental services, technology management, financial services and administrative services. The assessee is aggrieved against the inclusion of this company.

22.2. We have heard the rival submissions and perused the relevant material on record. The Id. AR has simply relied on the current website of this company to support his contention that it is functionally different from the assessee. Obviously, the website indicates the position of a company as on date and not *qua* the date of closing of the year, which event took place nine years back. No other information/detail has been made available to show that this company is functionally different. In the absence of any such details, we are unable to approve the stand of the assessee. This company is, therefore, held to be rightly included in the list of comparables.

(v) RITES Ltd.

23.1. The TPO noticed that this company is primarily a consultancy organization having three business segments, namely, Consultancy services, Export of rolling stock, equipment and spare, Leasing of railway rolling stock and equipment. The TPO considered only the Consultancy services segment of this company for the purpose of inclusion in the list of comparables, against which the assessee is aggrieved.

23.2. Having heard the rival submissions and perused the relevant material on record, we find that only 'Consultancy service' segment of this company has been considered by the TPO leaving the other business segments aside. Our attention has not been drawn towards any material of substance to indicate that the nature of services rendered by this company cannot be considered as matching with the services provided by the assessee for the purpose of comparison. The Id. AR further submitted that the TPO wrongly computed profit margin from the Consultancy services segment of this company. While retaining this

company in the list of comparables, we direct the TPO/AO to recompute profit margin of Rites Ltd. from the Consultancy service segment after due notice to the assessee.

(vi) WAPCOS Ltd. (Seg.)

24.1. The TPO considered this company as comparable by observing that it was providing support services in terms of technical support, technical know-how valuation and assistance in development/upgradation of potential suppliers, etc. The assessee's objections about the functional dissimilarity of this company, were rejected.

24.2. After considering the rival submissions and perusing the relevant material on record, we find from the Annual report of this company that it has two segments, namely, 'Consultancy and engineering projects' and 'Lumpsum turnkey projects.' The TPO has taken 'Consultancy and engineering project segment' for the purposes of comparison with the assessee company. This company is engaged in infrastructure development projects. This company is also working as independent

review and monitoring agency for projects in some States. It is also providing supervision and quality control consultancy for construction/upgradation of rural roads under PMGSY. It also secured projects for development and hygiene education, development of dry pit latrines, designs for local conditions for household and schools and solid waste management. It also secured projects for transmission line Kirti Irti to Sta, Treng, Camhodia. A review of the above services provided by this company, it can be easily ascertained that it is nowhere close to the rendering of marketing support services, which is being done by the assessee under this segment. The nature of activity done by the assessee is quite distinct from this company. We, therefore, direct to exclude WAPCOS Ltd. (Seg.) from the list of comparables.

25. To sum up, we set aside the impugned order on the issue of addition towards transfer pricing adjustment and remit the matter to the file of AO/TPO for a fresh determination of the ALP of the international transaction of 'Receipts for services rendered' in consonance with our

above directions. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings

26. In the result, the appeal is allowed for statistical purposes.

The order pronounced in the open court on 02.02.2017.

Sd/-

[K.N. CHARY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, February, 2017.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.