

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH  
MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.2199/Mum/2015  
(Assessment Year :2010-11)**

M/s. Rohm and Haas India Pvt. Ltd., 1 <sup>st</sup> Floor, Block B, 02, Godrej Business District Pirojshanagar, LBS Marg Vikhroli (W) Mumbai – 400 079	Vs.	The Assistant Commissioner of Income Tax-11(1)(1) Room No.204, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
<b>PAN/GIR No.AAACR2855F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**ITA No.6577/Mum/2018  
(Assessment Year :2014-15)**

**SA No.261/Mum/2019  
ITA No.6577/Mum/2018  
(Assessment Year :2014-15)**

M/s. Dow Chemical International Pvt. Ltd., as successor of Rohm and Haas (India) Pvt. Ltd., Godrej IT Park – P2 1 <sup>st</sup> Floor Block B, 02 LBS Road, Godrej Business District, Pirojshahnagar Vikhroli (W) Mumbai – 400 079	Vs.	Income Tax Officer – 14(1)(1), Room No. 431, Aayakar Bhavan, MK Road, Mumbai – 400 020
<b>PAN/GIR No.AAACR2855F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Rajan R Vora / Shri Hemen Chandariya
Revenue by	Shri Anand Mohan
<b>Date of Hearing</b>	<b>20/02/2019, 14/06/2019 &amp; 20/09/2019</b>

<b>Date of Pronouncement</b>	<b>25/09/2019</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

**ITA Nos.2199/Mum/2015 & 6577/Mum/2018**

These appeals in ITA No.2199/Mum/2015 & 6577/Mum/2018 for A.Y.2010-11 & 2014-15 arise out of the order by the Dispute Resolution Panel -1 (WZ), Mumbai in Objection No.84 dated 04/09/2018 (Id. DRP in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(1) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 22/12/2017 by the Id. Income Tax Officer – 14(1)(1) (hereinafter referred to as Id. AO).

Let us take up assessee appeal for A.Y.2010-11 in ITA No.2199/Mum/2015.

2. The first issue to be decided in this appeal is with regard to the transfer pricing adjustment of international transaction in respect of import of raw materials from associated enterprises (AEs) in the sum of Rs.35,45,28,005/-.

3. The brief facts of this issue are that the assessee is engaged in manufacturing speciality chemicals, distribution of chemicals and undertaking sales promotion activities for overseas group companies wherein it earns indenting commission.

3.1. The assessee's business operations of manufacturing speciality chemicals can be divided into the following three areas:

- Paint and coating materials
- Packaging and building materials
- Performance chemicals and biocides

3.2. The assessee has its manufacturing plant at Taloja, Mumbai and Sriperumbudur, Chennai. The Taloja plant is used for manufacturing water based emulsion polymers for the decorative paints, textiles, construction, paper coatings and leather industries, and flexible packaging adhesives. The Sriperumbudur plant manufactures acrylic emulsion polymers largely used in manufacturing paints and coatings.

3.3. The assessee filed its Return of Income ('ROI') for AY 2010-11 on 30 September 2010 declaring total income as NIL after adjusting brought forward losses amounting to INR 9,61,23,747. Along with its Return of Income, the assessee also filed Accountant's Report in Form 3CEB [in accordance with section 92E of the Income-tax Act, 1961 ('Act')] reporting *inter-alia*, the particulars of the international transactions undertaken with its Associated Enterprises ('AEs') during AY 2010-11.

3.4. The list of international transactions carried out by the assessee with its AEs during the year are as under:-

Name of international transaction	Method	Profit Level Indicator	Value of transaction (INR)
Import of raw materials for manufacturing chemicals	Cost Plus Method ('CPM')	<u>Gross margins</u> Net sales	1,40,89,43,936

Export of manufactured finished goods			1,04,53,26,726
<u>Import of finished goods</u> Export of traded goods	Resale Price Method	<u>Gross margins</u> Net Sales	41,52,83,426 9,88,50,072
Provision of support services	Transactional Net Margin Method (TNMM <sup>1</sup> )	<u>Operating margin</u> Operating cost	11,71,45,490
Provision of technical support services	TNMM	<u>Operating margin</u> Operating cost	5,41,67,039
Payment of interest on external commercial borrowing	Comparable Uncontrolled Price ('CUP')		64,47,798
Purchase of software	Not Applicable		16,22,360
Availing of support services	Cost allocation		11,87,38,679
Reimbursements of expenses	Not Applicable		2,46,77,756
Recovery of expenses	Not Applicable		1,40,782

3.5. The Id. TPO sought to make an adjustment with regard to international transaction of import of raw materials for manufacturing made by the assessee from its AE. The Id. TPO accepted international transactions to be at arm's length in respect of export of manufactured finished goods, import of finished goods, export of traded goods, provision of support services, payment of interest on external commercial borrowing, purchase of software, availing of support services, reimbursements of expenses and recovery of expenses.

3.6. During the A.Y.2010-11, the assessee has imported raw materials from its AEs amounting to INR 140,89,43,936. Adopting the methodology used during AY 2007-08 to AY 2009-10, the assessee benchmarked the said transaction in the transfer pricing report applying Cost Plus Method

(CPM) as the Most Appropriate Method (MAM). It was stated in the transfer pricing report submitted for AY 2010-11 that the assessee had aggregated its transactions pertaining to import of raw materials for manufacturing with the transactions of export of manufactured finished goods and benchmarking of the said transactions were done on an aggregated basis.

3.7. The gross profit margin earned by assessee for the aforesaid transaction is computed at 16.63 percent as under:

Particulars	Amount (INR)
Net sales	458,11,94,993
Cost of sales	381,94,43,003
Gross profit	76,17,51,990
Gross profit margin (on net sales)	16.63%.

3.8 Whereas, the updated gross operating margin of the comparable companies for AY 2010-11 was arrived at 14.22 percent. The method of computation is in line with the computation of gross profit margins of the assessee as submitted in the TP Study.

Sr. No.	Name of company	Gross Margins (Single year updated)
1	South Asian Petrochem Limited (Merged with Dhunseri Petrochem & Tea Limited)	19.90%
2	Apar Industries Limited	7.53%
3	Axel Polymers Limited	20,58%

4	Gujarat Polybutenes Private Limited	8.88%
Arithmetic mean		14.22%

3.9. Accordingly, the transaction of import of raw materials was considered to be at arm's length.

3.10. The above approach of adoption of CPM for the transaction of import of raw materials and export of finished goods has been adopted by the assessee in the previous years and has been accepted by the Learned Transfer Pricing Officers in the Orders passed from AY 2007-08 to AY 2009-10.

3.11 The assessee adopted Cost Plus Method (CPM) as the most appropriate method for benchmarking its international transactions. The Id. TPO has rejected CPM as MAM and applied Transaction Net Margin Method (TNMM) rejecting the comparables chosen by the assessee and by adopting fresh comparables. The Id. TPO rejected the CPM on the ground that assessee is a loss making concern.

3.12. The TPO worked out the Profit Level Indicator ('PLI') of the assessee using net operating margin calculated as Operating Profit/ Operating Income (OP/ OI) as under:

Particulars	Amount (INR)	Amount (INR)
<b>Operating income</b>		
Net sales	4,58,11,94,993	
Other operating income	3,38,84,690	4,61,50,79,683

<b>Operating cost</b>		
Cost of sales	3,81,94,43,003	
Other operating cost	96,44,29,863	4,78,38,72,866
Operating profit		(16,87,93,183)
OP/OI		-3.66%

3.13. Further, the Id. TPO rejected all 4 companies adopted as comparable by the assessee (mentioned above) in its TP Study for CPM Method and selected 4 companies as comparables for applying TNMM to benchmark the transaction of import of raw materials. The comparables chosen by the Id. TPO are as under:-

<b>Sr. No.</b>	<b>Name of the company</b>	<b>OP/OI for AY 2010-11 (%)</b>
1	Jupiter Bioscience Limited	31.07
2	Fineotex Chemicals Limited	22.11
3	Vivimed Labs Limited	15.90
4	Jubilant Lifesciences. Limited	26.40
	<b>Arithmetic Mean</b>	<b>23.87</b>

3.14. The Id. TPO computed the arm's length price of international transactions as under:-

<b>Particulars</b>	<b>Key</b>	<b>Amount (INR)</b>
AE Purchases	A	1,40,89,43,936
OP/OI	B	(3.66)%
Corresponding sales	$C = A*(1-B)$	1,35,82,21,954
ALP Margin (Comparable' s Margin)	D	23.87%
ALP Profit	$E=C*D$	32,42,07,580/-
ALP Cost	$F=C-E$	1,03,40,14,374
<b>Adjustment</b>	<b><math>G=A-F</math></b>	<b>37,49,29,562</b>

3.15. The Id. TPO did not disturb the arm's length determination of any of the other international transactions undertaken by the assessee as detailed above including export of finished goods.

3.16. Before the Id. DRP the assessee filed objections on the following issues.

- a. Transfer pricing adjustment on account of international transaction on import of raw materials from AEs amounting to Rs.37,49,29,562/-
- b. Disregarding the economic analysis undertaken by the assessee using the CPM for determination of ALP
- c. Rejecting the companies adopted as comparable by the assessee for benchmarking its international transactions without providing any cogent reasons for the same.
- d. Considering the comparables engaged in different products and activities vis-a-vis the assessee as comparables for arriving at the comparables margin.
- e. Erroneous calculation of the margins of certain comparables adopted by the Id. TPO.

3.17. The assessee submitted additional evidences for application of Controllable Uncontrolled Price (CUP) method using independent Chemical Information Service (ICIS) prices instead of CPM and TNMM before the Id. DRP. This was filed without prejudice to its claim that CPM should be adopted as MAM. The assessee pleaded that by applying CUP using ICIS prices in respect of chemicals (Monomers) imported by the assessee from its AEs, around 68% of the total raw materials imports from AEs were covered. In other words, the comparable data was available in respect of 68% of total import of raw materials from AEs by application of CUP using ICIS prices. The assessee submitted the details pertaining to date-wise comparison of import price with market price, in the form of Independent Chemical Information Service (ICIS)

3.18. ICIS is a global chemical market information provider with over 30 years of experience in providing data, information, high-value news, analysis and independent consulting to companies operating in the chemical industry enabling them to make better-informed trading and planning decisions. It publishes CUP data which is available in public domain of market price and hence can be regarded as a valid CUP. During the remand proceedings, the learned TPO rejected the additional evidence filed as the Id. TPO in his original order had already rejected CUP method and applied TNMM.

3.19. The Id. DRP disregarding the submissions and contentions of the assessee upheld the action of Id. TPO to disallow application of CPM to

compute the ALP of the international transaction of import of raw materials and instead applied TNMM by stating that:

- The assessee while computing the gross margin has not considered indirect cost of production and has merely reduced cost of goods sold from the value of total sales to arrive at profit.
- The assessee has not explained how comparable gross margin in case of uncontrolled transaction has been computed.

3.20. The Id. DRP neither commented on acceptability of ICIS prices as a valid CUP nor rejected the same. The Id. DRP only rejected the aggregation methodology adopted by the assessee while calculating the ALP using the ICIS prices. The Id. DRP stated that set off approach of the assessee could not be accepted as no documents were produced to show that transactions were entered together and prices were negotiated on a combined basis.

Further, the Id. DRP held that even if CUP is considered for some of the transactions, the adjustment would still persist to the extent of Rs.1,29,19,187 (i.e. value of imports where the purchase price is higher than market price) and hence, this further supports the adjustment made by the TPO under TNMM.

3.21. The Id. DRP upheld the action of the Id. TPO/AO in rejecting assessee's comparable companies and applying TNMM using Id. TPO's set of comparables. However, the Id. DRP directed the Id. AO to rectify arithmetic mean of the comparable companies considered by the Id.TPO

at operating margin (on operating revenue) of 22.37% and reduced the adjustment to Rs. 35,45,28,005/-.

3.22. Thus, the Id. DRP upheld the action of the learned AO in rejecting CPM and applying TNMM as the MAM. Also, the Id. DRP rejected alternate submission of the assessee to apply CUP method based on ICIS prices, merely because there was some positive adjustment, without using aggregated approach.

4. Aggrieved, the assessee is in appeal before us.

5. The Id. AR filed additional evidences before us in respect of following aspects / transactions:-

#### **A. JUSTIFICATION OF LOSSES ON NET LEVEL**

The Id. AR argued that the primary reason for rejection of CPM by the Id. TPO was that assessee had incurred loss during the year. He argued that the loss had been incurred due to sales made to a third party i.e. Asian Paints Ltd. wherein the prices were very poor. The selling price offered by Asian Paints Ltd. was very poor and loss had not been incurred on account of import of raw materials from its AEs. In support of this proposition, the Id. AR filed a letter dated 13/04/2018, wherein additional evidences were filed in this regard which are enclosed in 1044 of the paper book. The Id. AR vide letter dated 22/10/2018 had also filed additional grounds of appeal to substantiate the commercial rationale in respect of operating loss incurred in its manufacturing segment. He vehemently argued that the gross margins of the assessee cannot be

ignored which are derived based on commercial decisions taken by the assessee by accepting to the selling price quoted by Asian Paints Ltd., which is a third party.

### **B. Usage of TIPS Data Base for application of CUP as MAM**

The Id. AR in support of application of CUP method as MAM provided data from TIPS Data Base in addition to ICIS, based on the action of the Id. TPO in the subsequent years wherein in assessee's own case, the Id. TPO alternatively applied CUP method using TIPS Data Base to benchmark the international transaction of import of raw materials, though the same was rejected by the Id. TPO as availability of data was not substantial. In view of this the assessee filed a request for admission of additional grounds of appeal to consider CUP in the form of prices published by TIPS Data Base which were available for 94.69% of the total raw materials imported from AEs. According to the Id. AR, if TIPS Data Base is used for verification of comparable prices using CUP method, it would cover 94.69% of the total import transactions from its AEs for which comparable data is also available thereon. In this regard, the Id. AR filed additional evidences substantiating the comparison of import prices with TIPS Data Base prices which are available for 94.69% of the raw material imported from AEs. The Id. AR vehemently pleaded that under CUP method using TIPS Data Base, there were days wherein the prices of the assessee are favourable and there were days wherein the prices of the assessee are adverse when compared to comparable prices. He prayed that a portfolio approach should be adopted and no cherry picking could be done thereon by considering only those days where the prices of the assessee are adverse. The additional evidences in this regard giving comparative

workings are enclosed in page 1051 of the paper book filed by the assessee. The Id. AR vehemently argued that the Id. DRP had accepted the fact of fluctuating prices both upwards as well as downwards for the same product during the year. The Id. DRP stated that difference in ALP by CUP method and by taking cherry picking of the transactions resulted in addition of Rs.1.29 Crores.

The Id. AR reiterated his contentions that if portfolio approach is followed by the revenue, then there will only be loss of Rs.7.80 Crores and accordingly, there would be no need to make any adjustment to ALP thereon. In this regard, he also vehemently argued that the Id. DRP having accepted the fact of fluctuating prices of the product and having worked out the ALP adjustment to the tune of Rs.1.29 Crores thereon, ought not to have sustained the addition of Rs.35.45 Crores.

**C. USE OF SEGMENTAL DATA OF COMPANIES IF TNMM IS APPLIED ON WITHOUT PREJUDICE BASIS**

The Id. AR also filed additional ground vide letter dated 22/10/2018 wherein he contested that even if TNMM is applied as the MAM, in respect of two comparables chosen by the Id. TPO i.e. Jubilant Life Sciences Ltd., and Vivimed Labs Ltd., he requested for adoption of operating margin of these two companies at segment level instead of entity level. The Id. AR reiterated the fact that this additional ground is raised without prejudice to his earlier contention that CUP should be accepted as MAM. The Id. AR also argued that Id. DRP had also been following the proper method for selection of MAM. Before the Id. DRP, the combined profitability of both import of raw materials and export of finished goods from / to AE's for

last three years were availed. The Id. DRP having accepted TNMM to be MAM cannot choose only for one transaction. This argument was advanced by the Id. AR in order to drive home the point that the Id. DRP ought to have accepted CUP as MAM using TIPS Data Base wherein 68% of comparable data were available for benchmarking the international transaction, in addition to adoption of portfolio approach thereon by considering both positive figures as well as negative figures of various dates in respect of import of materials from AEs and portfolio approach in respect of import of materials from AEs and export of finished goods to AEs to be taken together for the purpose of benchmarking the international transactions.

5.1. The Id. AR argued that though assessee had followed CPM as MAM in earlier years and the same was accepted by the Id. TPO in earlier years, the assessee found it desirable to choose CUP as MAM before the Id. DRP in view of the availability of comparable data for almost 68% of import transactions from AE. He also argued that even the Id. TPO had changed his stand by choosing TNMM as MAM which is in contrast to his own stand taken in earlier years wherein CPM was accepted as MAM. The Id. AR also placed on record the additional evidences before this Tribunal by providing comparable data by adopting CUP as MAM and by using TIPS Data Base which covers 94.69% of the total transactions in respect of import of raw materials from AEs as additional evidences and vehemently prayed for adoption of CUP as MAM and fairly stated that let this comparable data which is available for 94.69% of transactions be verified by the Id. TPO as to its veracity. By this process, the entire dispute would come to rest to real adjustment, if any, pursuant to such verification by the Id. TPO. The Id. AR again reiterated the fact that CPM was rejected by

the Id. TPO only on the ground that assessee during the year had incurred loss from manufacturing business. The reason for the said loss was stated to be primarily on account of lower sales realization from supply of finished goods to a third party customer i.e., Asian Paints Ltd. and the same was not on account of import of raw materials from its AEs. The Id. AR placed on record the additional evidence to support this statement in page 1046 of the paper book. The Id. AR also stated that the assessee identified business opportunity in the South India market and intended to set up the ground level plant at Sriperumbudur for emulsions to cater its customer base in paints and other applications, accordingly, the assessee and Asian Paints Ltd., entered into a Memorandum of Understanding for supply of binders. Evidences in this regard were filed as additional evidence vide pages 1048 and 1049 of the paper book. Under the terms of the MOU, the assessee sold binders to Asian Paints Ltd., during the three year period from 2007 till 2009 primarily at a price linked to Asian Paints Ltd., internal cost of manufacturing the same product irrespective of market price and the actual cost of manufacture in the hands of the assessee. The said commercial arrangement with Asian Paints Ltd., (third party customer) was a primary reason for operating loss in the hands of the assessee. The assessee also submitted the segmental information with respect to its manufacturing business vide page No.1050 of paper book as under:-

- a. Sale of products - (Primal RH – 4A, Bulk and Piramal RH-1 /Bulk) to Asian Paints Ltd
- b. Sale of other products to Asian Paints Ltd. and sale of products to other customers

5.2. The Id. AR also stated that assessee had incurred operating losses of 29.72% on its operating revenue with regard to sale made to Asian Paints Ltd., on account of specific business of commercial arrangement made with M/s. Asian Paints Ltd., whereas the assessee had made reasonable profits of other manufacturing business. Further the arrangement with Asian Paints Ltd. continued till F.Y.2014-15 post which, the assessee decided to change the product portfolio owing to continuous loss. The Id. AR stated that post such change in the product portfolio of the assessee, the assessee started making profits.

5.3. The Id. AR argued that CUP being the more direct method, the same should be preferred over other methods. He also placed reliance on the decision of Co-ordinate Bench of this Tribunal in the case of Serdia Pharmaceuticals India Pvt. Ltd. vs. ACIT reported in 44 SOT 391, Mumbai wherein it was held that Traditional Transaction Method such as CUP, CPM and RPM should be used, if data is available, over Traditional Profit Methods such as PSM and TNMM. The Id. AR also placed reliance on the decision of this Tribunal in the case of Sonata Software Ltd. vs. ACIT in ITA No.3514/Mum/2010 wherein it was held that TNMM and Profit Supply Method (PSM) are treated as methods of last resort which are pressed into service only when the methods i.e. CUP, Resale Price Method (RPM) and Cost Plus Method (CPM) cannot be reasonably applied. All these decisions were relied upon by the Id. AR to drive home the point that CUP should be accepted as the MAM in the instant case. The Id. AR also placed reliance on the decision of Delhi Tribunal in the case of Tilda Riceland Pvt. Ltd. vs. ACIT reported in 161 TTJ 213 wherein acceptability of prices from TIPS Data Base was engaged and it was also held that in any event what TIPS software does is to collect the data, compile the same in easy to

refer format and make it available to the end user of such data online ([www.TIPSaxim.com](http://www.TIPSaxim.com)) or on electrical media, but this data nonetheless, is public data maintained by the Customs department at various ports. It was also held by the Delhi Tribunal that the Id. TPO was in error in rejecting the information, inputs received from the TIPS software and the data base made available by the said entity.

5.4. The Id. AR with regard to his statement of adopting portfolio approach in CUP method by using TIPS Data Base, placed reliance on the decision of this Tribunal in the case of Boskalis International Dredging C.V vs. DDIT reported in 67 SOT 118. The Id. AR also submitted that this decision of Mumbai Tribunal in the case of Boskalis International Dredging C.V, supra had been upheld by the Hon'ble Jurisdictional High Court which is reported in TS-1310-HC-2018 (MUM). The Id. AR also submitted that in the recently released OECD final deliverables on the Base Erosion and Profit Shifting (BEPS), Action Plan 8 to 10 on Aligning Transfer Pricing TP outcomes as with Valuation Creation specifically contains the chapter of commodity transactions, wherein the OECD as profit guidance with price obtained from a recognized and transparent price reporting or statistical agencies or from Governmental price setting agencies can be considered to be valid for CUP method.

5.5. The Id. AR also made several arguments to prove that TNMM cannot be considered as MAM in the facts of the instant case and he also vehemently objected to the various comparables chosen by the Id. TPO. due to functional dissimilarities, among others in that regard. The said arguments are not brought out herein in this order in view of the elaborate arguments made by the Id. AR for adoption of CUP to be MAM.

5.6. Per contra, the Id. DR vehemently objected to admission of various additional evidences filed by the assessee detailed hereinabove on the ground that assessee is in the habit of filing additional evidences before the Id. DRP as well as before this Tribunal. The Id. DR vehemently argued that the reasons for incurring losses by the assessee using CPM as MAM during the year was stated to be the commercial decision taken by the assessee pursuant to MOU entered into with Asian Paints Ltd. and that this was stated for the first time before this Tribunal only by the assessee. This was never pointed out before the lower authorities. In other words, the Id. DR argued that assessee had never adduced proper reasoning before the lower authorities for incurrance of losses during the year in its manufacturing business that it was attributable to lower sales realization from Asian Paints Ltd.

5.7. With regard to adoption of CUP as MAM, the Id. DR objected that assessee had to be consistent with regard to one particular method to be adopted by him. He argued that the assessee cannot be given a complete leeway to choose different methods at different point in time for different assessment years before different forums. He stated that up to A.Y.2014-15, assessee had been applying only CPM as MAM.

5.8. The Id. DR reiterated the findings of the Id. DRP that the market price of raw materials was fluctuating on a day to day basis and hence, the set off as proposed by the assessee for using portfolio approach cannot be considered and the price prevailing on the day of transaction alone is to be considered. He argued that no evidences were produced by

the assessee to show that the prices were initiated on combined basis for both import as well as export.

5.9. With regard to adoption of CUP as MAM using TIPS Data Base, the Id. DR argued that the data base in TIPS software is only Customs Department data maintained for determining the levy of duty and the same cannot be used for benchmarking international transactions carried out by the assessee. He further argued that even if the TIPS Data Base is to be accepted, the data on the relevant date of transaction is to be compared. He vehemently opposed the acceptance of bundled approach carried out by the assessee.

5.10. With regard to acceptability of TIPS software by the Id. TPO in A.Y.2014-15, the Id. DR argued that the same was just used by the Id. TPO for his own purposes and has been taken by the Id. TPO for A.Y.2014-15 cannot be applied for A.Y.2010-11 i.e. year under appeal. The Id. DR vehemently opposed for admission of additional evidences filed by the assessee for usage of TIPS Data Base which covers 94.69% of the total import transactions from AEs, and opposed for remanding the same for verification to the file of the Id. TPO on the grounds that assessee cannot be given a second chance to improve its case. The Id. TPO finally submitted that even in TIPS Data Base, the data on the relevant date of transaction is to be considered or at least to the nearby dates. Hence, the claim of the assessee is that 94.69% of the total import transactions gets covered using TIPS Data Base is not correct and only 70% of the total value is comparable from the said TIPS Data Base. Hence, he submitted that the argument of the Id. AR deserves to be rejected on this ground itself.

6. We have heard rival submissions and perused the materials available on record including the judicial pronouncements relied upon by the parties before us at the time of hearing. It is not in dispute that assessee had been consistently following CPM as MAM in the earlier years. It is not in dispute that assessee had indeed adopted CPM as MAM in its TP study report and even before the Id. TPO. The said method has been rejected by the Id. TPO on the ground that assessee has incurred loss from its manufacturing business during the year under consideration. From the elaborate arguments narrated hereinabove of the Id. AR, we are convinced that the assessee had incurred losses during the year not on account of import transactions from its AEs, but on account of commercial reasons by having lower sales price realization from a third party customer i.e., Asian Paints Ltd., pursuant to MOU entered into by the assessee with Asian Paints Ltd., The reasoning given by the Id. AR in this regard for the incurrance of loss during the year are quite convincing and hence, we dismiss the rejection of CPM as MAM by the Id. TPO in the instant case. However, we find that assessee had given up the claim of CPM before the Id. DRP and had prayed for adoption of CUP in view of the fact that CUP being a direct method and the comparable data was available for almost 68% of the total value of import transactions using ICIS software. We find that this plea of the assessee was rejected by the Id. DRP for the reasons narrated hereinabove and the Id. DRP upheld the action of the Id. TPO in applying the TNMM as MAM. We find that the Id. DRP had categorically accepted the fact of fluctuating prices both upward and downward pricing for the same product at or near to the relevant date of transactions using CUP method. We find that ultimately the purpose of TP analysis is to benchmark the international transactions

carried out by the assessee with AEs with comparable cases using any one of the prescribed methods. When the CUP method using ICIS software covers 68% of the total transactions that too being a direct method and a traditional transaction method, the Id. DRP ought to have accepted the same. Before us, we find that assessee by way of additional evidences had produced comparable data using TIPS Data Base which covers even more higher percentage of total value of import transactions from the AEs. We hold that CUP is a direct method. We find that assessee has raised additional grounds of appeal for adoption of CUP to be MAM which we are inclined to accept in the facts of the instant case. We find that assessee had also filed additional evidences before us by producing data from TIPS Data Base maintained by the Customs Department, for the purpose of comparability of the prices of import transactions carried out by the assessee vis-à-vis comparable prices on the relevant date or nearer to the date of transactions. This according to the Id. AR covers 94.69% of the total value of import transaction from AEs, which according to the Id. DR covers only 70% of the total transactions. We hold that in either case, substantial amount of transactions gets covered using TIPS Data Base under CUP method. Hence, we admit the entire additional evidences filed by the assessee before us in this regard and deem it fit and appropriate to restore the entire issue to the file of the Ld. AO with the following directions:-

(a) CUP should be adopted as MAM being the direct method and being a traditional transaction method which should be preferred over traditional profit method such as RPM and TNMM.

(b) TIPS Data Base maintained by the Customs Department which has also been accepted by the Delhi Tribunal in the case of Tilda Riceland Pvt.

Ltd. vs. ACIT reported in 161 TTJ 213 supra, should be accepted as a valid database.

(c) While comparing the data at or near to the relevant date of transactions with the comparable prices using TIPS Data Base, the Id. TPO is directed to adopt portfolio approach to take both the prices that are favourable to assessee as well as that are adverse to assessee in view of a categorical finding of fluctuating prices for the same product already given by the Id. DR which is not disputed by the Id. DR before us. We hold that the revenue cannot do cherry picking of those transactions which are favouring them and ignore those transactions that are detrimental to them while benchmarking the transactions of the assessee with comparable cases. This has already been upheld by the decision of this Tribunal in the case of Boskalis International Dredging C.V vs. DDIT reported in 67 SOT 118 , which decision has been subsequently approved by the Hon'ble Jurisdictional High Court reported in TS-1310-HC-2018 (MUM).

6.1. Based on the aforesaid directions, the Id. TPO is directed to work out the arm's length price and make adjustment thereon, if necessary in respect of import of raw materials made by the assessee from its AEs. Accordingly, the Revised ground Nos.1-7 raised by the assessee in respect of transfer pricing adjustment together with additional grounds thereon are allowed for statistical purposes.

**CORPORATE TAX ISSUES:-**

7. The Ground No.8 raised by the assessee is with regard to action of the Id. CIT(A) confirming the addition of Rs.1,24,008/- in respect of sundry creditors u/s.41(1) of the Act. During the course of assessment proceedings, the assessee was directed to produce the details of 11 sundry creditors aggregating to Rs.1,96,694/- which were duly produced by the assessee. The assessee furnished the movement in the aforesaid sundry creditors in respect of five parties. The Id. AO observed that in respect of remaining sundry creditors there were no movement at all in closing balance and accordingly concluded that those sundry creditors are no longer payable by the assessee and those liabilities had ceased to exist. Accordingly, the Id. AO brought the same to tax by applying provisions of Section 41(1) of the Act in the sum of Rs.1,24,008/-.

7.1. The assessee pleaded before the Id. DRP that those sundry creditors were continued to be shown as liabilities in its balance sheet and those liabilities has not ceased to exist so as to warrant invocation of provisions of Section 41(1) of the Act. It was also submitted that the concerned creditors had not waived their right to receive money from the assessee and the assessee had not written back those liabilities to its income. Accordingly, it was pleaded that there is neither unilateral nor bilateral cessation of liability. The Id. DRP however, observed that these liabilities are outstanding since 2009 and continued as outstanding till 2014, but still upheld the action of the Id. AO.

7.2.. Aggrieved, the assessee is in appeal before us.

7.3. We have heard the rival submissions. It is not in dispute that the assessee had not written back those liabilities as no longer payable by

crediting to its profit and loss account. The assessee continues to show the said sundry creditor balance as its liability, meaning thereby liability to pay all these sundry creditors had been duly acknowledged by the assessee as on the balance sheet date and even in subsequent years. Hence, the same does not fall under the ambit of cessation of liability. It is for the assessee to decide whether a particular liability had ceased to exist from its books or not. We find lot of force in the reliance placed by the Id. AR on the decision of Hon'ble Apex Court in the case of CIT vs. Sugauli Sugar Works Pvt. Ltd., reported in 236 ITR 518, decision of Hon'ble Delhi High Court in the case of CIT vs. Shri Vardhman Overseas Ltd., in 343 ITR 408 (Del) which supports the argument of the assessee. In view of the aforesaid observations and respectfully following the judicial precedents, we direct the Id. AO to delete the addition made u/s.41(1) of the Act in the sum of Rs.1,24,008/-. Accordingly, the revised ground No.8 is allowed.

8. The revised ground Nos.9 & 10 raised by the assessee are with regard to the action of the Id. DRP upholding the disallowance of foreign exchange loss amounting to Rs.26,13,86,459/-.

8.1. The brief facts of this issue are that the assessee is engaged in the business of manufacturing and trading of chemicals, imports and exports of raw materials, finished goods, traded products etc., The assessee has taken foreign currency loan for the purpose of business which was repaid during the year under consideration. In order to mitigate the risk of foreign exchange fluctuation, the assessee entered into forward exchange contracts with the bank. During the year under consideration, the assessee has incurred a foreign exchange fluctuation loss of

Rs.26,13,86,459/- on cancellation of forward contracts, which were claimed as deduction in the return of income filed by the assessee as the same were related to the business of the assessee. The assessee during the course of assessment proceedings gave a break-up of net foreign exchange loss adopted in the profit and loss account in the sum of Rs.4,52,69,267/- as under:-

a) Net exchange loss on cancellation of forward contracts -	Rs.26,13,86,459/-
b) Exchange loss realized (other than Cancellation of forward contracts)	Rs.12,66,14,800/-
c) Exchange gain and realized (other Than cancellation of forward contracts)	<u>(Rs.34,27,21,993/-)</u>
Net Foreign exchange loss adopted to P & L Account (a+b+c)	Rs.4,52,79,266/-
	=====

8.2. Out of the above, the Id. AO asked the assessee to furnish the detailed note and description of exchange fluctuation loss of Rs. 26,13,86,459/- incurred due to foreign exchange fluctuation of cancellation of forward contracts alone. In response to the same, the assessee submitted that the losses incurred on cancellation of forward contracts were related to import / export transaction regarding to trading of goods. The assessee further submitted that it is not in the business of hedging forward contracts. The Id. AO further observed that the assessee failed to demonstrate that the forward contracts were entered into in relation to its business. The Id. AO further observed that the foreclosure or cancellation of forward contracts falls within the ambit of speculation

activity carried out by the assessee and accordingly proceeded to disallow the sum of Rs.26,13,86,459/- in the assessment. In other words, the Id. AO treated the said loss as speculation loss and not normal business loss.

8.3. Before the Id. DRP, the assessee furnished certain additional evidences in the form of statement giving listing of forward contracts which resulted in loss of Rs. 26,13,86,459/- together with certain sample copies of forward contracts entered into with the bank to prove that the same were related to the trading activity of the business of the assessee. The Id. DRP sought for a remand report in this regard from the Id. AO. During the remand proceedings, the Id. AO after verification of additional evidences that were filed by the assessee held that loss on cancellation of forward contract is not allowable by observing that the documentary evidences does not prove that the same were related to import / export transactions carried out by the assessee. The Id. DRP however, after considering the statements of the assessee and the remand report of the Id. AO together with the additional evidences filed stated that loss of cancellation of forward contracts in respect of traded goods should be allowed as deduction and accordingly, directed the Id. AO to verify other forward contracts also. Pursuant to the directions of the Id. DRP, the assessee submitted a letter dated 24/12/2014 submitting listing of forward contracts and some more sample copy of forward contracts including three sample copies already submitted in the form of additional evidences with the Id. AO and explained prices and charges of entering into forward contracts. The assessee duly submitted that these forward contracts were either entered for import / export transaction or it had been "re-booked" for extension for further period. However, in the final assessment order, the Id. AO without appreciating the explanation of the

assessee and not following the directions of the Id. DRP proceeded to disallow the entire loss on cancellation of forward contracts as not relatable to traded goods of the assessee in the sum of Rs. 26,13,86,459/-.

8.4. We have heard rival submissions. We find that the Id. AR had filed additional evidences in the form of certificate from Citi Bank stating that the foreign exchange fluctuation loss on cancellation of forward contract had arose only in respect of trading transactions. These documents are enclosed in pages 1013 and 1014 of the paper book. We also find that the Id. AR had placed a certificate from Standard Chartered Bank confirming the same which is enclosed in page 1055 of the paper book. The Id. AR also placed on record the RBI guidelines permitting opening of forward contract which are enclosed in page 1020 of the paper book. The Id. AR fairly stated that since these documents were admittedly not submitted before the lower authorities, he stated that let it be examined by the Id. AO, and in case if the forward contracts were entered by the assessee for these trading transactions and, if on examination that is found to be correct, then the assessee may be granted deduction pursuant to its verification by the Id. AO. The Id. AR also gave the entire details of various forward contracts entered into by the assessee with Citi Bank and Standard Chartered Bank which are enclosed in pages 760-780 of the paper book. The Id. DR vehemently opposed that the additional evidences submitted by the assessee before the Tribunal should not be admitted as sufficient opportunities were provided to the assessee by the lower authorities. We are not inclined to accept this argument of the Id. DR as the basic details of forward contracts were indeed given by the assessee before the lower authorities and the same were not properly appreciated

with reference to the relevant documents by the lower authorities. The present documents filed were only as a matter of abundant caution and to further strengthen the evidences as detailed supra. Hence, we are convinced that these additional evidences deserve to be admitted and accordingly, deem it fit and appropriate to remand this issue to the file of the Id. AO to decide the impugned issue in dispute before us in the light of additional evidences filed by the assessee together with list of forward contracts on cancellation of which foreign exchange fluctuation loss had been incurred by the assessee need to be verified by the Id. AO and, if it is found by the Id. AO, that the forward contract was indeed entered for trading purposes, then the exchange fluctuation loss should be allowed as deduction for the assessee. With these directions, the revised ground Nos. 9 & 10 and additional Ground (revised Ground No.23) are allowed for statistical purposes.

9. The revised ground Nos. 11 & 12 raised by the assessee is in respect of addition of sundry creditor balances of Rs.21,43,13,273/- made by the Id. AO as unexplained credit and upheld by the Id. DRP.

9.1. During the course of assessment proceedings, the assessee was asked to establish identity / creditworthiness of the following list of creditors by the Id. AO:-

Party name	Amount* (in Rs)
L2	31,557,521
Material GR/IR clearing	71,027,584
Non product goods receipt/ invoice receipt	26,829,323
Non material/ goods receipt/ invoice receipt	14,434,052
Goods receipt/ invoice receipt/ clear/F	45,645,484

Other provision	89,2241
A/P suppliers manual posting	23,927,068
Total	21,43,13,273

(\*closing balance as on 31 March 2010}

9.2. The Id. AO observed that assessee was unable to provide the requisite details and accordingly, proceeded to make the addition u/s.68 of the Act as unexplained creditors. Before the Id. DRP, assessee filed additional evidences like name of the party, address of the party, amount owed comprising the aforesaid creditors aggregating to Rs.21,43,13,273/- The assessee further submitted that most of the parties involved therein were duly paid / settled in the subsequent years. The Id. CIT(A) called for a remand report from the Id. AO. In the remand proceedings, the Id. AO after verification of additional evidences observed that the details submitted by the assessee are found to be untenable as assessee had simply filed list of alleged creditors that the assessee could not establish the identity and creditworthiness of the parties involved and failed to substantiate the genuineness of the transactions. The Id. DRP on considering the party wise details submitted by the assessee before it and the remand report of the Id. AO again directed the Id. AO to verify whether the creditors have been settled subsequently. Further the Id. DRP also directed that where amounts are still outstanding at the time of issue of direction, the addition may be retained unless the assessee gives full address of the party and establish the identity thereon. Pursuant to the directions of the Id. DRP, the assessee vide letter dated 24/12/2014 submitted before the Id. AO the following details to establish the identity and creditworthiness of the sundry creditors.

- a) The statement giving list of sundry creditors.
- (i) Having balance more than Rs.5 lakhs outstanding
  - (ii) Others i.e. party name, address and amount due alongwith sample copy of recent invoices issued by the said sundry creditors to establish identity of the creditors. These documents are enclosed in pages 787 to 953 of the paper book filed before us.
- b) The Id. AO requested assessee to submit the written balance confirmation of more than 300 parties and to bring them in person to substantiate the identity of the parties involved. In response to the same, the assessee could not produce the confirmation from the parties or bring them in person after so many years. However, assessee submitted the full addresses and respective PAN of most of the parties to substantiate their identity. These details are enclosed in pages 960 to 968 of the paper book filed before us.

9.3. In spite of having all these documents on record, the Id. AO in the final assessment order made an addition of Rs.21,43,13,273/- in respect of sundry creditors for the reasons that the identity and creditworthiness of the parties were not proved by the assessee.

9.4. Aggrieved, assessee is in appeal before us.

9.5. We have heard the rival submissions. We find that assessee has submitted the following supplementary evidences before us vide letter dated 19/10/2018:-

a) The details submitted before the lower authorities are now categorized into foreign vendors and other vendors. These details are enclosed in page 1029 to 1038 of the additional evidences in respect of the above details. The assessee submitted that out of the total amount of Rs.21,43,13,273,

(i) An amount of Rs.1,81,88,112/- pertains to foreign vendors for which assessee has provided the addresses of all the parties.

(ii) Further in the case of foreign vendors which include transactions with the assessee's AEs, the transactions with them even benchmarked and verified / accepted during the transfer pricing assessment proceedings. Further PAN details of other party vendors were not provided wherein they were not required to obtain PAN in India.

(iii) The balance amount of Rs.19,61,25,161/- pertains to Indian vendors for which the assessee has already provided the addresses and PAN details of parties aggregating to Rs.15,78,97,121/- which covers 80% of the total amount thereon.

(iv) Assessee submitted that in order to establish identity of the parties, addresses and PAN details were provided for major parties

b) The assessee also submitted a statement showing details of movement of parties having closing balance of more than Rs.1 Crore as on 31/03/2010 i.e. opening balance as on 01/04/2009, purchases made from the parties during the year, payments made during the year to those parties, closing balance as on 31/03/2010 and the date of payment / credit in the bank statement to prove that the closing balance has been subsequently paid by the assessee. This statement is enclosed in page

1039 of the additional evidence filed before us in the paper book. With these documents on record, the Id. AR pleaded that assessee had duly proved the identity of those parties and also their creditworthiness and further pleaded that these parties are having regular business transactions with the assessee and prayed for deletion of addition made u/s.68 of the Act. We find lot of force in the alternative argument made by the Id. AR that purchases made from the aforesaid parties involved were accepted by the Id. AO as genuine. Once the purchases have been accepted as genuine, there cannot be any question of disputing the closing balance of the sundry creditors of the very same parties by treating them as unexplained credits u/s.68 of the Act. We find that the assessee had furnished various evidences which had not been properly appreciated by the lower authorities and certain evidences were also submitted before us as additional evidence for the first time as detailed supra and these additional evidences require to be factually examined by the Id. AO. Hence, we admit those additional evidences in the interest of justice and fair play and deem it fit and appropriate to remand this issue to the file of the Id. AO for denovo adjudication in the light of various evidences including the additional evidence submitted by the assessee. The assessee is also at a liberty to furnish further evidences, if any, in support of its contentions. Accordingly, the revised ground Nos.11 & 12 raised by the assessee are allowed for statistical purposes.

10. The revised ground Nos. 13 raised by the assessee is with regard to upholding the disallowance of legal and professional fees of Rs.1,00,60,581/- on an adhoc basis.

10.1. During the year under consideration, the assessee had incurred legal and professional fees of Rs.5,03,02,904/- and assessee was asked to produce the details of the same. The assessee vide letter dated 21/02/2017 submitted the details such as name of the party, address of the party, amount incurred thereon. The Id. AO however, proposed to make adhoc disallowance of 20% of the total expenditure amounting to Rs.1,00,60,581/- for want of documentary evidence of incurring legal and professional fees. The Id. AO also placed reliance on the decision of his predecessor in assessee's own case for the earlier year to support the disallowance made in the year under consideration. The assessee submitted before the Id. DRP that the aforesaid incurrence of legal and professional expenses were made wholly and exclusively for the purpose of his business; that the same are not capital / personal in nature and hence, the same are squarely allowable as deduction u/s.37 of the Act. The assessee also submitted that the statutory and Tax Auditors had not given any adverse comments in their audit reports regarding genuineness of legal and professional fees and its related business nexus thereon. The assessee further submitted that, in any case, the adhoc disallowance made by the Id. AO at 20% of total legal and professional fees cannot be sustained. However, the Id. DRP upheld the addition made by the Id. AO for want of documentary evidences.

10.2. Aggrieved, the assessee is in appeal before us.

10.3. We have heard the rival submissions. We find that the assessee had also submitted additional evidences in pages 988 to 1012 of the paper book and pages 1040 to 1042 of the paper book giving various details of legal and professional fees paid to various parties together with

their PAN and nature of services rendered by them. These evidences require factual examination of the Id. AO and hence, in the interest of natural justice and fair play, we deem it fit to remand this issue to the file of the Id. AO for denovo adjudication in the light of various additional evidences submitted by the assessee which are admitted herein and decide the issue in accordance with law. The assessee is at liberty to furnish further evidences, if any in support of its contentions. Accordingly, the ground No.13 raised by the assessee is allowed for statistical purposes.

11. The revised ground Nos. 14 & 15 raised by the assessee is with regard to upholding the disallowance of interest of Rs.47,04,000/- u/s.36(1)(iii) of the Act by the Id. DRP. The Id. AO observed that assessee had given loans and advances aggregating to Rs.65,96,28,824/-. The entire details of loans and advances given by the assessee were submitted before the Id. AO vide letter dated 26/12/2013. The Id. AO observed from the said details that certain loans and advances were given interest free by the assessee. Accordingly, he show-caused the assessee as to why the interest paid on borrowed funds should not be proportionately disallowed to the extent of interest free advances given by the assessee. The Id. AO pursuant to the directions of the Id. DRP in the final assessment order made disallowance of Rs.47,04,000/- on a proportionate basis to the extent of interest free advances amounting to Rs.3,92,62,964/- and applied 12% interest thereon and worked out the disallowance of Rs.47,04,000/- in the assessment.

11.1. Aggrieved, the assessee is in appeal before us.

11.2. We have heard rival submissions. We find that the Id. AR vehemently pleaded that the advances in the sum of Rs.3,92,62,964/- were regular business / trade advances given by the assessee for the purpose of its business and were given to the regular parties with whom the assessee has regular business transactions. The Id. AR also submitted supplementary evidence before us vide letter dated 19/10/2018 in the form of statement showing movement of advance given to these parties and that is opening balance as on 01/04/2009, advance given during the year, payments received / set off during the year, closing balance as on 31/03/2010 and the adjustment / set off of closing balance in the subsequent period by raising the invoice or by adjusting the advances. These additional evidences are enclosed in page 1043 of the paper book which deserves to be admitted as it is a factual matter. The Id. AR also argued that assessee is having sufficient interest free funds in its kitty to make these interest free advances in any case, and hence, by placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of HDFC Bank and Reliance Utilities and Power Ltd., he argued that no disallowance of interest u/s. 36(1)(iii) could be made in the facts of the instant case. We also find that these documents requires to be factually examined by the Id. AO, hence we deem it fit and appropriate in the interest of justice and fair play to remand this issue to the file of the Id. AO for adjudication in the light of additional evidences filed hereinabove and in the light of decision of Hon'ble Jurisdictional High Court HDFC Bank and Reliance Utilities and Power Ltd supra. The assessee is at a liberty to furnish further evidences, if any, in support of its contentions. Accordingly, the revised grounds 14 & 15 raised by the assessee are allowed for statistical purposes.

11.2. In the result, appeal of the assessee in ITA No.2199/Mum/2015 for A.Y.2010-11 is partly allowed for statistical purposes.

**ITA No. 6577/Mum/2018 A.Y.2014-15**

12. The ground Nos. 1 & 2 raised by the assessee for the A.Y.2014-15 are general in nature and do not require any specific adjudication.

13. The grounds 3-14 raised by the assessee are with regard to ALP adjustment made in respect of import of raw materials from AEs and export of finished goods to AEs.

13.1. During the year under consideration, the assessee had imported raw materials amounting to Rs.182,91,48,671/- for manufacturing specialty chemicals and exporting finished goods to its AEs amounting to Rs.129,43,85,574/-. The assessee has segregated both the transactions and benchmarked the same applying CPM in its TP study as was done in earlier years. The Id. TPO as was done by him in A.Y.2010-11 rejected the CPM as well as alternate benchmarking done by the assessee using CUP method, and applied TNMM, benchmarked the transactions of import of raw materials and made an adjustment of Rs.25,25,13,733/-. The Id. TPO used PLI of Operating Profit / Operating Revenue (OP/OR) under TNMM and rejected the companies adopted as comparables by the assessee in its TP study report and selected his own set of comparables. The resultant arithmetic mean of 14.96% was arrived and the same when compared to assessee's operating margin of 1.34% on income resulted in an adjustment of Rs.25,25,13,733/- to the income of the assessee. This

entire adjustment was made by the Id. TPO in the same manner as was done by him in A.Y.2010-11.

13.2. The Id. TPO based on alternative analysis conducted by him in A.Y.2013-14, added four additional comparables engaged in manufacture of emulsions during year under consideration to the study of companies selected as comparables by him and on without prejudice basis, proposed to make an alternate adjustment of Rs.17,94,66,442/- in respect of import of raw materials from AEs by applying TNMM. The Id. TPO rejected the CUP analysis submitted by the assessee using ICIS data base and on his own conducted a search on TIPS Data Base for import prices of raw materials. In the study analysis, the Id. TPO did not consider the portfolio approach and proposed an alternate adjustment of Rs.6,25,15,581/- to the income of the assessee under CUP method. However, the Id. TPO himself did not consider the CUP adjustment worked out using TIPS Data Base stating that comparable datas for only 80% of the raw materials imported by the assessee were available and hence, in the absence of complete CUP data for 100% of raw materials imported, limited CUP data cannot be used to benchmark the said transaction.

13.3. Accordingly, the Id. TPO finally sustained the adjustment of Rs.25,25,13,733/- made to ALP in respect of import of raw materials from AEs by using TNMM in the same manner in which as was done by him in the assessment year 2010-11. The Id. DRP upheld the order of the Id. TPO.

13.4. Aggrieved the assessee is in appeal before us. Before us the assessee filed an additional evidence furnishing the revised TIPS analysis

under CUP method using TIPS data base, wherein, the assessee was able to provide the comparable data to 98.25% of the total transaction of import of raw materials as against 80% computed by the Id. TPO in its order. The assessee pleaded that once the portfolio approach is considered using TIPS Data Base under CUP method, there would be no need to make any adjustment to ALP. The Id. DR vehemently opposed to the non-admission of these additional evidences as was done by him for A.Y.2010-11 and reiterated the findings of the lower authorities.

13.5. We have heard rival submissions and perused the materials available on record. At the outset, we find that this issue of adjustment to ALP in respect of import of raw materials is similar to that adjudicated by us in A.Y.2010-11 supra wherein we have remanded the issue to the file of the Id. TPO with certain directions. The said decision would apply with equal force for this assessment year also except with variance in figures. We also find that for this assessment year i.e. A.Y.2014-15, assessee is able to provide comparable data using TIPS Data Base under CUP method for 98.25% of the transactions as against 94.69% transactions provided for the A.Y.2010-11. Accordingly, the grounds raised by the assessee in respect of import of raw materials are allowed for statistical purposes subject to aforesaid directions contained in A.Y.2010-11.

13.6. With regard to international transaction in respect of export of finished goods to AE during the A.Y.2014-15, the Id. TPO made an alternate transfer pricing adjustment of Rs.21,07,34,721/- by applying TNMM using Profit Level Indicator (PLI) of OP/OC (Operating Profit/Operating Cost) of the assessee and two comparables selected by him. However, the Id. TPO sustained the adjustment of Rs.25,25,13,733/-

arising on account of benchmarking of the import of raw materials as it was higher than the adjustment arising on account of benchmarking of export of finished goods at Rs.21,07,34,721/-. This action of the Id. TPO was upheld by the Id. DRP.

13.7. Aggrieved, the assessee is in appeal before us.

13.8. We have heard rival submissions. Before us, the assessee filed additional evidence in the form of datawise comparison of export prices and market prices using TIPS Data Base under CUP method using aggregation / portfolio approach for 94.23% of the total exports made to AE's and pleaded for acceptance of the same. This was filed in addition to vehemently objecting to the adoption of TNMM as MAM. The Id. AR on without prejudice basis, vide letter dated 08/02/2019 also submitted that even if TNMM is to be adopted as MAM, the assessee segmental results pertaining to export of finished goods is required to be considered for benchmarking the international transaction of export of finished goods wherein assessee has earned operating margin of 25.14% on operating cost. Accordingly, the operating margin earned by the assessee in respect of export to AEs was higher than the arithmetic mean of the operating margin earned by comparable companies selected in TP study (i.e. 2.55% companies selected by the Id. TPO for computing disallowance i.e. 17.86%, additional companies selected by the Id. TPO from emulsions companies i.e. 10.78%)

13.9. Per contra Id. DR vehemently objected to the admission of additional evidences filed before this Tribunal and reiterated the findings of the Id. DRP. We have already held in A.Y.2010-11 that additional

evidences filed by the assessee for import of raw materials using TIPS Data Base under CUP method is to be admitted as it covers majority of the international transactions carried out by the assessee. In the instant case in respect of export of finished goods, the comparable data using TIPS Data Base under CUP method covers 94.23% as stated by the Id. AR of the total value of the transactions. However, since this data requires factual examination of comparable prices by the Id. TPO, we deem it fit and appropriate to remand this issue to the file of the Id. TPO in the same directions as was given by us for import of raw materials from AEs for A.Y.2014-15 supra.

13.10. Accordingly, the ground Nos. 3-14 raised by the assessee are allowed for statistical purposes.

14. The ground No.15 raised by the assessee is with regard to chargeability of interest u/s.234A of the Act. We find that return of income for the A.Y.2014-15 was filed on 29/11/2013 as stated by the Id. AO in the final assessment order in para 1 thereon. Since this return has been filed before the due date prescribed u/s.139(1) of the Act, there cannot be any levy of interest u/s.234A of the Act. Hence, we direct the Id. AO to cancel the chargeability of interest u/s.234A of the Act in the sum of Rs.17,16,426/-. Accordingly, ground No.15 raised by the assessee is allowed.

14.1. The ground No.16 raised by the assessee is with regard to initiation of penalty proceedings u/s.271(1)(c) of the Act which would be premature at this stage to be adjudicated.

14.2. In the result, appeals of the assessee in A.Y.2010-11 and 2014-15 are partly allowed for statistical purposes.

**SA No.261/Mum/2019 (A.Y.2014-15)**

15. Since the main appeal is disposed off herein the stay petition preferred by the assessee is dismissed as infructuous.

**16. In the result appeals of the assessee in A.Y.2010-11 and 2014-15 are partly allowed for statistical purposes and Stay petition No.261/Mum/2019 is dismissed as infructuous.**

Order pronounced in the open court on this 26/09/2019

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 26/09/2019  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**