

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

**Before Sh. N. K. Saini, Hon'ble Vice President  
and**

**Sh. Kuldip Singh, Judicial Member**

**ITA No. 218/Del/2017 : Asstt. Year : 2012-13**

Turner International India Pvt. Ltd., 5 <sup>th</sup> Floor, Radisson Commercial Plaza, NH-8, Mahipalpur, New Delhi-110037	Vs	Deputy Commissioner of Income Tax, Circle-25(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AA ACT3821H</b>		

**ITA No. 1069/Del/2014 : Asstt. Year : 2009-10**

Turner International India Pvt. Ltd., 5 <sup>th</sup> Floor, Radisson Commercial Plaza, NH-8, Mahipalpur, New Delhi-110037	Vs	Deputy Commissioner of Income Tax, Circle-16(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AA ACT3821H</b>		

**Assessee by : Sh. Ravi Sharma, Adv. &  
Sh. Rishabh Malhotra, AR  
Revenue by : Sh. Sanjay I. Bara, CIT DR**

<b>Date of Hearing : 29.10.2018</b>	<b>Date of Pronouncement : 01.01.2019</b>
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**ORDER**

**Per N. K. Saini, Vice President:**

These two appeals by the assessee are directed against the separate orders dated 27.12.2016 and 27.01.2014 for the assessment years 2012-13 and 2009-10 respectively passed by the AO u/s 143(3) r.w.s. 144C(4) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Since, the appeals belonging to the same assessee having common issues involved, were heard together, so, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 218/Del/2017 for the assessment year 2012-13. Following grounds have been raised in this appeal:

*“On the facts, in law and in the peculiar circumstances of the case, the purported order under Section 143(3) read with Section 144C of the Income Tax Act, 1961 (‘the Act’) dated December 27, 2016 giving effect to Learned Dispute Resolution Panel’s (‘Ld. DRP’) directions dated 23 November 2016 disposing off Appellant’s rectification application dated 2 November 2016 is bad in law, void ab initio and deserves to be quashed without prejudice to ground no. 1 below.*

*1. On the facts, in law and in the peculiar circumstances of the case, the purported order dated December 27, 2016 under Section 143(3) read with Section 144C of the Act, is bad in law and deserves to be quashed as it is barred by limitation.*

*2. the Ld. AO / Ld. TPO / Ld. DRP has erred in making an addition of Rs. 33,91,01,488 to the total income on account of a transfer pricing adjustment to the distribution segment of the Appellant.*

*3. the Ld. AO / Ld. TPO / Ld. DRP has erred by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 (“the Rules”).*

*4. the Ld. AO / Ld. TPO / Ld. DRP has erred in conducting a fresh comparability analysis based on*

*application of incorrect keywords and filters, in contradiction of the Hon'ble ITAT's direction in Appellant's own case, without providing any cogent reasons for rejecting Appellant's economic analysis.*

*5. the Ld. AO / Ld. TPO/ Ld. DRP has failed to understand and appreciate the functions performed, assets employed and risks assumed by the Appellant and its associated enterprises ("AEs"), thereby comparing companies which are functionally incomparable vis-a-vis the distribution segment of the Appellant.*

*6. the Ld. AO / Ld. TPO / Ld. DRP has erred in:*

*6.1. Not accepting the use of multiple year data, as adopted by the Appellant in its Transfer Pricing ('TP') documentation; and*

*6.2. Determining the arm's length margins / prices using data pertaining only to financial Year ('FY') 2011-12 which was not available to the Appellant at the time of complying with the Indian TP documentation requirements.*

*7. the Ld. AO / Ld. TPO / Ld. DRP has erred, in law and on facts and circumstances of the case, by rejecting certain comparable companies using "Turnover less than INR 5 Crore" as a comparability criterion.*

*8. the Ld. AO / Ld. TPO / Ld. DRP has erred in rejecting functionally comparable companies; and instead selecting functionally dissimilar companies to determine the ALP for the distribution segment of the Appellant based on the fresh search conducted by the Ld. TPO.*

*9. the Ld. TPO and subsequently Ld. AO has erred in not following specific and binding directions of Ld. DRP.*

*10. the Ld. AO / Ld. TPO / Ld. DRP has erred by denying the benefit of economic adjustment on account of working capital to the Appellant in arriving at the arm's length margin.*

*11. the Ld. AO/Ld. TPO have erred in not restricting the adjustment made to Appellant's distribution segment, to the value of international transaction with AE's as directed by the Ld. DRP, and instead proposed an adjustment to the entire cost base of the distribution segment, which includes uncontrolled transactions with independent third parties as well.*

*12. the Ld. AO has grossly erred in initiating penalty proceedings under section 271(1)(c) of the Act.*

*13. the Ld. AO has erred in levying interest under section 234A, 234B, 234C and 234D of the Act while completely disregarding the provisions of the Act and the judicial precedence.*

*The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*

*The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case."*

4. Ground No. 1 was not pressed and Ground No. 12 is raised pre-maturely, so these grounds do not require any comment on our part.

5. Ground Nos. 2 to 11 are co-related and relate to the addition of Rs.33,91,01,488/- on account of transfer pricing adjustment to the distribution segment of the assessee.

6. Facts of the case in brief are that the assessee is a subsidiary of M/s Turner Broadcasting System Asia Pacific, Inc., and was engaged in the business of distribution of subscription rights of satellite channels of Cartoon Network, WB, CNN, POGO and HBO. The assessee was also engaged in the business of imports, promotion marketing, distribution and provision of sub-distribution rights to cable and broadcast entities. The assessee e-filed the return of income on 3011.2012 declaring an income of Rs.5,58,47,660/-. Later on, the case was selected for scrutiny. The AO noticed that the assessee had entered into the following international transactions with its AE:

<b>S. No.</b>	<b>Nature of international transaction</b>	<b>Value (in INR)</b>	<b>Method Used</b>
1	Purchase of distribution and advertisement rights	2,719,042,376	TNMM with OP/OR as PLI
2	Availing of services	24,072,571	
3	Provision of support services	6,834,498	
4	Payment for product and promotional licensing	33,634,699	CUP Method
5	Provision of production services	72,468,785	TNMM with OP/OC as PLI

He, therefore, referred the matter to the transfer pricing officer (TPO) for determining the arm's length price. The assessee had undertaken a TP study carried out by an independent external consultant wherein a detailed analysis was undertaken to ascertain the functions performed, risks assumed and assets utilized by transacting entities in respect of the aforesaid transactions. The assessee considered the above mentioned transactions at arm's length based on the TP documentation. The TPO initiated the TP

assessment proceedings and called for certain information / documents from time to time. The assessee aggregated the international transactions mentioned at (1), (2) & (3) above, under distribution segment. The TPO rejected the set of companies engaged in distribution of softwares selected by the assessee in the TP documentation for the reason that the comparable companies identified by the assessee were not functionally similar to the distribution activity undertaken by the assessee. The TPO proceeded to conduct a fresh search and selected the following six comparables.

<i>S. No.</i>	<i>Name of the company</i>	<i>OP/Sales (%)</i>
1.	<i>Malayalam Communications Ltd.</i>	<i>36.18</i>
2.	<i>Raj Television Network Ltd.</i>	<i>21.09</i>
3.	<i>TV Today Network Ltd.</i>	<i>5.24</i>
4.	<i>Zee Media Corporation Ltd.</i>	<i>13.81</i>
5.	<i>Maa Television Network Ltd.</i>	<i>22.75</i>
6.	<i>India Vision Satellite Communication Ltd.</i>	<i>(-) 1.57</i>
	<i>Average</i>	<i>16.27</i>

The TPO proposed the adjustment of Rs.61,52,84,260/-

7. Thereafter, the AO passed the draft assessment order dated 15.03.2016 and made the aforesaid adjustment. Against the above said draft assessment order, the assessee filed the objection before the Id. DRP who directed vide order dated 05.10.2016 to include the companies i.e. M/s Sonata Information Technology Ltd., M/s Softcell Technologies Ltd., M/s Advance Technologies Ltd., M/s Empower Industries India Ltd. and Integra Telecommunication & Software Ltd. in the final list of comparable companies, if those

companies clear the filters applied by the TPO. The Id. DRP also directed to include the following three comparables if they pass all the filters:

- “1. *M/s Advance Technologies Ltd.*
2. *M/s Empower Industries India Ltd.*
3. *M/s Integra Telecommunication and Software Ltd.*”

The Id. DRP also directed the TPO to verify and use corrected margin in the final list of comparable.

8. The TPO, however, rejected the comparable M/s Softcell Technologies Ltd. by observing that it was engaged in the business of consultancy services, so, it was not comparable on the basis of functional dissimilarity. The TPO finally selected the following comparables and worked out the arithmetic mean at 9.48% in the following manner:

<i>S. No.</i>	<i>Name of the company</i>	<i>After DRP's</i>
		<i>OP/OR</i>
1.	<i>Sonata Information Technology Ltd.</i>	<i>-0.10%</i>
2	<i>India Vision Satellite Communication Ltd.</i>	<i>-1.57%</i>
3.	<i>Maa Television Network Ltd.</i>	<i>22.75%</i>
4.	<i>Malayalam Communications Ltd.</i>	<i>35.86%</i>
5.	<i>Raj Television Network Ltd.</i>	<i>20.42%</i>
6.	<i>TV Today Network Lid.</i>	<i>5.24%</i>
7.	<i>Zee Media Corpn. Ltd.</i>	<i>13.81%</i>
8.	<i>Avance Technologies Ltd.</i>	<i>-0.46%</i>
9.	<i>Empower Industries India Ltd.</i>	<i>-1.21%</i>
10.	<i>Integra Telecommunication and Software Ltd.</i>	<i>0.05%</i>
	<b><i>Arithmetic Mean</i></b>	<b><i>9.48%</i></b>

Accordingly, the adjustment was worked out to Rs.33,91,01,488/- from Rs.61,52,84,260/- as under:

<i>Particulars</i>	<i>After DRP's Direction</i>
<i>Operating Revenue of the assessee</i>	<i>406,74,92,954</i>
<i>Operating profit in distribution activity</i>	<i>464,96,844</i>
<i>OP/OR for distribution activity</i>	<i>1.14%</i>
<i>Operating cost of the assessee</i>	<i>402,09,96,110</i>
<i>Arm's Length Price Margin (OP/OR)</i>	<i>9.48%</i>
<i>Arm's Length Profit</i>	<i>38,55,98,332</i>
<i>Adjustment</i>	<i>33,91,01,488</i>

The AO accordingly made the adjustment of Rs.33,91,01,488/-.

9. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the TPO has wrongly selected companies which were primarily channel and content owners, thus functionally dissimilar to the assessee. It was further submitted that the ITAT vide consolidated order dated 20.05.2016 for the assessment years 2005-06 and 2006-07 in ITA No. 3080/Del/2011 and 5981/Del/2010 respectively, remanded the matter back to the AO/TPO, in pursuance to the directions of the ITAT, the AO passed the assessment order dated 30.01.2018 for the assessment year 2006-07, against the said order the assessee preferred an appeal in ITA No. 1204/Del/2018 wherein vide order dated 18.06.2018, it has been held that only a distributor could be a valid comparable for the purpose of benchmarking the distribution segment of the assessee and that the channel/content owner companies could not be taken as comparables. The Id. Counsel for the assessee further submitted that

the ITAT directed to exclude the following companies from the list of the comparable:

- *“Malayalam communications Ltd.*
- *Raj Television Network Ltd.*
- *TV Today Network Ltd.*
- *Sun TV Network Ltd.*
- *Zee Entertainment Enterprises Ltd.*
- *Zee Media Corporation Ltd. and*
- *UTV Software Communications Ltd.”*

10. It was further submitted that for the year under consideration, the companies M/s Malayalam Communications Ltd., M/s Raj Television Network Ltd., M/s TV Today Network Ltd. and M/s Zee Media Corporation Ltd. had been selected by the TPO/Id. DRP in the final list of comparables, those deserve to be excluded (copy of the said order dated 18.06.2018 was furnished).

11. In his rival submissions, the Id. CIT DR supported the orders of the authorities below and reiterated the observations made by the TPO in para 8 of his order.

12. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that on a similar issue relating to the selection of the comparable in assessee's own case, this Bench of the ITAT directed to exclude the 7 comparables vide aforesaid order dated 18.06.2018. The relevant findings have been given in para 11 of the said order which read as under:

*“11. We have heard the rival submissions and also perused the relevant findings given in the impugned*

*orders as well as the material referred to before us. From the stage of the DRP, ten comparables have been selected with an average mean of 11.95% and based on such comparables adjustment of Rs.10,07,35,464/- has been made in the distribution segment. The details of these comparable companies with this average margin have already been incorporated above. Out of the said comparable companies, seven comparables have been sought to be excluded by the assessee which are channel and contents owners who are full-fledged channel companies who owned and operate various TV channels and undertake content creation on their own. The Tribunal in assessee's own case for the Assessment Year 2007-08 and 2008-09 and also in Assessment Year 2006-07 have held that Satellite TV channels and cable network operators have significantly different operating models and provide earning model and once the Tribunal has held that such channel/content owner companies should not be included for the purpose of comparability analysis, then there is no reason why the TPO is again selecting such companies for the purpose of benchmarking the ALP of the assessee's distribution segment. Before us, the learned counsel has already clarified on the basis of material available on record that distribution activity and ancillary/production activity of the assessee are two distinct set of transactions for which, not only separate benchmarking has been done but also separate remuneration has been earned for each of the said activities. So far as production activity is concern, the same has been found at arm's length by the TPO and once these are two different segments then there is no justification to mix up the functions of such ancillary activities with that of distribution activity so as to justify selection of such channel/content owner companies, especially when transaction from such ancillary services constitutes only 4% of the value of the*

*international transaction of the assessee. Apart from that, the assessee is providing these services as a captive service provider for which it is remunerated separately and ALP of such transaction is not in dispute. Accordingly, we reject the DRPs and TPO action for mixing the functionality of distribution and production activities which are in fact independent and also separately benchmarked. We are in tandem with the contention of the learned counsel that these two activities cannot be mixed up for distorting the functionality and justifying the selection of channel owner companies. Thus, we hold that the seven comparable companies, namely, i) Malayalam Communications Ltd.; ii) Raj Television Network Ltd.; iii) TV Today Network Ltd. iv) Sun TV Network Ltd.; v) Zee Entertainment Enterprises Ltd.; vi) Zee Media Corporation Ltd.; and vii) UTV Software Communications Ltd.; are directed to be excluded.*

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13. For the year under consideration, the Id. Counsel for the assessee requested to exclude the 4 comparables, namely, M/s Malayalam Communications Ltd., M/s Raj Television Network Ltd., M/s TV Today Network Ltd. and M/s Zee Media Corporation Ltd. So, respectfully following the aforesaid referred to order dated 18.06.2018 in ITA No. 1204/Del/2018 for the assessment year 2006-07 in assessee's own case, we direct the AO/TPO to exclude the aforesaid 4 companies from the list of comparables.

14. The next issue vide Ground No. 10 relates to the benefit of economic adjustment on account of working capital, denied to the assessee by the AO.

15. As regards to this issue, the ld. Counsel for the assessee submitted that the ld. DRP in the directions has rejected the assessee's claim for granting working capital adjustment to the margin of the companies finally identified as comparable. However, for the assessment years 2010-11 and 2011-12, the ld. DRP had granted the benefit of working capital adjustment to the assessee. Therefore, the consistent approach should have been followed and the assessee's claim may be allowed.

16. In his rival submissions, the ld. CIT DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

17. After considering the submissions of both the parties and the material available on the record. We are of the view that when the ld. DRP has allowed working capital adjustment for the preceding assessment years 2010-11 and 2011-12 then there was no reason to deviate from the said view for the year under consideration. We, therefore, direct the AO to allow the benefit of the working capital adjustment to the assessee while working out the arm's length price.

18. Ground No. 12 relating to initiation of the penalty proceeding u/s 271(1)(c) of the Act is pre-maturely raised as such, it is dismissed.

19. Ground No. 13 relates to the charging of interest u/s 234A, 234D, 234C and 234D of the Act. As regards to this issue, it was the

common contention of both the parties that it is consequential in nature. We order accordingly.

20. Now we will deal with the appeal in ITA No. 1069/Del/2014 for the assessment year 2009-10. Following grounds have been raised in this appeal:

*“1. The Assessment Order passed in pursuance of the directions issued by the Hon’ble Dispute Resolution Panel (‘Hon’ble DRP’) is a vitiated order as the Hon’ble DRP erred both on facts and in law in confirming the addition made by the Ld. Assessing Officer (‘AO’) to the Appellant’s income by issuing an order without appreciation of facts and law;*

*2. The Ld. AO and the Hon’ble DRP erred both on facts and in law in confirming the addition of Rs. 20,51,32,093/- to the income of the Appellant by holding that its international transactions under the distribution segment does not satisfy the arm’s length principle envisaged under the Act. In doing so, the Hon’ble DRP has grossly erred in agreeing with the Learned Transfer Pricing Officer’s (‘Ld. TPO’s) action of:*

*2.1. not appreciating that the Appellant had prepared the detailed contemporaneous Transfer Pricing documentation bona fide and in compliance with the Act and Income Tax Rules 1962 (“the Rules”).*

*2.2. not appreciating the fact that the Appellant had selected uncontrolled comparable companies based on a detailed Functional Asset and Risk (“FAR”) analysis following a methodical benchmarking process and completely disregarding the comparable companies identified by the Appellant.*

*2.3. rejecting the economic analysis conducted by the Appellant in respect of ‘distribution segment’ wherein*

*distributors were selected as comparables and instead selecting the companies without appreciating that their FAR of these companies are different as compared to the Appellant under the distribution segment.*

*2.4. conducting a fresh comparability analysis based on application of additional/ revised filters in determining the Arm's Length Price ("ALP") for the Appellant's distribution segment.*

*2.5. disregarding the judicial precedence of NGC Network (India) Pvt. Ltd. (2011-TII-45-ITAT- MUM-INTL), wherein companies engaged in trading of branded software were accepted as comparables to determine the arm's length price for the distribution of satellite television channel; and rejecting a similar search conducted by the Appellant which was presented before the Ld. TPO.*

*2.6. not considering that in case companies having completely different cost structure as compared to the Appellant were to be accepted and compared with the distribution activities of the Appellant, operating profit/ value added expenses ('OP/VAE') should have been used as the Profit Level Indicator ('PLI').*

*2.7. disregarding prior years' data as used by the Appellant in the transfer pricing documentation and holding that current year (i.e. FY 2008-09) 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 transfer pricing documentation, and in doing so has grossly erred in interpreting the requirement of 'contemporaneous' data in the Rules to necessarily imply current year (i.e. FY 2008-09) data.*

*2.8. without prejudice to the above objections, in computing the operating margin of Mahalaxmi Commercial Services Limited in an incorrect manner*

*leading to inaccurate computation of arithmetic mean of comparable companies, and the transfer pricing adjustment.*

*2.9. disregarding judicial pronouncements in India in undertaking the transfer pricing adjustment.*

*3. Without prejudice to the other grounds, Ld. AO erred in not making an adjustment to the operating margin of comparable companies to account for difference in working capital employed by the Appellant and comparable companies.*

*4. On the facts and circumstances of the case and in law, the Ld. AO has grossly erred in:*

*4.1. not granting complete credit of Tax Deducted at Source (TDS), without providing any reason in this regard.*

*4.2. charging interest under section 234D of the Act.*

*4.3. withdrawing interest under section 244A of the Act.*

*4.4. initiating penalty proceedings under Section 271(1)(c) of the Act.*

*The above grounds are without prejudice to each other.*

*The Appellant craves leave to alter, amend or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary either before or during the hearing.”*

21. The issues raised by the assessee are similar to the issues raised for the assessment year 2012-13 in ITA No. 218/Del/2017. The only difference is there in selection of the comparables by the

TPO for the year under consideration. The TPO selected the following comparables:

<b>S. No.</b>	<b>Name of the company</b>	<b>OP/Sales(%)</b>
1.	<i>Cybermedia Media India Online Ltd.</i>	7.12
2.	<i>Mahalaxmi Commercial Services Ltd.</i>	36.54
3.	<i>Quadrant communications Ltd.</i>	5.43
4.	<i>Sporting &amp; Outdoor Ad-Agency Pvt. Ltd.</i>	11.84
5.	<i>Synergy Adlabs Media Ltd.</i>	20.70
6.	<i>Rockman Advertising &amp; Marketing (India) Ltd.</i>	0.26
7.	<i>Adbur Private Limited</i>	0.41
	<b>Average</b>	11.75

22. The TPO proposed an adjustment of Rs.20,51,32,093/-. The AO made the aforesaid addition in the draft assessment order. Thereafter, the assessee filed the objection against the aforesaid adjustment before the Id. DRP who did not allow any relief to the assessee and sustained the adjustment made by the AO.

23. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the assessee had chosen following 5 comparables:

<b>S. No.</b>	<b>Name of the comparable company</b>	<b>Unadjusted OP/Sales(%)</b>
1.	<i>Advance Technologies Ltd.</i>	0.54
2.	<i>Axon Infotech Ltd.</i>	1.17
3.	<i>Empower Industries India Ltd.</i>	-0.21
4.	<i>Rockon Fintech Ltd.</i>	-1.50
5.	<i>Sonata Information Technology Ltd.</i>	1.95
	<b>Mean</b>	0.39

However, the TPO rejected the set of comparables selected by the assessee and proceeded to conduct a fresh search and selected 7 new comparables. It was further submitted that the ITAT Delhi

Bench H-20, New Delhi in the assessee's own case for the assessment year 2006-07 in ITA No. 1204/Del/2018 vide order dated 18.06.2018 had ruled in favour of the assessee by accepting the software distribution companies to bench mark the distribution segment of the assessee and directed the department to include the following comparables companies in the final list of comparable:

- *“Sonata Information Technologies Ltd.*
- *Softcell Technologies Ltd.*
- *Empower Industries India Ltd.*
- *Trijal Industries Ltd.”*

24. It was further submitted that for the year under consideration, the assessee requested the TPO to include M/s Sonata Information Technologies Ltd. and M/s Empower Industries India Ltd. However, the same had not been considered by the TPO. He requested to include the aforesaid two companies in the list of comparables and that the weighted average OP/sales of the comparables after including M/s Sonata Information Technologies Ltd. and M/s Empower Industries India Ltd. would be 6.22% whereas the assessee had earned operating margin of 4.98% and by applying proviso to Section 92C(2) of the Act, therefore, the variation between the arm's length margin and the assessee's margin does not exceed the prescribed threshold, as such the assessee satisfies the arm's length standard.

25. In his rival submissions, the ld. CIT DR strongly supported the orders of the authorities below and further submitted that the assessee is in the distribution business while the comparable

selected by the assessee were in the different field. Therefore, the TPO rightly rejected the comparables selected by the assessee.

26. In his rejoinder, the Id. Counsel for the assessee submitted that the query raised by the Id. DR relating to functionality has been answered by the ITAT in assessee's own case in ITA No. 1204/Del/2018 for the assessment year 2006-07 vide para 13 of the order dated 18.06.2018.

27. We have considered the submissions of both the parties and perused the material available on the record. In the present case, the contention of the Id. Counsel for the assessee was that the companies M/s Empower Industries India Ltd. and M/s Sonata Information Technologies Ltd. deserve to be included in the list of the comparables. This issue has been considered by the ITAT Delhi Bench 3-I-20, New Delhi in assessee's own case for the assessment year 2006-07 wherein vide paras 13 & 14 of the order dated 18.06.2018, it has been directed that these two comparables with working capital adjustment should be taken and should be benchmarked with the assessee's margin. The relevant findings have been given in paras 13 & 14 which read as under:

*“13. In so far as the aforesaid contention of the learned counsel that Software Distribution Company should be accepted, we agree in principle that such companies can be taken for comparability analysis, when there are no direct comparable dealing with distribution of satellite channels are available. Such an acceptability of software distribution companies in the case of distribution of TV channels has found favour by the co-ordinate bench in the case of NGC India Pvt. Ltd. (supra). Thus, we hold that*

*software companies can also be included for the purpose of comparability analysis, because in assessee's own case for the subsequent years such companies have been accepted to be good comparables and Trijal Industries Ltd. too has been accepted as a valid comparable by the TPO in the Assessment Year 2013-14.*

*14. In so far as Trijal Industries Ltd. is concerned, it is seen that this company is engaged in trading of computer packages and is mainly Software Distribution Company and hence can be taken as good comparable. The functions carried out are quite akin with the distribution activity of the assessee company, which can be analysed atleast under TNMM. Even if we agree with the contention of the learned DR that in case software companies are to be included then matter should be remanded back to the TPO for searching for other software companies. . However, looking to the fact that already two rounds of litigations have been done in the case of the assessee and matter pertains to the Assessment Year 2006-07, therefore, to give finality on the issues, we hold that following four comparables with working capital adjustment should be taken and should be benchmarked with the assessee's margin of 2.07% on PLI of OP/OR:-*

- (i) Empower Industries India Ltd.*
- (ii) Sonata Information Technologies Ltd.*
- (iii) Softcell Technologies Ltd.*
- (iv) Trijal Industries Ltd."*

28. So, respectfully following the aforesaid referred to order dated 18.06.2018 for the assessment year 2006-07 in ITA No. 1204/Del/2018 in assessee's own case, we direct the AO/TPO to include M/s Empower Industries India Ltd. and M/s Sonata Information Technologies Ltd. in the list of the comparable. It is also relevant to point out that these companies were also directed to be included in the list of comparables by the ld. DRP for the

assessment year 2012-13, therefore, by keeping in view the Principles of consistency also, the aforesaid companies deserve to be included in the list of comparables.

29. Ground No. 4 relates to the credit of tax deducted at source not granted by the AO, charging of interest u/s 234D of the Act and withdrawing of interest u/s 244A of the Act.

30. As regards to this ground, it was the common contention of both the parties that these issues may be remanded back to the file of the AO to be adjudicated in accordance with law, after providing due and reasonable opportunity of being heard to the assessee. We order accordingly.

31. Ground No. 4.4 relating to the initiation of penalty proceedings u/s 271(1)(c) of the Act was pre-maturely raised, hence dismissed.

32. In the result, the appeals of the assessee are partly allowed.

(Order Pronounced in the Court on 01/01/2019)

Sd/-  
**(Kuldip Singh)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**VICE PRESIDENT**

**Dated: 01/01/2019**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**