

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'DB-A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
AND
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.835/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2020-21)

DELICATESSEN ENGINEERING SERVICES PRIVATE LIMITED, HYDERABAD PAN:AAGCD8678N (Appellant)	Vs.	Dy. CIT. CIRCLE- 8(1), HYDERABAD (Respondent)
निर्धारिती द्वारा / Assessee by: Shri H. Srinivasulu, Advocate		
राजस्व द्वारा / Revenue by: Shri B Bala Krishna, CIT(DR)		
सुनवाई की तारीख / Date of hearing: 26/02/2025		
घोषणा की तारीख / Pronouncement: 16/05/2025		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the final assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the I.T. Act, 1961 dated, 18/07/2024, in pursuant to the directions issued by the DRP-1 Bengaluru, dated 26/02/2024 u/s 144C(5) of the I.T. Act, 1961 and relating to A.Y.2020-21.

2. The assessee has raised the following grounds of appeal:

Grounds of Appeal against the order u/s 250 of the Income Tax Act, 1961 (“the Act”)

The Assessment order with adjustment of INR 12,95,02,892 passed by the Assessment Unit, Income Tax Department (“Ld. AO”) / Transfer Pricing Officer (“Ld. TPO”) is erroneous both in law and on the facts of the case. The Ld. AO / TPO erred by making an adjustment under section 92CA(3) of the Act. The Ld. AO / TPO erred issuing adverse order without considering the facts and circumstances of the case by disregarding the submissions made by the Appellant.

1. The order of the Ld. AO / TPO u/s 143(3) r.w.s 144C(13) read with section 144B of the Act is erroneous both in law and on the facts of the case.
2. The Ld. AO / TPO is not justified in arriving at the arm’s length margin of 16% by using wrong comparables and not considering the adjustments made in the Assessee Company’s PLI thereby resulting in the TP adjustment of INR 12,95,02,892.
3. The Ld. AO / TPO erred in considering the transactions pertaining to the Design services as KPO and benchmarked the transaction accordingly.
4. The Ld. AO / TPO erred by excluding comparable companies as mentioned below selected by Assessee Company which has passed RPT filter:

Sr. No.	Comparable Companies
1	Enoia babcock borsig Pvt. Ltd.
2	Citec Engineering India Pvt. Ltd.
3	Devita Engineering (India) Pvt. Ltd.
4	NPCC Engineering Pvt. Ltd.
5	Intec Infra - Technologies Pvt. Ltd.
6	May Softech Pvt. Ltd.

5. The Ld. AO / TPO erred by selecting M/s Mahindra Consulting Engineers Limited as a comparable company even though the company -
 - has been in the business for almost 27 years
 - fails RPT filter
 - is functionally different.
6. The Ld. AO / TPO erred by selecting M/s Genesys International Corporation Limited as a comparable company, which is -
 - has been in the business for almost 37 years,
 - non availability of segmental information and is functionally different
7. The Ld. AO / TPO erred by selecting M/s L & T Technologies Services Limited as a comparable company as the company is -
 - a huge conglomerate and is part of Larsen and Toubro Group,
 - having turnover more than 115 times from that of the assessee company and
 - has its own brand and is functionally different.
8. The Ld. AO / TPO is not justified in including Exceptional item amounting to INR 5,68,86,667 as part of operating cost.
9. The Ld. AO / TPO is not justified in considering Amortisation of Goodwill amounting to INR 1,42,69,565 as part of operating cost.
10. The Ld. AO / TPO is not justified in considering Management Fee amounting to INR 6,58,03,545 and Value Fee amounting to INR 1,62,53,333 as part of operating cost.
11. The Ld. AO / TPO is not justified in rejecting capacity utilisation adjustment made by the Assessee Company amounting to INR 2,11,93,445.
12. The Ld. AO / TPO ought to have given an opportunity to file additional comparables which are functionally comparable to the Assessee.

Each of the above ground of appeal is independent and without prejudice to the other grounds of objections preferred by the Appellate.

The Appellate craves leave to add, alter, vary, omit, substitute or amend one or more of the above grounds of objections at any time before or at the time of proceedings so as to enable the Hon'ble ITAT to decide these grounds according to facts and law.

3. The appellant, M/s. Delicatessen Engineering Services (P) Ltd is engaged in the business of construction and site preparation, has filed its return of income for the A.Y 2020-21 on 05/02/2021 declaring current year loss of Rs.4,32,29,914/-. The company brought Global Engineering Services (GES) Division of MW High Tech Project India (P) Ltd through business transfer agreement. The appellant has reported international transaction in respect of sale engineering design services to its AEs. The ALP of the international transaction in EDS segment provided to its AEs has been determined by applying the TNNM method as the most appropriate method in the facts and circumstances of the case. The operating cost to the operating profit has been taken to be the profit level indicator (PLI) in TNNM analysis. The appellant has selected 8 comparable companies for engineering design services on the basis of search conducted in the public data basis.

4. During the course of assesment proceedings, a reference u/s 92CA of the I.T. Act, 1961 has been made to the TPO to determine the ALP of international transactions with its AEs. During the course of TP proceedings, the TPO examined the taxpayers TP study and relevant search criteria adopted for selection of comparables. The TPO after analyzing the functions performed by the assessee and relevant search criteria considered for selection of comparables has observed that the assessee had considered certain inappropriate filters which are not relevant to identify the companies for the purpose of TP analysis. Further, the TPO had also analyzed the functions carried out by the

appellant in EDS segment and after considering the rule 10TA(g) of the IT Rules, 1962 which defines the Knowledge Process Outsource (KPO) services after considering the relevant definition of KPO observed that the functions performed by the assessee to its AE in EDS segment falls under engineering and design services and therefore, re-characterized the appellant as a KPO Service Provider. The TPO had also examined the TP study in light of certain additional filters including the filters that has KPO/EDS income more than 75% of its operating revenue, companies whose net sales were less than Rs.1 crore and companies having more than 25% related party transactions were excluded. The TPO had also adopted various other filters and conducted a fresh TP study to identify 5 companies which were found to be functionally comparable to the transactions under examination and the same have been accepted in the list of final comparables. The final set of comparables along with year-wise OP/OC are as follows:

Table 4

	2018	2019	2020	
Company Name	OP/OC	OP/OC	OP/OC	Wt.Average
Mahindra Consulting Engineers Ltd.	47.27	11.59	8.89	19.41

L &T Technology Services Ltd.	20.72	23.36	25.88	23.61
Genesys International Corpn. Ltd.	44.66	14.84	5.42	27.97
Eclerx Services Ltd.	37.04	27.48	23.54	29.14
Ugam Solutions Pvt. Ltd.	26.06	38.67	5.64	32.99
Arithmetic Mean	26.62			

5. Further, the TPO has computed the Arithmetic Means of 5 comparables at 26.62% and then proposed the TP adjustment of Rs.11,01,15,941/- in respect of price received by the appellant from its AE for rendering engineering design services and issued a show-cause notice and called upon the assessee to file its objections, if any, for proposed adjustment. In response, the assessee has filed its objection for recharacterization of appellant company into KPO services provider and also rejection of TP study conducted by the assessee. The assessee had also raised objection for selection of 5 comparables by the TPO by raising various objections including difference between the FAR analysis and the

filters adopted by the TPO for selection of comparables. The TPO after considering the relevant objections filed by the assessee and also taken note of relevant provision of Rule 10TA of the I.T Rules 1962 which defines the KPO Services held that the services rendered by the appellant to its AEs in EDS segment falls under the KPO services and therefore, examined the objections filed by the assessee on each comparables including Mahindra Consulting Engineering Ltd, L&T Technology Services Ltd and Genesys International Corporation Ltd in the final set of comparables and has arrived at the arithmetic mean of OC/OP at 20.91%. Further, the TPO had also considered exceptional items being consultancy charges paid to M/s. Cyient Ltd by the erstwhile company MW High Tech Project India (P) Ltd amounting to Rs.5,68,86,667/- as part of operating cost to arrive at a total cost of Rs.49,56,96,297/- as against the total operating cost reported by the appellant at Rs.43,88,09,630/-. Further, the TPO after considering the operating cost of Rs.49,56,96,297/- has made a markup of 20.91% to arrive at ALP to be received by the assessee from its AEs for rendering services of Rs.59,93,46,393/-. Since the appellant has received revenue of Rs.,44,55,04,830/- from its AEs for rendering EDS services, the TPO had made a total adjustment of Rs.15,38,41,580/- to the international transaction of the assessee with its AEs.

6. The Assessing Officer, in pursuant to the order of the TPO passed u/s 92CA(3) of the Act, dated 30/07/2023 has passed draft assessment order u/s 144C(1) of the Act on

13/09/2023 and determined the total income of the assessee at Rs.11,06,11,670/- by making TP adjustment proposed by the TPO in respect of international transactions with its AEs.

7. The assessee has filed its objections against the draft assessment order passed by the Assessing Officer u/s 144C(1) of the Act dated 13/09/2023 before the DRP-1 Bengaluru and raised 11 grounds of objections and challenged the recharacterization of the services rendered by the appellant to its AEs as KPO services, rejection of the TP study conducted by the assessee including rejection of comparables, selection of fresh comparables and also re-computation of PLI by including consultancy charges paid to Cyient Ltd by the erstwhile company. The assessee had also challenged the rejection of capacity utilization adjustment sought by the assessee in light of under-utilization of capacity for the year under consideration.

8. The learned DRP after considering the relevant objections filed by the assessee and also taken note of various reasons given by the Assessing Officer to propose the TP adjustment has allowed the partial relief to the assessee, where the learned DRP has directed the TPO to include Prothious Engg. Services Ltd in the list of final set of comparables, provided on the basis of quantitative filters as adopted by the TPO and is part of the comparables. However, the DRP rejected all other objections taken by the assessee including exclusion of 3 comparables viz.,

Mahindra Consulting Engineering Ltd, L&T Technology Services Ltd and Genesys International Corporation Ltd on the ground that all the 3 companies are functionally comparable to the assessee company and are engaged in providing KPO services. The learned DRP further held that merely because of the high turnover, a company cannot be excluded when it passes all filters applied by the TPO for selection of comparables and further the broader functions performed by the companies are similar to the assessee company. The DRP had also rejected the ground raised by the appellant challenging recomputation of operating cost by including consultancy charges paid to Cyient Ltd on the ground that the said expenditure is part of the operating cost of the appellant company because such expenditure has been paid in pursuant to the agreement with Cyient Ltd by the erstwhile company and the same has been transferred to the appellant company by virtue of business transfer agreement. Therefore, observed that there is no merit in the argument of the assessee that it is one time and exceptional in nature and cannot be considered as operating cost. The learned DRP had also rejected the ground taken by the assessee challenging the reasons given by the TPO for not considering the amortization of goodwill and management fee and termination fee as part of operating cost on the ground that the amortization of goodwill is part of the operating cost of the assessee and also management fee & termination fee is part of the cost of the assessee as is evident from the treatment given by the assessee in its books of account. Therefore, rejected the grounds of objections filed by the assessee.

The DRP had also rejected capacity utilization adjustment sought by the assessee on the ground that a comparability adjustment must be carried on the profit margins of the comparables where a merit based method is used to determine the ALP. The capacity related details were required to be disclosed by manufacturing companies under erstwhile schedule of companies account, however, as per the new disclosure requirement, these details are not mandatory under Schedule-3. Hence it may be difficult to adjust for any capacity utilization between the assessee and comparable companies due to lack of sufficient data. Therefore, rejected the grounds taken by the assessee.

9. In pursuant to the directions issued by the DRP u/s 144C(5) of the I.T. Act, 1961, dated 20/06/2024, the Assessing Officer has passed the final assessment order u/s 143(3) r.w.s. 144C(13) of the Act on 18/07/2024 and determine the total income of the assessee at Rs.8,62,72,978/- by making adjustment of Rs.12,95,02,892/- to the international transactions of the assessee with its AEs for providing engineering design services. Aggrieved by the final assessment order passed by the Assessing Officer, the assessee is now in appeal before the Tribunal.

10. Ground Nos.1 & 2 of the assessee's appeal are general in nature and thus, not adjudicated.

11. Ground No.3 of assessee's appeal related to recharacterization of the services rendered by the assessee as knowledge process outsource or KPO services. The learned Counsel for the assessee submitted that the learned TPO has wrongly characterized the services rendered by the assessee as KPO only on the basis of definition of KPO services in terms of Rule 10TA of the I.T. Rules 1962 which contains engineering and design services. However, the fact remains that there is a difference between the engineering services and engineering and design services. The learned Counsel for the assessee referring to the FAR analysis of the assessee company submitted that the significant function performed by the appellant and MW Group entities is design which includes the process of generating ideas for an optimum solution to the design requirement. MW group entities are EPC contractors wherein they provide solution to their customers. As part of complete process of required facility to its customers, the appellant understands the requirement and provides the broad parameters to the appellant company which design supporting services are provided. Therefore, considering the simple design services provided by the assessee on the basis of concepts supplied by the AEs cannot be considered as engineering design services as defined under KPO services in terms of section 10TA(g) of IT Rules, 1962. The learned Counsel for the assessee further referring to various evidences submitted that the appellant is providing services with the help of low skilled employees which includes Diploma Holders and ITI Trainees. Therefore, classifying the services rendered by low qualified

employees as KPO services which is generally provided by high skilled technical graduates is not correct. The TPO without understanding the relevant evidences simply recharacterized the appellant services as KPO only on the basis of definition of KPO services as per Rule 10TA(g)(iii) of the Act. Therefore, he submitted that recharacterization of services rendered by the TPO should not be upheld.

12. The learned CIT (DR), on the other hand, supporting the orders of the DRP & TPO submitted that the assessee is engaged in the business of providing engineering design services to its AEs on the basis of broader concept supplied by the AE. The AE only provides concept but the assessee fully develops the design according to the requirement of the clients and the said services definitely falls under the engineering design services as defined under the definition of KPO in terms of Rule 10TA(g)(iii) of the I.T. Rules, 1962. Therefore, there is no merit in the grounds taken by the assessee challenging the recharacterization of the services and thus, the order of the DRP should be upheld.

13. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the services rendered by the appellant to its AEs. The appellant is providing engineering design services to its AEs on the basis of concept provided by the AE as per requirement of the customers. The

services include in-depth understanding of the clients business process, existing systems etc. However, on careful examination of various design services provided by the assessee which includes 3D modelling and 2D Drawings from 3D modelling, clean room technical specification, 3D visualization (for Architecture), 3D Modelling and 2D Drawings from 3D Modelling of process plant equipment (pipes, ducts, cable tray, pipe racks etc.) Staad analysis, connections design for (civil/structural) etc. For rendering the above services, the appellant company has employed various categories of technical staff including Diploma Holders, Engineering Graduates, PG Graduates and from the above, it is undisputedly clear that the services rendered by the appellant to its AEs in EDS segment is not a simple design services in the category of BPO services but it is a highly technical work in the category of Knowledge Process Outsourcing (KPO) and therefore, in our considered view, there is no error in the reasons given by the TPO to recharacterize the services of the appellant company as KPO services and thus, we reject the ground taken by the assessee.

14. Ground No.4 relates to the exclusion of 6 comparable companies by the TPO/Assessing Officer. The learned Counsel for the assessee at the time of hearing submitted that the assessee does not wish to press the ground challenging the exclusion of companies. Therefore, Ground No.4 of the assessee has been dismissed as not pressed.

15. The next issue that comes for our consideration from Ground No.5 of assessee's appeal is exclusion of Mahindra Consulting Engineers Ltd. The learned Counsel for the assessee submitted that the above company is not comparable to the appellant company because it has been in the business for almost 27 years and further, it fails RPT filter. The learned Counsel for the assessee further submitted that it is also functionally different from the assessee company which is evident from the annual report of above company where if we go through the services rendered by above company, it is into multidisciplinary engineering consultancy services, project advisory services and infrastructure consulting. The clients base include Central & State Governments and Public Sector Undertakings etc., Since the company is into multidisciplinary engineering consulting services and also fails RPT filters, the same cannot be included in the final set of comparables. Although, the assessee has raised objection in the light of the above facts, the TPO and DRP has rejected the objections filed by the assessee and included the above company in the final set of comparables. In this regard, the assessee has relied upon the decision of the ITAT Bangalore Benches in the case of JCIT vs. Toyota Kirloskar Motors (P) Ltd in ITA No.2016/Bang/2018 and the decision of the Hon'ble Karnataka High Court in the case of Pr. CIT vs. Yodlee Infotech (P) Ltd in ITA No.685/2017 dated 28/06/2018.

16. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that Mahindra Consulting Engineers

Ltd under engineering design services, derives 100% revenue from the said segment. Further, the assessee has computed the related party transaction at 33.6% by aggregating income and expenses whereas the TPO and the DRP has computed related party transactions separately and as per the said findings the related party transaction is less than 25% of the total revenue and total expenses and thus, it passes the RPT filter applied by the TPO. Further, the year of spending in the business does not matter when it comes to PLI and what is required to be seen is the broader functions performed by the company. Since the company is similar to the appellant company when it comes to functioning, the TPO/DRP has rightly included the above company and therefore, their orders should be upheld.

17. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the services rendered by the appellant to its AEs which includes 3D design execution, 2D equipment laid out and isometry from 3D Model Platform which are almost similar to the engineering consultancy services provided by the Mahindra Consulting Engineers Ltd which is evident from general information provided by the company in their annual report. Further, although Mahindra Consulting Engineers Ltd provides services to different classes of clients but going by the nature of services rendered by the above companies, it is predominantly in the field of engineering design services. Further, there is no difference between the engineering

design services and engineering and design services as canvassed by the learned Counsel for the assessee in light of the definition of engineering services and design services as per various dictionaries. Further, going by the description of services by the assessee in their TP study, it is undisputedly clear that the assessee on the basis of broad concept provided by the AE, design drawings in the field of EPC contractor to M+W group of companies and therefore, from the above, in our considered view, it is very clear that the services rendered by the assessee to the AE are comparable to services rendered by Mahindra Consulting Engineers Ltd. Further, although the appellant contended that it fails the RPT filter, but in our considered view, the method of computation of related party transaction by the assessee is contrary, because related party transactions should be computed to revenue or expenses separately but there is no question of aggregating both the transactions and computing the percentage. Since related party transaction of the appellant company with related party is less than 25% in respect of income and expenditure separately, in our considered view, it passes the RPT filter applied by the TPO. Further, the standing in the business of number of years does not matter for the margin earned by the company, but all depends upon the nature of services rendered by the company. Therefore, the argument of the learned Counsel for the assessee that Mahindra Consulting Engineers Ltd is in the business of almost 37 years and cannot be compared with the appellant company being in the first year operation does not hold

water. Thus, we reject the argument of the assessee and upholds the inclusion of Mahindra Consulting Engineers Ltd.

18. Ground No.6 relates to the selection of M/s Genesys International Corporation Ltd as a comparable company. The learned Counsel for the assessee objected the above company on the ground of long standing in the business of more than 37 years and non-availability of segmental information. The learned Counsel for the assessee submitted that Genesys International Corporation Ltd is engaged in providing Geographical Information Services comprising of photogrammetry, remote sensing, car topography, data conversion, state of the art terrestrial and 3D geo-content including location and other computer related services, whereas the assessee is into simple activities of engineering design services of EPC contractors. Therefore, the same cannot be compared with the assessee company. Further, the above company is into software company and products which is not similar to KPO. There is no segmental information. It owns intangible assets, hence the same cannot be considered as comparable companies. In this regard, he relied upon the decision of the ITAT in the case of MACOM Technology Solutions (India) Ltd vs. DCIT in ITA No.281/PUN/2016.

19. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that the KPO services include geographical information services. Further, long standing in the

business does not any way matter with the margin earned by any company. Further, intangible assets owned by the above company cannot be linked with operating margins. Since the above company falls under the services of KPO, therefore, the TPO and DRP has rightly included and their orders should be upheld.

20. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. The TPO/DRP included M/s Genesys International Corporation Ltd as a comparable company only on the basis of definition of Knowledge Process Outsource Services as per Rule 10TA(g) of the I.T. Rules, 1962 which includes geographical information system and various other 6 segment of services. Admittedly, the assessee is into engineering and design services which is unique and different from geographical information system services. Further, going by the services rendered by the assessee to its AEs in EDS segment, it provides services to EPC contractor. On the other hand, if we go through the services provided by M/s Genesys International Corporation Ltd as a comparable company, it predominantly into the services of geographical information system services comprising of photogrammetry, remote sensing, car topography, data conversion, state of the art terrestrial and 3D geo-content including location and other computer related services, whereas the assessee is into simple activities of engineering design services of EPC contractors and cannot be compared to each other. The TPO/DRP without considering the relevant facts simply included

the above company in the list of final set of comparables. Thus, we direct the TPO/Assessing Officer to exclude M/s Genesys International Corporation Ltd as a comparable company, from the list of final set of comparables.

21. The next issue that came up for our consideration from Ground No.7 is selection of L&T Technologies Services Ltd as a comparable company. The learned Counsel for the assessee submitted that L&T Technologies Services Ltd is a huge conglomerate having turnover of more than 115 times from that of the assessee company. It has its own brand value. Further, the company is not functionally comparable to assessee company because it renders services in various segments including engineering and research development and uses A.I. It has huge brand value and carry intangible assets. Therefore, the above company cannot be compared with the assessee company.

22. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that the turnover filter is not a criteria of exclusion of any company in case of FAR analysis of the company is similar to the appellant company. Further, going by the annual report, the services rendered by L&T Technologies Services Ltd is similar to the assessee company. The DRP after considering the relevant facts has rightly included the above company and therefore, the orders of the TPO/DRP should be upheld.

23. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant company turnover for the year under consideration is less than Rs.50crores, whereas the turnover of the L&T Technologies Services Ltd is more than Rs.6000 crores which is more than 115 times of the assessee company. It is a well established principle of law that, the turnover filter is one of the criteria for exclusion of any company from the list of comparables. The various Courts and Tribunals have consistently held that the lower and upper limit of 10 times of the turnover filter should be applied to any company, for the purpose of computing FAR analysis. If we apply 10 times lower or upper turnover limit, then L&T Technologies Services Ltd does not pass the turnover filter. Therefore, selection of this company i.e L&T Technologies Services Ltd is incorrect. Further, on going through the broader services rendered by the assessee company and L&T Technologies Services Ltd, there is huge difference between the services rendered by both the company. L&T Technologies Services Ltd is into research and development services in the field of engineering consultancy services and provides services to manufacturing technology and process engineering company to help them develop projects, processes and infrastructure required to deliver project and services to their end customers. Therefore, in our considered view, L&T Technologies Services Ltd is not a comparable company to the appellant company which is providing engineering design

services to its AEs for EPC Contractor. Therefore, on this count also, L&T Technologies Services Ltd cannot be included in the list of final set of comparables. Therefore, we direct the TPO/Assessing Officer to exclude L&T Technologies Services Ltd from the list of final set of comparables.

24. The next issue that came up for our consideration from Ground No.8 is regarding inclusion of exceptional item being consultancy charges paid to Cyient Ltd for Rs.5,68,86,667/- as part of operating cost. The appellant has acquired global engineering design services division of M+W Hightech Services (P) Ltd vide business transfer agreement dated 01/06/2019. Before acquisition of the global engineering design services by the assessee, MW Hightech Projects (P) Ltd entered into a service agreement with Cyient Ltd on 9/12/2016 for a period of 3 years from 1/2/2017 for rendering engineering design services. In the BTA agreement, it is mentioned that Cyient Ltd shall receive the consultancy charges for the purpose of establishing the global engineering design centre in Hyderabad. Since the agreement period lasted for the financial year under consideration and the appellant has taken over global engineering services division in a slump sale w.e.f. 1/6/2019, the appellant has allocated the consultancy charges payable to Cyient Ltd pre business transfer agreement period and post business transfer agreement period and accordingly debited an amount of Rs.1,62,53,333/- as professional and consultancy charges and the balance amount of Rs.5,68,86,667/- has been shown below the line as exceptional

item in the P&L Account. The TPO has considered exceptional item as part of operating cost to the assessee on the ground that the expenditure is definitely for the purpose of the business i.e. now in the possession of the assessee and further, the benefits of the agreement occurs for A.Y either be in the form of increased expertise of the staff of the assessee or completion of particular project and in both the cases, the benefit to the assessee only on account of its being a successor to M+W Hightech Projects (P) Ltd. The learned DRP upheld the reasons given by the TPO.

25. The learned Counsel for the assessee submitted that the exceptional item being consultancy charges paid to Cyient Ltd did not pertain to the previous year relevant to A.Y 2020-21. The payment made to Cyient Ltd relates to the services rendered by M+W Hightech and the agreement was part of slump sale. It is always operating expenses of relevant previous year alone has to be considered under Rule 10TA(g) of the I.T. Act, 1961. The assessee did not debit sum of Rs.5,68,86,667/- to P&L A/.c and treated it as a below the line item. The learned Counsel for the assessee further submitted that on one side the Assessing Officer has not considered exceptional item as expenditure incurred for the purpose of business while computing income, whereas on the other side treated it as operating expenditure. If the expenditure considered operating in nature, then the same should be allowed as deduction while computing the income. Therefore, he submitted that the Assessing Officer/TPO erred in treating the exceptional item and the same should be deleted.

26. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that the agreement with Cyient Ltd is for a period of 3 years from 1/2/2017 and it lasts up to 31/01/2020. Part of the agreement pertains to the financial year relevant to the A.Y 2020-21. Further, as per business transfer agreement, the appellant has taken over global engineering design division and necessary payment required to be made to Cyient Ltd is the responsibility of the assessee. The assessee has treated part of expenditure pertains to its business operations and the remaining part of expenditure not pertains to its operation only on the ground that the period pertains to the business transfer agreement. But the fact remains that since the payment is made for various services including drawing, designing etc., the benefit from the said services may accrue to the assessee in future and therefor, the TPO/DRP has rightly included the said expenditure as operating expenditure and their orders should be upheld.

27. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the agreement with Cyient Ltd and the erstwhile company is for a period 3 years starting from 1/2/2017 and it lasted up to 31/01/2020. In fact, the assessee itself has apportioned the expenditure into 2 parts i.e. prior to BTA agreement and post BTA agreement. The expenditure related to prior to BTA agreement has

been treated as exceptional item. The question now before us is whether the expenditure incurred by the assessee company towards consultancy charges paid to Cyient Ltd in pursuant to the agreement pertains to the period prior to BTA Agreement is operating in nature or exceptional item. Going by the agreement between the parties, Cyient Ltd provides various services including recruitment, operational management services, drawing, design etc., The services provided by the Cyient Ltd in the field of drawing, design and recruitment services will definitely help the assessee in furtherance of the business for the subsequent period. Further, the appellant itself has taken over the said agreement as part of business transfer agreement and also agreed to pay service charges on its own. It at all the claim of the assessee is correct, the payment made to Cyient Ltd is for 3 years and payment pertains to period prior to BTA agreement is not for the assessee, then there is no question of assessee being taken over the said agreement and making payments in total including payments pertains to earlier period. Since the assessee itself has taken over the agreement in a slump sale and further the entire amount of consultancy charges has been paid by the assessee, in our considered view, unless the assessee derived benefit from the agreement, it may not have taken over agreement and agreed to make payment to Cyient Ltd. Therefore, from the above, it is undisputedly clear that the benefits of agreement from Cyient Ltd is furthering the business of the assessee in subsequent years and for this purpose, the assessee agreed to make payment. Therefore, once the expenditure is related to the business

operations of the assessee, then it should be definitely part of the business expenditure do the assessee and partakes the nature of operating cost. The TPO/DRP has rightly considered exceptional item, being service charges paid to Cyient Ltd as operating in nature. Thus, we are inclined to uphold the findings of the TPO/DRP and reject the ground taken by the assessee.

28. The next issue that came up for our consideration in Ground No.9 of assessee's appeal is considering Amortization of Good Will amounting to Rs.1,42,69,565/- as part of operating cost. The learned Counsel for the assessee submitted that the appellant had acquired global engineering services division as a going concern from M+W Hightech Projects by way of BTA in financial year 2019-20. This acquisition resulted in a goodwill of Rs.8,56,17,387/- which had been recognized in the final statement and in this year, a sum of Rs.1,42,69,565/- has been amortized and debited to P&L Account. The assessee submitted before the DRP that amortization of goodwill was an extraordinary item and was not pertaining to the regular operation of the assessee and the same has to be considered as non-operating in nature. The DRP without considering the relevant aspect held that the appellant cannot claim depreciation of goodwill arising out of amalgamation even though they challenged before the DRP whether it is operating or non-operating. Since the amortization of goodwill, one time expenditure, the same should be excluded for the purpose of operating cost.

29. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that the assessee has not challenged the exclusion of amortization of goodwill from the operating cost before the TPO. The assessee has taken a ground for the first time before the DRP and argued that the amortization of goodwill is non-operating nature and should be excluded from the operating cost. Therefore, the DRP has rightly rejected the contention of the assessee. Therefore, he submitted that the order of the DRP should be upheld.

30. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee has treated amortization of goodwill as part of its operating cost in financial statements. In fact, the assessee has not raised any objection before the TPO for exclusion of amortization of goodwill from operating cost. However, the assessee has taken this ground for the first time before the DRP and argued that amortization of goodwill is not operating in nature. We find that the term operating expenditure means, the cost incurred in the previous year by the assessee in relation to the international transaction during the course of its normal operations, but it does not include extra ordinary items or loss on transfer of assets or investment other than assets on which the depreciation is included in the operating expenses. From the

definition of operating cost, it is undisputedly clear that the depreciation on any asset is part of operating cost because the assets are used in the course of business of the assessee. Whether goodwill is an asset and the same has been used in the business of the assessee to be eligible for depreciation and part of operating cost has to be seen in relevant facts of the case. In the present case, goodwill is not self-generated one to be considered it as asset employed in the business. Further, the goodwill arises out of acquisition of global engineering design from another company. The excess of liabilities over assets has been treated as goodwill. Since it is one time extra ordinary expenses arise on account of acquisition of global design services division from another company and a difference between the asset and liabilities of the transferor company, in our considered view, said asset being goodwill cannot be included as asset employed in the business of the assessee to be considered as operating in nature. Further, the learned DRP has itself given a finding that goodwill acquired on account of amalgamation or business transfer agreement is not eligible for depreciation. Once the assessee is not eligible for depreciation on goodwill, then the same cannot be considered as operating in nature for the purpose of computing margin. Therefore, we are of the considered view that the TPO is erred in including amortization of goodwill as part of operating cost. Thus, we direct the TPO to exclude amortization of goodwill from operating cost.

31. The next issue that came up for our consideration from Ground No.10 relates to considering management fee amounting to Rs.6,58,03,545/- and value fee amounting to Rs.1,62,53,333/- as part of operating cost.

32. We have considered an identical issue in Ground No.8 of assessee's appeal with relation to exceptional item being consultation/management fees paid to Cyient Ltd. The assessee has considered the very same expenditure in Ground No.10 and seeks to exclude the amount as part of operating cost. Since we have already held that consultancy/management fees paid to Cyient Ltd is part of operating cost, in our considered view, Ground No.10 taken by the assessee challenging the exclusion of management fee amounting to Rs.6,58,03,545/- and value fee at Rs.1,62,53,333/- is devoid of any merit and thus, we reject the ground No.10 taken by the assessee.

33. Ground No.11 relates to rejecting capacity utilization adjustment sought by the assessee amounting to Rs.2,11,93,445/-. The learned Counsel for the assessee referring to the business transfer agreement dated 1/65/2019 submitted that the previous year of the assessee comprises of 10 months and it is the first year of design services division, the assessee could not fully support its AEs with its design services. The capacity utilization of the appellant is 87.8% as against the comparables which utilized 100% in their capacity. Therefore, he

submitted that a suitable adjustment needs to be allowed for under-utilization of capacity.

34. The learned CIT (DR) on the other hand supporting the orders of the DRP submitted that the appellant seeks to allow capacity utilization without any documentary evidence in support of its claim. The DRP after considering the relevant facts has rightly rejected the claim of the assessee and therefore, the order of the DRP should be upheld.

35. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. Admittedly, the assessee has not made any claim for under-utilization of capacity before the TPO. For the first time, the assessee has made a request for capacity utilization adjustment before the DRP on the ground that it is the first year of operation of the appellant and has only utilized 86.87% as against the comparables which utilized 100% of their capacity. We find that the assessee has taken over existing running business of global engineering design division from another company and therefore, the argument of the assessee that it is the first year of operation in respect of the said segment is devoid of any merit because it may be a 10 month period for the assessee, however, the said segment was fully functional in the previous period with another company and therefore, we cannot accept the argument of the assessee that it is the first year of operation for the segment

of business. Further, the assessee has claimed to have utilized 86.87% capacity and for this purpose the assessee considers the total value hours and the hours utilized under consideration and claims that the total utilization for the year is only 86.87%. In our considered view, there is no basis for adopting the total available hours and further, the assessee has not submitted any details for the number of hours utilized for the under utilization and therefore, on this ground itself, capacity utilization computed by the assessee should be rejected. However, the case of the assessee is that it has utilized 86.87% whereas the comparables which utilized 100% of their capacity. In our considered view, once again the assessee is making a claim without there being any evidence. We do not know whether the comparables are operating with full capacity to say that they are operating with 100% capacity. In absence of any evidence, it cannot be said that the comparables are operating at 100% capacity. Since the appellant has failed to file any evidences to support its claim, in our considered view, there is no reason to deviate from the reasons given by the DRP to reject allow adjustment towards capacity utilization. Thus, we reject ground No.11 taken by the assessee.

36. Ground No.12 relates to the filing of additional ground for inclusion of comparables which are functionally comparable to the assessee. The learned Counsel for the assessee submitted that owing to data base related problem, it could not list Code Ploy Engg. Ltd and E2G Engineering & Design Services (P) Ltd in the list of comparables, even though the above two companies are

functionally comparable to the assessee company. The TPO/DRP not allowed the assessee to file the additional grounds of appeal. Therefore, he submitted that a suitable direction may be given to the TPO to allow the appellant to file the additional ground for selecting the above two comparables.

37. The learned DR, on the other hand, submitted that the grounds raised by the assessee is frivolous because the assessee has not made out a case that what is the reason for not selecting the above 2 companies. Further, the assessee has not made any claim before the TPO. Since the TPO has not examined the FAR analysis of the two companies, there is no reason to allow the assessee to raise the additional ground on this issue. Therefore, ground raised by the assessee should be rejected.

38. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee has not taken any ground before the TPO raising inclusion of above 2 companies in the list of final set of comparables. Further, the assessee has also not taken any ground before the DRP on this issue. Therefore, the argument that the TPO/DRP not allowing the assessee to take an additional ground for inclusion of the above two companies is devoid of any merit and cannot be accepted. Further, the assessee has not placed relevant material before the TPO to examine the FAR

analysis of the 2 companies to consider for inclusion or exclusion for the purpose of computing the ALP. Therefore, we are of the considered opinion that there is no merit in the argument of the assessee and therefore, the Ground No.12 taken by the assessee is rejected.

39. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 16th May, 2025.

Sd/-

Sd/-

(VIJAY PAL RAO) VICE PRESIDENT	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 16th May, 2025

Vinodan/sps

Copy to:

S.No	Addresses
1	Delicatessen Engg. Services (P) Ltd, 3 rd Floor, Shanta Sriram Tech Park, Sy.No.126, Adjacent to DLP, Achuthapuram Mandal, Gachibowli, Hyderabad 500032 Telangana
2	Dy. CIT, Circle 8(1) Signature Towers, Gachibowli, Hyderabad 500084
3	DRP-1 Bengaluru
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order