

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD “D” BENCH, AHMEDABAD**

[Coram: Pramod Kumar VP and Madhumita Roy JM]

ITA No.: 1493/Ahd/ 2017
Assessment year: 2008-09

Deputy Commissioner of Income Tax
Circle 2(1)(1), VadodaraAppellant

Vs

Sabic Innovative Plastics India Pvt LtdRespondent
Plastics Avenue, Jawharnagar 391 320
Vadodara District, Gujarat [PAN: AABCE7565N]

Appearances by

MSA Khan and Vinod Tanwani *for the appellant*

Manoj Pardasini and Miral Sangharajka *for the respondent*

Date of concluding the hearing : December 12, 2018

Date of pronouncement : March 08, 2019

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 31st March 2017 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s. 92CA of the Income Tax Act, 1961, for the assessment year 2008-09.

2. Grievance raised by the appellant is as follows:

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in directing that segmental accounts should be used for comparability analysis when such segmental account consist of certain unallocable expenses which cannot be reasonably allocated and turnover of the relevant segment is around 90% of total turnover of the comparable.

3. The issue in appeal lies in a narrow compass of material facts. In the present proceedings before the CIT(A) in the second round, which was a result of the matter being set aside to the file of the CIT(A) by a coordinate bench, the CIT(A) accepted the plea of the assessee that Ciba India Limited and EI Dupont India Pvt Ltd were valid comparables and noted that “undisputedly, the AO/TPO has considered segmental accounts in the case of appellant and, accordingly, made adjustments in the margins of trading operations only.....segmental accounts in the case of CIBA India Limited have to be considered for benchmarking since the same are available”. Learned CIT(A) however, as a measure of

abundant caution, put a rider and added that “the AO/TPO are directed to verify the correctness of computations of margin done by the learned representative vis-à-vis TPO and then determine net operating margin for adjustment to ALP”. The Assessing Officer, however, is aggrieved and in appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that the CIT(A) has remitted the matter for verification of correct margins at the assessment stage. It is for the Assessing Officer to take a call on what is correct computation of segmental margin, and, as an integral part thereof, correct allocation of common expense. Yet, rather than doing this exercise diligently, he is in appeal before us on an altogether new plea that certain expenses are unallocable. If the expenses are unallocable, the expenses must not be allocated which will increase the margins of comparables-something that the revenue authorities cannot be aggrieved of. However, where there is a reasonable basis for allocation of such expenses, the Assessing Officer can always adopt the same. All the issues with regard to the computation of correct margins are open before him. In our humble understanding, there is no occasion to be aggrieved of the directions of the CIT(A). In any case, no specific issues were raised before us in support of the grievance raised in the appeal. We have carefully perused the written submissions filed by the TPO as well, and we find no specific issues, with respect to the grievance before us, raised therein.

6. In view of the above discussions, as also bearing in mind entirety of the case, we confirm the conclusions arrived at by the CIT(A) on this aspect, and decline to interfere in the matter.

7. In the result, the appeal is dismissed. Pronounced in the open court today on the 8th day of March, 2019.

Sd/-

Sd/-

Madhumita Roy
(Judicial Member)

Pramod Kumar
(Accountant Member)

Ahmedabad, dated the 8th day of March, 2019.

<i>Copies to:</i>	(1) <i>The appellant</i>	(2) <i>The respondent</i>
	(3) <i>CIT</i>	(4) <i>CIT(A)</i>
	(5) <i>DR</i>	(6) <i>Guard File</i>

By order

True Copy

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*