

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.469/Bang/2016
AssessmentYear: 2011-12

Deputy Commissioner of Income-tax Circle-1(1)(2) Bangalore	Vs.	M/s. Tenova Technologies Pvt. Ltd. (formerly known as Bateman Engineering (India) Pvt. Ltd.) 5 th Floor, A Wing, I Think Techno Campus, Pokhran Road No.2, Thane West, Thane, Maharashtra 400 601 PAN NO : AACCB8552F
APPELLANT		RESPONDENT

IT(TP)A No.749/Bang/2016
Assessment Year: 2011-12

M/s. Tenova Technologies Pvt. Ltd. (formerly known as Bateman Engineering (India) Pvt. Ltd.) Maharashtra 400 601	Vs.	Deputy Commissioner of Income-tax Circle-1(1)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Nageswar Rao, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	10.02.2022
Date of Pronouncement	:	15.02.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the final assessment order dated 20.1.2016 passed by the A.O. for assessment year 2011-12 u/s 143(3) r.w.s. 144C(13) of the Income-tax Act,1961 ['the Act' for short] in pursuance of directions given by Ld. Dispute Resolution Panel ("Ld. DRP").

2. At the time of hearing, the Ld. A.R. pressed only ground No.6 relating to working capital adjustment and ground No.10 relating to two comparable companies. Both the grounds read as under:

"6. Notwithstanding the above grounds, the learned TPO/AO erred in not passing an appropriate order giving effect to the directions of the DRP, consequently performing an adjustment to the extent of INR 75,27,169. The learned TPO erred in considering the working capital adjustment as 2.96% in place of 5.835.

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10. The learned AO/TPO has erred by not including Engineering Projects (India) Limited and McNally Bharat Engineering Company Ltd as a comparable company in the final set of comparable companies, due to inadvertent error in directions of the Hon'ble Dispute Resolution Panel."

3. The facts relating to the case are stated in brief. The assessee is a subsidiary of Bateman Engineering N.V., Netherlands and it is engaged in providing engineering contracting and project management services to mineral resource sector. The assessee, vide its letter dated 20th April, 2021 has informed the ITAT that the name of the assessee was changed to Tind Projects Private Limited and again changed to the present name M/s Tenova Technologies Private Limited with effect from 23rd June, 2020.

4. The financial details and international transactions entered by the assessee with its associated enterprises are tabulated as under by TPO:-

“The financials of the taxpayer for the F.Y. 2010-11 as per P&L account are as under:

<i>Operating Income (OR)*</i>	<i>110,01,25,906/-</i>
<i>Expenditure (OC)**</i>	<i>110,28,25,626/-</i>
<i>Operating Profit (OP)</i>	<i>(-)26,99,720/-</i>
<i>OP/OC</i>	<i>(-)0.24%</i>
<i>OP/OR</i>	<i>(-)0.24%</i>

** Excluding other income save scrap sales.*

*** Excluding interest on vehicle loan & loss on sale of fixed assets.*

International transactions of the taxpayer during F.Y. 2010-11

The taxpayer company has entered into the following international transactions with its Associated Enterprises (AEs) during the financial year 2010-11:

<i>International transactions</i>	<i>Amounts (Rs.)</i>
<i>Purchase of Project material</i>	<i>11,37,09,229/-</i>
<i>Receipt from Technical Services</i>	<i>7,42,06,056/-</i>
<i>Provision for project execution services</i>	<i>26,48,042/-</i>
<i>Reimbursement of expenses</i>	<i>5,14,37,467/-</i>
<i>Recovery of expenses</i>	<i>53,18,628/-</i>
<i>Total</i>	<i>Rs.24,73,19,422/-</i>

5. The assessee, in its TP study, selected CUP method as against appropriate method. The TPO did not accept the same and he took the view that TNM method is the most appropriate method. Accordingly, he rejected the TP study and has selected following 15 comparable companies:-

<i>Sl.No.</i>	<i>Company name</i>	<i>OP/Sales %</i>	<i>OP/OC%</i>
<i>1</i>	<i>Larsen & Toubro Ltd.</i>	<i>13.71</i>	<i>15.89</i>
<i>2</i>	<i>Mahindra Consulting Engineers Ltd.</i>	<i>23.25</i>	<i>30.29</i>

3	<i>SPML Infra Ltd.</i>	7.25	7.82
4	<i>TCE Consulting Engineers Ltd.</i>	19.38	24.04
5	<i>Angelique International Ltd.</i>	9.48	10.47
6	<i>BGR Energy Systems Ltd.</i>	11.38	12.84
7	<i>Engineering Projects (India) Ltd.</i>	1.26	1.28
8	<i>Engineers India Ltd.</i>	28.52	39.90
9	<i>Hindustan Dorr-Oliver Ltd.</i>	9.06	9.96
10	<i>Jaihind Projects Ltd.</i>	15.58	18.46
11	<i>Mcnally Bharat Engg. Co. Ltd.</i>	5.96	6.34
12	<i>Petron Engineering Construction Ltd.</i>	9.56	10.57
13	<i>Raunaq International Ltd.</i>	8.98	9.87
14	<i>Simon India Ltd.</i>	22.68	29.34
15	<i>UB Engineering Ltd.</i>	7.77	8.42
	Average	12.11%	14.72%

5. The TPO adopted operating profit/operating sales as profit level indicator. The average margin of the comparable companies was worked out at 12.11%. Accordingly, the TPO made transfer pricing adjustment of Rs.1,43,40,084/- as given below:-

<i>Arm's Length Mean Margin on Sales</i>	<i>12.11%</i>
<i>Operating Revenue</i>	<i>110,01,25,906/-</i>
<i>Arms Length Cost 87.89% of Operating Revenue (ALP)</i>	<i>96,69,00,659/-</i>
<i>Cost paid</i>	<i>110,28,25,626/-</i>
<i>Shortfall:</i>	<i>13,59,24,967/-</i>
<i>*Proportionate TP adjustment [13,59,24,967 x 10.55%]</i>	<i>Rs.1,43,40,084/-</i>

6. The assessee contested 12 comparable companies out of the list of companies selected by the TPO by filing objection before Ld DRP, i.e., the assessee accepted following three companies:-

- (a) Engineering Projects (India) Ltd
- (b) Hindustan Dorr-Oliver Ltd
- (c) Mcnally Bharat Engg. Co. Ltd

The Ld DRP upheld inclusion of following two comparable companies:-

(i) Raunaq International Ltd

(ii) Petron Engineering Construction Ltd

Hence, after the order passed by Ld DRP, the above said five companies shall remain as comparable companies.

7. The Ld A.R submitted that the confusion arose to the TPO/AO because of the following observation made by Ld DRP at page 10 of its order:-

“Having considered the submission, it is noticed by us that the assessee has objected 14 out of 15 companies, the remaining one company which is not under dispute is Hindustan Door-Oliver Ltd. In addition to that we found that Raunaq International Ltd and Petron Engineering Construction Ltd are found functionally comparable. Accordingly we direct the Assessing Officer to exclude other 12 companies being functionally different and determine the ALP based on the above three comparables.”

The Ld A.R submitted that there would remain five comparable companies after the order of Ld DRP, since the assessee has contested only 12 comparable companies out of 15 before Ld DRP. However, the Ld DRP has erroneously presumed that the assessee has contested 14 comparable companies out of 15. In fact, the assessee did not contest following three companies before Ld DRP:-

(a) Engineering Projects (India) Ltd

(b) Hindustan Dorr-Oliver Ltd

(c) McNally Bharat Engg. Co. Ltd

However, the Ld DRP has observed that the assessee did not contest only “Hindustan Dorr-Oliver Ltd” and accordingly gave directions to TPO/AO as mentioned above. Accordingly, while giving effect to the order of Ld DRP, the TPO/AO did not include Engineering Projects (India) Ltd and McNally Bharat Engg. Co Ltd. Accordingly, the Ld A.R submitted that the TPO/AO may be directed to include above said two companies also in the list of comparable companies.

8. We heard Ld DR on this issue and perused the record. From the order passed by Ld DRP, we notice that the assessee did not object inclusion of Engineering Projects (India) Ltd and McNally Bharat Engg. Co Ltd. Thus, the assessee has objected inclusion of 12 comparable companies out of 15 selected by TPO. We notice that the Ld DRP has given above said directions on the presumption that the assessee has objected 14 comparable companies. Accordingly, it has given direction to consider only three comparable companies, whereas, the TPO/AO is required to consider five comparable companies. Since the direction given by Ld DRP is erroneous, we modify the same and accordingly direct the TPO/AO to determine the ALP of the transaction by considering following five comparable companies:_.

- (a) Engineering Projects (India) Ltd
- (b) Hindustan Dorr-Oliver Ltd
- (c) McNally Bharat Engg. Co. Ltd
- (d) Raunaq International Ltd
- (e) Petron Engineering Construction Ltd

9. The next issue urged by the assessee relates to granting of working capital adjustment. We notice that the TPO did not grant adjustment towards working capital difference. However Ld DRP, following the decision rendered by the co-ordinate bench in the case of Rambus Chip Technologies (India) P Ltd (IT(TP)A No.23/Bang/2015) has directed the TPO/AO to grant working capital adjustment on actual basis. It is the submission of Ld A.R that, since the number of comparable companies has increased from 3 to 5, the working capital adjustment will also undergo a change. Accordingly, he prayed that the AO/TPO may be directed to grant working capital adjustment on actual basis.

10. We heard Ld D.R on this issue. We find merit in the prayer put forth by Ld D.R. Accordingly, we direct the AO/TPO to grant working capital adjustment on actual basis.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 15th Feb, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 15th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.