

**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. 6800/DEL/2015 (A.Y 2011-12)**

DCIT Circle-21(2), Room N. 222, C.R. Building, I. P. Estate New Delhi <b>(APPELLANT)</b>	Vs	Rolls Royce India P. Ltd. 2 <sup>nd</sup> Floor, Birla Tower West, 25, Barakhamba Road New Delhi AABCR5277Q <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. R. K. Kapoor, Adv</b>
<b>Respondent by</b>	<b>Sh. Sanjay Pandey, Sr. DR</b>

<b>Date of Hearing</b>	<b>30.01.2019</b>
<b>Date of Pronouncement</b>	<b>04.02.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 15/5/2015 passed by DCIT, Circle 21(2) New Delhi u/s 143(3)/144C/92CA(4) of Income Tax Act, 1961.

2. The grounds of appeal are as under:-

“1. On the facts and circumstances of the case and in law, the Hon’ble DRP has erred in excluding the comparable which have upward impact and is not even handed in retention and exclusion of comparables, which is the basic principle of TP Statue.

2. *The Order of Hon'ble DRP is perverse is not appreciating the facts of the case correctly in the light of TP Statute and also in light of Evidence Act."*

3. During the year, the assessee Company was engaged in the business of Supply of Power and Oil & Gas Pumping Systems, part and engines relating thereto as well as providing Engineering Services relating to power, oil and gas sector, Providing Project Management and Marketing Support Services to Group Companies. The revised return of income for Assessment Year 2011-12 was filed on 30/3/2013 at a total income of Rs.38,22,94,149/-. Reference to the Transfer Pricing Officer was made to determine Arms Length Price u/s 92CA (3) of the Income Tax Act. The TPO passed the order on 29/1/2015. The assessee filed objections before the DRP. The DRP vide directions dated 9/9/2015 directed the TPO. The assessment order dated 15/5/2015 u/s 143(3)/144C/92CA (4) was passed on 15/5/2015.

4. The Ld. AR submitted the Tribunal in the same Assessment Year i.e. Assessment Year 2011-12 in assessee's appeal being ITA No. 6636/Del/2015 vide order dated 22/4/2016 referred back this issue to the file of the Assessing Officer /TPO to decide the Transfer Pricing issue afresh after giving an opportunity to the assessee. The Assessing Officer passed a consequential order u/s 254/143(3) dated 20/10/2016 without giving an opportunity to the assessee. The assessee filed an appeal before CIT(A) against order dated 20/10/2016 on merits as well as on legal grounds. The CIT(A) vide order dated 31/7/2018 quashed the order u/s 254/143(3) dated 20/10/2016 as the same was passed without first passing draft order u/s 144C and held the same to be none curable defect. Thus, the assessment order has been referred as void-ab-initio relying on Delhi High Court's decision in case of JCB India Ltd 2017 Taxman.com 155 & Hon'ble Supreme Court decision in case of Control Risk India Pvt. Ltd. 2018-TII-10-S.C-TP. Thus, the Ld. AR submitted that the Department's appeal before the Tribunal for the same year becomes

infructuous in the absence of any valid assessment order and is liable to be dismissed in this preliminary ground only.

5. The Ld. DR submitted that the Department is challenging exclusion of three comparables as per the directions given by the DRP. The Ld. DR relied upon the order of the TPO and submitted that the DRP erred in excluded the comparables which have awkward impact but the Ld. DR could not controvert the fact that the assessee's appeal has been decided and the CIT(A) in the second round has passed the order. In-fact, the Ld. DR also could not controvert the merits of these 3 comparables wherein the functional profile is totally different from the assessee's functions.

6. We have heard both the parties and perused the material available on record. In assessee's own case for the Assessment Year 2011-12 the Tribunal has decided the issue and remanded the same to the file of the Assessing Officer /TPO. The TPO also decided this issue in second round which was afterwards challenged before the CIT(A) and CIT(A) set aside the order of the TPO/AO. Since the Assessment Order itself has become null and void, then the emerging orders also becomes void-ab-initio. Therefore, Department's appeal does not survive and becomes infructuous.

7. In result, Revenue's appeal is dismissed.

**Order pronounced in the Open Court on 04<sup>th</sup> FEBRUARY, 2019.**

**Sd/-**

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

Dated: 04/01/2019  
*R. Naheed \**

Copy forwarded to:

1. Appellant

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	30.01.2019
Date on which the typed draft is placed before the dictating Member	31.01.2019
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	05.02.2019
Date on which the final order is uploaded on the website of ITAT	05.02.2019
Date on which the file goes to the Bench Clerk	05.02.2019
Date on which the file goes to the Head Clerk	