

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-3004/Del/2013
(ASSESSMENT YEAR-2008-09)**

DCIT Income Tax Office Haldwani, Distt. Nainital Uttrakhand.	vs	Delta Power Solution India P. Ltd. Pantnagar. Uttrakhand AACCD5896N
Appellant by	Shri Vijay Chaudhary, Sr. DR	
Respondent by	Shri Parth, Adv.	

Date of Hearing	29.02.2016
Date of Pronouncement	14.03.2016

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

The present appeal has been filed by the Revenue against the order of the ld. CIT(A)-II, Dehradun vide order dated 08/03/2013 for the AY 2008-09 on the following grounds of appeal:

1. *“That the ld. CIT(A)-II, Dehradun has erred in law and on facts in directing to adopt RPM for working out value of transaction with respect to AEs without appreciating the fact that each year is an independent year and principle of res-judicata are not applicable to income tax proceedings. In view of the fact and circumstances of the tax payer’s case, TNMM is the most appropriate method.*

2. That the order of the ld. CIT(A)-II, Dehradun is against the spirit of legislature and the order of the Assessing Officer is liable to be resotred.
3. That the appellant craves, leave to add, alter, amend or vary from the above grounds of appeal.”

2. Brief facts of the case are as under:

The assessee has e-filed its return of income on 29.09.2008 declaring Nil total income by claiming loss of Rs. 71,49,110/-. The assessee is wholly owned subsidiary of DET International Holding Ltd., Cayman Island. The assessee has manufacturing facilities at Pondicherry and Rudrapur with corporate office at Gurgaon. The Registered office of the assessee is at Rudrapur. During the year under consideration the assessee did not start production at Rudrapur plant however, as per the CA’s report u/s 92E of the I.T. Act, the assessee entered into international transaction with its AE to the extent of Rs. 23,72,68,470/-which is as under;

S.No.	Type of International Transaction	Total Value (Rs.)	Method selected
1.	Purchase of raw materials	11,38,15,778/-	TNMM using operating profit as a PLI operation revenue.
2.	Export of finished goods	20,68,837/-	TNMM using operating profit as PLI operating revenut.
3.	Import of industrial automation products	118,615,849/-	RPM using gross profit as a PLI sales.
4.	Sales commission	16,46,756/-	RPM using gross profit as a PLI sales.
5.	Window license fee	32,51,160/-	No benchmarking required.

6.	Reimbursement of expenses	61,071/-	No benchmarking required.
----	---------------------------	----------	---------------------------

2.1. The assessee used Transactional Net Margin Method(TNMM) as the Most appropriate Method(MAM) for the transactions relating to purchase of raw materials and export of finished goods and The assessee used the operating profit as PLI. In respect of Import of automation products and sales commission segment, the assessee used Resale Price Method(RPM) as the MAM and gross profit as PLI sales.

2.2. The Id.AO therefore made a reference u/s 92CA of the I.T. Act was made to Addl. Director Income Tax, Transfer Pricing Officer, Kanpur (Camp Office Noida) to compute Arm's Length Price(ALP), regarding the international transactions made by the assessee company. The TPO, Noida determined the arm's length price of the international transaction of the assessee relating to cost of goods sold is at Rs. 7,56,53,190/- as against Rs. 11,86,15,849/- shown by the assessee for import of industrial automation products. The Id.TPO rejected the RPM used by the assessee and applied TNMM method for benchmarking the transaction and proposed an adjustment of Rs. 4,29,62,659/- for import of industrial automation products. Accordingly on the basis of the order of TPO, assessment u/s 143(3) was made by making an addition of Rs. 4,29,62,659/-.

3. Aggrieved with the above order u/s 143(3) of the IT Act, 1961, the assessee filed an appeal before the Id. CIT(A)-II, Dehradun.

3.1. The Id.CIT(A) called for a report in respect of some documents filed by the assessee in respect of net margins in subsequent

years. The TPO filed his report on 08.02.2013, in which he once again he supported that TNMM must be applied to calculate the ALP. The assessee also filed its objection to the report. The ld. CIT(A)-II, Dehradun has allowed the appeal in favour of the assessee by stating that,;

“ The arguments for adopting RPM and the authorities relied upon for comparing RPM/TNMM have considerable persuasive value. However, the clinching argument for adopting RPM is the fact that in the appellant’s own case for AY 2009-10 the ld. TPO has adopted RPM for determining the Arm’s Length Pricing (as against using TNMM for this year being AY 2008-09). On this ground the ld. Assessing Officer is directed to adopt RPM for working out value of transaction with respect to AEs.”

4. Aggrieved by the order of the ld.CIT(A), the Revenue is in appeal before us now.

4.1. The ld.DR submitted that the ld.TPO has correctly applied the TNMM as the MAM for determining ALP. He supported the order of the ld.TPO.

5. On the contrary, the ld.AR submitted that RPM must be MAM for these transactions as there is no value addition that is made by the assessee. He reiterated his submissions made before the ld.CIT(A) that, RPM is applied where an enterprise purchases from its AE and then resells to an unrelated enterprises. He submitted that there is no valid reasons given by the TPO for rejecting RPM adopted by the assessee. He further submitted that the TPO in the subsequent

year being 2009-10 has accepted RPM as MAM for the trading section. Ld.AR supported the findings of the ld.CIT(A).

6. We have perused the orders of the authorities below as well as the arguments advanced by both the parties.

6.1. It is observed that the primary objective of the assessee is of manufacturing/trading/assembling of Telecom Power Equipment, visual display products, industrial automation and magnetic components, etc. The only issue in dispute is in regards to the MAM for determining ALP in respect of the trading section. The assessee had used TNMM as MAM for arriving at the ALP in respect of purchase of raw materials, export of finished goods and in respect of Transaction relating to import of industrial automation products and sales commission it had used RPM as MAM. The ld. AR submitted that as there is no value addition in respect of goods sold by the assessee and therefore RPM is the MAM for determining ALP in respect of these two heads being import of industrial automation products and sales commission.

6.2. It is observed that the ld.CIT(A) has dealt with the issues relating to the timing difference and sufficient data not being available to reconcile the change in the market, change in rate of exchange, change in cost etc. at length in paragraph 3.1.at pages 3 to 9. The ld.CIT(A) has reproduced in paragraph G, the relevant extract of the accepted position for A.Y: 2009-10, wherein the TPO has accepted the RPM as the most appropriate method for calculating the ALP in respect of trading segment.

7. We do not find any infirmity in the findings of the Id.CIT(A). As in the subsequent year the TPO himself has accepted RPM to the MAM for determining the ALP for the trading segment, on the similar facts and circumstances, as recorded by the Id.CIT(A). We therefore uphold the findings of Id.CIT(A). The grounds filed by the Revenue is thus dismissed.

In the result, the appeal filed by the Revenue stands dismissed.

The order is pronounced in the open court on 14.03.2016

Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER

Dated: 14/03/2016

**Kavita Arora*

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date
1.	Draft dictated on	29.02.2016
2.	Draft placed before author	01.03.2016
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	