

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

IT(TP)A No.2710/Bang/2017
(Assessment year: 2013-14)

M/s.Weivin Pvt. Ltd.
No.143-E, 1st & 2nd Phase,
Bommasandra Industrial Area,
Bengaluru-560099. ... Appellant
PAN: AAACW1349M

Vs.

Income-tax Officer,
Ward 7(1)(4),
Bengaluru. ... Respondent

Appellant by : Shri Padamchand Khincha, CA.
Respondent by : Shri C.Sundar Rao, CIT(DR)

Date of hearing: 20/03/2019
Date of pronouncement: 12/06/2019

O R D E R

Per PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order u/s 143(3) r.w.s. 144C dated 26/10/2017 passed in pursuance to the directions of the Hon'ble Dispute Resolution Panel dated 27/09/2017.

2. The assessee has raised the following grounds of appeal:

1	<p><u>General Grounds:</u> The orders passed by the learned Income-tax Officer, Ward 7(1)(4), Bangalore (Assessing Officer); learned Deputy Commissioner of Income-tax (Transfer Pricing) — 2(2)(2) (Transfer Pricing Officer/ TPO); and Honorable Dispute Resolution Panel [collectively referred as "lower income tax authorities" for brevity] are bad in law and liable to be quashed to the extent it is prejudicial to the Appellant.</p>
2	<p>The lower income tax authorities have erred in not accepting the capital gains arising from sale of shares of ForgePro India Private Limited (hereinafter referred to as "ForgePro") to Jervis B Webb International Company (hereinafter referred to as "Jervis") and enhancing the sale consideration in the manner carried out by them.</p>
3	<p>The lower income tax authorities have erred in making transfer pricing adjustment of INR 27,63,42,660' without considering all the submissions and/or withoUt appreciating properly the facts and circumstances of the case and the law applicable.</p>
4	<p><u>Reference to TPO:</u> The learned Assessing Officer has erred in making a reference to TPO for determining arm's length price without demonstrating as to why it was necessary and expedient to do so. The Honorable DRP has erred in confirming the action of the Assessing officer merely on the ground of higher risk element.</p>
5	<p>Without prejudice, the learned Assessing Officer has erred in making a reference to TPO for determining arm's length price by not complying with instruction no. 15 of 2015 dated 16.10.2015. The reference made to the Transfer Pricing Officer is therefore bad in law and consequently the orders passed by the lower income tax authorities are bad in law.</p>
6	<p><u>Transaction between unrelated parties:</u> The learned TPO has erred in not appreciating that the impugned sale of shares of ForgePro to Jervis was a</p>

	result of negotiation between two independent parties under uncontrolled conditions. The Hon'ble DRP has erred in confirming the action of the TPO.
7	<p><u>Rejection of valuation report:</u></p> <p>The learned TPO has erred in law and on facts by not accepting:</p>
	(a) the transfer pricing documentation maintained by the appellant and
	(b) the valuation report of shares of ForePro obtained from the independent valuation expert.
8	The learned TPO has erred in law and on facts by questioning the expertise of the independent valuer.
9	<p><u>Rejection of Risk-free rate:</u></p> <p>The lower authorities have erred in rejecting the adjustment to share valuation of ForgePro on account of risk free rate at 8.66% based on 10 year India Government's zero coupon bond yield as on 31.3.2012</p>
10	The lower authorities have erred in not appreciating that risk free rate as on 31.3.2012 (being the year end rate) provides an appropriate estimation of future risk free return.
11	The TPO has erred in considering the average of the weekly yield of 10 year Government of India bonds for 12 months from April 2011 to March 2012 as risk free rate at 8.391%. The Honorable DRP has erred in confirming the action of the TPO on the ground that when the analysis involves future year projections and termination value for perpetuity term, risk free rate cannot be adopted as on a particular date.
12	<p><u>Rejection of Company Specific Risk Premium:</u></p> <p>The TPO has erred in rejecting the Company Specific Risk Premium (CSRP) of 4% adopted in the valuation and used 0% signifying no company specific risks for ForgePro.</p>

13	The learned TPO has erred in making the following observations while excluding CSRP in the valuation exercise:
	(a) There is no CSRP in case of appellant that is different from comparables
	(b) Beta takes care of major risks
	(c) Minor systematic risks cannot be quantified nor do they command a risk premium in the investment market;
	(d) With a turnover of INR 27 crores, the Appellant is not a small firm and small firm risk premium is not applicable in the present case; and
	(e) Beta of the Appellant should be less than the comparables because it has the price advantage available to EOU(s).
14.	The Honorable DRP has erred in:
	(a) concurring with the conclusion of the TPO;
	(b) in rejecting the detailed submissions made by the Appellant detailing the reasons to include CSRP and the point to point rebuttals to the observations of the TPO.
15	<u>Rejection of growth rate and terminal growth rate:</u> 15. The TPO has erred in considering the growth rate and terminal growth rate while valuing the shares of Forgepro at 6% as against the rate of 2% considered by the Appellant vide its independent valuation report.
16	The TPO has erred in concluding that
	(a) Growth rate of the Appellant depends on the growth of Indian economy since the Appellant operates in India; and
	(b) GDP growth rate shows the overall growth of a country and is used as an approximation of terminal growth rate.
17	The TPO has erred in not appreciating that:
	(a) Growth rate must be reflective of growth of economy in which Appellant's major market is based which is

		outside India in the Appellant's case;
	(b)	Perpetual growth rate of 6% is unsustainable and unrealistic; and
	(c)	Growth rate of the sector or industry in which the Appellant operates is of paramount importance.
		Without prejudice, the growth rate of a company cannot be equated with growth rate of a country.
18		The Honorable DRP has erred in confirming the action of TPO based on the following grounds:
	(a)	Growth rate of supplier market is relevant since ForgePro is products are industrial in nature.
	(b)	Any entity who experiences growth shall increase its capacity building and would be able to meet the market growth. Current capacity is irrelevant for future growth and the action of TPO in computing 6% as growth rate [vis-à-vis 2% current growth rate] is justified.
19		<u>Addition of control premium:</u> The TPO has erred in adding the 'control premium' at 25% on adhoc basis while valuing the shares of ForgePro. The Honorable DRP has erred in confirming the action of the TPO.
20		The TPO has failed to appreciate that:
	(a)	Control premium is not a separate and distinct capital asset and is attached to the shares of ForePro and no real income accrues from the controlling stake;
	(b)	Control of ForgePro already existed with buyer of shares and therefore the sale of these shares does not confer the controlling interest;
	(c)	Control premium is already included in the agreed purchase consideration.
21		Without prejudice to the above, no material was brought on record to show that the Appellant has derived a benefit of 25% of the value owing to control premium.
22		<u>Free cash flow for FY 2016-17 considered as terminal</u>

	<p><u>free cash flow:</u> The TPO has erred in considering the free cash flow for FY 2016-17 as terminal free cash flow while carrying out adjustment to share valuation of ForgePro and the Honorable DRP has erred in confirming the action of the TPO.</p>
23	<p><u>Error in company valuation:</u> The TPO erred in valuing the company at INR 70.93 crore as the arm's length price while computing the equity value of ForgePro.</p>
24	<p>The lower authorities have erred in not appreciating that the cost of setting up a new unit with similar facilities and technology would be much lower whereby the valuation done by TPO is higher than the replacement cost. The Honorable DRP has erred in confirming the action of TPO.</p>
25	<p>The TPO and DRP have erred in not appreciating that the cost of setting up a new unit denotes the opportunity cost and no prudent buyer would incur a cost of acquisition which is more than the cost of setting up similar business.</p>
<p>The appellant prays accordingly.</p>	

3. Brief facts of the case are that the assessee-company is engaged in manufacturing metal handling equipment and the assessee has an Associated Enterprises Jervis B Webb Company, USA (JBW). The shareholding of the assessee company is held by Vinar 60% and JBW 40% and whereas JBW held 40% of shares of Forge-Pro India Pvt.Ltd. ('ForgePro') and the assessee-company owning 60% of shares in the financial year 2012-13. The assessee-company owning

60% shares of ForegoPro has sold its stake to JBW for a consideration of Rs.25,56,92,340/- and paid long-term capital gains tax. Since the nature of transaction is by sale of share of subsidiary to its AE, hence, valuation report is prepared in September 2012. The assessee-company filed the Return of income on 29/11/2013 declaring nil income. Subsequently the case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Income-tax Act,1961 ['the Act' for short] were issued. The AO found that the assessee had the following international transactions with its AE:

Particulars	Amount Paid
Purchased- Import of conveyor parts and consumables	8,816,614
Purchased- Import of spares, web alloys consumables and conveyor parts	21,948,872
Sold- Export of materials	1,583,307
Total	32,348,793

4. As per Form 3CEB, the transactions with its AE being Rs.28,95,93,437/- in respect of sale of shares, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's length price (ALP) of international transaction with the approval of the CIT. Since the assessee-company has sold 60% shares of Forge Pro India Pvt. Ltd of subsidiary company to its AE(JBW) for a consideration of Rs.25,56,92,340/- and

disclosed long-term capital gains of Rs.17,21,93,247/-. The TPO, on receipt of reference called for documents maintained and prescribed u/s 92D(3) vide letter dated 17/6/2016 and considered the financial profile at para. 2.1 as under:

<u>Wevin India P. Ltd</u>	A.Y. 2013-14	
Particulars	Amount	Amount
Total Operating Income ®	739360844	
Add: Exchange gain	2831088	
Less: Other Income	37096297	
Operating Income		705095635
Total Operating Cost	701662939	
Less: Finance cost	50277344	
Operating Cost		651385595
Operating Profit		53710040
OP/OC		8.25%
OP/OR		7.62%

Valuation report was prepared and historical financial data referred at para 3.1 which is as under:

Profit & loss account for March ending

	10	11	12	13	14	15	16	17
INCOME								
Sales	132.5	173.3	271.4	360	444.9	471.5	500	530.5
Total revenues	132.5	173.3	271.4	360	444.9	471.5	500	530.5
EXPENDITURE								
Cost of sales	92.3	108.3	143.7	198	247.2	264.5	283	302.8
Other Expenses	17.4	23.4	68.8	87.2	103.4	110.3	117.7	125.6
Total expenses	109.7	131.7	212.5	285.2	350.6	374.8	400.7	428.4
FRIDTA	22.7	41.5	58.9	74.8	94.3	96.8	99.4	102.1
Depreciation	9.2	10.4	13.2	15.2	15.2	15.2	15.2	15.2
EBIT	13.5	31.1	45.7	59.6	79.1	81.6	84.2	86.9
Interest on working capital			2.5	4.8	5.6	5.6	5.6	5.6
Interest on team loan	20.8	21.9	20.8	16	11.8	7.6	2.6	-
Other income/ Charges	-	-	1.6	0.4	1.2	1.6	2	3.6
EBT	-7.3	9.2	24.1	39.2	62.9	70	78	85

The TPO has also verified the audited historical balance sheets and provisional balance-sheets for future periods as referred at para 3.4 of the order.

5. Whereas as the TPO observed that the assessee has perceived discounted cash flow (DCF) as an appropriate method of valuation and referred and computed the cash flow for 5 years and discounted to the present value and for rest of the economic life after 5 years and it has taken a terminal period cash flow and discounted. The details of cash flow and discounts are referred at para 3.6 of the TPO order as under:

The cash flow and discount details are as under:

Particulars	FY 13	FY 14	FY 15	FY 16	FY 17
Revenue	360.0	444.9	471.5	500.0	530.5
EBT	38.9	61.7	68.4	76.0	81.4
Less: Estimated taxes	-	(16.2)	(22.2)	(24.7)	(26.4)
Add: Depreciation and Amortization	15.2	15.2	15.2	15.2	15.2
Less: Capital expenditure	(8.6)	(5.0)	(5.0)	(5.0)	(5.0)
Less: Increase in Non cash working capital	(5.0)	(15.6)	(6.3)	(4.0)	(4.3)
Less: Decrease in Debt	(22.8)	(31.3)	(50.0)	(38.0)	-

The TPO found that the valuer has computed estimated adjusted equity value of Forge Pro India Pvt. Ltd., share at Rs.284.60 referred at para.3.6.1 of the order:

Page 10 of 22

	INR Mn
Present value of explicit period	66.74
Present value of terminal period	581.64
Estimated gross equity value	223.50
Add: Cash and term deposits on 31.03.2012	10.1
Add: Fair value of surplus land	63.2
Less: Advances from Webb India Pvt Ltd	(6.0)
Less: Advances from Jervis B Webb International Ltd	(6.3)
Estimated adjusted equity value of ForgePro	284.60

Since the TPO was not able to assess the method of valuation due to inconsistencies and assumptions made by the assessee on some key matters not accepted the value of share computed by the assessee and issued show-cause notice on 26/09/2006 referred at para.4.1 of the order and worked out average risk free (RF) rate at 8.39% which is more than accurate risk free rate. Whereas the assessee has taken the equity risk and premium (ERP) at 6% based on the cumulative long-term average return on the National Stock Exchange. Further, the TPO observed that the tested party is not a small firm and does not belong to MSME industry and has a turnover of Rs.27 crores and hence the small risk premium is not liable to be tested parties. Whereas Beta value and equity risk premium take care of systematic risk and the specific premium is incorrectly attributed at 4%. The TPO found that the perpetual growth rate has been taken at 2% whereas it should have been taken at 6% based on historical data for financial year 2011-12. Based on the said

information, the TPO has made the calculation referred at para 4.7 to 4.9 and show cause notice was issued for adjustment and the assessee furnished the reply by letter dated 14/10/2016 on determination of risk free return. Whereas the TPO has dealt on submissions and issues and analyzed the valuation and worked out the adjusted equity value as under:

	INR Mn
Present value of explicit period	66.74
Present value of terminal period	581.64
Estimated gross equity value	648.38
<i>Add: Cash and term deposits on 31.03.2012</i>	10.1
<i>Add: Fair value of surplus land *</i>	63.2
<i>Less: Advances from Webb India Pvt Ltd</i>	(6.0)
<i>Less: Advances from Jervis B Webb International Ltd</i>	(6.3)
Adjusted Equity Value of ForgePro	709.38

Hence, the ALP was adjusted and the TPO considered the control premium and explained that the assessee has relinquished 60% shares in Forge Pro India Pvt. Ltd., and JBW has gained 100% share-holding over Forge Pro India Pvt. Ltd., from 40% due to share holding change. The TPO observed that in the normal market situation, when the transactions are between third parties the purchaser pays a control premium for controlling stake. The assessee has explained that JBW held 40% stake in assessee's company and 40% ownership of Forgepro, whereas assessee owns 60% ownership stake in Foregepro and therefore effective

Page 12 of 22

ownership of JBW is 40% + 40% of 60% = 64% and the TPO rejected the assessee's submissions at para.6.2 and observed that Jervis (JBW) has become 100% owner of Foregpro and added control premium relying on the judicial decision at 25% of the share value and finally worked out the ALP at para. 6.5 which is as under:

“6.5 The arms-length price and adjustment is computed as under:

		Ref	Rs
Equity value	A	Para 5.11	709,380,000
Value of shares sold to Jervis	B	60% of A	425,628,000
Control premium	C	25% of B	106,407,000
Arms length price of sale of shares	D	= B + C	532,035,000
International transaction	E		255,692,340
Adjustment	F	= D – E	276,342,660

and passed the order u/s 92CA with adjustment of Rs.27,63,42,610/- dated 21/10/2016

6. Whereas the AO has passed the draft assessment order with capital gains worked out based on ALP adjustment of the TPO where sale of shares was worked out by TPO is Rs.53,20,35,000/- instead of Rs.28,95,934,437/- adopted by the assessee and other additions, assessed income of Rs.32,50,67,000/- and passed the order u/s 143(3) r.w.s. 144C(1) dated 15/12/2016.

7. Aggrieved by the draft assessment order, the assessee filed objections with the DRP and the DRP considered the objections and the findings of the TPO has rejected the

assessee's claim and passed the order u/s 144C(5) dated 27/09/2017.

8. Further, the assessment order u/s 143(3) read with sec.144C(1) was passed by the AO considering the directions of the DRP and the additions made by the AO and determined the income at Rs.32,50,67,000/- and passed the order u/s 143(3) r.w.s. 144C(1) of the Act dated 26/10/2017.

9. Aggrieved by the order, the assessee has filed appeal with the Tribunal. At the time of hearing, the learned AR reiterated the submissions made before the TPO and the DRP and submitted that the DRP has erred in confirming the action of the TPO in respect of control premium addition of 25% of share value and rejecting terminal growth rate at 2% but considered 6%. Similarly, the TPO erred in rejecting the Companies Specific Risk Premium (CSR) at 4% considered in the valuation of shares. The learned AR emphasized that the control premium added to ALP determination is not acceptable. Whereas control premium is not separate asset identifiable or distinguishable or independent of shareholding. The learned AR relied on the judicial decisions in support of his view. The contention of the learned AR that the assessee company holds 60% shares of Forge Pro India Pvt. Ltd., and has sold to Jervis B Webb Company (JBW) for

Page 14 of 22

Rs.25.56 crores. The share-holding of assessee in Forge Pro India Pvt. Ltd., (ForgePro) is 60% and balance 40% held by JBW. Whereas for determination of control as a shareholder, both direct share-holding and indirect share-holding has to be considered i.e. JBW held 40% in ForgePro directly and 24% indirectly i.e. 40% of 60% being 24%. Hence, JBW held 64% of equity shares in ForgePro and directly and indirectly control already exists with JBW. Whereas the assessee has only 36% stake. The learned AR referred to clause 8.1.3 of the Agreement and also page 198 of the paper book and dealt on the ownership and control percentage. Further, learned AR has referred to the decision of the Ahmedabad bench of Tribunal in the case of *Deputy Commissioner of Income-tax vs. Hazira LNG* (2017) 77 taxmann.com 61 (Ahmd.Trib) and referred as under:

"The equity capital 0.1 PLL is held by Indian Oil, Bharat Petroleum, ONG and GAIL at 12.5% each, and, in turn, 74.14%, 78.92%, 84.93% and 57.36% respectively of the equity capital of these companies is held by the President of India. In effect, thus, the indirect shareholding of the President of India in these companies can be computed as follows:

Sr. No.	% of holding of Government of India	% holding in PLL	Holding
1.	74.14	12.5%	9.2675
2.	78.92	12.5%	9.865
3.	84.93	12.5%	10.61625
4.	57.36%	12.5%	7.17
Total			36.91875

Page 15 of 22

It is thus clear that where a person or an enterprise holds, directly or indirectly, shares carrying not less than 26% of voting powers in each such enterprises, the requirements of Section 92A(2)(b) will be fulfilled, and that where a person, directly or indirectly, or through one or more intermediaries, participates in the management, control or capital of these companies, the requirements of Section 92A(I)(b) will be fulfilled."

9.1 The learned AR also emphasized on various case-laws which are considered by the US and UK. The contention of the learned AR that JBW is already having control over ForgePro and referred to page 430 of the paper book. The learned AR also submitted that the Board of Directors of ForegePro comprises of three directors nominated by JBW and two directors nominated by Vinar group. ForegePro is dependent for orders from JBW as JBW provides technology and banking arrangement and due to this action the control of ForegePro is directly or indirectly exists in the hands of JBW and no new control has been obtained by acquiring shares by JBW. Therefore, the addition of control premium by TPO is bad in law.

9.2 Further, the learned AR emphasized that value of DCF i.e. discounted cash flow method is inclusive of control premium and referred to the method used for future cash flow and supported his stand with reference to guidelines on valuation issued by the ICAI. Further control premium has to be applied only to publicly traded companies and always

control premium is an integral part of terms of agreement. The learned AR distinguished the decision relied by the TPO and were the percentage of control premium is different and the price of shares was not arrived by DCF method but on negotiated price. Whereas the assessee-company is supported valuation of shares by DCF method, judicial precedents, principles, regulations and guidelines. The learned AR emphasized on the rejection of growth rate of 2% and considering 6% by TPO and no risk premium of 4% was granted by the TPO. The learned AR supported his arguments, with submissions and voluminous information/material and prayed for allowing the appeal.

9.3 Contra, the learned DR supported the orders of the DRP and emphasized that by purchase of shares, JBW has got control and therefore, control premium is mandatorily to be added. There is no necessity to grant risk premium at 4% and the terminal rate determined at 6%, accepted by the DRP is a good rate and supported the orders of the lower authorities.

10. We heard the rival submissions and perused material on record. The learned AR has argued only on the grounds in relation to addition of control premium rejection of risk-free rate and rejection of companies' specific premium (CSRP) and

rejection of growth rate and terminal growth rate where the assessee has adopted at 2% based on valuation report whereas the TPO adopted 6% and the learned AR has not argued other grounds of appeal and same are treated as not pressed and dismissed.

10.1 On the first ground of addition of control premium, we found that the assessee-company is holding 60% stake in ForegePro and balance 40% stake is held by JBW and whereas the assessee-company's share-holding held by Vinar 60% and balance 40% JBW. Due to sale of 60% of shares of ForegePro to JBW, the stake of JBW has been increased to 64% as demonstrated by the learned AR. The concept of addition of control premium was dealt by the TPO and has been emphatically calculated the control premium. On the issue of addition of control premium, the learned AR has made elaborate submissions. We perused the order of the DRP. Where DRP has dealt with addition of control premium, risk adjustment rate and growth rate. We found that the assessee's submissions are elaborate whereas the DRP having considered the objections and findings of the TPO could not specifically gave independent opinion but relied on decisions and the findings of the TPO and passed the order. We found that mainly the observations of the TPO have been considered

and the order of the DRP is not clear on this specific addition of control premium made by the TPO. The assessee's objections on risk premium and the risk adjustment and terminal risk are also not dealt in detail. The learned AR demonstrated referring to judicial decisions and DRP order specifically on the addition of control premium as under:

“9. Objections Ground No.8:

The Ld. TPO has erred in adding the 'control premium' while valuing the shares of ForgePro.

9.1. The arguments of the assessee in regard to the above ground is as under:

1. In the course of the hearing, the TPO noted that controlling interest has been transferred and that should command a premium. The TPO observed that JBW has taken over major stake of ForgePro for 40% to 100% as a consequence of the sale.
2. Control is an interest arising from holding a particular number of share and the same cannot be separately acquired or transferred. Each share represents a vote in the management of the company and such a vote can be utilized to control the company. Controlling stake is therefore not an identifiable or distinct capital asset. This principle is upheld by the Supreme Court in Vodafone International Holding B. V. v. Union of India (17 taxmann.com 202). In the Company's case, the value of equity share has already factored the controlling interest.
3. The TPO has relied on the decision of the Hon. ITAT in the case of Lanxess India Pvt Ltd v. ACTT (94 DTR 0314) wherein an adjustment of 25% of the share value was made by the TPO on account of control premium on the basis of a report by Philip Sounders Jr, PHD who gave a finding that a mean average premium ranged from 30 percent to 50 percent. The Ld. TPO has failed to appreciate that 'control premium' is a question

Page 19 of 22

of fact' which needs to be evaluated on a case to case basis and cannot be applied generally, simply by relying on a ruling which in turn has relied on an unverified report of an expert rendered in an unknown context.

4. The Company also objects to the addition of control premium on the following basis:
 - a) The control of ForgePro already existed with JBW and no additional control was acquired. Hence, no significant value could be added by JBW by acquiring shares of ForgePro since it was already in control and hence no control premium must be contemplated.
 - b) Control premium is the opinion of the buyer and is included in the valuation

9.2. The Panel perused assessee's contention as laid above. The assessee's contentions can be summarised as under:

- Controlling stake is non-identifiable asset and therefore cannot be valued separately.
- JBW already exercised control on ForgePro through indirect shareholding in assessee-company and therefore no additional control is exercised by ForgePro through this arrangement.
- Control Premium is already included in the valuation
- Control premium is a factbased exercise and just a reliance on a ruling cannot be a basis to assign value to the same

The assessee has well acknowledged that with one additional share an additional vote is obtained by the purchaser. Now, one vote cannot make a difference as decisions in a company is undertaken through shareholder resolutions where majority shareholders (50% or 75%) need give in their consent on a particular view for the implementation. However, when an investor acquires shares which is equivalent to providing him a majority stake, then it is said to acquire a controlling stake and through which it can have its say

Page 20 of 22

in the affairs of the company and regulate the future business operation. Thus, a controlling stake has its own set of merits for which any investor would be willing to pay a premium. Moreover, the seller of shares being well aware of the fact that the buyer (investor) would acquire a controlling stake would definitely command a premium on the share price which would be over and above the market price or expected market price.

The Panel would also like to highlight a recent instance in the Indian capital market wherein an existing investor paid 4% premium over the market price of share for adding just 1.7% stake to its existing stake of 31.6%. The relevant information has been quoted as under and could be find out on the link mentioned below:

"Tata Sons has offered to buy nearly 1.7% of Tata Motors shares worth Rs 2,000 crore on Tuesday at a premium of 4% over Monday's closing price"

.....

Hence, it is a well-established fact that controlling stake is well identified and a premium is paid over and above the market price or fair value of shares. With regard to determination of premium, the findings of the TPO has been perused and found to be in order and the Panel finds no reason to deviate from the same. Hence, the ground is rejected.”

10.2 The learned AR has emphasized that the DRP has relied on the listed company profile and relying on the findings of the TPO for the justification of addition of control premium. We found that the DRP should have considered the facts and judicial decisions relied by the assessee. Further, we are of the opinion that the order of the DRP is not clear on many aspects and the objections were not fully adjudicated. Therefore, we, considering the provisions, circumstances and

the submissions of the learned AR, we are of the opinion that the order of the DRP is cryptic and non-speaking. Accordingly, to meet the ends of justice, we restore the entire disputed issues to the file of the DRP to consider afresh assessee's submissions made in the course of hearing and pass a speaking and reasoned order. Since we have restored issue to the file of the DRP and other issues i.e. risk premium and terminal risk adjustment are also restored to the file of the DRP to pass a reasoned order with specific observations and the assessee should also be provided adequate opportunity of hearing and shall co-operate in submitting information before the DRP. We order accordingly.

11. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 12th June, 2019.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 12/06/2019

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore