

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1', NEW DELHI**

Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM

ITA No. 5929/Del/2012 : Asstt. Year : 2008-09

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| Omniglobe Information Technologies (India) Pvt. Ltd., E-11, Rajouri Garden, New Delhi-110027 | Vs | Income Tax Officer, Ward-13(4), New Delhi |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAACO6606M | | |

Assessee by : Sh. Ajay Vohra, Sr. Adv. & Neeraj Jain, Adv.
Revenue by : Sh. S. K. Jain, Sr. DR

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| Date of Hearing : 04.05.2016 | Date of Pronouncement : 13.05.2016 |
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 25.10.2012 passed by the AO u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Following grounds have been raised in this appeal:

“1. That the assessing officer erred on facts and in law in completing assessment under section 144C read with section 143(3) of the Income-tax Act (the Act) at an income of Rs. 10,62,72,150 as against the returned loss of Rs. 3,11,783.

2. That the assessing officer / TPO erred on facts and in law in making an addition of Rs. 10,62,65,696 allegedly on account of difference in the arm's length price of the 'international transactions' of BPO/Data Processing Services rendered to the associated enterprise.

2.1 That on facts and circumstances of the case and in law, the DRP/TPO erred in not holding that since the associated enterprise ("the AE") has incurred a loss, in relation to ITES services rendered by the appellant to the AE, which, in turn, were rendered by the AE to ultimate third party customer(s), no Transfer Pricing adjustment was warranted.

2.2 That on facts and circumstances of the case and in law, the DRP/TPO erred in not holding that the Transfer Pricing adjustment, at best, could not exceed the total profit earned by the group, as the same would result in taxation of notional income.

2.3. That the assessing officer/TPO erred on facts and in law in adopting following additional filters without appreciating that applying such quantitative filters selectively defies the purpose of the benchmarking analysis:

(i) Ratio of service income to total income at least 75%

(ii) Employee cost more than 25%

(iii) Income from export sales at least 25% of the total income.

(iv) Companies having diminishing profits/persistent losses for the period under consideration were excluded

2.4 That the assessing officer/TPO erred on facts and in law in considering Vishal Information Technologies Ltd. and Eclerx Services Limited as comparable companies without appreciating that such companies being KPO service provider, does not satisfy the test of comparability provided under Rule 10B(2) of the Rules.

2.5 That the assessing officer/TPO erred on facts and in law in appreciating that the above companies, viz., Vishal Information Technologies Ltd. and Eclerx Services Limited, were reflecting abnormally high margin and also were functionally not comparable to the appellant.

3. That on facts and circumstances of the case and in law, the assessing officer / TPO erred in not allowing risk adjustment for low risk assumed by the appellant operating as a captive service provider.

The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing.”

3. The main grievance of the assessee in this appeal relates to the addition of Rs.10,62,65,696/- on account of difference in arm's length price of the international transactions of BPO/Data Processing Services rendered by

the assessee to the associated enterprise (AE) by considering two comparables M/s Vishal Information Technologies Ltd. and Eclerx Services Ltd.

4. Facts of the case in brief are that the assessee filed the return of income on 10.09.2008 declaring a loss of Rs.3,11,783/- which was processed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Subsequently, the case was selected for scrutiny. The assessee is a 100% subsidiary company of M/s Omniglobe International LLC, USA. The AO noticed that the assessee had made international transactions with its associated enterprises on account of BPO/Data Processing Services amounting to Rs.37,93,12,422/-. The AO, therefore, referred the matter to the TPO for determination of arm's length price u/s 92CA of the Act. The TPO observed that the international transactions reported by the assessee is to be adjusted by Rs.10,62,65,696/- to bring it at arm's length price. The TPO rejected the assessee's comparable on functional analysis and 4 comparables had been used to for the purpose of benchmarking the international transactions. The assessee had considered itself to be the tested party and Operating Profit/Operating Cost (OP/OC%) as the Profit Level Indicator (PLI) and considered 28 companies with

OP/OC of 8.01% as comparable for the purpose of benchmarking the international transaction. However, the TPO has selected the following 4 comparable with mean operating margin over cost at 36.34%:

| <i>S. No.</i> | <i>Company Name</i> | <i>OP/OC(%)</i> |
|---------------|---|-----------------|
| 1. | <i>Eclerx Services Ltd.</i> | <i>66.25%</i> |
| 2. | <i>ICRA Online Ltd.</i> | <i>9.78%</i> |
| 3. | <i>E4e Healthcare Business Services Pvt. Ltd.</i> | <i>17.50%</i> |
| 4. | <i>Coral Hub Ltd.</i> | <i>51.84%</i> |
| | <i>Average</i> | <i>36.34%</i> |

5. Accordingly, the adjustment of Rs.10,62,65,696/- on account of the difference in the margin of the comparable companies and assessee company was worked out by the TPO as under:

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| <i>“Operating Cost (A)</i> | <i>356,152,353</i> |
| <i>OP/TC</i> | <i>36.34%</i> |
| <i>Margin (B)</i> | <i>Rs.129,425,765</i> |
| <i>Arm’s length</i> | <i>Rs.485,578,118</i> |
| <i>Revenue (A+B)=C</i> | |
| <i>Price charged by the assessee</i> | <i>379,312,422</i> |
| <i>Difference (C-D)</i> | <i>106,265,696”</i> |

6. The AO passed the draft assessment order and proposed to make the addition of Rs.10,62,65,696/-. The assessee raised the objection before the Dispute Resolution Panel-II, New Delhi (DRP) and objected the consideration

of M/s Vishal Information Technologies Ltd. and Eclerx Services Ltd. as comparable. The DRP however rejected the objection of the assessee by observing that no comparable can be rejected merely on the basis of margins and that in order to exclude the extreme result case there should have been either a defect in comparability for exceptional condition faced by the comparables.

7. Now the assessee is in appeal and requested for admission of the following additional ground:

“That on the facts and circumstances of the case and in law the TPO/DRP erred in not allowing comparability adjustment to account for difference in working capital employed by the appellant vis-à-vis comparable companies considered by the TPO.”

8. It has further been submitted that after excluding Eclerx Services Ltd. and Coral Hub Ltd. from the final set of comparable companies considered by the TPO, the adjusted Operating Profit/Operating Cost would be within the range of +/- 5% and shall be considered to be at arm's length price. A request has been made to admit the additional ground under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963. Reliance was placed on the decision of the Honorable Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT reported at 229

ITR 383. The assessee had also moved an application dated 09.11.2015 for admission of the additional evidence in terms of Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 stating therein as under:

The appellant seeks to place on record the following by way of additional evidences:

"Computation of working capital adjustment claimed in the operating profit margin of the comparable companies"

Omniglobe Information Technologies India Pvt. Ltd. ("the appellant"), a company incorporated on 19th March, 2004, is a wholly owned subsidiary of Omniglobe International LLC, USA ("the parent company"). The appellant is engaged in the business of providing BPO services to its associated enterprise, i.e., Omniglobe International LLC.

The appellant in the relevant previous year entered into the following international transactions with the associated enterprise for providing BPO and IT enabled services for Telecom company, viz., phone activation services, local number portability, payment verification, etc.:

| SI. No. | International transactions | Associated Enterprise | Amount (Rs.) Receipt | Method applied |
|----------------|-----------------------------------|------------------------------|-----------------------------|-----------------------|
| 1. | Data processing services | Omniglobe LLC | 379,312,422 | TNMM |

For the purpose of benchmarking the international transactions, the appellant has considered itself to be the tested party and operating profit/ cost (OP/OC%) as the Profit Level Indicator ("PLI"). In the transfer pricing study report, the appellant considered 28 companies with OP/OC of 8.01%, as comparable for the purpose of benchmarking the international transactions.

Accordingly, since the operating profit margin (OP/OC%) of the appellant at 8%, was within the +/- 5% of the mean operating margin (OP/TC%) of the comparable companies the international transactions were considered to be at arm's length. The TPO, however, in the order passed under section 92CA(3) of the Act, applied following additional filters:

- (i) Turnover in excess of 1 crore*
- (ii) Ratio of service income to total income at least 75%*
- (iii) Employee cost more than 25%*
- (iv) Income from export sales at least 25% of the total income.*
- (v) Companies having diminishing profits/persistent losses for the period under consideration were excluded*

Applying the aforesaid filters, the TPO rejected 24 companies and selected the following 4 companies with mean operating margin of 36.34% as comparable to the appellant:

| <i>S. No.</i> | <i>Company Name</i> | <i>OP/OC(%)</i> |
|---------------|-----------------------------|-----------------|
| <i>1.</i> | <i>Eclerx Services Ltd.</i> | <i>66.25%</i> |
| <i>2.</i> | <i>ICRA Online Ltd.</i> | <i>9.78%</i> |

| | | |
|----|---|---------------|
| 3. | <i>E4e Healthcare Business Services Pvt. Ltd.</i> | <i>17.50%</i> |
| 4. | <i>Coral Hub Ltd.</i> | <i>51.84%</i> |
| | <i>Average</i> | <i>36.34%</i> |

Accordingly, the TPO in the order passed under section 92CA(3) of the Act had computed an adjustment of Rs. 10,62,65,696.

The appellant has challenged the aforesaid Transfer Pricing adjustment made by the TPO and sustained by the Dispute Resolution Panel ('DRP') in the various grounds of appeal set out in the memorandum of appeal. The appellant in order to support its claim also craves leave to place on record computation of working capital adjustment claimed in the operating profit margin of the comparable companies, by way of additional evidence.

It is respectfully submitted, in this regard, as under:

It is respectfully submitted that the appellant enjoys significantly better payment terms from its associated enterprises as compared to the comparable companies which is evident from the 'Debtors to Operating Cost' ratio of the appellant at 6.32% which is significantly lower than the average ratio of 68.27% of the comparable companies.

In view of the aforesaid it is respectfully submitted that the appellant is entitled for an appropriate adjustment to account for the differences in the level of working capital requirements.

After excluding eClerx Services Ltd. and Coral Hub Limited from the final set of comparable companies considered by the TPO, in terms of decision of Hon'ble Delhi High Court in the case of Ramp Green Solutions Pvt. Ltd. vs. CIT (ITA 102/2015), the working capital adjusted operating margins of the comparable companies works out to 11.09% as follows:

| S. No. | Company Name | OP/OC (%) | Adjusted OP/OC |
|---------------|--|------------------|-----------------------|
| 1. | ICRA Online Ltd. | 9.78% | 4.69% |
| 2. | E4e Healthcare Business Services Pvt. Ltd. | 17.50% | 17.50% |
| | Average | 13.64% | 11.09% |

*Detailed computation of working capital adjustment is enclosed as **Annexure-1**.*

Accordingly, since the operating profit to cost ratio of the appellant at 8% is within the range of +/- 5% of the operating profit to cost ratio of comparable companies at 11.09%, the international transaction undertaken by the appellant shall be considered to be at arm's length price.

It would be appreciated that this is the first appeal before the Hon'ble Tribunal against the impugned assessment order. The appellant in order to rebut the findings of the assessing officer/TPO and to support the arm's length price of international transaction of provision of IT enabled services undertaken with the associated enterprise has computed the working capital adjustment, which is

now placed before the Hon'ble Bench by way of additional evidence.

PRAYER:

It is respectfully submitted that if subsequent events occur, the appellate authority has to examine and evaluate the same and mould the relief accordingly (ref. Pasupuleti Venkateswarlu vs. The Motor & General Traders. AIR 1975 SC 1409).

Reliance is also placed on the decision of Hon'ble High Court in the matter of Text Hundred India Pvt. Ltd. vs. CIT (ITA No. 2077,2061 and 2065/2010), wherein the plea for admission of additional evidence before the Tribunal was accepted by the Hon'ble High Court.

Your Honour's attention is also invited to the decision of Mumbai Bench of the Tribunal in the case of UCB India Pvt. Ltd. vs. ACIT, Circle 7(3), Mumbai, 121 ITD131, wherein it is held as under:

"In all fairness, the appellant should not be pinned down to his submissions in the first round of Transfer Pricing proceedings. It should be appreciated that Transfer Pricing regulations are relatively new provisions and the case does require special consideration. The appellant is free to support his case in any manner it deems fit by filing any additional evidence or document before the AO. Further information may be gathered from the parent company, if possible. Fresh methods may be adopted to prove ALP.

Our intention is that, the appellant should not be shut out in the second round of proceedings, on the ground that, certain documents were not filed in the first round or certain method was not adopted originally. (emphasis supplied).

Attention is further invited to the decision of the Hon'ble Tribunal in the case of NIT Ltd. vs ACIT: (ITA No. 1871/Del/2009) wherein the fresh search submitted by the appellant even before the Tribunal was accepted.

It is respectfully submitted that the aforesaid additional evidences sought to be placed on record in the form of the consolidated financial statements of the associated enterprise, have bearing on transfer pricing dispute involved in the appeal. It is therefore respectfully prayed that, in terms of rule 29 of the Income -tax Appellate Tribunal Rules, the aforesaid additional evidences may kindly be admitted and taken into consideration while adjudicating the captioned appeals.

The appellant trusts that the request shall merit sympathetic consideration.”

9. During the course of hearing the Id. Counsel for the assessee reiterated the contents of the aforesaid applications furnished for admission of the additional ground and the evidences and requested to admit the additional ground as well as the additional evidences. The reliance was placed on the following case laws:

- *Pasupuleti Venkaterwarlu Vs The Motor General Traders AIR 1975 SC 1409*
- *D.C.M. Benetton India Ltd. Vs CIT, New Delhi (2008) 173 Taxman 283 (Del)*
- *U.C.B. India Pvt. Ltd. Vs ACIT, Circle-7(3), Mumbai, 121 ITD 131 (Mum)*
- *NIT Ltd. Vs ACIT (ITA 1871/Del/2009, ITAT, New Delhi)*

10. In his rival submissions the Id. DR objected for admission of the additional ground and the additional evidences and submitted that those were not raised/furnished either before the TPO or before the DRP, therefore, should not be admitted.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the assessee has raised the additional ground relating to the computation of working capital adjustment. In support of the additional ground the assessee also furnished the additional evidences. It is noticed from the order of the DRP dated 24.09.2012 that the assessee has raised the objection relating to credit and collection risks which arose when an enterprise supplies product or service to a customer in advance of the payment. It is also noticed that the assessee claimed for working

capital adjustment before the DRP which is evident from page no. 362 of the assessee's paper book which read as under:

“Re:- Claim for working capital adjustment:-

It is respectfully submitted that while undertaking a benchmarking analysis for the purpose of determination of arm's length price, appropriate adjustments are made for material differences. In this regard, Rule 10B(3) of the Income Tax Rules, 1963 provides as under:

Therefore, Rule 10B(3) requires that appropriate adjustments should be made while undertaking any benchmarking analysis.

In terms of Rule 10B(3), appropriate adjustments are required to be made to account for the differences in the working capital investments of the assessee vis-à-vis the comparable companies.”

12. However, the DRP has not commented upon the said objection of the assessee. We, therefore, by considering the totality of the facts, are of the view that the additional ground raised by the assessee deserves to be admitted. It is also noticed that the new evidences furnished by the assessee are directly related to the computation of working capital adjustment and go to the root of the matter. Therefore, these additional evidences are also admitted.

13. In the instant case, it is an admitted fact that the assessee company is a voice call centre and the comparable challenged by the assessee, namely, M/s Eclerx Services Ltd. and M/s Vishal Information Technologies Ltd. are KPO. It is also noticed that the DRP in para 5 of its order dated 24.09.2012 discussed the aforesaid comparable. As regards to the M/s Eclerx Services Ltd., the DRP was of the view that the functional differences pointed out by the assessee were significant to warrant the rejection of this company as comparable. At the same time, the DRP retained the said company as comparable, therefore, a contradictory stand has been taken by the DRP. As regards to the comparable M/s Eclerx Services Ltd. is concerned, it is noticed that this comparable had been considered by the Hon~~o~~ble Jurisdictional High Court in the case of DCM Benetton India Ltd. Vs CIT (2008) 173 Taxman 283 (Del) (copy of which is placed at page nos. 1206 to 1247 of the assessee's paper book). In the said case their lordships in para 31 to 37 has observed as under:

“31. In the present case, the Tribunal noted that Vishal and eClerx were both engaged in rendering ITeS. The Tribunal held that, “once a service falls under the category of ITeS, then there is no sub-classification of segment”. Thus, according to the

Tribunal, no differentiation could be made between the entities rendering ITeS. We find it difficult to accept this view as it is contrary to the fundamental rationale of determining ALP by comparing controlled transactions/entities with similar uncontrolled transactions/entities. ITeS encompasses a wide spectrum of services that use Information Technology based delivery. Such services could include rendering highly technical services by qualified technical personnel, involving advanced skills and knowledge, such as engineering, design and support. While, on the other end of the spectrum ITeS would also include voice-based call centers that render routine customer support for their clients. Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar. Their business environment would be entirely different, the demand and supply for the services would be different, the assets and capital employed would differ, the competence required to operate the two services would be different. Each of the aforesaid factors would have a material bearing on the profitability of the two entities. Treating the said entities to be comparables only for the reason that they use Information Technology for the delivery of their services, would, in our opinion, be erroneous.

32. It has been pointed out that whilst the Tribunal in Willis Processing Services (India) Pvt. Ltd. v. DCIT (supra) held that no distinction could be made between KPO and BPO service providers, however, a contrary view had been taken by several benches of the Tribunal in other cases. In

Capital IQ Information System India (P.) Ltd. v. Dy. CIT, (IT) [2013] 32 taxmann.com 21 and Lloyds TSB Global Services Pvt. Ltd. v. DCIT, (ITA No. 5928/Mum/2012 dated 21th November 2012), the Hyderabad and Mumbai Bench of the Tribunal respectively accepted the view that a BPO service provider could not be compared with a KPO service provider.

33. The Special Bench of the Tribunal in Maersk Global Centers (India) Pvt. Ltd. (supra) struck a different cord. The Special Bench of the Tribunal held that even though there appears to be a difference between BPO and KPO Services, the line of difference is very thin. The Tribunal was of the view that there could be a significant overlap in their activities and it may be difficult to classify services strictly as falling under the category of either a BPO or a KPO. The Tribunal also observed that one of the key success factors of the BPO Industry is its ability to move up the value chain through KPO service offering. For the aforesaid reasons, the Special Bench of the Tribunal held that ITeS Services could not be bifurcated as BPO and KPO Services for the purpose of comparability analysis in the first instance. The Tribunal proceeded to hold that a relatively equal degree of comparability can be achieved by selecting potential comparables on a broad functional analysis at ITeS level and that the comparables so selected could be put to further test by comparing specific functions performed in the international transactions with uncontrolled transactions to attain relatively equal degree of comparability.

34. *We have reservations as to the Tribunal's aforesaid view in Maersk Global Centers (India) Pvt. Ltd. (supra). As indicated above, the expression 'BPO' and 'KPO' are, plainly, understood in the sense that whereas, BPO does not necessarily involve advanced skills and knowledge; KPO, on the other hand, would involve employment of advanced skills and knowledge for providing services. Thus, the expression 'KPO' in common parlance is used to indicate an ITeS provider providing a completely different nature of service than any other BPO service provider. A KPO service provider would also be functionally different from other BPO service providers, inasmuch as the responsibilities undertaken, the activities performed, the quality of resources employed would be materially different. In the circumstances, we are unable to agree that broadly ITeS sector can be used for selecting comparables without making a conscious selection as to the quality and nature of the content of services. Rule 10B(2)(a) of the Income Tax Rules, 1962 mandates that the comparability of controlled and uncontrolled transactions be judged with reference to service/product characteristics. This factor cannot be undermined by using a broad classification of ITeS which takes within its fold various types of services with completely different content and value. Thus, where the tested party is not a KPO service provider, an entity rendering KPO services cannot be considered as a comparable for the purposes of Transfer Pricing analysis. The perception that a BPO service provider may have the ability to move up the value*

chain by offering KPO services cannot be a ground for assessing the transactions relating to services rendered by the BPO service provider by benchmarking it with the transactions of KPO services providers. The object is to ascertain the ALP of the service rendered and not of a service (higher in value chain) that may possibly be rendered subsequently.

35. As pointed out by the Special Bench of the Tribunal in Maersk Global Centers (India) Pvt. Ltd. (supra), there may be cases where an entity may be rendering a mix of services some of which may be functionally comparable to a KPO while other services may not. In such cases a classification of BPO and KPO may not be feasible. Clearly, no straitjacket formula can be applied. In cases where the categorization of services rendered cannot be defined with certainty, it would be apposite to employ the broad functionality test and then exclude uncontrolled entities, which are found to be materially dissimilar in aspects and features that have a bearing on the profitability of those entities. However, where the controlled transactions are clearly in the nature of lower-end ITeS such as Call Centers etc. for rendering data processing not involving domain knowledge, inclusion of any KPO service provider as a comparable would not be warranted and the transfer pricing study must take that into account at the threshold.

36. As pointed out earlier, the transfer pricing analysis must serve the broad object of benchmarking an international transaction for

determining an ALP. The methodology necessitates that the comparables must be similar in material aspects. The comparability must be judged on factors such as product/service characteristics, functions undertaken, assets used, risks assumed. This is essential to ensure the efficacy of the exercise. There is sufficient flexibility available within the statutory framework to ensure a fair ALP.

37. Applying the aforesaid principles to the facts of the present case, it is once again clear that both Vishal and eClerx could not be taken as comparables for determining the ALP. Vishal and eClerx, both are into KPO Services. In Maersk Global Centers (India) Pvt. Ltd. (supra), the Special Bench of the Tribunal had noted that eClerx is engaged in data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management. In addition, eClerx also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services. Clearly, the aforesaid services are not comparable with the services rendered by the Assessee. Further, the functions undertaken (i.e. the activities performed) are also not comparable with the Assessee. In our view, the Tribunal erred in holding that the functions performed by the Assessee were broadly similar to that of eClerx or Vishal. The operating margin of eClerx, thus, could not be included to arrive at an ALP of controlled transactions, which were

materially different in its content and value. In Maersk Global Centers (India) Pvt. Ltd. (supra), the Special Bench of the Tribunal had noted the same and had, thus, excluded eClerx as a comparable. It is further observed that the comparability of eClerx had also been examined by the Hyderabad Bench of the Tribunal in M/s Capital Iq Information Systems (India) (P.) Ltd. v. Additional Commissioner of Income-tax (supra), wherein, the Tribunal directed the exclusion of eClerx as a comparable for the reason that it was engaged in providing KPO Services and further that it had also returned supernormal profits.”

14. It is an admitted fact that the said judgment of the Hon~~o~~ble Jurisdictional High Court was not available either to the TPO or to the DRP because the order has been passed by the Hon~~o~~ble Jurisdictional High Court on 10.08.2015 while the orders of the DRP and the TPO are dated 24.09.2012 and 13.10.2011 respectively. We, therefore, considering the totality of the facts as narrated hereinabove, deem it appropriate to set aside this issue back to the file of the TPO/DRP for the reasons that the judgment of the Hon~~o~~ble Jurisdictional High Court and the Special Bench relied by the Id. Counsel for the assessee were not available to the TPO/DRP and that the DRP has given a contradictory findings with regard to the comparable M/s eClerx Services Ltd. Moreover, the issue relating to the working capital

adjustment was raised by the assessee before the DRP, however, no finding had been given by the DRP on the said issue. Now the assessee has furnished certain additional evidences which are essential to resolve this controversy. Accordingly, we remand the case back to the file of the TPO/DRP to be adjudicated afresh in accordance with law after considering the aforesaid judgment of the Honøble Jurisdictional High Court in the case of DCM Benton India Ltd. Vs CIT (supra) and the additional evidences furnished by the assessee on the issue relating to working capital adjustment raised vide additional ground, after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 13/05/2016)

Sd/-

(Beena Pillai)

JUDICIAL MEMBER

Dated: 13/05/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR