IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No.7569/DEL/2019
Assessment Year: 2015-16

Hyundai Rotem Company, N-3, 3rd Floor, South Extension, Park No.1, Delhi.	vs.	ACIT (International Taxation), New Delhi.
TAN/PAN: AABCK6367L		
(Appellant)		(Respondent)

Appellant by:	Shri Rajan Vohra, AR.		
Respondent by:	Shri Sanjay I- Bara, CIT-D.R.		
Date of hearing:	04	12	2019
Date of pronouncement:	02	03	2020

O R D E R

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the final assessment order dated 29.08.2019, passed u/s.143(3) r.w.s. 144C passed in pursuance of direction given by DRP vide order dated 03.07.2019 u/s.144C(5) for the Assessment Year 2015-16. In the grounds of appeal, the assessee has raised the following grounds:

"The facts and in the circumstances of the case and in law, the learned AO/ learned Deputy Commissioner of Income-tax (Transfer Pricing Officer) - 2(1)(1) ('Ld. TPO') on fact and in law has:

General Grounds

1. erred in computing a transfer pricing adjustment of INR 2,75,74,335/- to the total income of the Appellant, on account of arm's length pricing of the international transaction pertaining to support services entered into by the Appellant with its Associated Enterprise ("AE");

Consistent approach not followed

2. erred in not taking cognizance of the provisions of the India Korea Double Taxation Avoidance Agreement thereby not adopting a consistent approach as also upheld by the Hon'ble ITAT in Appellant's own case in AY 2010-11 and AY 2012-13;

Characterization of functional profile

3. erred in misunderstanding the appellant's business model and functional and risk profile thereby not accepting the economic analysis undertaken by the appellant in accordance with the provisions of the Act read with the Rules, and modifying the economic analysis for the determination of Arm's Length Price ("ALP") of the appellant's international transactions;

Comparable companies

4. erred in considering companies functionally different as comparable, to benchmark the international transaction of support services provided by the Appellant to its AE that is. 1) Mitcon Consultancy & Engineering Services Limited, 2) Killick Agencies & marketing Limited and 3) Mahindra Consulting Engineers Limited;

5. erred in rejecting the comparables which were selected by the appellant in the transfer pricing study after a detailed functional and economic analysis on the ground that it is functionally not comparable such as 1) Concept Public Relations India Limited and 2) MCI Management (India) Limited;

6. <u>without prejudice to above</u>, erred in computing incorrect margin of comparable company i.e. Mahindra Consulting Engineers Limited;

<u>Risk Adjustment</u>

7. erred in not allowing suitable adjustments to account for differences in the risk profile of the Appellant vis-a-vis the comparables disregarding the fact that risk adjustment has been allowed by the Hon'ble Delhi bench of the Income Tax Appellate Tribunal in the Appellant's own case for AY 2011-12 and 2012-13;

<u>Levy of interest under section 234B of the Act</u>

8. erred in levy of interest under section 234B of the Act of Rs.77,07,273;

<u>Levy of interest under section 234C of the Act</u>

9. erred in levy of interest under section 234C of the Act of Rs.2,13,435"

2. The facts in brief are that Hyundai Rotem Company is a South Korean Company and is a part of Hyundai Motor Group and it is engaged in producing all kinds of railway vehicles, such as electric multiple unit, high speed trains, light rail vehicles, locomotives and passenger coaches, car manufacturing systems and environment plants. It provides rail business solutions throughout the world, ranging from manufacture of rolling stock to the supply of turnkey rail systems. Its business scope includes not only advanced defence industry products but also production and supply of industrial plants and environment friendly facilities. The Rotem has set up project offices in India which are;-

(i) RS1 PO

(ii) RS3 PO

(iii) BMRCL PO

(iv) HM PO

(v) RS 10 PO

These project offices were set up in India for carrying out liaising and coordination activities on behalf of the HO in India. The details of project offices of Rotem were as under:

"2.4.1 ROTEM – RS1 PO

ROTEM, along with MC and MELCO formed a consortium to execute contract RSI with DMRC for design, manufacture, supply, testing and commissioning of passenger rolling stock for Mass Rapid Transport System Phase 1 at New Delhi. The contract with DMRC consists of both on-site services and off-shore supplies -

Offshore work consists of complete manufacture of 15 corridor trains and supply to DMRC

Onsite work consists of local manufacture/assembly of 45 trains.

Accordingly, ROTEM - RSI PO was set up in the year 2001 with the objective of coordination and supervision of onsite portion of the DMRC Contract. However, the onsite activities were neither performed by ROTEM nor by ROTEM - RSI PO since, it was subcontracted to BEML. ROTEM - RSI PO was in charge of getting the onsite portion of work done by BEML and other sub-contractors. For this purpose, ROTEM - RSI PO was coordinating with BEML and DMRC to ensure that assembly of trains is as per quality standards and within agreed timeframe. In this connection, ROTEM - RSI PO does not employ any significant assets to enable it to carry out the assembly of trains on its own. Accordingly, the entire assembly was sub-contracted to third *parties such as BEML, which have requisite assets, expertise to perform the necessary functions.*

However, during FY 2014-15, the activities of ROTEM were restricted to maintenance and trouble-shooting services under DLP. The DLP services have been rendered by ROTEM through ROTEM - RSI PO. The Project office for this purpose has employed engineers and fitters, in addition to administrative staff. Further, the ROTEM head office has engaged outsourcing companies to carry out minor modifications, such as replacement of components of doors of rolling stock, as required by DMRC.

The role of engineering staff is to overview the replacement/modification job being undertaken by outsourcing companies and liaise with DMRC personnel in relation to maintenance and trouble shooting in relation to rolling stock supplied under Contract RSI.

2.4.2 ROTEM - RS3 PO

For the purpose of bidding for the Contract RS3 of DMRC, bids for which were invited by DMRC under International Competitive Bidding for the Mass Rapid Transport System - Phase II Contract / Tender RS3 for design, manufacture, supply, testing, commissioning, training and transfer of technology of 156 Standard Gauge EMUs or rolling stock; MC, ROTEM, MELCO and BEML formed a consortium and the contract was later awarded to MRMB consortium vide contract agreement dated October 19, 2007.

In connection with contract RS3, ROTEM has been chosen as the technical leader of the project and is responsible for detailed design development, manufacture, supply, testing, and commissioning of Mechanical portion of the Rolling Stock; MELCO is responsible for the detail design development, manufacture, supply of the Propulsion Equipments and other possible electrical equipments of the Rolling Stock; and BEML is responsible for the localization works. Further, MC *as consortium leader is responsible for project co-ordination, commercial management, contract administration, legal administration, providing bank guarantees and collecting payments from DMRC.*

For the purpose of coordination and administrative support in connection with RS3 contract, ROTEM has established a project office ("ROTEM - RS3 PO,r) at New Delhi, India with the prior approval of Reserve Bank of India. For this contract, ROTEM - RS3 PO undertakes only liaisoning activities (under instructions of ROTEM head Office) between MRMB Consortium and DMRC as a representative and on behalf of ROTEM.

As evident from role defined, in the Contract RS3 for FY 2014-15, ROTEM only undertakes the supply of components to BEML and is not involved in onsite activities. The onsite activities of testing and commissioning in India are undertaken by BEML as an independent member to MRMB Consortium. However, being the technical leader, DMRC has entrusted ROTEM with responsibility of supervision of onsite testing and commissioning work being undertaken by BEML in India.

Though ROTEM is not responsible for onshore activities, being a member to the contract of MRMB Consortium with DMRC and supplier of components to BEML, ROTEM has a vested interest in the developments of the discussions of BEML with DMRC. ROTEM - RS3 PO under the instructions of ROTEM participates in the discussions between the MRMB Consortium and DMRC. ROTEM - RS3 PO merely acts as a communication channel between ROTEM (in the role of member to MRMB Consortium) and DMRC even though the meetings may pertain to the onsite portion of the Contract RS3. Being a representative of the member of MRMB Consortium, ROTEM - RS3 PO enables ROTEM to acquire first hand information of communication between DMRC and BEML and developments in this regard. It therefore facilitates coordination between the activities undertaken by BEML and DMRC officials.

In addition to administrative staff, ROTEM - RS3 PO has employed managerial staff and engineers. The role of managers is primarily to undertake liaisoning and coordination activities, whereas, engineering staff is required to overview the testing and commissioning activities. Further, the administrative team based at New Delhi also coordinates the process of logistics i.e. transportation of trains, insurance etc. from BEML manufacturing facility at Bangalore to DMRC depots at Delhi.

2.4.3 BMRCL PO

In January 2007, BMRCL floated a tender for design, manufacture, supply, testing and commissioning of Passenger Rolling Stock including training of its personnel and supply of spares, and operation and maintenance manuals for 50 train sets, each train consisting of 2 Driving Motor Cars and 1 Trailer Car totaling 150 cars ("2RS-DM contract")- ROTEM in consortium with MC,

MELCO and BEML (jointly "BRMM consortium") had participated in the pre-qualification bid invited by BMRCL and submitted a tender which was later awarded by BMRCL to the consortium in 2009.

Under the contract, BEML has been appointed as the consortium leader and is responsible for supply of EMUs to BMRCL while ROTEM/ MELCO/ MC are responsible for supplying equipments/ materials to BEML. BEML is responsible for corresponding with BMRCL on behalf of the consortium and local manufacturing, T&C of rolling stock at BEML factory. ROTEM is responsible for design, development, manufacture, supply T&C of its portion of rolling stock, training of personnel, support and supervision of quality of manufacturing, assembly, T&C and integration of the metro cars to be produced by BEML. MELCO has assigned its individual scope of work under the 2RS-DM contract of BMRCL to ROTEM. Accordingly, ROTEM assumes the rights and obligations of MELCO under the contract and bears the responsibility for supply of electrical works.

2.4.4 HM PO

HM floated a tender for design, manufacture, supply, testing and commissioning of Rolling Stock for the 72 km rail system on elevated structures from Miyapur to L.B Nagar; Jubilee Bus Station to Falaknuma; and Nagpole to Shilparamam corridors in Hyderabad. ROTEM participated in the pre¬qualification bid invited by HM and submitted a tender which was later awarded to ROTEM in September 2012.

Under the contract, ROTEM is responsible for survey, investigation, supervision of on-site and off- site operations, design, manufacture, supply, testing and commissioning of Rolling Stock, supply of equipments and materials.

Under HM contract, the project office is responsible for rendering co-ordination and support services to its head office.

2.4.5 ROTEM - RS10 PO

During the year 2013, Rotem entered into a contract with DMRC for design, manufacture, supply, testing, commissioning and training of 486 standard gauge cars for phase-ill of Mass Rapid Transport System project. Linder the aforesaid contract a maximum of 120 cars can be manufactured efffshore and the remaining cars would need to be manufactured in India. For the purpose of coordination and administrative support in connection with the RS-10 at New Delhi, India."

3. Thus, as per details contain in TP study report, the functional profile of the POs were treated to be administrative and coordinative function without implying significant risks such as market risk, contractual risk, credit and collection risk and foreign exchange risk and were highlighted to be low services. Functions performed by the project offices under

various project offices performing various contracts have disclosed following functions in the TP study report and the risk undertaken:

4.1.2 Functions performed

The purpose of this section is to identify economically important activities performed by each of the related parties and to explain the significance that each function has in creating value for business. This section provides a broad overview of the various functions performed by ROTEM - POs in relation to the identified international transaction.

RS1 Contract -

Since, the major portion of supply of rolling stock under contract RSI has been completed, the consortium is serving the DLP in connection with the contract RSI. During FY 2014-15, ROTEM - RS 1 PO was responsible for undertaking after sales activities under DLP. For this purpose, no significant function has been performed by ROTEM head office and ROTEM - RS 1 PO was responsible for liaisoning and coordinating the process of after sales activities.

In light of the above and based on our discussions with ROTEM - RSI PO, summarized below is an analysis of functions performed, the risks assumed, and the assets employed by the transacting entities, in relation to the international transaction -

► *Liaisoning and coordination*

ROTEM - RS 1 PO liaise with DMRC to understand their requirement and defects identified by DMRC in the components supplied by ROTEM. Subsequently, the defects, if any, identified by DMRC are communicated to ROTEM head office.

The defects, such as replacement of components of doors of rolling stock, if any, is undertaken by the outsourcing companies identified by ROTEM head office. The procedure for replacement is demonstrated by ROTEM head office to the outsourcing companies and ROTEM - RSI PO's role is restricted to supervision of activities of outsourcing companies. The entire *maintenance activities in India in relation to the rolling stock supplied to DMRC is performed under the supervision of Chief Maintenance Engineer of ROTEM - RSI PO who has been approved by DMRC.*

► *Maintenance and trouble shooting*

Based on the requirement of DMRC, ROTEM - RSI PO handles routine technical issues occurring on a day to day basis. ROTEM - RSI PO undertakes minor troubleshooting in relation to rolling stock supplied to DMRC under contract RSI.

For this purpose, any material / equipment required in the course of the maintenance activities are procured by the overseas purchase department of ROTEM head office. The purchase department directly place orders with vendors for any spares/consumables, as may be required, and such material is delivered by the vendors directly to the outsourcing companies engaged for carrying out the requisite modifications. The role of ROTEM - RSI PO in this regard is restricted to communication of the defects to ROTEM head office; obtain budgetary sanctions from head office for spares/consumables; and supervision of the activities being undertaken by outsourcing companies engaged by ROTEM head office.

The functions performed by ROTEM - RSI PO and its AE, are summarized in the table below –

Type of functions	*ROTEM – RS1 PO*	*ROTEM*
Liaisoning and coordination	*Yes*	*No*
Maintenance and trouble shooting	*Yes*	*Limited*

During FY 2014-15, in relation to RS3 project, ROTEM - RS3 PO has a few other personnel who have been engaged under a manpower supply arrangement from an outsourced agency to handle minor issues. ROTEM does not receive any separate remuneration for the services rendered during DLP.

The functions performed by ROTEM and ROTEM - RS3 PO in relation to the international transaction pertaining to administrative support and co-ordination services have been summarized below -

► *Contract execution*

All the activities related to onsite portion of the contract are to be performed by BEML. In relation to contract RS3, ROTEM has been appointed as technical leader and is required to undertake detailed design and development of the mechanical portion. Further, it is also responsible for the manufacture, supply, testing and commissioning of the activities relating to the mechanical portion of the project in Korea.

For FY 2014-15, ROTEM is responsible for supplying material to BEML for use in assembling of EMUs in India. The local assembling is undertaken by BEML and ROTEM through ROTEM - RS3 PO supervise the site and depot operations in connection with onsite testing and commissioning work being undertaken by BEML in India. In addition, ROTEM - RS3 PO is responsible for rendering support services in relation to custom clearance of supplies made from outside India and arranging for logistics.

► *Testing and commissioning*

Based on the requirement of DMRC, ROTEM - RS3 PO supervises the onsite testing and commissioning activities being undertaken in relation to Contract RS3. ROTEM - RS3 PO handles routine technical issues occurring on a day to day basis under the technical guidance provided by ROTEM head office. However, the project office undertakes only minor troubleshooting in relation to rolling stock. Any concern in relation to assembling is taken care-off by BEML and design issues are handled by ROTEM head office.

► *Liaisoning/interfacing with DMRC*

ROTEM - RS3 PO is involved in liaisoning and interfacing with the DMRC officials and General Consultants appointed by DMRC. This entails various administrative activities and technical matters to be coordinated for proper execution of the contract.

***ROTEM - RS3 PO** acts as the communication link between ROTEM as a member to MRMB Consortium and DMRC representing ROTEM under instructions of Head Office of ROTEM. The cost incurred by ROTEM - RS3 PO in relation to such coordination activities, are reimbursed by ROTEM*

Head Office with an appropriate mark up thereon. All the activities performed by ROTEM - RS3 PO are support activities which further are charged at a cost plus mark up basis to the Head Office.

The functions performed by ROTEM - PO and its AE, are summarized in the table below –

Type of functions	*ROTEM – RS3 PO*	*ROTEM*
Contract execution	*No*	*Yes*
Testing and commissioning	*Limited to supervision*	*No*
Liaisioning/ interfacing with DMRC	*Yes*	*Limited*

***BMRCL Contract** -*

The functional role and responsibilities of BMRCL PO are largely similar to those under DMRC's RS3 contract.

The functions performed by ROTEM and BMRCL PO in relation to international transaction pertaining to administrative support and co-ordination services have been summarized below -

► *Contract execution*

In relation to the 2RS-DM contract awarded by BMRCL to the consortium, ROTEM is responsible for coordinating and providing logistics support in connection with offshore supplies made by ROTEM to BEML in relation to MELCO's assigned scope of work. ROTEM continues to be the technical leader of the project and is responsible for detailed design development, manufacture, supply, testing, and commissioning of mechanical portion. The local manufacturing such as car body manufacturing and assembly, and bogie assembly is to be done by BEML.

BMRCL PO is responsible for liaising with local service providers in connection with logistics support and undertakes routine administrative compliances in relation to payment of custom duties etc. on behalf of head office.

In addition, BMRCL PO is responsible for local procurement of certain material and supply of same to BEML directly. In relation to the local supplies being made by BMRCL PO to BEML, there is no separate consideration receivable from BMRCL in this regard. The PO is paid by

BEML for such local supplies out of the fixed lump-sum consideration received.

► *Supervision*

BMRCL PO is responsible for co-ordinating and interfacing with service providers in connection with handling cargo and other logistics, customs clearance etc. of equipment imported into India and transportation of same to the assembly sites of sub-contractors and further to BEML's factory for local assembling of EMUs.

► *Liaisoning / interfacing*

BMRCL PO is involved in liaisoning and interfacing with BMRCL officials and BEML in connection with the ROTEM's scope of work under the contract. This entails various administrative activities and technical matters to be coordinated for proper execution of the contract.

BMRCL PO acts as the communication link between ROTEM as a member to BRMM Consortium and BMRCL representing ROTEM under instructions of ROTEM. The cost incurred by BMRCL PO in relation to such coordination activities, are reimbursed by ROTEM with an appropriate mark-up thereon.

The functions performed by BMRCL PO and ROTEM, are summarized in the table below-

Type of functions	*BMRCL PO*	*ROTEM*
Contract execution	*Limited*	*Yes*
Supervision	*Yes*	*Limited*
Liaisioning/interfacing with DMRC	*Limited*	*Limited*

Hyderabad Contract -

The functional role and responsibilities of HM PO are largely similar to the other contracts undertaken by ROTEM. The functions performed by HM PO have been summarized below -

Contract execution

The scope of work of Rotem (head office) under offshore supply is manufacturing, testing, inspection and shipping of 57 train cars of 3 car configuration to port in India. The scope of work of Rotem (head office) *under onshore services is related to oversight and coordination, including integrated testing and commissioning and trial runs, providing information on rectification of defects, clearing, forwarding, handling, transportation to site, receipt and unloading/ handling of the trains at site. The project office mainly acts as an interface between Rotem (Head office) and the end customer.*

► *Logistic support*

HM PO is responsible for coordinating and providing logistics support in connection with offshore supplies made by ROTEM. It liaises with local service providers in connection with logistics support and also undertakes routine administrative compliances on a day-to-day basis. The rolling stock manufactured by ROTEM is directly delivered to HM by ROTEM-HO. HM PO's role is restricted to only coordination and logistic support.

► *Liasioning*

HM PO is involved in liaising and interfacing with HM officials in connection with the ROTEM's scope of work under the contract. This entails various administrative activities to be coordinated for proper execution of the contract. It is also responsible for liasing with Government representatives. The cost incurred by HM PO in relation to such coordination activities, are reimbursed by ROTEM with an appropriate mark-up thereon.

The functions performed by HM PO and ROTEM, are summarized in the table below –

Type of functions	*HM PO*	*ROTEM*
Contract execution	*Limited*	*Yes*
Logistics Support	*Yes*	*Limited*
Liaisioning with HM	*Yes*	*Limited*

RS 10 Contract-

The functional role and responsibilities of RS10 PO are largely similar to the other contracts undertaken by ROTEM. The functions performed by RSIO PO have been summarized below -

► *Contract execution*

Under the RS-10 contract, a maximum of 120 cars can be manufactured offshore and the remaining cars need to be manufactured in India. For the purpose of coordination and administrative support in connection with the RSIO contract, Rotem has established a project office i.e. Rotem- RS 10 PO at New Delhi, India. Rotem (head office) has appointed a sub-contractor i.e. BEML Limited for manufacture of balance cars in India on "job-work basis".

For FY 2014-15, ROTEM (Head Office) is responsible for supplying material to BEML for use in assembling of EMUs in India. The local assembling is undertaken by BEML. ROTEM - RSIO PO undertakes oversight and coordination for the onsite testing and commissioning work undertaken by BEML in India. The RS-10 PO is primarly responsible for liasoning and coordination activities under the project.

► *Logistic support*

RSIO PO is responsible for coordinating and providing logistics support in connection with offshore supplies made by ROTEM. It liaises with local service providers in connection with logistics support and also undertakes routine administrative compliances on a day-to-day basis. The rolling stock manufactured by ROTEM is directly delivered to RSIO by ROTEM. RSIO PO's role is restricted to only coordination and logistic support.

► *Liasioning*

► *ROTEM - RSIO PO is involved in liaisoning and interfacing with the DMRC officials and General Consultants appointed by DMRC. This entails various administrative activities and technical matters to be coordinated for proper execution of the contract.*

ROTEM - RSIO PO acts as the communication link between the Head office and DMRC and representing ROTEM under instructions of Head Office of ROTEM. The cost incurred by ROTEM - RSIO PO in relation to such coordination activities, are reimbursed by ROTEM Head Office with an appropriate mark-up thereon. All the activities performed by ROTEM -

RSIO PO are support activities which further are charged at a cost plus mark-up basis to the Head Office.

► *RSIO PO is involved in liaising and interfacing with RSIO officials in connection with the ROTEM's scope of work under the contract. This entails various administrative activities to be coordinated for proper execution of the contract. It is also responsible for liasioning with Government representatives. The cost incurred by RSIO PO in relation to such coordination activities, are reimbursed by ROTEM with an appropriate mark-up thereon.*

The functions performed by RSIO PO and ROTEM, are summarized in the table below –

Type of functions	*RS 10 PO*	*ROTEM*
Contract execution	*Limited*	*Yes*
Logistics Support	*Yes*	*Limited*
Liaisioning/ Interfacing with DMRC	*Yes*	*Limited*

4.1.3 ***Risk Analysis***

4.1.3.1 Business risk

Business risk arises when a firm is subject to adverse sales conditions due to either increased competition in the marketplace, adverse demand conditions within the market, or the inability to develop markets or position products to service targeted consumers.

ROTEM - POs only provide administrative support services to ROTEM and do not assume any specific market risk. ROTEM is responsible for generating business and none of business related decisions are made by people in ROTEM - POs. ROTEM is responsible for deciding the business strategy and future growth strategy for the company. Accordingly, business risk is borne by ROTEM.

4.1.3.2 Credit and collection risk

When a firm supplies products or services to a customer in advance of customer payment, the firm runs the risk that the customer will fail to make payment. This risk is known as customer credit risk.

The revenues of ROTEM - POs are generated from a single entity i.e. ROTEM, which is its Head Office. Accordingly, ROTEM - POs do not bear any significant credit and collection risk which an independent service provider would have been exposed to while dealing with independent customers.

4.1.3.3 Foreign exchange risk

Exchange rate risk relates to the potential variability of profits that can arise because of changes in foreign exchange rates. Such risks arise when doing business in any market that is affected by international trade and can arise even if a company does not conduct actual transactions in a foreign currency.

ROTEM - POs bill ROTEM HO in a currency which is different from its functional currency. However, given the current context and keeping in mind the current economic scenario; ROTEM - POs are not exposed to any significant foreign exchange risk.

Briefly tabulated are the key risks, borne by ROTEM - POs and ROTEM in relation to the administrative support and co-ordination services provided by ROTEM - POs to ROTEM – HO

Type of Risks	*ROTEM - POs*	*ROTEM*
Business risk	*No*	*Yes*
Credit and collection risk	*No*	*Yes*
Foreign exchange risk	*No*	*Yes*

4.2 Reimbursement of expenses to AE

During the year, ROTEM charged back certain operating expenses borne by it on behalf of ROTEM – Pos. The details of the charged back expenses is as follows:-

Associated enterprise	*Charged to*	*Description of Services*	*Amount (INR)*
ROTEM	*RS3*	*Expenses incurred by ROTEM on behalf of PO*	*2,792,901*
ROTEM	*BMRCL*	*Expenses incurred by ROTEM on behalf of PO*	*7600198*
ROTEM	*HM PO*	*Expenses incurred by ROTEM on behalf of PO*	*3006724*
ROTEM	*RS 10*	*Reimbursement of salaries*	*7889194*

4.3 Reimbursement of expenses by AE

ROTEM – Pos incurred miscellaneous operating expenses o behalf of ROTEM and charged back these expenses to ROTEM. The value of the charge back of these expenses is as follows:-

Associated enterprise	Paid by	Description of Services	Amount (INR)
ROTEM	RS 13	Payment to vendor on behalf of ROTEM	21610500
ROTEM	RS3 PO	Taxes and duties paid on behalf of ROTEM	17802178
ROTEM	BMRCL PO	Taxes and duties paid on behalf of ROTEM	28603004
		Expenses incurred on behalf of ROTEM	164553
ROTEM	HM PO	Expenses incurred on behalf of ROTEM	3156987
		Taxes and duties paid on behalf of ROTEM	1908619
ROTEM	RS 10 PO	Taxes and duties paid on behalf of ROTEM	37363
		Expenses incurred on behalf of ROTEM	1040750
		Payment to vendor on behalf of Head office	832240005
Total			906563959

4.4 Assets employed

The written down value of assets employed by ROTEM – Pos after depreciation as on March, 31 2015 are as follows –

Type of asset	Amount				
	ROTEM RS1 PO	ROTEM RS3 PO	BMRCL PO	HM PO	ROTEM RS 10 PO
Leasehold improvements	-	-	-	-	-
Furniture and Fixtures	-	-	-	978212	155332
Office Equipment	-	-	-	16225	243959
Computer	-	-	-	182858	376229
Vehicles	-	-	-	-	-
Software	-	-	-	1190311	1097408

4. In the TP study report, following international transaction with its AE were reported:-

No.	Nature of transaction	Method	Value of transaction (in
i.	Rendering of administrative support and coordination services by ROTEM - RSI PO	TNMM	4,987,110
ii.	Rendering of administrative support and coordination services by ROTEM - RS3 PO		118,342,532
iii.	Rendering of administrative support and coordination services by BMRCL PO		74,233,139
iv.	Rendering of administrative support and coordination services by HM PO		170,522,202
V.	Rendering of administrative support and coordination services by RS10 PO		152,994,500
vi.	Reimbursement of expenses to AE	Other method	906,563,959
vii.	Reimbursement of expenses by AE		21,289,017

5. In order to benchmark the administrative support services, the assessee adopted TNMM as most appropriate method and OP/OC was taken as PLI. The assessee selected six comparable companies for its arm's length analysis which was determined from the 35th percentile of the data set and ending on 65th percentile of data set and the median was arrived at 7.74%. The computation was done in the following manner:

No.	***Name of the company***	***Weighted** average **OP/OC%***
(i)	*Concept Public Relations India Ltd*	*4.24*
(ii)	*MCI Management (India) Ltd*	*5.33*
(iii)	*ICR A Management Consulting Services Ltd.*	*6.99*
(iv)	*Keystone Integrated Marketing Services Pvt. Ltd*	*8.49*
(v)	*India Tourism Development Corporation Ltd*	*8.55*
(vi)	*E D C / L (India) Ltd.*	*4.50*
	35th Percentile	***6.99%***
	Median	***7.74%***
	65th Percentile	***8.49%***

6. The operating margin at the entity level at 10.79% which at the unit-wise profitability was shown as under:

Particulars	RS1PO	RS3PO	BMRCLPO	HMPO	RS10	Total
Operating Income	49,87,110	11,83,42,532	7,42,41,851	17,05,22,202	15,29,94,500	52,10,88,195
Operating Cost	45,75,330	10,24,09,499	6,80,28,801	15,64,01,003	13,81,69,867	46,95,84,500
Operating Profit	4,11,780	1,59,33,033	62,13,050	1,41,21,199	1,48,24,633	5,15,03,695
OP/OC	9.00%	15.56%	9.13%	9.03%	10.73%	10.97%

7. The TPO accepted two of the comparables of the assessee, namely, ICRA Management Consulting Services Ltd. and Keystone Integrated Mktg. Services Pvt. Ltd. and other fours were rejected. Thereafter, the ld. TPO had selected 5 more comparables whose weighted averages OP/OC were as under:

S. No.	***Company Name***	***OP/OC 2013***	***OP/OC 2014***	***OP/OC 2015***	***WTG. AVG. OP/OC***
1	*I C R A Management Consulting Services Ltd.*	*2.36*	*4.01*	*11.82*	*6.13%*
2	*Keystone Integrated Mktg. Services Pvt. Ltd.*	*6.89*	*7.10*	*9.75*	*8.13%*
3	*Mitcon Consultancy & Engineering Services Ltd.*	*34.84*	*25.06*	*10.35*	*22.82%*
4	*Killick Agencies & Mktg. Ltd.*	*26.73*	*23.06*	*23.22*	*24.32%*
5	*WAPCOS Ltd (seg)*	*NA*	*35.55*	*32.98*	*34.16%*
6	*Holtec Consulting Pvt. Ltd.*	*60.15*	*60.19*	*43.82*	*54.39%*
7	*H S C C (India) Ltd.*	*66.54*	*68.85*	*72.82*	*69.59%*

8. Accordingly, the TPO made adjustment of Rs.6,26,99,255/- in respect of provision of administrative support services.

9. As highlighted by the ld. counsel before us that, the ld. TPO in his order has taken note of business activities of the head office and arrived at a presumption that the activities of the project office are technical in nature, since the head office operates in technical environment. Ld. Counsel for the assessee submitted that the TPO has misunderstood the fact, though while the contract was entered into by the head office with third parties, pursuant to which projects office have been set up, can be said to be technical contracts, but the functions performed by the project office were merely restricted to liaising and coordination. Later on, the proposed TP adjustment was reduced to Rs.6,20,41,837/- by the TPO vide order dated 28th December, 2018 passed u/s.154 r.w.s. 92CA(3) after an application for rectification was filed by the assessee.

10. Being aggrieved by the adjustment and addition proposed in the draft assessment order, the assessee filed objection before the DRP. The ld. DRP vide its direction dated 3rd July, 2019 excluded government companies and Holdtech Consultancy Pvt. Ltd. from the set of comparables and after giving effect to the DRP's order the transfer pricing adjustment was reduced to Rs.2,75,74,335/-.

11. Before us, the ld. counsel for the assessee, Mr. Rajan Vohra, first of all, submitted that the ld. TPO has completely erred on facts in taking the nature of services and functions of head office to be that of functions performed by the project

officers. The technical consultancy services were not the same as support services, because in so far as the assessee through project offices are concerned was engaged merely in provision of low end and support services which falls into the category of business support services and cannot be compared with the company engaged in rendering high and technical consultancy services. The contracts entered into by the head office cannot be determinative factor of the functional profile of the project offices. He further brought on record that in the earlier years when transfer pricing adjustment were made, the TPO has not disputed the functional profile of the assessee for Assessment Year 2007-08, 2008-09, 2009-10, 2010-11 and 2013-14. Thus, when Department itself in all the years has accepted the functional profile of the project office, then TPO in this year cannot take a different stand and change the profile of the assessee. However, he submitted that in the Assessment Year 2011-12, the TPO has not accepted the assessee's functional profile. He further submitted that the assessee is mainly aggrieved for exclusion or inclusion of following comparable companies:-

Sr. No	*Name of the company*	*Margin as per TP study*	*Margins considered by the* Ld. TPO	*Appellant's reason for exclusion/ inclusion from set of comparable*
Comparables to be excluded				
1	***Killick Agencies & Marketing Limited***	*Not considered comparable in TP Report*	24.32%	*Functionally different* *Rule of consistency*

2	***Mitcon Consultancy & Engineering Services Limited*** *("Mitcon")*	*Not considered comparable in TP Report*	22.82%	*Functionally different* *Rule of consistency*
3	**Mahindra Consulting Engineers Ltd.**		22.80%	Functionally Different Rule of consistency Incorrect margin
Comparables to be included				
4	Concept Public Relations India Limited	4.24%	Company excluded by TPO and accepted by DRP	Functionally similar
5	MCI Management (India) Limited	5.33%	Company excluded by TPO and accepted by DRP	Functionally similar

12. Ld. counsel for the assessee submitted that here in this case rule of consistency needs to be followed for the reason that, in AY 2013-14 and AY 2012-13, the Appellant had rejected Killick Agencies & Marketing "“Limited, Mitcon Consultancy & Engineering Services Limited and Mahindra Consulting Engineers Limited as a comparable and the Ld. TPO has accepted the stand of the Appellant and rejected them as comparable. Therefore, based on the rule of

consistency, which has been upheld by the ITAT also in Appellant's own case pertaining to AY 2010-11, AY 2011-12 and AY 2012-13, wherein it was held that without any change in functionality and financial data, inclusion/exclusion of comparable cannot be done, as TPO had to bring some material on record to show that why these comparables are to be excluded/ included in the year under consideration. This finding was given while adjudicating for some other comparable i.e. ICRA Management Consultancy Limited for AY 2010-11; and therefore by this logic, all the three comparable should not be included in the final list of comparable companies.

13. Ld. Counsel further submitted that, here in this case, if three comparable chosen by the TPO are excluded then assessee's margin would be at arm's length and he pleaded for exclusion of M/s. Killick Agencies and Marketing Ltd.; Mitcon Consultancy and Engineering Services Ltd. and Mahindra Consulting Engineers Ltd.

Killick Agencies and Marketing Limited (KILLICK) Operating Margin : 24.32% Functional difference

14. Ld. Counsel submitted that this company acts as an agent for its foreign principals for sale of dredgers, dredging equipment, steerable rudder propellers, maritime and aviation lighting, acoustic communication equipment etc. The company also provides after sales services and is involved in the export of micro switches, engineering items etc. Further, it

was observed that the company is engaged in the business of marine equipment like specialized propulsion systems, marine engines, industrial & marine gear boxes, ballast water treatment system, special purpose sea going vessels, industrial & marine exhaust system, ship lighting & navigation lighting systems, dredges and dredge equipment, ship building presses, rescue boats and specialized davits, reverse osmosis water systems arc special acoustic communication equipment for defense. Further, the Ld. TPO in her order has herself stated that this company receives income in the form of commission, which is not comparable to the Appellant which is remunerated on a cost plus mark-up basis. It needs to be appreciated that this company essentially operates as a commission agent, the functional profile of which is very different from a routine support service provider. Revenue from operations of Killick is mainly commission income which is approximately 89 percent of the total revenue.

Particulars	***Amount in Rs***
Total income	*4,09,76,853*
Commission income	*3,64,52,724*
% of Commission income** to **Total income	***89%***

Thus, this company would functionally be not comparable to the project offices of the assessee which are merely engaged in providing business support/liaising and coordination services. He further submitted that in following cases the Tribunal has found that Killick Agencies and Marketing Ltd. to be non comparable with the entities providing business support services:-

Electronics for Imaging India (P) Ltd. (IT (TP) A No 212/ Bang/2015) dated 24 February 2016.

14. The Hon'ble ITAT has excluded Killick for Sales and support service provider and held as under-

"Further we note that this company is acting as an agent for various foreign principals for sale of dredgers, dredging equipments and machineries. Accordingly, we do not find any error or illegality in the findings of the DRP and direct the AO to exclude this company from the comparables"

ITO v Alcon Laboratories Pvt Ltd (IT(TP)A No 391/Bang/2015) dated 21 November 2017.

The Hon'ble ITAT has excluded Killick for Sales marketing support service provider and held as under-

"9. In respect of remaining two comparables i.e. 1) HCCA Business Services Pvt. Ltd. and 2) Killick Agencies & Mktg. Ltd., we find that as per the tribunal order rendered in the case of DCIT vs. Electronics for imaging India Pvt. Ltd. (Supra), it was held that these two are not good comparables because these are functionally different. We have already noted that this tribunal order is applicable in the present case. Hence, Hence, we respectfully follow this tribunal order and hold that in the present case also, these two comparables i.e. 1) HCCA Business Services Pvt. Ltd. and 2) Killick Agencies & Mktg.

Ltd., are rightly excluded by DRP from the final list of comparable.

NI Systems (India) Pvt. Ltd. IT (TP) A No. 10491 Bang/2016) dated 13 September

The Hon'ble ITAT has excluded Killick for marketing support service provider and held as under-

"8.3.2 Considering the facts of the matter as laid out above and following the aforesaid decision of the co-ordinate bench in the case of Electronics for Imaging India Pvt. Ltd., for asst, year 2010 11 (Supra) we direct the AO/TPO to exclude this company from the list of comparables on grounds of it being functionally different from the assessee in the case on hand who was only providing sales and marketing support services."

On a without prejudice basis, he submited that even if it's profile is considered to be that of a technical support service provider, then following judicial precedent Killick cannot be considered comparable to a company engaged in provision of technical services

Veolia India Pvt Ltd (ITA No. 6693/DEL/2015) dated 11 October 2019

The Hon'ble ITAT has excluded Killick for Consultancy and advisory service provider and held as under-

"We find that this company markets Marine Equipment like specialized Propulsion Systems, Marine Engines, Ship Lighting & Navigation Lighting systems, Dredges and dredge equipment, Ship Building Presses, Rescue Boats and

Specialized Davits, Reverse Osmosis Water Systems and Special Acoustic Communication Equipment for defense. This company is involved in exports of micro switches, engineering items, acoustics items & head-sets. The Annual Report of this company suggests that this company boasts of its role in promotion of the Dredgers and Dredging equipment by leading manufacturers. There is no doubt that this company is engaged in marketing services and on this count alone, cannot be considered as a good comparable vis a vis the assessee. We, accordingly, direct the TPO to exclude the same from the final set of comparables. "

Mitcon Consultancy & Engineering Services Limited (Mitcon) Margin: 22.82%

15. Ld. Counsel submitted that the company has a technical consulting team and is engaged in providing technical consultancy services. Further, the company operates in various segments such as power division, energy, textiles etc. In light of the above, the company is not functionally comparable to the Assessee who is engaged in providing business support services. Further, Mitcon has received government grants unlike the Appellant which affects its profitability and hence cannot be taken as a comparable for the Appellant. Further, Mitcon was also engaged in providing vocational training and IT courses of MH CIT and generates approx. 26% of the total revenue. The Ld. TPO has characterized the functional profile of the assessee as an Engineering Support service provider and hence, proposed

Mitcon as a comparable considering its functional profile. However, without prejudice he submitted that it's profile is that of a business support service provider, it would like to submit that even if the Assessee is considered an engineering/technical support service provider, Mitcon should not be considered as a comparable. Reliance has been placed in this regard on the following judgments wherein Mitcon has been rejected as a comparable for the taxpayer having a profile of an engineering consultancy service provider:

> *Granite services International (P) Ltd v ACIT dated 12 September 2017 (ITA 532/Del/2016)*
>
> *The Hon'ble ITAT has excluded Mitcon for technical support service provider and held as under:-*
>
> *Similarly, in respect of Mitcon Consultancy and Engineering Services Limited and Rites Ltd. it is submitted that both these companies have multi-dimensional functionality and mostly serving the related parties, and apart from that the segmental data is not available. On this aspect also Ld. AR submits that these two companies cannot be good comparables. On facts, Ld. DR does not dispute the same. We, therefore, hold that these two companies also cannot be comparables to the assessee company.*
>
> *23. This order of the Hon'ble ITAT has not been disturbed by the High Court evident from the following excerpt from the order passed by the Hon'ble Delhi High Court:*

M/s Granite Services International India Pvt. Ltd. ITA 1413/2018 &ITA 1438/2018 (HC)

"3. The issues sought to be urged by the Revenue in both these appeals concern the legality of the ITAT including and excluding certain comparables and also remanding certain comparables to the TPO for the purpose of determination of Arm's Length Price of international transactions involving the Respondent-Assessee. In the considered view of the Court the above orders of the ITAT do not give rise to any substantial question of law."

24. M/s. STEAG Energy jervices (I) Pvt. Ltd.. vs. ACIT, Circle (ITA No.835/Del/2016) 26 April 2019 (Page 926 of Legal paperbook)

25. The Hon'ble ITAT has excluded Mitcon for engineering and technical solution service provider on account of receipt of government grants and functional difference and held as under-

" 15. Furthermore, when we examine Schedule VIII forming part of the balance sheet, available at page 725 of the paper book, it shows that Mitcon has also income from wind power generation to the tune of Rs. 51,91,068/-. Furthermore, when we examine Schedule II to the balance sheet at page 721 of the paper book, it shows that Mitcon has received grants from Government of India under various schemes which certainly affects its profitability.

16. Hon'ble jurisdictional High Court in the case cited as WSP Consultants India (P.) Ltd. (supra) having identical business profile as that of the taxpayer rejected Mitcon on the ground that it is deriving less than 75% revenue from the consultancy *services. 17. So, we are of the consider view that Mitcon is not a suitable comparable vis-a-vis the taxpayer, hence ordered to be excluded "*

16. Accordingly, based on the above, Mitcon should not be considered as a comparable to the Appellant for the coordination and liaising activities undertaken by the Appellant.

Mahindra Consulting Engineers Ltd. – Margin 22.80%; Rectified Margin -9.67%

17. The company is engaged in providing engineering consultancy services which cannot be compared to the liaising, administrative and coordination functions performed by the Appellant. Further, unlike the Appellant's mercantile system for recognizing revenue, Mahindra recognizes revenue as per Accounting Standard ('AS') - 7 i.e. Accounting for Construction contracts under percentage completion method which involves technical estimates with respect to cost to completion of each contract/activity . Hence, this system of accounting can be clearly distinguished from the Appellant's system of accounting which recognizes revenue from its HO on the basis of cost-plus an arm's length mark-up. In support he relied upon following cases:-

Functionally different for Business Support Service Provider

1. CISCO Systems TS-246-ITAT-2014(Bang) dated 14 August 2014

The ITAT has excluded Mahindra for marketing, sales support and management service provider and held as under:

> *"53.20 Mahindra Consulting Engineers Ltd.: This Company is engaged in providing infrastructure consulting. In our view, it cannot be regarded as a comparable as the nature of services performed and the industry are entirely different.*

Functionally different for engineering support service provider

Fluor Daniel India (P.) Ltd. (IT Appeal No. 973 (Delhi) of 2016) dated 17 January 2019) The Hon'ble ITAT has excluded Mahindra for engineering and design service provider and held as under-

> *"We therefore direct to exclude this company, in view of highly technical capabilities of executing infrastructure development projects vis-a-vis that of assessee who is rendering engineering and related services as a sub-contract limited to specific functions as per the requirement of its affiliate."*

This order of the ITAT has not been disturbed by the High Court in ITA 665 of 2019.

Different method of accounting being followed

The Delhi Bench of the ITAT has in the case of Ciena India Pvt Ltd vs ITO (ITA No.1453/Del/2014) held that this company should be excluded due to the fact that it follows a different method of accounting.

Honeywell Turbo Technologies India Pvt Ltd vs. DCIT (ITA No. 377/PUN/2014)

18. Accordingly, based on the above, Mahindra Consulting Engineers Limited should not be considered as a comparable to the Appellant for the coordination and liaising activities undertaken by the Appellant

Incorrect Margin Computation

19. Without prejudice to the contention that the functional profile of Mahindra Consulting Engineers Limited is functionally dissimilar to the functional profile of the Appellant, it is submitted that the Ld. TPO has considered incorrect margins of this company for the purpose of proposing TP adjustment. The Appellant had raised this issue before the Ld. TPO by way of a rectification application. However, this was dismissed by the Ld. TPO without providing any cogent reasons for the same. Further, the Appellant also took an additional ground for rectification of margin of Mahindra which was not adjudicated by the Hon'ble panel of the DRP.

20. On the other hand, ld. CIT-DR submitted that in so far as present profile is concern, the DRP has considered the assessee's contention and has rejected the same after discussing the issue threadbare and looking to the description of the activities it is clear that assessee is a PO and represent the parent company in the work of the consortium which is entirely technical, and therefore, the contention of the assessee that it is dealing with activities and technical services, and therefore, it is routine administrative

services provider cannot be accepted. Regarding Killick Agencies and Marketing Limited, he submitted that this provides principal and best sales services for equipment to its principals and installation of equipment on behalf of its principals were especial technical engineers which required therefore FRA is similar. We drew our attention to profile of the said company from the annual report which is placed at paper book at pages 754 and 756.

21. Regarding Mitcons Consultancy Services Limited, he submitted that the said company is also providing technical services and hence it is functional comparable with the assessee and has rightly been included by the DRP.

22. Lastly, with regard to Mahindra Consulting Engineering Ltd. He submitted that as per the annual report this company is providing technical services and therefore, it is the functions of other profiles are same.

23. We have heard the rival submissions and perused the relevant findings given in the impugned orders as well as material referred to before us at the time of hearing. Though mainly three comparables have been challenged for exclusion by the ld. counsel, however one of the issues which have been raised before us is, whether the functional profile of the project offices can be said to be technical in nature, because the head office operates in technical environment. From the detail FAR analysis and the functions carried out by various project offices in India, we find that the project offices have

been established by the assessee to execute certain contract work. These contracts have been entered by the head office with 3rd parties and the functioning of the project office are mainly for liaising and coordination maintenance and trouble shooting and in some cases testing and commissioning logistics support supervision etc. has also been done. In so far as liaising and coordination functions are concerned it is mainly to liase with DMRC to understand from them and the defect pointed out by DMRC and is mainly interfacing by the DMRC officials on behalf of Head Office which entails various activities in technical matters before coordinating for proper execution of the contract. Maintenance and troubleshooting are in the nature, whether any material equipment is required in the course of maintenance activities which are to be procured by overseas purchase department of head office and to place order with vendors etc. Testing and commissioning has been stated to be routine technical issue which occurs on day to day basis under the technical guidance of Rotem Head Office. The major testing and commissioning is done by the head office only. The nature of international transaction here in this case are rendering of administrative support and coordinating services by the project offices. Here it is not a case that any transaction undertaken by the head office vis-à-vis the other AEs are subject matter of TP analysis, therefore, the functional profile of the project office needs to be seen while testing the FAR and the comparability analysis for the purpose of transfer pricing. This fact has been clearly brought out in the TP study report. Further, as pointed out by the ld. counsel, functional profile of POs has been consistently accepted by the Department right from the Assessment Year 2007-08 to Assessment Year 2013-14. It has also been highlighted and brought on record that the Tribunal in assessee's own case has accepted the similar functional profile in the Assessment Year 2010-11. Thus, in this year without there being any change of functions or in material facts, functional profile cannot be changed. Accordingly, we accepted the contention of the ld. counsel that the TPO/DRP have erred on facts in treating the functional profile of the head office as the functions of project office.

24. Now coming to the above three comparables for exclusion, we find that first of all, these three comparable companies in the Assessment Years 2012-13 and 2013-14 have been rejected by the assessee as comparable and the ld. TPO has accepted the stand of the assessee. Further, the Tribunal in assessee's own case for the Assessment Year 2010-11 and 2011-12 and 2012-13 has held that without there being any change any in functionality and change in financial data, the TPO cannot take a different stand either in the exclusion or for inclusion of comparables in the year under consideration. Thus, prima facie in view of 'rule of consistency' these three comparables are liable to be excluded.

25. However, on further analysis of the functional profiles of the comparables as highlighted by the ld. Counsel, we find that in the case of Killick Agencies and Marketing Ltd., this company was acting as an agent for its foreign principals for sale of heavy equipments and this company has also provided after sale services. Apart from that, it is also involved in export of engineering Items etc. Further, this company is also engaged in the business of marine equipment and established engine equipment as highlighted by the ld. counsel from its annual report. Moreover, out of the total revenue 89% revenue is from the commission income and therefore a company which is a commission agent cannot be held to be a comparable company who is providing business support services. Further, various coordinating Benches as noted above has excluded this company from the entities engaged the marketing support services. Thus, Killick Agencies and Marketing Ltd. is directed to be excluded.

26.. As far as Mitcon Consultancy Services Ltd., this company is engaged in providing technical consultancy services and operates in providing technical consultancy in field of power energy, textile etc. Since we have already held that the ld. TPO has wrongly categorized the functional profile of the project office of the assessee as an engineering support service provider, therefore, Mitcon Consultancy Engineering Services cannot be held to be comparable, because project offices have been providing liaising and business support services. Thus, this comparable is directed to be excluded.

27. Lastly, as regards Mahindra Consultancy Engineering Ltd., again this company is providing engineering consultancy services which is incomparable to liaising, administrative and coordination function performed by the POs of the assessee. The nature of services of Mahindra consultancy Engineering Ltd. includes providing infrastructure consultancy and infrastructure development projects, therefore, this company cannot be held to be comparable. Without prejudice the ld. counsel has argued that the TPO has wrongly computed the margin of this comparable on 22.80, whereas rectify margin 9.67. Since, we have already directed the exclusion of this company, because it is not comparable with the functions carried out by the PO, therefore this work becomes purely academic.

28. Lastly, the assessee vide ground no.12 has asked for risk adjustment. Here in this case, the assessee for rendering of support and coordination is remunerated at cost plus basis. On the basis of the cost incurred in the provision of services, it operates in risk mitigated scenario, whereas the comparables selected for the comparability analysis includes companies which are fairly working in diversified areas and carry out additional functions like marketing etc. and are taking more risks. Here in this case, as noted in the FAR analysis, the POs are neither taking any business risk nor credit risk or collection risk or any kind of foreign exchange risk. The risk factors like marketing and business risk etc. which are normally associated with any independent entity

are more as compared to the assessee which is a risk mitigated entity and is insulated from various kind of risk operating as a capital service provider. Accordingly, we agree with the assessee that risk adjustments are warranted in case of comparables on account of the difference in the risk profile of the assessee vis-à-vis the comparable companies. Moreover, it has been brought on record that the Tribunal in assessee's own case for the Assessment Year 2011-12 and 2012-13 has allowed the risk adjustment to the net margin of the comparable in order to align the risk profile of the assessee. The ld. counsel has also given the quantification of the risk adjustment which has been placed in the paper book at pages 447 to 449, wherein it has given the difference between the bank rates and SBI base rates and quantification factor as been laid down by the Sony India (P) Ltd. vs. DCIT, 114 ITD 448.

29. Accordingly, we direct the TPO to examine the assessee's quantification of risk adjustment specifically where assessee has taken the difference between bank rates and SBI bank rate and the quantification done by the assessee of the risk adjustment on 10.50%, is correct or not. With this direction this issue is remanded back to the TPO/Assessing Officer.

30. In view of our above findings, the other grounds are not adjudicated. Accordingly, the appeal of the assessee is treated as allowed.

31. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 2nd March, 2020.

Sd/-	Sd/-
[PRASHANT MAHARISHI]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 2nd March, 2020

PKK: