

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3901/Del./2015
(Assessment Year : 2008-09)**

M/s. Honeywell International (India) vs. ACIT, Circle 12 (1),
Private Limited, New Delhi.
17, Ground Floor,
Amrit House, Sant Nagar,
New Delhi – 110 065.

(PAN : AABCA7954K)

**ITA No.3981/Del./2015
(Assessment Year : 2008-09)**

ACIT, Circle 12 (1), vs. M/s. Honeywell International (India)
New Delhi. Private Limited,
17, Ground Floor,
Amrit House, Sant Nagar,
New Delhi – 110 065.

(PAN : AABCA7954K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Kamal Sawhney, Advocate
Shri Prashant Meharchandani, Advocate
REVENUE BY : Shri Subha Kant Sahu, Senior DR

Date of Hearing : 07.11.2019
Date of Order : 20.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER

Present cross appeals filed by the assessee as well as by the revenue are being disposed off by way of composite order to avoid repetition of discussion.

ITA NO.3901/DEL/2015 (TAXPAYER'S APPEAL)

2. The Appellant, M/s. Honeywell International (India) Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 10.03.2015 passed by the Commissioner of Income-tax (Appeals)-44, New Delhi in an appeal challenging the orders passed by the Id. TPO/AO qua the assessment year 2008-09 on the grounds inter alia that :-

“Transfer Pricing Matter - Provision o(IT enabled services

1. On facts and in law, the Ld. AO / Ld. TPO have erred in rejecting and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in rejecting the comparability analysis carried out in the Transfer Pricing ("TP") Documentation maintained by the Appellant under section 92D of the Act, read with Rule 100 of the Rules, and in carrying out a fresh comparable search analysis by using inappropriate filters, thereby, making an adjustment to the aforesaid international transaction.

2. On facts and in law, the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / TPO in violating the provisions of Rule 10B(2) of the Rules by rejecting following comparable companies (refer below) as identified by the Appellant.

- ***Allsec Technologies Ltd***
- ***Shreejal Info Hubs Ltd***

3. On facts and in law, the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / TPO in violating the provision of Rule 10B(2) of the Rules by adding following new companies as com parables to the Appellant.

- *Crossdomain Solutions Private Ltd*
- *Coral Hub Ltd (earlier known as Vishal Information Technologies Ltd)*
- *Datamatics Financial Services Ltd -IT enabled services segment*
- *E4E Healthcare Business Services Private Ltd (earlier known Nitanny Outsourcing Services Private Ltd)*
- *HCL Com net systems & services Ltd - IT enabled services segment*
- *Infosys BPO Ltd*
- *Wipro Ltd - BPO segment*

4. *On facts and in law, the Ld. AO / Ld. TPO have erred in considering and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in considering erroneous net operating profit margins for some of the companies considered as comparable in the TP Order, in order to determine the ALP of the aforesaid international transaction.*

5. *On facts and in law, the Ld. AO / Ld. TPO have erred in considering and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in considering an erroneous figure of INR 175,632,798 as operating revenue in the IT enabled services segment of the Appellant for the purpose of making the said TP adjustment instead of correct figure of INR 187,013,618, thereby leading to an additional TP adjustment of INR 11,380,820.*

Transfer Pricing Matter - Provision of Market Support Services

6. *On facts and in law, the Ld. TPO have erred in rejecting and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO of rejecting the comparability analysis carried out in the TP Documentation maintained by the Appellant u/s 92D of the Act, read with Rule 92D of the Rules and in carrying out a fresh search for comparable companies by using inappropriate filters, thereby, making an adjustment to the aforesaid international transaction.*

7. *On facts and in law, the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO of violating the provisions of Rule 10B(2) of*

the Rules by rejecting following comparable companies identified by the Appellant.

- *Indiacorn Ltd*
- *Interads Ltd*
- *Rediff.corn India Ltd*
- *Times Innovative Media Ltd (Events management segment)*

8. *On facts and in law, the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in violating the provision of Rule 10B(2) of the Rules by adding following new companies as comparables to the Appellant.*

- *Apitco Ltd*
- *Vapi Waste & Effluent Management Co. Ltd*
- *Choksi Laboratories Ltd*

9. *On facts and in law, the Ld. AO / Ld. TPO have erred in considering and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in considering erroneous net operating profit margins for some of the companies considered as comparable in the TP Order, in order to determine the ALP of the aforesaid international transaction.*

Transfer Pricing Matter - Common

10. *On facts and in law the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in violating the provisions of Rule 10B(1)(e)(iii) and Rule 10B(3) of the Rules by denying the benefit of working capital adjustment.*

11. *On facts and in law the Ld. AO / Ld. TPO have erred in violating and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in violating the provisions of Rule 10B(1)(e)(iii) and Rule 10B(3) of the Rules by denying the benefit of risk adjustment.*

12. *On facts and in law the Ld. AO / Ld. TPO have erred in not granting and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO of not granting the benefit of the 5% variation as per the proviso to section 92C (2) of the Act to the Appellant.*

13. *On facts and in law, the Ld. AO / Ld. TPO have erred in ignoring and the Ld. CIT(A) has erred in confirming the action of Ld. AO / TPO of ignoring the fact that the Appellant was entitled to tax holiday under section 10A of the Act on its profits from provision of services to foreign associated enterprises and*

therefore, would not have got any incentive to manipulate the transfer prices of its international related party transactions.

14. On facts and in law, the Ld. AO / Ld. TPO have erred in exercising and the Ld. CIT(A) has erred in confirming the action of Ld. AO / TPO of exercising the powers under section 133(6) of the Act for collecting information and relying on the same for comparability purposes for companies by disregarding the fact that the same was not available in the public domain.

15. On facts and in law, the Ld. AO / Ld. TPO have erred in disregarding and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO of disregarding prior years' data used by the Appellant to benchmark its international transactions, in its TP Documentation for the year and holding that current year (i.e. FY 2007-08) data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP Documentation, and grossly misinterpreting the requirement of 'contemporaneous' data in the Rules to necessarily imply current year data, thereby breaching the principles of natural justice and 'impossibility of performance'.

16. On facts and in law, the Ld. AO / Ld. TPO have erred in not discharging and the Ld. CIT(A) has erred in confirming the action of Ld. AO / Ld. TPO in not discharging the statutory onus to establish that any of the conditions specified in. clause (a) to (d) of Section 92C(3) of the Act have been satisfied before disregarding the ALP determined by the Appellant and proceeding to determine the ALP afresh.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Honeywell International (India) Private Limited, the taxpayer is a subsidiary of Honeywell International Inc., USA and is into the business of distribution and assembly of life safety equipments that include fire and smoke detectors. The taxpayer has been characterized as providing Marketing Support Services to its Associated Enterprises (AE).

During the year under assessment, the taxpayer entered into international transactions as returned in Form No.3CEB as under :-

<i>S.No.</i>	<i>Nature of International Transaction</i>	<i>Amount (in INR)</i>
<i>1</i>	<i>Purchase of raw materials</i>	<i>144,481,646</i>
<i>2</i>	<i>Purchase of finished goods</i>	<i>228,884,744</i>
<i>3</i>	<i>Sale of goods</i>	<i>21,112,933</i>
<i>4</i>	<i>Purchase of fixed assets</i>	<i>2,940,906</i>
<i>5</i>	<i>Call centre services</i>	<i>175,632,798</i>
<i>6</i>	<i>Support Services</i>	<i>259,180,671</i>
<i>7</i>	<i>Commission</i>	<i>1,704,345</i>
<i>8</i>	<i>Cost-sharing</i>	<i>10,145,647</i>
<i>9</i>	<i>Reimbursement of expenses</i>	<i>20,069,991</i>

4. Ld. Transfer Pricing Officer (TPO) only disputed the international transactions qua marketing support services segment. The taxpayer in its TP study applied Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) to benchmark the international transactions qua marketing support services segment and calculated its own margin at 9.92%, selected five comparables by using multiple years data and calculated margin of the comparables at 5.30% on cost and found its international transactions at arm's length. However, ld. TPO rejected the taxpayer's TP study and selected 10 comparables by however accepting TNMM as MAM with PBIT/cost as Profit Level Indicator (PLI) and calculated the mean margin at 21.76% and thereby computed the Arm's Length Price (ALP) of the international transactions as under :-

“Arithmetic mean PLI : 21.76%
Arm’s Length Price : 21.76%

Operating Cost	Rs.177,294,607
Arms Length Margin	21.76% of the Operating Cost
Arms Length Price (ALP)	Rs.215,873,913
Price shown in the international transactions	RS.194,889,312
Shortfall being adjustment u/s 92CA	Rs.20,984,601

The above shortfall of Rs.20,984,601 is treated as transfer pricing adjustment u/s 92CA.

14. Summary of Adjustments

The summary of adjustments u/s 92CAR is as under :-

Segment	Adjustment
IT Enabled Services	Rs.41,456,233
Market Support Services	Rs.20,984,601
Total	Rs.62,440,834

Thus the above amount of Rs.62,440,834 is treated as transfer pricing adjustment for the FY 2007-08.”

5. The taxpayer carried the matter before the Id. CIT (A) by way of filing appeals, which has been partly accepted by ordering exclusion of two comparables qua provisions of marketing support services segment.

6. After giving effect to the order passed by the Id. CIT (A) who has excluded two comparables, mean margin of the comparable comes down to 18.10% and consequently, Id. TPO proposed the adjustment for marketing support services at Rs.1,44,95,619/-. Assessee carried the matter by way of an appeal

before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the assessee as well as Revenue have come up before the Tribunal by way of filing the present appeals.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Undisputedly, Id. TPO has accepted the TNMM as the MAM applied by the taxpayer to benchmark the intentional transactions qua provision of marketing support services with PBIT/Cost as PLI. After giving effect to the order passed by the Id. CIT (A), final set of comparables to benchmark the international transactions qua marketing support services are as under :-

Sr. No.	Name of the company	Corrected NCP margin
1	Apitco Ltd.	49.35%
2	Best Mulyankyan Consultants Ltd.	12.85%
3	Choksi Laboratories Ltd.	29.20%
4	ICRA Management Consulting Services Ltd.	4.18%
5	IDC Ltd.	14.82%
6	Vapi Waste and Effluent Management Co.	17.87%
7	Indus Technical and Financial Consultants Ltd.	12.60%
8	Technicom – Chemie Ltd.	3.96%
	Total	18.10%

9. At the very outset, ld. AR for the taxpayer contended that at this stage, the only dispute is qua inclusion of three comparables viz. *Apitco Ltd., Vapi Waste & Effluent Management Co. Ltd. and Choksi Laboratories Ltd.* by AO/TPO/CIT (A) which are not suitable comparables vis-à-vis the taxpayer to benchmark the international transaction. The taxpayer sought exclusion of aforesaid three comparables from the final list to benchmark the international transactions. We would examine the suitability of all the three comparables vis-à-vis the taxpayer one by one.

GROUND NO.1 TO 5

10. Ld. AR for the taxpayer brought to the notice of the Bench that grounds no.1 to 5 qua provisions of ITES segment have become infructuous as relief has already been granted by the ld. CIT (A). In view of the matter, grounds no.1 to 5 are dismissed having been become infructuous.

GROUND NO.6, 8 & 9

11. The taxpayer sought exclusion of *Apitco Ltd., Vapi Waste & Effluent Management Co. Ltd. and Choksi Laboratories Ltd.* from the final set of comparables to benchmark the international transactions qua provision of marketing support services segment.

APITCO LTD. (APTICO)

12. The taxpayer sought exclusion of Apitco as comparable vis-à-vis the taxpayer on the grounds inter alia that it is a Government company; that Apitco is functionally dissimilar; that Apitco has been excluded as a comparable by the Tribunal in taxpayer's own case for AY 2010-11.

13. Ld. DR for the Revenue, on the other hand, relied on the orders of the lower authorities below.

14. When we examine annual report of Apitco, available at pages 950 and 951 of the paper book, apart from Apitco being a Government company operating under controlled regulation, social economic platform model, it is into diversified functions viz. providing consultancy services in areas like development of industry clusters, energy management, environment management, infrastructure planning, micro enterprise development project planning etc. whereas its financial segmental are not available.

15. Moreover, suitability of Apitco as a comparable has been examined by the CIT (A) in taxpayer's own case for AY 2010-11 when there is no change in the business model and has ordered to exclude the same as a comparable by relying upon the decisions rendered by the Tribunal in *Vedaris Technology (P) Ltd. – 2010-TII-10-ITAT-DEL-TP* and Hon'ble Mumbai High Court in *M/s.*

Thyssen Krupp Industries India Pvt. Ltd. – 2016-TII-18-HC-MUM-TP.

16. Hon'ble Bombay High Court in *M/s. Thyssen Krupp Industries India Pvt. Ltd.* (supra) examined the suitability of a Government company as comparable and ordered to exclude the same from the final list of comparables by returning following findings :-

“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.”

17. Coordinate Bench of the Tribunal in *Ciena India Pvt. Ltd. vs. DCIT in ITA No.3324/Del/2013 & 2948/Del/2013* examine the suitability of Apitco vis-à-vis marketing support services provider and ordered to exclude the same by returning following findings :-

“17.1. The Revenue is aggrieved against the exclusion by the Id. CIT(A) of Apitco Ltd. This company was considered as comparable by the TPO. The Id CIT(A) noticed that this company to be engaged in providing technical and engineering services and also executing projects on turnover basis. He, therefore, held this company to be not comparable.

17.2. Having heard the rival submissions and perused the relevant material on record, we find from the Annual report of this company that it is engaged in providing several services, viz., Micro Enterprises Development, Skill Development, Entrepreneurship Development, Research Studies, Project related Services, Infrastructure Planning & Development, Environment Management, Energy related Services, Cluster Development, Technology Facilitation, Asset Reconstruction & Management Services, Emerging Areas. It can be seen from the nature of operations carried out by this company that the same is towards Micro enterprises development, Skill development and Project related services, etc., also including Infrastructure planning and development along with Energy related service and Cluster development. A part of its activities has got some resemblance with the nature of service provided by the assessee under this segment. The ld. CIT(A) has recorded that 'only 12% of total income of this company is from research studies which is akin to the nature of services provided by the assessee company.' This contention has not been controverted by the ld. DR with any clinching evidence. When we consider the operations of this company as enumerated above and the fact that this company has maintained accounts on entity level and there is no bifurcation available in respect of the services similar to those provided by the assessee under this segment, this company on entity level cannot be considered as comparable. We, therefore, hold that the ld. CIT(A) was justified in considering this company as not comparable."

18. So, the Apitco being a Government company operating in different regulatory, social economic platform model and being into diversified services, of which segmental financials are not available, is not a suitable comparable vis-à-vis the taxpayer. Moreover, Revenue itself has rejected the Apitco as a suitable comparable vis-à-vis the taxpayer in taxpayer's own case for AY 2010-11, hence we order to exclude Apitco as a suitable comparable from the final set of comparables.

CHOKSI LABORATORIES LTD. (CHOKSI)

19. The taxpayer sought exclusion of Choksi from the final set of comparables for benchmarking the international transactions on the grounds inter alia that it is functionally dissimilar; that Choksi has been ordered to be excluded by Id. CIT (A) in taxpayer's own case for AY 2009-10 and exclusion has not been challenged in the appeal filed before the Tribunal.

20. Ld. DR for the Revenue, on the other hand, relied on the orders of the lower authorities below.

21. When we examine the annual report of Choksi, available at pages 1000 to 1005 of the paper book, it has come on record that Choksi is into providing complete solutions for improving quality in processes, products and services which include providing services as pharmaceutical analysis, food & beverages analysis, water analysis and construction material analysis. It is also providing instrument calibration & validation services, environment management services, clinical research, consultancy services and its consultancy services also include training on quality control techniques, third-party inspection, training, auditing & consultancy etc. and it is also into assaying and hallmarking.

22. Comparability of Choksi has been examined by the Tribunal vis-à-vis routine marketing support services provider in *Ciena*

India Pvt. Ltd. (supra) and excluded the same by returning following findings :-

“15. The TPO visited the website of this company and noticed that it was engaged in providing analysis, calibrations, pollution control and consultancy services' to a broad spectrum of industries. By considering such nature of services provided by this company, the TPO held that these were similar to the services provided by the assessee to its AE. We have gone through the Annual report of this company, which is available on pages 2370 onwards of the paper book. Note no. 8 to Part B - 'Notes forming part of the accounts' - provides that this company is a commercial testing house engaged in testing of various products and also offers services in the field of pollution control as allied activity. Para 2 of the Annexure to the auditor's report also clarifies that this is a company engaged in rendering services 'for testing purposes. From the above description of the nature of services carried on by this company, it is evident that it is basically engaged in providing testing services for various products and also offers services in the field of pollution control. As against this, the services provided by the assessee are purely in the nature of identifying customers for its AEs and providing technical support services to their customers. We fail to appreciate as to how marketing support services can be equated with testing services. When we peruse Schedule of fixed assets of this company, it can be seen that the major asset is 'Instruments.' It is with the help of these instruments that the company is providing services in the nature of testing of various products. By no standard, this company can be considered as comparable with the assessee company. We, therefore, direct the exclusion of this company from the list of comparable.”

23. Similarly, in the case of *Fujitsu India Ltd. vs. DCIT in ITA No.6280/Del/2012*, the Tribunal ordered to exclude Choksi as a comparable vis-à-vis marketing support services provider by returning following findings :-

“21.1. The TPO included this company in the list of comparables despite the assessee's objection that it was functionally different.

21.2. We have gone through the Annual report of this company, which is available in the paper book. Note no. 8 to Part B - 'Notes forming part of the accounts' - provides that this company

is a commercial testing house engaged in testing of various products and also offers services in the field of pollution control as allied activity. From the above description of the nature of services carried on by this company, it becomes evident that it is basically engaged in providing testing services for various products and also offers services in the field of pollution control. As against this, the services provided by the assessee are purely in the nature of marketing support to its AEs. We fail to appreciate as to how marketing support services can be equated with testing services. When we peruse Schedule of fixed assets of this company, it can be seen at the major asset is 'Instruments.' It is with the help of these instruments that the company is providing services in the nature of testing of various products. By no standard, this company can be considered as comparable with the assessee company. We, therefore, direct the exclusion of this company from the list of comparables."

24. So, keeping in view the functional profile of Choksi and the fact that Revenue itself has excluded the same as a comparable in taxpayer's own case for AY 2009-10 when there is no change in the business model during the year under assessment and following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that Choksi is not a suitable comparable vis-à-vis the taxpayer, hence ordered to be excluded.

**VAPI WASTE & EFFLUENT MANAGEMENT
CO. LIMITED (VAPI)**

25. The taxpayer sought exclusion of Vapi on the grounds inter alia that it is a Government company and its capital is contributed by the Government; that it is functionally dissimilar as it is engaged in effluent treatment and common solid waste

management; and that its reported income is basically from membership fee collected from the members.

26. Apart from the fact that Vapi is a Government company, as per annual report, available at page 1020 of the paper book, it has received its substantial capital from Government. Moreover, it is engaged into effluent treatment and common solid waste management business, as is evident from page 1006 of the paper book, and as such, cannot be a valid comparable vis-à-vis the taxpayer which is a routine marketing support services provider. Furthermore, when we examine the financials of Vapi at page 1021 of the paper book, it has received income as membership fee from the members to the tune of Rs.178,953,573/-.

27. Coordinate Bench of the Tribunal in ***Intercontinental Hotels Group (India) Pvt. Ltd. TS-894-ITAT-2018(DEL)-TP*** ordered to exclude Vapi as a comparable vis-à-vis routine marketing support services provider by returning following findings :-

“16. We further find that in the case of Vapi Waste Effluent Co., capital is contributed by its members and Government. Major portion of its income comes from members in form of charges for deposition which means that the contributors are beneficiaries. Therefore, the price of this company cannot be treated as an independent and uncontrolled price when the majority of the Revenue is earned from the members who have contributed to the capital of the company.

17. We further find that almost 64% of the assets employed by this company are plant and machinery and for a service company to have such heavy capitalization in plant and machinery is

unique whereas assets of the assessee company are of routine nature, namely computer and office equipment.

18. The coordinate bench in the case of Actis Advisers Pvt Ltd in ITA No. 6390/DEL/2012 has held as under:

'Coming back to the issue of comparability the inclusion/exclusion of Vapi and WAPCOS, the ITAT in the cases of M/s MCI Com India P. Ltd. and M/s Verizon India P. Ltd. (supra) has held that companies like EIL, Rites, Wapsos and TCE are engineering companies and provide end to end solutions and therefore they cannot be compared with those assessee who were into providing marketing support services to the parent company. They were held to be functionally not comparable with these engineering companies. The case of Vapi also falls on the same footing. Therefore, respectfully following the order of the IT A T in the cases of M/s MCI Com India P. Ltd. and M/s Verizon India P. Ltd. (supra) and Estel in ITA no. 584/Bang/06 we are of the view that Vapi and WAPCOS are functionally not comparable to the assessee.'

19. The order of the coordinate bench was affirmed by the Hon'ble Delhi High Court in Tax Appeal No. 952/2015 wherein the Hon'ble High Court has held as under:

"6. As far as Issue (i) is concerned, the Court finds that while the Assessee provides marketing support services, the first excluded company WASCOS, as a comparably/ provides engineering consultancy services and the second excluded company Vapi provides consultancy for water resource management. The reasons given by the ITAT for exclusion of those two entities as comparables appears, therefore, to be fully justified on facts as well as in law. No substantial question of law arises"

20. As discussed elsewhere, Vapi Waste & Effluent Mgmt. Co. Ltd is functionally different from the assessee company and following the findings of the coordinate bench [supra], we are of the considered view that this company is not a good comparable and should be excluded from the final list of com parables."

28. Furthermore, Hon'ble Delhi High Court confirmed the exclusion of Vapi in case of *CIT-I vs. Actis Advisers Pvt. Ltd. in*

TS-535-HC-2015(DEL)-TP as comparable vis-à-vis marketing support services provider by returning following findings :-

“6. As far as Issue (i) is concerned, the Court finds that while the Assessee provides marketing support services, the first excluded company WASCOS, as a comparable, provides engineering consultancy services and the second excluded company Vapi provides consultancy for water resource management. The reasons given by the ITAT for exclusion of those two entities as comparables appears, therefore, to be fully justified on facts as well as in law. No substantial question of law arises.”

29. In view of what has been discussed above, we are of the considered view that Vapi being into providing different functions vis-à-vis the taxpayer and has derived substantial revenues from its members on account of membership fee cannot be considered as an uncontrolled entity, hence ordered to be excluded as comparable vis-à-vis the taxpayer.

GROUND NO.7

30. The taxpayer sought inclusion of ***Times Innovative Ltd., Interads Limited, Rediff.com India Ltd. and Indiacom Limited*** as comparables to benchmark its international transactions qua marketing support services. However, during the course of arguments, the same has not been pressed by the taxpayer, hence dismissed.

GROUND NO.10 & 11

31. Grounds No.10 & 11 are not pressed by the Id. AR for the taxpayer on the ground that in case, *Apitco Ltd., Vapi Waste & Effluent Management Co. Ltd. and Choksi Laboratories Ltd.* are excluded, these grounds have become academic.

GROUND NO.12

32. This ground needs no adjudication as AO/TPO are required to provide the benefit of 5% variation as per statutory provisions.

GROUND NO.13, 14 & 15

33. Grounds No.13, 14 & 15 are dismissed having not been pressed during the course of arguments.

GROUND NO.16

34. Ground No.16 needs no finding being general in nature.

35. Resultantly, the appeal filed by the taxpayer being ITA No.3901/Del/2015 is partly allowed.

ITA No.3981/Del./2015 (REVENUE'S APPEAL)

36. Since the tax effect in the appeal filed by the Revenue is low i.e. less than Rs.50,00,000/-, in view of the CBDT Circular

No.17/2019 dated 8th August, 2019 which is applicable retrospectively in view of the decision rendered by coordinate Bench of the Tribunal in case of *Dinesh Madhavlal Patel [TS-469-ITAT-2019(Ahd)] 2019-TIOL-1556-ITAT-AHM dated 14th August, 2019*, the appeal of the Revenue being ITA No.3981/Del/2015 is dismissed on account of low tax effect.

Order pronounced in open court on this 20th day of November, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 20th day of November, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**