

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

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

ITA No. 1684/DEL/2016  
[A.Y 2011-12]

GE India Industrial Pvt Ltd  
Building No. 7A, 4th Floor,  
DLF Cyber City, DLF Phase III  
Sector 25A, Gurgaon

Vs.

The Dy. C.I.T  
Circle - 10(1)  
New Delhi

PAN: AAACG 4901 D

[Appellant]

[Respondent]

Assessee by : Shri Sachit Jolly, Adv  
Shri Aayush Nagpal, Adv

Revenue by : Shri Anupam Kant Garg, CIT-DR

Date of Hearing : 29.09.2020

Date of Pronouncement : 08.10.2020

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order dated  
NIL framed u/s 143(3) r.w.s 144C of the Income tax Act, 1961  
[hereinafter referred to as 'the Act' for short] pertaining to ay 2011-12.

2. The assessee has raised as many as 16 grounds of appeal with sub-grounds. However, the grievances of the assessee can be summarised as under:

#### TRANSFER PRICING ISSUES

- a) Not allowing of adjustment on account of higher import content;
- b) Not allowing capital utilization adjustment;
- c) Not allowing working capital adjustment;
- d) Safe Harbour Rules are not applicable for the year under consideration; and
- e) Comparables selected by the TPO are not valid comparables.

3. In addition to the above, the assessee has also contested domestic issues which related to:

- a) Disallowance of warrantee and replacement expenses;
- b) Disallowance of claim of bad debts written off;
- c) Denial of depreciation of Written Down Value [WDV] of software expenditure; and
- d) Denial of depreciation of WDV of expenditure incurred on purchase of business rights

4. Representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in

the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

5. In addition to the oral arguments, the representatives of both the sides have also furnished written submissions which have been duly considered.

6. Facts on record show that during the year under consideration, 'GEIPL', the appellant, was engaged in the following activities :

- Export of computer software (Bently Nevada India division)
- Sales and service of vibration monitoring systems and related parts (Bently Nevada Sales and Services division)
- Sale of industrial and residential UPS and Multilin and providing annual maintenance support services (Enterprise Solutions division)
- Providing network infrastructure services (Global Infrastructure Services – GIS division)
- Providing strategic management, finance, human resources, sales and marketing, communication, legal and compliance, supply chain management, employee health and safety and government relations services to General Electric group companies (India Head Quarters – India HQ division)
- Sale, installation and commissioning of dissolved gas analysis (DGA) kits and training of technicians (Kelman division)
- Trading of industrial lighting fixtures, High Intensity Discharge lamps and other lighting products (Lighting division)
- Marketing support, transaction outsourcing and accounting services to General Electric group companies (Marketing support and GBS division)
- Designing, engineering, supply, testing, installation and commissioning, technical services, hardware and software support (AMCs/ LTSA) for power transmission and distribution (Network Reliability Products & Services - NPRS division)
- Sales and services of specialised equipments used for extraction and transmission of oil and gas (Oil and Gas Division)
- Manufacture, erection and commissioning services for electrical installations and manufacturing and trading of electrical components (Power Controls division)
- Dealing in pressure instruments and sales and service of non-destructive testing equipment and related films (Sensing and Inspection Technologies division);
- Providing Infrastructure support to General Electric group companies (Tower division)
- Rendering professional and training services (Training division)
- Manufacturing and trading of critical locomotive spares (Transportation division)
- Manufacture, sale and trade of specialty chemicals (Water and Process Technologies division);

7. The international transactions were referred for determination of arm's length price to the TPO and the TPO proposed an adjustment of Rs. 46,82,16,277/- in respect of certain international transactions of some of the divisions of the appellant company vide order dated 30.01.2015. Accordingly, the AO framed draft assessment order against which the assessee filed objections before the Dispute Resolution Panel [the 'DRP' for short] and the DRP issued its directions vide order dated 29.12.2015. Finally, the AO issued the final assessment order in accordance with the directions of the DRP vide order dated 28.01.2016.

8. We will first address to the issues relating to TP adjustment in some of the divisions of the appellant.

I Digital Energy [Distribution Activity]

9. In this division, the appellant is engaged in distribution of power quality products, such, as Uninterruptible Power Supplies (UPS), batteries and relays. In this division, the bone of contention is the claim of adjustment on account of higher import cost. The assessee claims that percentage of total imports to total purchases of the assessee are 67.97% whereas for comparable companies, the average

total imports to total purchases is 20.66%. It is the claim of the assessee that even Rule 10B(3)(ii) of the Income Tax Rules, 1962 (Rules, in short) states that reasonably accurate adjustments are to be undertaken to iron out the differences that materially affect the price or cost charged or paid or profit arising from such transactions in the open market.

10. Per contra, the ld. DR contends that what is mentioned in the Rules is 'comparable' and not 'identical'. Therefore, any adjustment would distort the comparabilities. It has been contended by the Revenue that any adjustment, if any, need to be carried out, are to be carried out in the comparables and not in the tested party.

11. It is the say of the ld. counsel for the assessee that the DRP had stated that custom duty would be balanced out by not having to pay Excise Duty on the domestic production. The ld. counsel for the assessee, drawing our attention to the decision of the co-ordinate bench in the case of Honda Motor India Private Limited [I.T.A .Nos. 1801, 6807/Del/2014], pointed out that the Tribunal in this case had directed to allow adjustment by computing the difference between

the rate of Custom Duty and rate of Excise Duty for adjustment are thus, statutory levies.

12. We find that this division is distribution division and comparable companies are also distributors and therefore, there is no question of any Excise Duty. We find that the DRP has stated that the assessee had failed to furnish the data and substantiate its claim for adjustment. We do not find any force in this observation of the DRP. The Assessing Officer has furnished the following data to substantiate its claim of adjustment:

Particulars	Amount [Rs.]
Total Purchases [A]	43,15,57,719
Imports [B]	29,35,48,437
% of imports to total purchases [C=B/A]	67.97%
Custom duty paid by the assessee [D]	7,21,59,562
% of imports to total purchases - comparables [E] [Note]	20.66%
Excess imports [ F= C - E ]	47.31%
Additional duty paid [G = D/C*F]	5,02,26,125

Particulars	Amount [Rs.]
Sale	44,58,41,783
Cost of goods sold	39,78,06,281
Gross Margin [A]	4,80,35,502
GM% [before adjustment]	10.77%
Add: import duty adjustment [B]	5,02,26,125
Revised Gross Margin	9,82,61,627
Revised GM% [After adjustment]	22.04%

13. It can be seen from the aforementioned calculation percentage of imports to total cost purchases in the case of the appellant is 67.97% as against 20.66% in the case of the comparables, which means that the assessee is subject to higher imports at 47.31%. In our considered opinion, on the given facts, the assessee should get benefit of adjustment on account of higher imports.

14. The claim of the ld. DR that any adjustment should be made in the case of comparables and not in the hands of the tested party cannot be accepted because the co-ordinate bench in assessee's own case in ITA No. 2210/Ahd/2012 for A.Y 2004-05 allowed adjustment

on account of high raw material cost to the margins of the assessee.

The relevant findings of the co-ordinate bench read a under:

"15. In the instant case, what is being tested is whether purchase from associated enterprises is at arms-length or not. Admittedly, sales by the assessee is not to the associated parties and therefore, is un-controlled transaction. In view of above, in the light of OECD guidelines, while working out ratio of raw-material should be worked out by comparing the raw-material vis-à-vis sales. In this view of the matter, we uphold the finding of the TPO for the year under appeal wherein he arrived at the conclusion that the assessee should be allowed the adjustment of 18.50% because of excess consumption of raw-material. However, in our opinion, while giving the adjustment, the assessee should be allowed the adjustment of 18.50% of the sales and not of the 18.50% of the raw material cost. We, therefore, direct the Assessing Officer to allow the adjustment of 18.50% of the sales while working out the operating profit and if, after the above adjustment, the operating profit of the assessee works out to more than 6.78% i.e. the average of operating profit of comparables, then no adjustment should be made. With this direction, we set aside the orders of the lower authorities and restore the matter back to the file of the Assessing Officer.

15. Considering the facts mentioned hereinabove, in the light of findings of the co-ordinate bench [supra], we direct the Assessing Officer/TPO to allow adjustment on account of higher import cost and decide the issue afresh.

16. Since we have directed for allowance of adjustment on account of higher import cost, we do not find it necessary to allow adjustment with regard to working capital in this division.

## II POWER CONTROL DIVISION [MANUFACTURING SEGMENT]

17. In this division, an adjustment of Rs. 4,79,51,479/- has been made by not granting comparability adjustment in respect of rise in cost of raw materials, not granting comparability adjustment in respect of underutilization of capacity and not granting adjustment for varying levels of working capital employed and treating provisions no longer required written back by the assessee as non-operating in nature.

18. In this division, the assessee is engaged in manufacturing of low voltage electrical products for sale to its customers. These products

include MCCB, fuse gear, control gear, switches, capacitors, MCB and ACB.

19. Before the TPO, the assessee had claimed adjustment with regard to rise in price of raw materials and adjustment on account of under utilisation of capacity. Claim of underutilisation of capacity was rejected by the TPO on the ground that during the year, the assessee has increased its installed capacity from 300 panels to 700 panels and as the assessee is a captive center of its AE, the AE had decided to increase the capacity expecting the business and should have compensated the assessee in case of no business. According to the TPO, when the AE has not granted any adjustment, the assessee should not expect any adjustment in TP audit.

20. The DRP confirmed the findings of the TPO.

21. Before us, the ld. counsel for the assessee once again drew our attention to the decision of the co-ordinate bench in ITA No.2210/Ahd/2012 [supra] and pointed out that the raw material adjustment was allowed on account of significantly high consumption of raw material.

22. In so far as this adjustment is concerned, we have already extracted the relevant findings of the co-ordinate bench at para 14 hereinabove. In view of the above, we direct the Assessing Officer/TPO to allow adjustment on account of high raw material consumption.

23. In so far as adjustment on account of under utilisation of capacity is concerned, we find that capacity utilisation by the assessee is 43% whereas comparable companies are working at an average capacity of 53.58%. In our considered opinion, this wide variation mandates appropriate adjustment to iron out differences between the assessee and comparable companies.

24. Observation of the lower authorities that the assessee is a captive center for its AE seems to be incorrect. We find that total revenue of the Power Control Division is Rs. 2,08,46,83,619/-, whereas the sales made to the AEs are only Rs. 17,14,01,378/-which makes it to 8.22% of total sales. Thus, it can be seen that the assessee is not a captive center for its AE. In light of the above facts, we direct the AO/TPO to allow adjustment on account of underutilization of capacity.

25. Since we have directed for allowance of higher raw material consumption and under utilisation of capacity, we do not find it necessary to dwell into the claim of working capital adjustment.

26. Another claim in this division is that the provisions no longer required written back by the assessee were treated as non-operating by the TPO. We find that the treatment given by the TPO is based upon Safe Harbour Rules. In our considered opinion, Safe Harbour Rules are not applicable for the year under consideration as they were introduced on 18.09.2013, which means that these provisions were not in existence at the time of preparation of the TP documentation. The Hon'ble High Court of Delhi in the case of Fiserv India Private Limited 17/2016 has held that Safe Harbour notification dated 18.09.2013 is prospective. In light of the above, we do not find any reason why the provisions written back should not be treated as operating in nature. We direct accordingly.

III BENTLEY NEVADA INDIA AND BENTLEY NEVADA SALES AND SERVICE DIVISION [BNI/BNSS].

27. In this division the assessee has challenged the ALP adjustment of Rs.2,87,41,969/-.

28. Facts on record show that in BNSS division, the assessee is engaged in provision of software development services to its AEs. These services are in the nature of customisation of condition monitoring software to meet specific requirements of customers and customers and BNI is engaged in providing software development services only to its AEs. BNI develops condition monitoring software, which is used by end customer to monitor the condition of machinery in use and take optimal business decisions regarding machinery maintenance and operations. From the list of comparables, the TPO/DRP disregarded the following comparable companies from the comparable set on account of different F.Y:

- R Systems International Limited
- Helios & Matheson Information Technologies Limited
- Mascon Global Limited

29. We find that these companies were accepted as functionally comparable with the appellant and only because of different F.Y., these companies were disregarded by the TPO/DRP. In our considered opinion, where the audited quarterly results are available in the public domain, there should not be any difficulty in making necessary adjustment in respect of quarterly results and making accounting year

similar to that of the assessee. This principle has been accepted in a catena of decisions by the co-ordinate benches. To name a few:

- Pangea3 Legal Database Systems Private Limited (ITA No. 484/Mum/2016)
- American Express (I) P Ltd [ITA No. 1426/Del/2015]
- Cadence Design Systems (India) Ltd [ITA No.2074/DEL/2014]
- Mercer Consulting HC [ITA No. 101 of 2015]

30. We accordingly, direct the TPO to consider the quarterly results and work out proportionate profit margin. The assessee is directed to furnish necessary details and the TPO is directed to verify the same.

31. The other dispute relates to inclusion of Infosys technologies Ltd and Acropetal Technologies Ltd. The main contention of the assessee is that these companies were included by cherry picking, which is against the rule of the Tribunal in the case of Toshiba India Ltd 3175/DEL/2007 wherein it has been held that ALP must be determined by a systematic approach and cherry picking of comparables is not acceptable.

32. Moreover, the Hon'ble High Court of Delhi in the case of Agnity India Technologies Pvt Limited in ITA No. 1204/2011 has held that

Infosys Technologies Ltd cannot be compared to software service companies, as Infosys is engaged in the trade marked products and investment in product research and development centre has brand value and has substantial expenditure on R&D activities and is also engaged in the sale of software products and segment for software services is not available.

33. In fact, the company's segments are based on industries and geography and not activities. For these reasons, the Hon'ble High Court of Delhi in the case of Agnity India Technologies Pvt Ltd[supra] has directed for exclusion of Infosys Technologies from the final set of comparables. For similar reasons, we direct the Assessing Officer/TPO to exclude Infosys Technologies from the final set of comparables.

34. In so far as Acropetal Technologies Ltd is concerned, this company is engaged in the business of engineering design services, healthcare services, enterprise and IT services, energy and environment services, IT infrastructure management services and IT consultancy services.

35. As per the annual report of this company, engineering design services span across the entire product development. This company has implemented several healthcare case management and patient information system that merge sophisticated technology with user-friendly interfaces. This company also provides end to end solutions in many areas. The annual report further states that this company is committed to deliver cost-effective software products, services and solutions to its customers.

36. A careful perusal of the annual report of this company suggests that this company is software product company and hence, cannot be compared to the appellant. In light of the facts discussed hereinabove, we direct for exclusion of this company.

#### IV TRANSPORTATION DIVISION [MANUFACTURE OF TURBO CHARGERS]

37. In this division, the assessee has challenged the adjustment of Rs.5,17,67,019/-. The main contention before us is that no adjustment for payment of extraordinary expenses in the nature of provision for Sales Tax, rent, gratuity, payment of consultancy charges, liquidating damages were provided for adjustment. In this division, the assessee

sells locomotive parts, turbochargers and railway signalling equipment in India. The assessee imports locomotive parts, turbo parts and signalling panels from its affiliates in US. The locomotives are sold directly by the assessee to customers India whereas the company assembles Turbo kits into turbochargers in its assembly facility before selling turbochargers finally to its customers. Before the TPO/DRP the assessee has claimed the adjustment on account of extraordinary expenses. The TPO rejected the claim on the ground that these are expenses in relation to business operations.

38. Before us, the learned counsel for the assessee pointed out that TPO himself has provided adjustment in F.Y 2006-07. Therefore, there should not be any reason for denying similar adjustment for the year under consideration.

39. In our considered opinion, if working capital adjustment brings parity in comparability and case strength to comparability, we do not find any reason why the same should be denied. All that the TPO has to do is to satisfy himself with the working of the adjustments and point out issues of his dissatisfaction. We, accordingly, direct the AO/TPO to

consider the working of the adjustments to be furnished by the assessee and decide the issue afresh. We order accordingly.

V. WATER & PROCESSING TECHNOLOGY DIVISION [TRADING ACTIVITY]

40. In this division, adjustment of Rs.78,71,916/- is contested by the assessee. The main contention is that no adjustment was given with regard to high import content and further no adjustment was given for varying levels of working capital employed by the assessee vis-a-vis comparable companies.

41. In so far as adjustment on account of higher import is concerned, we have already decided this issue at para 14. For our detailed reasoning given therein, we direct the AO/TPO to allow adjustment on account of higher import. Since the adjustment on account of higher import is directed to be allowed, we do not find it necessary to allow benefit of working capital adjustment.

VI. WATER AND PROCESS TECHNOLOGY DIVISION [MANUFACTURING OF MEMBRANES]

42. In this division, the assessee manufactures specialty chemicals more specifically, water treatment chemicals and pulp and paper product chemicals. In this division, the assessee has challenged

adjustment of Rs.2,33,47,148/-. The challenge of the assessee relates to not providing comparability adjustment of scrap sales and not granting working capital adjustment.

43. The assessee further contends that operating margin of comparable companies is incorrectly computed. In so far as adjustment on account of scrap sales is concerned, the same has been denied on the ground that adjustment cannot be carried out on the margins of the assessee. This issue has been elaborately discussed by us in para 15 wherein we have referred to the findings of the coordinate bench. In same lines, we direct the AO/TPO to allow adjustment on account of scrap of sales.

44. In so far as incorrect computation of operating margin of comparable companies is concerned, we find that the DRP had directed the AO/TPO to make necessary corrections, which have not been carried out by the TPO. We, accordingly, direct the TPO/AO or to carry out the directions of the DRP.

## VII MARKETING SUPPORT SERVICES [RENDERED BY VARIOUS DIVISIONS]

45. MSD is engaged in providing marketing support services to majority of businesses within GE, classified under Energy Infrastructure and Technology Infrastructure. MSD provides marketing support services exclusively to its AEs. GBS is an administration support services provider. It is engaged in providing these services only to its domestic and foreign AEs. In this division, ALP adjustment of 26,01,40,955/- has been contested by the assessee.

46. At the very outset, we have to state that out of 19 comparable companies selected by the assessee in its TP study, 18 comparables were rejected by the TPO. This itself shows that the TP study in this division was flawed. The main reason for rejecting the comparables given by the TPO is that these comparables were mainly engaged in providing security services or travel related services etc which are not at all comparable to those segments of the assessee which is broadly an administrative service segment. Since the 18 comparables were rejected by the TPO and only one valid comparable survived, the TPO had no choice but to work out the ALP on the basis of fresh search.

47. Before us, the assessee has challenged the inclusion of the following comparables:

1. TSR Darashaw Limited

In his written submissions, the learned counsel has reiterated what has been contended before the TPO/DRP.

48. We have carefully gone through the written submissions. We do not find any force in the claim of the assessee. On a perusal of the annual report of TSR Darashaw Ltd, we find that this company is engaged in the activities of payroll management, traditional registry service and record management activity, which are functionally administrative and management activities and, therefore, functionally comparable. On the contention of the assessee that this company is engaged in development of software, we find that the development of software is in the final phase of launching and hence do not have much relevance for the year under consideration. We, therefore, do not find any error or infirmity in the inclusion of this company. This company will remain in the final set of comparables. The assessee has referred to various judicial decisions wherein the coordinate benches have rejected the inclusion of TSR Darashaw Limited. We are of the considered view that each case has to be

considered on the facts of its own and facts of the case in hand justify the inclusion of TSR DarashawLtd in the final set of compatibles. We order accordingly.

## 2. APTICO LIMITED

49. Referring to the income from operations of this company, the learned counsel pointed out that Apitco Ltd is not rendering market support services but is engaged in the provision of technical and engineering consultancy services. We do not find any force in this contention of the learned counsel. Income from operations of this company is as under:

### **SCHEDULE - 11**

#### **INCOME FROM OPERATIONS**

Micro Enterprises Development	5,729,192
Skill Development	3,300,091
Entrepreneurship Development	10,255,558
Tourism & Research Studies	4,186,253
Project related Services, Infrastructure Planning & Developmen	36,566,465
Environment Management	1,538,346
Energy related Services	2,320,885
Cluster Development	49,485,525
Asset Reconstruction & Management Services	6,050,759
Emerging Areas	-

**119,433,074**

50. A perusal of the above shows that this company is not into engineering type of service but is a consultancy entity. The revenue from nature of services are evident from figures given hereinabove.

We, therefore, find no reason for the exclusion of this company from the final set of comparables. We, accordingly, direct the TPO/AO to keep this company from the final set of comparables. Various benches of the Tribunal may have excluded this company on the facts of those cases but the facts of the case in hand clearly suggests that Aptico Limited remains in the final set of comparables.

#### GLOBAL PROCUREMENT CONSULTANTS LIMITED

51. The annual report of this company suggests that this company is indirectly held by the government as Export Import Bank, which is a public financial institution, holding more than 25% of the subscribed capital of this company and as per section 224A of the Companies Act, 1956, such company has to appoint auditors as per special resolution, which has been followed by this company. Being a public sector undertaking itself is a strong ground for exclusion of this company from the final set of comparables. We direct accordingly.

52. Another contention of the ld. counsel is that there is an arithmetical error in the margin of concept communications for which the DRP has issued necessary directions but have not been followed by

the TPO. We accordingly direct the TPO to give effect to the directions of the DRP.

53. The learned counsel has further brought to our notice that after change in remuneration policy from cost +5% to cost +25% market transactions in MSD and oil and gas division are at arms length. It is the say of the learned counsel that if the TPO/AO take cognizance of the increased mark up, there would not be any adjustment in respect of these business divisions.

54. We are of the considered view that if there is change in the remuneration policy by which cost +5% mark-up is increased to cost +25% mark-up, the TPO/AO must examine this change in the remuneration policy and, if found correct for the year under consideration, the same may be given effect to and the ALP adjustment should be decided afresh accordingly.

55. To sum up, for the sake of repetition, the assessee is engaged in rendering marketing support services and companies undertaking similar business operations are not available in the public domain. Therefore, a pragmatic approach has to be undertaken for selecting

the most likely comparable companies, and such companies should be service providers and on the basis of this, we have given our findings hereinabove.

VII TECHNICAL SUPPORT [SENSING AND INSPECTION TECHNOLOGIES DIVISION]

TECHNICAL SUPPORT [TRANSPORTATION DIVISION] AND TECHNICAL SUPPORT [OIL GAS DIVISION]

56. Under technical support sensing and inspection technology division, service engineers are sent to customer locations in India to provide technical support services. Technical services provided to AEs thus include installation, product clarification and break down/maintenance visits. Under technical transportation division, the assessee provides technical support or warranty support in relation to GE transportation products on behalf of the AEs and under technical support oil and gas division, the assessee analyses technical and material Non-conformities coming from the sites and classify and prioritise them.

57. At the very outset, the learned counsel for the assessee referred to the chart of comparable companies as Annexure -I and pointed out that these companies should have been included because they are performing similar functions as by two comparable companies considered by the TPO. It is the say of the learned counsel that the claim of the assessee has not been properly appreciated by the DRP/TPO.

58. We have carefully considered the chart as referred by the learned counsel. We find that almost all comparable companies have been rejected on the basis of functional dissimilarity or on the basis of some filters. In our considered opinion, it would be in the interest of justice to revisit the comparabilities of these companies as per analysis given by the assessee in the following charts:

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
1	Antelec Limited	Rejected on the basis of being functionally dissimilar	Note 2 of Schedule 15 of notes to accounts state that electrical jobs executed are accounted at contract rates. Page 27 states that the Company is principally involved in execution of electrical contracts. Appellant on page 28 of the written submissions has provided that GEIPL in this divisions sends service engineers to customer locations in India to provide technical support services. The technical services provided include installation, product clarification and break down / maintenance visits, technical support or warranty services and analysis of technical and material non-conformities coming from the sites. Your Lordships would appreciate that Antelec provides electrical job contracts which can be compared to the installation, maintenance visits and warranty services provided by Appellant. Hence, this company is functionally comparable. Appellant pleads your Lordships to direct AO / TPO to accept this Company
2	EDAC Engineering Limited	Rejected on the basis of failing the RPT filter	RPT to sales of this company is 17.21%, whereas TPO has considered 25% as the threshold. Therefore this company is to be considered as a comparable. Appellant pleads your Lordships to direct AO / TPO to accept this Company
3	Everest Infra Energy Limited	Rejected on the basis of being functionally dissimilar	Page 4 of the annual report states that Company is engaged in the business of the Rural Electrification Projects and Road Projects. Appellant on page 28 of the written submissions has provided that GEIPL in this divisions sends service engineers to customer locations in India to provide technical support services. The technical services provided include installation, product clarification and break down / maintenance visits, technical support or warranty services and analysis of technical and material non-conformities coming from the sites. Your Lordships would appreciate that installation, maintenance visits and warranty services provided by Appellant can be compared to the projects undertaken by this Company. Appellant pleads your Lordships to direct AO / TPO to accept this Company

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
4	Isgec Covema Limited	Rejected on account of no operational income during the year	The income statement of the financials state that the Company has earned receipts of INR 4,95,65,655 in the current year. Thus the claim of DRP / TPO is incorrect. Appellant pleads your Lordships to direct AO / TPO to accept this Company
5	Lurgi India Co Pvt Limited	Rejected on the basis of different financial year	Appellant has made detailed submissions in this regard on page 12 of written submissions.
6	MN Dastur & Co Limited	Rejected on the basis of current year data is not available in public domain	Financials for FY 2010-11 are available in public domain. Appellant pleads your Lordships to direct AO / TPO to accept this Company
7	Mecon Limited	Rejected on the basis as the company is failing service income filter	Company earns income from services rendered and construction contracts. Note 8 under Schedule 11 of notes to accounts states: 8.2. Execution of Projects 8.2.1 Credit for execution of projects to the clients against contracts or letters of Intent or work orders or exchange of letters which stipulate fixed price is taken into account on the basis of percentage of progress achieved during the financial year. Appellant submits that the construction contracts are also in the nature of services rendered. So entire revenue earned by the Company is from services. Appellant also renders installation, maintenance of equipments sold to clients. Thus, the transactions can be equated. Therefore, Appellant pleads your Lordships to direct AO / TPO to accept this Company
8	Raunaq International Limited	Rejected on the basis of being functionally dissimilar	Page 4 of the annual report states - Company is engaged in the execution of turnkey engineering contracts in the field of mechanical, civil and associated electrical engineering applications.

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
9	Simon India Limited	Rejected on the basis of being functionally dissimilar	Page 12 states that the Company earns income from engineering supplies and services. Page 21 states that the Company offers technology, basic engineering, detailed engineering, project management, procurement and construction services and contracting capability covering a wide spectrum of the process industries.
10	Simplex Infrastructures Limited	Rejected on the basis of being functionally dissimilar	Page 87 states - Company has two segment - Construction business and Others which includes income from wind mill, real estate, and hire of plant and equipment including oil drilling rig
11	Sterling & Wilson Limited	Rejected on the basis of being functionally dissimilar	Page 21 states - Company renders MEP services - Mechanical, Electricals and Plumbing and fire fighting. These are technical support services and can be compared to the business of the Appellant.
12	Sunil Hitech Engineers Limited	Rejected on the basis as the company is failing service income filter	Page 24 of the annual report states that the Company is has Project segment and overhauling & Maintenance segment. Company is engaged in the business of Fabrication, Erection & Commissioning of Boilers (Power Plants), Erection, Testing, Commissioning of ESP, Transmission & Distribution and EPC Contract and Repair & Maintenance, Overhauling and Renovation of Boilers and Auxiliaries, Ash Handling Systems etc. Your Lordships would appreciate that the operations are similar to the Appellant. Therefore, Appellant pleads your Lordships to direct AO / TPO to accept this Company
13	Supreme Offshore Constructions & Technical Services Limited	Rejected on the basis of being functionally dissimilar	Page 20 of the annual report states that the Company is engaged in engineering construction project.

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
9	Simon India Limited	Rejected on the basis of being functionally dissimilar	Page 12 states that the Company earns income from engineering supplies and services. Page 21 states that the Company offers technology, basic engineering, detailed engineering, project management, procurement and construction services and contracting capability covering a wide spectrum of the process industries.
10	Simplex Infrastructures Limited	Rejected on the basis of being functionally dissimilar	Page 87 states - Company has two segment - Construction business and Others which includes income from wind mill, real estate, and hire of plant and equipment including oil drilling rig
11	Sterling & Wilson Limited	Rejected on the basis of being functionally dissimilar	Page 21 states - Company renders MEP services - Mechanical, Electricals and Plumbing and fire fighting. These are technical support services and can be compared to the business of the Appellant.
12	Sunil Hitech Engineers Limited	Rejected on the basis as the company is failing service income filter	Page 24 of the annual report states that the Company is has Project segment and overhauling & Maintenance segment. Company is engaged in the business of Fabrication, Erection & Commissioning of Boilers (Power Plants), Erection, Testing, Commissioning of ESP, Transmission & Distribution and EPC Contract and Repair & Maintenance, Overhauling and Renovation of Boilers and Auxiliaries, Ash Handling Systems etc. Your Lordships would appreciate that the operations are similar to the Appellant. Therefore, Appellant pleads your Lordships to direct AO / TPO to accept this Company
13	Supreme Offshore Constructions & Technical Services Limited	Rejected on the basis of being functionally dissimilar	Page 20 of the annual report states that the Company is engaged in engineering construction project.

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
14	Suzlon Infrastructure Service Limited	Rejected on the basis of being functionally dissimilar	Company has merged and Financials for FY 2010-11 are not available
15	Thermax Engineering Construction Co Limited	Rejected on the basis of being functionally dissimilar and also that data for relevant FY i.e. 2010-11 is not available on the public domain	Page 83 of annual report states Company earns revenue in respect of projects for construction of plants and systems, involving design engineering, fabrication, supply, erection (or supervision thereof), commissioning. Also, the financial statements for FY 2010-11 are available in public domain. Appellant pleads your Lordships to direct AO / TPO to accept this Company
16	Thermax Instrumentation Limited	Rejected on the basis of being functionally dissimilar and also that data for relevant FY i.e. 2010-11 is not available on the public domain	Page 27 of the annual report states that the Company is engaged in the civil works and erection & commissioning of co-generation and power plants. Also, the financial statements for FY 2010-11 are available in public domain. Appellant pleads your Lordships to direct AO / TPO to accept this Company
17	UB Engineering Limited	Rejected on the basis of service income ratio	Revenue recognition in Schedule L of notes to account states - Revenue from construction and project related activities is recognized by applying percentage of completion to the contract value. Your Lordships would appreciate that the servicing projects are also rendition of services, hence, the company earns 100% revenue from services.

Annexure 1 - Analysis of Appellant's Comparable companies rejected by TPO in respect of Technical Support Services Division - Refer Ground 13 of Grounds of appeal

S.No	Name of Company	Reason for rejection by DRP / TPO	Appellant's Analysis
18	United Van Der Horst Limited	Rejected on the basis of service income ratio	Appellant accepts TPO / DRP's comments
19	Wapcos Limited	Rejected on the basis of service income ratio	Page 26 of annual report states that the Company has two segments - Consultancy & Engineering projects and Lump Sum Turnkey projects. Page 18 and 19 talk about the revenue from services rendered. (A) Consultancy Contracts Income from services rendered commensurate with the progress of work under the contract, is accounted for: (B). Turnkey Projects a. Consultancy fees is recognized as per terms of contract, in cases where such fee is stipulated as a separate item and included in consultancy fees. Your Lordships would appreciate that in both the segments, the Company earns income from services or consultancy fee. Therefore, 100% of the income is from rendition of services. Appellant pleads your Lordships to direct AO / TPO to accept this Company
20	Yashmun Engineers Limited	Rejected on the basis of service income ratio	Appellant submits that the Company earns income from the following sources: Sale of products - INR 73,00,400 Sale of traded items - INR 1,08,27,548 Labour charges - INR 8,37,10,448 Works contract - INR 3,21,58,921 The revenue from labour charges and works contract forms 86.47% of the total revenue, which is higher than the 75% filter prescribed by the TPO. Appellant pleads your Lordships to direct AO / TPO to accept this Company

Page 5 of 5

59. The TPO is directed to re-examine the issues raised by the assessee hereinabove and decide the issue afresh after giving reasonable opportunity of being heard to the assessee.

### CORPORATE TAX ISSUES

### DISALLOWANCE OF WARRANTY AND A REPLACEMENT EXPENSES.

60. While scrutinising the return of income, the assessing officer noticed that the assessee has debited Rs.3,28,17,167/- to the profit and loss account under the head 'Warranty and Replacement

Expenses'. The assessee was asked to show cause as to why this provision should not be disallowed.

61. In its reply, the assessee strongly contended that warranty costs are estimated by management on the basis of technical evaluation of and past experience. It was explained that provision is made for estimated liability in respect of warranty cost in the year of sale. Further, provision for warranty is utilised to make good the amount spent on replacement of parts and accessories and other related expenses on the event of failure of the product. It was claimed that the liability for warranty is triggered on sale of products eligible for warranty. It was strongly contended that the said provision is not contingent in nature and hence the same should be allowed as deduction.

62. The assessing officer rubbished the claim of the assessee stating that the assessee has not given any documents to prove that the provision is based on scientific working. The AO further observed that similar view was taken in A.Y 2008-09,2009-10 and 2010-11.

63. Objections raised before the DRP were similarly dismissed.

64. Before us, the learned counsel for the assessee reiterated what has been stated before the lower authorities.

65. Per contra, the ld. DR strongly supported the findings of the assessing officer.

66. We have given careful consideration to the orders of the authorities below. It is not in dispute that similar disallowances were made in A.Y 2006-07 and 2007-08 and the matter travelled up to the Tribunal and the coordinate bench in ITA Nos. 3064/A/10 and 2749/A/11 has considered this dispute vide ground No. 3 of that appeal. The relevant findings of the coordinate bench read as under:

"16. We have heard the rival submissions and perused the material on record. It is an undisputed fact that assessee has debited expenses on account of warranty expenses. The expenses are with respect to warranty is an undisputed fact. The H'ble Apex Court in the case of Rotork Controls (supra) has laid down the conditions which are required to be satisfied for making claim in respect of post sale customer service and has laid down the principle pertaining to the same.

The Hon'ble Apex Court in that case noted that provision made for warranty @ 2% of turnover based on past experience (historical trend) was most appropriate as it fulfilled accrual concept as well as matching concept. It further held that "for determining an appropriate historical trend, it is important that the company has a proper accounting system for capturing the relationship between the nature of the sales, the warranty provisions made and the actual expenses incurred against it subsequently. Thus, the decision on the warranty provision should be based on past experience of the company. A detailed assessment of the warranty provisioning policy is required particularly if the experiences suggests that I.T.A Nos.3064 /Ahd/2010,2749/Ahd/2011 A.Y. 2006-07 &2007-08 Page No 12 GE India Industrial Pvt. Ltd. vs. DCIT warranty provisions are generally reversed if they remained unutilized at the end of the period prescribed in the warranty. Therefore, the company should scrutinize the historical trend of warranty provisions made and the actual expenses incurred against it.

On this basis a sensible estimate should be made. The warranty provision for the products should be based on the estimate at the year end of future warranty expenses. Such estimates need reassessment every year. As one reaches close to the end of the warranty period, the probability that the warranty expenses will be incurred is considerably reduced and that should be reflected in the estimation amount. Whether this should be done through a pro rata reversal or otherwise should require assessment of historical trend. If warranty provisions are based on experience and historical trend(s) and if the working is robust then the question of reversal in the subsequent two years, in the above example, may not arise in a significant way. It is important to note that there are four important aspects of provisioning. They are-provisioning which relates to the present obligation, it arises out of obligating events, it involves outflow of resources and, lastly, it involves reliable estimation of obligation."

17. We find that in the present case there is no finding with respect to the compliance of aforesaid guidelines of Apex Court by assessee in the order of AO or DRP. We are therefore of the view that the matter needs to be examined in the light of the principles laid down by Hon'ble Apex Court. We therefore remit the matter to the file of AO for deciding the issue afresh in the light of the decision of Hon'ble Apex Court in the case of Rotork Controls (supra) and after giving a reasonable opportunity of hearing to the assessee. Thus this ground of assessee is allowed for statistical purposes."

67. In light of the findings given by the coordinate bench [supra] we direct accordingly. Ground No. 14 is allowed for statistical purposes.

68. Ground number 15 relates to disallowance of claim of bad debts written off.

69. While scrutinising the return, the Assessing Officer noticed that the assessee has written off bad debts amounting to Rs.6,94,01,066/-. The assessee was asked to provide details of these bad debts.

70. In its reply, the assessee stated that these debts are actually written off and strong reliance was placed on the case of TRF Limited in Civil Appeal No. 5293 and 5294 of 2003.

71. The assessee was further asked to furnish details of income accounted for two amount claimed as return off. On a perusal of the details, the Assessing Officer noticed that the assessee could furnish only details in respect of Rs.5,35,56,246/-. The Assessing Officer, accordingly, disallowed the balance of Rs.1,58,44,820/-.

72. When objections were raised before the DRP, the DRP directed the AO to examine the facts and allowed the claim to the extent allowable u/s 36(1)(vii) of the Act. Accordingly, fresh notice was issued to the assessee and once again was asked to furnish details and after again perusing the details, the AO finally came to the conclusion that the assessee could not explain the write off amounting to Rs.1,50,93,959/- and made addition.

73. Before us, the learned counsel for the assessee drew our attention to the documents exhibited in the paper book and pointed out that the assessee had furnished complete details which have not been properly appreciated by the assessing officer. It is the say of the ld. counsel for the assessee that the assessee has fulfilled all the conditions specified u/s 36(1)(vii) read with section 36(2) of the Act and pleaded that actual write off of debts should be allowed.

74. Per contra the ld. DR supported the findings of the Assessing Officer.

75. We have carefully considered the orders of the authorities below and the submissions made by the ld. representatives. We have also perused the relevant documentary evidences referred to by the learned counsel which are exhibited in the paper book. In our considered opinion, if the debts are actually written off from the books, the ratio laid down by the Hon'ble Supreme Court in case of TRF [supra] squarely applies, which is also acknowledged by CBDT in its Circular No. 551 dated 22.012019. Once the debts have been actually written off, the same has to be allowed. We, accordingly, direct the

Assessing Officer to delete the addition of Rs.1,50,93,959/-. Ground No.15 is, accordingly, allowed.

76. Ground No. 16 relates to disallowance of claim of advances written off.

77. The Assessing Officer noticed that the assessee has claimed Rs.80,39,243/- as advances written off. The assessee was asked to furnish the complete details. The assessee furnished the details which were dismissed by the assessing officer. The Assessing Officer was of the opinion that the assessee has not submitted any factual details of such advances written off, that is, party wise break up, purpose of advance, date and year of such advance made and why the same has been written off. The assessing officer was of the further belief that such a write off of advances are in the nature of debts and therefore, the same has to be considered in the light of section 36(1)(vii) read with section 36(2) of the Act. The Assessing Officer made an addition of Rs. 80,39,243/-, which was confirmed by the DRP.

78. Before us, the learned counsel for the assessee drew our attention to the details of advances written off which are exhibited in

the paper book. It is the say of the ld. counsel that advances are in the nature of trade advances, which were made in regular course of business and since advances were found to have become irrecoverable, the same were written off.

79. Per contra, ld. DR supported the findings of the Assessing Officer.

80. We have carefully considered the issue. A perusal of the relevant pages exhibited in the paper book shows that these advances were in the nature of trade advances, which were made in regular course of business and were given to suppliers in the normal course of business and some are earnest money deposits and some are guarantee deposits, which were furnished in furtherance of business of the assessee. In our considered opinion, such advances being directly related to the business activities of the assessee, write off of the same should be allowed. We accordingly direct the Assessing Officer to delete the addition of Rs.80,39,243/-. Ground No. 16 is, accordingly, allowed.

81. Ground Nos. 17 and 18 relate to the claim of depreciation@ of 60% on WDV of software and 25% on WDV of capital expenditure. We find that the DRP has given a categorical direction to the Assessing Officer to allow depreciation on WDV. However, we find that the TPO

has not followed the directions of the DRP. In our considered opinion, directions of the DRP are mandatory for the Assessing Officer and the Assessing Officer should have followed the directions. We, accordingly, direct the Assessing Officer to follow the directions of the DRP and allow claim of depreciation. Ground Nos. 17 and 18 are, accordingly, allowed for statistical purposes.

82. The only grievance which remains to be adjudicated is that the Assessing Officer has not granted self-assessment tax. We direct the Assessing Officer to allow credit of self-assessment tax as per provisions of the law.

83. In the result, the appeal filed by the assessee in ITA No. 1684/DEL/2016 is allowed in part for statistical purposes.

**The order is pronounced in the open court on 08.10.2020.**

**Sd/-  
[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Sd/-  
[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> October, 2020

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	08.10.2020
Date on which the final order is uploaded on the website of ITAT	08.10.2020
Date on which the file goes to the Bench Clerk	08.10.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	