

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I2' NEW DELHI**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
&
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**ITA No.-2021/Del/2015
(Assessment Year: 2010-11)**

Weir Minerals (India) Private Ltd., No. 1212-15, 12 th Floor, DLF Tower B, Plot No. 11, Jasola District Centre, South Delhi, New Delhi. AAAC10519D	vs	DCIT Circle 27(2) New Delhi.
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Assessee by	Sh. Manoneet Dalal, AR, Sh. Vishu Goel, AR
Revenue by	Sh. H.K. Chaudhary, CIT DR

Date of Hearing	09.11.2017
Date of Pronouncement	23.11.2017

ORDER

PER SHRI K.N. CHARY, J.M.

Aggrieved by the assessment order dated 23.01.2015 that was framed pursuant to the directions of the Ld. Dispute Resolution Panel-II, New Delhi (hereinafter for short called as DRP) passed on 2.12.2014, assessee preferred this appeal mainly challenging the rejection of one Shroffs Engineering Limited as a

comparable company to the manufacturing segment of the assessee. Ld. DRP rejected this company on the ground that the Ld. TPO did not have the opportunity to analyze the annual report of Shroffs Engineering Limited.

2. Relevant facts necessary for disposal of this appeal are that the assessee company incorporated on 28.09.1992 is a subsidiary of Weir Minerals Australia Limited, which is a subsidiary of Weir Group PLC., UK. Assessee is engaged in the manufacturing and sale of pumps to Associated Enterprises (AEs) and non-AEs, and also provides conversion of drawing services predominantly to AEs inasmuch as 96% of the Revenue is derived from AEs, whereas 4% of the Revenue is derived from non-AEs. Assessee receives engineering drawings in AUTOCAD 2D format for up-gradation into 3D format with the help of software. Transactional Net Margin Method (TNMM) was selected as the Most Appropriate Method for benchmarking the international transactions with application of operating margin on cost as the appropriate profit level indicator for the manufacturing and shared services segments and in this regard the assessee has selected 11

companies as comparable to the manufacturing activity performed. According to the assessee the average operating mark-up on cost earned by the comparable companies in the manufacturing segment was 10.44%, whereas the assessee had earned the margin of 8.68%, as such, the transactions are concluded to be at arm's length in the TP Report. On this aspect the TPO opined that the companies rejected by the assessee in the course of qualitative analyses were possibly suitable comparables and after analyzing the same, he proposed 10 comparables to be used to bench mark the transaction. After considering the proposals or objections from the assessee, out of 11 comparables selected by the assessee, TPO rejected four comparables namely Beacon Industries & Pumps Ltd., SPX Flow Technology Pvt. Ltd., Shroffs Engineering Ltd. and selected seven comparables suggested by the assessee. TPO added four more comparables namely Fisher Sanmar Ltd., Tyco Sanmar Ltd., Vanaz Engineers Ltd. and Delphi TVS Ltd. and finally selected 11 comparables to benchmark the international transaction, and ultimately made an adjustment of Rs. 2,34,26,767/- in the segment of sale of finished goods. When the matter was carried by the assessee to the DRP,

Ld. DRP returned a finding that the comparables selected by the TPO namely Fisher Sanmar Ltd., Tyco Sanmar Ltd., Vanaz Engineers Ltd. and Delphi TVS Ltd. are not suitable comparables and directed to exclude them. In the same process Ld. DRP while dealing with Shroffs Engineering Ltd. observed that the TPO had no occasion to consider this company in the TP proceedings, as such, this company should not be taken as a comparable in this case. Hence, the assessee is before us challenging this finding of the Ld. DRP, basing on which the AO passed the order dated 23.01.2015.

3. It is the argument of the Ld. AR that insofar as the functional profile of assessee and the Shroffs Engineering Ltd. is concerned, there is no dispute either by the TPO or DRP, but the Ld. TPO rejected this as a comparable only on the ground that the current year data was not available in the public domain, whereas the DRP rejected it only because the TPO had no occasion to consider this company during the TP proceedings. He invited our attention to the paper entitled “background of comparable companies – import of raw material and sale of finished goods” incorporated at

page no. 496 to 498 of the Paper Book and vide Sl. No. 7 at page no. 497 there is a reference as to the Shroffs Engineering Limited which shows that the company is engaged in the manufacturing of premium “PLUGA” brand Submersible Pumpsets, Openwell Submersible Pumpsets, Drainage Pumps and Mini Monoblock Pumps and it also shows the source of information. Page no. 236 to 267 of the Paper Book refers to the written submissions of the assessee before the TPO and at page no. 245 & 246 the statistics relating to Shroffs Engineering Ltd. are given and vide page nos. 145 & 182 the financial statements of Shroffs Engineering Ltd. for the year 2010-11 are incorporated. It is the submission of the Ld. AR that though annual report was not available, all the relevant data is available before the TPO as well as the Ld. DRP. Ld. DR while referring to Schedule ‘W’ at page 173 of the Paper Book submitted that the sale outside India is less than 20% and on this aspect Ld. AR submits that virtually the sales of the assessee are in India only.

4. We have gone through the record. There is no dispute that Shroffs Engineering Ltd. is also in the line of manufacture of

premium submersible pump sets like the other comparables confirmed by the Ld. DRP and Shroffs Engineering Ltd. is also fitting in the profile as one in the list of comparables. All the relevant information like the financial statements for the year 2010-11 is available on record from which we can find out that the ratio between the cost of goods sold to sales was 65%, whereas for other comparables selected by the TPO it is between 36% to 68% and so also its margin is 7.80% as compared to others between 6.55% and 17.19%. When there is no dispute as to the functional profile or the other financial parameters of the assessee and Shroffs Engineering Limited, merely because the TPO had no occasion to consider the company in the TP proceedings, the DRP should not have rejected the same without referring to the merits of the matters. We are of the considered opinion that Shroffs Engineering is also in the manufacturing of the pumps in line with the assessee and a suitable comparable to the assessee. We, therefore, direct the inclusion of this company in the comparables.

5. In respect of grounds no. 2 & 5 Ld. AR submits that the rectification proceedings are pending and no specific adjudication by the Tribunal is necessary. We recorded the same.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23.11.2017

Sd/-
(R.S. SYAL)
VICE PRESIDENT

Dated: 23.11.2017

*Kavita Arora

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI