

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I-2: NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.658/Del/2017
Assessment Year: 2012-13

Rolls Royce India Pvt. Ltd.,
2nd Floor, Birla Tower West,
25, Barakhamba Road,
New Delhi.

Vs ACIT,
Circle 21(2),
New Delhi.

PAN: AABCR5277Q

(Appellant)

(Respondent)

Assessee by	:	Shri Pradeep Dinodia, Advocate,
Revenue by	:	Ms Nidhi Sharma, Sr. DR
Date of Hearing	:	22.10.2019
Date of Pronouncement	:	30.10.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 20.12.2016 of the Assessing Officer passed u/s 143(3)/144C/92CA(4) of the IT Act, 1961, relating to assessment year 2012-13.

2. The grounds of appeal raised by the assessee read as under:-

“1. That the DRP/AO has erred in law and on facts in the circumstances of the case in confirming the addition of Rs.7,26,52,018/- on account of transfer pricing adjustment u/s 92CA(3) and non-TP disallowances on wholly illegal, erroneous and untenable grounds.

2. The order of assessment is bad in law.

Transfer Pricing Adjustment

3. That the Ld. DP/AO has erred in law in confirming the addition of Rs.5,97,94,267/- u/s 92CA(3).

4. That the Ld. DRP has erred in law in disposing off the objection of the assessee in summary manner without analyzing and appreciating the facts of the assessee's case.

5. The learned AO's order based on the findings of the learned Transfer Pricing Officer and the directions of the learned Dispute Resolution Panel u/s.144C(5) of the Income- tax, is erroneous, untenable in law and on facts for the various reasons and not limited to the following: -

5.1. The TPO as well as the DRP and consequently the AO have grossly erred in law and on facts and in the circumstances of the case in erroneously:

5.1.1. Rejecting the scientifically run search process of the assessee without cogent reason

5.1.2. Rejecting the search process of the assessee was bad in law in view of the facts the final set of 7 comparables of the Ld. TPO had 3 of the originally chosen comparables by the assessee.

5.1.3. Carrying out a new search process based on erroneous filters

5.1.4. Cherry Picking the comparables

5.2. The TPO as well as the DRP and consequently the AO have grossly erred in law and on facts and in the circumstances of the case for the choice of comparable companies by erroneously:

5.2.1. Determining the ALP of the international transactions of the assessee related to project management services (PMS), marketing support services (MSS) and corporate services that are support services in nature by treating and comparing them to high-end technical services, which is not in line with Rule 10B(2)(b), such that it does not satisfy the Functions performed, Assets employed and Risk assumed (FAR) Tests.

5.2.2. Ignoring the fact that the AE service segment of the assessee constitutes of more than 90% i.e. substantially

and predominantly comprising of support services and therefore comparable companies which provided similar support services to the support service segment of the assessee should have been chosen, thus not satisfying the Functions Test.

5.2.3. In not appreciating the fact that the new comparables chosen bear different risk in rendering technical services, while the assessee is non-risk bearing entity in its support services segment.

5.2.4. In not appreciating the Risks assumed by the assessee is NIL vis-a-vis the comparables which are high end service providers such that a Risk Adjustment should also be allowed to the assessee to fulfill the criteria laid down in Rule 10B(2)(b) of the IT Rules.

6. That the Ld. TPO and consequently DRP/AO has erred in law and on facts in not selecting Cyber Media Research & Services Ltd in final list of comparables which has been selected comparable of the assessee for last 2 years.

7. That the Ld. TPO and consequently DRP/AO has erred in law and on facts in not including assessee comparables namely Office Care Services Ltd and Vatika Marketing Ltd in final list of comparables stating them to be low end and functionally different.

8. Without prejudice to the above, the AE service segment of the assessee is prayed to be segregated into 2 segments namely, Technical Segment and Business Support Segment (including Project Management Services, Corporate services & Market Support services) and ALP of each segment be determined separately with separate set of comparables as all information to the effect in on records.

9. That the proposed addition of Rs.5,97,94,267/- is bad in the law and is prayed to be deleted.”

3. Ground Nos.1 to 4 being general in nature are dismissed. Ground of appeal No. 5 to 7 relate to inclusion/exclusion of certain comparables.

4. Facts of the case, in brief, are that the assessee is a subsidiary of Rolls Royce Overseas Holding Limited and operates in India primarily in the power generation

and oil and gas markets with a range of reciprocating engines covering gas engines, HFO engines and crude oil engines. It also undertakes servicing contracts wherein it purchases spare parts from overseas Rolls Royce entities for subsequent sale. The company also undertakes services such as repair and maintenance and other services including technical project management and marketing support. It filed its return of income on 9th October, 2013 declaring total income of Rs.75,72,74,676/-. The Assessing Officer referred the matter to the TPO u/s 92CA for determination of the arm's length price of the international transaction entered into by the assessee. The TPO noted that the assessee during the year under consideration has entered into the following transactions:-

No.	Nature of transaction	Method	Value of transaction (in Rs.)
1.	Purchase of spares for trading	TNMM (PLI as OP/OR)	8,18,13,383
2.	Provision of technical services		5,72,53,977
3.	Provision of project management Services	TNMM (PLI as OP/OC)	1,24,70,910
4.	Provision of Marketing Support Services		40,11,67,754
5.	Recharge of payroll expenses		1,41,34,741
6.	Reimbursement of Bank Guarantee Charges	NA	1,96,053
7.	Reimbursement of Insurance Charges		26,19,566
8.	Recharge of expenses		13,00,47,169

5. While the TPO accepted the purchase of spares for trading and recharge of expenses, however, he did not accept the TP approach of the assessee for the service segment. According to the TPO, the services rendered by the assessee are high-end support services. After applying various filters, the TPO proposed the following comparables, whose average OP/OC is 30.66%, the details of which are as under:-

S.No	Company Name	OP/OC (%)
1	<i>Apitco Ltd.</i>	20.46
2	<i>B VG India Ltd.</i>	24.46
3	<i>H S C C (India) Ltd.</i>	48.83
4	<i>ICR A Management Consulting Services Ltd.</i>	6.62
5	<i>Info Edge (India) Ltd.</i>	56.79
6	<i>Kitco Ltd.</i>	37.97
7	<i>Tata Consulting Engineers Ltd.</i>	19.47
<i>Average</i>		30.66

6. Rejecting the submissions of the assessee that it was providing simple business support services and not high end marketing support services and, therefore, the comparables should be taken from the segment broadly classified as ‘Business support services’ and observing that in the past also the same approach was adopted by him has been followed, the TPO finally adopted the following comparables for benchmarking the international transaction in support services:-

S.No	Company Name	OP/OC
1.	Apitco Ltd.	20.46
2.	H S C C (India) Ltd.	48.83
3.	ICRA Management Consulting Services Ltd.	6.62
4.	Info Edge (India) Ltd.	56.79
5.	Kitco Ltd.	37.97
6.	Tata Consulting Engineers Ltd.	19.47
7.	UB Engineering	6.1
Average		28.03

7. Accordingly, he proposed an upward adjustment of Rs.6,22,45,975/-. The assessee approached the DRP. The DRP rejected all the contentions of the assessee. However, the DRP directed the TPO to recompute/benchmark the margin of M/s UB Engineering Ltd. The Assessing Officer, thereafter, calculated

the arm's length price and revised the same to Rs.5,97,94,267/- as against Rs.6,22,45,975/- made earlier.

8. Aggrieved with such order of the A.O./TPO/DRP, the assessee is in appeal before the Tribunal.

9. The ld. counsel for the assessee submitted that the assessee is operating in trading and service segment and the only area of dispute is the service segment comprising PMS, MSS and technical services. In AE service segment, the assessee is providing more than 95% of the risk free services and only 10% technical services. Referring to page 209 of the paper book, he submitted that this was also submitted before the Assessing Officer. Further, there is no change in the facts from assessment year 2007-08 onwards including assessment year 2011-12. He submitted that the assessee had selected 11 comparables with 15.63% margin based on three year average as per TP study copy of which is placed at page 175 of the paper book. He submitted that out of seven comparables proposed by the TPO, only three comparables selected by the assessee were included. So far as the various comparables selected by the TPO and upheld by the DRP are concerned, the ld. counsel for the assessee submitted that the assessee is non-risk bearing in support services segment and high end chosen by the TPO and upheld by the DRP should be excluded. Referring to the order of the Tribunal in assessee's own case for assessment year 2010-11 and 2011-12, he submitted that the Tribunal has given the finding that the assessee is providing approximately 90% of risk free support

services and the comparables should be selected which assumes low or no risk. He submitted that there is no change in facts of the case during the year under consideration. He submitted that the revenue in support service segment is Rs.42.62 crores while in technical service it is Rs.5.27crores. Thus, 89% of total service income is from rendering support service. So far as the allegation of the TPO that the services provided by the assessee are high end support services, he submitted that the Tribunal has already given a finding in assessee's own case that the assessee is a non-risk bearing service provider. It is also evident from the support service agreement, copy of which is placed at page 222 to 243 of the paper book. Now, coming to the various comparables selected by the TPO, the ld. counsel filed the following chart:-

S. No.	Company Name	Business Profile	Reliance placed for rejection
1.	Aptico Ltd.	Imparting consultancy in entirely different field and is not comparable to functions performed by the assessee (PB Pg.313)	Covered by ITAT order for A.Y. 2010-11 & A.Y.2011-12 in assessee's own case (Para 37 PB Pg.338 & Para 15 PB Pg.323 respectively)
2.	Kitco Ltd.	Functionally not comparable to the assessee because of nature of services rendered (PB pg.314)	Covered by ITAT order for A.Y. 2010-11 & A.Y. 2011-12 in assessee's own case (Para 38-39 PB Pg.338 & Para 15 PB Pg.323 respectively)
3.	Info Edge (India) Pvt. Ltd.	Info Edge (India) Limited (Info Edge) is India's premier online classifieds company in recruitment, matrimony, real estate, education and related services (PB Pg.315-316)	Covered by ITAT order for A.Y. 2011-12 in assessee's own case. (Para 21 PB Pg. 325)
4.	TCE Consulting Engineers	Tata Consulting Engineers Limited (TCE) is an Indian engineering consulting firm. The company is a	Covered by ITAT order for A.Y. 2011-12 in assessee's own case. (Para

	Ltd.	<p>wholly owned subsidiary of Tata Sons Ltd. The company provides engineering services & solutions for power, nuclear, infrastructure, industrial, mining & minerals, steels and metals, transportation, water building, manufacturing, spatial planning, and the environment. Lately an advanced technology business unit has also been started. Hence highly technical. See profile on PB Pg.311-312)</p> <p>Moreover all TATA group companies own IPR which makes it functionally different from assessee which does not own any IPR</p>	<p>17 PB Pg.324)</p> <p>M/s Verizon (India) Pvt. Ltd. Vs JCIT [ITA No. 4187/Del/2010],</p> <p>“EIL RITES, WAPCOS AND TCE operate in engineering consultancy industry, the risks and returns vary significantly from those of the marketing support services company operating on a cost plus model.”</p> <p>Delhi ITAT in Fluor Daniel India Pvt. Ltd., New... vs ACIT, ITA 973/DeI/2006</p> <p>Therefore, in our view it is apparent that this company is engaged in providing high end engineering consulting services which is not comparable with limited functions performed by assessee. Therefore we direct to exclude this comparable.</p>
5.	HSCC (India) Ltd.	<p>HSCC India Ltd. is a Government of India enterprise set up in 1983 with an authorized capital of Rs.20 million. HSCC is one of the few organization in South East Asia, rendering comprehensive range of professional consultancy services in health-care and other social sectors, in India and abroad. The services of HSCC's being government of India enterprise, have been utilized by various organization, both in Public and Private Sectors, Central</p>	<p>The company is a Govt. of India Undertaking providing high quality professional services. Considering these facts, ITAT in case of Shell India Markets Pvt. Ltd. [TS-430-ITAT-2014 (MUM)-TP] held that the company was not functionally comparable and directed its exclusion. Reliance is placed on International SOS Services India P Ltd. [TS-</p>

		<p>Government Department, State Governments as also international agencies like the World Bank, WHO, among others for their projects in India and abroad. It undertakes various IT projects and Procurement projects as evident from the website of the company. Hence highly technical. See profile on PB Pg. 307-310.</p> <p>Copy of relevant extract of financials enclosed as Annexre-1</p>	<p>493-SC-2018-TP] in which judgement of Delhi HC in same case has been upheld and it has been held that Government of India Undertaking cannot be included as a comparable.</p> <p>Reliance is also placed on ITAT rulings in Chemtex Global Engineers Pvt. Ltd. [TS-161-ITAT-2013 (Mum)-TP] and Yum Restaurants (India) Pvt. Ltd. [TS-166-ITAT-2014 (DEL)-TP] in which it was held that engineering, consultancy, chemical testing services not comparable to assessee's marketing support services.</p> <p>Delhi Bench of the Tribunal in the case of Bachtel India Pvt. Ltd. vs. DCIT in ITA No.882/Del/2014.</p> <p>Thus this comparable is prayed to excluded due to functionally different and being government company.</p>
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10. Referring to the order of the Tribunal in assessee's own case for assessment year 2010-11 and 2011-12, copy of which is placed at page 317 to 341 of the paper book, he submitted that the Tribunal has held that such comparables should be selected which are providing non-risk bearing business support services. If above mentioned high end technical services comparables are excluded from the final list of comparables, then, average PLI of the remaining comparables shall be 6.36%.

11. So far as the inclusion of Cyber Media Research & Services in the final list of comparables is concerned, he submitted that the TPO did not include the above comparable in the final list of comparables although it passes all the filters of TPO's search process. He submitted that since this comparable is functionally similar to that of the assessee and was taken as the assessee's comparable in the preceding two years, therefore, this comparable should be included in the final list of comparables. Referring to the decision of the Mumbai Bench of the Tribunal in the case of Siemens Technology Services Pvt. Ltd. [TS-220-ITAT-2016 (MUM)-TP], he submitted that the Tribunal in the said decision has held that if a company was a good comparable in earlier years because of functional similarity, it should have been included for arriving at the average PLI of comparables. So far as inclusion of Cyber Media Research & Services is concerned, he submitted that the assessee had filed objections before the TPO for not including the above comparable. However, the TPO had excluded this comparable merely because its turnover decreased from the previous year from Rs.12.70 crore to Rs.3.33 crore in the year under consideration and alleged abnormal reduction in revenue. He submitted that this observation of the TPO is without any basis since in subsequent year it again increased to 5.61 crore. He submitted that the TPO had applied turnover criteria for obtaining comparables of above Rs.1 crore as per page 12 of the TPO's order. Therefore, the TPO cannot artificially reject this criteria and apply any turnover test for rejecting this company. He submitted that the DRP in para 10 of the order has upheld the exclusion of this comparable for being

functionally different. Since there is no abnormal business circumstances in the year under consideration so as to warrant exclusion of Cyber Media Research & Services from the final list of comparables when it was a good comparable in the last two years, therefore, he submitted that this company should be included in the final list of comparables. Referring to the decision of the Delhi Bench of the Tribunal in the case of Trend Micro India Pvt. Ltd. [TS-556-ITAT-2015 (DEL)-TP], he submitted that the Tribunal in the said decision has held that the Revenue cannot challenge own comparables absent CIT(A)/DRP directions.

12. So far as the exclusion of assessee's comparables, namely Office Care and Vatika Marketing from the final list of comparables are concerned, he submitted that both the companies are functionally similar to the assessee's support services segment. So far as Office Care Services Ltd. is concerned, he submitted that the company is engaged in providing housekeeping support services for offices and homes, electrical maintenance work, civil management, manpower of support services and other allied services. Since this company performs the same kind of support functions as the functions performed by the assessee, therefore, this company should be included in the final list of comparables. Further, the company does not fail 75% service income filter as alleged by the TPO at page 9 of his order. Referring to the Profits & Loss Account of the above company, he submitted that there is revenue of Rs.7.16 crore and no revenue from trading or finished goods sale as there is no or negligible cost of goods and nil inventory.

12.1 So far as Vatika Marketing Ltd. is concerned, he submitted that the company was set up by Ashiana Housing group and is engaged in providing building repair and maintenance services and performs the similar kind of support functions as the functions performed by the assessee. This company does not fail 75% service income filter as alleged by the TPO at page 10 of his order. He submitted that out of total revenue of Rs.11.13 crore, an amount of Rs.9.85 crore is from service income and there is no revenue from trading or finished goods sale as there is no or negligible cost of goods and nil inventory. Accordingly, he submitted that this company should be included in the final list of comparables. He submitted that the Id. DRP upheld the exclusion of the above two comparables in an *ad hoc* manner by just referring to the reasoning given by the TPO and without giving any cogent reason for not appreciating the submissions of the assessee. He accordingly submitted that both the companies be included in the final list of comparables.

13. The Id. DR, on the other hand, strongly supported the order of the A.O./TPO/DRP. So far as the various comparables which have been tested by the Tribunal in assessee's case in the preceding years are concerned, she relied on the order of the A.O./TPO/DRP. So far as the new comparables are concerned, she submitted that the FAR analysis has not been considered by the A.O./TPO/DRP and, therefore, merely on the basis of the submissions made by the Id. counsel for the assessee, these companies cannot be included/excluded. She submitted that she

has no objection if these comparables are restored to the file of TPO/A.O. for verification of the functionality test and the FAR analysis.

14. We have considered the rival arguments made by both the sides. So far as the companies Aptico Ltd. and Kitco Ltd. are concerned, we find the Tribunal in assessee's own case, vide ITA No.6336/Del/2015, order dated 22nd April, 2016 for assessment year 2011-12, has directed the TPO for exclusion of the companies holding that they are functionally different and they are not comparable with that of the assessee. The relevant observations of the Tribunal at para 15-16 of the order reads as under:-

“15. We have carefully considered the rival contentions. Comparable No.1 Apitco Ltd. and no 2. Kitco Ltd. are submitted to functionally not comparable and further it is submitted that they have been considered by the coordinate bench in the order of the assessee for A.Y. 2010-11 in assessee's own case as under:-

"36. The second comparable, inclusion of which is disputed by the assessee, is Apitco Ltd. In the synopsis filed by the assessee it is mentioned that the services provided include but not limited to the domains of project report preparation, techno economic studies, feasibility studies, micro enterprise development, skill development, project management consulting, industrial cluster development, environmental management consulting, energy management consulting, market & social research and asset reconstruction management services. This company was promoted jointly by All India Financial Institutions (IDBI, IFCI, ICICI), State Industry Development Corporations (APIDC, APSFC) and commercial banks (Andhra Bank, Indian Bank, State Bank of India, Syndicate Bank),

37. From a bare perusal of the services rendered by Apitco Ltd. it is clear that it is imparting consultancy in entirely different field and is not comparable to the functions performed by different service segments of assessee. We, therefore, direction for exclusion of this comparable from the list of comparables.

KITCOLTD.

38. The functional profile of this company, as given in the synopsis filed by the assessee, is as under:

"1. KITCO, the first technical consultancy organization(TCO) in India, was established in 1972 by Industrial Development Bank of India, other national and state level financial institutions, Govt. of Kerala and 7 Public Sector Banks for rendering services to Entrepreneurs, Govt. Departmental PSUs, Local Bodies, etc. Presently, Small Industries Development Bank of India (SIDBI) is the prime shareholder with 49% shares of the company.

2. The aim of setting up of TCO, which had the blessing of Govt. of India and the Reserve Bank of India, was to provide professional technical consultancy assistance to banks by appraisal of projects for priority sector lending and to entrepreneurs in the 5MB Sector by way of preparation of Project Reports & Market Studies and conducting training programmes for entrepreneurship development. Subsequently similar TCOs were set up in almost all the states with one of the National Financial Institutions (IDBI, IFCI or ICICI) as the prime shareholder.

3. KITCO has successfully implemented projects like Cochin International Airport Ltd., Titanium Sponge Project, International Marina, Cochin Special Economic Zone, etc and presently implementing a multimodal Mobility Hub at Cochin, all of which are first of its kind in the country in their own respect. KITCO has successfully completed the Phase-1 of CIAL Golf Course & Country Club and Ghallah Wentworth Golf Course at Muscat, Sultanate of Oman, thereby establishing itself in an area, which was considered to be the forte of European Consultants. The prestigious overseas assignments KITCO so far has completed include the technical evaluation of electrical power distribution network at King Abdul Aziz International Airport, Jeddah.

4. All its clients are either central government, state government, PSU etc. Snapshot enclosed.

5. It is working In divisions like infrastructure, tourism, aviation, IT services, HRD, financial services etc. which are dissimilar to the functional profile of the assessee company. Snapshot enclosed.

39. From the above submissions it is evident that this comparable is not functionally comparable with the assessee because it is the nature of services rendered and not per se rendering of services is relevant in accepting or rejecting a company as comparable.

Therefore, we direct exclusion of this comparable from the list of comparables."

16. In view of above finding of coordinate bench for exclusion of Aptico and Kitco Ltd. holding that they are functionally different Rolls Royce India Private Limited V DCIT ITA No 6636 Del 2015 A.Y. 2011-12 and are not comparable with the assessee. Therefore respectfully following the decision of coordinate bench we direct to exclude both these comparables accordingly."

15. Respectfully following the decision of the Tribunal in assessee's own case and in absence of any contrary material brought to our notice, we direct the A.O./TPO exclude the above two companies from the list of comparables.

15.1 So far as Info Edge (India) Pvt. Ltd. is concerned, we find the Tribunal in assessee's own case in the immediately preceding assessment year at para 21 of the order has discussed the issue and has directed the TPO for exclusion of this comparable. The relevant observation of the Tribunal at para 21 reads as under:-

"21. Regarding Infoedge India Pvt. Ltd we are of the view that this company has been included by the TPO holding that it is functionally comparable. Assessee contended before the Id. TPO as well as DRP that this company is functionally not comparable in view of it engaged in management of online portals and also has major sources of revenue as advertisement income. Both the lower authorities rejected the contention of the assessee. We have carefully considered the rival contentions. It is apparent that the comparable selected by TPO is engaged in online portal activities such as employment website, matrimonial website and its major revenue is advertisement and subscriptions. It has diversified services such as recruitment related, real estate related, matrimonial related services and owns significant Rolls Royce India Private Limited V DCIT ITA No 6636 Del 2015 A.Y. 2011-12 intangibles/websites such as naukri.com, 99 acre.com etc. Therefore this company is functionally different as it is providing an advertisement space as well as online portal based on subscription by the buyer and seller of the services compared to services provided by the assessee of marketing support services . In view of this we direct Id. TPO for exclusion of this comparable."

16. Respectfully following the decision of the Tribunal in assessee's own case and in the absence of any contrary material brought to our notice, we direct the TPO to exclude this company from the list of comparables.

17. So far as TCE Consulting Engineers Ltd., is concerned, we find the Tribunal in assessee's own case in the immediately preceding assessment year at para 17 of the order has discussed the issue and has directed the A.O./TPO to exclude this company from the list of comparables. The relevant observation of the Tribunal reads as under:-

“17. Regarding TCE Consulting Engineers Ltd. it is submitted that it is also engaged in providing highly technical services. The profile submitted by the assessee shows that it has successfully managed complex engineering projects across the infrastructure spectrum and also associated with prestigious urban infrastructure facilities such as Airports, Railway and Aerotropolis engineering consulting projects. Therefore it is apparent that this company is engaged in providing high end engineering consulting services which is not comparable with the functional analysis of the assessee. Therefore we direct to exclude this comparable.”

18. Respectfully following the order of the Tribunal in assessee's own case and in absence of any contrary material brought to our notice, we direct the A.O./TPO to exclude this company from the list of comparables.

19. So far as HSCC (India) Ltd. is concerned, we find the Tribunal in assessee's own case for the immediately preceding assessment year at para 24 of the order has discussed the issue and restored the issue to the file of the TPO with certain directions by observing as under:-

“24. The next comparable is HSCC India Ltd. which has been included by ld. TPO based on page no.7 of the annual report of that company. However, on reading of the order of TPO we do not find any argument of the assessee regarding exclusion of this comparable. On reading of the order of the DRP also this comparable was not objected to its inclusion by TPO. Only objection was raised regarding correction of the margins and this grievance of the assessee is resolved by ld. DRP. In view of this respectfully following the decision of honourable special bench in Deputy Commissioner of Income-tax V Quark Systems (P.) Ltd. 2010] 38 SOT 307 (CHD.) (SB) We remit this comparable back to the file of the Ld. TPO for exclusion or retention of this comparable as plea for its exclusion has been raised before us for the first time.”

19.1 Respectfully following the decision of the Tribunal in assessee's own case, we restore this issue to the file of the TPO/A.O. for fresh adjudication of the issue in the light of the direction of the Tribunal.

20. So far as inclusion of Cyber Media Research & Services in the final list of comparables is concerned, it is the submission of the ld. counsel for the assessee that it passes all the filters adopted by the TPO. It has also been the submission of the ld. counsel for the assessee that since this company is functionally similar and was taken as assessee's comparable in previous two years i.e., 2010-11 and 2011-12, therefore, this being a good comparable in the earlier years because of functional similarity, it should be included in the list of comparables. In view of the above submission of the ld. counsel for the assessee, we restore this issue to the file of the A.O./TPO with a direction to verify as to whether the above company passes the filters adopted by the TPO himself and in case it passes all the filters adopted by the TPO, then, the TPO/A.O. is directed to include this company as a comparable for arriving at the average PLI of the comparables.

21. So far as the company Cyber Media Research & Services is concerned, we find the TPO excluded this company merely because its turnover decreased from Rs.12.70 crore the previous year to Rs.3.33 Crore in the year under consideration. It is the submission of the Id. counsel that in subsequent year the turnover has gone up to Rs.5.61 crore. Further, the TPO has applied the turnover criteria of more than Rs.1 crore and, therefore, it is the submission of the Id. counsel that the TPO should not have artificially rejected this criteria and applied another turnover test for rejecting this comparable. We find force in the above argument of the Id. counsel. However, the submission of the Id. counsel that the turnover of the above comparable company has gone up in the subsequent year and that it passes all the filters of the TPO needs verification at the level of A.O./TPO. We, therefore, remit this issue to the file of A.O./TPO with a direction to verify as to whether the turnover has gone up to Rs.5.61 crore in the subsequent year as against Rs.3.33 crore in the current year and, if the same is found to be correct, then, this company should be included in the list of comparables.

22. So far as Office Care Services Ltd. is concerned, it is the submission of the Id. counsel for the assessee that this company is engaged in providing house keeping support services for offices and homes, electrical maintenance work, civil management, manpower support services and other allied services. Thus, it is his submission that this company performs the similar kind of support functions as the functions performed by the assessee and it does not fail 75% service income filter.

It is the submission of the ld. counsel for the assessee that this company has earned the revenue of Rs.7.16 crore and no revenue from trading or finished goods sale. We, therefore, deem it proper to restore this issue to the file of the TPO with a direction to verify that this company does not fail the 75% service income filter and performs the similar kind of support functions as performed by the assessee company. In case the same is found to be correct, then, the A.O./TPO is directed to include this company in the list of comparables.

23. So far as Vatika Marketing Ltd. is concerned, here also, it is the submission of the ld. counsel for the assessee that it is engaged in providing building repair & maintenance services and performs the similar kind of support functions as the functions performed by the assessee and does not fail 75% service income filter. According to the ld. counsel, out of the total revenue of Rs.11.13 crore, an amount of Rs.9.85 crore is from service income and there is no revenue from trading or finished goods sale as there is no or negligible cost of goods and nil inventory. We, therefore, deem it proper to restore this issue to the file of the A.O./TPO with a direction to verify that it does not fail 75% service income filter as alleged by him in the order and also to verify as to whether the above companies perform similar kind of support functions as performed by the assessee company and if found correct, then to retain this company in the final list of comparables. Ground of appeal No.5 to 7 are accordingly allowed in the terms indicated above.

24. Ground of appeal No.8 was not pressed by the assessee for which ld. DR has no objection. Accordingly the same is dismissed.

25. The Corporate Tax grounds and other grounds are as under:-

“Corporate Tax

10. That the Ld. DRP/AO has erred in law in confirming the addition on account of unbilled revenue write off and security deposit write off of Rs. 1,15,59,310 & Rs. 12,98,441/- respectively.

11. That the Hon’ble DRP has erred in law and on facts in holding that unbilled revenue write off shall be entitled to be allowed only when found to be credited again in books of the assessee in subsequent year.

12. That the Hon’ble DRP has erred in law in not appreciating that the condition of Sec 36(1)(vii) read with Sec 36(2) has already been complied with to claim the allowance of unbilled revenue write off.

13. That the Hon’ble DRP and consequently Ld. AO has grossly erred in law and on facts, in the circumstances of the appellant’s case in confirming the addition of security deposit written off amounting to Rs. 12,98,441/- merely on the basis of assumptions, surmises and conjectures.

14. That the Hon’ble DRP has erred in law in holding that the claim of security deposit write off shall be allowed only if it was received against contract earned by the assessee in the course of its business.

Common Grounds

15. That the penalty proceedings initiated u/s Sec 271(1)(c) are on wholly illegal and untenable grounds since there was no concealment of any income nor submission of inaccurate particulars of income, nor any default according to law by the assessee.

16. That the interest charged u/s Sec 234B and 234C of the Act is on wholly illegal and untenable grounds and is prayed not to be upheld. _

17. That each ground is independent of and without prejudice to the other grounds raised herein.”

26. Ground Nos. 13 and 14 were not pressed by the Id. counsel due to smallness of the amount for which Id. DR has no objection. Accordingly, the same are dismissed as not pressed. Ground Nos.15 and 16 are either premature or consequential in nature. Accordingly, the same are dismissed. Ground No.10-17 being general in nature are dismissed.

27. So far as Ground No.11 to 12 are concerned, they relate to the addition on account of unbilled revenue written off and security written off of Rs.1,15,59,310/-

28. Facts of the case, in brief, are that during the assessment proceedings the Assessing Officer noted that the assessee has claimed unbilled revenue written off to the extent of Rs.1,15,59,310/- u/s 36(2)(vii) of the Act. On being questioned by the Assessing Officer, the assessee replied as under:-

“ In this respect, we would like to submit before your good self that during the year under consideration, assessee company written off unbilled revenue of Rs. 1,15,59,310/- during the relevant year. This revenue has already accrued to the assessee company earlier years, so the same had already been offered to taxation in earlier years. So, it is allowable .Further reliance is placed on the case of M/s Nortel Networks India Pvt. Ltd. ITA No. 1938/Del/2009.

Relying on the above facts and the case laws, we hereby submit before your honour that the assessee case is very much identical to the case Nortel Networks India Pvt. Ltd. As mentioned supra that is Assessee Company claimed the amount of unbilled revenue written off hence it should be allowed.”

29. However, the Assessing Officer did not accept the submissions made by the assessee and made addition of Rs.1,15,59,310/-. The assessee approached the DRP and the DRP restored the issue to the file of the Assessing Officer with

certain directions. Subsequently, the Assessing Officer passed the order retaining the same addition by observing as under:-

“6.5 I have considered the submission and accompanying documents. However, upon a perusal of the submission of the assessee, it is not clear whether the amount actually booked as revenue of Rs. 38.98 Cr. From M/s Rolls Royce International Ltd. during F.Y 2011-12 includes the sum of Rs. 1,15,59,310/- booked as unbilled-revenue during F.Y. 2010-11. As per directions of DRP, the claim of assessee shall be allowed only if a contra entry of Rs.1,15,59,310/- is found credited again during the year under consideration. Since, the contra reversal entry is allowable subject to the same amount being credited during FY 201-12, the claim of the assessee is not allowed in the absence of credit amount booked in the accounts. In view of this, the amount of Rs. 1,15,59,310/- on account of unbilled revenue written off shall be disallowed. Since, I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under section 271(1)(c) are being initiated separately.”

30. Aggrieved with such order of the A.O./TPO/DRP, the assessee is in appeal before the Tribunal.

31. The ld. counsel for the assessee submitted that due to certain small error, the Assessing Officer has repeated the addition, however, the fundamental principle is same and since the assessee in the preceding year has offered the amount to taxation and in the current year it has reversed the same, therefore, this being a contra entry, the addition is uncalled for. He accordingly submitted that the addition made by the Assessing Officer should be deleted.

32. The ld. DR, on the other hand, submitted that the assessee has failed to substantiate with evidence that the amount booked as revenue of Rs.38.98 crores from M/s Rolls Royce International Ltd. for F.Y. 2011-12 includes the sum of Rs.1,15,59,310/- booked as unbilled revenue during F.Y. 2010-11. He submitted

that the assessee has failed to substantiate the same before the Assessing Officer after the direction of the DRP, therefore, the order of the Assessing Officer should be upheld and the grounds raised by the assessee on this issue should be dismissed.

33. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer, in the instant case, made an addition of Rs.1,15,59,310/- on account of unbilled revenue written off on the ground that the assessee could not explain properly as to whether the amount actually booked as revenue of Rs.38.98 crore from M/s Rolls Royce International Ltd. during F.Y. 2011-12 includes the sum of Rs.1,15,59,310/- booked as unbilled revenue during F.Y. 2010-11. It is the submission of the ld. counsel for the assessee that due to certain small arithmetical error there is some minor difference in the figures shown in 2012-13. However, it is his submission that given an opportunity, the assessee is in a position to reconcile the same before the A.O./TPO that these are mere contra entries and no addition is called for. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of the A.O./TPO with a direction to grant one more opportunity to the assessee to substantiate its case. The A.O./TPO shall decide the issue as per fact and law, after giving due opportunity of being heard. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

34. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

The decision was pronounced in the open court on 30.10.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 30th October, 2019

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi