

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: '1-2' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 6625/DEL/2015 (A.Y 2011-12)

DCIT Circle 25(1), New Delhi (APPELLANT)	Vs	Teijin India Pvt. Ltd. 601, 6 th Floor, Nehru Place New Delhi AACCT7234Q (RESPONDENT)
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Appellant by	Ms. Jai Shree Sharma, Sr. DR
Respondent by	Sh. Rohit Tiwari, Adv

Date of Hearing	21.01.2019
Date of Pronouncement	25.01.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the Assessment Order dated 20.10.2015 passed by the Assessing Officer u/s 143 (3) read with Section 144C of the Income Tax Act, 1961.

2. The grounds of appeal are as under:-

1. *“On the facts and in the circumstances of the case, the DRP-2 erred in directing AO to complete the assessment as per observation made by DRP in the order which resulting in reduction of the addition of Rs.1,19,41,815/- on account of proposed addition of arm’s length price of the international transaction with its associated enterprises.”*
2. *“On the facts and in the circumstances of the case, the DRP-2 erred in*

directing TPO to exclude 5 mentioned below companies from the final set of comparables :

- i) *Info Edge (India) Ltd.*
- ii) *Media ReserarchUsersCouncil*
- iii) *MMTV LTD*
- iv) *Power Systems Operation Corpn. Ltd.*
- v) *TSR Darashaw.”*

3. *“The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. Teijin India was incorporated in July 2006 as a wholly owned subsidiary of Teijin Limited, Japan (“Teijin Japan”). Teijin India is engaged in the provision of marketing support services to Teijin Japan and other Teijin Group companies, as required. The Assessee filed the return of income on 28 November 2011 declaring an income of Rs. 15,844,165 for the AY 2011-12. During the course of the assessment proceedings, the Ld. AO made a reference under section 92CA(3) to the Ld. TPO and in response to the notice issued by the Ld. TPO under section 92CA(2) of the Act, the information and documents (as prescribed under section 92D of the Act read with Rule 10D of the Rules) maintained by the Assessee were submitted to the Ld. TPO. TPO proposed adjustment vide order dated 28/01/2015 and the draft order dated 20/02/2015 was served on the assessee proposing upward adjustments in the income of the assessee. The assessee filed objections before the DRP and DRP vide direction dated 10/9/2015 given relief to the assessee.

4. The revenue is in appeal before us.

5. The Ld. DR submitted that the Transfer Pricing Officer i.e. TPO has given a detailed discussion as regards to the comparable selected by the assessee in his order at Para 40 as under:-

S.No.	Company Name	Contentions of the assessee	Comments on the contentions of the assessee
1	Media Research Users Council ('MRUC')	<ul style="list-style-type: none"> • Functionally not comparable - Registered not-for-profit body of members and engaged in conducting researches on all forms of media, which are used by advertisers, media houses, agencies and various government organization. • Fails export income filter of greater than 75% of total service income i.e. 18.02%. • Abnormal profit margin of 40.53% 	<ul style="list-style-type: none"> • Market survey and research is a part and parcel of providing market support services. Under TNMM the standards of comparability are relatively relaxed and only broad similarity of functions is required. Accordingly, it cannot be rejected on account of functional comparability. • Export turnover filter has already been removed by this office. • Supernormal profit companies are also part and parcel of industry and cannot be rejected merely because they have earned high margins, unless peculiar economic circumstances are pointed out. <p>In order to exclude the extreme result cases, there should either be a defect in comparability or</p>

			exceptional conditions faced by such comparables. In the present case, the company is comparable to the Assessee and thus cannot be rejected merely on account of earning supernormal profits.
2	Info Edge India Ltd.	<p>Functionally not comparable and high-end diversified services an Indian e-commerce/ online classifieds company which is engaged in rendering of high end diversified services in the area of recruitment, matrimony, real estate, education and related services.</p> <ul style="list-style-type: none"> • Fails export income filter of greater than 75% of total service income i.e. 9.86% • High Turnover of Rs. 294 crores i.e. 22.6 times • Abnormal profit 	<p>The company is involved in the business of providing advertisement, recruitment, promotion and other Market Support Services to various clients, agencies and companies through web based portals which are further supported by its retail support service stations for the same activity spread throughout the various geographical locations. The relevant extract from the annual report of the company is given below:-</p> <p>"Info Edge (India) incorporated in 1995, owns one of the leading job portals naukri.com. The company is a leading provider of various portals related to online recruitment, matrimonial, real</p>

		margin of 45.53%	<p>estate and education classifieds and related services in India."</p> <p>"Company has a network of 67 offices spread across in 41 cities in India. Company also operates internationally through 2 offices in Dubai, 1 in Bahrain and 1 in Riyadh. These international offices are engaged in business of sales, marketing and payment collection activities of company's business division.</p> <p>The company has employee strength of 1,798 people. Info Edge (India) owns four subsidiaries namely Naukri Internet Services, Jeevansathi Internet Services, Info Edge (India) Mauritius and Allcheckdeals India.</p> <p>Business Recruitment- This division of company is involved in providing recruitment through portals namely naukri.com,</p>
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			<p>firstnaukri.com, naukrigulf.com, brijj.com and Quadrangle-an executive search agency.”</p> <p>Hence the comparable is a good comparable as its functions are similar to that of the function of the assessee for benchmarking of provision of Market Support Services to its clients.</p> <p>Export turnover filter has already been removed by this office.</p> <p><u>High turnover</u> - The applicability of turnover filter has already been discussed earlier in Para 14 of this order. Supernormal profit companies are also part and parcel of industry and cannot be rejected merely because they have earned high</p>
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			<p>margins, unless peculiar economic circumstances are pointed out.</p> <p>In order to exclude the extreme result cases, there should either be a defect in comparability or exceptional conditions faced by such comparables. In the present case, the company is comparable to the Assessee and thus cannot be rejected merely on account of earning supernormal profits.</p>
3	MMTV	<p>Functionally not comparable - Engaged in the television broadcasting business and related operations, within and outside India</p> <ul style="list-style-type: none"> • Fails export income filter • Abnormal Profit Margin of 32.94% 	<ul style="list-style-type: none"> • Export turnover filter has already been removed by this office. • Supernormal profit companies are also part and parcel of industry and cannot be rejected merely because they have earned high margins, unless peculiar economic

			<p>circumstances are pointed out.</p> <ul style="list-style-type: none"> In order to exclude the extreme result cases, there should either be a defect in comparability or exceptional conditions faced by such comparables. In the present case, the company is comparable to the Assessee and thus cannot be rejected merely on account of earning supernormal profits.
4	Global Procurement Consultants Ltd.	<ul style="list-style-type: none"> Functionally not comparable - Engaged in providing procurement related services Fails export income filter Abnormal profit margin of 30.86% 	<ul style="list-style-type: none"> As per page 3 of AR, GPCL synthesizes Indian consultancy expertise in project management and procurement across varied sectors of the economy including finance, infrastructure, energy, transportation, communication, information technology, industry, agriculture, mining, water resources, health and education.

			<p>The skill set of the employees is in relevant for Marketing Support Services as different companies may use different strategies, policies, action, mode and medium, activity and outreach for marketing services, hence the factor which is relevant is the proportion of the activity and the revenue generates. It is a good comparable</p> <ul style="list-style-type: none">• Export turnover filter has already been removed by this office.• Supernormal profit companies are also part and parcel of industry and cannot be rejected merely because they have earned high margins, unless peculiar economic circumstances are pointed out. <p>In order to exclude the extreme result cases, there should either be a</p>
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			<p>defect in comparability or exceptional conditions faced by such comparables. In the present case, the company is comparable to the Assessee and thus cannot be rejected merely on account of earning supernormal profits</p>
5	Aptico Ltd.	<p>Functionally not comparable - Engaged in mainly providing environment management, technical consultancy, industrial and entrepreneurship development, training programmes, micro enterprise development, waste minimization and energy management services</p>	<ul style="list-style-type: none"> • As per page 27 of AR, main operations of Apitco ltd. are Micro Enterprises Development, Skill Development, Entrepreneurship Development, Tourism & Research Studies, Project related Services, Infrastructure, Planning & Development, Environment Management, Energy related Services, Cluster Development, Asset Reconstruction & Management Services. It is a good comparable. • Export turnover filter has already been removed by this office.

6	TSR Darashaw Pvt.	Functionally not comparable-Business	<p>TSR DARASHAW PRIVATE LIMITED is one of India's leading Business Process Outsourcing (BP) organization certified under the IS) 9001:2008 guidelines having a total industry experience of over 35 years. TSRDL has state-of-the-Art IT capabilities and well trained HR which are the key requirements for handling BPO activities. TSRDL's strength, capabilities and infrastructure enables it to handle any large, voluminous, time bound processing activities requiring meeting of stringent quality and service standards in a regulatory environment.</p> <p>Presently TSRDL</p>
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			<p>services over 5 million customers- end users on behalf of their esteemed clients, most of whom are leaders in their respective industries. It is a good comparable.</p> <p>Export turnover filter has already been removed by this office.</p>
7.	Power System Operation Corporation Ltd.	<ul style="list-style-type: none"> • Functionally not comparable - Engaged in power system and market operations. • Government Company- wholly owned subsidiary of the Power grid Corporation of India Limited which is a Government of India Enterprise. <p>Grants in aid received from Government during Financial Year 2010-11.</p> <p>Fails to export income filter of greater than 75% of total service income i.e Nil</p>	<p>As per page 35 of AR, The company's principle business is power system and market operation. The Company operates within India and does not have operations in economic environments with different risks and returns. The company has entered into business transactions with its related party Power Grid Corporation of India Ltd. during the year, which is only 11.76% of the total turnover of the company. It is a good comparable.</p> <p>Export turnover filter has already been removed by this office.</p>

8.	Apar Chematek Lubricants Ltd.	Fails RPT filter	The contention of the assessee examined and accepted after verifying the facts. The company is rejected from the list of comparable.

Thus, the Ld. DR relied upon the order of the TPO and submitted that the DRP has given a proper finding while directing TPO to exclude 5 Companies from the final set of comparables which are as follows:-

6. The Ld. AR relied upon the order/directions of the DRP and submitted a detailed synopsis whereby giving each comparables which were excluded as being the functionally not comparable to the assessee company. The Ld. AR relied upon the decision of the Tribunal in case of Adobe Systems India Pvt. Ltd. Vs. ACIT (2015) ITA No. 6165 & 6287/Del/2015 order dated 6/7/2018.

7. We have heard both the parties and perused the material available on record. From the annual reports of each of the comparables contested by the Revenue it can be seen that comparables are functionally dissimilar to the assessee company. These comparables are considered in case of Adobe Systems India Pvt. Ltd. (supra) for the same Assessment Year 2011-12 and from the perusal of the Tribunal's order it can be seen that these comparables are functional different than assessee's company. The Tribunal held as under for each of the comparables for A.Y. 2011-12 regarding marketing support services:

"25. We have considered the rival arguments made by both the sides and perused the material available on record. So far as MMTV Ltd. is concerned, the DRP excluded this company from the list of comparables on the

ground that this is functionally different entity and does not make a good comparable to the assessee in MSS function. Further, the submission of the assessee that it has significant intangibles could not be converted by the Ld. DR . Since the above company is engaged in the business of televisions broadcasting and related operations and it has got significant intangibles, therefore, we hold that this company cannot be compared with that of the assessee company. The order of the DRP is accordingly upheld.

26. *So far as Media Research Users Council is concerned, we find this company is a council of media companies with members comprising advertisers, publishers, advertising agencies and companies from broadcast and other media and engaged in undertaking surveys, research into the readership, viewership, listenership of various media for advertising. We, therefore, uphold the order of the DRP on this count in holding that Media Research Users Council is a functionally different entity and hence does not make a good comparable to the assessee in MSS function. The order of the DRP is accordingly upheld.*

27. *So far as Power Systems Operation Corporation Ltd is concerned, we find this is a Government of India undertaking and having RPT filter 48.20%. This company is also functionally different and segmental details are not available. Further, it fails export turnover filter begin 14.16%. We, therefore, uphold the order of the DRP in excluding this company from the list of comparables.*

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31. *So far as TSR Darashaw Ltd is concerned, we find this company is engaged in share registry and transfer services, depository services, record management, payroll and provident fund management and corporate fixed deposit management which are in the nature of IT enabled services as evident from page 21 of the annual report. WE, therefore, uphold the order of the DRP*

in holding that this is functionally different entity. Further, this company was rejected by the Tribunal in assessee's own case for Assessment Year 2009-10 and the DRP in assessee's own case for Assessment Year 2010-11 and no appeal was filed by the Revenue before the Tribunal. We, therefore, uphold the order of the DRP in excluding the company from list of comparables. The Ground No.2 by the Revenue is accordingly dismissed.

40. *After hearing both the sides, we find the Info Edge (India) Ltd. was included by the TPO holding that it is functionally comparables which has been upheld by the DRP. WE find the Tribunal in the case of Rolls-Royce India Pvt. Ltd. (supra) while directing the TPO to exclude this company as comparable from the market support services segment has observed as under:-*

“21. *Regarding Infoedge India Pvt. ltd we are of the view that this company has been included by the TPO holding that it is functionally comparable. Assessee contended before the Ld. TPO as well as DRP that this company is functionally not comparable in view of it engaged in management of online portals and also has major sources of revenue as advertisement income. Both the lower authorities rejected the contention of the assessee. We have carefully considered the rival contentions. It is apparent that the comparable selected by TPO is engaged in online portal activities such as employment website, matrimonial website and its major revenue is advertisement and subscriptions. It has diversified services such as recruitment related, real estate related, matrimonial related services and owns significant Rolls Royce India Pvt. Ltd. Vs. DCIT ITA No. 6636/Del/2015 Assessment Year 2011-12 intangibles/websites such a naukri.com, 99 acre.com etc. Therefore, this company is functionally different as it is providing an advertisement space as well as online portal based on subscription by the buyer and seller of the services compared to*

services provided by the assessee of marketing support services. In view of this we direct Ld. TPO for exclusion of this comparable.”

41. *Similarly, the Tribunal in the case of LinkedIn Technology Information Pvt. Ltd. (supra) has directed the TPO to exclude this company from the list of comparable.*

42. *Following the above two decisions and considering the fact that the functions of Info Edge (India) Ltd is different from that of the case of the assessee, we hold that the above company is not a comparable. We accordingly direct the Assessing Officer /TPO to exclude this company from the list of comparables.”*

The assessee company is engaged in provisions of marketing support services to Teijin-Japan and other group companies, while the comparables are functionally different from the assessee companies which can be seen from the Annual reports of each of the comparables. The DRP has given proper direction for excluding these comparables contested by the Revenue. The Ld. DR also was not able to demonstrate that the functional profile of these comparables is similar to that of assessee company. Therefore, the appeal filed by the Revenue is dismissed.

9. In result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 25th JANUARY, 2019.

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 25/01/2019
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	21.01.2019
Date on which the typed draft is placed before the dictating Member	21.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	25.01.2019
Date on which the final order is uploaded on the website of ITAT	25.01.2019
Date on which the file goes to the Bench Clerk	25.01.2019
Date on which the file goes to the Head Clerk	