IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-2' : NEW DELHI)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1016/Del./2015
(ASSESSMENT YEAR : 2010-11)

AT & T Communication Services India Private Limited, Vatika Triangle, 3rd Floor, Sushant Lok – 1, Block – A, Gurgaon – 122 002.	vs.	ACIT, Circle 3(2), New Delhi.
(PAN : AACCA8033E)		
(APPELLANT)		**(RESPONDENT)**

ASSESSEE BY : Shri Kanchan Kaushal, Advocate
REVENUE BY : Shri H.K. Chaudhary, CIT DR

Date of Hearing : 22.01.2018
Date of Order : 15.02.2018

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. AT & T Communication Services India Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 29.01.2015, passed by the AO in consonance with the orders passed by the ld. DRP/TPO under section 143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

"On the facts and circumstances of the case and in law, the Hon'ble Dispute Resolution Panel-I, Delhi ('DRP') has, vide order passed under section 144C(5) of the Income Tax Act, 1961 ('Act'), erred in confirming the adjustments proposed by the Assistant Commissioner of Income Tax, Circle 2(1), New Delhi ('DCIT) in the draft assessment order dated March 24,2014 and the Assistant Commissioner of Income Tax, Circle 3(2), New Delhi ('learned AO') has therefore, erred in making additions/ disallowances in the final assessment order dated January 29, 2015 passed under section 143(3) read with section 144C of the Act.

Each of the ground is referred to separately, which may kindly be considered independent of each other.

1. Ground No.1 - Disallowance of advance written off

1.1 On the facts and in the circumstances of the case and in law, the learned AO has erred in disallowing a deduction for Rs.4,590,000, being security deposit forfeited by the vendor on account of termination of contract between the vendor and the Appellant for taking new office space on lease.

2. Ground No.2 - Addition on account of non-charging of mark-up on support service charges billed to AT&T Global Network Services India Private Limited ('AGNSI')

2.1 On the facts and in the circumstances of the case and in law, the learned AO has erred in making an addition of Rs.18,414,784 on account of non-charging of mark-up on support service charges billed to AGNSI, an Indian affiliate of the Appellant.

3. Ground No.3 - Disallowance of year-end accruals

3.1 On the facts and in the circumstances of the case and in law, the learned AO has erred in making disallowance of expenses amounting to Rs 5,615,035 (represented by year-end accruals) on account of non-submission of supporting documents.

3.2 Without prejudice to the above, on the facts and circumstances of the case and in law, the learned AO has erred in not holding that since such year-end accruals have been reversed in the subsequent financial years, the same should be allowed as tax deductible expenditure for the subsequent financial years.

3.3 On the facts and circumstances of the case and in law, the learned AO has erred in not allowing claim made by the

Appellant for deduction of year-end accruals amounting to Rs. 51,594,924 proposed for disallowance in the preceding assessment year (i.e. A Y 2009-10).

Ground No.4 - Grounds relating to Transfer Pricing Matters:

That, on the facts and circumstances of the case and in law:

4.1 The learned Transfer Pricing Officer ('TPO')/ AO/ DRP have erred in making an addition of INR 91,602,187 to the total income of the Appellant in respect of international transactions pertaining to provision of network support services by the Appellant to its Associated Enterprises ('AEs') and imputed interest on inter-company receivables outstanding from AEs (hereinafter referred to as 'impugned transactions').

4.2 The learned TPO/ AO/ DRP has erred, in law and on facts and circumstances of the case, by not accepting the economic analysis undertaken by the assessee in accordance with the Act read with the Income-tax Rules, 1962 ('the Rules'), and modifying the same for determination of arm's length prices ('ALP') of the impugned transactions to hold that the same are not at arm's length.

4.3 The learned TPO / AO / DRP have erred in:

a. Not accepting the use of multiple year data, as adopted by the Appellant in its Transfer Pricing ('TP') documentation; and

b. Determining the arm's length margins I prices using data pertaining only to financial Year ('FY') 2009-10 which was not available to the Appellant at the time of complying with the Indian TP documentation requirements.

4.4 The learned TPOI AOI DRP have erred in rejecting certain comparable companies selected by the Appellant by applying inappropriate comparability criteria such as :

a. Turnover less than INR 5 crore;
b. Diminishing revenue; and
c. Different accounting year.

4.5 The learned TPO AO DRP have erred in erroneously rejecting certain companies selected by the Appellant and adding certain companies to the final set of comparables on an ad-hoc basis, thereby resorting to cherry picking of comparables for determination of ALP.

4.6 The learned TPO/ AO/ DRP have erred in selecting certain companies (which are earning supernormal profits) as comparable to the Appellant.

4.7 The learned TPO/ AO/ DRP have erred in not considering gains / losses arising out of foreign exchange fluctuations while computing the operating margins of the Appellant as well as comparable companies.

4.8 The learned TPO/ AO/ DRP have erred in not making suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparable companies.

4.9 The learned TPO / AO / DRP have erred in holding inter-company receivables arising from the international transactions pertaining to provision of inter-company services to constitute a separate international transaction and proceeding to benchmark the same by application of Comparable Uncontrolled Price ("CUP") method.

4.10 The CUP analysis undertaken by the TPO and upheld by DRP is flawed and does not represent an uncontrolled transaction.

4.11 The learned TPO / AO / DRP failed to appreciate that once working capital adjustment is granted, no separate adjustment is required on account of interest on outstanding receivables.

4.12 The learned TPO / AO / DRP failed to appreciate that in similar uncontrolled transactions, the Appellant does not charge interest on delayed payments

5. Ground No.5 - Short credit in respect of Taxes Deducted at Source ('TDS')

5.1 On the facts and in the circumstances of the case and in law, the learned AO has erred in granting credit for TDS of Rs 65,489,076 , as against Rs 65,784,537 claimed by the Appellant in its revised return of income filed for the subject AY.

6. Ground No.6 - Levy of excess interest under section 234B and 234C of the Act

6.1 On the facts and circumstances of the case and in law, the learned AO has erred in charging excess interest under section 234B and 234C of the Act at Rs 1,05,91,198 and Rs 3,575,578, respectively, instead of Rs 3,259,684 and Rs 2,317,879 computed by the Appellant in its revised return of income filed for the subject A Y.

7. Ground No.7 - Initiation of penalty proceedings under section 271(l)(c)

7.1 On the facts and circumstances of the case and in law, the learned AO has erred in initiating penalty proceedings under section 271 (1)(c) of the Act against the Appellant on account of the above adjustments made in the assessment order."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The taxpayer is a wholly owned subsidiary of AT&T Communications Services International Inc. USA, engaged in the provision of support services to overseas AT&T group companies and customer support services, telecommunications network planning and management services to customers in India. The services rendered by the taxpayer is consisting of three segments viz., (i) market research, administrative support & liaison services; (ii) network outsourcing services; and (iii) network support services. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AE) as under :-

S.No.	International Transaction	Method	Amount in INR
1	Provision of Market Research, Administrative & Liaison Services (MSA)	TNMM	53,04,45,952
2	Provision of Network Outsourcing Services (NOS)	TNMM	14,29,966
3	Provision of Network Support Services	TNMM	56,33,79,984
4	Reimbursement of expenses	TNMM	15,05,70,738
	Total		124,58,26,640

3. The taxpayer in order to benchmark its international transactions in its TP study applied Transactional Net Margin Method (TNMM) as the Most Appropriate Method (MAM) by using multiple year data of comparable companies found all its international transactions at arm's length.

4. However, the ld. TPO considered international transactions entered into by the taxpayer with its AE qua provisions of services under network outsourcing support services at arm's length and international transaction qua reimbursement of AE at arm's length and made ALP adjustment qua the remaining two transactions along with interest on receivables as under :-

S. No.	Nature of International Transaction	ALP determined by assessee (INR	ALP determined by this office (INR)	Adjustment u/s 92CA (INR)
1	Provision of Network Support Services	68,04,86,952	79,96,89,494	11,92,02,542
2	Provision of Market Research, Administrative Support & Liaison Services	53,04,45,952	56,67,24,667	3,62,78,715
3	Interest on receivables	NIL	5,34,100	5,34,100
Total				15,60,15,357

5. The taxpayer carried the matter before the ld. DRP by filing objections who has treated the international transactions qua provision of Market Research, Administrative Support And Liaison Services (MRA) at arm's length and provided part relief qua

international transactions of Network Support Services (NSS). Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

6. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. The taxpayer deposited an amount of Rs.45,90,000/- with M/s. In Time Properties Pvt. Ltd. (In Time) for getting on lease new office space in Hyderabad vide agreement dated 06.10.2009. Subsequently, the taxpayer decided not to take office space on lease and consequently "In Time" forfeited 50% of the security deposit. AO/DRP disallowed the amount of Rs.45,90,000/- claimed as deductible expenses on the ground that the said amount was forfeited due to breach of contract by the taxpayer.

8. The ld. AR for the taxpayer contended that since the contract with "In Time" was terminated before commencement of the lease period, 50% of the security deposit forfeited by In Time was written off in the books of account in the financial year 2009-10; that since the loss on account of forfeiture of the deposit is

occurred in the course of business, it is revenue in nature and that the taxpayer has been regularly carrying out its business activities from various premises through-out the company and the said agreement was terminated due to genuine business consideration and relied upon the decision rendered by the coordinate Bench of the Tribunal in case of ***Fabindia Overseas Pvt. Ltd. in ITA No.199/Del/2012 order dated 28.06.2013***. The coordinate Bench of the Tribunal by relying upon the decision rendered by the Hon'ble Delhi High Court in case of ***CIT vs. Khaitan Chemicals & Fertilizers Ld. – 326 ITR 114*** held the loss of security deposit as a business loss in the revenue field u/s 37(1) of the Act. For facility of reference, operative part of the order rendered by the coordinate Bench of the Tribunal in ***Fabindia Overseas Pvt. Ltd.*** (supra) is reproduced as under :-

> ***"18. On this factual matrix the issue before us is "whether the loss of security deposit in question is a business loss in the revenue field." In our considered opinion the above loss is a business loss for the reason that the assessee has taken on lease many premises spread over many parts of the country, and this act of taking this show room on lease is in the normal course of business. In fact 84 show rooms are taken on lease at various places. Six months rent was given as security deposit. This was given in the course of business. The transaction is intimately connected with the business of the assessee. The Assessing Officer has not disputed the genuineness of the claim. The CIT(A) has disallowed the amount on the ground that the loss was in the capital field. We do not agree with this finding. There is no enduring benefit to the assessee. In our view the loss in question is in the revenue field and has been rightly claimed u/s 28. This is not a bad debt. It is not a case where "lease premium" is paid for a long term lease as in the case of Kribco***

(supra). It is a deposit in the usual course of taking show rooms on lease.

19. The Hon'ble Delhi High Court in the case of CIT vs. Khaitan Chemicals & Fertilizers Ltd. 326 ITR 114 has held as follows.

"We agree with the Ld.Counsel for the appellant/Revenue that the assessee had wrongly claimed it as a bad debt u/s 36(1)(vii) of the said Act. However, we find that the Tribunal has examined the matter in the correct light and allowed the same as an expenditure u/s 37(1) of the said Act. A plea was raised by the Ld.Counsel for the Revenue that the Tribunal ought not to have done this and ought to have remanded the matter to the Assessing Officer to determine as to whether the claim was allowable u/s 37(1) of the said Act or not. However, we find that the decisions cited by the Ld.Counsel for the assessee, namely, CIT vs. Mahalakshmi Textile Mills Ltd. (1967) 66 ITR 710 (SC) and CIT vs. Rose Services Apartments India P.Ltd. (2010) 326 ITR 100 (Delhi) – (ITA no.777 of 2008 decided on February 20,2009), give a clear indication that the Tribunal was empowered to deal with the issue of allowability of the said amount of Rs.14.79 lakhs and as to whether the assessee was entitled to claim it as a bad debt or as an expenditure u/s 37(1)"

20. Applying the propositions laid down in this case law to the facts of the case we uphold the contentions of the assessee that the expenditure in question can be allowed as a business loss by the Tribunal, though originally it was claimed as a bad debt. The amount in question was given, not for acquiring of any asset giving enduring benefit and was incurred in the course of trade and hence is in the revenue filed."

9. So, in view of the facts and circumstances of the case, we are of the considered view that depositing the security deposit for taking the office space on lease by the taxpayer and subsequently terminating the agreement due to business consideration is a business decision which cannot be questioned by the Revenue. So, following the decision rendered by the coordinate Bench of the Tribunal in ***Fabindia Overseas Pvt. Ltd.*** (supra) in an identical

issue, the addition made by the AO of Rs.45,90,000/- on account of advances and service tax written off is ordered to be deleted.

GROUNDS NO.2 & 2.1

10. The AO made addition of Rs.1,84,14,784/- on account of non-charging of mark-up on support service charges billed to AT&T Global Network Services India Pvt. Ltd. (AGNSI), a group company of the taxpayer which has started its operation from AY 2008-09 on the ground that without any profit motive, no such services can be provided in a business set up. The AO noticed that the taxpayer has charged mark up of 8% from AGNSI in AY 2008-09 and first three months of AY 2009-10 and thereafter unilaterally reversed the same on the plea that it was management decision and AO considered it an after-thought due to lack of complete documentation in this regard. The ld. DRP held the decision of AO to the extent that the AO should restrict the mark-up as finally determined by the TPO pursuant to the directions issued by this order on TP matters.

11. Challenging the impugned order passed by AO/DRP, the ld. AR for the taxpayer contended that there is no provision under the Act to impute notional income for domestic transactions and moreover transfer pricing provision as has been amended by the

Finance Act, 2012 specifically to cover the domestic transactions, however w.e.f. April 1,2013, and would not be applicable to the transaction prior to April 1, 2013; that no mark up is applicable and required to be charged on the support services charges paid by AGNSI to ACSI as is duly explained in the agreement between ACSI and AGNS; that it was decided between the parties that no mark up is charged by ACSI on the support service charges billed to AGNS and recovery should be made on cost to cost basis as per agreement; that commercial expediency of a particular transaction would be examined from the perspective of a businessman; that both AGNSI and the taxpayer are profit making entities and there was no tax incentives for the purpose to deflate the revenues earned by the taxpayer and relied upon the judgment of Hon'ble Apex Court in ***CIT vs. A. Raman & Company (1968 AIR 49) and*** the judgment of Hon'ble Allahabad High Court in ***Smt. Sumanlata Didwania vs. ITO (1986) 17 ITD 830 (All.)***.

12. However, on the other hand, the ld. DR for the Revenue contended that if something is charged by a company, there must be some agreement that there is no mark up and in this case, no such agreement has been produced and relied upon the order passed by the AO/DRP.

13. Undisputedly, the taxpayer as well as AGNSI, its group company are profit making entity and there is no tax incentive for the purpose to deflate the revenues earned by the taxpayer. Even in case higher amount have been charged by the taxpayer from AGNSI, no added tax advantage is being availed by the taxpayer by charging support services cost from AGNSI at cost to cost basis without any mark up.

14. Issue of non-charging of mark up on support services being built up to AGNSI has come up in the appeal for AGNSI for AY 2008-09 to AY 2011-12 wherein the Revenue has raised a ground that such support services expenditure should be disallowed in the books of account of AGNSI.

15. The coordinate Bench of the Tribunal in case of ***AGNSI for AY 2009-10 in ITA No.2538/Del/2014*** upheld the decision rendered by the ld. DRP in favour of the assessee on identical issue by returning the following findings :-

> ***"75. We have carefully considered the rival contentions and perused the facts of the case. The facts of the case as explained by the appellant are that, ACSI, a group company of appellant and an entity in operations for more than 10 years by then, was having developed support services functions. Accordingly, since such functions were already housed in ACSI, appellant entered into a support services agreement with ACSI for provision of the aforesaid support services to appellant. We have gone through the submission of the assessee and find that necessary evidences in the form of the support service agreement, invoices, the details of payments made and the bank statements evidencing the payment thereof have been furnished by the assessee to prove the genuineness of the expenses. We find that no evidence has been***

brought on record by the Department to dispute the said claim. Rather, the Department's claim is merely based on suspicion as also noted by the DRP while deleting the above disallowance. We also find that even otherwise, both ACSI and appellant are profit making entities and hence, there was no tax incentive for the parties to deflate the revenues earned by appellant. The decision was totally based on commercial considerations. By transferring the cost from ACSI to appellant no added tax advantage is being availed by appellant. We are also of the view that commercial expediency of a particular expenditure incurred by a businessman should be examined from the perspective of the business person and no third party, including the tax authorities, is entitled to question the commercial reasoning/ justification of the expenditure so incurred. Reliance in this regard is placed on the following judicial precedents furnished by the assessee:

i. CIT v. Panipat Woollen & General Mills Co Ltd (103 ITR 66) (Supreme Court)
ii. CIT v. Sales Magnesite (P) Ltd [1995) 214 ITR 1
iii. Binodiram Balchand vs. Commissioner of Income Tax (48 1TR 548)
iv. Calcutta Landing and Shipping Co Ltd vs. CIT (65 ITR 1) (Cal High Court) v. CIT Vs B Dalmia Cement Ltd (254 ITR 377)

76. Respectfully following the principles laid down in the aforesaid judicial precedents, we find that where the appellant has actually incurred the aforesaid support services cost and no evidence has been brought by the Department to controvert the same, such expenditure cannot be disallowed merely on suspicion. We affirm the finding of the ld DRP on this issue. In view of the above, the appeal of the revenue on this ground is dismissed."

16. So, in the instant case also, the Revenue has failed to controvert the invoices, the details of payment made and evidencing the payments thereof to dispute the genuineness of the expenses and the fact that the taxpayer as well as AGNSI are profit making entities and there was no tax incentives for the purpose to deflate the revenues earned by the taxpayer, the Revenue has based its decision on commercial consideration. Moreover, in case of

both the resident parties, terms and conditions of the arrangement cannot be questioned by the Revenue unless specifically provided under the Act. In case of a contract by both the parties who are admittedly resident Indian entities, they make the law for themselves which cannot be interfered unless contract is unlawful or specially barred by the law of the land. Moreover by such a decision of not charging mark up by the taxpayer on support services charges billed to AGNSI, no loss of tax has been caused to Revenue. So, the findings of the TPO/DRP that the taxpayer is not only to cut charges but mark up also is not sustainable in the eyes of law. So, we order to delete the addition on account of not charging of mark up on support services charges billed to AGNSI.

GROUNDS NO.3 TO 3.3

17. AO disallowed an amount of Rs.56,15,035/- and added back the same to the income of the taxpayer on the ground that the taxpayer does not have the basis of recording year end accrual. The ld. DRP approved the proposed addition on this account.

18. Undisputedly, the detail of year end accrual outstanding as on March 31, 2010 are as under :-

Particulars	***Accruals as on March 31, 2010***
Accrual Control Accunt	***11,25,51,600***
Salary payable	***50,26,782***
IPA Accruals	***24,21,901***
SIP Accruals	***51,00,353***
Internal LSP Liability	***25,24,592***
Total	***12,76,25,228***

19. It is also not in dispute that out of the aforesaid amount of Rs.12.76 crores, invoices of Rs.10.69 crores were submitted and accepted by the AO. It is also not in dispute that reversal entries of Rs.1.50 crores were made in the succeeding years by giving benefit of the same to the taxpayer. It is also not in dispute that Rs.5.02 crores for the disallowance made in the preceding assessment year has been allowed to the taxpayer against the above disallowance resulting in credit of Rs.4.46 crores. It is also not in dispute that taxpayer is following mercantile system of accounting and has produced documentary evidence supporting payment / reversal of more than 95% of the expenses represented by the year end accrual.

20. The ld. AR for the taxpayer contended that year end accruals being provisions made towards routine business expenditure incurred are based on past trends as well as scientific and reasonable basis and are liable to be allowed as deduction in view

of the decisions rendered by Hon'ble Apex Court in ***Rotork Controls India (P) Ltd. – 314 ITR 62***.

21. The ld. AR for the taxpayer further contended that the issue is also covered by the decision of the coordinate Bench of the Tribunal in case of ***AGNSI in ITA No.1059/Del/2015 for AY 2010-11***.

22. Ld. DR for the Revenue contended that before the ld. DRP, the taxpayer has not produced any documentary evidence nor pressed the addition and moreover AO has already been directed to verify and proceed accordingly.

23. So far as question of not pressing the issue before the ld. DRP, as contended by the ld. DR for the Revenue, is concerned, when we see the entire discussion on this issue in para 8.1, it goes to prove that the issue was pressed and disposed of by the ld. DRP on merits and merely on the basis of one sentence it cannot be said that the issue has not been pressed.

24. Hon'ble Supreme Court in case cited as ***Rotork Controls India (P) Ltd.*** (supra) decided the identical issue in favour of the taxpayer by returning the following findings :-

> " ***Held, reversing the decision of the High Court, that the valve actuators, manufactured by the assessee, were sophisticated goods and statistical data indicated that every year some of these were found defective ; that valve actuator being a sophisticated item no customer was prepared to buy a valve actuator without a warranty. Therefore, the warranty became an integral part of the***

sale price; in other words, the warranty stood attached to the sale price of the product. In this case the warranty provisions had to be recognized because the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of the obligation. Therefore, the assessee had incurred a liability during the assessment year which was entitled to deduction under section 37 of the Income-tax Act, 1961.

The present value of a contingent liability, like the warranty expense, if Properly ascertained and discounted on accrual basis can be an item of deduction under section 37. The principle of estimation of the contingent liability is not the normal rule. It would depend on the nature of the business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting adopted by the assessee. It would also depend upon the historical trend and upon the number of articles produced.

A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation, and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not me, no provision can be recognized.

The principle is that if the historical trend indicates that a large number of sophisticated goods were being manufactured in the past and the facts show that defects existed in some of the items manufactured and sold, then provision made for warranty in respect of such sophisticated goods would be entitled to deduction from the gross receipts under section 37."

25. When undisputedly no mistake has been pointed out by the AO in the calculation nor it is the case of the AO that the taxpayer had not paid certain bills and the taxpayer is following mercantile system of accounting and the expenses are having element of estimation as well as scientific basis, keeping in view the past trend, the expenses are required to be allowed in the year of

creation itself, particularly, when the Revenue authorities has allowed the entire claim of expenditure in the subsequent years.

26. So, following the law laid down by the Hon'ble Apex Court in ***Rotork Controls India (P) Ltd.*** (supra) and the decision rendered by the coordinate Bench of the Tribunal in ***AGNSI in ITA No.1059/Del/2015 for AY 2010-11***, we are of the considered view that when the taxpayer has worked out the liability by using a substantial degree of estimation by proving 95% of the invoices on the basis of historical trend, no disallowance can be made. So, we order to delete this addition.

GROUNDS NO.4 TO 4.12

27. Undisputedly, the TPO has not disputed the function and method of benchmarking the international transactions applied by the taxpayer. It is also not in dispute that the taxpayer is operating low risk network support services provider to IBM Corp., the customer of its AE. It is also not in dispute that the NSS are in the nature of fault monitoring, incident management, troubleshooting, charge management, configuration of network devices, security compliance and any other services required by the AE from time to time. It is also not in dispute that the taxpayer is remunerated at cost plus 16% mark up as per service agreement with AT&T Corp.

It is also not in dispute that AT&T Corp. has entered into Master Service Agreement to outsource IMB's worldwide network service delivery business functions.

28. Post directions of DRP, the TPO selected 12 comparables with OP/OC as Profit Level Indicator (PLI) which are as under :-

S. No.	Company Name	Compar-ables as per TP STUDY	Compar-ables introduced by TPO	OP/TC (as per TPO Order)	Working Capital Adjusted OP/TC (as per Final Assessment Order)
1	Telecommunications Consultants India Ltd. (Seg.)	-	-	10.73%	5.61%
2	Cades Digitech Pvt. Ltd.	-	-	8.80%	5.55%
3	Certification Engineers International Ltd.	-	-	78.63%	70.24%
4	Engineers India	-	-	62.94%	59.99%
5	HSCC (India)	-	-	18.32%	3.89%
6	IBI Chematur	-	-	52.66%	51.62%
7	Kirloskar Consultants Ltd.	-	-	15.64%	9.06%
8	Kitco Ltd.	-	-	14.01%	13.69%
9	Mahindra Consulting Engineers Ltd.	-	-	23.50%	23.37%
10	NTPC Electric Supply Co Ltd.	-	-	74.70%	71.27%
11	Rites Ltd.	-	-	50.05%	42.88%
12	TCE Consulting Engineers Ltd.	-	-	25.88%	24.33%
	Average			36.32%	31.79%

29. The ld. AR for the taxpayer in order to cut short his arguments contended that the taxpayer grievance is to the extent of excluding Government owned undertaking from the final set of comparables for benchmarking the international transactions qua

Network Support Services (NSS) and relied upon the decision rendered by the coordinate Bench of the Tribunal in ***Bechtel India Private Limited in ITA No.1478/Del/3025*** (available on pages 46 & 47 of case law compendium-II) and decision rendered by Hon'ble Bombay High Court in ***Thyseen Krupp Industries India (P.) Ltd. in ITA No.2218 of 2013*** (available on page 36 of case law compendium-II).

30. The coordinate Bench of the Tribunal in ***Bechtel India Private Limited*** (supra) ordered to exclude Government undertakings as comparable on the ground that, *"the majority revenue (and profitability) of this company comes from Government (state or center) run projects and that the company derives benefit out of its parental relation with the Government in getting contract which certainly makes the profit margin."*

31. Hon'ble Bombay High Court in ***Thyseen Krupp Industries India (P.) Ltd.*** (supra) has also lay down the principle that, *"the Engineers India Ltd. could not be considered to be comparable for the reason that contracts between Public Sector undertakings are not driven by profit motive along but other consideration also weigh in such as discharge of social obligations etc."*

32. By applying the decision rendered by the coordinate Bench of the Tribunal in ***Bechtel India Private Limited*** (supra) and

Hon'ble Bombay High Court in ***Thyseen Krupp Industries India (P.) Ltd.*** (supra), the coordinate Bench of the Tribunal in case of ***WSP Consultants India Pvt. Ltd. in ITA No.344/Del/2016*** ordered to exclude Kitco, a 100% Government undertaking.

33. So, in view of the matter, we are of the considered view that Government undertakings/companies are not the suitable comparables for benchmarking the international transaction. So, the AO is directed to verify all the Government undertakings / companies from the final set of comparables which are taking preferential treatment from Government in getting contract etc. and are not driven by profit motive alone impacting the profit margin and to exclude the same and then benchmark the international transactions qua Network Support Services. Consequently, grounds no.4 to 4.12 are determined in favour of the taxpayer.

GROUNDS NO.5 & 5.1

34. The AO allowed credit of TDS 6,54,89,076/- as against the claim of Rs.6,57,84,537/- claimed by the taxpayer in its revised return of income filed for the year under assessment. When the taxpayer has brought on record the complete detail of TDS to the tune of Rs.6,57,84,537/- by filing revised return of income, the AO has erred in granting short credit thereof. So, we direct the AO to

provide full credit of TDS of Rs.6,57,84,537/- after duly verifying the facts.

GROUNDS NO.6 & 6.1

35. Grounds No.6 & 6.1 qua levy of interest u/s 234B and 234C of the Act need no specific finding being consequential in nature.

GROUNDS NO.7 & 7.1

36. Grounds No.7 & 7.1 are premature, hence do not require any adjudication.

37. Resultantly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on this 15th day of February, 2018.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 15th day of February, 2018
TS

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT (A)
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.