

**IN INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI. SOUNDARARAJAN K, JUDICIAL MEMBER**

IT(TP)A No.1488/Bang/2024
Assessment Year : 2014-15

M/s. Dell International Services India Pvt. Ltd., Divyasree Greens, Sy. Nos.12/1, 12/2A and 13/1A, Challaghatta Village, VarthurHobli, Bangalore – 560 071. PAN : AAACH 1925 Q	Vs.	DCIT, Circle –2(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Tanmaye Rajkumar, AR
Revenue by	:	Dr. Divya K. J, CIT(DR)(ITAT), Bangalore.

Date of hearing	:	10.07.2025
Date of Pronouncement	:	24.07.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This appeal filed by the assessee is against the Order passed by the CIT(A), vide DIN and Order No.ITBA/APL/S/143(3)/2024-25/1065557642(1) dated 11.06.2024, for the Assessment Year 2041-15.

2. At the outset of hearing, the learned Counsel submitted that ground Nos.1 and 2 are general in nature and ground Nos.4 and 5 were not pressed. Therefore, these above grounds are dismissed as not pressed.

3. Briefly stated, the facts of the case are that the assessee company is engaged in the business of marketing of EMC products, consultancy and solutions. The assessee filed return of income for the Assessment Year 2014-15 on 28.11.2014 declaring income of Rs.26,78,74,040/-. The case was selected for scrutiny and statutory notices were issued and served upon the assessee. Subsequently, the case was referred to the TPO after obtaining necessary approvals. As per Form 3CEB and TP study report, following are the international transactions and financial statements:

3. International Transaction as per 3 CEB report and TP documentation:-

The following are the international transactions entered into by the taxpayer with its associated enterprises:

Particulars	As per TP Document		As per 3CEB
	Amt. (Received / Receivable)	Amt. (Paid / Payable)	
Provision of marketing support services	1603775686		1603775686
Provision of technical support services	693131914		693131914
Purchase of fixed assets		810112	810112
Reimbursement of expenses paid		95556688	95556688
Reimbursement of expenses received	11638500		11638500
Reimbursement received towards Employee Stock Option Plan (ESOP) and Restricted Stock Unit ('RSU')	22479418		22479418
Remittance on behalf of employees towards Employee Stock Purchase Plan (ESPP)		13184267	13184267
Total	2331025518	109551067	2440576585

4. Further, financials of the tax payer as reconciled by the TPO are as under:

4. The financials of the taxpayer for the F.Y. 2013-14 as per TP document is as under:

Particulars	Technical Support Services (in millions)	Marketing Support Services (in millions)	Total (in millions)
ITeS	693.13	1603.78	2296.91
Foreign Exchange Gain	-	17.92	17.92
Total Operating Income [A]	693.13	1621.70	2314.83
Operating (including Personnel expenses)	362.93	849.13	1212.06
Other expenses	240.27	562.15	802.42
Depreciation	9.76	22.85	32.61
Total Operating Cost [B]	612.96	1434.13	2047.09

Operating Profit [C=(A)-(B)]	80.17	187.57	267.74
Margin [D=C/B*100]	13.08%	13.08%	13.08%
Reconciliation:			
Add: Other Income (E)			8.40
Less: Non Operating Expenses (F)			-
Loss on sale of fixed assets			-
Assets/advances written off			-
Provision of doubtful advances			-
Rent and other costs for setting up Pritech Units			-
Donation			1.43
Profit Before tax as per segment (C+E-F)			274.71
Profit Before tax as per the financials			274.41

5. The tax payer has reported international transaction in respect of provision of marketing support services and technical support services. The ALP of the international transactions for the services provided to the AEs has been determined by applying Transaction Net Margin Method (TNMM) stating

to be at arm's length. The OP/OC was considered as the PLI. The data base was used was Prowess and Capitaline. The 5 companies selected as comparable companies and arithmetic mean were calculated at 11.75 after applied certain filters as set out in the T.P. study and its written synopsis. However, the learned TPO did not accept the TP study filed by the assessee and he started fresh search applying the data base under Prowess and Capitaline and applied certain filters as per TP order u/s 92CA of the Act. and the same is extracted in the written submissions of the assessee. He selected 6 companies and calculated average margin at 27.83% and TPO calculated PLI as OP/OC under TNMM and he made adjustment of Rs.2,39,71,904/-. Accordingly, show cause notice was issued to the assessee. The assessee replied to the show cause notice. During the TP proceedings, the assessee objected for exclusion of Quest Global Engineering Pvt. Ltd., and he sought for inclusion of two companies named DCM Ltd., (IT business) and Telecommunication Consultancy India Ltd. The ld. TPO rejected the prayer of the assessee and he passed Order under section 92CA of the Act on 27.10.2017 suggesting for the adjustments as stated above. Accordingly, the AO passed draft Assessment Order under section 144C(13) of the Act on 29.01.2018.

6. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A) and he dismissed appeal of the assessee.

7. Aggrieved from the above Order, assessee filed appeal before the Tribunal. The learned Counsel reiterated the submissions made before the lower authorities and she has filed written synopsis for inclusion and exclusion of comparable companies as under :

“The only issue which arises for consideration in the above appeal pertains to the Transfer pricing adjustment (“TP adjustment”) of Rs. 2,39,71,904/- made by the Transfer Pricing Officer (“the TPO”) towards

the international transactions for provision of Technical Support Services (“TSS”) to its Associated Enterprises (“AEs”).

BRIEF FACTS

1. *The Appellant is engaged in provision of marketing support services and technical support services to the EMC Group companies. The Appellant provides post sales technical support services for the products of EMC.*
2. *During the previous year relevant to the assessment year 2014-15, one of the international transactions that took place between the Appellant and its AEs was provision of technical support services at a price of 6,93,13,1194/- for which a TP adjustment of **Rs.2,39,71,904/-** was made.*
3. *On a reference made by the Assessing Officer to the TPO, the TPO passed an order dated 27.10.2017 determining a TP adjustment of Rs. 2,39,71,904/-. Subsequently, the Assessing Officer passed a final assessment order dated 29.01.2018 incorporating the said TP adjustment.*
4. *Aggrieved by the final assessment order, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) (“CIT(A)”) on 01.03.2018. The CIT(A) vide order dated 11.06.2024 dismissed the appeal preferred by the Appellant in toto.*
5. *Aggrieved by the order passed by the CIT(A), the Appellant has filed the present appeal before this Hon’ble Tribunal.*

APPELLANT’S SUBMISSIONS:

A.1. Details of the Appellant’s international transactions:

Particulars	Amount in Rs.	Outcome of rectified TP Order
<i>Provision of marketing support services</i>	<i>160,37,75,686/-</i>	<i>Accepted to be at arm’s length</i>
<i>Provision of technical support services</i>	<i>69,31,31,914/-</i>	<i>Adjustment of Rs. 2,39,71,904/-</i>
<i>Purchase of fixed assets</i>	<i>8,10,112/-</i>	
<i>Reimbursement of expenses paid</i>	<i>9,55,56,688/-</i>	
<i>Reimbursement of expenses received</i>	<i>1,16,38,500/-</i>	

<i>Reimbursement received towards ESOP and Restricted Stock Unit</i>	2,24,79,418 /-	<i>Accepted to be at arm's length</i>
<i>Remittance on behalf of employees towards Employee Stock Purchase Plan</i>	1,31,84,267 /-	

A.2. Net mark-up on cost earned by the Appellant as computed in the TP Order:

<i>Operating Income</i>	<i>Rs. 162,17,00,000/-</i>
<i>Operating Cost</i>	<i>Rs.143,41,30,000/-</i>
<i>Operating Profit (Op. Income – Op. Cost)</i>	<i>Rs.18,75,70,000/-</i>
<i>Operating/Net mark-up (OP/OC)</i>	<i>13.08%</i>

A.3. Comparison of the TP studies done by the Appellant and TPO:

	<i>Appellant</i>	<i>TPO</i>
<i>Methodology adopted</i>	<i>TNMM</i>	<i>TNMM</i>
<i>Profit Level Indicator (PLI)</i>	<i>OP/TC</i>	<i>OP/OC</i>
<i>Database used</i>	<i>PROWESS & CAPITALINE PLUS</i>	<i>PROWESS & CAPITALINE PLUS</i>
<i>Comparables selected</i>	<i>05</i>	<i>06</i>
<i>Period for which data used</i>	<i>FYs 2011-12, 2012-13 and 2013-14</i>	<i>FY 2013-14</i>

A.4. Filters applied by the Appellant in its TP study:

Step	Description
1.	Companies which had positive sales and ratio of operating income to sales greater than 50% – selected
2.	Companies with ratio of R&D expenses to sales < 3% – selected
3.	Companies with ratio of net fixed assets to sales < 200% – selected
4.	Companies with average sales < Rs. 1 crore – rejected
5.	Companies with net worth less than zero – rejected
6.	Companies reporting forex earning/net sales > 25% - selected
7.	Companies with ratio of sum of advertising, marketing and distribution expenses to sales < 3% – selected.
8.	Companies which are rendering similar services and are functionally comparable – selected

A.5. Comparables selected by Appellant and their arithmetic mean:

Sl. No.	Name of the company	Average mark-up (in %)
1.	D C M Ltd.	3.56
2.	Ajel Ltd.	9.90
3.	Telecommunication Consultants India Ltd. (Consultancy and Service Contracts)	13.41
4.	Tera Software Ltd. (Technical)	13.91
5.	Mindtree Ltd. (IT Services)	17.98
Arithmetical Mean		11.75

A.6. Filters applied by the TPO:

Step	Description
1.	Companies for which financial data was available for FY 2013-14 – selected.
2.	Companies having different financial year ending (i.e., not 31 st March 2014) or data of the company which does not fall within 12 month period i.e., 01.04.2013 to 31.03.2014.
3.	Companies whose income was less than Rs. 1 crore – rejected
4.	Companies whose Technical Support Services is less than 75% of the total operating revenue – excluded

5.	<i>Companies whose income from non-financial services to sales is more than 75% - selected</i>
6.	<i>Companies who have more than 25% related party transactions of the sales – excluded</i>
7.	<i>Companies having positive net worth – selected.</i>
8.	<i>Companies reporting loss for any 2 years of the last 3 years – rejected.</i>
9.	<i>Companies whose export revenues are more than 50% of revenue – selected.</i>
10.	<i>Companies failing the FAR analysis – rejected.</i>

Comparables selected by TPO and their arithmetic mean:

<i>Sl. No.</i>	<i>Name of the Company</i>	<i>OP/O C (in %)</i>
1	<i>Acropetal Technologies Ltd. (segmental)</i>	<i>15.63</i>
2	<i>Quest Global Engineering Pvt. Ltd.</i>	<i>18.35</i>
<i>AVERAGE MARK-UP</i>		<i>16.99</i>

A.7. Computation of arm's length price by the TPO and adjustment made:

<i>Arm's Length Mean Mark-up on cost</i>	<i>16.99%</i>
<i>Operating Cost</i>	<i>61,29,60,000/-</i>
<i>Arm's Length Price @ 116.99% of operating cost</i>	<i>71,71,01,904/-</i>
<i>Price Received</i>	<i>69,31,30,000/-</i>
<i>Variation in price</i>	<i>2,39,71,904/-</i>
<i>3% of price received</i>	<i>2,07,93,900/-</i>
<i>Shortfall being adjustment u/s. 92CA</i>	<i>Rs. 2,39,71,904/-</i>

B. ORDER OF THE CIT(A)

The CIT(A) rejected the contentions raised by the Appellant in toto and dismissed the appeal.

C. List of comparables pursuant to order passed by the CIT(A) are as follows:

<i>SI. No.</i>	<i>Name of the Company</i>
1.	<i>Acropetal Technologies Ltd. (segmental)</i>
2.	<i>Quest Global Engineering Pvt. Ltd.</i>

D. APPELLANT'S SUBMISSIONS:

GROUND NO. 3.3: Exclusion of Quest Global Engineering Pvt. Ltd. ("Quest Global")

At an outset, it is submitted that the finding of the TPO that the Appellant has accepted for the inclusion of Quest Global is wholly erroneous and contrary to the material on record. It is submitted that the Appellant has not accepted for the inclusion of Quest Global as a comparable company and the same is evident from the submissions dated 10.02.2020 and 06.10.2017 made by the Appellant before the TPO and the CIT(A) available at pages 48-49 and 66 of the paperbook. Further, the TPO in the remand report has observed that the Appellant has failed to provide any specific evidence in support of its contention. In this regard, it is submitted that the Appellant has demonstrated that Quest Global is functionally not comparable to the Appellant.

It is submitted that Quest Global is engaged in rendering engineering design and analysis services. The principal activities of the Company include rendering engineering consulting services in design, modeling, simulation, in the areas of gas turbine, steam turbine, power generation, aircraft engines and automotive technologies which is not functionally comparable to the Appellant which provides post-sales technical support services.

The Company has only one business segment, which is providing engineering consulting services for advanced technology products which is not comparable to the Appellant which provides technical support services for EMC products.

Further, it is submitted that Quest Global ought not to be considered as a comparable on account of its large scale of operations. It is submitted that the difference in the scale of operations have a direct impact on the profitability.

Detailed submissions are placed at pages 92-94 of the paperbook.

Therefore, it is submitted that Quest Global ought to be excluded from the final list of comparables.

GROUND NO. 3.2.1: Inclusion of DCM Limited (“DCM”):

It is submitted DCM is engaged in rendering IT services and is therefore functionally comparable to Appellant.

It is submitted that though the Company is engaged in other business, segmental details of the same are available and therefore, the IT services segment of the Company is comparable to the Appellant.

Detailed submissions are placed at pages 97-98 of the paperbook.

Therefore, it is submitted that DCM ought to be included in the final list of comparables.

GROUND NO. 3.2.2: Inclusion of Telecommunication Consultants India Limited (“TCIL”):

It is submitted that company was excluded by the TPO for the reason that the annual reports of the company was not available for the assessment years 2013-14 and 2014-15. The TPO excluded this company relying on the annual report for the assessment year 2012-13.

In this regard, it is submitted that the annual report of the Company for assessment year 2014-15 is available in the public domain. The copy of the annual report was furnished by the Appellant before the TPO and therefore, the finding of TPO that the annual report for the assessment year 2014-15 was not available is wholly erroneous and contrary to the material on record. Further, it is submitted that the TPO has considered the entity level details regarding the functionality of TCIL while the Appellant has provided details specifically relating to the consultancy and service contract segment.

It is submitted that the consultancy and service contracts segment of TCIL is engaged in rendering consultancy services, including IT consultancy and is therefore functionally comparable to the Appellant.

Detailed submissions in this regard are placed at pages 98-99 of the paperbook.

Therefore, it is submitted that TCIL ought to be included in the final list of comparables.

Wherefore, it most humbly prayed that this Hon’ble Tribunal be pleased to allow the above appeal filed by the Appellant, in the interests of justice and equity.”

8. The learned Counsel further submitted that the TPO has wrongly mentioned in the TP Order that Quest Global Engineering Pvt. Ltd., has been

accepted by the assessee. However, after show cause notice, objection was raised which is available in the Paper Book.

9. The learned DR relied on the Order of the lower authorities and she submitted that the lower authorities have rightly dealt with the objections raised by the assessee regarding inclusion of comparable company and exclusion of 2 other comparable companies.

10. Considering the rival submissions and on perusal of the entire material available on record and Orders of the authorities below, we noted that here the dispute raised by the assessee as per the written synopsis is quoted supra. The assessee wants to exclude Quest Global Engineering Pvt. Ltd., submitting that this company is functionally not a comparable company. We noted from the TP study placed at Paper Book Page No.154 and onwards, the functional profile of the assessee company is as under:

3.2.2.2. Technical Support Functions:

EMC ITS India is involved in the provision of technical support services under the instruction from and on behalf of EMC ISI as per the service agreement. EMC ITS India follows standard operating procedure and quality norms set out by the EMC ISI. The service portfolio under the technical support function is divided into two parts:

- ❖ **Tele-call advisory and administrative support services:** EMC ITS India resolves day to day queries raised by customers in relation to the products of EMC, over calls. The Company maintains the customer database and provides information related to up gradation of software and hardware used by customers.
- ❖ **Technical support:** EMC ITS India provides the complete installation supports for the newly purchased software/ hardware as per the instruction from EMC ISI. In addition, the Company also provides annual maintenance support services as may be required - however EMC ITS India does not enter into any warranty contracts with customers which remain the sole responsibility of the EMC Group.

- ❖ **Residency Services:** EMC ITS India provides residency services, wherein it recruits skilled manpower (referred to as residents) from the market based on the skill set requirement of the customer and places them in customer locations.

The residents are employees of EMC ITS India and are generally engineers by qualification. These residents work on-site at the customer's site under the operational supervision of the customer, but under the overall control of EMC ITS India. The residents manage the data centre of the customer – rendering services in the nature of maintaining and performing daily operational tasks of Open Systems and/or Backup Environment, providing technical support, etc.

3.2.2.3. General Management Functions:

The functions addressed below are common functions that are carried out by any business irrespective of their size and type. These functions are drivers of every business and are indispensable in the economic environment.

- ❖ **Corporate Strategy Determination:** Generally, all policies within EMC ITS India are determined by its own management who continuously monitor the economic environment surrounding the Indian entity, assess their strategic position within the industry and target to achieve its corporate objective with guidance from EMC Group.
- ❖ **Finance, Accounting, Treasury and Legal Function:** The management in EMC ITS India is responsible for managing the finance, treasury, legal and accounting functions. In certain areas, wherever necessary, EMC ITS India is guided by the EMC Group. EMC ITS India is also responsible for all local statutory compliance.
- ❖ **Human Resource Management Function:** The HR function at EMC ITS India is coordinated by its management, which is responsible for recruitment, development and training of the personnel including the emolument structure. In this respect, where appropriate, it is guided by EMC Group policies.

11. We also have gone through the financial statement of the Quest Global Engineering Pvt. Ltd. As per Textual Information (33) placed at Paper Book Page No.57, the overview of the company is placed as under:

QuEST Global Engineering Private Limited ('the Company' or 'QuEST Global') was incorporated on July 18, 2008 as a private limited company under the Companies Act, 1956. The Company is a subsidiary of QuEST Global Services Pte. Limited, Singapore (?the Holding company?), which is one of the leading providers of diversified engineering services.

The principal activities of the Company include rendering engineering consulting services in , design, modeling, simulation, in the areas of gas turbine, steam turbine, power generation, aircraft engines and automotive technologies.

The Company has units registered under Special Economic Zone (SEZ) Act

12. The functional profile of the comparable company selected by the TPO are not matching with the assessee company. Which are clear from the above profile of both the companies., Accordingly the comparable company selected

by the AO is functionally different. Therefore, it cannot be said it is a comparable company in the case of the assessee. Therefore, the AO is directed to exclude this company from the list of comparable companies selected by the TPO.

13. Further, the assessee has sought for inclusion of 2 comparable companies i.e., DCM Ltd., (IT business) and Telecommunication Consultancy India Ltd. Considering the submissions noted supra, and on going the Paper Books filed by the assessee in this regard, we are of the view that this issue is to be considered afresh in the light of the filters applied by the TPO which has not been disputed by the assessee during the course of hearing. Therefore, it requires fresh consideration and AO/TPO is directed to provide reasonable opportunity of being heard to the assessee and assessee is directed to file necessary documents to substantiate the claim for inclusion.

14. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Pronounced in the court on the date mentioned on the caption page.

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 24.07.2025.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.