

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-2' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 6770/DEL/2015 [A.Y 2011-12]

Veolia India Pvt Ltd
[Earlier known as Veolia Water [I] Pvt Ltd
B - 1, Marble Arch, 9, Prithviraj Road
New Delhi

Vs.

The Dy. C.I.T
Circle 26(1)
New Delhi

PAN: AABCV 7389 R

ITA No. 6693/DEL/2015 [A.Y 2011-12]

The Dy. C.I.T
Circle 26(1)
New Delhi

Vs.

Veolia India Pvt Ltd
[Earlier known as Veolia Water [I] Pvt Ltd
B - 1, Marble Arch, 9, Prithviraj Road
New Delhi

PAN: AABCV 7389 R

(Applicant)

(Respondent)

Assessee By : Shri Raghunath, CA
Ms. Shweta Gupta, CA

Department By : Ms. Nidhi Sharma Sr. DR

Date of Hearing : 09.10.2019

Date of Pronouncement : 11.10.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two captioned cross appeals by the assessee and revenue are preferred against the order dated 29.10.2015 framed u/s 143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to assessment year 2011-12. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. Grievance of the assessee is two-fold - firstly, the assessee is aggrieved by the transfer pricing adjustment of Rs. 53,68,398/- and, secondly, the assessee is aggrieved by the addition towards contract revenue recognised under Accounting Standard [AS] - 7.

3. Grievance of the Revenue relates to partial relief given by the Dispute Resolution Panel [DRP] against the addition towards contract revenue recognised under AS-7.

4. We will first address to the common grievance involved in both the appeals relating to addition towards contract revenue recognised under AS-7.

3. Briefly stated, the facts of the case are that the assessee's core activities are in the field of water supply, distribution, treatment, management, operation & maintenance, etc. Its activities, inter-alia, involves construction, capacity augmentation, installation and commissioning of various types of water infrastructure facilities i.e., sewerage treatment plant, water treatment plant etc. The assessee also performs operation and maintenance of such facilities.

4. During the year under consideration, the assessee executed two contracts, namely, Project Kanhan and Project Demo Zone. The scope of work in Project Kanhan relates to construction of water treatment plant of 240 MLD and in Project Demo Zone, work on rehabilitation and implementation of uninterrupted water supply and reduction of UFW with improvement in level of services to customers in the pilot area of Dharampeth zone of NMC is done.

5. The assessee follows the method prescribed in AS-7 to measure the extent of activity completed at the end of each year viz. the proportion of contract costs actually incurred till the balance sheet date over the total estimated budgeted contract costs.

6. The quarrel is in respect of the non-acceptance by the Assessing Officer of the budgeted contract costs considered by the assessee for the purposes of computing the percentage of completion of contract activity at the balance sheet date and the contract revenue to be recognized as income under the percentage completion method in compliance with AS - 7.

7. Disregarding the method of accounting adopted by the assessee, the budgeted contract costs have been computed by the AO in an indirect method with reference to the gross margin of 6.97% reported by the tax auditor in the tax audit report. The AO, accordingly, made additions in respect of Project Kanhan at aRs. 4,35,49,020/- and Project Demo Zone at Rs. 2,90,308/-.

8. Objections were raised before the DRP and the DRP directed the Assessing Officer to also add other operating expenses to the budgeted contracts costs worked out by the Assessing Officer and to re-compute the contract revenue to be recognized as income on this basis. Following the directions of the DRP, the Assessing Officer reworked out contract revenue and additions got reduced to Rs. 21,70,078/- for Project Kanhan and to Rs. 4,051/- for Project Demo Zone.

9. Both the assessee and revenue are in appeal before us.

10. The representatives of both the sides were heard at length and the case records carefully perused. The entire quarrel can be summarised as under:

Assessee's Method (Project Specific Method based on costs incurred in the specific contract):

Estimated Budgeted Contract Costs =	Actual contract costs (both direct and other operating costs) incurred till the balance sheet date + estimated similar costs to complete the contract. The assessee has estimated the costs to complete having regard to factors such as activities already completed, activity remaining to be
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completed, time required to complete, past experience of costs already incurred, customer expectations, scope changes and other relevant factors.

AO's Method (Indirect Method with reference to Gross Margin)

Estimated Contract Costs = Budgeted Contract Revenue minus Gross Profit based on the Company's Gross Margin of 6.97% reported by the Tax Auditor. The Ld. AO has, therefore, estimated the budgeted costs in an indirect manner by adopting the Gross Margin of 6.97% respecting all activities of the company including all the contracts.

DRP's Method (Hybrid method - a variation of the AO's method w.r.t Gross Margin and by adding other operating expenses)

Estimated Contract Costs = Budgeted Contract Revenue minus Gross Profit based on the Gross Margin of 6.97% reported by the Tax Auditor + Other Operating Expenses

11. Recognition of contract revenue as per aforesaid three methods is tabulated as under:

Project Kanhan

	Assessee's Method	AO's Method (Draft assessment order)	As per DRP's Directions (Final assessment order)
(Amounts are in Rs.)			
(1) Name of the Project	KANHAN	KANHAN	KANHAN
(2) Contract Value	683,899,283	683,899,283	683,899,283
(3) Total Estimated i.e. Budgeted Cost	680,067,402	636,231,502	677,739,286
(4) Total Cost incurred till 31 March 2011	628,193,537	628,193,537	28,193,537
(5) Percentage of Completion (%) = (4)/(3)	92.37%	98.74%	92.69%
(6) Cumulative Contract Revenue till 31 March 2011 = (2) x (5)	631,733,132	675,282,152	633,903,211
(7) Cumulative Contract Revenue till 31 March 2010	391,647,050	391,647,050	391,647,050
(8) Contract Revenue for the FY 2010-11 (AY 2011-12)= (6) - (7)	240,086,082	283,635,102	242,256,161
(9) Addition for Alleged Short Recognition of Contract Revenue		43,549,020	2,170,079
(10) Relief as per Directions of the DRP			41,378,941

PROJECT DEMO ZONE

	Assessee's Method	AO's Method (Draft assessment order)	As per DRP's Directions (Final assessment order)
(Amounts are in Rs.)			
(1) Name of the Project	DEMO ZONE	DEMO ZONE	DEMO ZONE
(2) Contract Value	260,234,060	260,234,060	260,234,060
(3) Total Estimated i.e. Budgeted Cost	242,384,620	242,095,747	242,384,620
(4) Total Cost incurred till 31 March 2011	221,099,477	221,099,477	221,099,477
(5) Percentage of Completion (%) = (4)/(3)	91.22%	91.33%	91.22%
(6) Cumulative Contract Revenue till 31 March 2011 = (2) x (5)	237,381,459	237,671,767	237,381,458
(7) Cumulative Contract Revenue till 31 March 2010	202,335,107	202,335,107	202,335,107
(8) Contract Revenue for the FY 2010-11 (AY 2011-12)= (6) - (7)	35,046,352	35,336,660	35,042,300
(9) Addition for Alleged Short Recognition of Contract Revenue		290,308	4,051
(10) Relief as per Directions of the DRP			286,257

12. It is the say of the ld. counsel for the assessee that for computing the gross margin of 6.97%, deduction has been given only for project expenses viz. material cost, sub-contract expenses, technical fee, rates and taxes and certain other direct costs. The ld. counsel for the assessee stated that the Assessing Officer has not considered many items of other costs that have to be incurred for contract execution viz. payroll cost of the assessee's personnel executing the contract, travel and stay, external consultants and professional charges, insurance, vehicle hire, etc.

13. However, we find that this infirmity has been corrected by the DRP by directing the Assessing Officer to also consider other operating expenses to the budgeted costs and the same has been followed by the Assessing Officer. Therefore, no adverse inference is called for.

14. The ld. counsel for the assessee vehemently stated that adoption of gross margin of 6.97% from tax audit report is erroneous in as much as the margin of each contract has to be considered separately and the margin of 6.97% cannot be uniformly applied to all contracts because each contract has its own profitability.

15. It is the say of the ld. DR that similar issue arose in A.Y 2009-10 and the Tribunal in ITA No. 4027/DEL/2013 vide order dated 23.11.2015 has restored the issue to the file of the Assessing Officer for passing the assessment order after considering the details/evidences submitted by the assessee pertaining to budgeted costs of both the projects and the revenue recognised therefrom. Since the facts and issues are identical, the ld. DR prayed for a similar direction.

16. The ld. counsel for the assessee pointed out that in subsequent A.Y viz., 2015-16, the Additional CIT has issued directions u/s 144 of the Act following the directions of the DRP given in A.Y 2011-12 [which is the year under consideration].

17. We have considered the order of the co-ordinate bench in ITA No. 4027/DEL/2013 and have also the benefit of the directions u/s 144A of the Act given by the Additional Commissioner for A.Y 2015-16. We have also considered the assessment order for A.Y 2015-16 which has been framed pursuant to the directions of the Additional CIT u/s 144 of the Act. We have also the benefit of the assessment order for A.Y 2016-17 in which year also the Assessing Officer has considered the

directions of the DRP for A.Y 2011-12 [year under appeal] and the directions of the Additional CIT u/s 144 of the Act for A.Y 2015-16.

18. Considering the orders of the co-ordinate bench and the assessment orders of subsequent years, we find that the Assessing Officer has been consistent in accepting the methodology of the assessee adopted consistently following AS - 7. Considering the facts of the case in totality in light of the orders mentioned hereinabove, we do not find any merit in the appeal filed by the Revenue. We also do not find any merit in the methodology adopted by the DRP while dismissing the appeal of the revenue. We direct the Assessing Officer to delete the addition of Rs. 21,70,079/- for Project Kanhan and Rs. 4,051/- for project Demo Zone. Accordingly, Ground No 3 with all its sub grounds of the assessee's appeal is allowed and Ground No. 1 of the Revenue is dismissed.

19. Ground No. 2 in assessee's appeal with its sub grounds relates to transfer pricing adjustment.

20. Facts on record show that the assessee is engaged in the provision of consultancy and advisory services including project construction and execution thereof in the field of water management industry. The appellant also provides certain support and consultancy services to its group companies.

21. The international transactions with its AEs can be understood from the following chart:

Associated Enterprises("AEs")	Description of Transaction	Amount (in Rs.)	Method Applied
Veolia EAU-CGE (Project Office, Bangalore)	Rent received	2,804,145	Transaction Net Margin Method ("TNMM")
	Fees charged for deployment of personnel	26,593,313	TNMM
	Purchase of used items of fixed assets	149,990	Comparable Uncontrolled Price ("CUP")
	Reimbursement made to the AE	220,900	Cost Plus Method("CPM")
	Reimbursement received from AE	6,920,000	CPM
Veolia Water India Africa	Rendering of consultancy services	74,193,695	TNMM
Veolia EAU- CGE, France	Reimbursement received from AE	8,346,512	CPM
	Charges levied by the AE for corporate guarantee provided	1,287,693	CUP
	Insurance charges recovered by the AE	64,060	CPM
Veolia Water Mena	Charges levied by the AE for corporate guarantee	370,619	CUP

Associated Enterprises("AEs")	Description of Transaction	Amount (in Rs.)	Method Applied
	provided		
Veolia Environment Campus	Reimbursement made to the AE	547,856	CPM
ELGA Labwater UK	Rendering of services	2,802,792	TNMM
	Total	377,127,671	

22. For the purposes of computation of arm's length price of above transactions, the assessee, in its transfer pricing study relied upon TNMM and considered operating profit earned from international transaction by operating cost as the relevant profit level indicator [PLI]. The PLI of the company was arrived at 10.90% on cost and when compared with PLI of the comparables at 8.55%, the assessee reported international transactions at arm's length.

23. The following companies were considered as comparables by the assessee:

S. No.	Name of the Company	OP/OC	Business profile of the comparables selected
1	Absotherm Facility Management Pvt. Ltd.	4.02%	It is engaged in providing facility management and project consultancy services.
2	Coalition Development Systems (India) Pvt. Ltd.	9.52%	It is engaged in providing business intelligence services including

S. No.	Name of the Company	OP/OC	Business profile of the comparables selected
			analytics and insight services.
3	Cyber Media Research Ltd.	10.24%	It is engaged in providing market research, consultancy and advisory services.
5	I C R A Management Consulting Services Ltd.	15.61%	It is engaged in providing management consultancy and analytical services.
6	Radiant Hospitality Services Pvt. Ltd.	3.35%	It is engaged in providing integrated facilities services.
	Arithmetic Mean	8.55%	
	Appellant's Mean	10.90%	

24. The TPO accepted only two comparables taken by the assessee, namely, Cyber Media Research Ltd and ICRA Management Consulting Services Ltd. and rejected all the other four comparables. The TPO suggested new set of comparables as under:

S. No.	Name of the Company	OP/OC (%)
1	Apitco Ltd	25.17
2	Cameo Corporate Services Ltd.	12.4
3	C D S L Ventures Ltd.	69.25
4	Cyber Media Research Ltd.	10.6
5	Global Procurement Consultants Ltd.	30.86

S. No.	Name of the Company	OP/OC (%)
6	T S R Darashaw Limited	28.91
7	ICRA Management Consulting Services Ltd.	16.14
8	Killick Agencies & Mktg. Ltd.	8.47
	Average	25.23%

25. The assessee raised objections before the DRP. After considering the facts, the DRP was of the opinion that CDSL Ventures Ltd and Global Procurement Consultants Ltd are not good comparables and directed the TPO to remove the same from the final set of comparables.

26. Following the directions of the DRP, final set of comparables taken by the TPO and consequent adjustment is as under:

S. No.	Name of the company proposed as comparable	OP/OC (%)
1	Apitco Ltd.	25.17
2	Cameo Corporate Services Ltd.	12.4
3	Killick Agencies & Marketing Ltd.	8.47
4	Cyber Media Research Ltd.	10.6
5	ICRA Management Consulting Services Ltd.	16.14

6	TSR Darashaw Ltd.	28.91
	Average	16.94%

Particulars	Amount in INR
Operating cost	8,88,92,319
Arm's Length Margin	16.94%
Arm's Length Price (ALP)	103,950,677
Price shown in the international transactions	98,582,279
Shortfall being adjustment u/s 92CA	5,368,398

27. Before us, the ld. counsel for the assessee vehemently argued for exclusion of four comparables. We will address each such comparable.

APITCO LTD.

28. The Annual Report of this company is placed at pages 471 to 505 of the paper book. We find that this company is a Technical Consultancy Organization which provide services to the Entrepreneurs and be a catalyst for the economic growth of the country. Services of this company include project report preparation, techno economic

studies, feasibility studies, micro enterprise development, skill development, project management consultancy, industrial cluster development, environmental management consulting, energy management consulting, market and social research and asset reconstruction management services. We find that the major revenue arises from cluster development, project related services and entrepreneurship development & training.

29. The revenue from cluster development is 41.43%. Considering the nature of activities of Aptico Ltd, vis a vis the business profile of the assessee, we are of the considered opinion that Aptico Ltd is involved in carrying out multiple activities that are not comparable to market support services.

30. Aptico Ltd was also excluded by the co-ordinate bench in *Kobelco Cranes India Pvt. Ltd. Vs. ITO*, ITA No. 802/Del/2016 for A.Y 201-12. The relevant findings of the co-ordinate bench read as under:

“8.3. A careful perusal of the operations carried out by Apitco Limited deciphers that this company is providing services in the nature of Project report preparation, Technical and economic studies, Feasibility studies, Micro

enterprise development, Skill development, Project management consulting, Industrial cluster development, Environmental management consulting, Energy management consulting, Market and social research and Asset reconstruction management services. No segment-wise profitability data of these services is available. The TPO has considered this company as comparable on entity level. We find that there is a tiny resemblance of some of the functions performed by this company with the overall activities undertaken by the Appellant. Under such circumstances, we fail to appreciate as to how all the above listed services taken together as one unit can be considered as comparable with the services provided by the Appellant as listed above.”

31. Considering the business profile of the assessee, we do not find Aptico Ltd as a good comparable and accordingly direct the TPO to exclude the same from the final set of comparables.

CAMEO CORPORATE SERVICES LTD

32. The Annual Report of this company is placed at pages 506 to 543 of the paper book. We find that this company has been established as Business Process Outsourcing (BPO) service provider, providing services to a wide range of clients. Its main businesses are in the areas of

Document Management, Medical Transcription, Data conversion and Registry & Share Transfer. It provides solutions in Insurance, Banking, Healthcare, Telecom, Financial & Accounting, Education and Media & Publishing services. This company also provides services in customer care, transaction processing and data processing and also I.T enabled services.

33. A perusal of the business profile of this company shows that this company is involved in IT enabled services/BPO services and on this count itself, cannot be considered as a good comparable with the business profile of the assessee. In our understanding, ITES companies use Information Technology that enables the business by improving the quality of service which cannot be considered for comparing with the service provided by the assessee to its AEs. We, accordingly, direct the TPO to exclude the same from the final set of comparables.

TSR DARASHAW LTD

34. The Annual Report of this company is placed at pages 544 to 573 of the paper book. We find that this company is one of India's leading Business Process Outsourcing (BPO) organization certified under the ISO

9001:2000 guidelines having a total industry experience of over 35 years. This company has state-of-the-Art I.T. capabilities with well trained HR which are the key requirements for handling BPO activities. This company's main business products are Payroll & Employees Trust Fund Administration & Management, R & T for Shares, Debentures and FD, Category I Registrar by SEBI, Records Management, Transaction / Document Processing for Securitization, Loans etc.

35. These services speak for themselves and by any stretch of imagination cannot be compared with services provided by the assessee.

36. The TPO has himself observed that this company is involved in BPO services. Therefore, we fail to understand why this company was selected in the final set of comparables. Considering the business profile of the assessee, vis a vis with that of TSR Darashaw, we do not find this company as a good comparable and, accordingly, direct the TPO to exclude the same from the final set of comparables.

KILLICK AGENCIES & MARKETING LTD.

37. The Annual Report of this company is placed at pages 574 to 585 of the paper book. We find that this company markets Marine Equipment like specialized Propulsion Systems, Marine Engines, Ship Lighting & Navigation Lighting systems, Dredges and dredge equipment, Ship Building Presses, Rescue Boats and Specialized Davits, Reverse Osmosis Water Systems and Special Acoustic Communication Equipment for defense. This company is involved in exports of micro switches, engineering items, acoustics items & head sets. The Annual Report of this company suggests that this company boasts of its role in promotion of the Dredgers and Dredging equipment by leading manufacturers. There is no doubt that this company is engaged in marketing services and on this count alone, cannot be considered as a good comparable vis a vis the assessee. We, accordingly, direct the TPO to exclude the same from the final set of comparables.

38. The Id. DR, supporting the above comparables, had vehemently argued that TNMM method adopted by the assessee at the entity level itself shows the assessee is taking into consideration the overall

operating margin and, therefore, there cannot be any defect in the final set of comparables chosen by the TPO.

39. We do not find any merit in this argument of the Id. DR. We are of the considered view that the comparables should be on same platform as that of the business activities of the assessee and any deviation therefrom, will make the comparable a bad comparable. Considering the facts of the case in totality, qua the comparables, we direct the TPO to exclude the comparables as mentioned hereinabove from the final list of comparables. Thus, Ground No. 2 with all its sub grounds raised by the assessee is allowed.

40. In the result, the appeal of the assessee in ITA No. 6770/DEL/2015 is allowed and that of the Revenue in ITA No. 6693/DEL/2015 is dismissed.

The order is pronounced in the open court on 11.10.2019.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 11th October, 2019

VL/

Copy forwarded to:

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

Asst. 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	
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