

**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.1491/Del./2015  
(Assessment Year : 2010-11)**

M/s. Exxon Mobil Gas (India) Pvt. Ltd., vs. ACIT, Circle 8(2),  
11033, Lane No.3, Doriwalan, New Delhi.  
Karol Bagh,  
Delhi – 110 005.

**(PAN : AABCE1792K)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Vishal Kalra, Advocate  
Ms. Reema Malik, CA  
Ms. Surabhi Suri, Advocate**

**REVENUE BY : Shri Subhakant Sahu, Senior DR**

Date of Hearing : 30.10.2019

Date of Order : 28.11.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER**

The Appellant, M/s. Exxon Mobil Gas (India) Pvt. Ltd. (EMGIPL) (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 30.12.2014 passed by the AO in consonance with the orders passed by the Id. DRP/TPO under section 143 (3) read with section

144C(13) of the Act qua the assessment year 2010-11 on the grounds inter alia that :-

*“1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the income of the appellant for the relevant assessment year at INR 2,28,58,370, as against returned income of INR 98,77,683.*

*2. That on the facts and circumstances of the case and in law, the AO/ Transfer Pricing Officer ("TPO") have erred in making transfer pricing adjustments and the Dispute Resolution Panel ("DRP") further erred in upholding the adjustment in respect of the international transaction pertaining to business support services, alleging the same to be not at arm's length in terms of the provisions of sections 92C(1) and 92C(2) of the Act, read with Rule 100 of the Income-tax Rules, 1962 ("the Rules").*

*3. That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred, in arbitrarily rejecting certain functionally comparable companies identified by the Appellant on a subjective basis, inter alia, using unreasonable comparability criterion.*

*3.1 That on the facts and circumstances of the case and in law, the DRP / AO / TPO have grossly erred in re-characterising business of the appellant as marketing support services without appreciating that the appellant has been engaged in providing business support services and the same was duly accepted by the Revenue Authorities in earlier years as well as subsequent year.*

*4. That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred in arbitrarily selecting comparable companies based on incorrect appreciation of functional, asset and risk profile, and arbitrary search filters.*

*5. That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred in not considering the foreign exchange gain or loss, as the case may be, treating the same non-operative income / expense, while computing profit level indicator ('PLI') of the appellant as well as of the comparables.*

*6. That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred in not granting the benefit of economic / risk adjustments.*

*7. That on facts and circumstances of the case and in law, the DRP / AO / TPO have erred in not providing the Appellant*

*the benefit of (+/-) 5 percent range as provided by the proviso of section 92C(2) of the Act.*

*8. That on the facts and circumstances of the case and in law, the DRP / AO / TPO have erred in ignoring the provisions of rule 108(4) of the Rules and judicial pronouncements, which advocates use of multiple year data and different financial year data of comparable companies for the purpose of determination of the arm's length price.*

*9. That on the facts and in the circumstances of the case and in law, the AO has erred in levying interest under sections 234B and 234D of the Act.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Exxon Mobil Gas (India) Pvt. Ltd., the taxpayer was incorporated on May 28, 2003 and is into the business of providing business support services as may be required by its affiliates. The Mobil Pacific Services Inc. holds 99.99% equity in the taxpayer and 0.01% equity is held by Exxon Venture Holding Inc. The taxpayer provides certain support services to its Associated Enterprises (AE), which include conducting market survey activities and administrative services. Broadly, the services provided by the taxpayer to its AE are as under :-

- *Conducting market surveys and providing market information.*
- *Assisting its AEs to develop business strategies for India by providing general guidance on Indian economy and market conditions.*
- *Facilitating communication among Exxon Mobil group entities and / or its affiliates, foreign companies, Indian companies and government authorities.*

- *Attending and coordinating meetings among Exxon Mobil group entities and/or affiliates and other foreign and Indian companies to prevent misunderstanding due to language barriers.*
- *Handling administrating matters with respect to meetings and travel arrangement; and*
- *Generally acting as liaison among Exxon Mobil group entities and/or its affiliates and other foreign companies and their Indian customers and government authorities.*

3. During the year under assessment, the taxpayer entered into international transactions with its AE as under :-

<i>Sl. No.</i>	<i>Nature of transaction</i>	<i>Method applied</i>	<i>Value of International Transaction</i>
<i>1</i>	<i>Provision of Market Survey and related advisory Services.</i>	<i>TNMM</i>	<i>11,62,42,507</i>
<i>2</i>	<i>Receipt of Shared Services</i>	<i>-</i>	<i>3,47,884</i>
<i>3</i>	<i>Reimbursement of Expenses</i>	<i>-</i>	<i>9,22,283</i>
<i>4</i>	<i>Reimbursement of Salary Cost</i>	<i>-</i>	<i>2,12,64,664</i>
<i>5</i>	<i>Recovery of Salary Cost</i>	<i>-</i>	<i>51,96,029</i>
<i>6</i>	<i>Recovery of Expenses</i>	<i>-</i>	<i>1,43,35,518</i>

4. The taxpayer in its transfer pricing analysis qua provision of business support services applied Transactional Net Margin Method (TNMM) with Operating Profit/Operating Cost (OP/OC) as Profit Level Indicator (PLI) as Most Appropriate Method (MAM) chosen 23 companies as comparables used multiple year data, and computed margin of comparables at 6.63% as against its

own margin of 14.63% and found its international transactions at arm's length.

5. TPO, after applying various filters, accepted TNMM with OP/OC as PLI as Most Appropriate Method (MAM) as the MAM applied by the taxpayer to benchmark its international transaction chosen six comparables with average margin of 27.74%.

6. Consequently, TPO computed the arm's length price of international transactions at Rs.13,01,70,892/- as against Rs.11,62,42,507/- determined by the taxpayer.

7. The taxpayer carried the matter before the Id. DRP by way of filing objections, who has partly allowed the objections. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

8. 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.

9. Undisputedly, Id. TPO/DRP have accepted the TNMM with OP/OC as PLI as MAM applied by the taxpayer to benchmark its international transactions qua business support services after providing working capital adjustment. Functional profile of the taxpayer has also not been disputed by the Id. TPO/DRP. After

giving effect to the directions issued by the Id. DRP, final set of comparables with correct margins are as under :-

<i>S.No.</i>	<i>Name of the Company</i>	<i>Adjusted NCP's</i>
<i>1</i>	<i>Apitco Limited</i>	<i>31.75</i>
<i>2</i>	<i>Cyber Media Research Limited</i>	<i>15.90</i>
<i>3</i>	<i>Global Procurement Consultants Ltd.</i>	<i>36.16</i>
<i>4</i>	<i>HCCA Business Services Pvt. Ltd.</i>	<i>20.56</i>
<i>5</i>	<i>Quadrant Communications Ltd.</i>	<i>15.13</i>
<i>6</i>	<i>TSR Darashaw Limited (Amt in lakhs)</i>	<i>41.35</i>
	<i>Average</i>	<i>26.81</i>

10. Consequently, Id. TPO computed the arm's length price of international transactions as under :-

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Operating Cost (OC)</i>	<i>10,19,03,000</i>
<i>Arm's Length Margin (%)</i>	<i>26.81%</i>
<i>Arm's Length Price (126.81% of OC)</i>	<i>12,92,23,194</i>
<i>Price received</i>	<i>11,62,42,507</i>
<i>Adjustment</i>	<i>1,29,80,687</i>

### **GROUND NO.1**

11. Ground No.1 is general in nature and does not require any adjudication.

### **FOUNDATIONS NO.2, 3 & 4**

12. At the very outset, Id. AR for the taxpayer in order to compress the controversy raised by filing present appeal to the extent that AO/TPO/DRP have erred in selecting 3 comparables viz. *Apitco Ltd., Global Procurement Consultants Ltd. and TSR Darashaw Ltd.*, which are otherwise incomparable on numerous

grounds. Now, we would discuss the suitability of aforesaid comparables vis-à-vis the taxpayer qua providing of business support services one by one.

**APTICO LIMITED (APTICO)**

13. The taxpayer sought exclusion of Aptico from the final set of comparables to benchmark the international transactions qua provision of business support services on the grounds inter alia that Aptico is having a different profile; that no segmental information is available qua diversified streams of income and relied upon the decision of the coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT (2018) 95 taxmann.com 156 (Delhi-Trib.)*, which was confirmed by the Hon'ble Delhi High Court.

14. Ld. DR for the Revenue, on the other hand, supported the order passed by the TPO/DRP by contending that TPO has not recharacterized taxpayer's services and that website information available at page 409 was taken on 25.05.2018 is not relevant to the year under consideration and relied upon the orders of the lower Revenue authorities.

15. Perusal of the annual report and website extract qua Aptico, available at pages 378 and 392 of the paper book and website extract available at page 409, shows that during the year under assessment, Aptico recorded total revenues of Rs.1609.11 lakhs

contributed by all major business segments : Cluster Development Rs.479.87 lakhs; Project Related Services Rs.326.01 lakhs; Skill Development Rs.275.75 lakhs; Tourism & Research Studies Rs.148.36 lakhs; Entrepreneurship Development & Training RS.108.73 lakhs; Asset Reconstruction & Management Services Rs.55.03 lakhs; Micro Enterprises Development RS.52.83 lakhs; Energy Related Services Rs.48.35 lakhs; Environment Management RS.39.98 lakhs; Emerging Areas Rs.6.84 lakhs and other income Rs.67.36 lakhs.

16. Perusal of the schedule annexed with profit & loss account shows that Aptico is having income from different streams. Perusal of information, available at website of the company placed at page 409 of the paper book, also shows that the services provided by Aptico 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, Environment Management Consulting, Energy Management consulting, Market & Social Research and Asset Reconstruction Management Services.

17. Coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT* (supra) examined the suitability of Aptico as a

comparable vis-à-vis routine business support service provider and found the same non-comparable on the ground that Aptico is engaged in providing high end technical services to other Government companies and public sector undertakings; that it is into diversified business. Aforesaid order passed by the Tribunal has been affirmed by the *Hon'ble High Court reported in (2019) 102 taxmann.com 376 (Delhi)* by returning following findings :-

*“14. Ld. AR brought to our notice that the Apitco Ltd. was rejected by a catena of decisions rendered by different Benches of this Tribunal including a coordinate Bench of this Tribunal in Ciena India (P) Ltd. v. DCIT in ITA No. 2948 and 3224/del/2013 following which in Avaya India Private Limited versus DCIT in ITA No.146/del/2013. He also placed reliance on the nation reported in Kobelco Cranes India Private Limited v. ITO in ITA No.8021de1/2016. In International SOS services India private limited versus DCIT ITA No.1631/del/2014 this company was excluded on account of being hundred percent government organisation and the appeal against this decision of the tribunal was dismissed by the Hon'ble jurisdictional High Court.. Further it could be seen in Vestegaard Asia private limited verses DCIT in ITA No. 6670/del/2015 and H & M Mouritz India private limited verses DCIT in ITA 282/bang/2015 it is held that the Aptico Pvt Ltd., is not a good comparable with any company rendering business support services on the ground that this company is a public sector undertaking and its operations are mainly based the on the policy requirements of the government.*

*15. Further reliance is placed by the counsel on the decision of the Mumbai bench of this tribunal in TysokKrupp industries India private limited verses ACIT in ITA No. 6460/mum/2012 wherein it was held that this company being a government enterprises is not comparable with a private business service provider because in case of government enterprises profit motive is not irrelevant consideration, and government companies work for other public sector undertakings and in that sense the related party transactions are much more than the filter of 25%. This decision of the tribunal was upheld by the Hon'ble Bombay High Court in ITA number 20/02/2018 of 2013.*

*16. The reasons recorded by the Tribunal in all the decisions referred to above hold good for the assessee also inasmuch as the assessee is a private company in the field of providing business support services. We, therefore, while respectfully following the ratio laid down in the above decisions hold that Apitco Ltd., is not a good comparable with the assessee and is accordingly liable to be excluded. We, therefore, directly Ld. TPO to exclude this company from the finalist of comparables to benchmark the international transaction relating to the market support services provided by the assessee to its AEs.*

18. As per the ratio laid down by *Hon'ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. vs. CIT ITA 102/2015 order dated 10.08.2015*, the functions of a company is to be taken as comparable cannot be ignored. So, since functions of Aptico are different vis-à-vis the taxpayer, it cannot be taken as a suitable comparable.

19. In view of what has been discussed above and following the aforesaid decision rendered by the coordinate Bench of the Tribunal, confirmed by the Hon'ble High Court, we are of the considered view that Aptico being into diversified business activities with no segmental information available and being into providing high end consultancy services is not a suitable comparable vis-à-vis the taxpayer who is a routine business support service provider, hence ordered to be excluded for benchmarking the international transactions.

**GLOBAL PROCUREMENT CONSULTANTS  
LIMITED (GPCL)**

20. The taxpayer sought exclusion of GPCL from the final set of comparables for benchmarking the international transactions on the grounds inter alia that GPCL has different business profile; that its segmental financials are not available; that GPCL is permitted by Export Import Bank of India in association with leading Indian public sector and private sector consultancy organisation on the basis of public private entrepreneurship model; and relied upon the decision of the coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT (2018) 95 taxmann.com 156 (Delhi-Trib.)*, which was confirmed by the Hon'ble Delhi High Court.

21. Ld. DR for the Revenue, on the other hand, relied upon the orders of the lower Revenue authorities.

22. Perusal of the annual report, available at page 416 of the paper book, shows that GPCL encompasses preparing and reviewing technical specifications, estimation of costs, selection of vendors, inspection and expediting and quality control & time management. Furthermore, it has also come on record from annual report that GPCL is operating in field of power, water resources, transportation, industries and other sectors; that GPCL also undertakes training through state of the art tailor made training

modules for transfer of expertise, bid support services in international funded projects, independent procurement review of multilaterally funded projects spread across the globe and procurement audits, whereas no such segmental financials are available qua diversified nature of services being provided by the GPCL. GPCL has been ordered to be excluded by the coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT* (supra) as a comparable vis-à-vis routine business support service provider by returning following findings :-

*“26. We have gone through the material provided in the paper book in respect of Global Procurement Consultants Ltd. and find that Global Procurement Consultants Ltd., is primarily engaged in preparing and reviewing technical specifications, estimation of costs, selection of vendors, inspection and a expediting and quality control and time management. It is also clear that the company renders the procurement related services in exclusively in CIS countries, Eastern Europe and emerging economies in the African continent, by Kettering relates in the areas like Health, Education, Urban and Rural Development, agriculture, mining, transportation, communication, energy, water resources and other key factors. We also further find from the record that Global Procurement Consultants Ltd., conducts procurement pushed revenue for World Bank financed projects, renders financial advisory services with a high volatile margins.*

*27. This profile what we have observed from the record certainly makes this company to stand apart from the market support service providers. Further it is submitted by the Ld. AR that this company rejected by Ld. DRP, Delhi in the case of travel security services (India) private Ltd for assessment year 2011-12 by holding that this company is functionality similar and should be deleted from the set of comparable companies rendering business support services. Further a coordinate Bench of this Tribunal in *Kobelco Cranes India Private Limited vs. ITO* in ITA No. 802/del/2016 excluded this company as comparable to the marketing support services. So also in *Adidas technical services Ltd vs. DCIT* in ITA No. 862/del/2016 and ITA No. 1233/del/2015 a coordinate Bench of this Tribunal excluded this*

*Global Procurement Consultants Ltd., as a good comparable to the marketing support service providers on the ground of functionality similarity.*

28. *This profile of this Global Procurement Consultants Ltd., as narrated by the Ld. TPO himself speaks in unequivocal terms that this Global Procurement Consultants Ltd., is a company established by the government to serve the purpose of professional procurement and management services needs and also to provide combines management services required by the government departments or their project execution agencies to carry out the procurement in time bound and efficient manner within the framework of government regulations and guidelines of international institutions, which is not such a characteristic of the business of the assessee. The business model itself is different, let alone the disproportion is of the financials. We have no hesitation, in the face of the profile of Global Procurement Consultants Ltd., that it is not a good comparable at all to the assessee and for that matter to any private marketing support service provider, as such we direct the Ld. TPO to exclude this company from the list of comparables to benchmark the international transaction of the assessee in providing the market support services to its AEs.”*

23. Hon’ble High Court confirmed the aforesaid exclusion of GPCL as a comparable.

24. As per the ratio laid down by *Hon’ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. vs. CIT ITA 102/2015 order dated 10.08.2015*, the functions of a company is to be taken as comparable cannot be ignored. So, since functions of GPCL are different vis-à-vis the taxpayer, it cannot be taken as a suitable comparable.

25. In view of the facts and circumstances and following the aforesaid decision rendered by the coordinate Bench of the Tribunal, confirmed by Hon’ble Delhi High Court, GPCL is into

diversified nature of activities; that it is established by Government to serve the professional procurement and management services need; that it has different business model with no financial segmental are available, is not a suitable comparable vis-à-vis the taxpayer who is into routine business support service provider, hence ordered to be excluded.

**TSR DARASHAW LTD. (TSRDL)**

26. The taxpayer sought exclusion of TSRDL on the grounds inter alia that it has a different business profile; that TPO has taken entity level revenue from financials comprising of diverse segments and services; that it has installed state of the art infrastructure over the last 12 months and relied upon the decision of the coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT* (supra), confirmed by Hon'ble Delhi High Court.

27. Ld. DR for the Revenue, on the other hand, relied upon the orders of the lower Revenue authorities.

28. Perusal of the annual report, relevant page 465 and 481 of the paper book, explains the outlook of TSRDL as under :-

*“Payroll process outsourcing’ continues to be promising even in the current challenging environment and in line with the growth of the business, TSRDL has emerged stronger and has been able to retain its market share. TSRDL has now selected a new Global Payroll ERP application called RAMCO for its fast growing Payroll business, which is on par with similar applications in the*

*business. This will enable TSRDL to be able to cater to various complexities of the payroll requirements of the clients. IT continues to be the key focus wherein the company has installed state of the art infrastructure over the last 12 months and has changed over to new and latest applications for its traditional business in Registry and Share Transfer business.’*

29. Furthermore, perusal of business outlook at page 465 shows that it has installed state of the art infrastructure over the last 12 months and has changed over to new and latest applications for its traditional business in Registry and share transfer business and it has been enabled it to cater to various complexities of the payroll requirements of the clients. Moreover, TSRDL has been selected as new Global Payroll ERP application called RAMCO for its fast growing payroll business.

30. Coordinate Bench of the Tribunal in *Philip Morris Services India S.A. vs. DDIT* (supra) excluded TSRDL from the final set of comparables by returning following findings :-

*“39. On a perusal of record and the Annual Report of TSR Darashaw Ltd. we find that TSR Darashaw Ltd. is mainly into the payroll process outsourcing with a new global payroll ERP application called RAMCO for its payroll business. Further the order of Ld. TPO itself reads that TSR Darashaw Ltd. undertakes the registrar and transfer agent activity functions for equity and preference shares, venture instruments and bonds, commercial paper and private placements. Moreover this company, under this segment also undertakes transfer processing customer/query handling and correspondence split/consolidation/renewal of certificates, processing and distribution of interest to slash dividend warrants, payments by physical warrants/through ECS/director credited. In the segment of Records Management activity, TSR Darashaw Ltd. undertakes storage, retention and tribal of physical and/or electronic records. In the segment of payroll and trust fund activity, TSR Darashaw Ltd. handles the*

*activities normally handled by “Payroll and Retirement Funds” section in any organisation including interface with the regulatory authorities. These functions are not at all comparable with the functions performed by the assessee. At the same time no segmental information is available as to the revenues.*

*40. Further the coordinate benches of this tribunal in Microsoft Corporation India Private Limited vs. DCIT in ITA No. 5766/del/2011, Eli Lilly and Co (India) Private Ltd vs. ACIT in ITA No. 788/del/2015 and Kobelco Cranes India Private Limited vs. ITO in ITA No. 802/del/2016, Adobe Systems India Private Limited vs. JCIT in ITA No. 1163/del/2014, and Adidas technology Services Private Limited vs. DCIT in ITA No. 862/del/2016 held that TSR Darashaw Ltd. is not a good comparable to the companies rendering market support services.*

*41. In this factual and legal position, where of the considered opinion that TSR Darashaw Ltd. is not at all a good comparable to the assessee who is rendering only market support services in no way comparable to the functions performed by the TSR Darashaw Ltd. We, therefore, direct the Ld. TPO to delete this company from the finalist of comparables.”*

31. Hon’ble High Court confirmed the aforesaid exclusion of TSRDL as a comparable.

32. As per the ratio laid down by *Hon’ble Delhi High Court in Rampgreen Solutions Pvt. Ltd. vs. CIT ITA 102/2015 order dated 10.08.2015*, the functions of a company is to be taken as comparable cannot be ignored. So, since functions of TSRDL are different vis-à-vis the taxpayer, it cannot be taken as a suitable comparable.

33. In view of the facts and circumstances narrated above and following the aforesaid decision of the coordinate Bench of the Tribunal, confirmed by the Hon’ble Delhi High Court, we are of

the considered view that TSRDL is having different business profile vis-à-vis the taxpayer who is a routine business support service provider; that TPO has taken entity level revenue from financials which are of diverse segments and services; that it has established state of the art infrastructure over the last 12 months and it has selected new Global Payroll ERP application called RAMCO for its fast growing payroll business, is not a suitable comparable vis-à-vis the taxpayer who is a routine business support service provider, hence ordered to be excluded.

**GROUND NO.5**

34. Ld. AR for the taxpayer contended that DRP/TPO had not considered foreign exchange gain or loss as the case may be by treating the same non-operative income of the taxpayer by treating the PLI of the taxpayer as well as the comparables.

35. By now, it is settled principle of law that foreign exchange gain or loss on account of international transactions entered with its AE in the ordinary course of business i.e. in provision of business support services, the same cannot be treated as non-operating in nature.

36. Hon'ble Delhi High Court in case of *Pr.CIT vs. B.C. Management Services (P) Ltd. (2018) 403 ITR 45 (Delhi)* held that, "*foreign exchange gain/loss is part of the operating income*

*for ALP determination. In Pr. CIT vs. Ameriprise (P) Ltd. ITA No.206 of 2016 dated 23.03.2016, Hon'ble Delhi High Court held that, "foreign exchange gain earned by the taxpayer which is in relation to trading items and emanating from international transactions, direct value derived from it cannot be treated as non-operating losses and gains."*

37. In view of the matter, we are of the considered view that TPO/DRP have erred in not considering the foreign exchange gain or loss as operating income/expenses. So, the TPO is directed to treat foreign exchange gain/loss as operating income/expenses while computing PLI of the taxpayer as well as of the comparables. So, Ground No.5 is determined in favour of the taxpayer.

#### **GROUND NO.6**

38. The taxpayer also sought benefit of risk adjustment not granted by the TPO on the ground that the taxpayer is providing business support services to its AE on cost plus 10% mark-up, for which it does not bear any risk on account of service delivery, price, utilization, credit etc. When, undisputedly, the taxpayer is rendering business support services to its AE at cost plus 10% mark up and bearing no price risk or utilization risk, it is entitled for adjustment on account of difference in risk profile, business comparable companies u/s 10B(2) of the Income-tax Rules, 1962.

39. Coordinate Bench of the Tribunal in *Sony India (P) Ltd. vs. DCIT (2008) 114 ITD 448 (Del.)* decided the identical issue in favour of the taxpayer by returning following findings :-

*“As regards the other amount of Rs.83,06,011 forming part of miscellaneous income it could be seen that the said amount was received by the assessee from its foreign associate on account of cancellation of a contract. As the work undertaken under the said agreement was in relation to the development of software which. was the main business activity of its undertaking eligible for deduction under section 1 DB, the compensation received by the assessee on cancellation/termination of the said contract/agreement was integral part of its main business. There was, thus, a clear and direct nexus between the amount of Rs.83,06,011 received by the assessee as compensation for cancellation of the contract and the main business of software development of its undertaking and the said income forming part of the said main business 01 the undertaking was eligible for deduction under section 10B being derived from the said under-taking. For the application of words 'derived from; there should be a direct nexus between the income and the industrial under-taking and once such nexus is established, the said income certainly constitutes the income derived from such undertaking. As such, considering all the facts of the case, the amount of Rs.83,06,011 constituted its profit derived from the undertaking eligible for deduction under section 10B and the deduction under that section was rightly claimed by it in respect of the said income. In that view of the matter, the impugned order of the Commissioner (Appeals) on that issue was to be set aside and the Assessing Officer was to be directed to allow the deduction under Section 10A/10B in respect of compensation as claimed by the assessee.”*

40. In view of the matter, we are of the considered view that since the taxpayer rendered services to its AEs on cost plus mark,

for which it is reimbursed and no price risk or utilization is borne by it, the taxpayer is entitled for benefit of risk adjustment vis-à-vis comparables chosen by the TPO. So, Ground No.6 is determined in favour of the taxpayer.

**GROUND NO.7, 8 & 9**

41. Grounds No.7, 8 & 9 being consequential in nature need no specific findings

**GROUND NO.8**

42. Ground No.8 is dismissed having not been pressed during the course of arguments

43. Resultantly, the appeal filed by the taxpayer is partly allowed.

**Order pronounced in open court on this 28<sup>th</sup> day of November, 2019.**

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

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

**Dated the 28<sup>th</sup> day of November, 2019  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**