

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.449/PUN/2016**
निर्धारण वर्ष / **Assessment Year : 2011-12**

Tasty Bite Eatables Ltd.,
204, Mayfair Towers,
Wakdewadi, Shivajinagar,
Pune-411005.

PAN : AA ACT2317A

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-7,
Pune.

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / **ITA No.626/PUN/2016**
निर्धारण वर्ष / **Assessment Year : 2011-12**

DCIT, Circle-7,
Pune.

.... अपीलार्थी/Appellant

Vs.

Tasty Bite Eatables Ltd.,
204, Mayfair Towers,
Wakdewadi, Shivajinagar,
Pune-411005.

PAN : AA ACT2317A

.... प्रत्यर्थी / Respondent

Assessee by : Shri Arijit Chakravarty &
Shri Abhijeet Tilak

Revenue by : Shri Manoj Kumar Gautam

| | |
|--|--|
| सुनवाई की तारीख / Date of Hearing : 01.05.2019 | घोषणा की तारीख / Date of Pronouncement: 24.07.2019 |
|--|--|

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

These are the cross appeals filed by the assessee and the Revenue against the orders of the Assessing Officer/TPO/DRP for the assessment year 2011-12.

ITA No.449/PUN/2016 (By Assessee)

2. First, we shall take up the appeal of the assessee in ITA No.449/PUN/2016 for adjudication. The consolidated grounds raised by the **assessee** are extracted as under :-

“Transfer Pricing Grounds:

Ground 1: General - Challenging transfer pricing adjustment amounting to Rs. 4,45,43,975/-

*On the facts and circumstances of the case and in law, the learned Assessing Officer ('AO'), based on the directions of the Hon'ble Dispute Resolution Panel ('DRP'), has erred in making transfer pricing adjustment to the value of international transaction of export of finished goods and **not considering the comparability analysis as documented in transfer pricing study report** for the assessment year 2011-12 provided by the Appellant*

*Ground 2- Erroneous **rejection of segmental profit and loss A/c** of the Appellant and consideration of "**Entity Level**" margin of the appellant*

On the facts and circumstances of the case and in law,

*2.1 The learned AO based on the directions of the Hon'ble DRP, has erred in **considering "Entity level"** margin of the Appellant.*

*2.2 The learned AO, based on the directions of the Hon'ble DRP has erred in **rejecting the certified segmental profit** and loss account.*

*2.3 Without prejudice to the above, **finance cost / charges** should be treated as **non-operating** while computing the Profit level Indicator ('PLI') of the Appellant for application of Transactional Net Margin Method ('TNMM').*

*2.4 The AO/TPO/DRP have erred in law and on facts in treating the disallowance of **Bad Debts of Rs. 10,14,691/-** and **Provision of Rs. 10,00,000/-** respectively as **operating expenses** in computing the PLI of the Appellant.*

Ground 3- Erroneous computation of operating margin of the Appellant

*On the facts and in the circumstances of the case and in law, the learned AO has erred in computing the PLI of the Appellant incorrectly by **not considering "export incentive" as part of operating income** though the same was considered as "Operating Income" in the order of TPO u/s 92CA of the Act.*

Ground 4 - +/-5 percent benefit not granted

On the facts and circumstances of the case and in law, the learned AO, based on the directions of the Hon'ble DRP, has erred in not granting the benefit of +/-5 percent variation specified in the proviso to section 92C(2) of the Income-tax Act, 1961.

Corporate Tax Grounds:

Ground 5 -Disallowance of provision of Rs. 10,00,000/- and bad debts written off of Rs. 10,14,691

On the facts and in the circumstances of the case and in law the AO has erred in disallowing:

5.1 A provision of Rs. 10,00,000;

5.2 A bad debts written off of Rs.10,14,691;

5.3 Without prejudice to the above, and in the alternative, the AO has erred in disallowing the provision that the same is without any basis without any liability and bad debts stating that the same is with respect to parties with which the Assessee has ongoing transactions, while continuing to treat these items as operating for computing the PLI of the Appellant for transfer pricing purpose, thereby leading to double disallowance of the same amount.

The Appellant submits that each grounds of appeal is without prejudice to one another. The Appellant craves leave to add, alter, vary, omit, substitute or amend of the above ground of appeal at any time at the time during the pendency of appeal.”

3. From the above, it is evident that the grounds no.1 to 4 relates to the **TP issues**. The ground no.5 and its sub-grounds relate to the **corporate issue**. Ground no.2.4 is also a connected one to the ground no.5.

4. Briefly stated the relevant facts include that the assessee is engaged in the business of manufacturing of Ready To Serve (RTS) food products. Assessee reported two segments namely, (i) RTS segment and (ii) FFS (Frozen Food) segment. During the year, RTS gross products worth of Rs.51,27,06,263/- and Rs.8,47,27,628/- totalling to Rs.59.74 crores (rounded up) were exported to Australia and USA respectively. These export transactions constitutes international transactions with AEs and therefore, transactions were the subject-matter of benchmarking exercise for determining the arm's length price.

5. In the TP study of the assessee, TNM Method (TNMM) was followed as the Most Appropriate Method (MAM) and identified a final list of 10

comparables. The arithmetic average PLI of the said exports (RTS) segment is **9.10%** against that of the PLI of the comparables is **6.85%**. For working out the PLI of RTS-Export segment, assessee apportioned all the business expenses of the assessee between the segments. For this allocation of the assessee, the assessee relied on a certificate issued by the Cost Accountant.

6. However, the TPO found the said allocation of the operational cost vague and unacceptable. Therefore, the TPO rejected the PLI of the RTS-Export segmental data of the assessee and proceeded to adopt the entity level PLI of the assessee. Accordingly, the TPO worked out the assessee's PLI at entity level at **3.43%** and made certain adjustments too. Further, coming to the PLIs of said list of 10 comparables, the TPO rejected final list of the comparables of the assessee with the exception of the **ADF Foods Ltd.** with PLI of 15.78%. **Thus, as per the TPO, the PLI of the assessee at the entity level is 3.43% and the PLI of the comparable (ADF Foods Ltd.) is 15.78%.** Accordingly, the TPO quantified the ALP adjustments at Rs.9,75,84,476/- vide his order dated 29.11.2015 u/s 92CA(3) of the Act. Considering the aforesaid adjustments, the Assessing Officer prepared draft assessment order dated 20.03.2015 u/s 144C(1) of the Act. Assessing Officer made two other Non-TP additions on account of (i) **Sundry balances written off** amounting to Rs.10,00,000/- and (ii) **Bad debts** amounting to Rs.10,14,691/-. Other issues for adjudication includes (i) the issue of consideration of the said two items of claim as part of the operational expenses; (ii) consideration of finance cost/bank interest as the non-

operational expenses; and, (iii) consideration of 'Export incentive as part of the operational income. The matter travelled to the DRP.

7. Before the DRP, assessee raised issues relating to the issue of entity level, segmental PLIs, inclusion of operating income/cost etc. The DRP dealt with the issues relating to the need for going for entity level margins of the assessee and analyzed the dispute on the allocation of expenses between the RTS and the FFP segments of the assessee. DRP considered the fact that the assessee followed the (PLI) segmental data for the assessment years 2007-08 to 2011-12 in the past. DRP discussed the facts relating to the basis of apportionment of the expenses on one side and the rejection of the data related to the export segments on the other and noted the fact of relying on the certificate of Cost Accountant. The DRP also discussed the facts relating to the said two divisions in the business of the assessee relating to (i) the consumer business division comprising the Ready to Serve Foods (RTSF) segment and (ii) Tasty Bite Food Services (TFS) division comprising of Frozen Food Products (FFP) and Sauces segments. The TFS segment is only domestic purpose for the Indian third parties. The DRP considered the fact that the TPO accepted the said division of the business into the said two RTSF and TFS segments as well as the fact that the TPO accepted the segmental level result for the assessment years 2007-08 to 2010-11 except for the year under consideration. However, the DRP considered the above and rejected the claim of the assessee and approved the approach of the TPO/Assessing Officer in this regard. Thus, the DRP

passed a direction u/s 144C(5) of the Act vide its direction dated 15.12.2015.

A. Referring to the basis of **allocation of expenses**, the assessee submitted to the DRP that while the sales, exports, purchases of goods, product development expenses and foreign exchange losses etc are considered on actual basis. The overhead expenses like salary and other expenses were allocated on sales basis. These basis of allocation of salary and other expenses was questioned by the TPO/Assessing Officer and the DRP and held that the segment results are not reliable. The said certificate issued by the Cost Accountant was also not accepted. The contents of para 2.4.2 of the DRP's order are relevant.

Thus, it is a case of the assessee that RTS segmental data should be accepted. The entity level approach adopted by the TPO should be rejected in view of the settled principle of consistency.

B. Further, regarding the need for treating the finance/interest cost as **non-operating expenses** for the purpose of computing the PLI of the assessee, it was submitted to the DRP/TPO Rs.92,98,000/- was incurred by the assessee and the same constitutes non-operating cost and therefore, the same should be **excluded** from the scope of 'operating cost' for the purpose of computing the PLI of the assessee. Para 6 of the note filed before us is relevant. In this regard, the assessee mentioned that the said expenditure was incurred towards the payment of loans taken from bank and others and the same is non-specific in the profits of the year. Further, referring to the treatment given to such expenses in the past assessment

years i.e. assessment year 2011-12, assessee informed the Revenue that same was considered by the TPO and accepted the claim of assessee i.e. non-operating expenditure only. Mentioning the said expenditure was erroneously considered for inclusion in the operational cost by the TPO for the year under consideration, the assessee submitted for treating the same as non-operating expenses. The orders of the Tribunal in assessee's own case in the previous assessment years 2007-08 to 2010-11 was also submitted supporting to the above proposition. The claim of the assessee is allowed. Rule 10TA of the Safe Harbour Rules of the Act was also submitted in support of the claim of non-operating cost. The fact that such expenditure was considered as non-operating expenses by the TPO himself for the later assessment year 2014-15 was also informed.

C. Further, referring to the **“export incentives” as an operating revenue**, ld. Counsel for the assessee submitted that the assessee received export incentives amounting to Rs.4,42,78,000/- (page 264 of the Paper Book) and assessee included the same as the income of the assessee in the year under consideration for the PLI purpose. The TPO considered the same as operating income in the order passed u/s 92CA(3) of the Act. However, at the time of computing PLI of the assessee, the Assessing Officer not considered the said incentives inadvertently as an operating income of the assessee for PLI purpose. Stating that the assessee did not raise this issue before the DRP, assessee stated that there is no dispute about this export incentive as operating income of the assessee. In the final assessment order, the Assessing Officer failed to treat the said export

incentives as operating income of the assessee. Thus, it is the case of the assessee that the income of export incentives constitutes an operating income and the same is needed to be included as such for PLI purposes.

D. The other **corporate issue** i.e. (i) the **addition on account of bad debts of Rs.10,14,691/-** and (ii) the **provision of Rs.10,00,000/-** were also adjudicated on the correction of disallowance and treated the same as an operating cost of the assessee for PLI purpose. Regarding the addition on account of bad debts of Rs.10,14,691/-, the brief facts are that, in the assessment proceedings, the Assessing Officer wanted the assessee to file the details about the claim of bad debts written off in the books of account. On examining the said details, the Assessing Officer noted that the sum of Rs.10,14,691/- involving M/s. Vista Process Foods Pvt. Ltd. is not an allowable expense as the assessee has a running account with the said party. On the basis of running account, the Assessing Officer considered the same as not a bad debt. This ground was not pressed before the DRP and hence, the same was dismissed as not pressed.

Further, regarding the provision of Rs.10,00,000/- for operating expenses, the brief facts are that the Assessing Officer noted that the assessee made a provision of Rs.10,00,000/- for operating expenditure and the same was found made without any basis. The Assessing Officer disallowed the same too as per discussion given in para 5 of the draft assessment order. The DRP did not adjudicate the same as they were not pressed before DRP. Thus, the Assessing Officer made the final assessment order on 29.01.2016 quantifying the total income at Rs.6,68,75,491/-

against the returned income of Rs.2,03,16,825/-. The relevant computation as given in para 13 of the final assessment order is extracted hereunder :-

“13. Subject to the above remarks, the total income of the Assessee Company is computed as under :-

COMPUTATION OF TOTAL INCOME

| | |
|---|-------------------------|
| <i>Total income as per return of income</i> | <i>Rs.2,03,16,825/-</i> |
| <i>Add: Disallowance/additions</i> | |
| <i>i) Transfer Pricing adjustment</i> | <i>Rs.4,45,43,975/-</i> |
| <i>ii) Disallowance of provision</i> | <i>Rs.10,00,000/-</i> |
| <i>iii) Bad Debts written off</i> | <i>Rs.10,14,691/-</i> |
| <i>Total Income</i> | <i>Rs.6,68,75,491/-</i> |

8. Thus, the assessee aggrieved with the order of the TPO/DRP so far as rejection of (i) segmental data of the RTS segment and adopting of the entity level PLI computation; (ii) treatment of the export incentives as non-operation income; (iii) treatment to the ‘finance cost plus interest charges’ as operational expense. These are the core issues which contested by the assessee before us in the grounds extracted above.

So far as discussed the facts and developments before the Assessing Officer/TPO and the DRP, we shall now take up the limb-wise adjudication in the following paragraphs.

Before the Tribunal

(A) Rejection of segmental results and adopting the entity level approach

9. On this issue, the relevant facts were already discussed and it has two divisions, namely, (i) Division of Export Sales of RTS food to USA and

Australia; and (ii) Division of Domestic Sales of FFP and Sauces in India. The assessee filed segmental details of these two divisions. The same were duly certified by qualified Cost Accountant. On finding that some of the expenses were allocated between the divisions based on revenue to sale basis, the same were rejected by TPO while similar results were accepted by the TPO/Assessing Officer since the assessment year 2007-08 onwards. In the process, the set 'principle of consistency' was ignored by the authorities. After rejecting the said segmental results, the Assessing Officer/TPO/DRP was adopted the entity level PLI which means inclusion of the domestic sales also for the purpose of PLI workings. This approach of the Assessing Officer/TPO/DRP was contested before us and various arguments were made to substantiate the claim of the assessee. The assessee filed a written note on this issue. In the said note, the assessee submitted that the revenue consistently accepted the export segment results since the assessment years 2007-08 to 2010-11. Before the TPO/Assessing Officer, the assessee furnished details of Profit and Loss Account based on the books of account maintained by the assessee. Relying on the DRP's direction given in para 2.4.2 of the order in favour of the Revenue, assessee argued that the same constitutes violation of the principle of consistency. Highlighting this principle, ld. Counsel submitted that there is a finding of fact from this Tribunal for the assessment year 2007-08 in favour of upholding the AEs segment results and the same is not in favour of the entity level results of the assessee. Moreover, it is a fact that the TPO himself rejected the entity level margins and computed the PLI for the assessment years 2010-11 and 2011-12. Therefore, on hearing ld. Counsel

for the assessee on one side and the arguments of the ld. DR for the Revenue, who relied on the order of the Assessing Officer/TPO/DRP, we are of the opinion, the violation caused to the “principle of consistency” is not proper. Therefore, we are of the opinion the same should be allowed in favour of the assessee. Accordingly, relevant grounds no.1, 2 & 2.1 are allowed.

**(B) Segmental profits relates to the PLI
of the export sales of RTS food**

10. Regarding another limb relating to the correctness of the segmental profits and the PLI of the export sales of RTS food, we are of the opinion the assessee maintained books of account for both the segments separately. The apportionment of expenses is an integral part of the said limb. While allocating the certain common expenses, the assessee relied on profit to sale basis, which is an approved method of allocation of the common expenses between the segments. No sustainable reason is mentioned as to why such a basis is unsustainable. The certificate issued by the Cost Accountant and the basis adopted for allocation of expenses is not an unusual basis. The ld. DR could not file any evidence or case law to defend his stand. Therefore, we find the segmental results supplied by the assessee deserve to be accepted. The assessee relied on various decisions in support of the apportionment of common expenses and the details are discussed in para 3.3 of the note. As such, no contrary view is brought to our notice by the Revenue. Accordingly, the relevant grounds no.1, 2 & 2.2 are allowed in favour of the assessee.

**(C) Treating of the “finance cost and interest charges”
as non-operating expenses**

11. The issue of treating of the finance cost and interest charges as non-operating expenses for the purpose of computing the PLI of the assessee and its adjudication constitutes an academic issue considering the facts that we have already granted relief to the assessee on the correctness of the segmental data. In any case, this issue is now covered in favour of the assessee as discussed in para 6 of the note where clauses (j) and (k) of Rule 10TA of Safe Harbour Rules are discussed for allowing such expenditure as non-operating expenses. Thus, the said finance cost/interest charges needs to be treated as non-operating cost as held by the Tribunal in the assessee's own case for assessment years 2007-08 to 2010-11 and in assessment year 2014-15. Thus, the relevant grounds no.2 & 2.3 are allowed in favour of the assessee.

**(D) Disallowance on account of bad debts/
Provision for operational expenses –
Treatment to these additions in matters of PLI calculations**

12. Ground no.2.4 relates to the disallowance on account of (i) bad debts and (ii) provision towards operating expenses. The ground no.5 relates to the Assessing Officer's decision in disallowing these two items on merits. In ground no.5, assessee argues that if the disallowance is confirmed, the income of the assessee stands increased to that extent and such increased income constitutes an operating profit of the assessee and the same should be considered for the purpose of calculating the PLI of the assessee. In case, the same is allowed, the same constitutes operating cost. We shall now take up the merits of disallowance and the same is justified on merits.

Merits of disallowance**A. Bad Debts**

13. The assessee claimed the bad debts of Rs.10,14,694/- involving Vista Process Foods Pvt. Ltd., the debtor. The Assessing Officer disallowed the same on the ground that the assessee continues to have considered in transactions with the said debtor. However, there is no dispute on the fact the amounts were written off in the books of the assessee. The assessee relied heavily on the judgement in the case of TRF Ltd. vs. CIT 323 ITR 397. The DRP confirmed the said disallowance. On hearing both the sides on this issue, we find that the claim of the assessee is proper. We find no violation by the assessee in claiming the said bad debts. The assessee has strength of the said Apex Court's judgement in the case of TRF Ltd. (supra). We accordingly allow the claim of bad debts in favour of the assessee.

B. Provision for operating expenses

14. The assessee created an amount of Rs.10,00,000/- as provision for making the operating cost in the year under consideration. The Assessing Officer disallowed the same when the assessee failed to establish the correctness of the said provision and the criteria for arriving at such sum as a provision towards the operating expenses. For want of evidences, DRP confirmed the decision of the Assessing Officer in making such disallowances. Before us, ld. Counsel for the assessee relied heavily on the claim in the books of account. However, ld. Counsel could not demonstrate the criteria for arriving at such an amount as a provision and utilization of

the same in the year under consideration. On hearing both the sides and considering the assessee's failure to discharge the onus, we proceed to confirm the disallowance made by the Assessing Officer. Accordingly, on merits, the addition on account of provision is confirmed.

C. Effect of such disallowances in matters relating to the calculation of PLI *qua* the operating income and operating expenses.

15. The bad debts claim and the disallowance thereof now stands reversed by us. In effect, the bad debts amount of Rs.10,14,691/- constitutes an operational cost. Therefore, Assessing Officer is directed to consider the bad debts claim is an operational cost and calculate the PLI of the assessee as per the procedure.

Regarding the operating expenses amounting to Rs.10,00,000/-, it is our finding that the claim of the assessee is not allowable considering the failure of the assessee in discharging the onus by furnishing the evidences and the criteria for quantifying such amount. The effect of the said decision is going to increase the income of the assessee. Thereby, the operating income stands increased by the said sum of Rs.10,00,000/-. The Assessing Officer is directed to consider the same as operating income while calculating the PLI of the assessee. Accordingly, ground no.2.4, 5 and its sub-grounds disposed of as above.

(D) Treatment to be given to the export incentives

16. The said limb relates to erroneous computation of operating margin *qua* the treatment to be given to the export incentives. The assessee

reported earnings of the export income of Rs.4,42,78,000/- (page 264 of the Paper Book). In this regard, the case of the assessee is that the same constitutes an operational income and the same claim was accepted by the authorities in many assessment years in the past. Therefore, considering the principle of consistency, we are of the opinion the assessee's claim should be allowed in his favour. The jurisdictional High Court's judgement in the case of Welspun Zucci Textiles Ltd. (ITA No.1286 of 2014) for A.Y. 2008-09 supports the case of the assessee. The said judgement was followed in the case of Carraro India (P.) Ltd. (ITA No.1629/PUN/2013) too. Accordingly, the export incentive needs to be included in the operational income for PLI computation. Thus, the said issue raised in ground no.3 is allowed in favour of the assessee.

17. In the result, the appeal of the assessee is partly allowed as above.

ITA No.626/PUN/2016 (By Revenue)

18. Now, we take up the appeal of the Revenue in ITA No.626/PUN/2016 for adjudication.

Preliminary Issue - Condonation of Delay

19. Before us, at the outset, ld. DR for the Revenue submitted that the appeal of the Revenue in ITA No.626/PUN/2016 for the assessment year 2011-12 could not be filed in time and the said appeal of the Revenue is filed with the **delay of 09 days**. In this regard, ld. DR for the Revenue filed an affidavit explaining the reasons for non-filing the appeal of the Revenue in time. For the sake of completeness, the relevant paras of the said affidavit are extracted hereunder :-

“.....

In this case the last date of filing was 29/03/2016, the appeal could not be filed on time and the same is being filed on 07/04/2016. There has been delay of 9 days in filing of appeal. This is to request that the delay in filing the appeal may be kindly condoned. The reason for the delay are as under:

There was a heavy burden of time barring assessment in this circle, and the under signed has completed 128 time barring assessments in the Month of March 2016. There were other time barring matters such as penalty orders, reopening of cases, Judicial matters and audit related matters. The Scrutiny report in the case was called for from the Transfer Pricing Officer on 01/01/2016. Moreover, the report of the TPO recommending filing of further appeal was not received physically but was received only through e-mail on 22.03.2016.

The delay has been caused inadvertently and due to the above reasons. It is most humbly and with sincere apologies requested that the delay in filing appeal may kindly be condoned.”

20. The delay of 09 days cannot be considered as an extra-ordinary delay. Therefore, considering the above reasons given by the ld. DR for the Revenue in the affidavit, we find it is a fit case for condoning the delay of 09 days in filing the appeal of the Revenue. Therefore, we condone the delay and proceed to adjudicate the appeal of the Revenue in the following manner.

21. The ground raised by the Revenue is as under :-

*“Whether the DRP was right in law and on facts in directing to grant proportionate adjustments since entire transfer pricing exercise is carried out on the **basis of the entity level net margin**, considering different net margin of the international transaction on the basis of segmental accounts at the later stage would make the entire proceedings carried out infructuous.”*

22. From the above, it is evident that the ground raised in the appeal of the Revenue relates to the direction of the DRP to grant proportionate adjustments since the entity level margins are considered and approved by the DRP.

23. In this regard, the assessee made a written submission relying on plethora of decisions including that of own case for the assessment year 2012-13 in favour of restricting the quantification of adjustment value of

international transactions only. Referring to the decision of the Tribunal in assessee's own case for the assessment year 2007-08 vide ITA No.1682/PUN/2011, ld. Counsel submitted that the contents of para 37 is relevant. Further, the fact that the Tribunal decided the similar issue in favour of the assessee in the assessment years 2008-09 and 2009-10 vide ITA No.335/PUN/2013 (para 21) and ITA No.337/PUN/2014 (para 12) was also relied. As per the said precedents in assessee's own case such matter stands remitted back to the file of the Assessing Officer for re-computation. For the sake of completeness, para 12 of the order of the Tribunal in ITA No.337/PUN/2014 for the assessment year 2009-10 dated 11.06.2018 is extracted as under :-

“12. The ground Nos. 2 & 3 of the appeal are against considering the entire RTS segment for calculation of PLI. The assessee has prayed for restricting the adjustment on the basis of value of international transactions only. It has been brought to our notice that identical grounds were raised in the appeal for assessment year 2008-09. The Co-ordinate Bench of Tribunal in assessee's own appeal in ITA No.335/PN/2013 (supra.) remitted the issue back to the file of Assessing Officer for recomputation. The Tribunal in principle accepted that transfer pricing adjustment has to be made with respect to international transaction only and not on the entire sale of RTS segment. The relevant extract of the order of Tribunal reads as under:

*“21. The issue arising vide grounds of appeal No.2 and 3 is identical to the issue before the Tribunal in assessment year 2007-08 vide ground of appeal No. 3 and following the same parity of reasoning, we hold that transfer pricing adjustment has to be made with respect to international transaction only and not on the entire sales of RTS segment. However, since a verification exercise is required to be carried out, **we remit this issue back** to the file of Assessing Officer/TPO with a direction to re-compute the adjustment, if any, in line with directions given by the Tribunal in assessment year 2007-08. The Assessing Officer /TPO shall afford a reasonable opportunity of hearing to the assessee. The grounds of appeal No. 2 and 3 raised by the assessee are thus, **allowed for statistical purposes.**”*

*Thus, in view of the above decision of the Co-ordinate Bench, we remit the issue back to the file of Assessing Officer/TPO to decide the issue de-novo on similar lines. Accordingly, ground Nos. 2 & 3 raised in appeal by the assessee are **allowed for statistical purpose.**”*

24. Considering the above settled nature of the issue with identical direction, the matter is remitted back to the file of the Assessing Officer to re-comply with the same. Accordingly, the ground raised by the Revenue is dismissed.

25. In the result, the appeal of the Revenue is dismissed.

26. Resultantly, the appeal of the assessee is partly allowed and the cross appeal of the Revenue is dismissed.

Order pronounced on 24th day of July, 2019.

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

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

पुणे / Pune; दिनांक Dated : 24th July, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The DRP-3, Mumbai;
4. The CIT(DRP-3), Mumbai;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune