आयकर अपीलीय अधिकरण पुणे न्यायपीठ "सी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", 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.514/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. अपीलार्थी/Appellant

PAN: AABCM1789L

Vs.

The Dy. Commissioner of Income Tax,
Circle – 9, Pune …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.566/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

The Dy. Commissioner of Income Tax,
Circle – 9, Pune …. अपीलार्थी/Appellant

Vs.

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. प्रत्यर्थी / Respondent

PAN: AABCM1789L

प्रत्याक्षेप सं./CO No.24/PUN/2015

निर्धारण वर्ष / Assessment Year : 2009-10

(out of ITA No.566/PUN/2014)

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 … प्रत्याक्षेपक/ Cross objector

PAN: AABCM1789L

Vs.

The Dy. Commissioner of Income Tax,
Circle – 9, Pune …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.380/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. अपीलार्थी/Appellant

PAN: AABCM1789L

Vs.

The Asst. Commissioner of Income Tax,
Circle – 9, Pune …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.486/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

The Asst. Commissioner of Income Tax,
Circle – 9, Pune …. अपीलार्थी/Appellant

Vs.

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. प्रत्यर्थी / Respondent

PAN: AABCM1789L

आयकर अपील सं. / ITA No.546/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. अपीलार्थी/Appellant

PAN: AABCM1789L

Vs.

The Asst. Commissioner of Income Tax,
Circle – 9, Pune …. प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.534/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Asst. Commissioner of Income Tax,
Circle – 9, Pune …. अपीलार्थी/Appellant

Vs.

Mercedes-Benz India Pvt. Ltd.,
E-3, MIDC Chakan, Phase-III,
Chakan Industrial Area,
Kuruli & Nighoje, Tal. Khed,
Pune – 410501 …. प्रत्यर्थी / Respondent

PAN: AABCM1789L

Assessee by : S/Shri Pramod Achuthan, Rajendra Agiwal and Krishna Jawar

Revenue by : Ms Amrita Misra, CIT

सुनवाई की तारीख / **Date of Hearing : 24.06.2019**		घोषणा की तारीख / **Date of Pronouncement: 31.07.2019**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of cross appeals filed by assessee and Revenue are against respective orders of DCIT & ACIT, Circle-9, Pune, relating to assessment years 2009-10 to 2011-12 passed under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (in short 'the Act'). The assessee has also filed Cross Objection against appeal of Revenue for assessment year 2009-10.

2. This bunch of cross appeals filed by assessee and Revenue and also Cross Objection filed by assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA Nos.514/PUN/2014 and 566/PUN/2014, relating to assessment year 2009-10.

3. The learned Authorized Representative for the assessee pointed out that major issues raised in the present bunch of appeals stand covered by the orders of Tribunal in assessee's own case starting from assessment year 2005-06 followed in assessment years 2006-07 to 2008-09.

4. First, we take up appeal of assessee in ITA No.514/PUN/2014, relating to assessment year 2009-10 wherein the assessee has raised the following grounds of appeal:-

> *1. The learned Assessing Officer erred in making addition to the total income of the Appellant of Rs.22,18,12,968 on account of transfer pricing adjustments by not considering the transfer pricing analysis documented in transfer pricing report for AY 2009-10.*

The Appellant prays that the addition made to the total income of the Appellant for AY 2009-10 on account of transfer pricing adjustments should be deleted and analysis documented in transfer pricing report should be accepted.

2. *The learned Assessing Officer erred in rejecting the combined transaction approach followed by the Appellant at the company level for benchmarking various international transactions of the Appellant for AY 2009-10.*

   The Appellant prays that the combined transaction approach followed by the Appellant at the company level for benchmarking various international transactions for AY 2009-10 should be accepted.

3. *The learned Assessing Officer has erred on the facts and in law by applying Resale Price Method ('RPM') and comparing gross margin of controlled transaction of import of CBUs with gross margin of functionally non comparable controlled transaction of import of spares of the Appellant itself and making an adjustment of Rs 22,18,12,968 based on such comparison.*

   The Appellant prays that the approach of applying RPM and using functionally non comparable controlled transaction as comparable for the international transaction of import of CBUs should be rejected and analysis documented in transfer pricing report should be accepted.

4. *The learned Assessing Officer has erred on the facts and in circumstances of the case and in law in making adjustment to the purchase price of CBUs by comparing the said transaction with another controlled transaction without evaluating applicability of any other method for benchmarking and without determining availability of any uncontrolled transactions / comparable companies for comparison.*

   The Appellant prays that the applicability of any other method and availability of uncontrolled transactions / comparable companies be evaluated before doing any comparability with a controlled transaction for AY 2009-10 on without prejudice basis.

5. *The learned Assessing Officer has erred on the facts and in circumstances of the case and in law in making adjustment to the purchase price of CBUs without making any adjustment on account of differences in functions, risks and assets of the spares segment vis-à-vis CBU segment for AY 2009-10.*

   Without prejudice to any of the above grounds raised, the Appellant prays that the arm's length price be determined by applying RPM and gross margin of spares segment after considering adjustment for the differences in the functions, risks and assets for AY 2009-10.

6. *The learned Assessing Officer erred in computing the arm's length price of the international transactions without taking into account the benefit of +/- 5 per cent variation from the mean, which is permitted and opted for by the Appellant under the provisions of section 92C(2) of the Act.*

   The Appellant prays that benefit of the +/- 5 per cent range as available under the proviso to section 92C(2) of the Income-tax Act, 1961 be allowed to the Appellant while carrying out transfer pricing adjustments in AY 2009-10.

7. The learned Assessing Officer erred in disallowing the royalty expenditure of Rs 8,10,18,409 as capital expenditure for AY 2009-10.

The Appellant prays that the entire royalty expenditure of Rs 8,10,18,409 should be allowed as revenue expenditure for AY 2009-10.

8. The learned Assessing Officer erred in disallowing the expenditure of Rs 1,24,78,000 on homologation as capital expenditure for AY 2009-10.

The Appellant prays that the entire of expenditure on homologation of Rs 1,24,78,000 should be allowed as revenue expenditure for AY 2009-10.

Additional ground with respect to transfer pricing which was not taken before lower authorities

9. The learned Assessing Officer have erred on the facts and in law in making the transfer pricing adjustment to the entire cost sales of CBU Unit of the Appellant instead of limiting it to the purchase cost of CBUs from the Associated Enterprises only.

Without prejudice to any of the above grounds raised, the Appellant prays that the learned Assessing Officer be directed to limit the transfer pricing adjustment to the transactions with the Associated Enterprises only.

5. Further, the assessee has also raised additional grounds of appeal, which read as under:-

10. The transfer pricing adjustments/additions/variations made by the Assessing Officer is bad in law, illegal and unsustainable on the basis of the following grounds, taken singly or cumulatively, and, therefore, its upholding by the Hon'ble Dispute Resolution Panel ought to be decided.

10.1 Without prejudice to the above, the Additional Commissioner of Income Tax who has passed the relevant Transfer Pricing Order could not have any legal authority to act as a Transfer Pricing Officer ("TPO") in view of the clear provisions of section 92CA and consequently the order passed by him is bad in law and illegal. Accordingly the adjustment made by the AO in the Assessment Order in relation to the transfer pricing adjustments/additions/variations is also bad in law and illegal.

10.2 On the facts and the circumstances of the case and in law, learned AO erred in making the reference to the TPO without proper application of mind to the facts on records, without recording his reasons for any necessity or expediency and without legal and valid approval of CIT and hence the same is not in accordance with the provisions of Section 92CA(1) of the Act. The Appellant prays that the proceedings initiated by the TPO under Section 92CA of the Act on the basis of the said reference be held as void ab initio and thus the order passed by the TPO under Section 92CA(3) of the Act be cancelled.

10.3 a) The conditions stipulated in section 92C(3) of the Act are mandatory and the Assessing Officer is expected to record his satisfaction in that respect before making the reference to the TPO.

b) Further the TPO has failed to prove that any of the conditions laid down in section 92C(3) of the Act had been satisfied, which made out a case for tax evasion.

10.4 On the facts and the circumstances of the case, a transfer pricing adjustments /additions/variations cannot be made without arriving at the finding that the intention of the assesses was to evade tax and shift profits outside of India. Further, such finding of tax evasion and of shifting of profits constitutes a condition precedent for making the Transfer Pricing Adjustment.

10.5 The transfer pricing adjustments/additions/variations made by the Assessing Officer is bad in law, illegal, without jurisdiction and contrary to and/or beyond and in excess of the express statutory provisions of the Act including sections 4, 5, 9, 92, 92C, 92CA, etc. The approval of the CIT under section 92CA(1) is also not in accordance with law and hence adjustment must be quashed.

10.6 The Appellant requests your Honours to kindly admit the additional ground of appeal and prays that the transfer pricing adjustments/additions/variations made by the learned AO under section 143(3) of the Act should be deleted.

Your Honours would appreciate that additional ground can be raised at appellate stage, if the facts in connection with the issues raised, are on record. In support of the said proposition, the Appellant relies on the following judicial precedents in this regard:

- *National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383 (SC);*
- *Jute Corporation Of India Ltd. 187 ITR 688 (SC);*
- *Ahmedabad Electricity Co. Ltd. 199 ITR 351 (Bom)(FB); and*
- *All Cargo Global Logistics Ltd. vs. DCIT - ITAT Special Bench – ITA No.5018/Mum/2010 order dated 21 May 2012.*

6. The Revenue in ITA 566/PUN/2014, relating to assessment year 2009-10 has raised the following grounds of appeal:-

I)Comparable selection .

Dispute Resolution Panel erred in selection and rejection of comparables as -

a. Comparables have been identified following vigorous search process Following the same parity of reasoning, the provisions of Rule 10A(a), Rule 10B(2), Rule 10B(3) and Rule 10B(1) comparing functions, assets and risks, from the search undertaken by the assessee company; wherein Hindustan Motors was not a comparable and it did not fit in the category of uncontrolled transaction, when Hon'ble DRP in AY 2007-08 and AY 2008-09 had already upheld the rejection on the same ground, wherein Tata Motor's RPT was 26% which was within the range suggested as limit for classification of the associate concerns, as per Actis Advisors judgment of the ITAT New Delhi in ITA No. 5277/Del/2011 and ITA No.958/Del/2012 delivered on 12.12.2012; and wherein M/s.Chongquing Dima Industries Co. Ltd. was one of the company identified by the assessee company which was taken as comparable based on data provided by the assessee company in TP Audit.

II) Foreign Exchange Fluctuations

Dispute Resolution Panel erred when it directed that -

a. *Foreign Exchange Fluctuations be considered as Non operating expense as per the 'Draft Safe Harbour Rules', when the assessee company itself has considered FE losses/gains as operating expense, when it took NPM as PLI following the provisions of Rule 10B(1)(e)(i).*

b. *Wherein there is no case for any adjustment; which needs to be made to the financial results of either Assessee Company or the comparables as the factors which materially affect the prices of the products and services are already taken care in the qualitative and quantitative search criteria.*

III) Inclusion of disallowed expenditure in the calculation of PLI

Dispute Resolution Panel erred when it directed that the disallowed expenditure needs to be included in the calculation of PLI -

a. *When such expenditure is clearly not part of the operating income of Assessee Company and without prejudice the same should have to be included in the peers companies to maintain the comparability.*

7. However, during the course of hearing, the learned Authorized Representative for the assessee pointed out that in case the issue raised in grounds of appeal No.1 to 6 is decided, which admittedly stands covered by earlier order of Tribunal, then there is no need to adjudicate the additional grounds of appeal. So, first we address the issue raised vide grounds of appeal No.1 to 6, 9 and additional ground of appeal No.10.

8. The issue raised vide above said grounds of appeal is against adjustment made by comparison of margins of Completely Built Units (CBUs) to the margins of spares. The assessee was engaged in the manufacture and sale of Mercedes Benz cars, automobile parts, components and consumables. The assessee in addition to manufacturing Mercedes Benz cars had also imported Completely Built Units (CBUs) from the parent company. The sale of cars was normally done through dealers. In addition to import of CBUs, the assessee had also imported spare parts or purchased them locally, which were sold to the dealers for their after sales activity. In addition, the assessee had also paid royalty to associated enterprise and that payment of royalty was also aggregated. The assessee had applied an aggregation approach and

combined all the transactions undertaken by it including the transaction of manufacture of passenger cars, under which it had made imports of raw materials from its associated enterprise and had combined the margins of transaction of import of Completely Built Units (CBUs) and spares. The assessee had applied combined TNMM method approach but the TPO had segregated the transactions of import of spares and import of CBUs and compared the margins of two transactions and made an upward adjustment in the hands of assessee.

9. The Tribunal in earlier years have held that there is no merit in the approach adopted by TPO, wherein the margins of CBUs were compared with margins of spares imported from associated enterprises. The said issue was first decided by the Tribunal in assessee's own case in assessment year 2005-06 and thereafter, in assessment years 2006-07 to 2008-09 vide consolidated order. The relevant findings of Tribunal are in paras 13 to 17 of order dated 30.04.2019 with lead order in ITA No.1468/PUN/2010, relating to assessment year 2006-07. The Tribunal in turn, relying on its earlier order had held that all the transactions have to be aggregated under the umbrella of manufacturing activity and after applying TNMM method, margins shown by assessee needed to be compared with mean margins of finally selected concerns.

10. The issue arising in the present appeal is squarely covered by the order of Tribunal and following the same parity of reasoning, we hold that in the present year also the transactions undertaken by assessee are to be benchmarked under the umbrella of manufacturing activity on aggregate basis and TNMM method has to be applied and margins shown by assessee have to be compared with mean margins of finally selected concerns. The royalty

payment made by assessee is also to be aggregated as part of transaction. In earlier years, the matter of selection of comparables and adoption of their mean margins was remitted back to the file of Assessing Officer. Following the same parity of reasoning, though in the present case, the TPO had selected some concerns as comparables but since it had applied RPM method to compare the margins of CBUs with margins of spare parts, we deem it fit to restore this issue back to the file of Assessing Officer/TPO who shall compare the margins shown by assessee on aggregate basis with finally selected mean margins of comparables and in case it is to be found to be within +/- 5% range, then no addition is warranted in this regard. We direct the Assessing Officer to follow our directions in para 17 of order dated 30.04.2019, which is being referred to but not being reproduced for the sake of brevity.

11. The ground of appeal No.1 raised by assessee is general in nature and hence, does not need any adjudication.

12. The grounds of appeal No.2 and 3 raised by assessee are thus allowed as per our directions in the paras above. The grounds of appeal No.4 and 5 as admitted by assessee would become academic, once the grounds of appeal No.2 and 3 are allowed and similarly, ground of appeal No.9 and additional ground of appeal No.10 would become academic.

13. Now, coming to ground of appeal No.6, which is against allowability of +/- 5% range which stands allowed in the case of assessee.

14. The Revenue is also in appeal for the year under consideration vis-à-vis selection of comparables. Since we are remitting this issue back to the file of

Assessing Officer, we are not addressing the same and the matter stands restored back to the file of Assessing Officer.

15. Similarly, in the Cross Objections the assessee has raised various grounds of objections vis-à-vis selection of comparables which now would be decided by Assessing Officer and those grounds are also held to be academic in nature.

16. Now, coming to next issue raised in the present appeal i.e. against treatment of balance royalty and whether the same is to be allowed as revenue expenditure.

17. We find that similar issue arose before the Tribunal in assessee's own case in the hands of assessee, wherein the balance royalty was disallowed as capital expenditure. The said issue has been dealt with by Tribunal starting from assessment year 2002-03 onwards and following the same parity of reasoning, we hold that balance royalty payment is to be allowed as revenue expenditure in the hands of assessee. Consequently, the ground of appeal No.7 raised by assessee stands allowed.

18. That leaves us ground of appeal No.8, which is against disallowance of homologation expenditure of ₹ 1,24,78,000/-.

19. Brief facts relating to the issue are that the assessee has pointed out that the assessee was engaged in the business of manufacturing of passenger vehicles. The assessee pointed out that under the Central Motor Vehicles Act and Central Motor Vehicles Rules, it was mandatory for the assessee to seek

approval from an agency designated by the Government, before introduction of any technical change in the existing model or before introducing any new vehicle / any upgraded version of existing vehicle, before its commercial sale. The designated agency in the case of assessee was Automotive Research Association of India (ARAI) and the whole process of getting approval was known as 'Homologation of vehicle'. The assessee during the year under consideration had booked expenditure of ₹ 1.25 crores (approx.) as Homologation expenses. The said expenses included cost of materials sent to ARAI for testing and certification and charges for obtaining certificate of homologation, etc. The Assessing Officer was of the view that cost for homologation for top brand vehicles, now a days, had become substantial and had been necessitated as the product to be launched has to conform to various norms, procedures, standards, etc. The Assessing Officer was of the view that since from the nature of expenses it was seen that homologation was meant for product before its launch and the benefits were spread over number of years, hence debiting the expenditure in a single year would give distorted picture of the income of assessee for that year. In view of that, he treated homologation expenses as capital expenditure and disallowed the same. The Dispute Resolution Panel (DRP) dismissed the objections raised by assessee and upheld the disallowance made by the Assessing Officer, which was then made by Assessing Officer in final assessment order.

20. The learned Authorized Representative for the assessee in this regard pointed out that in earlier years i.e. assessment years 2002-03 to 2004-05, the issue was allowed by the Tribunal, where an adhoc disallowance was made out of homologation expenses. In assessment year 2005-06 to 2008-09, no disallowance was made by Assessing Officer himself and thereafter, in the

instant assessment year, disallowance has been made holding expenses to be capital in nature. It was pointed out by the learned Authorized Representative for the assessee that the issue stands covered by decision of Delhi Bench of Tribunal in Honda Siel Cars India Limited Vs. ACIT (2007) 109 ITD 1.

21. The learned Departmental Representative for the Revenue referring to the details of expenses at page 619 of Paper Book, pointed out that the authority certified all new products since the said activity had an enduring benefit as the passenger cars were sold over a period of time, then the same needs to be disallowed. In respect of decision in Honda Siel Cars India Limited Vs. ACIT (supra), it was pointed out that expenditure was R&D expenditure, which was allowed in the hands of assessee.

22. The learned Authorized Representative for the assessee in this regard placed reliance on the decision of Hon'ble Apex Court in Taparia Tools Ltd. Vs. JCIT (2015) 276 CTR 1 (SC) that there is no concept of enduring benefit and the disallowance of expenses.

23. We have heard the rival contentions and perused the record. In the line of business of assessee i.e. manufacture and sale of passenger cars, the automobiles which were manufactured were governed by Central Motor Vehicles Act (CMV Act) and Central Motor Vehicle Rules (CMV Rules). Under the said regulations, it is mandatory to seek approval from the agency of the Government before making any technical changes in the existing model and also before introducing new vehicle / any upgraded version of existing vehicle before its commercial use. The ARAI makes the certification in this regard. Rules 91 to 126A of CMV Rules regulate the construction, equipment and

maintenance of motor vehicles. The requirement of Rule 126 is that every manufacturer or importer of motor vehicles shall submit Prototype of vehicles, to be manufactured or imported by him, for testing by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or ARAI, Pune or the Central. In the process of homologation, the assessee is under compulsion to provide to ARAI, for testing purpose, the auto components as well as entire vehicle, in case it wants to upgrade the same and/or import the new vehicle. After testing, ARAI issues a certificate of homologation for the particular vehicle. The assessee claims that material which was provided to ARAI and once it was returned to the assessee and the same was mainly scrapped as from safety perspective, it cannot be used in new cars. The assessee had debited cost of such material consumed during homologation process and also the cost of certification under the head homologation cost. It was put to the assessee that what happens to the engines in fully built cars or new cars, which were sent for certification and it was fairly pointed out that in case they were in usable condition, the same were not destroyed. In case of any technical variation in any existing vehicle or any of the components that the assessee wants to introduce in the existing vehicles, it was incumbent upon the assessee to get homologation certificate before any change was so introduced. Another expenditure which was incurred was that ARAI may in random, choose any car (as produced) for conducting conformity of production. Hence, it were not only the initial stage for which specifications need to be approved from ARAI but even for the existing vehicles, random checks were made that the assessee was manufacturing the same in conformity with the procedure laid down. The expenditure thus, laid out was for the purpose of smooth running of business and the revenue expenditure merits to be allowed in the hands of assessee. The assessee had

also filed breakup of homologation expenses incurred during the year under consideration and we have perused the same. Hence, there is no merit in the stand of authorities below in disallowing the same on the ground that the said expenditure may have enduring benefit to the business of assessee.

24. The Hon'ble Supreme Court in Empire Jute Co. Ltd. Vs. CIT (1980) 124 ITR 1 (SC) had laid down that test of enduring benefit cannot be applied blindly and mechanically, without regard to particular facts and circumstances. Merely because the aforesaid expenditure results in an enduring benefit would not make such expenditure as capital in nature, as while allowing any expenditure in the hands of assessee, the intent and purpose of expenditure is to be kept in mind and whether the same is incurred for smooth running of business, then, such expenditure is revenue in nature. Accordingly, we direct the Assessing Officer to allow homologation expenses of ₹ 1.25 crores (approx.). The ground of appeal No.8 raised by assessee is thus, allowed.

25. Now, coming to Revenue’s appeal in assessment year 2009-10, wherein we have already decided the first issue along with transfer pricing issue raised in the appeal of assessee and have remitted the issue of selection of comparables back to the file of Assessing Officer / TPO.

26. The second issue raised is adjustment on account of abnormal foreign exchange movement. The TPO while computing PLI of assessee had treated the foreign exchange loss as operating in nature. The DRP in turn, relying on the Safe Harbour principles had treated the foreign exchange fluctuation loss as non operating and directed the Assessing Officer to consider loss suffered

by assessee on account of foreign exchange fluctuation as non operating expenditure and work out the PLI accordingly.

27. The Revenue is in appeal against the order of DRP.

28. The case of assessee before us is that the year under consideration witnessed around 14.10% increase in Euro / INR rates vis-à-vis previous year and hence, was an exceptional year, wherein profitability of assessee was impacted by adverse fluctuation in foreign exchange currency. The learned Authorized Representative for the assessee pointed out that similar issue arose before Pune Bench of Tribunal in Demag Cranes & Components (India) Pvt. Ltd. Vs. DCIT in ITA No.328/PN/2014, relating to assessment year 2009-10, order dated 19.10.2016 and it was held that where Euro rates had fallen, then it was an unique event for this year and such foreign exchange loss was to be excluded while computing PLI of assessee. We find merit in the claim of assessee in treating foreign exchange loss as non-operating in nature. There was fluctuation in the rate of Euro / INR rates when compared to the previous year and the market witnessed around 14.10% increase in Euro / INR rates. In such facts and circumstances, where the phenomenon was unique, then the same is to be excluded while computing PLI of assessee.

29. We find that same ratio has been laid down by the Tribunal in Demag Cranes & Components (India) Pvt. Ltd. Vs. DCIT (supra). The year under appeal in the case of Demag Cranes & Components (India) Pvt. Ltd. Vs. DCIT (supra) and the assessee is same. Following the same parity of reasoning, we direct the exclusion of foreign exchange loss while computing PLI of assessee company. Upholding the order of DRP, we dismiss the ground of appeal No.2 raised by Revenue.

30. Now, coming to the last issue raised by Revenue i.e. ground of appeal No.3, which is against order of DRP that the expenditure of royalty and homologation which were disallowed by the Assessing Officer should not be included in the computation of PLI.

31. The learned Authorized Representative for the assessee pointed out that this ground of appeal raised by Revenue would become academic if grounds of appeal No.7 and 8 raised by assessee in its appeal are allowed.

32. We have already adjudicated grounds of appeal No.7 and 8 raised in assessee's appeal in favour of assessee, hence ground of appeal No.3 raised by Revenue becomes academic and the same is dismissed.

33. Now, we take up the appeal of assessee in assessment year 2010-11, wherein the issues raised by various grounds of appeal are similar to the issue raised in assessment year 2009-10. The ground of appeal No.2 raised in respect of TP adjustment is general in nature and hence, does not need our adjudication. The ground of appeal No.1 raised by assessee is pleaded to be academic once the grounds of appeal No.3 and 5 are allowed in the hands of assessee. The issue raised in ground of appeal No.3 is against rejection of combined TNMM method i.e. adoption of aggregation approach. In ground of appeal No.5, the assessee has raised the issue against order of authorities below in comparing the gross margins of CBUs with margins of spares and applying RPM method as most appropriate method. In ground of appeal No.4, the issue raised is against rejection of comparable companies.

34. We have already adjudicated similar issue in earlier years and also in assessment year 2009-10 in the paras above. Following the same parity of

reasoning, we direct the Assessing Officer / TPO to apply aggregation approach in order to benchmark international transactions undertaken by assessee under the umbrella of manufacturing of vehicles, which include import of raw materials, import of CBUs and spare parts along with payment of royalty. The Assessing Officer shall follow our directions in earlier years and compute PLI of assessee on aggregate basis. Thereafter, he decide the issue of selection of comparable companies, which have been selected by assessee and confront the same to assessee and decide the issue in accordance with our directions in earlier years and also in accordance with law. The Assessing Officer / TPO shall compute transfer pricing adjustment, if any, in the hands of assessee after affording reasonable opportunity of hearing to the assessee. Consequently, grounds of appeal No.3 to 5 are allowed and the ground of appeal No.1 thus, becomes academic and the same is dismissed. The learned Authorized Representative for the assessee pointed out that once the grounds of appeal No.3 to 5 are allowed, then grounds of appeal No.6 to 10 raised by assessee would become academic, hence the same are dismissed as academic.

35. The issue raised in ground of appeal No.11 is against treatment of royalty payment as capital expenditure instead of revenue expenditure. This issue has been decided in the hands of assessee since assessment year 2002-03 onwards and following the same parity of reasoning, the royalty has been allowed as revenue expenditure in the hands of assessee. Accordingly, we direct the Assessing Officer to apply the same proposition and allow the claim of assessee in entirety.

36. Now, coming to appeal filed by Revenue in assessment year 2010-11, wherein the grounds of appeal No.1 to 6 have been raised against order of DRP in allowing homologation expenses as revenue expenditure. The Revenue is aggrieved by the order of DRP as in earlier year the Assessing Officer had held it to be capital expenditure.

37. We have already adjudicated this issue in the case of assessee in assessment year 2009-10 and following the same parity of reasoning, we allow this claim of assessee. The grounds of appeal raised by Revenue are thus, dismissed.

38. Now, coming to appeal of assessee in assessment year 2011-12. The grounds of appeal raised in respect of transfer pricing adjustment under category A are identical to the grounds of appeal raised in assessment year 2010-11 and our directions would apply *mutatis mutandis* to assessment year 2011-12. In this regard, ground of appeal No.1 would become academic. The ground of appeal No.2 is general in nature and does not need any adjudication. The grounds of appeal No.3 to 5 are in respect of transfer pricing adjustment i.e. adoption of aggregation approach and not comparing gross margins of CBUs with spare parts and applying RPM method vis-à-vis selection of comparables. The issue stands decided in paras above and Assessing Officer has to apply the directions of Tribunal in earlier year. The grounds of appeal No.6 to 8 would become academic and the same are dismissed. The ground of appeal No.9 is against orders of authorities below in treating the royalty as capital expenditure instead of revenue expenditure. We have already adjudicated this issue in earlier year and following the same parity of reasoning, this ground of appeal is allowed.

39. Now, coming to appeal of Revenue in assessment year 2011-12, which is only against order of DRP in holding homologation expenses as revenue in nature, as against order of Assessing Officer in holding it to be capital expenditure. We find no merit in the aforesaid issue since the same has already been adjudicated by us in assessment years 2009-10 and 2010-11 and following the same parity of reasoning, we allow the claim of assessee. The grounds of appeal of raised by Revenue are thus, dismissed.

40. In the result, all the appeals of assessee are allowed as indicated above and all appeals of Revenue and Cross Objection of assessee are dismissed.

Order pronounced on this 31st day of July, 2019.

Sd/-	**Sd/-**
(D.KARUNAKARA RAO)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 31st July, 2019.

GCVSR

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

1. The Appellant;
2. The Respondent;
3. The DRP-3, Pune;
4. The CIT(IT&TP), Pune;
5. The DR 'C', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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