

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 895/Del/2014
(Assessment Year: 2009-10)

Degania Medical Devices Pvt. Ltd, Plot No. 251, Sector-6, IMT Manesar, Gurgaon PAN:AACCD0262A (Appellant)	Vs.	ACIT, Circle-1(1), Gurgaon (Respondent)
---	-----	--

Assessee by : Revenue by: Date of Hearing Date of pronouncement	Shri Rohit Tiwari, Adv Shri Amrender Kumar, CIT DR 13/09/2017 07/11/2017
--	---

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Assistant Commissioner of Income Tax, Circle – 1 (1), Gurgaon [hereinafter referred to as Id AO] dated 23.12.2013 for the Assessment Year 2009-10 under section 143 (3) read with section 144C of the income tax act, 1961 (in short The Act) passed in pursuance of direction of the Ld Dispute Resolution Panel – 1, New Delhi (hereinafter referred to as the Ld. DRP) dated 03/10/2013 against objections on draft assessment order passed by the Ld. Assessing Officer on 28/2/2013 wherein the transfer pricing adjustment proposed by the Additional Commissioner of Income Tax, Transfer Pricing, Chandigarh (hereinafter referred to as Ld. Transfer Pricing Officer) vide order under section 92CA(3) of the Act dated 29/01/2013 were incorporated.
2. The assessee has raised the following grounds of appeal:-
 - “1. The Hon’ble Dispute resolution Panel has erred in law, facts and circumstances of case by failing to give due consideration to the objections raised by assessee and rejecting almost all objection in pre conceived and mechanical manner without giving any justifiable, logical or cogent reasoning.
 2. That on the facts and circumstances of the case and in law, the Assessing Officer (‘AO’) / Transfer Pricing Officer (TPO) / Dispute Resolution Panel (‘DRP’) has erred in making an addition of Rs. 1533640/- to the total income of the appellant on account of various transfer pricing adjustments and accordingly, brought down returned loss of Rs. 17377228/- to Rs.2040830/-.
 3. The learned TPO and The learned AO has erred in law, facts and circumstances of the case by proposing and selecting Hindustan Syringes & Medical Devices Pvt. Ltd. (‘Hindustan Syringes’) as a comparable to the assessee to benchmark the impugned transaction. ‘Hindustan Svrinaes’ is not a suitable comparable. This comparable is

having a turnover more than 20 times the turnover of the assessee and producing entirely different products and use entirely different raw material which are not comparable.

4. The learned TPO and Learned AO has erred in law, facts and circumstances of the case by proposing and selecting Pregna International Ltd. ('Pregna') as a comparable to the assessee to benchmark the impugned transaction. 'Pregna' is not a suitable comparable. This proposed comparable ('Pregna') is producing or dealing in entirely different products like medical implants and electronic Components, which are not comparable with medical disposables (produced by assessee) by any stretch of imagination.

In fact Hon'ble DRP has erred in law, facts and circumstances of the case by rejecting our objection to proposed comparable. DRP has misconstrued the functional proximity of the products and was not able to appreciate the facts that Medical disposable cannot be compared with electronic products i.e. laparoscope and component. Also medical disposable cannot be compared with medical implants i.e. 'Copper T.'

5. The learned TPO and the learned AO have erred, in law and on facts and circumstances of the case by committing apparent mistake in his revised calculation by adding non-operational income in operational income like incentive in the form of DEPB /duty drawback and removing / ignoring operational expenses out of total operational expense like exchange fluctuation on forward Contract by exporters in normal business, thereby increasing margins of each comparable in his revised calculations (increasing average margin by almost 2.5%). The revised calculation of margin done by learned TPO in individual comparable is not correct.

The Learned TPO has not given any cogent or logically convincing ground for such additional to income and rejection of operational expenses. In fact Learned TPO has not acted judiciously in doing above and in fact he has arbitrarily done addition or deletion based on what is conveniently suited to his preconceived view point.

6. The learned TPO, and the learned AO have erred, in law and on facts and circumstances by not making suitable adjustments, on account for differences in the risk borne by the assessee for various risk / functional difference like Marketing, technology, inventory risk, Head office infrastructure support, credit and product liability risk. There is no cogent and logical reasoning for the same.
7. The learned TPO, and Learned AO have erred, in law and on facts and circumstances of the case by failing to make appropriate adjustments to account for differences in working capital employed by the assessee vis-a-vis comparable companies, as per rule 10B(3) of the Rules. The learned TPO has acted in biased manner with pre conceived notion and has not given any justifiable or cogent reasoning for not allowing working capital adjustment. Comparable have employed huge working capital whereas assessee has negative working capital due to advance from AE instead

3. Ground No 1 & 2 are general in nature therefore they are dismissed.

4. Ground No 3 & 4 are contesting two comparable companies included by the Id TPO. Ground no 5 is against the computation of margins of the comparable as well as the assessee company. Ground no 6 and 7 respectively are for risk adjustment and Working capital adjustments. These grounds are contested.
5. Brief facts of the case are that assessee is a private limited company, which is engaged in the business of import of assembly of component and re-export of assembled medical disposable balloon catheters as 100 % export oriented unit (EOU). It is providing a captive production to its parent company and its parent company has helped in setting up and expansion of manufacturing facilities by providing technology, training, and finance administrative and marketing support to the assessee. Assessee imports different sub assemble parts i.e. semi finished balloon catheters which includes the purging of holes in the silicon tubing and fixing with wall, rings and the balloon. The final products are being sold only to one customer i.e. the AE of the assessee.
6. For assessment year 2009 – 10, it filed its return of income on 25/09/2008 declaring loss of Rs. 17377228/-. As assessee has entered into international transactions, the case was referred to the Ld. Transfer Pricing Officer under section 92CA (1) of the Income Tax Act. The Ld. Transfer Pricing Officer passed an order under section 92CA (3) on 29/01/2013 proposing an adjustment to the International Transaction of the assessee of Rs. 1762 9070/-. Consequent to that draft assessment order under section 144C of the Income Tax Act was passed on 28/2/2013 wherein the only adjustment was made to the returned loss of Rs. 17377228/- of transfer pricing adjustment to the returned income of the assessee of loss of Rs. 17629070/- and computed total income of the assessee at Rs. 251842/-. The assessee preferred objections before the Ld. Dispute Resolution Panel who gave its direction on 03/10/2013. After considering the direction of the Ld. Dispute Resolution Panel, Ld. Transfer Pricing Officer passed an order under section 144C (10) read with section 92CA(3) proposing adjustments of Rs. 15336400/- on the arm's length price of the international transaction entered into by the assessee. Consequent to this, the Ld. Assessing Officer passed final assessment order under section 143 (3) of the Income Tax Act read with section 144 C of the Act on 23/12/2013 assessing the total income of the assessee at Rs. 2040228/-. Assessee is in appeal before us against that order.
7. The assessee has entered into 3, international transactions as under:
 - a. purchase of raw material of Rs. 1 4037 6182/- from its associated enterprise the Degania Silicon Limited , Israel

- b. sale of finished goods to Degania Silicon Limited, Israel of Rs. 1 8530 8065/- .
 - c. Purchase of plant and machinery from Degania Silicon Limited Israel of Rs. 7 68231/- and interest of Rs 1113753/-
8. Assessee adopted transactional net margin method (TNMM) as the most appropriate method (MAM) for the purpose of benchmarking of purchase of raw material and sale of finished goods. For benchmarking the arm's length price of the transaction of the purchase of plant and machinery and interest assessee in its transfer pricing documentation adopted CUP method as the most appropriate method. While endorsing TNMM method, assessee was adopted as the tested party and the profit level indicator used was operating profit/sales . The assessee used the data for FY 2008 – 09 and average PLI of the 5 comparable selected by was calculated at 3.35%, whereas the PLI of the assessee was computed at (-) 0.0463%, and since the margin of the taxpayer was within +-5% range of the mean margin of the comparables the transactions were stated to be at arm's length.
 9. The Ld. Transfer Pricing Officer rejected the transfer pricing study report of the assessee, on fresh search, selected 6 comparables vide para No. 11 of his order wherein the average PLI of those comparable companies was 9.45% and thereafter the adjustment under section 92CA of Rs. 17629070/- was proposed. Before the Ld. Dispute Resolution Panel assessee objected for the exclusion of South India surgical company. The Ld. Dispute Resolution Panel directed TPO as per Ground No. 6.3 directed the Ld. transfer pricing officer to include it for the comparability analysis. However all other contentions of the assessee were rejected. Vide order dated 05/12/2013, Ld. transfer pricing officer included the above comparable making the total comparable list of 7 companies whose average PLI was 8.215% and thereafter computed the adjustment under section 92CA of Rs. 15336400/-.
 10. Now The issue in dispute is the inclusion of the 2 comparable selected by the Ld. Transfer Pricing Officer of Hindustan Syringes and medical devices Ltd, which has the PLI of 16.91% and Pregna international Ltd, which is a PLI of 11.57%. Further, the assessee has also disputed the margin of the comparable companies wherein the duty drawback and duty entitlement pass book, foreign exchange fluctuation and other income is required to be adjusted. The assessee has also asked for the working capital adjustment, risk adjustment and abnormal items adjustment.
 11. Ground No 3 & 4 are against the inclusion of two comparables. Now we 1st take up the issue on inclusion of the 2 comparables i.e. Hindustan Syringes and medical devices Ltd and Pregnant international Ltd.

12. Regarding Hindustan Syringes Limited Ld. Transfer Pricing Officer has selected this comparable as the assessee has rejected this comparable in its accept reject matrix on the ground that sufficient financial data are not available. The Ld. Transfer pricing officer stated that the annual report of the company is available, has been perused and it is a medical disposable manufacturer. He further stated that the comparable financial data is also available in the Prowess database because it passes all filters, therefore according to him it is a suitable comparable. The Ld. Dispute Resolution Panel also observed that this company is engaged in manufacturing and sale of medical products such as syringes etc. The items manufactured by the assessee is production of the semi finished medical products into final products of disposable and therefore this comparable is functionally quite close to the assessee company. It was further held by the Ld. Dispute Resolution Panel that TNMM method allows some degree of flexibility and tolerance in the matter of selection of the comparable because under this method the net margins are compared and some amount of functional dissimilarity can be tolerated at the net margin level. According to the Ld. Dispute Resolution Panel as the company is undisputedly engaged in the provision of financial services but qualifies service income filter, hence cannot be excluded. Hence, according to the Ld. Dispute Resolution Panel the functional differences pointed out by the assessee are not significant enough to warrant the rejection of this company as comparable. Hence, the objection of the assessee was rejected.
13. The Ld. authorized representative placed before us balance sheet of the comparable and submitted that the turnover of this companies Rs. 374.26 crores while the turnover of the assessee is only Rs. 18.53 crores and therefore this is not suitable comparable. He relied upon the decision of the coordinate bench in case of DHL express India private limited versus Assistant Commissioner of Income Tax (ITA 7360/MUM/2010). It was further contested that the companies having export sales less than 10% of the total sales are excluded by the Ld. Transfer Pricing Officer wherein this companies having an 11% export and 89% domestic sales. Therefore, it fails the filter adopted by the Ld. Transfer Pricing Officer. It was further stated that the comparable company is functionally different, which is also be noted by the Ld. Dispute Resolution Panel. However, for the reasons that the assessee has adopted the transaction net margin method (TNMM) the functional dissimilarity have been ignored. He therefore relied on the decision of the Hon'ble Delhi High Court in case of Rampgreen solutions private limited wherein it is stated that the comparability factors cannot be different in different methods of the determination of the arm's length pricing.

14. Regarding Pregna International Limited the Ld. transfer pricing officer also looked into the accept reject metrics of the assessee wherein this company did not figure. Therefore he included this comparable stating that it is Manufacturer of medical disposable and data for the same is available in the databases. He further held that it passes all filters also therefore this is a suitable comparable. On objection before the Ld. Dispute Resolution Panel assessee contested the functional difference in dissimilarity of the above comparable. However, the Ld. Dispute Resolution Panel held that this company is engaged in the manufacturing and sale of medical products. According to the Ld. Dispute Resolution Panel items manufactured by the assessee are production of semi finished medical products and therefore it was observed that this comparable is functionally quite close to the assessee company. Further, the detailed reason given for 1st comparable of Hindustan syringes medical devices Ltd regarding relatively low degree of proximity acceptable in transaction net margin method were also applied for this and objection of the assessee was rejected.
15. The Ld. authorized representative submitted before us that this company has turnover from laparoscopic component of 32% which are in electronic Item and 66.94% from implants. He submitted that the implants remain in the human body for a longer duration. Some of the above items are disposable while assessee's turnover is 100% from disposable. He therefore submitted that the company which is manufacturing disposable items cannot be compared with the company which is manufacturing implants which remain in the human body. Hence, this comparable company is functionally different. He further submitted that there is a wide difference between the margin of the medical implants as well as the disposable. For this he referred to the newspaper article.
16. The Ld. Departmental Representative vehemently relied upon the order of the Ld. Transfer Pricing Officer which was confirmed by the Ld. Dispute Resolution Panel with respect to both the above comparables and stated that when the comparables are functionally closer and in TNMM method adopted by the assessee and Ld. TPO some of the dissimilarities can be ignored. He therefore submitted that there is no infirmity in the order of the lower authorities in confirming the inclusion of about 2 comparables.
17. We have carefully considered the contentions of the Ld. authorized representative and the Ld. departmental representative on exclusion/inclusion of the above 2 comparables. The functional profile of the company is not disputed by the lower authorities and assessee has also relied upon the same. After comparing the functions of the assessee, we discuss both the above comparables which are contested before us.

18. Coming to the 1st comparable of Hindustan syringes and medical devices Ltd, the assessee has placed before us copy of the Balance sheet of the comparable company for the year ended on 31st of March 2009 as well as profile of the company. We found that it was created to serve the medical profession with affordable, world class medical devices. It was the very first Technical Collaboration between Japanese Corporation and an Indian MSME to produce glass syringes. It started with manufacturing of Glass Syringes in the year 1959 and subsequently added other products such as Surgical Blades in 1971 , Single Use Syringes in 1986, Single use needle in 1987, Cannula manufacturing in 1989, Scalpvein Infusion Sets in 1991, I.V Cannulas in 1992 , Auto Disable Syringes in 2001 , Vacuum Blood Collection Tubes in 2007 and Blood Collection Needles in 2008 to it's product range. It is the first company in the world to launch a comprehensive range of sizes of Auto Disposable Syringes for curative segment, in the world. To cater effectively to its' commitment of providing Safe Injections, few years back it came up with a 22.73 million \$ worth State of the Art manufacturing facility, specifically for manufacturing K1 Design Auto Disable Syringes, for which it technologically collaborated with M/s. Star Syringe UK. It has collaboration with M/s. Ester Technology, Israel and launched Vaku-8 brand of Evacuated Blood Collection Tubes and Blood Collection Needles, which are fast getting acceptance & support of the medical fraternity. Thus the comparable company is largest manufacturer of disposable syringes and needles. During the year it has also executed agreement with UK Company to manufacture and sell specific syringes. The company is also carrying on research and development in several areas including quality improvement, capacity optimization, waste reduction, substitute of import inputs consumable etc. On perusal of the balance sheet of the company, It is apparent that assessee is a full-fledged manufacturer and not merely an assembler of the product. The turnover of the company for the year was Rs. 374 crores and for which the raw material consumption and operating expenses are incurred of Rs. 213 crores. The assessee is also engaged in the trading of the goods which have been mentioned in schedule H , however no segmental results of the trading activity and manufacturing activity are given. On looking at the profit and loss account in schedule of sales and administration expenses the assessee is paying royalty of Rs. 10539857/- . Therefore it is apparent that assessee is also utilizing some intellectual property for the purpose of exploitation of the same, which resulted into the profit earning apparatus of the company. This is also evident from the profile of the company where in it has few collaborations also, where as the assessee company does not have any R & D as well as does not use any

intangible. On looking at the business segment of the company it stated that it produces only medical and surgical instruments and appliances and accordingly the entire business has been considered as one single segment. Looking at the page No. 4 of the order of the Ld. Dispute Resolution Panel wherein in para No. 6.2 This comparable is considered. The comment of the Ld. DRP on the fact that the items manufactured by the assessee are production of the semi finished medical products where is the comparable company is producing/manufacturing the goods on its own and there is a wide variance in the processing of semi finished goods in manufacturing of an altogether new item. The Ld. DRP has stated that this company is functionally quite close to the assessee company but has not held that the it is functionally comparable. But it has been included stating that TNMM method allows same degree of flexibility intolerance in the manner of selection of the comparable because under this method net margins are compared. Hon'ble Delhi High Court in Rampgreen solutions Ltd versus CIT 377 ITR 533 (Delhi) has held that:-

“42. Before concluding, there is yet another aspect of the matter that needs consideration. The Tribunal proceeded on the basis that while applying the transactional net margin method, broad functionality is sufficient and it is not necessary that further effort be taken to find a comparable entity rendering services of similar characteristics as the tested entity. The Dispute Resolution Panel held that the transactional net margin method allows flexibility and tolerance in selection of comparables, as functional dissimilarities are subsumed at net margin levels, as compared to resale price method or comparable uncontrolled price method and, therefore, the functional dissimilarities pointed out by the assessee did not warrant rejection of eClerx and Vishal as comparables.

43. In our view, the aforesaid approach would not be apposite. In so far as identifying comparable transactions/entities is concerned, the same would not differ irrespective of the transfer pricing method adopted. In other words, the comparable transactions/entities must be selected on the basis of similarity with the controlled transaction/entity. Comparability of controlled and uncontrolled transactions has to be judged, inter alia, with reference to comparability factors as indicated under rule 10B(2) of the Income-tax Rules, 1962. Comparability analysis by the transactional net margin method may be less sensitive to certain dissimilarities between the tested party and the comparables. However, that cannot be the consideration for diluting the standards of selecting comparable transactions/entities. A higher product and functional similarity would strengthen the efficacy of the method in ascertaining a reliable arm's length price. Therefore, as far as possible, the comparables must be selected keeping in view the comparability factors as specified. Wide deviations in profit level indicator must trigger further investigations/analysis.”[extracted from ITR online and underlined by us]

19. Therefore, we reject the contention of the Ld. Dispute Resolution Panel because despite admitting the functional dissimilarity of the comparable company with the assessee company above comparable was directed to be included for the comparability analysis of the company. Further there is vast difference in the activities of the company as the comparable company is also using Intangible assets for which royalty is paid, whereas the assessee is merely a job worker. Comparable is also engaged in trading activities and which does not have segmental accounts for trading as well as manufacturing activities, whereas the assessee is merely an assembler. In view of the above functions, respectfully following the decision of the Hon'ble Delhi High Court, we direct the Ld. Transfer Pricing officer to exclude Hindustan syringes and medical devices private limited as a comparable company.

20. Coming to the 2nd comparable, as claimed and submitted this company is it is a leading Contraceptive Solutions Organization. It is spread across the globe in 140 countries partnering with social marketing organizations as well as private distributors in the area of Intra- uterine devices. It is the largest IUD manufacturer in the world and so far 100 million women have been served. Pregna is ISO 9001: 2008, CE, WHO GMP, ISO 14001, ISO 13485 certified and has an in-house Research and Development Team which has contributed towards many breakthrough products including value add-on to existing models. It has been granted 2 patents and 3 patents are pending. It is filing more patents every year. It was stated by the Ld. Transfer pricing officer that though the assessee is purely in manufacturing of medical disposable like tubal rings and intrauterine devices and the classification of that particular company is under the head of industry classification of the rubber and rubber products. However, the Ld. Transfer Pricing Officer stated that as the assessee is manufacturing, balloon catheters being manufactured by the assessee. But is comparable with the company which is manufacturing rubber and rubber products. The same argument was also given by the Ld. Transfer Pricing Officer in this case that the transaction net margin method is the most appropriate method and product comparability should not be same mandatory rather functions performed should be similar. The Ld. Dispute Resolution Panel also gave the same reasons for confirming the inclusion of the above company and also relied upon the reasons given above for confirming the inclusion of Hindustan syringes and medical devices private limited. We failed to understand the logic given by the Ld. Transfer Pricing Officer that though industrial classification of both the companies is different still they are similar. Furthermore, the Ld. Transfer pricing officer has further failed to appreciate that

the comparable companies engaged in the sale of components where one unit was sold for Rs. 69,000. This shows that the assessee company as well as the comparable companies selected by the Ld. Transfer pricing officer was engaged in different kind of business. It is further to be noted that even if in the transactional net margin method the functional similarity is required to be similar is held by the Hon'ble Delhi High Court in Rampgreen solutions private limited versus CIT (supra). In view of this we direct the Ld. Transfer pricing officer/assessing officer to exclude the above comparable companies from the comparability analysis. Hence, we direct exclusion of this comparable.

21. Therefore ground no. 3 & 4 of the appeal of the assessee is allowed.
22. Ground no 5 of the appeal is with respect to the margin of the comparable, Ld. authorized representative submitted that duty drawback has been considered by the Ld. Transfer pricing officer as operational income while comparing the margins of the comparable. He submitted that in case of liberty India Ltd (317 ITR 208) Hon'ble Supreme Court has held that it is not operational income as it is not and inextricably linked with the business of the assessee. We have carefully considered the contention of the Ld. and failed to understand that how the duty entitlement pass book scheme entity to duty drawback are not part of the operating profit. According to us, both the above incentives are provided to the manufacturer and exporter for the purpose of compensating in the duty component which is already been included in the cost of raw material. Therefore, in fact, they go to reduce the cost of raw model consumed by the assessee and hence, according to us there are part of the operating profit of the assessee and cannot be extruded for the purpose of comparability analysis.
23. With respect to the foreign exchange fluctuations He submitted that these have been considered as nonoperational items. However, the assessee has considered the foreign exchange loss of Rs. 1953939/- as operational as the issue is those foreign exchanges fluctuations have arisen and because of the adjustment on account of sale or realization of the debts. He further submitted that if the same is excluded from the PLI working of the assessee and considered it as a nonoperational then the margin of the company also increases substantially to 1.20169%. In any way he submitted that this is an operational expenditure and therefore in case of the comparable companies also, it should be included while working out the PLI or it should be excluded in the case of the assessee. With respect to the foreign exchange fluctuation, which is on account of the forward contract with respect to the purchase of material? We fully agree with the contention of the Ld. authorized representative that these are the foreign exchange fluctuations on revenue account and the hedging is also a

risk mitigating exercise to reduce the cost of imports and only. Therefore, it should be considered as part of the operating profits and losses of the companies.

24. With respect to the insurance claim he submitted that in insurance claim cannot be part of the income from manufacturing operating profit and it always pertains to the loss incurred in earlier years. Therefore, the quantitative impact of the above loss is required to be excluded in case of the comparability analysis. We do not find any reason to agree with the contentions of the assessee as insurance claim is on account of the assets employed by the company and may also relate to the working capital, expenditure for restating the assets have already been debited to the profit and loss account hence, such is part of operating results of the company.
25. He further submitted that the assessee must be granted the working capital adjustment that the assessee is getting advance payment from the buyer for goods sold to them and the working capital of the assessee is always negative, while the working capital of comparable is always positive. He submitted that assessee has given a detailed calculation and has a very strong case but rejected by the Ld. Transfer pricing officer without assigning any reason. He submitted that merely for the reason that the working capital should be computed on the basis of daily average of working capital deployed by the tested party and each of the comparable cannot be the sole reason for rejection of the claim of the assessee. He relied on the decision of the coordinate bench in case of Tata McGraw-Hill education private limited versus ACIT ITA No. 6114/del/2012 for assessment year 2008 – 09 wherein para No. 20 the coordinate benches held that the objection of the DRP that the average day to day working capital deployment is required to be computed, the bench held that the objection of the Ld. dispute resolution panel cannot be accepted as it is the average working capital deployment which is to be considered and which can be computed with reference to opening and closing balance of working capital deployed. Therefore, respectfully following the decision of the coordinate bench we also direct the Ld. assessing officer/transfer pricing officer to grant working capital adjustment to the assessee provided the assessee submits the relevant detail of working capital adjustment computation. In view of the coordinate bench decision cited before us which is on the same point, we accept the contentions of the assessee and direct the ld AO to compute working capital adjustments only on the opening and closing balance of the working capital employs at the beginning and end of the year. Hence Ground no 6 of the appeal is allowed.

26. With respect to the risk adjustment, he submitted that the most of the business risk like research and development, etc are borne by the associated enterprise where the same are borne by the comparables themselves. therefore referring to the guidelines of the OECD. He submitted that assessee must be and risk adjustment. Furthermore, the assessee is also stated that the comparable company has also taken a risk whereas the assessee is a risk-free entity. Before us no risk adjustment working was given by the Ld. authorized representative despite asking for, therefore, we do not entertain this ground of objection of the assessee. Hence, any adjustment on account of risk unless quantified cannot be given. Ground no 7 of the appeal is allowed.
27. In view of this we direct the Ld. Transfer pricing officer as well as the Ld. assessing officer to
- i. exclude the 2 comparables namely, Hindustan syringe Ltd were and Pregna international Ltd.
 - ii. to grant assessee that adjustment on account of the working capital if appropriate details are provided according to our direction following the decision of coordinate bench.
 - iii. not to exclude duty drawback and the DEPB from operational income of the assessee as well as of the comparable because they are operational income of the assessee for the reason given by us.
 - iv. not to exclude exchange fluctuation on account of forward contract in case of eastern medicate private limited as it is pertaining to the raw material purchases and on account of risk mitigation of the operation of the comparable.
 - v. To not to allow the risk adjustment to the assessee in the computation of margin.
28. In the result appeal of the assessee is partly allowed.
Order pronounced in the open court on 07/11/2017.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:07/11/2017
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi