

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'I-1', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6670/Del./2015
Assessment Year: 2011-12**

Vestergaard Asia Pvt. Ltd., 302, Ractangle One Bldg., D-4, Saket, New Delhi. PAN - AACCV2729E (Appellant)	vs.	DCIT, Circle 26(2), New Delhi. (Respondent)
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Appellant by	Sh. G.C. Srivastava, Advocate
Respondent by	Sh. Amrender Kumar, CIT/DR & Sh. Kumar Pranav, Sr. DR

Date of Hearing	16.10.2017
Date of Pronouncement	30.11.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order u/s. 143(3) read with section 144C of the Income-tax Act. 1961 (in short "the Act"), i.e. the order of the Assessing Officer. Circle- 26(1) dated 23.10.2015 incorporating the directions of learned Dispute Resolution Panel (DRP) on the order of Transfer Pricing Officer (TPO) passed u/s. 92CA(3) dated 14.01.2015 after directions of Id. DRP u/s. 144C(5) of the Act. The appellant has raised in all 10 grounds of appeal as under :

1. *"That on facts and in law, the order passed by the Deputy Commissioner of Income Tax, Circle 26 (2), New Delhi ('Learned AO') under section 143(3) read with section 144C of the Income Tax Act, 1961 ('the Act'), on the directions of the Hon'ble Dispute Resolution Panel ('DRP') is bad in law, in as much as it failed to appreciate the facts involved and the applicable law thereon.*
2. *That on facts and in law, the learned AO has erred in making an addition of Rs. 63,54,367 to the income of the Appellant on account of Transfer Pricing ("TP") adjustment.*
3. *That on facts and in law, the learned AO/DRP has erred in upholding the rejection of TP documentation of the Appellant by the Transfer Pricing Officer ("TPO").*
4. *That on facts and in law, the learned AO/DRP has erred in not rejecting the fresh analysis made by the TPO and use of inappropriate filters to find the comparables.*
5. *That on facts and in law, the learned AO/DRP has erred in upholding the rejection of use of multiple year data by the Appellant.*
6. *That on facts and in law, the learned AO/DRP has erred in rejection of comparables adopted by the Appellant and retaining the new comparables adopted by the TPO.*
7. *That on facts and in law, the learned AO/DRP has erred in completely disregarding the additional comparables proposed by the Appellant for which data was subsequently available during the hearings.*
8. *That on facts and in law, the learned AO/DRP has erred in rejection of risk adjustment sought by the Appellant on account of difference in risk profiles.*

9. That on facts and in law, the learned AO has erred in disregarding the directions of DRP to adopt correct number while calculating the profit margins of some of the comparables.

10. That on the facts and in law, the Learned AO has erred in charging interest under section 234B, 234C and initiating penalty proceedings under section 271(1)(c) of the Act consequent to the additions made in the assessment order passed u/s. 143(3)/144C of the Act. "

2. The assessee filed its return of income on 23.09.2011 showing an income of Rs.78,65,208/-. During the course of assessment proceedings, the Assessing Officer found that the assessee has entered into international transactions with its Associate Enterprise (AE) for provision of business support services amounting to Rs. 6,41,12,171/- and certain other transactions like purchase of packing material, export of marketing material, freight recovered and interest income and therefore, reference u/s. 92CA of the Act was made by the Id. Assessing Officer for determination of Arm's Length Price (ALP) for the international transactions undertaken by the assessee. The Id. TPO passed an order u/s. 92CA(3) vide order dated 14.01.2015 proposing an adjustment on account of business support services of Rs. 1,02,04,869/-. Based on this, the Id. Assessing Officer passed a draft assessment order on 03.03.2015 wherein the total income of the assessee was proposed to be assessed at Rs. 1,81,94,110/- incorporating TP adjustment proposed by the TPO and some addition on corporate tax matter. The appellant further filed its objections against the

transfer pricing adjustment proposed in draft assessment order before the Id. DRP and the Id. DRP vide its directions dated 10.09.2015 disposed of the objections of the assessee. Consequently, in the final assessment order, transfer pricing adjustment was made of Rs. 63,54,367/- in the normal computation of total income assessing the total income of the assessee at Rs.1,42,19,575/-. This order of the Id. Assessing Officer is in challenge before us on several grounds.

3. The assessee is engaged in providing various business support services to its AEs such as logistics, regulatory support export of marketing collaterals, IT support, Corporate Accounting etc.

4. The assessee, in its TP documentation, i.e., T.P. study report, has used Transaction Net Margin Method (TNMM) as the most appropriate method and used operating profit (OP) / total cost (TC) as the profit level indicator (PLI). The assessee has used 8 comparables with an average margin of 9.54% using the multiple year data and compared it with margin of the assessee at 9.73% and has submitted that its international transactions are at arm's length. The Id. TPO rejected the transfer pricing documentation of the assessee and applying its own filter, selected 10 comparables with an average PLI of 25.64% and taking into consideration the PLI of OP/OC, i.e., operating

profit/operating cost, determined the ALP of international transaction of Rs.6,91,02,834/- at Rs.7,93,07,703/-and proposed an adjustment of Rs.1,02.04,869/-.

5. Grounds No. 1 to 4 of appeal are stated to be covered and general and, therefore, they are not adjudicated separately and hence, dismissed. Ground No.5, which relates to the application of multiple year data s not pressed by the assessee and hence, dismissed.

6. Ground No. 6 is against the rejection by the TPO of EDCIL (India) Ltd. as comparable and inclusion of certain other companies as comparables by the TPO. This comparable was rejected by the TPO on page 21 of his order on the ground of non-availability of data and functional differences. On objection before the DRP, the assessee submitted that the financials downloaded from MCA's website and the business description of the comparable was filed before the TPO. These details were filed again before the DRP. However, in para 5.3 of its order, the DRP upheld the action of the TPO and held that the financials are not available in public domain.

7. Before us, the Id. AR contended that the financial information downloaded from the MCA website constitutes information in public domain and should be

considered in the comparability analysis. On the functional profile of the comparable, the Id. AR submitted that the comparable is engaged in providing services in the nature of technical assistance, procurement services, placement services, testing and recruitment, etc. He argued that since the functional profile of both the assessee and the comparable is the same, being business support services, the comparable should be included in the final analysis. The Id. AR further referred to page 23 of the TPO's order, wherein the TPO has included another company. Global Procurement Consultants Ltd., providing services similar to EDCIL (India) Ltd. He also relied on the decision of coordinate Bench in the case of Eli Lilly & Co. (India) P. Ltd. vs. ACIT (ITA No. 788/Del/2015) where on similar facts, EDCIL (India) Ltd. was included in the final list of comparables.

8. The Id. DR relied on the orders of the Id. DRP and the Id. TPO. He vehemently submitted that the company is not functionally comparable to the assessee and its financial data is not available in public domain. He therefore submitted that the company should not be included in the final list of comparables.

9. We have carefully considered the rival contentions. Before us, the Id. AR has submitted that the financial data was made available before the TPO as

well as DRP, for this, he has referred to page 113-114 of paper book no. 1 and page 159-192 of paper book no. 2. In our view, the information available on the MCA website should be considered as being available in public domain for the reason that anyone can access and download such information. On the comparability of the company, the TPO has noted that the company is providing technical support services, procurement services, training and management services etc. Such services are in the nature of business support services and are comparable to the services performed by the assessee. Our view is further supported by the decision of the Coordinate Bench in the case of Eli Lilly & Co. (India) P. Ltd. vs. ACIT (supra) where, on the identical facts, on the said comparable, EDCIL (India) Ltd., the coordinate Bench has held as under:

"30. Having considered the rival submissions -we find that the aforesaid company was held to be valid comparable in our own order for Assessment year 2009-10 by holding as under:

"19. We have heard the rival submissions and, perused the material on record. In the present case, the assessee wants inclusion of EDCIL, a government company, in the final set of comparables adopted by TPO/DRP. The assessee inter-alia submitted that in the appellants own case for the assessment year 2008-09. DRP had directed the TPO to consider the aforesaid segment, namely, 'Technical Assistance' and 'Human Resource' as comparable to the assessee and since the business of EDCIL and assessee has remained unchanged from preceding years, EDCIL continues to be comparable to the assessee and there exists no legitimate reason to reject the company in the year under consideration. The assessee

placed his reliance on the judgment of Hon'ble Supreme Court in the case of CIT vs. Excel Industries Limited 358 ITR 295, wherein their Lordships reiterated the law laid down in Radhasoami Satsang vs. CIT 193 ITR 321 to hold that, where a fundamental aspect permeating through the different assessment years have been found as a fact one way or the other, and the parties have allowed the position to be sustained by not challenging the order, it is not allowed to change the position in any subsequent year. Having gone through the order dated 30.8.2012 for Assessment year 2008-09 in the case of appellant, it is stated that DRP has held in regard to the above comparable as under:

"1 Educational Consultants India Ltd. (EDCIL) According to the assessee EDCIL offer support services in the following areas:

Student placement

Secondment of experts

Technical assistance

Procurement services

Testing and recruitment services

Technical support group

Training and Management Services

The company operates in three segments:

Technical Assistance, Institutional Development and Human Resources Development. The services provided under Technical Assistance and Human Resource Development have been considered as comparable to the nature of services provided by the assessee to its AE.

Further, we wish to submit the EDCIL was accepted as comparable to the assessee by the learned TPO during the assessment proceedings for AY 2007-08 as well as earlier years. Hence since the business of EDCIL and the assessee has remained unchanged from last year, EDCIL continues to be comparables to the assessee and there exist no legitimate reason to reject the company this year."

After considering the above facts, we find that functionally it is comparable and TPO is directed to include it in the list of comparables for computation of ALP"

21 For the foregoing reason and there being no change in the facts for the instant assessment year, the AO/DRP is directed to include EDCIL in the final set of comparable companies. Reliance in this regard is placed on the following observation of the Mumbai Bench of the Tribunal in the case of ACIT vs. NGC Network India (P) Ltd. 10 Taxmann.com 140 wherein it has been held as under:

"These comparables and the method of computation of arm's length price has been accepted by the department in the subsequent assessment year i.e. 2004-05. Therefore in our view comparables selected by the assessee have to be adopted for the purpose of computation of transfer pricing adjustments this year also. "

31. *Following the same EDCIL is held to be functionally comparable to the appellant and therefore included in the final set of comparable companies. "*

Therefore, following the order of coordinate Bench we also hold that EDCIL being functionally similar as per its business profile which remains uncontroverted by the Revenue, requires to be included.

10. The assessee has also challenged the selection of certain companies by the TPO which are not comparable to the assessee as per FAR analysis. The assessee has contested the following comparables included by the Id. TPO.

- (i). Aptico Limited
- (ii). TSR Darashaw Limited
- (iii). Cameo Corporate Services Limited
- (i). Aptico Limited:

11. The Id. TPO included this company in the final set of comparables. The assessee objected to the inclusion of this company before the TPO stating that this company is functionally not comparable as it provides high end consultancy services and has highly skilled professionals to collate and analyze data. The Id. TPO rejected all these arguments stating that the company is providing various support services for the development of tourism industry. Therefore, he included it as a comparable. The Id. DRP also rejected the objections of the assessee in para 5.4 of its order for the same reasons.

12. The learned AR of the assessee referred to the extract of the Annual Report given on page 25 of the TPO's order and submitted that the company is engaged in high end consultancy services such as Cluster Development Entrepreneurship Development & Training, Asset Reconstruction & Management Services, Micro Enterprises Development etc. He submitted that these services are very sophisticated and not at all comparable to the business support services provided by the assessee like logistics. IT support, accounting etc. He further relied on the decision of the coordinate Bench in the case of Adidas Technical Services P. Ltd. vs. DCIT (2016) (69 taxmann.com 401)(Delhi Tribunal), wherein on similar facts, this comparable was rejected.

13. The Id. DR relied on the order of the Id. TPO and reiterated the findings given at page No. 25 of the order of the TPO. He submitted that this comparable should not be excluded.

14. We have considered the rival submissions and also referred to the extract of the annual report of the company wherein it is stated that it is engaged in providing services in the nature of Entrepreneurship Development & Training, Asset Reconstruction & Management Services. Micro Enterprises Development etc. In our view, the arguments of the assessee merit consideration. The services mentioned above cannot be categorized as business support services. Our view is further supported by the decision of coordinate Bench in the case of Adidas Technical Services Pvt. Ltd. vs. DCIT (supra), wherein on the identical facts, on the same comparable of Aptico Ltd., the coordinate Bench has held as under:

"8.3. We first take up the case of Apitco Ltd. (a) Apitco Ltd.:- Apitco Ltd. is a Public Sector Undertaking providing various support services for the development of tourism industry. Later the functional profile of the company had undergone a change, and it is now engaged in providing technical consultancy relating to asset reconstruction companies, management services, micro enterprise development, skill development etc. This is a government company. The fact that its operations are mainly based on the policy requirements of the government and the fact that it is a preferred company of the Government of India for entrustment of works, cannot be ignored. Be it as it may, in our considered opinion, the functional profile of this company is different

from that of the assessee company and hence the same should be excluded from the list of comparable companies -while computing the ALP. "

Therefore, following the order of the coordinate Bench, we hold that Aptico Limited is functionally different from the assessee and is directed to be excluded from the list of comparables.

(ii). TSR Darashaw Limited

15. This comparable was selected by the learned TPO after rejecting the contentions of the assessee regarding functional non-comparability. The learned TPO held that since the clients of the company are in India, it is not, in fact, providing IT enabled services to its group entities but providing them business support services. He held that this company is providing business outsourcing services and is therefore comparable to the assessee. The Id. DRP also rejected the objections of the assessee.

16. The learned AR of the assessee relied on page no. 128 of paperbook-2 and submitted that this company is primarily a share transfer and registry agent who performs some other ancillary services such as record management and corporate fixed asset management. He submitted that the services provided by the company are completely different from the business support services provided by the assessee. To substantiate his claim, he relied on the decisions

of the coordinate Bench in the case of Adidas Technical Services P. Ltd. vs. DCIT (supra) and Eli Lilly & Co. (India) P. Ltd. vs. ACIT (supra).

17. The ld. DR referred to the findings of the TPO on page 25 of the TPO's order and submitted that the company is engaged in the business of providing business services. He further argued that in TNMM broad comparability is to be seen and that it is not possible to find two companies providing identical set of services. It was argued that comparison has to be made between the FAR analysis of the comparable with the assessee and other minor differences would not be sufficient for excluding the company from the list of comparables. Reliance was placed on the decisions of the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) (P.) Ltd. vs DCIT (56 taxman.com 417) and Rampgreen Solutions (P.) Ltd. vs CIT (60 taxman.com 355) and the coordinate Bench decision in the case of Copal Research India (P.) Ltd. vs DCIT (73 taxman.com 157). He therefore submitted that the company should not be excluded from the list of comparables.

18. We have carefully considered the rival contentions. We agree with the ratio laid down by the Hon'ble Delhi High Court in the aforesaid cases that a comparison has to be made between the FAR analysis of the assessee and the comparables. Applying this principle in the present case, we cannot accept the

contention of the Id. DR that FAR analysis of TSR Darashaw Ltd. is similar to the assessee. The company sought to be included by the Id. DR is performing share registry services whereas the assessee performs logistics, IT support services etc. The functions involved, assets used and risks borne by these two entities will be completely different. We further draw support from the decision of the coordinate Bench in the case of Adidas Technical Services P. Ltd. vs. DCIT (supra), wherein on identical facts, TSR Darashaw Ltd. was excluded as a comparable, observing as under:

"(d) TSR Darashaw Ltd.:- The TPO included this company on the ground that the company is providing business out sourcing services to clients in India, These services are provided to local clients and not the foreign clients and hence they are not similar to ITES service . The TPO observed that ITES companies have the advantage of location savings, while the business service companies do not have advantage. Since in this case the services are predominantly provided in India, the company is a correct comparable. He also held that the assessee had not gone into the verticals or high end or low end distinctions while selecting the comparables and has selected companies operating in various verticals. The TPO has also selected comparables which are broadly engaged in the field of marketing support services which has similar to the services provided by the assessee.

The Ld. Counsel for the assessee on the other hand submitted that the company is not functionally comparable. It is contended that there can be no comparison between a specific pay roll service rendered and marketing support service provided. It was contended that TSR Darashaw Ltd. is a broking and investment banking house and as 57.4% of its income is from the share registry services segment and hence not a comparable. Reliance is placed on the follow ing decisions.

- i. *Microsoft Corporation P. Ltd, vs. DC IT in ITA no. 5766/Del/2011;*
- ii. *Premier Exploration Services P. Ltd. vs. ITO in ITA no.4935/Del/2011.*

In our considered opinion TSR Darashaw Ltd. cannot be taken as a comparable as 57.4% of its income is from share registry services segment. This shows the functional profile of the assessee is different.

In the case of Microsoft Corporation Ltd. (supra) at para 18 the Tribunal has held as follows.

"Coming to the merits of comparability, we find that this company has three segments, which inter alia include: 'Pay Roll and Trust Fund activity (Pay Roll) '. It is this segment which has been considered by the assessee as comparable. This company on an overview is a broking and investment banking house. Its other segments are : 'Registrar and Transfer Agent activity (R&D)' and 'Records management activity (Records)'. The segment of 'Pay Roll' was considered by the assessee as comparable in its TP study report and the same is now assailed. Under the 'Pay Roll' segment, this company undertakes pay roll and employee trust fund administration and management. When we compare the nature of pay roll activity undertaken by this company with the marketing support services rendered by the assessee to its AEs, we find that both are way apart from each other. There can be no logical comparison between a specific pay roll services rendered by a company to its clients with the marketing support services rendered by the assessee to its AEs. This company is, therefore, directed to be excluded from the final set of comparables. "

Consistent with the view taken in the above case, we direct the AO/TPO to exclude this comparable. "

The ld. DR could not controvert how the facts of the case of the assessee are different from the case above, and therefore, following the decision of coordinate Bench, we hold that TSR Darashaw Ltd. cannot be said to be

providing business support services and is directed to be excluded from the list of comparables.

(iii). Cameo Corporate Services Limited

19. This comparable was included by the TPO by holding that it was performing business services. He rejected the contentions of the assessee regarding its functional dissimilarity. The Id. DRP also rejected the objections of the assessee against the company's inclusion.

20. Before us, the learned AR relied on the extracts of the company's annual report given on page 23 of the TPO's order and submitted that like TSR Darashaw Ltd., this company is also primarily engaged in the business of registry and share transfer and was therefore not comparable to the assessee. He relied on the decision of the coordinate Bench in the case of Adidas Technical Services Pvt. Ltd. vs. DCIT (ITA No. 862/Del/2016).

21. The learned DR relied on the order of the TPO and referred to the functional profile of the company. It was submitted that the company is engaged in providing business services and is comparable to the assessee. He vehemently submitted that the company should be included in the list of comparables.

22. We have considered the rival submissions and the extracts from the company's Annual Report. In our view, the functional profile of Cameo Corporate Services Ltd. is similar to the profile of TSR Darashaw Ltd. As we have already rejected TSR Darashaw Ltd. from the list of comparables, Cameo Corporate Services Ltd. is also directed to be excluded from the list of comparables. We find support from the decision of the coordinate Bench in the case of Adidas Technical Services Pvt. Ltd. vs. DCIT (ITA No. 862/Del/2016), wherein on identical facts, the company was excluded by observing as under:

"6. In the case of Cameo Corporate Services Ltd. the DRP is of the view that, the functions are comparable with that of TSR Drawshaw Ltd. As the Tribunal in its order for the A.Y. 2010-11 has directed exclusion of TSR Drawshaw Ltd. from the list of comparables, for the same reasons, we direct the A.OJT.P.O. to exclude Cameo Corporate Services Ltd. from the list of comparables in this year. "

In the result, ground No. 6 of the appeal is allowed.

23. Ground No. 7 is against the rejection of companies which were proposed by the assessee at the time of TP assessment as their data was not available at the time of preparing TP report. The assessee seeks the inclusion of the following three comparables-

(i). Marketing Consultants & Agencies Ltd.

- (ii). Sporting & Outdoor Ad-Agency Pvt. Ltd.
- (iii). Overseas Manpower Corporation Ltd.

(i). Marketing Consultants & Agencies Ltd.

24. This comparable, sought to be included by the assessee, was rejected by the TPO on the ground that its ratio of service income to total income is 67%, hence it fails the service filter of 75% applied by the TPO.

25. Before us, the Id. AR submitted that the TPO has no objections regarding the functional similarity of this comparable. The only objection is regarding the service filter. He submitted that the comparable is reporting a separate service segment in its Annual Report and for the purpose of comparability analysis, only the figures of the service segment are taken. He argued that where segmental data for service income is available, there can be question of applying a service income filter. He therefore submitted that this comparable should be included in the list of comparables.

26. The Id. DR relied on para 11.2 of TPO's order and argued that once the assessee has accepted the 75% service income filter, the companies which fail this filter, cannot be accepted. He therefore submitted that the company should remain excluded from the list of comparables.

27. We have carefully considered the rival contentions. The short question to be answered regarding this comparable is that where a company reports a separate service segment in its Annual Report, is there a need to apply service income filter. In our view, there is no need of applying such a filter if the segmental data is being used for comparability analysis. Such filter is to be applied only if the entity level profit margin is being considered in the comparability analysis. In the present case, since the service segment of the comparable is being considered in the final analysis the application of such filter is not required. We therefore direct the TPO to include this company in the list of comparables.

(ii). Sporting & Outdoor Ad-Agency Pvt. Ltd.

28. This comparable sought to be included by the assessee was rejected by the TPO on the ground that its revenue is continuously diminishing over the years.

29. Before us, the Id. AR submitted a chart showing the company's revenue over the preceding four financial years (including the relevant financial year. i.e. FY 2010-11). Referring to the chart, it was submitted that the revenue in FY 2010-11 was Rs. 3.98 crore as compared to the revenue of Rs. 3.99 crore in FY 2009-10, therefore the decline was a negligible 0.25%. He further

submitted that the TPO has not raised any objections regarding the company's functional similarity with the assessee. It was argued that if a company was functionally comparable, then it should not be rejected because of its revenue. In this regard, reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) (P.) Ltd. vs. DCIT (supra).

30. The Ld. DR on the other hand argued that the revenue of the company has been reducing over a number of years. This fact indicates that the company is undergoing abnormal/exceptional circumstances and therefore its margins cannot be taken as reflecting those of the industry. He vehemently argued that this company should be excluded from the comparability analysis.

31. In para 11.4 of his order, the TPO has noted that the data for FY 2010-11 was not available in public domain. He took the data of other years to hold that there was a pattern of diminishing revenue and rejected the comparable.

32. We have considered the rival contentions. As regards the availability of data for FY 2010-11, the Id. AR referred to page 312-316 of paper book 2 to argue that financial data of FY 2010-11, which was available in public domain,

was in fact on record. We therefore hold that such data was on record and should have been considered in the final analysis.

33. As regards the argument of diminishing revenue, we note that the reduction of revenue from FY 2009-10 (3.99 crore) to FY 2010-11 (3.98 crore) is approximately Rs. 1 lac. In our view, such a minor difference in revenue cannot be taken to mean that the company is undergoing abnormal circumstances and should be rejected. Even otherwise, if the functional similarity of the company with the assessee is accepted, the same should not be rejected simply because of difference in revenue. Our view is supported by the decision of the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) (P) Ltd. vs DCIT (supra), in which it was observed:

"33. Such being the case, it is clear that exclusion of some companies \whose functions are broadly similar and whose profile - in respect of the activity in question can be viewed independently from other activities-cannot be subject to a per se standard of loss making company or an "abnormal" profit making concern or huge or "mega" turnover company. As explained earlier, Rule JOB (2) guides the six methods outlined in clauses (a) to (f) of Rule 10B(1), -while judging comparability. Rule JOB (3) on the other hand indicates the approach to be adopted where differences and dissimilarities are apparent. Therefore, the mere circumstance of a company - otherwise conforming to the stipulations in Rule 10B (2) in all details, presenting a peculiar feature - such as a huge profit or a huge turnover, ipso facto does not lead to its exclusion. The TPO, first, has to be satisfied that such differences do not "materially affect the price...or cost";

secondly, an attempt to make reasonable adjustment to eliminate the material effect of such differences has to be made. "

In light of the above, we direct the TPO to include this company in the list of comparables.

(iii). Overseas Manpower Corporation Ltd.

34. This comparable was sought to be included by the assessee. The Id. AR referred to page no. 157 of paperbook-1 and submitted that this company is engaged in providing placement services, which fall under the head of business support services. He further submitted that the TPO has not drawn any adverse inference against the inclusion of this company, but has simply ignored it in his final set of comparables. He therefore submitted that the company should be considered in the final list of comparables.

35. In the counter, the Id. DR could not bring any specific material on record to show that the company was not comparable to the assessee.

36. We have considered the rival contentions. We agree with the arguments of the assessee that placement services performed by this company are in the nature of business support services. As neither the TPO nor the DR has been able to place any contrary material on record to show difference between the profiles of the assessee and the company, we direct the TPO to include this

company in the final set of comparables. In the result, this ground of appeal is allowed.

37. Ground No. 8 of the appeal, which relates to the claim of risk adjustment, was not pressed by the Id. AR. This ground is accordingly dismissed.

38. In ground No. 9, the assessee has challenged the incorrect calculation of the profit margin of one of the comparables, HSCC (India) Ltd.

39. Before us, the Id. AR has submitted that the margin adopted by the TPO is 21.04% whereas the correct margin of the comparable is 17.10%. He submitted that the difference is because the TPO has not considered bad debts and provision for doubtful debts as part of operating expenses. He submitted that bad debts and provision for doubtful debts are part of the day to operation of a business and should be considered as operating expenses. He further submitted that the DRP had directed the AO/TPO to verify the claim of the assessee and correct the computation of margins. The Id. DR relied on the order of the TPO and para 5.5 of the DRP's order. He submitted that these expenses are not operating in nature and have been rightly excluded by the TPO from operating expenses.

40. In his written note, the Id. AR has submitted the following computation, which according to him is correct if bad debts and provision for doubtful debts are considered part of operation expenditure.

Income from consultancy services		23,11,39,955
Other Income		10,34,40,416
Total income		33,45,80,371
Less: Non-operating income		
-Provision written back	97,69,066	
-Interest on deposits	9,14,57,391	
-Interest on staff loans	2,45,839	
Operating Income (A)		23,31,08,075
Total Expenditure		19,92,74,343
Less: Non-operating expenses		
-Provision for Doubtful Debt	2,05,230	
-Loss on sale of assets	16,122	
Operating Cost (B)		19,90,52,991
Operating Profit (C) [A - B]		3,40,55,084
Operating Profit/Operating Cost [C/B]		17.10%

41. We have carefully considered the rival submissions. We find force in the submission of the Id. counsel for the assessee that bad debts and provision for doubtful debts are made as a part of the operating activities of business governed by the principles of prudence. We, direct the TPO to verify the above profit margin calculation of the comparable submitted by the assessee and to treat the expenses of bad debts and provision for doubtful debts as part of

operating expenditure. In the result, ground No. 9 of the appeal is allowed accordingly.

42. Ground No. 10 is with respect to initiation of penalty proceedings and interest u/s. 234 B and 234C of the Act, which are consequential and premature in nature. Therefore, we refrain to adjudicate on them and dismiss the same.

43. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30 11.2017.

Sd/-
(Bhavnes Saini)
Judicial member

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

Dated: 30.11.2017

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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