

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4788/Del/2010  
Assessment Year: 2006-07**

<b>Denso India Limited, B-1/D-4,Ground Floor, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044 (PAN: AAACD4255F)</b>	<b>vs</b>	<b>Asstt. Commissioner of Income Tax, Circle 10(1), New Delhi.</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri Ravi Sharma, Adv.  
Shri Anubhav Rastogi, Adv.  
Respondent by : Shri Kumar Pranav, Sr. DR

**Date of Hearing: 6.3.2018  
Date of Pronouncement: 31.05.2018**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal has been preferred by the assessee against the final assessment order dated 30.07.2010 issued by the Ld. Dispute Resolution Panel-I, (DRP) New Delhi for assessment year 2006-07.

2. The brief facts of the case are that the assessee is a public company engaged in the business of manufacture and sale of electrical automobile components such as starters, alternators, wiper motors, fan motors, magnetos

etc. for four wheelers and two wheelers. The return of income was filed declaring an income of Rs. 36,87,61,248/-. The case was subsequently picked up for scrutiny under CASS. The details of the International Transactions entered into by the assessee with its Associated Enterprises ('AEs') along with the benchmarking analysis during the year under consideration was as under :-

S.No.	Description of the transactions	Amount (In Rs.)	Method applied	Denso India's Margin	Arm's Length margin
1.	Import of raw material, components and spare parts	126,155	TNMM using OP/TC as the PLI	8.00%	5.21% using multiple year data
2.	Purchase of finished goods	1,491,874			
3.	Export of finished goods	7,253,726			
4.	Payment of royalty	86,491,631			
5.	Payment of application cost	13,437,657			
6.	Payment of technical service fee	4,769,617			
7.	Payment of communication expenses	1,292,598			
8.	Training expenses	1,577,974			
9.	Miscellaneous receipts	3,068,780			
10.	Reimbursement of expenses from group companies	1,996,839	CUP	NA	NA

2.1 Reference was made to the Transfer Pricing Officer (TPO) and during the course of Transfer Pricing proceedings the TPO directed the assessee to submit current year data, i.e. pertaining to financial year 2005-06, for the comparable companies considered in the transfer pricing study. The assessee submitted before the TPO that in case the information available at the time of assessment proceedings is to be used, then instead of merely updating the financial results of the comparable companies, a fresh search ought to be conducted so that the additional companies for which data for financial year 2005-06 was available at the time of assessment proceedings can be considered.

2.2 The assessee carried out a fresh search and identified 8 additional comparable companies in addition to the 5 companies identified in the Transfer Pricing Study as comparable based on the updated financial information. The 13 companies, as identified after the fresh search and including the 5 companies initially selected in the Transfer Pricing study, were as under :-

S. No.	Name of the Company	Arm's length margin (using FY 2005-06 results only)
1.	Axles India Ltd.	6%
2.	India Forge & Drop Stampings Ltd.	3%
3.	Simmonds Marshall Ltd.	14%
4.	Subros Ltd.	6%
5.	Frontiers Springs Ltd.	4%

6.	Caparo Maruti Limited	4%
7.	Ghatge Patil Industries Limited	8%
8.	Shriram Foundry Limited	4%
9.	Sona Koyo Steering Systems Limited	7%
10.	X L O India Limited	4%
11.	Wheels India Limited	4%
12.	P H C Manufacturing Pvt. Ltd.	10%
13.	Lucas TVS Limited	7%
	AVERAGE	6%

2.3 The TPO however, carried out his own search and arrived at a set of 4 companies which were as under :-

S. No.	Name of the Company	Arm's length margin as per TPO
1.	Licas TVS Limited	9.20%
2.	Auto Ignition Limited	9.88%
3.	India Nippon Electricals Limited	13.63%
4.	India Japan Lighting Ltd.	9.94%
	AVERAGE	10.66%

2.4 Thereafter, based on the search conducted by him, the TPO issued a show cause notice to the assessee. In response, the assessee filed detailed submissions against the adjustment proposed by the TPO and submitted that one of the comparable companies proposed by the TPO, namely India Japan Lighting Ltd., was engaged in the manufacturing of auto lamps which was akin to electrical auto components being manufactured by the assessee. The assessee suggested the inclusion of additional six more companies which were also engaged in the manufacture of auto lamps in addition to the companies proposed by the TPO. However, the TPO did not accept the submissions and the evidentiary data submitted by the assessee and also rejected the company identified by him in the show cause notice i.e. India Japan Lighting Ltd. and thereafter calculated the mean OP/TC margin at 10.90% based on a set of 3 companies and made a TP adjustment of Rs. 115,226,756/- to the assessee's income.

2.5 The AO also made a 25% disallowance in respect of Royalty by considering the same as being capital in nature and made a further disallowance of Rs. 22,34,415/- in respect of provision for bad and doubtful debts. The draft assessment order was passed proposing to assess the total income of the assessee at Rs. 401,536,300/- as against the returned income of Rs. 368,761,248/-.

2.6 Aggrieved, the assessee approached the Ld. DRP and raised its objections before it. However, the Ld. DRP upheld the order of the TPO/AO with regard to the transfer pricing adjustment as well as the disallowance pertaining to royalty and provision for bad and doubtful debts.

2.7 Now, the assessee has approached the ITAT and has challenged the final assessment order passed subsequent to the directions of the Ld. DRP by raising the following grounds of appeal :-

*“1.The Learned Dispute Resolution Panel (“Ld. DRP”) and the Learned Assistant Commissioner of Income-tax (“Ld. AO”) (following the directions of the Ld. DRP), erred on facts and in law, in enhancing the income of the appellant by Rs. 115,226,756, on account of the Transfer Pricing (‘TP’) adjustment u/s 92CA(3) of the Income Tax Act, 1961 (‘Act’) made by the Learned Deputy Commissioner of Income-tax, Transfer Pricing Officer - I(4) (“Ld. TPO”), by holding that various international transactions of the appellant entered into with its associated enterprises (‘AEs’) during the year do not satisfy the arm’s length principle envisaged under the Act.*

*2.The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO’s stance of disregarding the arm’s length price (ALP) determined and the search strategy adopted by the appellant for benchmarking its international related party transactions in its TP documentation report maintained under section 92D of the Act read with Rule 10D\_of the Income-tax Rules, 1962 (‘Rules’), by giving arbitrary,*

*vague and unsound reasons that were not backed by any empirical evidence / sound analysis.*

*3.The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law. in upholding the Ld. TPO's stance of disregarding multiple year/ prior years' data as used by the appellant in the TP documentation report and holding that current year (i.e. financial year (FY) 2005-06) data for comparable companies should be used despite the fact that the same was not necessarily available to the appellant at the time of preparing its TP documentation report.*

*4.The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of rejecting the fresh search for comparable companies carried out by the appellant using data for FY 2005-06 which was submitted to the Ld. TPO by the appellant without prejudice to the fact that the same was not available to it at the time of preparing its TP documentation report.*

*5.TheLd.DRP and the Ld.AO(followingthedirectionsoftheLd. DRP), erred on facts andin law, in upholding the Ld. TPO's stance of making legally, economically and factually incorrect statements/ assumptions about the royalty/ technical know-how fee paid by the appellant to its AEs, wrongly assuming that no commensurate economic benefit arose to the appellant from receipt of such technology/ technical know-how/ information, and in ignoring the fact that the basis and quantum of royalty and technical know-how payments were within the limits approved/ prescribed by the Reserve Bank of India.*

*6.TheLd.DRP and the Ld.AO(following the directions of theLd. DRP),*

*Erred on facts and in law, in upholding the Ld. TPO's stance of conducting a fresh search for companies himself and not sharing the detailed step by step search strategy followed to arrive at the final set of 3 companies in the TP order on the basis of which the ALP was determined.*

*7.TheLd.DRP and the Ld.AO(following the directions of the Ld.DRP), erred on facts and in law, in upholding the Ld. TPO's stance of resorting to arbitrary rejection of low-profit/ loss making companies, based on erroneous and inconsistent reasons, and selecting only high-profit making companies, thus deriving a narrow/ incorrect/ unrepresentative industry set for benchmarking the operating profit margin earned by the appellant, and demonstrating an intention to arrive at a pre-formulated opinion and make an addition to the returned income of the appellant, without complete and adequate application of mind.*

*8. The Ld. DRP and theLd. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of applying (for the purpose of benchmarking/ economic analysis) a much narrower/ incorrect/ unrepresentative economic activity criteria of 'auto electrical components' as against a much broader/ representative economic activity criteria of 'automobile ancillaries' considered by the appellant.*

*9. TheLd. DRP and theLd. AO (following the directions of the Ld.DRP),erred on facts and in law, in upholding the Ld. TPO's stance of simply placing reliance on the predecessor Ld. TPO's orders and randomly and erroneously selecting only those companies for comparison with the appellant that had sales turnover > Rs. 100 crore during FY 2005-06 and by not sharing/ disclosing the information/ documents/ analysis carried out on the*

*basis of which this filter was applied.*

*10. The Ld. DRP and the Ld. AO (following the directions of the Ld.DRP), erred on facts and in law, in upholding the Ld. TPO's stance of rejecting the filtration criterion of Plant & Machinery/ Gross Fixed Assets (P&M/GFA) used by the appellant in its TP documentation report on vague/ ambiguous grounds which were not backed by any sound/ cogent reasoning.*

*11. The Ld. DRP and the Ld. AO (following the directions of the Ld.DRP), erred on facts and in law, in upholding the Ld. TPO's stance of not appropriately considering the functions, assets and risk profile of the companies used for comparison with the appellant.*

*12. The Ld. DRP and the Ld. AO (following the directions of the Ld.DRP), erred on facts and in law, in upholding the Ld. TPO's stance of arbitrarily disregarding certain comparable companies for ALP determination without giving sound basis/ reasons.*

*13. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of excluding a company for computation of the ALP of the international related party transactions of the appellant on the ground that it had entered into related party transactions and therefore was not a valid comparable in accordance with legal provisions without cognizance of the fact that the company had not entered into any transactions with related parties at all.*

*14. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of considering incorrect Operating Profit / Total Cost ('OP/ TC') margin numbers of the companies finally considered in the TP order for ALP determination.*

*15. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of not allowing a working capital adjustment to be made to the results of the companies selected by the Ld. TPO on account of differences between the working capital requirements of the appellant vis-a-vis these companies.*

*16. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in not allowing a comparability adjustment to be made on account of differences in levels of indigenization between the appellant and the companies selected by the Ld. TPO.*

*17. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of considering incorrect OP/ TC margin number of the appellant in the TP order.*

*18. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of making various statements/ averments merely based on conjectures/ surmises and unsound presumptions, which were not in accordance with the facts of the case, thereby making a high pitched assessment.*

*19. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of making an adjustment to the international related party transactions of the appellant during the year, in complete disregard of the fact that:*

- (a) majority of the said transactions continued to have the same pricing basis during FY 2005-06 as during FY 2001-02; and*

(b) *no adverse inference was drawn on the Transfer Prices of these transactions during the TP assessment proceedings for FY 2001-02.*

*20. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO's stance of irrationally making an absurd adjustment of Rs. 115,226,756 to the value of the appellant's international related party transactions of Rs. 119,510,012, including royalty and technical know-how fee payments, which as a result were reduced to a very insignificant number.*

*21. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in disregarding judicial pronouncements in India in undertaking the TP adjustment.*

*22. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), Erred on facts and in law, in not issuing a speaking order / Directions and in disposing off the appellant's detailed submissions and objections against the TP adjustment in a cryptic manner, without discussing/ appreciating/ understanding the merits of the case.*

*23. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in disallowing a sum of Rs. 576,661 (being 25% of royalty payment after Ld. TPO's adjustment) representing turnover based running royalty by observing the same as capital in nature.*

*24. The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in disregarding the fact that the royalty in question was paid on products manufactured and sold during the year and that the ratio of decision of CIT vs. Southern*

*Switchgears [148 ITR 272] and upheld by the Apex Court [232 ITR 359] is not applicable on the facts of the case.*

*25.The Ld. DRP erred in stating that no objection has been filed in respect of the disallowance of Rs. 2,234,415 being provision for bad and doubtful debts, even though the appellant had filed an application of additional objection dated July 1, 2010 before Ld. DRP which was also discussed at the time of hearing before the Ld. DRP, however no cognizance was taken of this fact in the body of the Ld. DRP's order / Directions.*

*26.The Ld. AO erred on facts and in law, in making a disallowance of Rs 2,234,415 being provision for bad and doubtful debts, when the same has been reduced from Loans and Advances under the assets side of the balance sheet and is thus in the nature of actual write off in view of the decision of the Apex Court in the case of Vijaya Bank vs CIT.*

3. The Ld. AR submitted that the TPO had adopted an inappropriate benchmarking approach. It was submitted that in the show-cause notice, the TPO had proposed to consider 4 companies engaged in the sale of electrical auto components such as head lamps, starter motor, alternator, switches, ignition units, etc. for ALP determination and in response, the assessee had argued that TNMM is more tolerant to product differences if forming part of the same industry and thus proposed following additional comparable companies which are engaged in the manufacturing of auto lamps similar to the India Japan Lighting Ltd. These companies were as under:

- Autolite (India) Ltd.,

- Fiem Industries Ltd.,
- Halonix Ltd.,
- Jagan Lamps Ltd.,
- Lumax Industries Ltd.; and
- S L Lumax Ltd.

3.1 It was submitted that the TPO, instead of including the 6 additional companies, rejected the one company (viz. India Japan Lighting Ltd) which was identified and mentioned in the show-cause notice by the TPO himself. The Ld. AR submitted that while undertaking profit based analysis using TNMM, net profit margins of companies are compared/ tested and comparable transactions need to be only broadly similar. Product diversity between the controlled and uncontrolled parties is acceptable under TNMM as long as the companies operate in the same industry. It was further argued that as long as the comparable companies chosen are also engaged in similar manufacturing activities for auto electrical components like the assessee, the results could reasonably be expected to be indicative of the actual margins prevalent in the industry. The Ld. AR submitted that these companies operated within the broader auto component industry and are affected by similar economic factors. The Ld. AR submitted that even within the broad auto component industry, these companies were engaged in the electrical component vertical and thus could be considered comparable to the Assessee. It was further submitted that if the strict product comparability criteria was to be applied, even the comparable

companies identified by the TPO will be found to be not engaged in the exact product profile. The Ld. AR also referred to the Safe Harbour Rules notified by the Government of India and submitted that the safe harbour rules have classified the auto component industry in two broad buckets of core and non-core component. It was submitted that even as per these rules, the products manufactured by the Assessee and the auto lamp companies would fall within the same bucket of non-core products. It was submitted that while undertaking benchmarking analysis using TNMM, broader basket of products should be accepted and since the auto lamps falls within the similar product of electrical auto component should be considered as comparable to the Assessee.

3.2 Without prejudice, it was further submitted that the TPO has not provided any rejection reason for rejecting the following companies which should also be included in the comparable set for determination of arm's length margin:

- Axles India Ltd.
- India Forge & Drop Stampings Ltd.
- Simmonds Marshall Ltd.
- Subros Ltd.
- Frontier Springs Ltd.
- Caparo Maruti Limited
- Ghatge Patil Industries Limited
- Shriram Foundry Limited
- Sona Koyo Steering Systems Limited

- X L O India Limited
- Wheels India Limited
- P H C Manufacturing Pvt. Ltd.

3.3 Coming to the next issue in dispute, it was submitted that the TPO did not allow a working capital adjustment to be made to the results of the companies selected by him on account of differences between the working capital requirements of the appellant vis-a- vis these companies. It was submitted that the rationale for seeking working capital adjustment was explained to the TPO in great detail by the assessee and in doing so reliance had been placed by the assessee on various guidelines (OECD Draft Notes on Comparability released on May 10, 2006 (OECD Draft Notes) and judicial rulings which clearly emphasized the importance of appropriate comparability adjustments including working capital adjustment for determining the ALP but the same was disregarded.

3.4 Coming to the issue of disallowing proportionate adjustment in respect of international transactions, it was submitted by the Ld. AR that by arriving at an arm's length OP/TC margin of 10.90%, the TPO made a TP adjustment of Rs 115,226,756/- to the value of the assessee's international transactions of Rs. 119,510,012/- which was irrational since this essentially resulted in wiping out of all the international related party transactions of the assessee during the year. It was submitted that the TP adjustment should be made only in proportion of

international transactions of the Assessee i.e. only the cost from AEs (purchase of raw material, purchase of finished goods, royalty paid, application cost paid, technical fees paid, payment of IT cost and training fees paid) and that the addition, if any, has to be restricted to the international transactions of the Company and by no stretch of imagination, could the same be extended to the domestic transactions with Non AEs by the Assessee. The Ld. AR furnished a chart providing details in this regard which is as per the table below:

Particulars	Reference	Amount (in INR)
Total cost of the Appellant (OC)	(A)	3,893,484,000
Operating Profit of the Appellant (OP)	(B)	309,163,000
OM (OP/OC)	(C=B/A)	7.94%
Operating Profit as per TPO @ 10.90%	(D=A*10.90%)	424,519,539
Difference	(E-D-B)	115,226,756
Value of International Transactions	F	109,187,506
Proportionate adjustment	(G=E*F/A)	3,231,379

3.5 The Ld. AR further submitted that the next issue under challenge was regarding prayer for rectification in the computation of the operating margins of the assessee as well as the comparables. The Ld. AR submitted that the TPO in his order had erred in computation of the operating margins of the Assessee and the comparables selected by the TPO. In this regard, it was submitted that the correct operating margin computation in the case of comparables was duly furnished before the TPO but the TPO, while passing his order, had failed to

consider an amount of INR 3,275,000/- received by the Assessee from its AEs as an award for good operational performance as operating income. It was submitted that considering that the amount received by the Assessee is closely interlinked to its routine business operations, it should be validly considered as part of the Assessee's operating income.

3.6 With respect to the grounds relating to disallowance of royalty @ 25%, it was submitted that the issue was covered in favour of the assessee by the judgment of the Hon'ble Delhi High Court in assessee's own case for earlier assessment year. A copy of the said judgment was placed before us.

3.7 With respect to the grounds pertaining to disallowance of provision for bad and doubtful debts, it was submitted that the assessee had filed additional objections before the Ld. DRP but the Ld. DRP had not passed speaking directions on the objections.

4. In response, the Ld. Sr. Departmental Representative placed heavily reliance on the order of the TPO as well as the directions of the Ld. DRP. It was vehemently argued by the Ld. Sr. DR that the TPO had selected the comparables after conducting a proper search process and had excluded the comparables after considering the FAR of the comparables. It was further submitted that there was no need for any variation in the order of the TPO which had subsequently been upheld by the Ld. DRP. The Ld. Sr. DR also vehemently argued that the working capital adjustment as claimed by the

assessee had been rightly rejected and further there was no requirement for proportionate adjustment in the case of only international transaction as claimed by the assessee. The Ld. Sr. DR also submitted that there was no need for rectifying the operating margin of the assessee and the comparables selected by the TPO as the assessee had not been able to demonstrate the need for rectification.

5. We have heard the rival submissions and have also perused the material available on record. First, we take up the issue of comparables. It is seen that the assessee had initially selected 5 companies as comparables and, thereafter, on being required by the TPO to submit current year data, carried out a fresh search and identified 8 additional comparables companies with an average OP/TC of 6%. However, the TPO rejected all the comparables selected by the assessee and based on a fresh search selected 4 comparables within average OP/TC margin of 10.66%. However, the assessee objected to the selection of the comparables and this resulted in the TPO dropping one of the comparables introduced by him i.e. India Japan Lighting Ltd. and arrived at average OP/TC margin of 10.90%. Although, the assessee had suggested that 6 more comparables having FAR similar to India Japan Lighting Ltd. be considered, the TPO did not accept the assessee's contention and excluded India Japan Lighting Ltd. also from the final list of comparables. It is the submission of the assessee that the assessee had not requested exclusion of this comparable but had

requested inclusion of 6 more comparables. This selection of comparables was also upheld by the Ld. DRP. However, a perusal of the order of the TPO as well as the directions of the Ld. DRP show that the assessee's submissions and objections have been dismissed in a summary manner without specifying the reason for which the comparables selected by the assessee were rejected and new comparables introduced. It is also seen from the perusal of the order of the TPO as well as the directions of the Ld. DRP that the assessee's plea for including 6 new comparables was also rejected in a summary manner without giving a proper reasoning. Thus, as the factual matrix stands, we find that the comparables have not been analysed by the Ld. TPO in light of the submissions of the assessee which have been simply disregarded without analysing the claim of the assessee and without passing a reasoned order. Accordingly, in such a situation, we have no other option but to restore the entire issue of the selection of the comparables to the file of the TPO for making a fresh comparability analysis after duly considering the evidences and submissions of the assessee in this regard. The assessee shall be given due opportunity to present its case by the TPO. We, however, also direct that the assessee will not be at liberty to pray for inclusion of any other new comparables except the 6 comparables which it has already requested for inclusion before the TPO. We also further direct that the assessee shall also not be at liberty to pray for exclusion of any other comparable except those comparables whose exclusion it has already prayed

before the TPO/Ld. DRP. Thus, these grounds are allowed for statistical purposes.

5.1 Coming to the issue of working capital adjustment, it is seen that the TPO has not allowed working capital adjustment to be made to the results of the companies selected by him on account of differences between the working capital requirements of the assessee vis-à-vis these companies. The TPO is directed to allow working capital adjustments to the assessee as per law while carrying out the fresh comparability analysis which has been restored to him. Thus, these grounds also stand allowed for statistical purposes.

5.2 The next ground for agitation by the assessee is regarding proportionate adjustment to be allowed to the assessee and it is seen that this issue, in principle, has been accepted by the Hon'ble Delhi High Court in the case of CIT vs. Keihin Panalfa Ltd. in ITA no. 11 & 12/ 2015. It is settled law that transfer pricing adjustment has to be made only in proportion to the international transaction of the assessee and the addition cannot be extended to domestic transactions with non-AEs of the assessee. The assessee has submitted a chart wherein the relief in terms of proportionate adjustment has been worked out at Rs. 32,31,379/-. Respectfully, following the judgment of the Jurisdictional High Court in the case of Keihin Panalfa Ltd. (supra), we direct the TPO to allow the assessee the benefit of proportionate adjustment to the assessee as per law and

restrict the adjustment only in respect of international transaction. Thus, these grounds are also allowed for statistical purposes.

5.3 The assessee has also agitated the calculation of operating margins of the assessee vis-a-vis the comparables selected by the TPO. These grounds are also restored to the file of the TPO for being adjudicated a fresh after duly considering the submissions of the assessee as well as the evidences being filed in support of the same.

5.4 The other two issues being challenged by the assessee pertain to disallowance of royalty amounting to Rs. 5,76,661/- and disallowance of Rs. 22,34,415/- pertaining to provision for bad and doubtful debts. As far as the issue of royalty is concerned, it is seen that this issue is covered in favour of assessee in assessee's own case by the judgment of the Hon'ble Delhi High Court in CIT vs. Denso India Ltd. reported in 374 ITR 62(Delhi) (MAG.) wherein it was held that the royalty paid by the assessee to its parent company was revenue expenditure and could not be treated as capital expenditure. The TPO has disallowed the impugned amount being 25% of royalty payment by observing the same as being capital in nature. However, the issue is clearly covered in favour of the assessee in assessee's own case by the judgment of Hon'ble Delhi High Court as aforesaid and accordingly we direct that this disallowance to be deleted.

5.5 As far as the issue of disallowance of Rs. 22,34,415/- pertaining to provision for bad and doubtful debts is concerned, it is seen that the assessee had filed an application for additional objections vide letter dated 01.07.2010 before the Ld. DRP. However, the Ld. DRP has not considered/ adjudicated this issue. Therefore, it would be in interest of justice if this issue is restored to the office of the Ld. DRP for considering the objections of the assessee and passing speaking order on the same. We, therefore, restore these grounds to the file of the Ld. DRP for considering the additional objections raised by the assessee and issue directions thereafter, after providing proper opportunity to the assessee. Accordingly, the grounds are allowed for statistical purposes.

6. In the final result the assessee's appeal stands allowed in terms of our specific directions as contained in the preceding paragraphs.

Order pronounced in the Open Court on 31.05.2018

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 31<sup>st</sup> May, 2018

*Binita*

Copy forwarded to:

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

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By Order

**ASSISTANT REGISTRAR**