

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 2851/DEL/2017
[Assessment Year: 2013-14]

Kehin India Manufacturing Pvt. Ltd [Formerly Kehin Panalfa Ltd 2315/23, Opposite Payal Cinema Behind Karim Restaurant Delhi Road, Gurgaon	Vs.	The Addl.CIT Special Range 5 New Delhi
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PAN: AAACK 5968

[Appellant]

[Respondent]

Date of Hearing : 14.01.2020
Date of Pronouncement : 15.01.2020

Assessee by : Ms. Pallavi Dinodia, Adv

Revenue by : Shri Surendra Pal, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order dated 09.03.2017 framed u/s 143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to Assessment Year 2013-14.

2. The sum and substance of the grievance of the assessee is that the TPO as well as the DRP erred in not accepting the Transactional Net Margin Method [TNMM] as Most Appropriate Method [MAM] and selected Resale Price Method [RPM] as MAM.

3. At the very outset, ld. counsel for the assessee stated that identical issues were considered by the Tribunal in assessee's own case in Assessment Years 2010-11, 2011-12 and 2012-13. The ld counsel furnished copies of the orders of the Tribunal for Assessment Years 2010-11 and 2012-13. It is the say of the ld. counsel for the assessee that the Tribunal has decided the impugned issues in favour of the assessee and against the Revenue.

4. Per contra, the ld. DR could not bring any distinguishing decision in favour of the Revenue but heavily relied upon the findings of the TPO.

5. We have given thoughtful consideration to the orders of the authorities below. We find force in the contentions of the ld. counsel for the assessee. The applicability of MAM has been considered by the co-ordinate bench in Assessment

Year 2010-11 in ITA No. 2051/DEL/2015 and in Assessment Year 2012-13 in ITA No. 6085/DEL/2016. The relevant findings of the co-ordinate bench read as under:

"10. Now coming to the applicability of TNMM as MAM, we find that in all the earlier years TNMM has been finally held to be most appropriate method on the facts of the assessee's case and since there is no change in material facts or FAR, then TNMM should be adopted as the most appropriate method to benchmark the international transaction of the assessee with the AE in the trading segment. Since this method has not been analysed by the TPO and the same comparable selected by the assessee has been adopted by the TPO for the purpose of RPM, therefore, we are of the opinion that the matter should be remanded back to the file of the TPO and AO, firstly, to consider TNMM as the MAM constituting the past history of the assessee; and secondly, to carry our fresh search analysis of the comparables and then benchmark the assessee's transaction in the trading segment. The TPO shall give effective opportunity to the assessee to substantiate its case and after analysing the comparables, ALP of the Trading Segment should be determined. All the other grounds raised by the assessee before us relating to transfer price adjustment shall be open before the TPO, except for the directions 12 given herein above. In the result, ground pertaining to transfer pricing adjustment is treated as partly allowed for statistical purposes.

6. Respectfully following the findings of the co-ordinate bench [supra], we set aside the matter to the file of the TPO/Assessing Officer. The TPO/Assessing Officer is directed to decide the issue afresh as per directions of the co-ordinate bench. Accordingly, ground pertaining to TP adjustment is treated as partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

The order is pronounced in the open court on 15.01.2020.

Sd /-

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th January, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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