

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM**

**आयकर अपील सं. / ITA No.1459/PUN/2010**

**निर्धारण वर्ष / Assessment Year: 2006-07**

Sandvik Asia Pvt. Ltd.,  
(formerly known as Sandvik Asia Ltd.)  
Mumbai-Pune Road,  
Dapodi,  
Pune – 411012

.... अपीलार्थी/Appellant

PAN: AACCS6638K

Vs.

The Dy. Commissioner of Income Tax,  
Circle – 10, Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 22.03.2018	घोषणा की तारीख / Date of Pronouncement: 05.06.2018
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of DCIT, Circle-10, Pune, dated 08.10.2010 relating to assessment year 2006-07 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

The following grounds of appeal are independent of and without prejudice to one another:

**1 Addition of Rs.4,84,611 under Section 14A of the Act.**

- 1.1 The learned Deputy Commissioner of Income-tax, Circle 10, i.e. Assessing Officer (AO) has erred in making an addition of Rs.4,84,611 under Section 14A of the Act read with Rule 8D of the Income Tax Rules.
- 1.2 The learned AO should not have applied Rule 8D without discharging its onus to record non-satisfaction of the Appellant's claim and without identifying whether any expenses incurred in relation of dividend income having regard to the accounts of the Appellant. Further, the Appellant has not incurred any specific expenses for earning the said dividend income.
- 1.3 The AO failed to appreciate that Rule 8D could not be applied while computing the total income.

**2. Addition of Rs.10,70,641 by treating the computer software expenses as capital in nature**

- 2.1 The learned AO has erred in making an addition of Rs.10,70,641 by treating the computer software expenses as capital in nature.

**3 Addition of Rs.23,43,436 by not accepting the netting off of interest payable under Section 220(2) against interest received under Section 244A of the Act**

- 3.1 The learned AO has erred in making an addition of Rs.23,43,436 by not accepting the netting off of interest payable.
- 3.2 The learned AO failed to appreciate that this very issue was concluded in its favour by decisions of the Tribunal in its own case which were binding upon him.

**4 Disallowance of depreciation claim of Rs.5,21,813/- in respect of the software expenses treated as capital expenditure in earlier years' assessments.**

- 4.1 The learned AO has erred in disallowing depreciation of Rs.5,21,813 in respect of the software expenses treated as capital expenditure in earlier years' assessments.

**5 Rejection of the allowance claimed Rs.73,16,439 in respect of disallowances in earlier years' assessments.**

- 5.1 The learned AO has erred by rejecting the allowance of the claim towards depreciation of Rs.30,29,142 in respect of Repairs to Factory building which was treated as capital expenditure and disallowed in AY 2003-04.
- 5.2 The learned AO has erred by rejecting the allowance of the claim towards depreciation of Rs.1,79,297 in respect of Reduction of Insurance Claim from Plant & Machinery Block in AY 2003-04 whereas the final insurance claim Rs.1,59,24,818 was fully reduced from the respective block of assets for the purpose of computing depreciation under Section 32 in the AY 2004-05.

- 5.3 *The learned AO has erred by rejecting the allowance of the write back of the excess Provision towards Obsolete stock of Finished Goods of Rs.30,42,000 which was disallowed in earlier years' assessments.*
- 5.4 *The learned AO has erred by rejecting the allowance of the claim of Rs.10,66,000 which is towards the Provision for excise duty on obsolete stock of finished goods made and disallowed during AY 2005-06 but reversed during the AY 2006-07.*

*The Appellant prays that the aforesaid claimed amounts should be allowed in computing the total income.*

**6 Enhancement of the income of the assessee by Rs.40,96,292 with respect to international transactions pertaining to export of finished goods by Manufacturing - Wires Segment**

- 6.1 *The learned Transfer Pricing Officer and AO has erred in adopting 'Cost Plus Method' (CPM) as the most appropriate method and comparing the gross profitability of domestic sales and sales to Associated Enterprises (AEs) as internal comparable in computing arm's length price and thus enhancing the income of the Appellant by Rs.40,96,292 with respect of international transaction pertaining to export of finished goods by Manufacturing – Wires Segment of the Appellant to its AEs.*

*The learned Transfer Pricing Officer and AO ought to have held that the international transactions undertaken by the assessee for the manufacture of wire are a part and parcel of and inextricably linked and collectively constitutes the manufacturing of wires and hence required to be aggregated for benchmarking purposes, thereby requiring the application of 'Transactional Net Margin Method' (TNMM) as the most appropriate method in computing the arm's length price for the above said international transaction.*

*The Appellant prays that the learned AO to accept he aggregate approach of international transactions and the application of TNMM method as adopted by the Appellant and accordingly recompute the arm's length price for the above said international transaction.*

**7 Transfer pricing adjustment without giving benefit of +/- 5 per cent as available under proviso to section 92C(2)**

- 7.1 *The learned Transfer Pricing Officer (TPO) and AO have erred in law in making the transfer pricing adjustment from the arm's length price without granting the benefit of the optics available to the Appellant under proviso to section 92C(2) of the Act of adopting as arms length price, a price which varies by not more than 5 per cent from the arm's length price.*

*The Appellant prays that the learned AO should allow the aforesaid benefit of 5 per cent variation from the arm's length price as available to the Appellant under proviso to section 92C(2) of the Act while computing the amount of transfer pricing adjustment.*

**8 Reference to the learned TPO in contravention of the provision of section 92CA(1) of the Act.**

- 8.1 *The learned AO has made reference to the TPO without calling for any information from/making any enquiries with the Appellant and without forming any opinion as contemplated under the section 92C(3) of the*

*Act. Further, the Appellant was not provided with a copy of the said reference or the CIT's approval for the same.*

*The Appellant prays that no effect should be given to the learned TPO's order and the addition proposed should be deleted.*

**9 Non-examination of the facts by The learned AO.**

9.1 *The learned AO has erred in confirming and following the order of the TPO that the international transactions of the Appellant were not at arm's length without evaluating the facts on an independent basis.*

*The Appellant prays that the addition made by the learned AO under section 143(3) on the basis of the order passed by the TPO should be deleted.*

10 *The Appellant prays that the learned AO be directed to grant all such relief arising from the preceding grounds as also relief consequential thereto.*

3. Briefly, in the facts of the case, the assessee had furnished return of income declaring total income of ₹ 132.33 crores. The case of assessee was taken up for scrutiny and under-mentioned additions were made in the hands of assessee.

- a) Disallowance under section 14A of the Act at ₹ 4,84,611/-;
- b) Disallowance of software expenses being capital in nature, however, depreciation @ 60% was allowed and net addition was of ₹ 10,70,641/-;
- c) Adjustment of interest paid under section 220(2) of the Act against interest received under section 244A of the Act at ₹ 23,43,436/-;
- d) Software deduction claimed on the basis of disallowance made in earlier years at ₹ 5,21,813/-;
- e) Transfer pricing adjustment under section 92CA(3) of the Act at ₹ 40,96,292/-.

4. The Assessing Officer had passed draft assessment order under section 143(3) r.w.s. 144C(1) of the Act after receipt of order of the Transfer Pricing Officer (TPO) under section 92CA(3) of the Act. The assessee then filed

objections to the Dispute Resolution Panel (DRP) and the Assessing Officer passed final order under section 143(3) r.w.s. 144C(13) of the Act, dated 08.10.2010 and upheld all the additions proposed in the draft assessment order, since the DRP dismissed all the objections raised by the assessee.

5. The assessee is in appeal against the order of Assessing Officer / DRP.

6. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal stands covered by earlier order of Tribunal in assessee's own case relating to assessment year 2005-06 in ITA No.1750/PUN/2013 and ITA No.1804/PUN/2013 being cross appeals filed by the assessee and the Revenue, order dated 14.06.2017. The learned Authorized Representative for the assessee took us through each of the grounds of appeal in this regard and we proceed to decide the present appeal after hearing both the learned Authorized Representatives, wherein the learned Departmental Representative for the Revenue fairly admitted that the grounds of appeal raised in the present appeal have been decided by the Tribunal in earlier year.

7. At the outset, the learned Authorized Representative for the assessee did not press grounds of appeal No.3, 7, 8 and 9 and pointed that the ground of appeal No.10 was general in nature. Hence, all these grounds of appeal are dismissed.

8. The issue raised in the ground of appeal No.1 is against addition made under section 14A of the Act at ₹ 4,84,611/-. The assessee during the year under consideration had earned exempt income of ₹ 41,75,283/-, against which

the Assessing Officer invoked provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') and worked out the disallowance at ₹ 4,84,611/-. The year under appeal is assessment year 2006-07, wherein the provisions of Rule 8D of the Rules are not applicable. The Tribunal in assessee's own case in assessment year 2005-06 had restricted the disallowance to ₹ 1 lakh under section 14A of the Act. Following the same parity of reasoning, we restrict the disallowance to ₹ 2 lakhs under section 14A of the Act in turn, relying on the decision of Hon'ble Bombay High Court in Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT (2010) 328 ITR 81 (Bom). Thus, the ground of appeal No.1 raised by the assessee is partly allowed.

9. The issue raised in ground of appeal No.2 is against treatment of computer software expenses. The assessee had incurred expenses for license to use computer software for its operations. The total expenditure incurred was ₹ 16,76,603/-. The Assessing Officer was of the view that the said expenditure was capital in nature and allowed depreciation @ 60% on the same i.e. ₹ 16,05,962/- resulting in disallowance of ₹ 10,70,641/-. The said addition was confirmed by the DRP, against which the Assessing Officer passed final assessment order and the assessee is in appeal. The said issue was also discussed by the Tribunal in paras 54 to 58 of the order relating to assessment year 2005-06 and in turn, relying on earlier orders of Tribunal in assessee's own case, it was held that the expenditure incurred on software application was to be allowed as revenue expenditure. We are making reference to the findings in paras 57 and 58 at pages 28 to 30 of the order of Tribunal and following the same parity of reasoning, we hold that the entire expenditure is to be allowed as revenue expenditure in the hands of assessee i.e. ₹ 26,76,603/-. The

depreciation allowed by the Assessing Officer on the expenditure being capital is to be withdrawn i.e. ₹ 16,05,962/-. Consequently, we direct the Assessing Officer to allow the said expenditure in the hands of assessee. The ground of appeal No.2 raised by the assessee is thus, allowed.

10. The issue in ground of appeal No.4 is also not pressed by the assessee, since it relates to disallowance of depreciation in respect of software expenses treated as capital expenditure in earlier years. The Tribunal as pointed out in the above paras had held the said expenditure on purchase of software to be revenue expenditure in earlier year and hence, the ground of appeal No.4 raised by the assessee becomes infructuous and the same is dismissed.

11. The ground of appeal No.5 is general in nature. However, the ground of appeal No.5.1 is specific and is against the claim of depreciation in respect of repairs to factory building which was treated as capital expenditure and disallowed in assessment year 2003-04. The assessee had claimed depreciation on such repairs to factory building, which was capitalized in its hands in assessment year 2003-04. The plea of assessee before us is that once the addition made in assessment year 2003-04 has been accepted by it and the expenditure was treated as capital expenditure, then depreciation on the same should be allowed. We find merit in the plea of assessee, where certain expenditure has been capitalized in the hands of assessee being out of repairs to factory building, then the same is entitled to claim the depreciation on the same. The assessee has furnished working at page 46 of Paper Book. The Assessing Officer may verify the said working of depreciation and allow the claim of assessee. The ground of appeal No.5.1 is thus allowed for statistical purposes.

12. The issue raised in ground of appeal No.5.2 is against the claim of depreciation in respect of reduction of insurance claim from plant & machinery block in assessment year 2003-04, whereas the assessee had reduced the respective block of assets for the purpose of computing depreciation in assessment year 2004-05.

13. Brief facts relating to the issue are that the assessee had received certain insurance claim totaling ₹ 1,59,24,818/-. Out of total insurance claim received by the assessee, sum of ₹ 85 lakhs was received in assessment year 2003-04 and the balance amount was received in assessment year 2004-05. The assessee had reduced the entire amount of ₹ 1.59 crores from the WDV of plant & machinery in assessment year 2004-05. The Assessing Officer held that part of amount of ₹ 85 lakhs was received in assessment year 2003-04 and accordingly, the same is to be reduced from the WDV of plant & machinery of assessment year 2003-04 itself. The assessee points out that it had accepted the said position made in assessment year 2003-04 and there was no appeal pending against the same. However, the assessee had reduced the entire amount of insurance claim in assessment year 2004-05, whereas the Assessing Officer reduced part of the claim in assessment year 2003-04. Hence, there was double addition to that extent in the hands of assessee. The assessee in this regard has filed the revised working, which is placed at page 46 of the Paper Book. The assessee having accepted reduction of WDV in assessment year 2003-04, then consequent effect has to be allowed in the year under consideration. Accordingly, we direct the Assessing Officer to allow the consequential effect of reducing compensation received from the value of WDV and re-working the depreciation which, as per the assessee, would ₹ 1,79,297/-.

The Assessing Officer is directed to verify the stand of assessee and allow the claim of assessee. The ground of appeal No.5.2 is thus, allowed.

14. The grounds of appeal No.5.3 and 5.4 has been pointed out to be infructuous, since the write back of provision for obsolete inventory / excise duty on obsolete inventory made in the previous year has been allowed as deduction. Hence, grounds of appeal No.5.3 and 5.4 are dismissed as infructuous.

15. Now, coming to the transfer pricing issue which is raised by the assessee in grounds of appeal No.6 and 6.1. The assessee was engaged in the manufacturing of wire segment and it had aggregated all the transactions in the said segment and applied TNMM method for determining arm's length price. The TPO noted that there were exports to associated enterprises as well as sale in domestic market and accordingly, he adopted internal comparable and applied CPM method for determining arm's length price. The TPO compared the gross profit earned in the domestic segment vis-à-vis to gross profit earned in the export segment and made an upward adjustment of ₹ 40,96,292/-.

16. The learned Authorized Representative for the assessee has pointed out that similar issue arose before the Tribunal in assessment year 2005-06 and the Tribunal vide paras 23 to 35 of the said order held the TNMM method has to be applied as compared to CPM method. The Tribunal also upheld the aggregation approach of assessee.

17. The issue raised by the assessee before us stands covered by earlier order of Tribunal in assessee's own case relating to assessment year 2005-06,

wherein the issue has been dealt in paras 23 to 35 of the said order. We are referring to the same but not reproducing for the sake of brevity and we hold that the TNMM method has to be applied for determining arm's length price. However, as in earlier year, the Assessing Officer is directed to verify the said claim of assessee by applying single year's data and compute the adjustment, if any, in the hands of assessee after affording reasonable opportunity of hearing to the assessee. The grounds of appeal No.6 and 6.1 are thus, allowed.

18. In the result, appeal of assessee is partly allowed.

Order pronounced on this 5<sup>th</sup> day of June, 2018.

**Sd/-**  
**(D.KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 5<sup>th</sup> June, 2018.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the order is forwarded to :**

1. The Appellant;
2. The Respondent;
3. The DRP, Pune;
4. The DIT (TP/IT), Pune;
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune