

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “K” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./I.T.A. No.562/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Valmet Automation India Private Limited (Formerly known as Metso Automation India Private Limited) Industrial Area, MIDC Mahape, Navi Mumbai-400 710	<u>बनाम/</u> Vs.	Dy. CIT-15(3)(1), Room No. 473, Aayakar Bhawan, New Marine Lines, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCM 8258 N		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri M. P. Lohia & Shri Nikhil Tiwari
प्रत्यर्थी की ओर से/Respondent by	:	Shri Saurabh Deshpande
सुनवाई की तारीख / Date of Hearing	:	26.07.2017
घोषणा की तारीख / Date of Pronouncement	:	06.10.2017

आदेश / ORDER

Per Shamim Yahya, A. M.:

This is an Appeal by the Assessee directed against the Order of Assessing Officer (A.O.) dated 30.11.2016, pertaining to the assessment year (A.Y.) 2012-13 passed under the direction of the Dispute Resolution Panel (DRP), dated 07.09.2016. The grounds of appeal read as under:

1. The impugned order passed by the Learned Deputy Commissioner of Income Tax -15(3)(1), Mumbai ("the learned Assessing Officer" or the " Ld.

AO") pursuant to the directions of the Hon'ble Dispute Resolution Panel ("DRP") wherein the total income of the appellant is determined as INR 61,204,050 as against the returned income of INR 45,533,340 is bad in law, contrary to facts and untenable, therefore, the additions made to the returned income deserve to be deleted and the income as returned by the appellant deserves to be accepted as the correct taxable income.

2 That the Ld. AO/ Learned Deputy Commissioner of Income Tax, Transfer Pricing 3(2)(1), Mumbai ("the learned Transfer Pricing Officer" or the " Ld. TPO") / Hon'ble DRP have erred in rejecting the arm's length price (ALP) for the international transaction of provision of engineering services, as determined by the appellant in its transfer pricing documentation by following a scientific search process, by application of entity-wide Transactional Net Margin Method (TNMM¹) with operating profit/ operating cost ('OP/OC') as the Profit Level Indicator ('PLI').

3 That the Ld. AO / Ld. TPO/ Hon'ble DRP have erred in considering the consolidated engineering segment as appearing in the audited financial statements of the appellant, instead of considering only the engineering services segment, for benchmarking the transaction pertaining to provision of engineering services (impugned transaction).

4 That the Ld. AO / Hon'ble DRP have erred by not considering the audited segmental accounts furnished by the appellant during the DRP proceedings, which captures sub-segmental details of 'engineering services' and 'engineering goods' segments both of which combined make-up the engineering segment as reported in the audited financial statements.

5 That the Ld. AO / Ld. TPO/ Hon'ble DRP have erred in computing the arm's length price of the impugned transaction without appreciating the fact that the lower margin in the combined segment was on account of manufacturing activities pertaining to engineering goods and not on account of engineering services rendered to associated enterprises.

6 That the Ld. AO / Ld. TPO/ Hon'ble DRP have erred in not allowing economic adjustments, such as start-up cost, capacity and foreign exchange fluctuation adjustment, while computing the margin of comparable companies considered for benchmarking the impugned transaction.

7 That the Ld. AO/ Ld. TPO / Hon'ble DRP have grossly erred in law by resorting to cherry picking of comparable companies, i.e., by not following a

scientific search process, for determination of the arm's length price of the international transaction of provision of engineering services.

8 The Ld. AO/ Ld. TPO / Hon'ble DRP have erred in considering quantitative filters like minimum export sales percentage and turnover for identification of comparable companies.

9 The Ld. AO/ Ld. TPO / Hon'ble DRP have erred in rejecting companies selected by the appellant in its transfer pricing documentation as comparable by alleging them to be functionally non-comparable in respect of the impugned transaction.

10 The Ld. AO/ Ld. TPO / Hon'ble DRP have erred in accepting functionally dissimilar companies as comparables for the purpose of determination of the arm's length price for the impugned transaction.

2. At the outset, the ld. Counsel of the assessee submitted that ground nos. 1 & 2 are general in nature.

3. Ground nos. 3, 4 and 5 relate to an issue wherein the segmental data and detail of engineering segment has not been considered.

4. The ld. Counsel of the assessee submitted that he shall not be pressing ground nos. 7, 8 and 9. Hence, these grounds are dismissed as not pressed.

5. Ground no. 10 relates to the grievance of the assessee on the selection of the comparables.

6. Apropos ground nos. 3, 4, and 5 relating to the transfer pricing adjustment. Brief facts of the case are as under:

The assessee company, Valmet Automation Private Limited ('VAPL' or the 'company' or the 'assessee') is engaged in manufacturing and production of Industrial Valves. Automated and Distributed Control System. It also provide Engineering services, offering innovative automation products, solutions and value adding life

cycles fitted to customer's specific needs. It offers environmental technology services e.g. advance process control, advance emission monitoring and authority reporting to help customers in oil and gas, paper and pulp, Power sector and other Industries. The details of International Transactions undertaken by the assessee during the previous year ended 31.03.2012 as per the TP report and Form 3CEB are as under:

Sr. No.	Description of the International Transaction	Amount (in INR)	Method adopted
1	Import of Raw Material	4,98,58,970	TNMM
2	Import of Fixed Assets	30,11,426	TNMM
3	Engineering Services Income	7,28,37,036	TNMM
4	Marketing Services (Commission)	11,58,95,479	TNMM
5	Technical Support Services	90,456	TNMM
6	Reimbursement of Expenses (Commission expenses)	15,43,086	TNMM
7	Reimbursement of expenses (Other Manufacturing Expenses)	1,05,945	TNMM
8	Reimbursement of Expenses	20,88,828	TNMM
9	Replacement of Raw Material	87,014	CUP

The TPO accepted the arm's length nature of all the international transactions of the Assessee except the international transaction pertaining to engineering services rendered to AEs.

In the Transfer pricing documentation, assessee has benchmarked the transactions undertaken during the year at an entity level with an application of transactional net margin method (TNMM). In the TP documentation, the assessee has considered seven (7) companies undertaking functions akin to VAMPL, and the average margin (Operating profit/Operating cost) of the said companies was computed as 9.96 percent, against the assessee's net margin of 10.01 percent.

7. In the transfer pricing order, the Transfer Pricing Officer (TPO) rejected the comparable selected by the assessee and substituted other comparables which led to an adjustment of Rs.2,61,13,622/- on the international transaction relating to the

assessee pertaining to engineering services rendered to the Associate Enterprises for A.Y. 2012-13.

8. Before the Dispute Resolution Panel (DRP) at the outset, the assessee's submission was as under:

- 3.1 Without prejudice, the Ld. TPO has erred in computing the assessee's margin for the purpose of benchmarking engineering service
The engineering segment reported in the financial statement and considered by the ld. TPO comprises of the following activities:
- (a) Manufacture and sale of Engineering goods; and
 - (b) Engineering services

Engineering service rendered to AEs forms part of the engineering service segment, hence, for the purpose of benchmarking the said transaction only engineering service segment should have been considered.

Lower margin in the consolidated engineering segment was on account of manufacturing engineering goods segment
(Refer Annexure 1):

- a) In the FY 2011-12, a new facility at Vododra was set up, which became operational after September. Hence, the company could not fully utilized its capacity in the year under consideration (Page 25, 64-65);
- b) Significant foreign exchange fluctuation in the year FY 2011-12;
- c) The segments/sub-segments of previous and succeeding year also shows that due to the expansion at Vadodara and forex, fluctuation; the company has reported negative margin in the engineering goods segment in FY 2011-12.

Further, the assessee submitted vide submission dated 26 April 2016:

“10.6 The assessee is in the process of preparing a detailed working of the ‘Engineering segment’ giving a bifurcation into “Engineering Services” and “Engineering Goods”. A no opportunity was given to the assessee to demonstrate that the “engineering segment” consisted of both “Engineering Services” and “Engineering Goods”, the assessee craves leave to file the audited copy of the working at the hearing. From a perusal of the statement, it would be seen that the “engineering services” division has earned a profit. The overall loss of the “Engineering” segment is attributable to the “Engineering

Goods” division. A perusal of the Annual Reports of the assessee for the AY 2012-13 it can be seen that this loss is as result of the expansion of the “Engineering Products” division by establishment of a Vadodara supply centre and a division in Mumbai.

10.7 Accordingly while calculating the Profit & Loss indicator for the assessee, the “Engineering Products” division should be excluded and only the “Engineering Services” should be considered.”

9. Thereafter, the assessee also disputed the comparables adopted by the TPO. The above submission of the assessee was that the engineering service segment reported in the financial statement has comprised of two activities namely (a) manufacture and sale of engineering goods and (b) engineering services. The engineering services rendered to the Associated Enterprises (AE) formed part of the engineering service segment. Hence, it was the assessee’s plea that for bench marking the said transaction, only engineering service segment should be considered. However, the Id. DRP did not accept this submission of the assessee without assigning any cogent reason. On this issue, the DRP observed as under:

5.1 We have gone through ground number 1. It is the contention of the assessee that the TPO has not taken the segment of engineering services and engineering manufacture segment separately. We do not find merit in this objection since the assessee has not been able to demonstrate as to how both the divisions are not intertwined with each other as far as the profitability of the entire business is concerned. The ground is accordingly rejected. The Panel proceeds into the analysis of individual comparables rejected by the TPO and contested by the assessee and also the comparables included by the TPO and contested by the taxpayer is carried out of this Panel.

10. Thereafter, the DRP dealt with the issue of comparables and other related issues.

11. Now the assessee is in appeal before the ITAT. It is the contention of the Id. Counsel of the assessee that the assessee is providing only engineering services to its AE. The engineering segment reported in the financial statement comprised both (a)

manufacturing and sale of goods (b) engineering services. The manufacture and sale of engineering goods is in the local market. Hence, it is the assessee's plea that when the segmental details are now available, the bench marking and comparability analysis should be done with reference to the segmental detail now available. In this regard, the ld. Counsel of the assessee has placed reliance on the following case laws for the proposition that audited segmental accounts furnished by the assessee should be used when details were not given in the audited financial statement:

- Sandoz Pvt. Ltd. vs. CIT (Mumbai ITAT) (25 ITR 347) dated 5 April 2013
- M/s. Tecnimont ICB Pvt. Ltd. vs. ACIT (Mumbai ITAT) (ITA No. 7098/Mum/2010) dated 25 February 2011)
- M/s. Tecnimont ICB Pvt. Ltd. vs. DCIT (Mumbai ITAT) (ITA No.6394/Mum/2012) dated 28 August 2013
- M/s. Paradigm Geophysical (I) Pvt. Ltd. vs DCIT (Mumbai ITAT) (ITA No. 1878/Mum/2014) dated 13 July 2016
- M/s. Infotech Limited v/s. ITO (Chennai ITAT) (ITA No. 21/Mds/2013) dated 7 May 2013
- M/s. Honeywell Electrical Devices & Systems India Ltd. vs. ACIT (Chennai ITAT) (29 ITR 347) dated 12 December 2013
- M/s. Sysarris Software (India) Pvt. Ltd. vs. DCIT (Bang ITAT) (IT(TP)A No. 639/Bang/2012) 17 April 2015

12. Per contra, the ld. Departmental Representative (DR) could not cogently dispute the proposition that when the segmental data are available, the same should be taken into account. However, the ld. DR submitted that since the assessee has not provided the detailed segment of engineering services and goods earlier before the A.O., now the AO should be directed to examine both the segments separately. In rejoinder, the ld. Counsel of the assessee submitted that this is not an issue in dispute

and moreover the Revenue has jurisdiction u/s. 263 of the Act to give the necessary direction to the AO.

13. Upon careful consideration, we find that the engineering segmental data considered by the TPO comprises both engineering goods and engineering services. Now the assessee has submitted detail of segmental data of engineering service and engineering goods. The assessee's international transaction comprise of engineering service to the associated enterprises. Hence, the plea of the assessee is cogent that when the segmental data is available, the same should be taken into account. In this regard, we note that in the ITAT decision in the case of Sandoz Pvt. Ltd. (supra), it was held that when the assessee submitted segmental accounts for each of its operation, which are different from the other, therefore, the correct approach under TNMM should be with each of the segmental with the corresponding comparables involved in similar lines of functioning after proper FAR analysis.

14. We find that the observation of the Id. DRP that the assessee has not demonstrated as to how both the divisions are not enter-twined is not at all tenable. By no stretch of imagination, the manufacture and sale of engineering goods on one hand and provision of engineering services on the other can be considered as the same segment unless specific facts to the contrary is put on record. The assessee is claiming that the engineering service segment on stand-alone basis has depicted profit but the goods segment has resulted in loss, which has resulted in the overall loss in the combined results considered in comparability analysis. This aspect deserves proper examination. Hence, we find that the objection of the Id. Counsel of the assessee that the segmental data should be considered in bench marking and comparability analysis is germane. Hence, we uphold the same. Accordingly, the issue is remitted to the file of the TPO. The TPO shall take into account the segmental detail and data and do the analysis afresh.

14. Apropos ground no. 10

This ground deals with comparables. Since, we have remitted the earlier issue to the file of the TPO, this issue arises only after the adjudication of the earlier issue and hence will arise subsequently. Hence, we are not dealing with the same.

15. In the result, this appeal filed by the assessee stands allowed for statistical purposes.

परिणामतः निर्धारिती की अपील सांख्यकीय उद्देश्य के लिए स्वीकृत की जाती है ।

Order pronounced in the open court on 06.10.2017

Sd/-

(Ram Lal Negi)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 06.10.2017

व.नि.स./Roshani, Sr. PS

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai