

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I" NEW DELHI**

**BEFORE SHRIVIKAS AWASTHY, JUDICIAL MEMBER  
AND  
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.960/Del/2016

निर्धारणवर्ष/Assessment Year: 2011-12

|  |                    |   |
|--|--------------------|---|
| Lockheed Martin India Pvt. Ltd.,<br>The Grand Plaza, The Grand Hotel,<br>Nelson Mandela Marg,<br>Vasant Kunj, Phase-1, New Delhi.<br>PAN No.AABCL4556E | <u>बनाम</u><br>Vs. | ACT,<br>Circle 15(2),<br>C.R. Building,<br>New Delhi. |
| <b>अपीलार्थी Appellant</b>   |                    | <b>प्रत्यर्थी/Respondent</b>                          |

|                    |  |
|--------------------|--|
| <b>Assessee by</b> | Ms. Rubal Bansal Maini, Advocate &<br>Shri Satvik Sareen, Advocate |
| <b>Revenue by</b>  | Shri Dharm Veer Singh, CIT DR                                      |

|                                  |            |
|----------------------------------|------------|
| सुनवाईकीतारीख/ Date of hearing:  | 08.01.2026 |
| उद्घोषणाकीतारीख/Pronouncement on | 23.01.2026 |

**आदेश /O R D E R**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This appeal arises from order dated 30.12.2015, u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereafter as "the Act"), passed by Ld. ACIT, Circle 15(2), New Delhi. In this case, an upward adjustment of Rs.104,84,439/- has been made after the Ld. DRP's orders were given effect too. The appellant is engaged in the business of marketing, promotion and advertising of products manufactured and produced by M/s Lockheed Martin Corporation and its group companies. The assessee is seen to have rendered market support services to its Associate

Enterprise (AE). The assessee was compensated on a cost plus 10% basis for the services rendered by it. The assessee had submitted a transfer pricing report with certain comparables which were substantially altered by the Ld. TPO to result in a final picture as under: -

| S.No.          | Company Name                             | OP/OC %       |
|----------------|--|---------------|
| 1.             | ICRA Management Consulting Services Ltd. | 16.14%        |
| 2.             | Quadrant Communication Ltd.              | 14.58%        |
| 3.             | Global Procurement Consultant Ltd.       | 30.86%        |
| 4.             | Cyber Media Research Ltd.                | 10.60%        |
| <b>Average</b> |  | <b>18.05%</b> |

| Particulars                              | Amount in INR      |
|--|--------------------|
| Operating Cost                           | 14,78,88,744       |
| OP/OC (%)                                | 18.05%             |
| Arm's Length Price at a Margin of 18.05% | 17,45,82,662       |
| Price received                           | 16,40,98,223       |
| <b>Revised addition</b>                  | <b>1,04,84,439</b> |

It is seen that one of the directions of the Ld. DRP for providing working capital adjustment was not considered by the TPO in arriving at the impugned upward revision. The assessee is aggrieved with this action and has approached the ITAT with the following grounds:

*"1. The order dated December 30, 2015 passed by the Learned Assessing Officer ("Ld. AO") under Section 143(3) read with Section 144C of the Income Tax Act, 1961 ("the Act"), pursuant to the directions of the Hon'ble Dispute Resolution Panel ("Hon'ble DRP") dated November 24, 2015, is bad in law and on the facts and circumstances of the case.*

*2. The Learned Transfer Pricing Officer ("Ld. TPO"), Ld. AO and the Hon'ble DRP have erred in rejecting the Arm's Length Price ("ALP") determined and the transfer pricing analysis conducted by the appellant, of the international transactions undertaken by it with its associated enterprises during the Financial Year 2010-11 and thereby proposing transfer pricing additions.*

*3. The Ld. TPO, Ld. AO and the Hon'ble DRP have erred in rejecting the use of data pertaining to multiple years, and in applying data pertaining only to the current year, i.e. of Financial Year 2010-11, for benchmarking of international transactions undertaken by the appellant with its associated enterprises during the Financial Year 2010-11.*

4. *The Ld. TPO, Ld. AO and the Hon'ble DRP have erred in rejecting / modifying certain qualitative and quantitative filters applied by the appellant and in introducing certain incorrect additional filters for selection of comparables for benchmarking the international transactions undertaken by the appellant with its associated enterprises during the Financial Year 2010-11.*

5. *The Ld. TPO, Ld. AO and the Hon'ble DRP have erred in modifying the set of final comparables by rejecting certain comparables which were selected by the appellant and also erred in introducing certain comparables that were rejected by the appellant for determining the ALP of the international transactions undertaken by the appellant with its associated enterprises during the Financial Year 2010-11.*

6. *The Ld. TPO, Ld. AO and the Hon'ble DRP have erred in not making a working capital adjustment and other appropriate adjustments on account of differences in the risk profile of the appellant vis-a-vis the comparables, while computing the ALP of the international transactions undertaken by the appellant with its associated enterprises during the Financial Year 2010-11.*

7. *The Ld. TPO, Ld. AO and the Hon'ble DRP have erred in committing certain errors while computing the margins of comparables and incorrectly computing the ALP of the international transactions undertaken by the appellant with its associated enterprises during the Financial Year 2010-11.*

8. *The Hon'ble DRP has erred in not deciding the ground of objection raised by the appellant on incorrect computation by the Ld. TPO of net margin of the comparables and the Ld. AO has erred in observing in the final order that the aforesaid ground was rejected by the Hon'ble DRP on the basis that the appellant had failed to furnish the details to substantiate its claim.*

9. *The Ld. TPO and the Ld. AO have erred in not following the directions of the Hon'ble DRP, while computing the ALP of the international transaction undertaken by the appellant during the FY 2010-11."*

1.2 The assessee has also filed additional evidence under Rule 29 of the ITAT Rules,1963 and has tendered financial statements of M/s Quadrant Communication Ltd. for the year ended on 31.03.2011. This entity was chosen by the Ld. TPO as a comparable.

1.3 It is also seen that the Revenue has moved an application under Rule 27 of the ITAT Rules in support of Ld. DRP's direction to enhance

the income on account of secondment of employees. The ground raised through Rule 27 is as under:

*“Additions of enhancement of income of Rs.6,18,74,478/- with regard to secondment of employees, as per the direction of the Hon’ble DRP are sustainable as there is a clear cut finding of the Hon’ble DRP in the order dated 20/24.11.2015 and the assessment has not attained finality.”*

2. Before us the Ld. AR argued with the help of written submissions and detailed paper books. It was stated that grounds 1, 2 & 3 were generic and their subject would be covered in the subsequent grounds.

2.1 As per ground 4 the assessee has agitated the issue of the application of employee cost filter by the Ld. TPO. It was pointed out that in the assessee’s own case for AY 2010-11 [ITA 1701/Del/2015, order dated 07.02.2020], the ITAT had directed that considering the business of the assessee and the nature of services provided by it to its AE, the employee cost filter of 25% was rejected as per specific findings given in paras 43 and 44 of the ITAT’s order (supra).

2.2 Ground no.5 challenges the rejection of the assessee’s comparables and the substitution of the same by certain others by the Ld. TPO. The averments of the Ld. AR may be briefly recapitulated:

- a) In this regard it was pointed out that the comparable- M/s Inhouse Production Ltd. was rejected by the TPO and the Ld. DRP, whereas the ITAT in the assessee’s own case for AY 2010-11, in para 40 and further in the assessee’s own case for AY 2012-13 [ITA 3971/Del/2017, order dated 11.11.2021]

in paras 16 to 18 thereon, the ITAT is seen to have remanded back this specific issue to the Ld. TPO to consider this entity afresh after considering the segmental data pertaining to healthcare information. Hence, this company deserves to be considered in light of such segmental data. In this regard for AY 2010-11 the specific direction was; *“The TPO is directed to decide the inclusion of this company afresh after considering the segmental data of this company”*. It was pointed out by the Ld. AR that following the finding in AY 2010-11 and even for the year 2012-13, the matter was remanded back.

- b) Regarding the rejection of India Tourism Development Corporation Ltd. by the TPO, it was brought to our notice by the Ld. AR that the ITAT has accepted this comparable and has directed the TPO that since the segmental comparable business (Of ARMS) accounts for 58% of the total income hence, this particular segment can be used as a comparable for the assessee. This decision was reiterated in the ITAT's order for AY 2012-13 (supra) by holding that since the ARMS division's functions were comparable with the assessee and the segmental data is also available, then merely because that division had incurred losses in two years, it should not be excluded since it is not a case of persistent loss making. In light of this finding the ITAT in AY 2012-13 has directed; *“that .....respectfully following the decision of the coordinate bench in assessee's own case, we direct the Ld. TPO to decide about the comparability of the arm's segment of the comparable companies with the assessee”* [para 19 in this order].

- c) The assessee has also challenged the introduction of Global Procurement Consultants Ltd. The Ld. AR pointed out the relevant portions from the ITAT's order for AY 2010-11, whereby it is recorded that this entity provides high end technical consultancy in International Funding Regulations and cannot be compared to market support services provided by the assessee. Thereafter the ITAT has rejected this comparable on the ground that the services provided by this entity are similar to those provided by the consultants who assist the clients in preparing for large scale infrastructure projects and certain other connected services. For this reason, the ITAT has directed for the exclusion of this entity as a comparable.
- d) The introduction of M/s Quadrant Communication Ltd. has been assailed on the ground that both the TPO and the DRP have, erroneously, accepted this entity as a valid comparable. The Ld. AR argued that M/s Quadrant is basically an advertising company and professes to provide a wide range of services pertaining to brand advertising, retail solutions, public relations, etc. Thus, M/s Quadrant is providing an entirely different set of services as compared to the assessee. Secondly, the Ld. AR averred that segmental data is not available and income from marketing services has not been separately reported in the financial statement and thus, the same cannot be quantified. The Ld. AR pointed out certain portions from the financial statements of Quadrant supplied by way of additional evidence. Thirdly, the Ld. AR has mentioned that Quadrant was held to be functionally dissimilar from the case of Adobe Systems India Pvt. Limited [199 TTJ 195 (Del) - (Trib.)]; and from the case of Renishaw

Metrology Services Ltd. [189 ITD 236 (Pune) - (Trib.)]. The Ld. AR supported the comparables used by the assessee and assailed the adoption of new comparables by the Ld. TPO/Ld. DRP.

2.3 Ground six has been argued by the Ld. AR by stating that the denial of risk adjustment was improper and not in line with the finding given on the same by the ITAT while adjudicating the cases for AY 2010-11 and 2012-13. The relevant finding from the ITAT's order for AY 2010-11 was read out as under: -

*“49. In so far as risk adjustment is considered, there is no quarrel that the assessee has a cost plus business model operating in a low risk or almost risk mitigated involvement as compared to the comparable companies who are independent service providers and bear significant reasons.*

*50. In our considered opinion, the assessee is very much entitled for risk adjustment accordingly.”*

It was further pointed out that for AY 2012-13 the ITAT had remanded this matter back to the file of Ld.TPO with a direction to the assessee to show the risk assumed by it and how the risk of the comparable companies was different.

2.4 Ground nos. 7 & 8 pertaining to the allegation that both the Ld. TPO and Ld. DRP committed certain errors while computing the margins of comparables and incorrectly computing the ALP of the International Transactions. It was pointed out that the Ld. TPO treated bank charges and provision for doubtful debts as non-operating while computing margins of the comparables. It was pointed out that the ITAT in AY 2010-

11 has directed the Ld. TPO to consider such charges on the basis of clear directions given in paras 47 & 478 of the said order. The Ld. AR read out the said paragraphs, whereby it is mentioned that bank charges are levied by banks for maintenance of bank accounts and other facilities closely linked to the business operations of an assessee and thus, the same should be considered as operating expenses while computing operating margins of the comparables. Furthermore, the provision for doubtful debt was held directly to relate to the business operations of an assessee and thus, this should also be considered as operating expenses while computing operating margins of comparables.

2.5 Ground no.9 pertains to not following of certain directions of the Ld. DRP by the Ld. TPO. In this regard it was specifically pointed out that the TPO has not allowed working capital adjustment in spite of fact that the Ld. DRP has given a specific direction; *“hence, from the above discussion, the TPO is directed to give working capital adjustment using the OECD Methodology given at it in annex to chapter III and apply SBI prime lending rate (as on 30<sup>th</sup> June of the relevant financial year) as the interest rate.”* It was the submission by the Ld. AR that this particular direction has been totally ignored by the Ld. TPO.

2.6 The Ld. AR concluded her arguments by relying on the findings of the ITAT in AYs 2010-11 and 2012-13 for most of the issues. For the issue of including Quadrant as a comparable it was averred on the basis of

fresh evidence filed under Rule 29 that this entity could not be a valid comparable. Lastly, the Ld. AR averred that the directions of Ld. DRP in terms of providing working capital adjustment should be given benefit of by the TPO.

3. The Ld. DR, on the other hand, pointed out the application under Rule 27 of the ITAT Rules and stated that this ground is not taken by the assessee as per the Form 36 filed by him and even though the directions of the Ld. DRP, arrived at after detailed discussions on pages 41 to 56 directing the Ld. AO to compute the disallowance u/s 40(a)(i) of the Act, do not appear to have been complied with, still he relied on the written submissions filed along with the application under Rule 27 of the ITAT Rules for issuing suitable directions. It was the submission that as far as the plea to reject Quadrant as a comparable was concerned, it was pointed out that the assessee has merely filed, along with the application under Rule 29, the account statements and not the full profile of this company. It was the submission that the Ld. TPO and the Ld. DRP have considered this entity as a comparable only after a careful consideration of the entire gamut of the business profile of the same while accepting it as a comparable. The Ld. DR pointed out page 15 of the TPO's report in his support. It was the submission that the assessee was basically doing liaisoning work for its AE and thus, there would be no comparable which would exactly match the overall profile of the assessee.

4. We have considered the submissions of Ld. AR/DR and have gone through the documents before us, including the ITAT decisions for AYs 2010-11 and 2012-13 in the assessee's own case. For the sake of brevity, we do not intend to reproduce the findings of ITAT on the issues before us for this year since most of these issues have been dealt with while recording the submissions of the Ld. AR. Thus, following the two orders of ITAT before us and since the facts remain the same for this year, we direct as under:

- i. Regarding In house Production Ltd. as a comparable, the matter is remanded back to the file of Ld. TPO to decide on including this company after considering the segmental data of this entity;
- ii. Regarding considering India Tourism Development Corporation Ltd. as a comparable, respectfully following the ITAT's order (supra), the Ld. TPO is directed to decide about the comparability of ARMS Segment of this entity and consider using the same as a comparable.
- iii. Regarding the case of Global Procurement Consultants, respectfully following the ITAT's order for AY 2010-11 (findings given in paras 22 to 24 thereon) this entity is directed to be rejected as a comparable.
- iv. Regarding the case of M/s Quadrant Communication Ltd., it is felt that the Ld. TPO may consider adopting this entity as a comparable only after examining the entire business profile of the said entity and also considering the documents filed before us by way of Rule 29. The Ld. AO is directed to consider this entity on merits and thereby adopting the same as a

comparable in case the business profile of Quadrant matches significantly with the business profile of the assessee. To this extent, we remand this matter back to the file of the Ld. AO.

- v. The issue of risk adjustment denied to the assessee deserves to be remanded back, following the findings given by the ITAT for AYs 2010-11 and 2012-13. Respectfully following the directions given in AY 2012-13 in para 24, we also set aside this issue back to the file of Ld. TPO with direction to the assessee to demonstrate the risk assumed by it and how the risk of the comparable entities are different. The Ld. TPO may decide the issue accordingly.
- vi. The working capital adjustment as directed by the Ld. DRP must be allowed on terms set by the Ld. DRP in its order.
- vii. The bank charges and provision for doubtful debts should be considered as operating expenses by the comparables and following the directions given in para 47 & 48 of the ITAT's order for AY 2010-11 the Ld.TPO must consider these expenses as operating while computing the margins of comparables. The matter is accordingly remanded back for such consideration.

5. Regarding the application dated 12.7.2024 under Rule 27 of the ITAT Rules filed by the Revenue, it deserves to be mentioned that the issue raised in application refers to an adjustment u/s 40(a)(ia) of the Act of Rs.618,74,478/-. The said issue does not emanate from the AO's order. Hence, the said application is mis-conceived. Accordingly, the same is dismissed.

6. In the result, the appeal of the assessee is partly allowed and the application under Rule 27 filed by the Revenue is dismissed.

Order pronounced in the open court on 23.01.2026

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(SANJAY AWASTHI)  
ACCOUNTANT MEMBER

Dated: 23.01.2026

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI