

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH '1-2' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.3840/Del/2017
Assessment Year: 2013-14**

Roxtech India Private Limited, vs. ACIT, Circle 21(2),
308, Hemkunt Chambers, New Delhi.
89, Nehru Place, New Delhi.

PAN : AADCR1329K
(Appellant)

(Respondent)

Appellant by : Mr. Vijay Mehta, CA
Respondent by: Sh. Sunil Kumar, CIT/DR

Date of hearing: 04/02/2021
Date of order : 22/02/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 11/4/2017 passed under section 144C/143(3) of the Income Tax Act, 1961 (for short "the Act") by the learned Assessing Officer pursuant to the directions dated 14/3/2017 passed by the Ld. Dispute Resolution Panel (DRP)-2, New Delhi ("Ld. DRP") in the case of M/s Roxtec India private limited ("the assessee"), for the assessment year 2013-14, assessee preferred this appeal.

2. Briefly stated relevant facts are that the Roxtec India, the assessee) is a company incorporated on 28/9/2005 and has been engaged in the business of assembling and distribution of Modular

Sealing System consisting of modules, frames and wedges/compression units and employed unique self proprietary and multi-diameter technology for industrial cables and pipe transits. Assessee was primarily engaged in the activities like, import sealing modules and wedges from its AEs; procure frames from local vendors who use the design provided by Roxtec group; and assemble sealing modules and wedges into customised, ready to use packs and sell it to the customers. For the assessment year 2013-14, the assessee company filed its return of income on 30.11.2013 declaring Nil Income with a loss of Rs. 6,08,28,977/-. During the assessment proceedings, learned Assessing Officer found that during the financial year 2012-13, the assessee entered into following International Transactions (ITs) :

Sl. No.	Nature of Transaction	Value Rs.in Crores Cr.)
1.	Import of Material (Semi-Finished and	8.36
2.	Export of finished goods	3.14
3.	Provision for Marketing Support services	0.59
	Total	12.09

3. In view of the above international transactions, determination of the Arms Length Price ("ALP") was referred to the Transfer Pricing Officer (Ld. TPO), and the Ld. TPO by order dated 25/10/2016 proposed an adjustment of Rs. 3, 65, 69, 055/-to be the arm's length price of the international transaction and the learned Assessing Officer vide draft order dated 7/12/2016 confirmed the part transfer pricing adjustment in consonance with the order of the Ld. TPO.

4. Aggrieved by such proposal of upward adjustment, assessee filed objections before the Ld. DRP who by order dated 14/3/2017 certain

directions, pursuant to which the learned Assessing Officer passed the order under section 144C/143(3) of the Income Tax Act, 1961 (for short "the Act") by reducing the loss to 2, 42, 59, 922/-. Aggrieved by such an action of the Ld. DRP and also the learned Assessing Officer, assessee preferred this appeal on as many as 7 grounds. Ground No. 7 is general in nature. Grounds No. 3 and 4 are withdrawn by the assessee at the time of arguments stating that due to the order dated 28/7/2017 passed by the learned Assessing Officer under section 154/144C/143(3) of the Act the net loss was determined at a Rs. 3, 40, 81, 910/-. Grounds No. 1, 2, 5 and 6, therefore, require adjudication.

5. Ground No. 1 relates to the re-computation of ALP by combining both Import of material and Export of Finished goods and applying TNMM and thereby upward adjustment of Rs. 34,193,860. In respect of the import of materials and export of Finished goods, the TPO applied TNMM as the MAM for both the aforesaid transactions on combined basis and recomputed the ALP by considering 5.15% as Arm's Length Margin and made addition of INR 3.42 crores to the returned losses, which the Ld. DRP upheld and accordingly, the Ld. AO passed the final order in line with DRP/TPO direction. Subsequently, Company filed a petition under Rule 13, requesting for rectification in the DRP direction on account of computational errors made in the margins at 5.15% as computed by the TPO Vide order dated 10th July, 2017, as per the directions of the DRP to verify the computational errors, the TPO with regard to import of material and export of finished goods recomputed the margin at 1.82% and restricted the addition to INR 2.44 crores. Learned Assessing Officer, thereafter, passed the order on 27th July 2017 giving effect to the aforesaid TPO order.

6. It is argued by the Ld. AR that there is no correlation whatsoever between the Concept of RPM/TNMM as envisaged in the order of

TPO/DRP; the findings in the case of Rotec India; and the final conclusion drawn i.e. TNMM is the MAM.

7. He further submitted that the Quantum of employee benefit expenses cannot be compared with the revenue as year by year the company is experiencing fall in revenue on account of slowdown in the telecom sector; that the human capital cannot be reduced in the short period of time; that the increase in employee cost in comparison to preceding year is nominal; that considering the fact that the core function of Roxtec India is 'sales and marketing' such reduction was neither advisable. He further submitted that all the employees in the Company have been undertaking general sales and marketing activities, the expenses are in the nature of Rent, Traveling and Conveyance have been incurred, these expenses are normal business expenditure and incurring such expenditure does not lead to an automatic conclusion that Roxtec India is carrying out substantial value addition/production. At best, it is a surmise or assumption made by TPO.

8. Nextly argued that expenses in the nature of advertising and Sales promotion have been incurred, inasmuch as during the year, Roxtec India has incurred INR 35.29 lacs under the head advertising and sales promotions; that these expenses are majorly on account of free samples distributed to the customers. No efforts have been made by the TPO to delve into the exact nature of the expenses and the TPO has chosen to rely on nomenclature used; that incurring of said expenses only fortifies the claim of the appellant that it is engaged into distribution function, that considering the quantum of expenditure i.e. 35.29 lacs, such expenses are reasonable and nowhere conclusive of the fact that Roxtec India is carrying out substantial value addition.

9. He further submitted that the observations of the Ld. TPO that assembling comes under 'Deemed Manufacturing' is based on the status

granted to the Company under excise laws, as under the excise law assembling function comes under the purview of 'deemed manufacturing; that the primary/ principle function of manufacturing the modules, wedges/compression units and frames, which requires use of the specialised technology of Roxtec group, is carried out by the AE of the Company and the local vendor respectively. The role of the Company is limited to M 2 decisions are marketing of the products in the specified territory, procuring modules and wedges from the AEs and frames from the local vendors; affixing modules and wedges into frames; and final delivery to the customers and invoicing for the sales. Hefurthersubmitted that the Ld. TPO wrongly observed that imports have been made in the nature of 'Raw materials'. Ld. AR aside the findings of the Ld. DRP also on similar grounds.

10. Ld. AR however, fairly submitted that this issue came up for consideration before the Tribunal in assessee's own case for the assessment year 2012-13 in ITA No. 240/del/2017 and the Tribunal has taken a view against the contentions of the assessee. Ld. AR, however, further submits that his contentions may be decided on merits for this year.

11. Per contra, Ld. DR submits that inasmuch as there is no change is in the facts and circumstances or in law, a considered view taken by the Tribunal for the immediately earlier assessment year cannot be brushed aside and as a matter of fact, the findings of the Tribunal in ITA No. 240/del/2017 are very much relevant for this assessment year also.

12. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the assessee has been running into losses for the last 3 successive assessment years and in respect of one such assessment year the Tribunal considered the issue.

At this juncture we deem it necessary to look at the observations of the Tribunal in assessee's own case for the assessment year 2012-13, and such observations run thus,-

11. The assessee has relied upon the decision of ACIT versus MSS India (private) Ltd reported at 123 TTJ 657 to support its case. We have carefully considered the facts in that case wherein the method adopted by the assessee was cost plus method and against which the learned transfer pricing officer adopted transactional net margin method. On careful perusal of the facts of that decision, they are distinct from the facts before us. In that case the assessee determined the arm's-length price of its transactions with foreign associates on the basis of cost plus method by offering the comparison of gross profit markup margin on its transactions with unrelated parties which was held to be correct. In that case TPO was held to be not justified in rejecting the method and making an adjustment as per transactional net margin method even if the assessee had suffered loss in those transactions with its associates. In the present case before us the issue is whether the assessee is a distributor or a manufacturer and whether resale price method is applicable to the international transactions entered into by the assessee. It is not the case that assessee has resold the same goods with only minor modifications to justify the adoption of RPM as the most appropriate method. In the present case the assessee has assembled the goods partly purchased from its associated enterprise and partly developed by its own vendor. Therefore, the decision relied upon by the learned authorised representative does not help the case of the assessee.

12. In view of the above facts we do not find any infirmity in the order of the learned assessing officer/transfer pricing officer as well as the direction of the learned dispute resolution panel in rejecting the resale price method adopted by the assessee and adopting transactional net margin method as the most appropriate method.

13. It is not the case of the Ld. AR that there is any change of facts and circumstances or in law from the ones relating to the assessment year 2012-13. Facts and law remained the same, we are of the considered opinion that the view taken by the Tribunal in the earlier assessment year cannot be disturbed to take a different view. Hence while respectfully

following the view taken by the Tribunal for the assessment year 2012-13 in ITA No. 240/del/2017, expected above, we dismiss ground No. 1.

14. Ground No. 2 relates to the action of the Ld. TPO of not allowing the working capital adjustment to the Appellant, while applying TNMM, on account of difference in working capital of the comparable companies and that of the assessee, as confirmed by the Ld. DRP. It is the submission of the Ld. AR that there are significant differences in the working capital employed by the Company and the comparable companies and the Working Capital adjustment was allowed to the Company in the previous year, namely, AY 2011-12 & 2012-13) he further submitted that the working capital adjustment has been further considered to be a legitimate adjustment in the the decisions reported in Demag Cranes & Components (India) Pvt. Limited Vs. DCIT Mentor Graphics (Noida) Pvt. Ltd. (112 ITJ 408) (Delhi ITAT).

15. There is no denial of the fact that in the earlier assessment years, namely, assessment years 2011-12 and 2012-13, by orders dated 29/1/2015 and 23/1/2016, the copies of which are produced before us, the Ld. AR, Ld. TPO allowed the working capital adjustment since the facts and circumstances involved in this year are similar to the facts and circumstances for the earlier assessment years, there is no justification for not allowing the same for this particular year. Having regard to this anomalous situation, we are of the considered opinion that the working capital adjustment should have been allowed for this year also. We therefore while answering ground No. 2 in favour of the assessee, direct the learned Assessing Officer/Ld. TPO to allow working capital adjustment to the assessee for this assessment year also.

16. Now coming to ground No. 5 and 6 those relate to the recomputation of the arm's-length price by applying the entity level

margins of tested party, instead of the segmental margins in respect of “marketing support services” and also by selecting six new companies why rejecting two companies selected by the assessee for such comparison.

17. According to the assessee, the AE of the assessee makes certain direct sales in India, in respect of which the assessee entered into a contract for providing the marketing support services. The assessee is remunerated at the rate of 15% of the value of sale effected by AE in India. Ld. TPO, after applying the additional filters to the search process, rejected two comparables out of three comparables selected by the Company by considering the same as functionally not similar; and added additional six comparables, and as against the margin of 25.06% on segmental level earned by assessee, Ld. TPO recomputed the ALP at a margin of 12.73% on entity level. Consequently, Ld. TPO recomputed the ALP by considering 12.73% as Arm’s Length Margin and made addition of INR 23.75 lacs.

18. It is the submission of the Ld. AR that the filters proposed by the TPO, inter-alia includes filters for selection of companies having income from export >75%; *and the* companies having employee cost > 25% of sales; that such filters, however, were subsequently withdrawn/ rejected in the order after observing the submission of the assessee wherein the assessee objected that all the comparable selected by TPO are failing one of the above two filters. He further disputed the adoption of Entity level margins instead of Segmental margins stating that given the fact that function, asset and risk (FAR) profile is different for each of the business lines, the Appellant has benchmarked the two segments (viz. import of semi-finished and finished goods and provision for MSS) involving AE transactions separately for transfer pricing purposes; that the assessee has maintained proper segmental records in relation to MSS and from

such transaction appellant earned margin of 25.06%; that they Ld. TPO, however, without giving any specific finding rejected the segmental margin and adopted the entity level margin of the Appellant; that the assessee is earning better margins when entity level margins are compared with the margins of comparable as determined by the TPO; that the margins of the assessee at entity level, which depicts primarily margins earned from sale of modular sealing solution cannot be compared with the margins of the comparable companies which are engaged in providing consultancy services. He placed reliance on the decisions reported in M/s Synverse Mobile Solutions vs DCIT and M/s Technimount ICB Pvt. Ltd vs ACIT it was held that for the purpose of benchmarking the transaction with the AE the TPO must consider the segments prepared by the assessee for the purpose of making any adjustment. Ld. DR placed reliance on the orders of the authorities below.

19. We have gone through the record in the light of submissions made on either side. Insofar as this issue - whether segmental results have to be taken into consideration or profit margin at entity level has to be considered, is concerned, there is no dispute that the assessee has maintained segmental records in relation to the Management Support Services. It is not decipherable from the orders of the authorities below that these segmental records are rejected for any explicit reasons. Ld. TPO adopted the entity level margins of the assessee as well as the comparables. There is no denial as to the submissions of the Id. AR that the segment of Management Support Services is different from other activities performed by the comparables.

20. In M/s. Synverse Mobile Solutions (supra), the Tribunal held that where direct overheads attributable to the respective segments were

duly allocated by the assessee to the said segments and even for indirect overheads, allocation was done by applying appropriate allocation keys, in the absence of any objection to the said allocation keys adopted or applied by the assessee, it is not proper for the TPO to resort to the entity level margin comparison of the assessee with other comparables. In Technimount ICB Pvt. Ltd. (supra), it was held that as per the provisions contained in Chapter-X vide provisions 92-94, international transactions are to be taken into consideration for determination of Arm's Length Price and for such purpose wherever it is practicable and available, the segmental results have to be considered and not to the profit at entity level.

21. In view of the undisputed availability of the segmental results in the case of the assessee as well as the comparable companies, in respect of Management support services, we are of the considered opinion that the Id. TPO should have taken them into consideration. For this purpose, we set aside the issue to the file of Id. Assessing Officer/TPO for comparison of the segmental results and not the margin at entity level.

22. Now coming to the ground No. 6, the assessee is challenging the rejection of two entities, namely, Best Mulyankan Consultants Ltd. and Indus Technical & Financial Consultants Ltd. from the list of comparables holding those to be functionally dissimilar. It is argued by the Id. AR that these two entities are also engaged in the business of providing consultancy services and are considered as valid comparables for evaluating market service segment by the Id. TPO in the case of Lufthansa Technik Services India Pvt. Ltd. vs. DCIT in ITA No. 5451/Del/2012.

23. It is the submission of the Id. DR that the functional profile for the assessment year 2013-14 is not clearly discernible from the order of Lufthansa Technik Services India Pvt. Ltd. (supra) because that case pertains to the state of affairs relating to assessment year 2008-09 and therefore, it cannot be a good guide for the functional profile of this company for the assessment year 2013-14.

24. From the record, it can be seen that the AEs of the assessee make certain direct sales in India. The assessee entered into contract from providing marketing support services. Such marketing support services include the marketing of the products, communication with the customers, participation in the customer tender process and post sale support services. Marketing of product to the customers in India as done by the assessee subject to certain parameters set out for the global consulting policies and general guidelines provided by the AEs. That service includes conducting market research and providing information of potential customers, as and when required, use of advertising and distribution of promotional materials etc. and participating in trade shows and exhibitions, exhibiting and demonstrating the products of the group. So also, the assessee is expected to communicate the requirement of the customers and their feedback to the AE. Further, the assessee is expected to act as a communication channel and facilitate procedural steps such as documentation formalities etc. besides follow up the post sale service for collection of the amount invoiced. The assessee gets remuneration of 15% of the value and sales effected by the AE in India. This profile of the assessee is not in dispute for comparability or

otherwise of the entities we have to compare their functional profile with that of the assessee.

25. It is seen from the record that the assessee has not produced the material to capture functional profile of these two companies with reference to the agreements for provision of services and the material produced before us in the shape of relevant extracts of annual report is insufficient to reach a definite conclusion on this aspect. When we have to compare the functional profile in the teeth of the objection taken by the Id. TPO, to retain these two entities in the list of comparables, matter requires deeper analysis. No such material is forthcoming. Hence, we hold that the assessee failed to substantiate their claim that Best Mulyankan Consultants Ltd. and Indus Technical & Financial consultants Ltd. are good comparables to the assessee.

26. Now coming to six comparables which were selected by the Id. TPO on the ground of functional similarity and objected by the assessee, these companies are Apitco Ltd., Cameo Corporate Services Ltd., Concept Communications Ltd., Just Dial Limited, Killick Agencies and Marketing Consultants & Agencies Ltd. From the arguments of the Id. AR, we could decipher that such an objection is based broadly on two grounds. Firstly that the comparables Apitco Ltd., Cameo Corporate Services Ltd. and Killick Agencies are functionally dissimilar whereas Cameo Corporate Services Ltd., Concept Communications Ltd., Just Dial Limited and Marketing Consultants & Agencies Ltd. have a turnover of more than 200 times to that of the assessee.

27. In the judgment dated 18.12.2018 in CIT vs. Philip Morris Services India SA, in ITA No. 1468/2018, the functional profile of these three companies, namely, Apitco Ltd. Cameo Corporate Services Ltd. and Killickagencies, was captured and the observations of the Tribunal in respect of the comparability of these entities with the entities providing Management Support Services, like the assessee, as approved by the Hon'ble High Court are that,-

Apitco Ltd.,

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13. As could be seen from the annual report of this company, this company is one of the 18 TCOs was formed by the key national level financial institutions in association with state-level institutions and banks, and accordingly being a government enterprise Apitco Ltd., was established to provide technical services to other government companies and body corporate. Further this company is engaged in providing services such as asset reconstruction and management, clustered allotment for mega footmarks, and environment services, energy-related services, infrastructure planning and development, energy audit etc. and undoubtedly this company is a high-end consultancy service provider. The annual report further reveals that this company is engaged in providing high-end technical services also.

14. Ld. AR brought to our notice that they Apitco Ltd., was rejected by a catena of decisions rendered by different Benches of this Tribunal including a coordinate Bench of this Tribunal in Ciena India (P) Ltd vs. DCIT in ITA No. 2948 and 3224/de1/2013 following which in Avaya India private limited versus DCIT in ITA No. 146/del/2013. He also placed reliance on the nation reported in Kobelco Cranes India Private Limited vs. ITO in ITA No. 802/del/2016. In International SOS services India private limited versus DCIT ITA No. 1631/de1/2014 this company was excluded on account of being hundred percent government organisation and the appeal against this decision of the tribunal was dismissed by the Hon'ble jurisdictional High Court.. Further it could be seen in Vestegaard Asia private limited verses DCIT in ITA No. 6670/del/2015 and H & M Mouritz India private limited verses DCIT in ITA 282/bankg/2015 it is held that the Aptico Pvt Ltd., is not a good comparable with any company rendering business support services on the ground that this company is a public sector undertaking and its operations are mainly based the on the policy requirements of the government.

15. Further reliance is placed by the counsel on the decision of the Mumbai bench of this tribunal in *TysokKrupp industries India private limited verses ACIT* in ITA No. 6460/mum/2012 wherein it was held that this company being a government enterprises is not comparable with a private business service provider because in case of government enterprises profit motive is not irrelevant consideration, and government companies work for other public sector undertakings and in that sense the related party transactions are much more than the filter of 25%. This decision of the tribunal was upheld by the Hon'ble Bombay High Court in ITA number 20/02/2018 of 2013.

16. The reasons recorded by the Tribunal in all the decisions referred to above hold good for the assessee also inasmuch as the assessee is a private company in the field of providing business support services. We, therefore, while respectfully following the ratio laid down in the above decisions hold that *Apitco Ltd.*, is not a good comparable with the assessee and is accordingly liable to be excluded. We, therefore, directly Ld. TPO to exclude this company from the finalist of comparables to benchmark the international transaction relating to the market support services provided by the assessee to its AEs.

Cameo corporate services.

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20. We have gone through the financials of this company, including the profit and loss account incorporated page No. 96 and scheduled 8 incorporated at page number 102 of the paper book relating to the financials of the comparable companies and find that the entire income of Rs. 24,36,67,920/- was shown without any segmental bifurcations.

21. Further the comparability of the Cameo Corporate Services with the companies providing market support services like assessee was considered by a coordinate Bench of this Tribunal in *Vestergaard Asia private limited* ITA 6670/de1/2015 by order dated 30/11/2017, in the light of the annual reports of the companies and the decision in *Adidas Technical Services Private limited vs. DCIT* in ITA No. 862/de1/2016, discussed the desirability of retaining the Cameo corporate services as one of the comparables, and reached a conclusion that the functional profile of Cameo Corporate Services is similar to the profile of *TSR Darashaw Ltd.* and not to the companies like assessee in this matter. On that ground Cameo Corporate Services was directed to be excluded from the list of comparables. It is pertinent to note that in *Adidas technical services private limited (supra) TSR Darashaw Ltd.* was considered and rejected. The Tribunal in *Vestergaard Asia private limited (supra)* found that Cameo corporate services and *TSR Darashaw Ltd.* stand on the

same footing and are not good comparables to the market support service providers.

22. Going by the profile of Cameo corporate services extracted by the Ld. TPO in his order and also in view of the nonavailability of segmental information in the financials of this company coupled with the findings of a coordinate Bench of this Tribunal Vestergaard (supra), we are of the considered opinion that Cameo Corporate Services is not a good comparable to the assessee in view of the functionality similarity. We, accordingly, direct the Ld. TPO to delete this company from the final set of comparables.

Killik Agencies and Marketing Ltd.

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32. From the Annual Report of this company we find that Killik Agencies and Marketing Ltd. is a public Ltd. unlisted company acting as agent for various foreign prince falls for sale of dredgers, Dredging Equipments, steerable Ruddar propulsion, maritime and aviation lighting, acoustic communication equipments etc. and this company also offers after sale services. Apart from this the company is involved in export of micro switches, engineering items, acoustic items and headsets.

33. It is brought to our notice that in the case of Parametric Technology India Private Limited, Ld. DRP rejected this Killik Agencies and Marketing Ltd to be a good comparable to the companies engaged in market support services and a Jurisdictional Tribunal that is a Bench of the Bangalore Tribunal upheld such a finding of the Ld. DRP. Further the Bangalore tribunal in the case of DCIT vs. Aruba Networks India Private limited in ITA- TP57/bank/2015 found that Killik Agencies and Marketing Ltd is not a marketing support service and it cannot find a place in the set of comparables for such companies.

34. On a perusal of the profile of this Killik Agencies and Marketing Ltd and also the findings of the tribunal on the comparability of this company with the companies rendering market support services, we are of the considered opinion that Killik Agencies and Marketing Ltd cannot be a good comparable to the assessee and is liable to be excluded from the final list of comparables and, accordingly we direct the Ld. TPO to exclude this company from the list of comparables for benchmarking the international transaction of market support services.

28. So also in Kobelco Cranes India Pvt. Ltd., in ITA No. 802/Del/2016, a coordinate Bench of this Tribunal captured the functional profile of

Kobelco Cranes, which renders the marketing and sales support services to its parent company. Such support services have been summarized in the order of TPO as customer support services in relation to the business dealings with existing clients and potential clients in India; administrative/facilitation assistance such as inventory of spare parts, arranging facilities, customs clearance and product support (both parts and service) and training to dealers and customers; assistance in relation to marketing/new business development; compilation of customer/market data, identification and evaluation of potential business opportunities in India, etc. The Tribunal held that Apitco is not at all a good comparable to the entity rendering marketing support services. In *Corning SAS India BO vs. DDIT* (ITA No. 5713/Del/2012, a coordinate Bench of this Tribunal held that Apitco Ltd. is not a good comparable to the entity providing marketing support services.

29. In *Adidas Technical Services P. Ltd.* (ITA No. 1233/Del/2015), the company is engaged in rendering support services to AE which in turn renders sourcing services to Adidas group companies for international premium range of footwear and apparels and accordingly their role is limited to supporting its AE. In that case, a coordinate Bench held that for a company rendering marketing support services, Apitco Ltd. is not at all a good comparable. Hence, we find that because of the peculiarity of Apitco being a Government Company and engaged in providing technical consultancy relating to asset reconstruction companies, management services, micro enterprise development, skill development etc. on the Government initiatives, which do not fall in comparison to the services provided by the assessee, we are of the considered opinion that Apitco

Ltd. is not at all a good comparable and has to be deleted. Coming to Cameo Corporate Services Ltd. and Killick Agencies, these entities have already been held to be non-comparable with the assessee like companies in the case of Philip Morris Services (supra) and the same accordingly deserve to be deleted.

30. In Philip Morris Services India SA (supra) it was observed that since the filters that have been used in T.P. study were not found to be appropriate in entirety as there are differences in the threshold limits of several filters and method of application of filters, it has resulted to an inappropriate set of comparables and approved the finding of the Tribunal that these three companies are not at all good comparable with the market support service entities like the assessee. Findings of the Tribunal and the Hon'ble High Court in Philip Morris Services India SA (supra) in respect of the comparability of the Apitco Ltd., Cameo Corporate Services Ltd. and Killick Agencies are very much relevant on this aspect in comparison with the assessee also who is rendering only the marketing support services, on the ground of dissimilarity of functions. We, therefore, direct the learned Assessing Officer/Ld. TPO to delete this the entities from the list of comparables.

31. Now coming to the aspect of noncomparable tea of certain companies in view of their huge and disproportionate turnover when compared to the entities like assessee, it could be seen from the financials of this Cameo Corporate Services Ltd. that the Revenues from business support services by Cameo Corporate Services are 75.65 crores whereas the revenue of the assessee is only at Rs.58 lacs and therefore, the Cameo Corporate Services Ltd.'s revenues are more than 100 times

from the International transactions compared to the assessee. In respect of Concept Communications Ltd., its revenue from operations is 125.02 crores which is 200 times the revenue of the assessee from international transactions. Just Dial Limited's revenue from operation is 362.77 crores, which is more than 600 times the revenue of the assessee. Lastly, the revenue of Marketing Consultants and Agencies Ltd. from operation is 153 crores, which is 200 times the revenue of the assessee from its international transactions.

32. It is, therefore, clear that the Revenue from operations of Cameo Corporate Services Ltd. is 100 times, Concept Communications Ltd is 200 times, Just Dial Limited is 600 times and Marketing Consultants is about 200 times from the revenue of the assessee from its international transactions.

33. In CIT vs. Pentair, 381 ITR 216 (Bom), the Tribunal considered HCL Comnet Systems & Services Ltd., Infosys BPO and Wipro Ltd., which were having huge turnover about 23 times and 65 times etc. and rejected them to be good comparables because of the huge turnover gap. The Tribunal also placed reliance on the decisions in Sony India (P) Ltd. vs. DCIT, 114 ITD 448, E-gain Communication, 2008 TIOL 282, Deloittee Consulting India Pvt. Ltd. vs. DCIT(ITA No. 1082/Hyd/2010 and Genisys Integrating System (India) (P) Ltd. vs. DCIT, 53 SOT 159. The Hon'ble Highcourt approved the rejection of the entities operating at large scale and whose turnover is more than 23 to 65 times to the comparables. That being so, the turnover gap in the case of assessee and that the comparable, namely, Cameo Corporate Services, Concept Communications, Just Dial Ltd. and Marketing Consultants Services is

ranging between 100 times to 600 times, which, in the light of the decision of Hon'ble Bombay High Court in Pentair (supra) renders these four entities as not comparable to the assessee. We, therefore, direct the Assessing Officer/TPO to exclude these four comparables.

34. In the result, the appeal of the assessee is allowed in part and for statistical purposes.

Order pronounced in the open court on this the 22nd day of February, 2021.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 22/02/2021
'aks'

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi