

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH
MUMBAI**

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2162/Mum/2015
(Assessment Year :2010-11)**

M/s. APL Logistics (India) Private Limited 247 Park, Hinson House 'B' Wing, 8 th Floor, LBS Marg, Vikhroli (W) Mumbai – 400 083 Maharashtra	Vs.	Assistant Commissioner of Income Tax 14(1)(1), Mumbai
PAN/GIR No. AACCA9694B		
(Appellant)	..	(Respondent)

Assessee by	Shri M.P. Lohia
Revenue by	Shri Chaitanya Anjaria
Date of Hearing	26/04/2019
Date of Pronouncement	29/05/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2162/Mum/2018 for A.Y.2010-11 arises out of the order by the Dispute Resolution Panel-IV, Mumbai in Objection No.153 dated 19/12/2014 (Id. DRP in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/01/2015 by the Id. Asst. Commissioner of Income Tax-14(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. The ground Nos. 1 & 2 raised by the assessee are general in nature and do not require any specific adjudication.

2.1. During the course of hearing, the Id. AR stated that grounds No.3 to 5 raised by the assessee are not pressed by him. The same is reckoned as a statement made from the Bar and hence the same are dismissed as not pressed.

2.2. Ground No.6 raised by the assessee is with regard to the action of the Id. DRP upholding the action of Id. TPO by considering certain additional comparables which are functionally different with that of the assessee for the purpose of benchmarking the international transactions of the assessee. The assessee further elaborated ground No.6 by specifically mentioning the name of comparables by way of separate grounds in ground Nos.20 to 23 as under:-

Ground No.20:- In respect of comparable TSR Darashah Ltd.,

Ground No.21:- In respect of comparable Apitco Ltd.,

Ground No.22:- In respect of comparable Global Procurement
Consultant Ltd.,

Ground No.23:- In respect of comparable HCCA Business Services Pvt.
Ltd.,

3. The brief facts of this issue are that the assessee company is engaged in providing local logistics of freight forwarding services in India which includes cargo consultation services, international freight forwarding services, warehousing management services and other local logistic support services. The assessee is a wholly owned subsidiary of APL Logistics Ltd. Singapore (APLL, Singapore in short) which is part of the Neptune Orient Lines Group (NOL Group). The freight traffic especially comprises out bound or export shipments (viz originating in India and destined for a location outside India) and Inbound or import shipments (viz originating outside India and destined for India). During

the year ending 31/03/2010, the assessee has entered into following international transactions as its associated enterprises (AEs in short).

Sr.No.	Nature of International Transaction	Value of Transaction (Rs.)	Method Used
1	Payment of balance transportation fees (Network fees) to APLL Singapore	115,681,483	TNMM
2	Freight charges in respect of international freight forwarding shipments paid by the Assessee in India on behalf of APLL Singapore	185,182,967	Refer note 1 below
3	Charges in respect of international freight forwarding shipments collected by the Assessee from the shippers (exporter)/ consignees of AEs	281,630,514	Refer note 2 below
4	Charges in respect of international freight forwarding shipments collected by AEs from consignees (importer) / shippers (exporter) outside India on behalf of the Assessee	143,479,830	Refer note 3 below
5	Received from APLL Singapore and API CPL ..Singapore against sale of investment	761,888,994	Valuation report
6	Payment for business administration services to APLL Singapore	4,760,500	TNMM
	Total	1,492,624,288	

- 1) These recoveries do not include provision of services and the actual cost incurred is receivable from the AE. Based thereon, the amount received/receivable is at arm's length.
- 2) These amounts are collected by the assessee on behalf of the AEs. Based thereon, the amount paid I payable is at arm's length.
- 3) These amounts are collected by the AEs on behalf of the assessee. Based thereon, the amount received/receivable is at arm's length.

3.1. The assessee is responsible for local logistics and freight forwarding support services in India (such as origination services for shipments originated in India to deliver outside India and destined services for shipments originated outside India to deliver in India). Similarly other associated enterprises of the assessee are responsible for international freight and overseas support services in their countries (such as destined services for shipment originated from India to deliver outside India and origination services for shipment originated outside India to deliver in India). In relation to above, the assessee had entered into international freight services agreement and consultation services agreement dated 01/01/2009 with APLL Singapore. In the transfer pricing documentation, the assessee has adopted Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) to benchmark its international transactions. The net cost plus (NCP) was selected as the Profit Level Indicator (PLI). In the TP study report, it is mentioned that assessee opts as a low risk logistics and freight forwarding support services provider being insulated from all kinds of business and operational risks and entrepreneurial third party service provider. On the other hand, markets its services thereby incurring substantial expenses on account of such marketing and sales promotional activities. The weighted average NCP earned by comparable independent companies in logistics and freight forwarding support services worked out to arithmetical mean of 3.43%. The assessee earned NCP of 5% from its logistics and freight forwarding support services. Since, the assessee's margin was higher than the comparables margin, the assessee concluded that the transactions undertaken by it were at arm's length. The assessee also mentioned in the TP study report that since NCP earned by the assessee were above the arithmetical mean of the NCP of comparables, the assessee did not make any risk adjustments but however reserved its right to claim the same as and when necessary. The assessee during the course of

proceedings from the Id. TPO provided the updated NCP margin of the comparables based on single year data wherein the average margin was arrived at 2.84%. This was submitted to the Id. TPO vide letter dated 06/09/2013.

3.2. The Id. TPO on going through the financials of the assessee observed that assessee has shown following amounts as pass through costs and these costs have not been taken into account while determining the mark-up. The assessee was asked to explain why these transactions have been shown as pass through costs and not taken into account for the purpose of determining the mark-up on cost:-

Sr. No.	Nature of international Transaction	Value of Transaction (Rs.)
2	Freight charges in respect of international freight forwarding shipments paid by the Assessee in India on behalf of APLL Singapore	185,182,967
3	Charges in respect of international freight forwarding shipments collected by the Assessee from the shippers {exporter}/ consignees (importer) in India on behalf of AEs	281,630,514
4	Charges in respect of international freight forwarding shipments collected by AEs from consignees (importer) / shippers (exporter) outside India on behalf of the Assessee	143,479,830

3.3. The assessee explained before the Id. TPO that in the agreement entered into with AE, pass through cost has been defined as under:-

"Pass Through Cost" means payments made for the account of other parties, example of Pass Through Costs are terminal handle costs (THC), insurance costs, import duties, freight (in/out) and any costs that would be classified under generally accepted accounting procedures (GAAP) as contra-revenue and cost of goods sold."

3.4. The assessee explained before the Id. TPO as under:-

- The assessee is paid for transporting the goods from the customer's location to the Warehouse and from warehouse to the port. The assessee is paid for the job as per the terms of the agreement, which is cost plus 5%.
- The ships are owned by AE and 3rd parties. The shipping line delivers the goods at the destination port. The Assessee collects the shipping freight on behalf of the AE from the exporter customer which is treated as pass through the cost as per agreement. An amount of Rs. 281,630,514 are Charges in respect of international freight forwarding shipments collected by the Assessee from the shippers / consignees in India on behalf of AEs. Out of these Rs. 281,630,514 depending upon the customer contract, APLL India would either pay the freight charges to the Shipping lines in India or would remit it to the AE on whose behalf it has collected the freight charges. During the year, assessee has paid Rs. 185,182,967/- to shipping lines in India.
- Sometimes the exporter asks the assessee that the shipping freight would be paid to the consignee so the AE collects shipping on behalf of the assessee for payment to shipping lines. Such amount is Rs. 143,479,830.
- The delivery of the goods from destination port to the customer's location is performed by the AEs and is neither collected by the assessee nor is reflected in assessee's account.

3.5. Further, vide submission dated 6 September 2013, it was submitted that assessee had collected certain freight and other charges in respect of international freight forwarding shipment from the shippers / consignees in India on behalf of its AEs. Similarly, AE's had collected certain freight and other charges in respect of international freight forwarding shipments from the shippers / consignees in their respective countries on behalf of the assessee. Further, the assessee had paid certain freight charges in respect of international freight forwarding shipments in India on behalf of APLL Singapore, These transactions are undertaken purely for administrative convenience.

3.6. There is neither an element of any provision of services nor an intention of providing any direct or proximate benefit to either of the parties. Any benefit arising to the assessee or its AEs is purely incidental and the cost of such benefit, if any, would not be significant. In view of the same and having regard to the fact that the transactions were undertaken on a cost to cost basis, these international transactions in the nature of administrative conveniences should not require a separate analysis and is considered to be consistent with the arm's length standard.

3.7. In the transfer pricing study of assessee submitted vide letter dated 22 August 2013, it was submitted that APLL India's is compensated

for local logistics and freight forwarding support services with mark-up of five percent on the costs incurred in delivering the services. The revenue in excess of costs plus an arm's length mark-up of five percent, if any, is remitted to APLL Singapore as a network fee for its role as the principal and entrepreneurial risk taker and its leadership relating to the strategic planning *and* management of the Global Logistics Business and provision of certain centralized services in the structure. Further, it was submitted that the network fee is not a payment made by APLL India for use of any patent, trademark, or other intellectual property owned by APLL Singapore. Rather, the network fee is intended to ensure that APLL India delivering Global Logistics Services on behalf of APLL Singapore is remunerated on cost +5%, whilst at the same time ensuring that any amount that may be realized by APLL India in excess of such an arm's-length return (if relevant) accrue to APLL Singapore, as the principal and entrepreneurial risk taker in the structure.

3.8. During the year under consideration, the assessee paid Network Fee amounting to Rs, 115,681,483 to APLL Singapore which is calculated in the following manner.

Particulars		Amount (Rs.)
Total revenue (from JFS and consolidation business) without pass through cost	A	57,07,88,484
Operating costs (i.e. base cost as defined in the IPS and Consolidation service agreement)	B	43,34,35,239
.Add: Mark-up of 5%	C	2,16,71.762

	D=B+C	45,51,07,001
Network Fee	A-D	11,56,81,483

Particulars	FY 2009-10
Operating Income (A)	455,107,001
Operating Expenses (B)	433,435,239
Adjusted Net Profit (A-B = C)	21,671,762
Adjusted NCP (C/B)	5%

3.9. The assessee submitted before the Id. TPO further as under:-

- The assessee has bench marked the transaction by TNMM
- Assessee is the tested party.
- PLI is Operation Profit/Cost.
- The assessee searched for comparables on Prowess and Capitaline in the Transfer Pricing Study, who are engaged in shipping services, cargo handling, logistic, road freight and transport services and selected 12 comparables on the basis of their business activities, turnover / revenue and profitability earned by them.

3.10. The assessee selected 12 comparables and arrived at the updated arithmetical mean margin of 2.84% as average of 12 comparables. The assessee earned margin of 5% and since the same was higher than 2.84% as average of 12 comparables, the assessee submitted that its pricing is at arm's length.

3.11. The Id. TPO observed in his order that the assessee has collected total revenue of Rs.57.07 Crores, out of which the operating cost of the assessee is Rs.43.34 crores. The remaining profit which is to be shared between the assessee and the AE is Rs. 13.73 cores, out of which Rs.2.18 crores is retained by the assessee, which comes to 15.73%. An amount of Rs.11.56 crores is retained by the AE which is 84.17% of the total revenue as shown below:-

Particulars		Amount (Rs.)
Total revenue (from IFS and consolidation business) without pass through cost	A	57,07,88,484
Operating costs (i.e. base cost as defined in the IPS and Consolidation service agreement)	B	43,34,35,239
Add: Mark-up of 5%	C	2.16,71.762
	D=B+C	45,51,07,001
Network Fee	A~D	11,56,81,483

3.12. The Id. TPO analysed the various functions performed by APLL Singapore (AE and the assessee together with various services rendered thereon and further assets employed and the risks assumed by both the parties. The Id. TPO observed that from the analysis given in the TP study report, it is seen that assessee is not simply doing transportation job but performing various other functions like market and business support, administrative, finance, human resource, vendor management, customer

relationship on behalf of the AE. Above all, the assessee is instrumental in assisting the AE for business amounting to Rs.28 Crores and 14 Crores which is a pass through cost for the assessee. The Id. TPO added 5 more comparables with the comparables chosen by the assessee for the purpose of benchmarking its international transactions of the assessee:-

- i. Aptico Ltd.,
- ii. Global Procurement Consultants Ltd.,
- iii. IDC (India) Ltd., (Cyber Media Research Ltd.)
- iv. TSR Darashaw Ltd.,
- v. HCCA Business Services Pvt. Ltd.,

3.13. The TPO arrived at the final margin of all comparables at 14.66% and accordingly made an adjustment of Rs.4,18,69,844/- to arm's length price as under:-

Particulars		As per Assessee Amount (Rs.)	As per TPO Amount (Rs.)
Total revenue (from IPS and consolidation business) without pass through cost	A	57,07,88,484	57,07,83,484
Operating costs (i.e. base cost as defined in the IPS and Consolidation service agreement)	B	43,34,35,239	43,34,35,239
Add: Mark-up of 5% (14.66%)	C	2,16,71,762	6,35,41,606
Profit retained by the assesses			21,67,17,621
Adjustment			4,18,69,844
Fee Paid to the AE			
	D=B+C	45.51,07,001	49,69,76.845
Network fee payable to the AE	A-D	11,56,81,483	7,38,11,639
Adjustment			4,18,69,844

3.14. The Id. DRP granted partial relief to the assessee with regard to inclusion / exclusion of certain comparables. The Id. AO/TPO arrived at the revised adjustment figure to ALP at Rs.3,39,81,323/-.

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions. We find that assessee had challenged the following four comparables out of 5 comparables chosen by the Id. TPO:-

- i. TSR Darashaw Ltd.,
- ii. Aptico Ltd.,
- iii. Global Procurement Consultants Ltd.,
- v. HCCA Business Services Pvt. Ltd.,

Let us now examine each and every comparable as under:-

5.1. TSR Darashaw Ltd.

The assessee seeks to exclude this comparable. The Id. TPO from the annual report of this comparable company observed that the said company is involved in the provision of business process outsourcing services like payroll and employees trust fund administration and management, record management; registrar and transfer agents for equity and preference shares, debenture instruments and bonds, commercial paper and private placements, transfer processing, customer/query handling and correspondence, split/consolidation/renewal of certificates, processing and distribution of interest/dividend warrants; depository related services like electronic connectivity with nsdl/cdsi and transmission of information to client companies through preferable

electronic media, dematerialization/rematerialization, inter-depository transfers; registrar to fixed deposit schemes like acceptance and processing of applications, renewals & repayments, processing & distribution of interest payments through ECS or physical warrants, etc.,

5.1.1. We find that the main contention of the Id. TPO to include this comparable is that assessee is also rendering support services in addition to logistics services. In this regard, on perusal of the annual report of the said comparable, we find from the segmental data provided thereon, the said comparable is engaged in deriving revenue from the following three main stream activities:-

- (i) Registrar and share transfer agent activity -Rs.1194.83 lakhs
- (ii) Revenue from record management activity –Rs.144.18 lakhs
- (iii) Revenue from payroll and trust fund activity-Rs.672.28 lakhs

Total

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Rs.2007.61 lakhs

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5.1.2. The Id. AR pleaded before us that more than 59.51% of the revenue was derived by the said comparable only from the Registrar and share transfer agent activity and no business support services were rendered thereon. He also placed on record the order of the Id. DRP dated 12/09/2017 in assessee's own case passed for the A.Y.2013-14 wherein the Id. DRP had held that Registrar and share transfer agent activities cannot be construed as business support services in assessee's own case. He also drew our attention

to para 7.9.4 of the said order of Id. DRP dated 12/09/2017 passed for the A.Y.2013-14 which is enclosed in page 470 of the paper book wherein it has been held by the Id. DRP that back office support services such as HR management, payroll management etc., are in the nature of ITES services and that ITES services could not be compared with logistic support services. The Id. AR also placed on record the order passed by the Id. DRP in assessee's own case on 15/05/2018 for A.Y.2014-15 wherein, in the context of inclusion of comparable i.e., Tata Consultancy Engineering Ltd., (TCE in short) by the Id. TPO, the Id. DRP held that the said comparable is found to be operating in the area of engineering consultancy and not in the area of support services and therefore, the same cannot be selected as an appropriate comparable to the assessee.

5.1.3. The Id. AR also drew our attention the very same order of Id. DRP dated 15/05/2018 wherein, in the context of inclusion of one of the comparables i.e., Holtec Consulting Pvt. Ltd., (Holtec in short) by the Id. TPO, the Id. DRP held that the said company is found to be operating in the area of engineering consulting and not in the area of support services and therefore, the same cannot be selected as an appropriate comparable to the assessee company.

5.1.4. The Id. DR relied on the DRP observations for the year under consideration with regard to this comparable and did not advance any further argument. There is no dispute about the functions performed by the assessee and the functions performed by its AE. We find that the co-

ordinate bench of Delhi Tribunal in the case of Trend Micro India Pvt. Ltd., vs DDIT in ITA No.1585/Del/2015 dated 20/11/2015 for A.Y.2010-11 had held in the context of exclusion of TSR Darashaw Ltd., from the list of comparables as under:-

“TSR Darashaw Limited.

9.1. The assessee objected to the inclusion of this company by arguing that the business segments of this company are, Registrar and Transfer Agent activity; Records management activity; and Payroll and trust fund activity. Not convinced with the assessee's submissions, the TPO treated it as comparable on entity level, against which the assessee is before us.

9.2. Having heard the rival submissions and perused the relevant material on record, we find that this company is a broking and investment banking house with its three segments, namely, Registrar and transfer agent activity (R&T); Records management activity (Records); and Payroll and trust fund activity (Payroll). Under the Registrar and Transfer Agent activity, this company undertakes registrar and transfer agent activity functions for Equity and preference shares, debenture instruments and bonds, commercial paper and private placements. It also undertakes transfer processing, customer/query handling and correspondence, split/consolidation/renewal of certificates, processing and distribution of interest/dividend warrants, payments by physical warrants/through ECS/Direct Credit. Under Records Management Activity, this company undertakes storage, retention & retrieval of physical and/or electronic records. Under Payroll and Trust Fund Activity, this company handles the activities normally handled by "Payroll and Retirement Funds" section in any organization, including interface with regulatory authorities. When we compare all the three broader activities undertaken by this company, namely, R&T, Records and Payroll, with the overall pre and post sale services rendered by the assessee to its AE, on a cost plus basis, we find that there is a huge functional disparity between the two. That apart, the consideration of this company on an entity level by the TPO has rendered the entire exercise of comparison meaningless. Finding striking dissimilarities between this company and the assessee, we order to exclude this company from the final set of comparables.”

5.1.5. We also find that against this decision, the revenue had preferred an appeal to Hon'ble Delhi High Court which was dismissed on the ground

that no substantial question of law arises thereon requiring examination by the court vide order dated 26/07/2016 in ITA No.447/2016.

5.1.6. We find that this comparable of M/s. TSR Darashaw Limited had been sought to be excluded from the final list of comparables by the Co-ordinate Bench decision of Delhi Tribunal in the case of M/s.Gecas Services India Pvt. Ltd., vs. ITO in C.O. No.217/Del/2015 dated 18/10/2018 for A.Y.2010-11 wherein the facts are as under:-

2. During the year under consideration, the assessee company was engaged in the business of providing marketing support services to its group affiliates and particularly GECAS services Limited, Ireland. The assessee had undertaken following international transactions with its Associated Enterprises (AE)

<i>S.No.</i>	<i>International Transactions</i>	<i>Value in transactions</i>
<i>1</i>	<i>Market support and administrative services rendered</i>	<i>Rs.4,57,43,014/-</i>

The decision rendered by the Delhi Tribunal thereon is as under:-

iii. TSR Darashaw Limited

13. The assessee objected to the inclusion of this company by arguing that the business segments of this company are, Registrar and Transfer Agent activity; Records management activity; and Payroll and trust fund activity. Not convinced with the assessee's submissions, the TPO treated it as comparable on entity level, against which the assessee is before us.

14. Having heard the rival submissions and perused the relevant material on record, we find that this company is a broking and investment banking house with its three segments, namely, Registrar and transfer agent activity (R&T); Records management activity (Records); and Payroll and trust fund activity (Payroll). Under the Registrar and Transfer Agent activity, this company undertakes registrar and transfer agent activity functions for Equity and preference shares, debenture instruments and bonds, commercial paper and private placements. It also undertakes transfer processing, customer/query handling and correspondence, split/consolidation/renewal of certificates, processing and distribution of

interest/dividend warrants, payments by physical warrants/through ECS/Direct Credit. Under Records Management Activity, this company undertakes storage, retention & retrieval of physical and/or electronic records. Under Payroll and Trust Fund Activity, this company handles the activities normally handled by "Payroll and Retirement Funds" section in any organization, including interface with regulatory authorities. When we compare all the three broader activities undertaken by this company, namely, S.&T, Records and Payroll, with the market services rendered by the assessee to its AE, on a cost plus basis, we find that there is a huge functional disparity between the two. That apart, the consideration of this company on an entity level by the TPO has rendered the entire exercise of comparison meaningless. Finding striking dissimilarities between this company and the assessee, we order to exclude this company from the final set of comparables. Similar view has been taken by the Tribunal in its order for the immediately preceding year in assessee's own case."

5.1.7. We hold that in the light of functions performed by the assessee and the functions performed by the AE which remain undisputed before us and in the light of the functions performed by TSR Darashaw Limited (i.e., comparable chosen by the Id. TPO) and further in the light of the aforesaid judicial precedents, we hold that the comparable TSR Darashaw Limited cannot be treated as a good comparable with the assessee in view of the functional dissimilarities. The Id. TPO accordingly is directed to exclude the same from the list of final comparables.

5.2. Apitco Limited

The assessee sought for exclusion of this comparable from the list of final comparables chosen by the Id. TPO. The Id. TPO observed that as per the information downloaded from the website of the said comparable, the said company is involved in the provision of consulting services, especially

to SMEs in project identification, project counselling, pre-feasibility reports, detailed project feasibility studied, infrastructure planning, market assessment, expansion, diversification and turnaround strategies energy audits, waste minimization, environment impact assessment, valuation of fixed assets, skill development etc, which is akin to services provided by assessee.

5.2.1. We find that the Id. TPO on perusal of break-up of revenue earned by the said comparable observed that the majority of the revenue is from Cluster Development of Rs.494.86 lakhs and Project related services of Rs.365.66 lakhs, which are in the nature of business support services. Accordingly, the Id. TPO concluded that these services are provided by the assessee also and hence is a good comparable. We find that the primary argument of the Id. AR before us was that this company is a Government company and hence, cannot be considered as a comparable.

5.2.2. Per contra, the Id. DR placed reliance on the decision of the Co-ordinate Bench of Delhi Tribunal in the case of BG Exploration & Production India Ltd., in ITA No.1170/Del/2015 dated 24/04/2017 wherein it was held that Government company is also a good comparable.

5.2.3. We find that the Id. AR placed on record the master data downloaded from the Ministry of Corporate Affairs website with regard to this comparable wherein it has been categorically stated that this company is a State Government company. Now the short question that arises for our consideration is whether the Government company could be

considered as a comparable with that of the assessee, which is a private concern. We find that this issue has been addressed by the Hon'ble Jurisdictional High Court in the case of CIT vs. Thyssenkrupp Industries India (P) Ltd., reported in 68 taxmann.com 248 (Bombay) wherein M/s. Engineers India Ltd., which is also a Government company was sought to be excluded from the list of comparables by observing as under:-

"4. Re question (b) :-

(a) The grievance of the respondent assessee before the Tribunal was that M/s. Engineers India Ltd. has been erroneously introduced as a comparable by the TPO for determining the ALP of the respondent assessee's International Transactions. The impugned order of the Tribunal records the fact that the Engineering India Ltd. is a Government Company and its annual report indicates that a substantial part of its revenue in execution of turnkey projects arose out of executing projects of public sector undertakings. In the circumstances, the impugned order of the Tribunal holds that the Engineers India Ltd. could not be considered to be comparable for the reason that contracts between Public Sector undertakings are not driven by profit motive alone but other consideration also weigh in such as discharge of social obligations etc. Thus, it is not comparable. Moreover, from the annual report, it is clear that the revenue earned in executing turnkey project for other public sector undertakings was much more than the filter of 25%, which has been applied by the TPO in his order under Section 92CA(3) of the Act, while taking TRF Ltd. as a comparable on the ground that its related party transaction was not in excess of 25% of its total turnover. Thus, applying consistent filter of 25% or less of related party transaction alone to be considered comparable, Engineers India Ltd. could not be considered to be comparable.

(b) We find that the view taken by the Tribunal in the impugned order is a reasonable and possible view. Nothing has been shown which would justify our interference in the impugned order of the Tribunal excluding Engineers India Ltd. from the list of comparables.

(c) In the above view, question (b) as framed also does not give rise to any substantial question of law. Thus, not entertained".

5.2.4. We also find that the Hon'ble Delhi High Court in the case of PCIT vs. International SOS Services India Pvt. Ltd., in ITA No.454 of 2016 dated 30/05/2017 in the context of exclusion of comparables Apitco Limited and Global Procurement Consultant Ltd., among others had placed reliance on the aforesaid decision of Hon'ble Bombay High Court and had held that Government owned companies cannot be construed as a comparable.

5.2.5. Respectfully following the aforesaid decision of Hon'ble Jurisdictional High Court and Hon'ble Delhi High Court supra, we hold that comparable Apitco Limited should be excluded from the list of comparables.

5.3. Global Procurement Consultant Ltd.,

The Id. DR placed reliance on the decision of Co-ordinate Bench of Delhi Tribunal in the case of Freescale Semiconductor India Pvt. Ltd., vs. DCIT in ITA No.1263/Del/2015 dated 18/12/2017 for A.Y.2010-11 wherein Global Procurement Consultant Ltd., was stated to be a good comparable in the set of facts available before the Delhi Tribunal. The Id. DR also argued that this is not a Government Company as argued by the Id AR, in view of the fact that shares of this company were partially held by Exim bank. We find that the Co-ordinate Bench of the Delhi Tribunal in the case of Philip Morris Services India S.A. vs. Deputy Director of Income Tax in 95 taxmann.com 156 had specifically excluded Global Procurement Consultant Ltd., from the list of comparables as it is a Government

company. They had also given a categorical finding that the said comparable company is a company established by the Government to serve the purpose of provisional procurement and management services needs and also to provide combined management services required by the Government departments or their project execution agencies to carry out the procurement in a time bound and efficient manner within the frame work of government regulations and guidelines of international institutions. Hence, the decision rendered by us for Aptico Limited would apply with equal force for Global Procurement Consultant Ltd., also on the very same footing i.e., the said comparable being a Government company. Hence we direct the Id. TPO to exclude the same from the list of comparables.

5.4. HCCA Business Services Pvt. Ltd.,

With regard to exclusion sought by the assessee in respect of comparable HCCA Business Services Pvt. Ltd., we find that the Id. DRP in its order for A.Y.2013-14 in assessee's own case had excluded this from the list of comparables. The Id. DR relied on the observations of the Id. DRP with regard to this comparable. Hence, following the directions of DRP in assessee's own case in the A.Y.2013-14, we direct the Id. AO to remove this comparable from the list of comparables.

5.5. The Id. TPO is directed to re-compute the ALP of the assessee after excluding the aforesaid four comparables and arrive at the revised margin of the comparables and decide as to whether ALP adjustment, if any,

need to be made thereafter, in the case of the assessee. Accordingly, Ground No.6, 20,21,22 & 23 are allowed.

6. Ground No.7 to 9 raised by the assessee are only with regard to the adoption of correct margins of the aforesaid comparables which we direct the Id. TPO to verify while recomputing revised ALP in the light of the aforesaid directions given by us.

7. Ground No.10 raised by the assessee is only academic and does not require any specific adjudication.

8. Ground No. 11 & 12 were stated to be not pressed by the Id. AR before us. The same is reckoned as a statement made from the Bar. Accordingly, the same are dismissed as not pressed.

9. Ground No.13 raised by the assessee is with regard to short credit of tax deducted at source, which is hereby directed to be verified by the Id. AO and grant the same as per law if assessee is found to be eligible thereon.

10. Ground No.14 is with regard to chargeability of interest u/s.234A of the Act. The Id. AR stated that due date of filing return of income for the A.Y.2010-11 was extended by CBDT to 15th October 2010 for which he placed on record the order passed by the CBDT on 27/09/2010. The return of income was filed by the assessee on 15/10/2010 i.e., on the due date. Hence, no interest u/s.234A of the Act could be levied on the

assessee. Accordingly, the ground No.14 raised by the assessee is allowed.

11. Ground Nos. 15 & 16 raised by the assessee are with regard to chargeability of interest u/s.234B of the Act which are consequential in nature and does not require any specific adjudication.

12. Ground No.17 & 18 raised by the assessee are with regard to chargeability of interest u/s.234D of the Act which are consequential in nature. The Id. AO is also directed to verify whether at all any refund was actually granted to the assessee before deciding the chargeability of interest u/s.234D of the Act.

13. Ground No.19 raised by the assessee is with regard to initiation of penalty proceedings u/s.271(1)(C) of the Act, the adjudication of which would be premature at this stage.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 29/05/2019

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/05/2019
Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

ITA No.2162/Mum/2015
M/s. APL Logistics (India) Pvt. Ltd.,

(Asstt. Registrar)
ITAT, Mumbai