

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I": NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2187/DEL/2023
Assessment Year: 2008-09

Schneider Electric India Private Limited, 9 th Floor, Tower-C, Building 10, DLF Cyber City, Phase-II, Gurugram- 122002 PAN No. AABCS1624G	Vs.	ACIT, Circle-22(2), New Delhi
(Appellant)m		(Respondent)

Assessee by:	Shri Rohit Tiwari & Ms. Tanya, Advs.
Department by:	Shri Dharm Veer Singh, CIT (DR)
Date of Hearing:	30.07.2025
Date of pronouncement:	13.08.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The assessee's appeal is against order dated 09.06.2023 of Learned Commissioner of Income Tax (Appeals)-Delhi-44 (hereinafter referred as "Ld. CIT(A)") under Section 250 of the Income Tax Act, 1961 (hereinafter referred as "the Act") arising out of order dated 23.03.2016 of the Learned Assistant Commissioner of Income Tax-22(2), New Delhi (hereinafter referred as "Ld. AO") under Section 143(3) of the Act for assessment year 2008-09.

2. Brief facts of case are that Appellant was primarily engaged in the manufacturing of low voltage and medium voltage equipment and distribution of electrical equipment and also provided e content e catalogue IPO services, contract R&D support services and business support services to its AEs. The Appellant undertook various international transactions with its AEs which were duly reported in Form 3CEB and documented in the TP Report. The Appellant submitted the information and documentation as asked by TPO vide notice issued by the TPO under section 92CA(2) of the Act. Further the authorised representatives of the Appellant appeared before the TPO from time to time and submitted various documents and information as were required by the TPO. In show cause notice, TPO proposed to consider the aggregated margin of sub-segmentation carried out by the Appellant in the TP study with respect to the manufacturing segment and benchmark the same against the updated margins of the comparables selected in the TP study. The TPO disregarded the contentions of the Appellant and made an adjustment of INR 322,984,000 with respect to the transaction of import of components of the Appellant vide its order dated October 20, 2011. The Ld. DRP, disregarded the additional evidences filed by the Appellant in support of the "transaction by transaction approach adopted by the Appellant in respect of its various international transactions and confirmed the addition made by the Ld. TPO/AO in its directions dated September 26, 2012.

4. The Hon'ble ITAT vide its order dated October 9, 2013, restored the matter to the files of the Ld. AO to ascertain the comparability of supplementary evidences to the case of the Appellant and analyse the pricing policy of the Appellant.

5. The Ld. TPO rejected Appellant's claim for characterizing overseas AE as the tested party in respect of transaction pertaining to import of components and confirmed the earlier approach of aggregation of segmental accounts as followed by the Ld. TPO in the initial TP order. However, in continuance to his approach in AY 2007-08, the Ld. TPO provided the benefit of proportionate adjustment thereby reducing the adjustment to INR 1,65,82,000 from INR 32,29,00,000. However, while computing the amount of transfer pricing adjustment the Ld. TPO aggregated the international transactions with AEs namely, (i) import of components (for manufacturing), (ii) payment of royalty, (iii) payment of management support charges. (iv) payment of project support charges, (v) receipt of repair and maintenance services, (vi) reimbursement of expenses, so as to compute a higher ratio of related party transaction to total cost in the consolidated manufacturing segment.

6. In the show cause notice the TPO proposed to reject the 6 out of 15 comparables selected by the Appellant in the TP Study applying certain arbitrary filters which was contested by the Appellant. However, the TPO

rejected the contentions of the Appellant and made an adjustment of INR 28,753,000.

7. The Appellant filed its objections before the Ld. DRP wherein the Appellant presented its contention against the approach followed by the Ld. TPO of applying additional filters, ignoring that the Assessee was entitled to claim deduction u/s 10A, and denying claim for adjustment on account of risk.

8. However, the Ld. DRP vide its directions dated September 26, 2012, confirmed the addition made by the Ld. TPO.

9. The Tribunal vide its order dated October 09, 2013 set aside the entire matter for fresh consideration of the Ld. AO/TPO.

10. In the remand back proceedings, the Ld. TPO did not adjudicate in respect of the transaction of provision of contract R&D support services. Furthermore to the above, the Ld. AO while incorporating additions proposed by the Ld. TPO, erred in directly passing the final assessment order, and thereby deviated from his own position in prior assessment year and also from the relevant legal provision of the Act in force, thereby vitiating the Appellants right to file objections before the Ld. Dispute Resolution Panel.

11. The Assessee company e-filed return of income for A.Y. 2008-09 on 30.09.2008 declaring a loss of Rs.187214318. The return was subsequently revised declaring income at Rs. 215867840 on 06.03.2009. In the final

assessment order dated 23.03.2016, the Ld. AO did not allow setoff of unabsorbed depreciation of Rs. 13851671 pertaining to A.Y. 2007-08 which was claimed by assessee.

12. Against order dated 23.03.2016, appellant/assessee preferred appeal before the Ld. CIT(A) which was dismissed vide order dated 09.06.2023.

13. Being aggrieved, appellant/assessee preferred present appeal with following grounds:

“1. That on the facts and circumstances of the case and in law, the order passed by Hon'ble CIT(A) under Section 250 of the Act and Ld. AO under Section 144C read with section 143(3) and section 254 of the Act is bad in law and liable to be quashed to the extent it confirms the additions/disallowances made in the order.

2. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO has erred in confirming the action to assess the income of the Appellant at INR 27,50,54,511/- as against INR 21,58,67,840/- as declared by the Appellant in its Return of Income ('ROI') for AY 2008-09.

3. That on the facts of the case and in law, the Hon'ble CIT(A)/ Ld. AO has erred in not appreciating and not considering the information / documentary evidence furnished by the Appellant before the Hon'ble CIT(A)/Ld. AO during the proceedings before Hon'ble CIT(A)/Ld. AO in relation to addition / disallowance made in the impugned assessment order.

Transfer Pricing

4. The Hon'ble CIT(A)/Ld. AO/Ld. TPO have erred on facts and in law in enhancing the income of the Appellant by INR 4,53,35,000 by holding that the international transactions pertaining to manufacturing segment and research and development (R&D) support services segment does not

satisfy the arm's length principle envisaged under the Act. In doing so, the Hon'ble CIT(A)/ Ld. TPO/ Ld. AO have grossly erred in:

4.1. not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case;

4.2. disregarding the arm's length price ('ALP') as determined by the Appellant in the Transfer Pricing ('TP') documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules'); and

4.3. disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year [i.e., Financial Year ('FY') 2007-08] data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation.

Purchase of components

5. That the Hon'ble CIT(A)/ Ld. AO/ Ld. TPO have erred on facts and in law in enhancing the income of the Appellant by INR 1,65,82,000 by holding that the international transactions pertaining to purchase of components does not satisfy the arm's length principle envisaged under the Act, and in doing so, have grossly erred in:

5.1. Disregarding the selection of overseas Associated Enterprises (AES). being the least complex of the transacting entities in respect of the said transaction, as the tested party on account of incorrect appreciation of facts and material place on record, and instead considering the Appellant as the tested party, thus violating the basic principles of TP;

5.2. Failing to appreciate that the international transactions of the Appellant relating to import of components for manufacture of electrical equipment would meet the arms length principle even on a transaction-by-transaction basis;

5.3. Failing to understand and appreciate the TP policy followed by the Appellant and its effect on the pricing of the international transactions;

5.4. Rejecting the segmental accounts furnished by the Appellant by aggregating the Appellants manufacturing sub-segments namely Manufacturing Local and Manufacturing TP, which was further segregated into Import of components for manufacturing and sale to Non-AEs and Manufacturing and export to AEs, thereby, failing to appreciate

the nuances of the Appellants segmented business operations and its differing impact on the functional, asset and risk profile of the Appellant;

5.5. including/ excluding certain companies on arbitrary/ frivolous grounds for determination of arm's length price;

5.6. including functionally dissimilar comparables namely Reed Relays & Electronics India Limited and Havells India Limited, which have been rejected by Ld. DRP/Ld. TPO in Appellant's own case for other years;

5.7. rejecting fresh benchmarking analysis submitted by the Appellant before Hon'ble CIT(A) considering itself as the tested party, on a without prejudice basis;

5.8. rejecting certain functionally comparable companies, namely Guardian Controls Limited, RMC Switchgears Limited, Automatic Electric Limited which have been accepted by Ld. DRP/Ld. TPO for other years;

5.9. Erroneously considering the international transactions, namely, payment of royalty, management support charges, project support charges, reimbursement of expenses and repair and maintenance services, while computing the amount of proportionate TP adjustment in respect of import of components and has further erred in:

- by re-determining the ALP of the impugned international transactions and thereby ignoring the rules of consistency and relevant judicial pronouncements as these transactions were accepted by the TPO in prior assessment years;
- by failing to appreciate that these transactions of the Appellant met the arm's length principle as benchmarked on a transaction-by-transaction basis in the TP documentation;
- by violating the principles of natural justice, as enshrined in proviso to Section 92C(3) of the Act, by not issuing an appropriate show cause notice calling upon the Appellant as to why the ALP of these impugned international transactions should be re-determined; and

5.10. ignoring the differences in working capital employed by the comparable companies and the Appellant and not allowing working capital adjustment; and

5.11. not allowing adjustment with respect to capacity utilization in determining the arm's length.

Contract R&D support services segment

6. That the Hon'ble CIT(A)/Ld. AO/Ld. TPO have erred on facts and in law in enhancing the income of the Appellant by INR 2,87,53,000/- by holding that the international transaction pertaining to provision of Contract R&D support services does not satisfy the arm's length principle envisaged under the Act, and in doing so, have grossly erred in:

6.1. Disregarding the comparability analysis conducted by the Appellant in the TP Documentation and proceeding to reject certain functionally comparable companies to the Appellant, selected therein, by applying certain arbitrarily selected filters;

6.2. by ignoring the fact that the variation between the arms length margin determined by the Ld. AO/TPO and the operating profit margin on cost of the Appellant falls within the +/- 5% range as per provision of section 92C(2) of the Act and thus the TP adjustment in the contract R&D support service segment is not warranted;

6.3. rejecting the quantitative screens/filters applied and set of comparables arrived at by the Appellant, following the detailed and robust search methodology carried out in the TP documentation, and proceeding to arrive at the fresh comparables set by applying certain arbitrarily selected filters;

6.4. including/ excluding certain companies on arbitrary/ frivolous grounds for determination of arm's length price;

6.5. including functionally dissimilar comparables namely Persistent Systems Ltd. which have been rejected by Hon'ble CIT(A) in Appellant's own case for other years;

6.6. excluding certain comparable companies on arbitrary/ frivolous grounds namely Indium Software India, Neilsoft Ltd. and Sasken Communication Technologies Ltd., even though they were comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

6.7. making certain computational errors while arriving at the ALP;

6.8. not providing the benefit of working capital adjustment while computing the ALP as provided by the Ld. TPO to the Appellant in subsequent assessment years, thereby disregarding the law, international guidance and judicial precedents in this regard;

6.9. ignoring the business/ commercial reality of the Appellant alad by not allowing risk adjustment to the Appellant.

CORPORATE TAX MATTERS

7. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO has erred in not adjusting the unabsorbed depreciation of Rs. 1,38,51,671 of Assessment Year 2007-08 against the current year income allegedly on the ground that there was no unabsorbed depreciation as the income of the appellant was assessed on a positive income in Assessment Year 2007-08.

8. That on the facts and circumstances of the case and in law, the Hon'ble IT(A)/Ld. AO has erred in initiating penalty proceedings under section 271(1)(c), 271AA and 271BA of the Act mechanically on the additions made.

The above grounds are without prejudice to each other.

The Appellant craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing”.

14. Learned Authorised Representative for the appellant/assessee submitted application dated 29.07.2025 under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (“the Rules) to file additional evidence in order dated 09.04.2025, transfer pricing analysis supplementary report, financial year 2007-08. The additional evidence is consistent with the claim made by the appellant. In appellant’s own case for assessment year 2007-08 involving adjudication of similar grounds raised by the appellant, Hon’ble Tribunal deemed it appropriate to remand the issues back to the file of Ld. TPO/A.O for fresh adjudication in the light of additional evidence/submissions placed on record before the Tribunal. Appellant had compiled supplementary documentation and conducted critical analysis to address the various contentions raised by the

appellant/assessee. The appellant would crave that its pricing policy may be further analyzed considering the new evidence which would not be collated earlier.

15. Learned Authorised Representative for the Department of Revenue relied on order of Ld. Assessing Officer.

16. From examination of record in light of aforesaid rival contentions, it is crystal clear that Ld. CIT(A) in order dated 09.06.2023 upheld assessment order dated 23.03.2016 of Ld. AO through which he disallowed set off of unabsorbed depreciation of Rs.1,38,51,671/- pertaining to assessment year 2007-08 as claimed by assessee.

17. In appellant's case for assessment year 2007-08, Hon'ble Delhi ITAT in order dated 09.04.2025 in ITA No. 1076/Del/2016 has observed as under:

“21. As emerging from records and from the oral and written submissions from the respective sides, the transfer pricing adjustments with reference to manufacturing segment at INR 14,84,00,000/-; Transfer pricing business support service segment at INR 5,78,03,317/-; TP adjustments in contract R&D service segment at INR 91,50,032/- aggregating to INR 21,53,53,349/- is under challenge. The assessee has also inter-alia challenged denial of deduction under s. 10A claimed with reference to the total income computed by the AO as a result of TP adjustments.

22. With reference to the TP adjustments made in manufacturing segment, it is the case of the assessee that the TPO has omitted to examine the ALP applying 'transactions by transactions approach' in the light of additional evidences placed before the Tribunal and largely omitted to taking into account various submissions despite the matter having been set aside for fresh determination. The TPO has only provided

proportionate relief in respect of its manufacturing segment and restricted the TP adjustments to the quantum of international transactions entered with AE. Besides, the direction of the ITAT in its order dated 22.11.2022 to re-examine the contentions of the assessee towards R&D support service segment and business support service segment has not been given due effect. The TPO has simply followed its previous order without adjudicating the issues pertaining to contract R&D support services and business support services segments. Similarly, the order passed under s. 254(2) stands merged with the ITAT order earlier passed under s. 254(1) of the Act and therefore the directions with respect to allowability of eligible claim of deduction under s. 10A ought to have been given due consideration. The observations made in the 254(2) order with reference to s.10A has not been weighed by the TPO/DRP/AO. The assessee further contends that principles applied by the Co-ordinate Bench of ITAT in the case of group company namely, Schneider Electric Infrastructure Ltd. for determination of transfer pricing adjustments by the Tribunal in similar circumstances should apply mutatis mutandis.

23. The assessee has filed detailed submissions in writing as well as made lengthy oral submissions as broadly extracted in the preceding paragraphs. The objections of the assessee ranges from failure to apply ALP principles in the assessment order passed under challenge; failure to apply interpretation rendered by Co-ordinate Benches and in disregarding multiple year/prior years data used by the assessee. As further contended, plea towards international transactions relating to import of components for manufacturing of electrical equipment would meet arm's length principles on a transaction by transaction basis as canvassed by the assessee have been ignored. The contention towards selection of overseas tested party is also alleged to have been disregarded contrary to position of law and based on incorrect appreciation of facts. The assessee also asserts that the TPO has included certain companies that are not comparable to the assessee in terms of the functions performed, assets employed and risks assumed. Likewise, as contended, the TPO has wrongly excluded certain comparables companies for the purposes of TP adjustments. As further contended, the benefit of working capital adjustment while computing the ALP has also not been borne in mind. In the light of order passed by the Tribunal under s. 254(12) of the Act, the assessee also claims tax holiday under s. 10A on profits arrived at after the adjustments so made in accordance with law and alleges that the lower authorities have failed to apply the principles laid down by the Jurisdictional High Court in the case of CIT vs TEI Technology Pvt.Ltd. 361 ITR 36 (Del).

24. Multiple other objections have been raised as noted in the preceding paragraphs.

25. We find considerable force in the plea of the assessee for appropriate relief from such alleged errors committed by the lower authorities. We thus consider it expedient to restore all the issues placed before the Tribunal back to the file of the TPO/AO for fresh determination of such issues in the light of submissions made and various claims asserted before the Tribunal. It shall be open to the assessee to make such submissions and adduce such evidences as may be considered expedient. The TPO/DRP/AO shall pass fresh order in accordance with law by way of a speaking order”.

18. In view of above material facts i.e. the adjudication of similar grounds and new evidence for analysis of pricing policy similar to preceding assessment year 2007-08 having been referred for adjudication afresh by Ld.TPO/A.O as per judicial precedents, it is considered expedient to restore all the issues placed before the Tribunal back to the file of Ld.TPO/A.O for fresh determination in accordance with law after giving fair and reasonable opportunity of being heard to the appellant/assessed.

19. In the result, the appeal of appellant/assessee is allowed for statistical purposes.

Order pronounced in the open court on 13th August, 2025.

Sd/-

**(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 13/08/2025

Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi