

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

ITA No.370/DEL/2016  
Assessment Year: 2011-12

The A.C.I.T  
Circle - 27 (2),  
New Delhi

Vs.

WSP Consultants India Ltd.  
118, JP House, Shahpur Jat,  
New Delhi

PAN No.AAACW5220F

(APPELLANT)

(RESPONDENT)

Appellant by

Shri Atul Jain, CA  
Shri Navratan Singh, CA  
Ms. Suchita Kanodia, CA

Respondent by

Ms. Jaishree Sharma, Sr. DR  
Shri H. K. Choudhary, CIT DR

Date of hearing: 23/01/2019

Date of Pronouncement: 30/01/2019

**ORDER**

**PER N. K. BILLAIYA, ACCOUNTANT MEMBER:**

This appeal by the Revenue is preferred against the order dated 28.10.2015 framed u/s 144C(5) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] pertaining to A.Y 2011-12.

2. The grievances of the revenue read as under :

(i) *"On the facts and in the circumstances of the case, the DRP-2 erred in directing AO to complete the assessment as per observations made by DRP in the order which resulting in reducing the addition to Rs.3,87,54,545/- in place of original recommended ALP of Rs.6,55,34,938/- for the International transactions undertaken the assessee company with its associate/parent enterprise.*

(ii) *On the facts and in the circumstances of the case, the DRP-II erred in directing TPO to exclude below mentioned companies from the final set of comparables :*

- i) Bengal S R E Infrastructure Devp. Ltd.*
- ii) Certification Engineers International*
- iii) Indus Technical & Financial*
- iv) Pallavan Transport Consultancy*
- v) Usha Hydro Dynamics Ltd.*
- vi) Rites Ltd.*
- vii) NTPC Electric Supply Company Ltd."*

3. The sum and substance of the grievance of the Revenue is that the DRP erred in excluding seven comparables on the ground that all of them are government companies and are, therefore, not good comparables.

4. The assessee company is engaged in providing design and engineering services property, environment, transport and infrastructure sectors. The assessee provides services to transform the built environment and restore the natural environment and its expertise ranges from environmental remediation to urban planning from engineering iconic buildings to designing sustainable transport networks and from developing the energy sources of the future to enabling new ways to extracting essential resources.

5. The comparables finally selected for bench marking the international transactions relating to engineering services are as follows:

<b>No</b>	<b>Company Name</b>	<b>OP/OC (%)</b>
1	<i>Ashok Leyland Project Services Ltd.</i>	<b>24.70%</b>
2	<i>Bengal S R E I Infrastructure Devp. Ltd.</i>	<b>42.14%</b>
3	<i>Certification Engineers International Ltd.</i>	<b>78.45%</b>
4	<i>Global Procurement Consultants Ltd.</i>	<b>30.86%</b>
5	<i>Indus Technical &amp; Financial Consultants Ltd.</i>	<b>14.78%</b>
6	<i>Kitco Ltd.</i>	<b>27.48%</b>
7	<i>Mahindra Consulting Engineers Ltd.</i>	<b>30.92%</b>
8	<i>Mitcon Consultancy &amp; Engg. Services Ltd.</i>	<b>40.19%</b>
9	<i>Pallavan Transport Consultancy Services Ltd.</i>	<b>25.59%</b>
10	<i>T C E Consulting Engineers Ltd.</i>	<b>29.29%</b>
11	<i>Usha Hydro Dynamics Ltd.</i>	<b>29.45%</b>
12	<i>Gujarat Industrial &amp; Technical Consultancy Org</i>	<b>7.89%</b>
13	<i>IBI Chematur (Engineering &amp; Consultancy) Ltd.</i>	<b>25.96%</b>
14	<i>Rites Ltd.</i>	<b>58.27%</b>
15	<i>NTPC Electric Supply Company Ltd.</i>	<b>18.01%</b>
	<b>Average</b>	<b>32.27%</b>

6. Accordingly, the ALP of the international transaction related to engineering services is computed as under:

<i>Operating Cost</i>	<i>18,88,60,313</i>
<i>OP/OC %</i>	<i>32.27</i>
<i>Arm's Length Price (ALP)</i>	<i>24,98,05,536</i>
<i>Price shown in the international</i>	<i>18,42,70,598</i>
<i>Shortfall being adjustment u/s</i>	<i>6,55,34,938</i>

7. Aggrieved by this, the assessee carried the matter before the DRP.

8. After considering the facts and objections of the assessee, the DRP directed the TPO and directions of the DRP can be understood from the following chart:

	<i>Comparable</i>	<i>TPO</i>	<i>Assessee</i>	<i>DRP</i>
1	<i>Ashok Leyland Project Services</i>	<i>The company is involved in provision of consultancy services</i>	<i>The company is in the business of Wind Energy and project services.</i>	<i>This is a good comparable in view of similar</i>

	limited	which are in the nature . of technical services and thus is comparable to the Assessee.	Project service segment of the company is engaged in the business of assisting investment activities in successfully identifying and implementation of projects in India.	FAR.
	Bengal S R E Infrastructure Devp. Limited	Bengal SRE is engaged in provision of infrastructure advisory and related services which) are in the nature of technical services and thus is comparable to the Assessee.	Bengal SRE is engaged in the business of preparation of project reports on Sewage, storm Water Drainage, Transportation etc. It is a govt company.	This is to be excluded as it is a Government Company with FAR ' not comparable.
3	Certification Engineers International Limited	This Company is mainly providing consultancy and engineering services which are in the nature of technical services and thus is comparable to the Assessee.	CEIL is engaged in provision of inspection and certification services. CEIL is a government owned entity.	This is to be excluded as it is a Government Company with FAR not comparable.
4	Global Procurement Consultants Limited	GPC is engaged in provision of procurement management services to government department and their project execution agencies which are in the nature of technical services	GPC provides valuation, consultancy and financial advisory services. GPC acts as a client representative in taking the responsibility of procurement by providing procurement related advisory services.	This is a good comparable in view of similar FAR.

		and thus is comparable to the Assessee.		
5	Indus Technical & Financial Consultants	This company provides consultancy services in the nature of technical services and thus is comparable to the Assessee.	The company is owned by the Government.	This is to be excluded as it is a Government Company with FAR not comparable.
6	Kitco Limited	The company is engaged in engineering and infrastructure activities which are in the nature of technical services and thus is comparable to the Assessee.	KITCO is engaged in providing ~ project engineering and project execution, technical services, environmental engineering and HRD consultancy.	This is a good comparable in view of similar FAR.
7	Mahindra Consulting Engineers Limited	The company is engaged in various engineering and infrastructure activities which are in the nature of technical services and thus is comparable to the Assessee.	The company is engaged in provision of consultancy services in the areas of special economic zones, water supply and sewerage etc.	This is a good comparable in view of similar FAR.
8	Mitcon Consultancy Engineering Services Limited	Mitcon is engaged in provision of engineering services in the nature of technical services and thus is comparable to the	The company provides technical consultancy in Power division, Energy and Carbon service division, Banking & Finance division etc.	This is a good comparable in view of similar FAR.

		Assessee.		
	Pallavan Transport Consultancy Services Limited	Pallavan is engaged in <sup>1</sup> consultancy services in the nature of technical services and thus is comparable to the Assessee.	Pallavan is one of the transport undertakings owned and controlled by Tamil Nadu Government.	This is to be excluded as it is a Government Company with FAR not comparable.  i
10	TCE Consulting Engineers Limited	TCE is engaged in project engineering services which is in the nature of technical services and thus is comparable to the Assessee.	The company is engaged in providing concept to commissioning services, site selection study, site investigation study, technology selection studies, feasibility and detailed project reports, electrical system studies, due diligence reports, etc.	This is a good comparable in view of similar FAR.
11	Usha Hydro Dynamics Limited	Usha is engaged in various services which are technical in nature and thus is comparable to the Assessee.	Usha is engaged in the business of hydrojet cleaning of machines and retubing of turbine condensers and heat exchangers.	This is not a good comparable due to differences in FAR. It should be excluded.
12	IB1 Chematur (E&C)	The company is engaged in engineering design and other services in the nature of technical services and thus is comparable to the Assessee.	IB1 Chematur is engaged in diversified activities since apart from detailed engineering, the company also provides project planning and management services, erection supervision	This is a good comparable in view of similar FAR.

			Procurement assistance, etc.	
13	NTPC Electric Supply Limited	The company is engaged in project management services which is in the nature of technical services and thus is comparable to the Assessee.	The company is engaged in the business of generation of electricity and allied activities. NTPC is owned by the Government.	This is to be excluded as it is a Government Company with FAR not comparable.
14	Rites Limited	Rites consultancy services segment has been considered, in which Rites is involved in provision of technical services and thus is comparable to the Assessee.	The company provides consultancy in areas such as Airports, transport, highways, industrial engineering etc. Rites is a Government owned enterprise and comes under the Ministry of Railways	This is to be excluded as it is a Government Company with FAR not comparable.

9. Aggrieved by this, the Revenue is before us.

10. The Id. DR strongly contended that without assigning any specific reason, the DRP has held that the aforesaid comparables are either government companies or functionally not comparable. It is the say of the Id. DR that without assigning any specific reasons, the DRP erred in excluding the seven comparables.

11. Per contra, the ld. counsel for the assessee supporting the findings of the DRP pointed out that in assessee's own case for assessment year 2011-12, the Tribunal has excluded KITCO Ltd for the very same reason given by the DRP for excluding the 7 comparables. The ld. counsel for the assessee pointed out that the order of the Tribunal was assailed before the Hon'ble High Court which declined to admit the same and the appeal of the Revenue was dismissed.

12. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. There is no quarrel that all the 7 comparable companies excluded by the DRP are either government companies having significant revenue from government or they are functionally different.

13. In assessee's appeal ITA No. 344/2016 exclusion of KITCO Ltd was prayed for on the ground that it is a government owned company and the Tribunal accepted the contention of the assessee and drawing support from the decision from the decision of the Hon'ble High Court of Bombay in the case of ThyssenKrupp Industries India Pvt. Limited in ITA No. 2218/2013 excluded KITCO Ltd from the list of final set of comparables. We find that the appeal of the Revenue was dismissed

by the Hon'ble High Court of Delhi in ITA No. 935/2017. The relevant findings of the Hon'ble High Court read as under:

*“Any inclusion or exclusion of a comparable per se cannot be treated as a question of law unless it is demonstrated to the court that the Tribunal or any other lower authority took into account irrelevant consideration or excluded relevant factors in ALP determination that impact significantly”*

14. Let us now consider each comparable company.

Bengal SREI

15. This company offers Transaction Advisory, Policy Advisory and Capacity Building, encompassing the entire gamut of Industrial and Urban infrastructure for projects like Jawaharlal Nehru National Urban Renewal Mission Programme of the Government of India and similar assignments from West Bengal Tourism Development Corporation Ltd. This company was formed as a joint venture with the West Bengal Industrial Development Corporation which is a Government of West Bengal undertaking. Most of the Revenue comes from government and functions performed by this company are also not comparable with that of the assessee. Exclusion is upheld.

### Certification Engineers International Ltd

16. This company is providing services related to certification, re-certification, safety audit and Health and Safety management systems, inspection of equipment and installations in the Hydrocarbon Industry to central government and state owned enterprises. 100 percent shares are held by Engineers India Ltd. and its nominees and 80.40% shares of Engineers India limited are held by President of India and rest are held by government controlled bodies. Being a government company, the Revenue comes from Government and is functionally not comparable with the assessee. Exclusion is upheld.

### Indus Technical and Financial Consultant Ltd

17. The FAR of this company is not at all comparable with that of the assessee since this company is into financial consultancy. Further, this company fails the TPO's own filter of rejection of companies where Revenue is less than Rs. 1 crore. Further, this company has diversified sources of income and segmental accounts are not available. This company has been rightly excluded by the DRP.

### Pallavan Transport Consultancy Services Limited

18. 100% of the shares of this company are held by the Governor and nominees on behalf of the Government of Tamil Nadu. This company provides consultancy with respect to traffic, transportation, software development to state government undertaking and bodies which include Tamil Nadu State Health Transport Department, Chennai Police, Digitization of records for various government bodies, vehicle tracking systems for state transport and civil aviation plan for Tamil Nadu. The Revenue is from government and has been right excluded by the DRP.

### Usha Hydro Dynamics Limited

19. This company's major around 92% is from cleaning activities which is not the business of the assessee and is also engaged in trading business. This company was rejected as good comparable by the coordinate bench in the case of Bechtel India Pvt. Ltd in ITA No. 6779/DEL/2015. FAR of this company is not comparable with that of the assessee and is, therefore, rightly excluded by the DRP.

RITES LTD.

20. This is a Government of India undertaking. This company is functionally dissimilar as this company provides consultancy with respect to public utilities like airport, transport, highways, industrial engineering, port and water resources among others and cost of sales includes cost of finished goods. This company was rejected as good comparable by the co-ordinate bench in the case of Bechtel India Pvt. Ltd in ITA No. 6779/DEL/2015 and in the case of Boeing International Corporation ITA No. 1127/DEL/2015. The DRP has rightly excluded this company.

NTPC Electric Supply Company

21. 100% shares are held by government owned PSU-NTPC. This company is undertaking implementation of turnkey Rajiv Gandhi Gramin Vidyutikaran Yojana Projects, turnkey execution of sub-stations for utilities, project management, consultancy for provision of supply of electricity in 5 km area around NTPC power projects. The significant revenue is from government and, therefore, rightly excluded by the DRP.

22. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the DRP.

23. In the result, the appeal of the revenue in ITA No. 370/DEL/2016 is dismissed.

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-**

**(N. K. BILLAIYA)  
ACCOUNTANT MEMBER**

Date: 30.01.2019

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	11.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	