

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH I-1 NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA NO. 2373/DEL/2015
Assessment Year: 2010-11**

DCIT, Circle-5(1), Room No. 390, C.R. Building, I.P. Estate, New Delhi.	vs	Bombardier Transportation India Pvt. Ltd., UNIT No. 11, 21 Ground Floor, The Grand Hotel, Vasant Kunj, Phase-II, Nelson Mandela Road, New Delhi-110070 (PAN: AAACA5584C)
Appellant		Respondent

**C.O. No. 201/DEL/2018
(IN ITA NO. 2373/DEL/2015)
Assessment Year: 2010-11**

Bombardier Transportation India Pvt. Ltd., UNIT No. 11, 21 Ground Floor, The Grand Hotel, Vasant Kunj, Phase-II, Nelson Mandela Road, New Delhi-110070 (PAN: AAACA5584C)	vs	DCIT, Circle-5(1), Room No. 390, C.R. Building, I.P. Estate, New Delhi.
Appellant		Respondent

**Department by: Shri Sanjay I. Bara, C.I.T. DR
Assessee by : Shri Vishal Kalra, Advocate**

**Date of hearing : 14.05.2019
Date of pronouncement : 07.08.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

ITA 2373/Del/2015 is the department's appeal preferred against the final assessment order passed subsequent to the directions of the learned Dispute Resolution Panel-1, New Delhi

(DRP) for assessment year 2010-11. The Cross Objection has been preferred by the assessee.

2.0 Brief facts of the case are that the Bombardier India is part of the Bombardier group. It is associated with the Indian Railways as a components supplier for propulsion and signalling systems. The business of the assessee company is split into various sub-divisions which include propulsion, rail control systems or signalling and mainline and metros. The return of income was filed declaring a loss of Rs. 7,92,91,823/-. Since the taxpayer had undertaken international transactions with its associated enterprises, a reference was made by the Assessing Officer to the Transfer Pricing Officer (TPO) in terms of provisions of section 92CA(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') and vide order dated 29.01.2014, the TPO proposed an addition of Rs. 1,42,49,84,550/- and the Assessing Officer in his draft assessment order proposed to assess the taxpayer at an income of Rs. 1,34,56,92,730/-. Thereafter, the assessee approached the learned DRP and the ld. DRP allowed partial relief to the assessee. In view of the directions of the ld. DRP, final assessment order was passed by the Assessing Officer on 22.7.2015. Against the final assessment order both the

department as well as the assessee preferred appeals before this Tribunal. The appeal of the assessee was heard on 2.9.2015 and the order was pronounced on 4.11.2015 in which the assessee's appeal was partly allowed. However, the appeal of the department was not listed and the same has come up for hearing before us now. Subsequently, the assessee also filed the C.O. against the said departmental appeal.

2.1 At the outset, the ld. AR submitted that ground no. 1, 2 and 3 of the department's appeal are identical to ground no. 3.6 of the assessee's appeal which has since been settled in favour of the assessee. He referred to ground no. 3.6 of the assessee's appeal and thereafter referred to para 35 to 42 of the order of the ITAT in assessee's appeal bearing ITA 1626/D/2015 and submitted that in ground no. 3.6, the assessee had challenged the modification proposed by the TPO of the economic analysis undertaken by the assessee in the transfer pricing documentation by introducing two new comparable companies namely Titagarh Wagons Ltd. and Texmaco Ltd. based on arbitrary accept/reject of comparables and it also highlighted that these two companies were not comparable to the assessee in terms of functions performed, assets employed and risks assumed. The ld. AR submitted that

the department's ground 1, 2 and 3 are also challenging the same direction of the ld. DRP. It was submitted that the Tribunal had after hearing both the parties on the issue adjudicated the issue in paragraph 42 of the order in assessee's appeal as under:-

“42. We have perused the records and the proceedings as well as heard both the sides. It can be seen that while deciding the comparables Ld. TPO has not taken into consideration the proper information related to the free of cost material provided by the Railways to Titagarh Wagons Ltd. as well as to Texmaco Ltd. and thus the said information is necessary to take into account the functions performed, assets employed and risks assumed (“FAR”), Ld. DRP in his finding also has directed Ld. TPO to take these aspect while allowing the said comparables. There is no doubt that these two companies are having the major role in supplying coaches to the Indian Railway and these are proper comparables if all the aspects are taken into consideration including the free of cost material value. Therefore, Ld. TPO is directed to take into account 30% additional cost base to account “free of cost” material and revised the OP/TC margin of 13.65% for determining the arm's length margin as claimed by the Assessee.”

2.2 The ld. AR submitted that the TPO had been directed by the ITAT to take into account 30% additional cost base to account for free of cost material and revise the OP/TC margin for determining the arm's length margin. The ld. AR also submitted that the department had thereafter approached the Hon'ble High Court of Delhi against the order passed by the ITAT and the Hon'ble High Court in ITA 391/2016 vide order dated 27.7.2016

had dismissed the appeal of the department and thus, the order of the ITAT had become final and binding in so far as this issue was concerned. The ld. AR further submitted that the department's appeal deserves to be dismissed because identical ground in assessee's appeal had been partly allowed by the ITAT and had been upheld by the Hon'ble Delhi High Court. The ld. AR also submitted that the C.O. of the assessee would become infructuous in case the department's appeal is dismissed.

3.0 In response, the ld. C.I.T. DR placed extensive reliance on the findings of the TPO and assailed the directions of the ld. DRP. However, he could not negate the fact that the grounds raised by the department were identical to ground no. 3.6 of the assessee's appeal which has since been restored to the TPO for taking 30% as additional cost base of account for free of cost material and thereafter revise the OP/TC margin of the assessee. The ld. C.I.T. DR fairly accepted that this order has been upheld by the Hon'ble Delhi High Court inasmuch as the department's appeal against the said order had been dismissed.

3.1 Having heard both the parties and after having perused the material on record as well as the order of the Tribunal in assessee's appeal and the order of the Hon'ble Delhi High Court

as aforesaid, we agree with the contentions of the ld. AR. We note that the grounds raised by the department are akin to ground 3.6 of the assessee's appeal which has since been restored to the TPO for the purpose of recomputing the OP/TC margin after taking into account 30% additional cost base to account for free of cost material. Therefore, on similar reasoning and logic as applied by the Coordinate Bench in assessee's appeal for this year in ITA No. 1626/Del/2015, we dismiss the grounds raised by the department after duly noting that the Hon'ble Delhi High Court has also upheld the order of the Tribunal. Thus, the department's appeal is dismissed.

3.2 Since the appeal of the department has been dismissed, the C.O. preferred by the assessee becomes infructuous and is dismissed.

4. In the result, both the appeal of the department as well as the Cross Objection of the assessee stands dismissed.

Order pronounced in the open court on 7th August, 2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 7th AUGUST, 2019
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	