

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'I' NEW DELHI**

**BEFORE : SHRI I.C. SUDHIR, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 3071/Del./2013
Asstt. Year :2007-08**

D.C.I.T., Circle 3(1),
New Delhi.

vs. C-Dot Alcatel-Lucent Research Centre
Pvt. Ltd., C-Dot, Campur Mandi Road,
Distt. Mehrauli, New Delhi
[PAN : AACCC7346Q]
(Respondent)

(Appellant)

Appellant by : Sh. Amrendra Kumar, CIT/DR
Respondent by : Sh. Rohit Sirohi, CA

Date of hearing : 02.11.2015
Date of pronouncement : 19.01.2016

ORDER

Per L.P. Sahu, Accountant Member:

This appeal by the Revenue arises out of the order passed by the CIT(A)-XX, New Delhi in relation to assessment year 2007-08 on the following grounds :

"1. Whether the Ld. CIT(A) has erred in facts and on law on ignoring the observation of the TPO regarding the payment for subscription fees of Rs.52,718/- such that the assessee has not been able to demonstrate with authentic persuasion, that payment was made for services indeed rendered. Thus erring in deleting the disallowance of Rs.52,718/-.

2. Whether the Ld. CIT(A) has erred in law and on facts by accepting the CUP evidence of the assessee and disregarding the arguments

presented in the remand report of this office in respect of CUP evidence relating to the purchase of equipments.

3. Whether the Ld. CIT(A) has erred in law and on facts by ignoring the characteristics of similarity in goods/services is strictest in CUP method which the assessee has filed to demonstrate by way of third party invoices.”

2. The brief facts of the case are that CDOT Alcatel Research Centre Pvt. Ltd. is a joint venture between Centre for Development of Telematics ((CDOT) and Alcatel Participations, France. The Company is engaged in research and development activities for wireless broadband technology and access infrastructure to develop wireless broadband solutions and provide consultancy, maintenance and support services. 51% of the shares are held by Alcatel Lucent, France and 49% are held by CDOT, India. The assessee undertook following international transactions during the year under consideration :

S.No.	Description of transaction	Method	Value (in Rs.)
1.	Purchase of equipment	Not benchmarked	72,26,594
2.	Purchase of software	CUP	15,41,724
3.	Payment for subscriptions	CUP	52,718

The assessee had used CUP method as the most appropriate method to benchmark the international transaction. The assessee has submitted two certificates, before the TPO, one from Alcatel Lucent France and other from Alcatel Lucent Deutschland AG certifying that all the equipments supplied to

the assessee company have been supplied at cost without charging any mark-up. They have further stated that the costs have been computed on the following basis:

Direct costs	-	Actual cost
R & D costs	-	8% of actual cost
Management cost	-	3% of actual cost
Fixed and variable cost coverage	-	9% of actual cost
CSC	-	1.2% of actual cost

They have further certified that the same methodology was applicable in determining the intra-group transfer pricing for all the group entities. The TPO issued show cause notice to the assessee and after considering the response to the show cause notice computed to the arm's length price of the international transaction as below :

S. No.	Description	Amount
1.	Equipment imported	Rs.46,06,181
2.	Purchase of software	15,41,724
3.	Subscription	Rs.52,718

As a result, total addition of Rs.42,14,855/- was made to the income of the assessee. The Id. CIT(A) has deleted the addition made by the AO/TPO vide impugned order. Aggrieved by this order, the Revenue is in appeal before us.

3. The Id. DR relied on the order of the AO/TPO and submitted that the Id. CIT(A) is not justified in deleting the impugned addition.

4. The Id. AR of the assessee, on the other hand, relied on the order of Id. CIT(A) and also furnished a written submissions, which read as follows :

“(A) Ground no.1: Regarding the Payment of Subscription fees amounting to Rs. 52,718/-

The assessee avails IT services from AE, Alcatel- Lucent, France. The assessee makes payment for subscription charges in relation to avilment of such services. In respect of the subscription charges for IT maintenance paid to Alcatel- Lucent, France, the transaction represents a cost to cost recharge, without any mark up, of the IT services availed from the associated enterprises. Therefore the CUP method was applied in accordance with the Indian TP regulations to confirm the arms length nature of transaction.

The AE generally procures the software for the entire group i.e. Alcatel Lucent group. These softwares are purchased from the third parties based the combined global requirement of the group. It is a common practice that when there is a bulk purchase or for multiple number of users the negotiated rates will be cheaper than the isolated purchases. The cost of this software was shared by the Indian entity. Such centralized procurement helps the group in achieving economies of scale. The Ld. CIT(A) has deleted the addition of Rs. 52, 718/-. (Pg 25, Para 5.10 of the Ld. CIT(A)'s order)

Quote

The Ld. TPO in her remand report has not raised any objection to the submission of the Respondent except stating that, "the claim of the assessee appears to be verifiable". In view of this, I see no reason why adjustment should be made on account of sharing of software expenses with the AE. In the same way, TPO has not given any reason to treat the subscription value (amounting o Rs. 52,718/-) as nil. Therefore, in absence of any reason to hold otherwise the subscription paid should not be disallowed. AO/TPO is directed to delete the addition made under these heads.

Unquote (Emphasis supplied)

(B) Ground no. 2: Regarding the Purchase of Equipments

1. During the captioned Assessment Year, the Company purchased base station equipment, modems, CPE cards, Cables, etc. from its AEs. The Ld. TPO arbitrarily identified prices of certain equipments and alleged that the same were comparable to the equipments being imported by the Company from its Associated Enterprises (AEs).

2. In this regard, the Respondent humbly submits that the equipments being imported were not purchased by the AEs from third parties but manufactured by the AEs themselves. Further, the Respondent has also not imported similar/ same equipment from any unrelated party in the same financial year.

3. As the equipments had been developed in-house by the AEs, price details/ data of similar equipment are also not available in the Public Database. The equipment is utilized by the Respondent for its own business purposes and hence is not a trading item.

4. The Respondent had submitted that the equipments purchased from its AEs had been purchased at cost. In other words, the Respondent had been charged only the actual direct and indirect cost incurred by the AEs in manufacturing the said equipments without any additional profit element. Due to the absence of any profit element, the cost actually incurred acts as an uncontrolled price for the product. Accordingly, the Respondent, while applying Comparable Uncontrolled Price (CUP) method, concluded that these transactions were at arm's length. In order to substantiate its aforementioned claim that the components had been purchased at cost, the Respondent vide its submission dated August 26, 2010 (PB 143-155) also submitted the cost certificates (PB 147-148) from its AEs. These cost certificates duly certified the Respondent's claim that only the actual cost component had been charged from the Respondent. Further, vide submission dated August 26, 2010; the customs valuation certificates were also submitted (PB 149-155) which state that the value of the imported equipment has been "*declared truthfully*".

5. Where the value of equipment has been approved by one arm of the Government (i.e. Customs Authorities), the same cannot be rejected by another arm of the Government unless such rejection is based on some concrete evidence.

Reliance is placed on the following judgments:

(a) **ACIT vs Star India (P) Ltd. [ITA No. 3585/M/2006, Assessment Year: 2002-03 and ITA No. 3846/M/2006, Assessment Year; 2002-2003]** wherein the Hon'ble Tribunal held as follows:

Quote

*In the instant case the Respondent has obtained the approval from the RBI before making the payment of licence fee, **as such the nature of payment cannot be out rightly rejected or doubted. It requires proper adjudication in the light of detailed analysis and relevant evidences furnished by the Respondent.** Whereas the Assessing Officer has disallowed the entire claim of payment of licence fee without looking into the merits of the case and the relevant provisions of the Act. We, therefore, are of the view that this issue requires fresh adjudication.*

Unquote (Emphasis supplied)

(b) It has also been held by the Hon'ble SC that one arm of the Government must respect the finding of the other arm of the same Government. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in **Apollo Tyres Ltd. (reported in 255 JTR 273)**. In this case, the Apex Court has held that the accounts of a company must be accepted as authentic and binding if the same have been maintained in a manner provided by the Companies Act, 1956 and have been audited and scrutinized and certified by the statutory auditors of the Company. Further, they have been approved by the company in its general meeting and also filed with the Registrar of Companies (RoC). The Court held that where the above have been complied with, the accounts must be accepted as authentic and binding. The relevant portion of the judgment is quoted below:

Quote

While so looking into the accounts of the company, an Assessing Officer under the Income Tax Act has to accept the authenticity of the accounts with reference to the provisions of the

Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by the statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the Revenue that it is still open to the Assessing Officer to rescrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act.

Unquote (Emphasis supplied)

(c) Again, recently, the Honb'le Supreme Court in the case of **Vadilal Chemical Ltd. v/s state of A.P. and Others [(2005) 6 SCC 292]** relied upon the decision of the Apex Court in Apollo Tyres Ltd. (supra) to hold that one arm of the Government must respect the law laid down by the other arm of the same Government.

It is submitted that the rationale of the aforesaid decisions in Apollo Tyres (supra) and Vadilal Chemicals (Supra) squarely applies to the facts of the Respondent's case wherein the Customs Authorities have already approved the valuation of the equipment imported by the Respondent from its AEs.

(d) The Respondent would also like to place reliance on the following extract from the decision of United States Tax Court in case of **Ross Glove Co., et al v. Commissioner (TC 1973)[60 TC 569]** decided on July 23,1973:

Quote

Since customs is directed by law to appraise imports in accordance with the provisions of 19 U.S.C. sec. 14010, we must assume, in the absence of contrary evidence that such duty was carried out in establishing the markups.

We find that the markups used by Customs in computing the value of gloves imported by Ross Glove may serve as a basis for determining an arm's length price under section 482.

Unquote (Emphasis supplied)

6. In the impugned TP order, the Ld. TPO has stated that valuation by customs authorities cannot be relied upon as the underlying purpose of a custom valuation is for different purpose.

Reliance has been placed on the following judgements:

(a) In this regard the Respondent would like to rely upon **Coastal Energy Pvt. Ltd Vs ACIT [TS-356-ITAT-2011-CHNY]** wherein it is ruled that comparable prices can be used for computing arm's length price for import of products. The relevant extracts are reproduced for your Honour's reference:

Quote

6. The next question to be considered is whether this price variation noticed by the TPO should be taken as the basis for making adjustment in the transfer pricing. The grievance of the

*assessee is that the comparable price has been obtained by the TPO from the customs authorities and the valuation of the customs authorities need not necessarily be realistic as that department is more interested in collecting import duties. **We should state without fear of contradiction that the customs authorities are assigning values to the imported goods on the basis of scientifically formulated methods and they are responsible for making a fair assessment value of the imported goods. The valuation made by the customs authorities is not an arbitrary exercise. But on the other hand, it depends upon large volume of international data classified according to internationally accepted protocol. Therefore, it is not possible to say that the credibility of the price rate furnished by customs authorities needs to be discounted.***

7. It is always possible for an assessee to establish its case for a different price other than the customs price provided the assessee has produced acceptable materials to support its proposition. In the present case, except its own internationally generated price, the assessee has not furnished any comparable data. Therefore, the assessee has no locus standi to question the credibility of the customs data relied upon by the TPO.

Unquote (Emphasis supplied)

The above decision underscores the fact that valuation undertaken for Customs' purposes can be relied upon for Transfer Pricing purposes to demonstrate that the goods have been imported at an arm's length value.

7. Without prejudice to the above, the Assessee would like to submit that in the impugned Transfer Pricing order, the Ld. TPO has undertaken an internet search to identify prices of equipments that according to him were comparable to the equipments purchased by the Respondent. Based on this internet search, he has compared the prices for equipments purchased by the Respondent during FY 2006-07, i.e. between April 1, 2006 and March 31, 2007, with prices that were prevalent during FY 2010-11. The relevant extract of the Ld. TPO's order has been given below for your Honour's ease of reference **(Pg 25 of the Ld. TPO's order):**

Quote

Computation of Arm's length price;

*In the show cause notice although zero value of ALP was proposed for all the international but after thoughtful consideration of the submission of the assessee and after discussion held with the Authorised Representative of the assessee and on the facts and circumstances of the case, it has been considered that the equipments imported certainly carry some value if sold in the open market. Under the circumstances, comparable uncontrolled price for the said products have been searched in the internet. **From Alcatel Lucent website a price list effective from June, 2010 has been found which contains prices for various products sold in the open market. Similarly, some online shopping websites have also been search where rates for certain Alcatel Lucent products not found in the price list, have been found..***

Unquote (Emphasis supplied)

8. As can be seen from above, the Ld. TPO has compared the prices that were applicable during FY 2006-07 with prices that were applicable 3 years down the line, i.e. FY 2010-11.

The Respondent humbly submits that the aforementioned methodology adopted by the Ld. TPO is flawed and contrary to the provisions of the Indian Transfer Pricing regulations. In this regard, the Assessee would like to quote the provisions as laid down under Rule 106(4) of in the Income Tax Rules, 1962 (the Rules), for your Honour's ease of reference:

Quote

*10B(4) The data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction **shall be the data relating to the financial year in which the international transaction has been entered into:***

Provided that data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared.

Unquote (Emphasis supplied)

- a. It is clear from the above that the intention of the law makers is to compare the controlled data with the uncontrolled data which pertains to the same financial year. The only exception to the above, as mentioned in the rule above, is that data for two prior years may be used, only if based on facts it can be ascertained that it had an influence on the prices for the current year.
- b. Accordingly, the Ld. TPO's approach wherein he relies upon data relating to three years after the transaction has undertaken is incorrect. Thus, the CUP analysis undertaken by the Ld. TPO should be rejected. Further, the Ld. TPO did not share with the Respondent the source of the prices that he identified by way of the internet search. Accordingly, the Respondent did not get an opportunity to verify/examine the information used by the Ld. TPO.

9. Further, without prejudice to above arguments, the Assessee would like to submit its contentions with regard to determination of arm's length price for the equipments purchased by it during the relevant year. In this regard, please find below a summary table capturing the equipments purchased during the year against which an adjustment has been made by the Ld. TPO:

Table - 3

S. No.	Product Description	Rate at which purchased by Respondent	Rate as determined by the TPO
1.	Base Station Receiver - 3BK 27506 AAAA Model	12,112	9,869
2.	Transciever Zyxel Wimax CPE PCMIA Card	136	103.42
3.	NEMO HW2C Kit	1,970	26.97
4.	Base Station Receiver (I Sector)	8,322	7,212.14*
5.	Modem Indoor I DIV 2.5 GHZ	260	75.86*

**The price represents on average as the Ld. TPO has relied upon different prices for the same component*

The Respondent's contentions regarding the aforementioned equipments have been provided below for your Honour's kind consideration:

9.1 Base Station Receiver 3BK 27506 AAAA Model and Transciever Zyxel Wimax CPE PCMIA Card

With regard to the "Base Station Receiver 3BK 27506 AAAA Model" and "Transciever Zyxel Wimax CPE PCMIA Card" mentioned above, the Respondent has now been able to identify certain Comparable Uncontrolled transactions undertaken by its AEs with third parties during the relevant assessment year. A comparative analysis of the price at which the products were purchased by the Respondent vis-a-vis the prices charged by the AEs for the same products from third parties has been summarized in the table below for your Honour's ease of reference:

Product Description as per customs documents	Model Number	Product Description as per AE's	Quantity	Price charged by AE's to CDOT (in Euro)	Total Value	Average Price Charged by AE's to third parties (in Euro)	+5% of range of the price
Base Station Receiver	3BK 27506 AAAA Model	Wimax Base Station A9116WBSA25-2	1	12,112	12,112	12,499*	12693
-DO-	-DO-	Wimax Base Station A9116WBSA25-2	1	12,112	12,112	12,499*	12693
Transciever Zyxel Wimax CPE PCMIA Card	N.A.	Zyxel Wimax CPE PCMIA Card	2	136	272	191*	N.A.

**Refer Annexure 4 of Submission dated October 8, 2012 for third party rates and average computation*

The underlying backup documents have been attached for your Honour's ease of reference as **Annexure 3A and 3B** of Submission dated October 8, 2012. **(PB 100-103)**.

Based on the above, it can be said that the price charged by the AEs from the Respondent was lower than the price charged from third parties. Accordingly, it can be concluded that the aforementioned international transaction undertaken by the Respondent is at arm's length.

9.2 NEMO HW2C Kit

With regard to "NEMO HW2C Kit" (NEMO Kits) mentioned in Table 3 above, the Respondent submits that for determination of ALP for this component, Ld. TPO in the impugned Transfer Pricing order has compared it with "Network Device Mounting Kits".

Based on the said comparison, the Ld. TPO reduced the purchase price of NEMO Kits and made an adjustment.

In this regard, the Respondent would like to take this opportunity to first explain the technical details of the component in question:

NEMO HW3 Kit (Board)1:

The NEMO (Network Modem) board provides the transmission function while hosting an IP/Ethernet transport functionality ensuring the Layer 3/ Layer 2 transport to and from Wimax Access Controller (WAC), Operations Maintenance Centre (OMC) configuration and monitoring management, as well as to other chained base stations. This is the heart of a Base Station like Mother Board of a PC. NEMO board is the digital board of the WiMAX Base Station. It contains processors & switches.

As can be seen from the above description, a NEMO Kit is a highly technical piece of equipment and forms the core component of a Base Station Transceiver and can only be equated to a motherboard in a PC. However, the Ld. TPO, based on his own conjectures and surmises, compared the aforementioned component to a "Network Device Mounting Kit". Based on an internet search, it can be seen that a "Network Mounting Kit" is a structure that is used for mounting network devices to the wall. A pictorial display of the same, as available in the public domain has been provided below for your Honour's ease of reference2:

As can be seen from the above, a "Network Mounting Kit" is merely a contraption that is utilized for holding a network device onto a wall or onto a structure. It is clearly a non-complex and non-technical piece of equipment. On the other hand, a NEMO Kit, as explained above, is a highly technical device, which forms the primary- component to a Base Station Transceiver. Accordingly, the comparative analysis undertaken by the Ld. TPO in the impugned Transfer Pricing order is flawed.

Further, with regard to the price of NEMO Kit as charged by the AE from the Respondent, the Respondent would like to submit that the said product is a proprietary' product of the group, which is sold as a part of a Base Station Transceiver to the customers. The NEMO Kit, being the primary and core component of the final product is not sold in isolation in the open market. Accordingly, the market price of the component is not available in the public domain.

Furthermore, as the Respondent is a research organization, engaged in undertaking research and development in the area of wireless broadband technology, this component was provided to the Respondent on a sporadic basis for undertaking research work. The component purchased was purely provided to the Respondent for non-commercial use and thus the market price of the same cannot be ascertained but for the cost certificates provided by the AEs that the said equipment was sold on a cost to cost basis.

The Respondent has already submitted that the aforementioned component, alongwith other equipments purchased by the Respondent from its AEs during the relevant

assessment were supplied at cost and no element of profit had been charged by the AEs on the same. Accordingly, the Respondent humbly submits to your Honour that the aforementioned transaction should be considered to satisfy the arm's length criterion by way of the CUP method as laid down under Indian Transfer Pricing regulations.

However, on a without prejudice basis, even if the price of the underlying NEMO Kit was to be ascertained by the Respondent, a possible approach could be to use the relative price proportion ratio of a mother board in the personal computer for deducing the proportion of Base Station Transceiver price (which has already proved to be at arm's length in the earlier part of the submission) which can be attributed to the NEMO Kit. As mentioned above, a NEMO Kit is the primary component of a Base Station Transceiver, like a motherboard is to a personal computer. Accordingly, the relative cost proportion that a typical mother board holds to a personal computer can be used as a benchmark to justify the price paid for a NEMO Kit.

In this regard, we have undertaken an internet search and have identified certain Central Processing Units (CPUs) with a standard configuration. The relative component prices of the same have also been identified. Based on our analysis, a mother board accounts for 12% to 18% of the total cost of the personal computer (refer Annexure 4 of the submission before Ld. CIT(A) dated October 8, 2012 for details). Further, the total market price for a Base Station Transceiver, as evidenced by the CUP submitted by the Respondent in **Annexure 3A** of the submission to Ld. CIT(A) dated October 8, 2012 **(PB 100)** is 12,499 Euros and the price of a NEMO Kit is 1970 Euros. Thus, a NEMO Kit accounts for around 16% of the cost of the Base Station Transceiver.

Based on the above analysis, it can be concluded that, as a NEMO Kit is a core component its relative pricing also captures an appropriate proportion of the total cost of the Base Station. Thus, it can be said that the purchases undertaken by the Respondent are at arm's length.

9.3 Base Station Transceiver (I Section) and Modem Indoor I DIV 2.5 Ghz

In the impugned Transfer Pricing order, the Ld. TPO while negating the cost certificates provided by the Respondent has stated that the Respondent has not been able to substantiate the cost by way of the actual cost calculation.

In this regard, the Respondent has now been able to secure the standard cost list that was applicable during the relevant assessment year for the two balance equipment/ components, namely Base Station Transceiver (I Section) and Modem Indoor I DIV 2.5 Ghz (refer Annexure 5 of the submission to CIT(A) dated October 8, 2012)**(PB 108)**.

From the perusal of the standard cost list alongwith the formula as mentioned in the cost certificates provided by the AEs, we can arrive at the price at which the Respondent purchased the equipment/ component from its AE. The calculation of the same has been given below:

Table - 5

		Amount in Euro	
Nature of Cost	Formula	Station Trariiseeiver (I Section) (WBSA25-1"as per pricelist)	Modem Indoor I DIV 2.5 Ghz ("A9100 2.5 Ghz CPE simple indoor EU power" as per price list)
Direct Cost*	A	6935.24	216.67
R&D Cost	$B = A * 8\%$	554-819	17-334
Management Cost	$C = A * 3\%$	208.057	6.5001
Fixed and Variable cost coverage	$D = A * 9\%$	624.172	19-5
CSC	$E = A * 1.2\%$	Nil*	Nil*
Total	$F = A + B + C + D + E$	8322	260
Price at which purchased by the Respondent		8322	260

#Source - Cost list

**No CSC cost was added by the AEs on the aforementioned equipment/component*

It is clear from the above computation that only the actual cost incurred in manufacturing of the respective equipment/component has been charged by the AE. Accordingly, as no profit has been charged by the AEs, the aforementioned purchase of equipment is at arm's length."

5. We have heard submissions of both the parties and have perused entire material on record.

6. The assessee-company CDOT Lucent has been formed for the research and development of wireless broadband technology and access infrastructure to develop wireless Broadband Solutions and provide consultancy, maintenance and support services. It is a joint venture with Alcatel-Lucent Participations, France who holds 51% share and 49% share rests with the

India Govt. The international transactions for the relevant assessment is less than Rs. 1 cr. Therefore, the assessee is exempt from the documentation requirements stipulated under section 92D of the Act read with rule 10D of IT Rules, 1962. The Id. TPO, during the transfer pricing assessment has made adjustment in all three international transactions undertaken by the assessee whereas the assessee has justified that all the three international transactions undertaken during the relevant assessment year has been charged by AE.

7. The CUP method offer the finest evidence of ALP. Arm's Length Price may arise where the tax payer or another member of the associate group sells the product in comparable sizes and in the comparable terms to ALP in similar promote markets (internal comparable).

8. An ALP party sells the similar product in similar size or quantity and in the comparable conditions to other arm's length party in similar markets (an external comparable).

9. The taxpayer of the entities buys the similar quantities in comparable quantities and in similar terms from the associate parties in the comparable markets (internal comparables).

10. An ALP Party buys the particular goods, in comparable quantities and in the similar terms from the other arm's length associate party in similar markets (external comparable).

11. In addition to this, while determining the ALP of an international transaction, under Rule 10C(2)(d), it is mandatory to judge with reference, among other things to the condition prevailing in the market, the overall economic development, the level of competition and whether the markets are wholesale or retail

12. The assessee has submitted the cost certificate from its AEs. The cost certificates duly certify the assessee's claim that only the actual cost component had been charged from the assessee. The customs Valuation Certificates were also submitted before the lower authorities which state that the value of the imported equipment has been declared truthfully.

13. The decision of Chennai Bench in the case of Coastal Energy Pvt. Limited in ITA No. 2099/Mds/2010 dated 13th July, 2011, quoted by the assessee is for the proposition that valuation undertaken for customs purposes, can be

relied upon for transfer pricing purposes to demonstrate that the goods have been imported at an arm's length value.

14. The Id. TPO has relied the equipments rates for the F.Y. 2006-07 based on the internet search whereas the case pertains to F.Y. 2010-11 wherein after passing of time, the rates will naturally increase. The provisions of Rule 10B(4) of the IT Rules read as under :

(4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction [*or a specified domestic transaction*] shall be the data relating to the financial year [*hereafter in this rule and in rule 10CA referred to as the 'current year'*] in which the international transaction [*or the specified domestic transaction*] has been entered into :

Provided that data relating to a period not being more than two years prior to [*the current year*] may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared:

[Provided further that the first proviso shall not apply while analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction, entered into on or after the 1st day of April, 2014.]

Product Description as per customs documents	Model Number	Product Description as per AE's	Quantity	Price charged by AE's to CDOT (in Euro)	Total Value	Average Price Charged by AE's to third parties (in Euro)	+5% of range of the price
Base Station Receiver	3BK 27506 AAAA Model	Wimax Base Station A9116WBSA25-2	1	12,112	12,112	12,499*	12693
-DO-	-DO-	Wimax Base Station A9116WBSA25-2	1	12,112	12,112	12,499*	12693

Transciever Zyxel Wimax CPE PCMIA Card	N.A.	Zyxel CPE Card	Wimax PCMIA	2	136	272	191*	N.A.
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**Refer Annexure 4 of Submission dated October 8, 2012 for third party rates and average computation*

15. The assessee is a research organization engaged in undertaking research and development in the area of wireless broadband technology. This component was provided to the assessee on a sporadic basis for undertaking research work. The component purchased was purely provided to the assessee for non-commercial use and thus the market price of the same cannot be as ascertained. The cost certificates provided by the AEs certify that the said equipment was sold on a cost to cost basis.

16. As regards the purchase of software and subscription fee of Rs.52,718/-, the software was purchased by the AE for the entire group i.e., Alcatel Lucent group. These softwares were purchased from third parties based on “combined global requirement” of the group. It is a common practice that when there is a bulk purchase or for multiple number of users the negotiated rates will be cheaper than the isolated purchases. The cost of this software was shared by the Indian entity. The assessee had given the details of comparison of the software purchased. The TPO in her remand report has also not raised any objection to the submission of the assessee except stating that

“the claim of the assessee appears to be verifiable. In view of this, we see no reason why adjustment should be made on account of sharing of software expenses with the AE. The TPO has also not given any reason to treat the subscription value amounting to Rs. 52,718/- as nil. Therefore, in the absence of any reason to hold otherwise, the subscription paid should not be disallowed. We accordingly, do not find any infirmity in the findings of the Id. CIT(A) while directing the AO to delete the addition made under these heads.

17. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.01.2016.

Sd/-
(I.C. SUDHIR)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated : 19.01.2016

*aks/-

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*