

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.585/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Vishay Components India Private Limited, Loni-Kalbhor, Near Pune (C. Rly.), Pune – 412 201 PAN : AAACB9652L	Vs.	ACIT Circle-13, Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Madhur Agarwal
Shri T. Vijaya Bhaskar Reddy

Date of hearing 10-01-2020
Date of pronouncement 13-01-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 26-02-2015 passed by the Assessing Officer (AO) u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2010-11.

I. MANUFACTURING SEGMENT

2. The first issue is against the transfer pricing adjustment in the 'Manufacturing segment' of the assessee. Succinctly, the factual panorama of the case is that the assessee is engaged in the manufacturing of electrical capacitors and resistors. A return was filed declaring total income at Nil. Certain international transactions were reported in Form No.3CEB. The Assessing Officer (AO) made a reference to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transactions. The TPO noticed that the assessee aggregated four major international transactions in the 'Manufacturing segment', namely, Export of Finished goods; Import of raw materials and components; Import of Finished goods for resale; and Receipt of Commission and applied the Transactional Net Margin method (TNMM) for demonstrating that such international transactions were at ALP. The assessee with Profit Level Indicator (PLI) of Operating profit/Operating cost worked out its Operating profit margin before depreciation, interest and taxes at 11.44%. Three companies were chosen as comparable with their average PLI

of OP/OC at 11.31% on the basis of multiple year data. The TPO did not accept the assessee's view point, *inter alia*, on the determination of the PLI on the basis of Operating profit before depreciation, interest and taxes. He worked out the Operating profit rate of the assessee, after depreciation but before foreign exchange loss, at 0.30%. Out of the three comparables chosen by the assessee, the TPO retained two and added a new company in the list of comparables, namely, CTR Manufacturing Industries. He also did not approve the profit rate of comparables based on the multiple year data. In this way, he worked out the average PLI of the new set of comparables on single year basis at 15.19%. This is how, he proposed transfer pricing adjustment amounting to Rs.19,23,48,242/- in this segment. The assessee could not convince the Dispute Resolution Panel (DRP) on its line of reasoning, which led to the impugned transfer pricing addition.

3. We have heard both the sides and gone through the relevant material on record. It is made clear that admittedly there is no dispute on the application of the TNMM as the most appropriate method and aggregation of the four sets of

international transactions under the Manufacturing segment, which have been accepted by the TPO. In so far as the working out of the assessee's own PLI is concerned, the assessee is aggrieved by the adoption of operating profit after depreciation. The Id. AR fairly settled down to admit that difference on account of rates of depreciation on individual assets (not the quantum of depreciation or the percentage of depreciation on overall basis) should be adjusted. We agree with this contention and hold that the operating profit of the assessee and that of the comparables should be calculated after depreciation since depreciation is an integral part of the operating cost. It is further held that no adjustment can be allowed if there is difference just on account of the amount of depreciation or percentage of depreciation to a certain base. An adjustment can be allowed in the computation of profit of the comparables only if there is difference in the rates of depreciation as charged by the assessee and comparables on the same assets.

4. The other grievance of the assessee is that the foreign exchange loss taken by the TPO as non-operating should be considered as operating. In this regard, we find that the Hon'ble Delhi High Court in *Pr. CIT Vs. B.C. Management Services Pvt. Ltd. (2018) 403 ITR 45 (Delhi)* has held that foreign exchange fluctuation in relation to trading transactions, prior to Safe Harbour Rules from 2013, should be treated as an operating item. In view of the above, it is held that the amount of foreign gain/loss arising out of the revenue transactions should be considered as an item of operating revenue/cost, both for the assessee as well as the comparables.

5. Another issue raised by the assessee is against the making of transfer pricing addition in respect of the whole segment rather than restricting it only to the international transactions. This issue is no more *res integra* in view of several judgments rendered by various higher forums including the Hon'ble jurisdictional High Court holding that the transfer pricing adjustment should be restricted only to the international transactions and not the entity level transactions. The Hon'ble jurisdictional High Court in *CIT Vs. Phoenix Mecano (India)*

Pvt. Ltd. (2019) 414 ITR 704 (Bom.) has held that the transfer pricing adjustment made at entity level should be restricted to the international transactions only. Here, it is pertinent to mention that the Department's SLP against the judgment in the case of *Phoenix Mecano (India) Pvt. Ltd.* has since been dismissed by the Hon'ble Supreme Court in *CIT Vs. Phoenix Mecano (India) Pvt. Ltd. (2018) 402 ITR 32 (St.)*. Similar view has been taken by the Hon'ble Bombay High Court in *CIT Vs. Thyssen Krupp Industries Pvt. Ltd. (2016) 381 ITR 413 (Bom.)* and *CIT Vs. Tara Jewels Exports (P). Ltd. (2010) 381 ITR 404 (Bom.)*. We, therefore, direct to restrict the transfer pricing addition only in respect of transactions with Associated Enterprises.

6. Still another issue raised by the assessee in this segment is against non-granting of working capital adjustment. In this regard, it is observed from the direction given by the Dispute Resolution Panel (DRP) on page 68 para 2.19.8 that the AO was directed : `to examine the computation of working capital adjustment worked out by the assessee and adopt correct operating margin of the comparable companies after working

capital adjustment.’ There is no cross appeal by the Revenue so as to challenge the said finding of the DRP. When the matter came up before the AO/TPO, no effect was given to such direction. We, therefore, direct the AO/TPO to give effect to the direction given by the DRP in this regard and allow working capital adjustment as per its recommendation.

7. Now we espouse the challenge laid to the inclusion/exclusion of some companies in/from the list of comparables.

(i) CTR Manufacturing Industries Limited

8. The TPO included CTR Manufacturing Industries Limited, with OP/OC at 22.80%, in the list of comparables. The assessee contended before the TPO that this company was functionally non-comparable. The TPO refused to accept the contention on the ground that the assessee was treating CTR Manufacturing Industries Limited as comparable since 2006-07. The DRP did not change the fortune of the assessee on this issue, against which the assessee has come up in appeal before the Tribunal.

9. Having heard both the sides and gone through the relevant material on record, it is observed that the assessee in the Manufacturing segment is involved in the manufacture of Resistors like high voltage resistors, low voltage resistors, power resistors etc. and Capacitors like film capacitors, trimmer capacitors and power capacitors used in various electronic applications/products. The assessee's figure of net sales, as given in its Profit and Loss account, is Rs.138.06 crore with majority of sale of Capacitors at Rs.83.42 crore (60% of total sales); Resistors at Rs.44.74 crore; and the remaining amount as Outsourcing income. Sale price charged by the assessee from Capacitors is roughly Rs.3/- per unit. We have examined the Annual report of CTR Manufacturing Industries Limited, a copy of which has been placed on record. Total Sales of this company at gross level is Rs.121.01 crore. Break-up of Sales has been given at Note no. 10 with the major item in terms of revenue as Tapchangers and Remote Tapchanger Control Cubicles at Rs.71.92 crore. Per piece sale price is Rs.2,13,948. The amount of revenue from sale of Plastic Film Capacitors, being, one of the items as the assessee is dealing in, is only

Rs.9.95 crore. Thus, in terms of percentage, the revenue from sale of comparable item of CTR Manufacturing Industries, being, Capacitors is less than 9%. This shows the level of divergence of the products dealt with by the assessee on one hand and CTR Manufacturing Industries Limited on the other.

10. The TPO, for including this company in the list of comparables, has relied on the fact that the assessee itself included this company as comparable in the assessment year 2006-07 onwards. We have gone through the details placed on record by the assessee, which show that in the Financial year relevant to the assessment year 2006-07, CTR Manufacturing Industries Limited was having a separate reportable segment of Electronics and electrical capacitors in addition to Transformer ancillaries and Others. The assessee considered only the segment of Electronics and electrical capacitors for the purposes of inclusion. Similar position went on for the assessment years 2007-08 and 2008-09 as well when CTR Manufacturing Industries Limited continued to have a separate reportable segment of Electronics and Electrical capacitors. However, from the assessment year 2009-10, CTR

Manufacturing Industries, merged its hitherto reportable segment of Electronics and electrical capacitors with Transformer ancillaries segment or Others segment. Annexure 2 to Notes on accounts for the year under consideration contains Segmental reporting. There are two primary segments of business, namely, Transformer Ancillaries with revenue of Rs. 106.46 crore and Others with revenue of Rs.14.54 crore. It is because of the omission/merger of a separate reportable segment matching with the assessee that it has been rendered non-comparable because of non-identification of the segmental information relating to electrical capacitors. The TPO has adopted the entity level figures of this company for the purposes of inclusion in the list of comparables, which cannot be held as comparable. Under these circumstances, we direct the exclusion of CTR Manufacturing Industries Limited from the list of comparables in the assessee's Manufacturing segment.

(ii) K. Dhandapani & Company Ltd.

11. The next challenge by the assessee is to non-inclusion of K. Dhandapani & Co. Ltd. in the list of comparables. On the

basis of his first show cause notice dated 1.11.2013, the TPO proposed to include this company in the list of comparables. However, in the second show cause notice dated 6.11.2013, the TPO withdrew this company. The assessee insisted on its inclusion, which the TPO did not accede to by observing that it was predominantly engaged in the trading activity in as much as 85% of its business was from trading activity. The DRP noted the assessee's contention for inclusion of only the Manufacturing segment of this company as comparable and not the entity level figures. It however affirmed the order of the TPO on the non-inclusion of the company by observing that the assessee did not furnish the Annual report of this company and further the assessee did not clarify as to why the TPO's reliance on the decision of Pune Benches of the Tribunal in PTC Software in this regard was misplaced. The assessee is aggrieved by the non-inclusion of this company.

12. We have heard both the sides and gone through the relevant material on record. A copy of Annual report of this company has now been placed on record, whose perusal divulges that Total sale as reflected in its Profit and loss

account stands at Rs. 3667.48 lakh. Segmental reporting at page 31 reveals revenue from Manufacturing at Rs. 585.59 lakh and Trading at Rs. 3081.88 lakh. The assessee has insisted only on the inclusion of the Manufacturing segment of this company. We have further gone through the break-up of the Manufacturing segment of this company at page 30 of the Annual Report, which discloses that the sale of Capacitors, the product which the assessee is dealing in, is Rs. 309.65 lakh. In addition, there are other items of sale in the Manufacturing division, shown at page 28 of the Annual Report, to the tune of Rs.275.93 lakh, which comprises of Switchboards and CTs at Rs.38.31 lakh; Motor Control Centres and Control panels at Rs.205.85 lakh; Busducts and Accessories at Rs.30.34 lakh; and Scrap at Rs.1.43 lakh. In percentage terms, sale of Capacitors of this company is roughly 52% of the total sales while the sale of other products is 48% approximately. The assessee is engaged in the manufacturing of Capacitors. When we examine the details of other products manufactured by K. Dhandapani & Co. Ltd., it transpires that products other than Capacitors are entirely different in terms of features and sale

price. As against the average sale price of the assessee's Capacitors at Rs.3/- per unit, the per unit sale price by K. Dhandapani & Co. Ltd. of Switchboards and CTs is Rs.87,000/-; Motor Controlled Centres and Control Panels is Rs.1.37 lakh; and that of Busducts and Accessories is Rs.52,000/- approximately. We fail to comprehend as to how these products are of any match to the products manufactured by the assessee. Admittedly, such other items constitute a larger chunk, namely, 48% of the total sales of K. Dhandapani & Co. Ltd. What is the impact of the profit derived by K. Dhandapani & Co. Ltd. from the sale of such finished goods on the overall profit of the Manufacturing segment, is not capable of ascertainment in as much as there is no separate figure of profit from Capacitors. Since such other items manufactured by K. Dhandapani & Co. Ltd. constitute a sizeable composition in the overall manufacturing segment, which are miles apart from the products manufactured by the assessee, we hold that this company cannot be considered as comparable even on segmental level.

13. To buttress the inclusion of this company, the Id. AR contented that the assessee applied the filter of 50% of similar goods sales and hence this company should be considered as comparable. In our view, this contention cannot be accepted because primarily, the filter so stated by the Id. AR has neither any statutory recognition nor any binding force. It is just a creation of the assessee, which is neither here nor there. Secondly, the factum of the TPO not accepting this company establishes that this filter was not accepted by him. In view such glaring differences between the products manufactured by the assessee and this company under the Manufacturing segment, we, uphold the non-inclusion of K. Dhandapani & Co. Ltd. in the list of comparables.

(iii) Keltron Components Complex Limited

14. The next comparable challenged by the assessee is Keltron Components Complex Limited. There is no discussion in the TPO's order *qua* this company. The assessee argued before the DRP that three companies, namely, Keltron Components Complex Limited, Keltron Resistors Limited and Keltron Electrons Ceramics Limited should be considered as

comparable as these were functionally similar to that of the assessee as held by the Tribunal in its order for the assessment year 2006-07. The DRP directed the AO to consider these companies as comparable if they satisfy the filters adopted by him. It was further directed that 'if any company fails a single filter used by the TPO, such company should be excluded from the list of comparable companies'. The AO, in para 5.4 of his final assessment order, has reproduced the relevant paragraphs from the TPO's order giving effect to the direction of the DRP on this issue. The TPO did not consider Keltron Resistors Limited and Keltron Electrons Ceramics Ltd. as comparable for the reasons given in his order, against which the assessee has no grievance. The TPO did not consider Keltron Components Complex Limited as comparable on the basis of extra-ordinary peculiar year under consideration. The assessee is aggrieved by the non-inclusion of this company.

15. We have heard both the sides and gone through the relevant material on record. The AO/TPO has considered this company as not comparable due to extra-ordinary financial events taking place in this year on the strength of the auditor's

report for the year ending 31-03-2010, relevant part of which is reproduced as under :

“As per the sanction of the Government of Kerala, the three fellow subsidiaries namely Keltron magnetic Ltd., Keltron Resistors Ltd. and Keltron Crystals Ltd., amalgamated with Keltron Component Complex Ltd. *While preparing the financial statements for the year 2008-09 the company prepared the amalgamated balance sheet.* In the notes of accounts forming part of financial statements for the year 2008-09, it is said that it is in accordance with AS14 “Accounting for Amalgamation” Company has incorporated amalgamation entries in financial statement. However Ministry of Corporate affairs Government of India has sanctioned the scheme of amalgamation only on 5th November 2009 and the company has filed the certified copy of the order with the Registrar of Companies, Cochin only on 24th November 2009. Upto 31st December 2009, Company has maintained four sets of books of accounts and has functioned as four separate companies. On the effective date of amalgamation, i.e. 01/10/2010 three transferor companies closed the books of accounts and transferred all accounts to the transferee company. From 01/01/2010 onwards single set of books of account is maintained and all transactions are carried out by KCCL.

16. It can be seen from the above reproduction that this company has been held to be non-comparable only because of peculiar financial circumstances. The otherwise functional similarity is not denied. The whole emphasis is on the fact that three fellow subsidiaries got amalgamated with Keltron Components Complex Ltd. during the year. Such three companies up to 31-12-2009 were maintaining separate sets of books of account and it was only from 01-01-2010 that the transferor companies closed the books of account and transferred all their accounts to the transferee company.

17. An otherwise comparable company is construed as non-comparable due to amalgamation/merger/demerger etc. It is so for the reason that its financials get affected because of such extraordinary events of amalgamation/merger/demerger etc., thereby jeopardizing the profit earned in normal circumstances. If the effect of amalgamation is absorbed in the accounts of an earlier year, then the accounts of the next year of such otherwise comparable company do not pose any threat and offer a good comparable. Similarly, if the effect of amalgamation is adjusted in a later year, the earlier year of the company can be

considered as comparable provided the comparability is otherwise not dented.

18. Reverting to the facts of the instant case, we find on reading the first lines of the above reproduction that the three fellow subsidiaries got amalgamated with Keltron Components Complex Limited and: *'While preparing the financial statements for the year 2008-09 the company prepared the amalgamated balance sheet.'* Thus it is evident that the effect of amalgamation was absorbed in an earlier year. This fact is further established on going through the Annual report of the Keltron Components Complex Limited as on 31-03-2009, which categorically records the fact of amalgamation of the above referred three companies with it as having been made effective from 01-04-2007. It has also been mentioned in such Annual report of the preceding year that: *'Consequent to the amalgamation of the companies, and when the amalgamation was made effective,(i) The transferred companies were dissolved without the process of winding up; (ii) That properties, rights and power as well as liabilities and duties of the transferor companies including of proceedings, amendment*

by or against the transferor companies were transferred to the transferee company'. It has further been reported in such Annual report that "The amounts as shown in the balance sheet, profit and loss account, corresponding schedules etc., including the respective figures relating to the previous year, which are formed part of the statement of accounts of the company are redrafted after incorporating events, transactions of the above merged entities with the transferee company". It is, therefore, vivid beyond an iota of doubt that merging of accounts of the other three companies with Keltron Components Complex Limited on amalgamation, got completed in an earlier year and did not have any reflection in its accounts for the year under consideration. This fact is further fortified on perusal of the Balance sheet of the company for the year under consideration also having corresponding figures as on 31.3.2009. Shareholders' funds as on 31.3.2010 stands at Rs.34.07 crore which is almost the same figure as on 31-03-2009. The amount of Fixed assets at gross value as on 31.3.2010 stands at Rs.28.81 lakh, with the corresponding figure as on 31-03-2009 at Rs.28.69 lakh. This shows that the effect of amalgamation of

the other three companies was not recorded in the accounts for the year ending 31-03-2010. Had the figures of amalgamating companies been considered in the balance sheet of the company for the year under consideration, then there would have been a lot of difference in such figures appearing as on 31-03-2010 *vis-a-vis* 31-03-2009. It is, therefore, manifest that the financial statements of the amalgamating companies were absorbed in the Keltron Component Complex Ltd. in an earlier year and not the year under consideration. Since the only reason given by the TPO for non-inclusion of this company is the extraordinary financial circumstances taking place in this year, which on factual verification is not correct, we hold that this company should be included in the list of comparables.

(iv) Gujarat Poly AVX Electronics Limited

19. The TPO proposed to include this company in the list of comparables. The assessee objected to it. The TPO got convinced and did not consider it as comparable on the ground that it was a persistent loss making company. The assessee argued before the DRP that the Gujarat Poly AVX Electronics Ltd. should be considered as comparable. For this proposition,

it relied on the order passed by the Tribunal in its own case for an earlier year. The Id. DRP did not accept the assessee's contention and upheld the TPO/AO's view point on the non-inclusion of this company.

20. We have heard both the sides and gone through the relevant material on record. This company came up for consideration before the Tribunal in the assessee's own case for the A.Y. 2007-08 in ITA No.1712/PUN/2011. Vide its order dated 10-02-2017, a copy placed at page 85 onwards of the paper book, the Tribunal accepted the assessee's contention on the otherwise comparability but remitted the matter to the AO for examining if it was a persistent loss making company. In case it was a persistent loss making company then the same has been directed to be excluded. The facts and circumstances of the instant year are *mutatis mutandis* similar. The TPO did not treat this company as comparable only on the issue of persistent loss making company by impliedly accepting the functional comparability. The claim of the assessee is that Gujarat Poly AVX Electronics Limited is not a persistent loss making company as has been held by the TPO. Some calculation has

been placed on record in support of the contention. In the absence of its verification done by the authorities below, we set aside the impugned order and remit the matter to the file of AO/TPO for examining if this company is really a persistent loss making company. In case it is found to be incurring losses in the year under consideration and also two or more consecutive immediately preceding years, then this company should be categorized as a persistent loss making company liable for exclusion. In the otherwise scenario, this company is directed to be included. We order accordingly.

II. I.T.ENABLED SERVICES/BACK OFFICE SERVICES SEGMENT

21. The assessee provided back office services to its AEs with the transacted value of Rs.9,88,98,418/-. It applied the Transactional Net Marginal Method (TNMM) with the Profit Level Indicator (PLI) of OP/OC. The TPO did not dispute the application of the TNMM as the most appropriate method and also the adoption of the PLI. He made certain changes in the list of comparables and accordingly proposed the transfer

pricing addition, for which an addition was made by the AO.

The assessee is aggrieved by such an addition.

22. Having heard both the sides and gone through the relevant material on record, it is seen from the assessee's Transfer Pricing study report that it rendered back office services to its AEs, the details of which have been given with the amounts received in para 3.2.7, as under:

Associated Enterprise	Nature of services	Amount (INR)
Vishay Intertechnology Asia Pte Ltd.	ARP	4,487,029
	BOMcon	3,474,156
	Support services-Logistic	453,717
	IT Support services	54,080,488
	Power MOSFETS services	15,286
	IEHS services	1,151,488
Vishay Intertechnology Inc	Global IT Support	1,882,671
Vishay Date Electronics Inc-USA	Support Services-resistors	1,552,444
Vishay Israel Ltd.	Support Services – Capacitors	5,887,199
Vishay Vitramon Inc	Support Services – Capacitors	416,877
Siliconix Technology C.V. – IR	Designing services	11,481,748
Vishay S.A.	ROHS	321,275
Visay Thin Film Inc LLC	Support Services – Thin film	321,490
BC components Beyschiag GmbH	Support Services – Resistors	5,013,669
Vishay Electronic GmbH	Support Services – Resistors	8,358,881
Total		98,898,419

23. As the assessee has only challenged the comparability of certain companies, we consider it expedient to first examine the

nature of services rendered by the assessee in this segment. Page 4 of the TPO's order gives an overview of the services rendered by the assessee to various AEs in this segment, which have been stated to be: "in the nature of Information Technology Enabled Services which, inter alia, include Accounts Receivable Processing (ARP services), Global IT Support (IT Support Services), Bill of Materials Conversion (BOMcon Services), Marketing Logistics Support services (Support services), Designing Services, Restriction of Hazardous Substance (ROHS) and certain Environment Compliance Support Services". This is a generalized description of services without reference to the further details as to their comprehensive nature and also whether these are high-end or low-end services and further the extent of rendition of such services individually. On a perusal of the amount received by the assessee from its AE for rendering the above services, it comes to the fore that out of total receipt of Rs.9.88 crore under this international transaction, the assessee received a sum of Rs.5.40 crore from Vishay Intertechnology Asia Pte Ltd. only for rendering I.T. Support Services. In addition, the assessee

also rendered ARP services, BOMcon Support Services and Logistic, Power MOSFETS services and IEHS services to small extents. Since the major component is from I.T. Support services, we directed the ld. AR to place on record a copy of agreement under which such services were provided to the AE so as to properly ascertain their nature for deciding the comparability or otherwise of the companies challenged. On the next date of hearing, the ld. AR expressed his inability to produce the relevant agreement in terms of which the I.T. support services were rendered. It goes without saying that unless the true nature of services rendered by the assessee is precisely found out, the comparability of other companies cannot be conclusively decided. In view of the fact that the relevant agreement is not available on record, we deem it fit to set-aside the impugned order on this score and remit the matter to the file of AO/TPO. We order accordingly and direct the AO/TPO to first ascertain the precise nature of services rendered by the assessee under the I.T. support services and then examine the comparability or otherwise of the companies challenged in this segment, namely, Informed Technologies

India Ltd., Infosys BPO Ltd., B N R Udyog Ltd. (Medical Transcription segment), Accentia Technologies Ltd., Jeevan Softech and R Systems. The ld. AR fairly agreed to it.

24. The next issue raised by the assessee in this segment is the non-granting of the working capital adjustment and risk adjustment. The ld. AR brought to our notice that the Tribunal, in its order for the assessment year 2008-09, has given certain directions towards granting such adjustments.

25. We have gone through the Tribunal order. Relevant discussion regarding the grant of working capital adjustment has been made in para nos. 55 to 57 of the order. Similarly *qua* the risk adjustment, the Tribunal vide para nos. 45 to 48 has directed the AO/TPO to allow the risk adjustment in terms of the directions given in another order mentioned therein. In the absence of any distinguishing feature having been brought to our notice by the ld. DR, respectfully following the precedent, we set-aside the impugned order and direct the AO/TPO to grant working capital adjustment and risk adjustment in the terms as discussed by the Tribunal in its order in the assessee's own case for the A.Y. 2008-09.

26. To sum up, we set-aside the impugned order and remit the matter to the file of AO/TPO for a fresh determination of the ALP of the international transactions under the Manufacturing and ITES/Back-office services segments in terms of the discussion made *supra* in this order. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh determination.

27. Ground No.23 is against the disallowance of stock written off in Domestic Tariff Area (DTA) amounting to Rs.17,55,138/-. The AO, following the view taken in earlier years, made the disallowance. The Tribunal in its aforementioned order for the Assessment year 2008-09 has remitted the matter to the AO for a fresh decision in accordance with the direction given in its order for the A.Y.2007-08. Following the consistent view taken by the Tribunal on this issue, we set-aside the impugned order and remit the matter to the file of the AO for deciding it afresh in accordance with the directions given in its order for the A.Y. 2007-08.

28. Ground No.24 is against the calculation of deduction u/s.10A and 10B of the Act. The AO recomputed the

assessee's claim of deduction u/s.10A after allowing set off of the brought forward losses.

29. Having heard both the sides and gone through the relevant material on record, we find that this issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in *CIT vs. Yokogawa India Ltd. (2017) 391 ITR 274 (SC)* in which it has been held that the deduction should be allowed *qua* the eligible undertaking standing on its own without reference to other eligible or non-eligible units or undertakings. To put it simply, the profits of the eligible units should be considered on standalone basis. Similar view has been reiterated by the Hon'ble Supreme Court in *CIT Vs. J.P. Morgan Services India Pvt. Ltd. (2017) 393 ITR 24 (SC)*. In view of the direct precedent, we allow the assessee's claim on this issue.

30. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 13th January, 2020.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 13th January, 2020
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr. CIT -5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“सी” / DR ‘C’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	10-01-2020	Sr.PS
2.	Draft placed before author	13-01-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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