

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.255/PUN/2011**  
**निर्धारण वर्ष / Assessment Year : 2006-07**

Endress+Hauser Flowtec (India) Pvt. Ltd.,  
Plot No.M-174/175, MIDC,  
Waluj, Aurangabad .... अपीलार्थी/Appellant

PAN:AAACE4919M

Vs.

The Asst. Commissioner of Income Tax,  
Circle-1, Aurangabad .... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.257/PUN/2011**  
**निर्धारण वर्ष / Assessment Year : 2006-07**

The Asst. Commissioner of Income Tax,  
Circle-1, Aurangabad .... अपीलार्थी/Appellant

Vs.

Endress+Hauser Flowtec (India) Pvt. Ltd.,  
Plot No.M-174/175, MIDC,  
Waluj, Aurangabad .... प्रत्यर्थी / Respondent

PAN:AAACE4919M

Assessee by : Shri Abhay Avchat  
Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / <b>Date of Hearing : 04.12.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 28.02.2019</b>
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**आदेश / ORDER****PER SUSHMA CHOWLA, JM:**

The cross appeals filed by assessee and Revenue are against order of CIT(A), Aurangabad, dated 27.12.2010 relating to assessment year 2006-07 passed against order under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The cross appeals filed by assessee and Revenue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.255/PUN/2011 has raised the following grounds of appeal:-

1.
  - a) *On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition of Rs.28,63,412/-.*
  - b) *On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in accepting the arm's length price made by Transfer Pricing Officer rather than accepting the working made by appellant.*
2. *On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in confirming addition of Rs.47,63,694/- being interest not eligible for deduction u/s 10B and concluding that interest income is not arising from business undertaking and needs to be treated as Income from other sources.*

4. The assessee has filed additional grounds of appeal on 18.04.2013.

The assessee also filed additional grounds of appeal during the course of hearing, which read as under:-

- a) *The learned Transfer Pricing Officer erred in not considering the trading segment results of the Company as per TP study report while assessing arm's length price in respect of the transaction import of goods for high seas sale and the Ld. CIT(Appeals) erred in confirming the same.*

- b) *The learned Transfer Pricing Officer erred in bifurcating / separating the transaction of import of goods for high seas sale from the other trading transactions which were part of a single trading segment while doing assessment and also erred in benchmarking it separately ignoring the trading segment results of the Company and the Ld. CIT(Appeals) erred in confirming the same.*

5. Briefly, in the facts of the case, the assessee was engaged in the business of manufacturing and trading in Flow Measuring Instruments, Component parts and accessories with 99.99% of the paid up capital being held by parent company i.e. Endress+Hauser Flowtec A.G. of Switzerland. The assessee had originally filed return of income declaring total income of ₹ 6.54 crores. The assessee on the same day filed revised return of income also. The case of assessee was selected for scrutiny. The Assessing Officer noted that the assessee had entered into international transactions with its associated enterprises and hence, reference was made under section 92CA(1) of the Act to the Transfer Pricing Officer (TPO), for computing arm's length price of international transactions.

6. The TPO noted that the assessee was engaged in the business of manufacturing industrial flow control instruments and flow meters, which were made as per specifications of foreign associated enterprises. A small portion was also sold in domestic market through its sister concern Endress + Hauser (India) Pvt. Ltd. The international transactions undertaken by the assessee were as under:-

S.No.	Nature of Transaction	A.Y. 2006-07 Amount in Rs.	Method used
1	Purchase of raw material and components	29,22,03,274	TNMM
2	International outsourcing activity purchase for resale	25,89,90,563	TNMM
3	International outsourcing activity sales	28,13,90,966	TNMM
4	Export/sales of manufactured goods	38,55,44,078	TNMM

5	<i>Sale of components and parts</i>	42,33,982	TNMM
6	<i>Import of capital goods</i>	3,04,68,945	TNMM
7	<i>Software access charges</i>	92,00,461	TNMM
8	<i>Finished goods purchased for high seas sales</i>	4,44,84,254	TNMM
9	<i>Reimbursement of expenses received</i>	15,04,059	TNMM

7. The assessee in the TP study report had benchmarked the international transactions by adopting TNMM method as most appropriate method. The assessee had aggregated international transactions at serial Nos.1, 4, 5, 6, 7 and 9 under the Manufacturing Segment and had benchmarked the same against external comparables. The transactions reflected at serial Nos.2 and 3 were aggregated under the Trading Segment and were benchmarked taking external segments. The transaction at serial No.8 was not considered in the analysis conducted though in the Trading Segment transaction was considered, while computing profitability from the Trading Segment as a whole. The TPO issued show cause notice to the assessee pointing out that activities pertaining to purchase for re-sale and sale of traded goods have been categorized as trading activity and have been accordingly benchmarked under the segment carved out as Trading Segment and remaining all other activities have been aggregated under the Manufacturing Segment and have been accordingly benchmarked under the manufacturing activity. The TPO also noted that the assessee had adopted TNMM method and operating profit over sales was taken as Profit Level Indicator (PLI). The assessee was asked to produce the reconciliation of the trading and manufacturing results with reference to international transactions in the shape of segmental results for manufacturing activity as well as the Trading Segment. In reply, the assessee submitted segmental financial information from Profit and Loss Account for the year ended 31.03.2006, with reference to TP study report. The TPO from the details submitted, noted that in the Trading Segment, the assessee had also included

high seas sales to the tune of ₹ 4.34 crores, which was sold to sister concern. The TPO was of the view that sale at high seas was different international transaction and was not to be included in the trading activities, which were distinguishable in nature and scope. Accordingly, it was proposed to make an adjustment to the value of international transactions relating to import of goods for high seas, corresponding to the difference between the arithmetic means of the profitability of the comparable companies at 3.98% and the profitability earned over sales from this activity by assessee company at (-) 2.61%. The difference worked out to 6.59% and the corresponding adjustments worked out to ₹ 28,63,412/-. The assessee was thus, show caused in this regard. In response thereto, the assessee pointed out that it was 100% EOU unit and explained the reasons for aggregating high seas trade activities with domestic manufacturing activity and since the segment profitability in respect of manufacturing and trading were higher than the mean profitability of set of external comparables, no adjustment needed to be made in the hands of assessee. The TPO did not agree with submissions made by the assessee in this regard and noted that where the assessee was manufacturing goods and sold to Indian affiliates, it had earned profit at 10.66% on sales; but when it had imported goods from the parent company and sold the same to the same affiliate, it had earned loss at (-) 2.61%. He was of the view that reason for loss was not the sale price but the purchase price which the assessee paid to the foreign company. He was of the view that the transfer price of the goods purchased from associated enterprise was not at arm's length price, which had caused the loss and hence, international transactions needed to be benchmarked against external comparables. He applied the same set of comparables with mean margins at 3.98% as against which the profitability of

assessee from international transactions relating to purchase of finished goods for high seas sales was (-) 2.61% and the corresponding adjustment worked out to ₹ 28,63,412/-. Hence, he made the aforesaid upward adjustment in the hands of assessee. The Assessing Officer passed final assessment order, against which the assessee filed an appeal before the CIT(A). The CIT(A) upheld the order of Assessing Officer, against which the assessee is in appeal before us.

8. The learned Authorized Representative for the assessee pointed out that ground of appeal No.1 raised by the assessee is against the said addition of ₹ 28,63,412/-. He also pointed out that additional grounds of appeal have been raised which were never raised before the Assessing Officer and CIT(A). The learned Authorized Representative for the assessee pointed out that no segmental details were filed before the authorities below. He further stressed that in the Trading segment, it had imported goods from its associated enterprises, which were sold to others and the margins earned was 7.39%; whereas when it were sold at high seas to sister concern, there was loss but the profit had to be seen on overall basis. The segmental transaction was under the umbrella of Trading segment and the reason for loss was commercial decision; but, he admitted that there was no difference in goods imported from trading or for high seas sales. He thus, pointed out that there is no merit in the adjustment made in this regard by the TPO. The learned Authorized Representative for the assessee also pointed out that similar transaction of finished goods purchased for high seas sales were made in the succeeding years and the aggregation approach adopted by the assessee for Trading segment i.e. including high seas sales has been accepted. He referred to the

order of TPO for assessment year 2008-09, wherein it has also been noted that adjustment was made in earlier year. However, no adjustment was made while computing arm's length price of international transactions undertaken by the assessee in assessment year 2008-09. The learned Authorized Representative for the assessee also pointed out that only additional ground of appeal No.1 is being pressed and the additional ground of appeal No.2 filed on 21.11.2018 is not pressed. In respect of additional grounds of appeal No.1 and 2 filed on 12.04.2013, the learned Authorized Representative for the assessee pointed out that both are not pressed. He further pointed out that the appeal of Revenue does not stand because of low tax effect.

9. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

10. We have heard the rival contentions and perused the record. First of all, we find that the Revenue is in appeal against directions of CIT(A) for allowing deduction under section 10B of the Act. The said appeal of Revenue is not maintainable because of low tax effect and hence, the same is dismissed.

11. Then, coming to appeal of assessee the additional grounds of appeal filed on 12.04.2013 are dismissed as not pressed. Similarly, additional ground of appeal No.(b) filed on 21.11.2018 is also not pressed and hence the same is also dismissed as not pressed. The assessee has also not pressed ground of appeal No.2 raised in original ground of appeal and the same is also dismissed as not pressed.

12. The only issue which remains to be adjudicated by way of ground of appeal No.1 and additional ground of appeal No.(a) is against transfer pricing adjustment of ₹ 28,63,412/-. The said adjustment was made in the hands of assessee in Trading Segment. The assessee was engaged in the manufacturing and trading in Flow Measuring Instruments, Component parts and accessories. The assessee had aggregated certain transactions under the head Manufacturing Segment and had applied TNMM method as most appropriate method and benchmarked the same against list of comparables. No addition has been made in the said Manufacturing Segment undertaken by the assessee. In the Trading Segment, the assessee had pointed out that it was importing goods from its associated enterprises which were sold in the domestic market and one transaction on high seas was with the sister concern. The assessee had aggregated both transactions under the Trading Segment and had applied TNMM method and compared its margins with the set of comparables. The TPO was of the view that under the Trading Segment, when the assessee was selling goods to others, the margins earned were 7.39% but when it sold on high seas the imported goods to its sister concern, it had incurred loss of (-) 2.61%. The TPO thus, was of the view that when compared with the profitability of comparables at 3.98%, difference would work out to 6.59% and the corresponding adjustment made in the hands of assessee was ₹ 28,63,412/-. The case of assessee on the other hand, is that the complete Trading Segment has to be aggregated and there is no merit in segregating the sales on high seas from the sale to others and making aforesaid adjustment in the hands of assessee. Under Rule 10A(d) of the Income Tax Rules, 1962, transaction is provided to include number of closely linked transactions. In the

case of assessee, international transaction is import of goods from its associated enterprises, which the assessee benchmarked under the Trading Segment. Once the goods are imported, then mostly the goods were sold to others, on which admittedly the margins earned by assessee were higher than the margins earned by comparables selected. But in this segment of Trading, the assessee has also made high seas sales to its sister concern, which it had aggregated with all the other concerns. There is merit in the plea of assessee in this regard. The sale on high seas of trading goods cannot be segregated. The sole reason for segregation is the loss arising on the said sales made to sister concern of assessee. In the totality of the above said facts and circumstances, we find no merit in the stand of TPO/Assessing Officer/CIT(A) in holding that sale on high seas to the sister concern was to be segregated and benchmarked separately. Once the activities are closely interlinked, then the same were to be aggregated and benchmarked under the umbrella of Trading Segment. It may also be pointed out that similar transaction of sale on high seas was made by the assessee in succeeding years and the same have not been segregated by the TPO himself though noting the fact that it was segregated in earlier years. In the above said facts and circumstances, we find no merit in the stand of authorities below in this regard and hold that the approach of assessee in aggregating transactions under the Trading Segment needs to be upheld and since the margins of assessee on aggregate basis under the Trading Segment were higher than the margins of comparables finally selected, which have not been disturbed by the TPO, then no adjustment is to be made on account of arm's length price of international transactions of Trading Segment. The ground of appeal No.1 and additional ground of appeal

No.(a) are thus, allowed. The grounds of appeal raised by assessee are thus, partly allowed.

13. In the result, appeal of assessee is partly allowed and appeal of Revenue is dismissed.

Order pronounced on this 28<sup>th</sup> day of February, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक Dated : 28<sup>th</sup> February, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Aurangabad;
4. The CIT, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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