

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)**

**AND**

**SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)**

**I.T.A. No.5347/Mum/2017  
(Assessment year : 2012-13)**

M/s S.B. & T Designs Ltd 9, Yusuf Building, Room No.15 1 <sup>st</sup> Floor, A.R. Street Pydhonie, Mumbai-400 003 PAN : AAICS6223L	vs	The Asstt. Commissioner of Income- tax, Circle 8(1)(2), Mumbai-400 020
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Dr. P. Daniel (AR)
Respondent by	Shri Chandra Vijay (DR)

Date of hearing	09-02-2021
Date of Pronouncement	24/02/2021

**ORDER**

This is an appeal by the assessee against the final assessment order dated 30-01-2017 passed under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 for the assessment year 2012-13, in pursuance to the directions of learned Dispute Resolution Panel (DRP), Mumbai.

2. Registry has pointed out a delay of 121 days in filing the appeal. The assessee has filed an application seeking condonation of delay. On perusing the said application, we find that the assessee has stated that the delay was due to

the hospitalization of the father of the Managing Director and subsequently, the marriage of his daughter. It has further been stated that the Chartered Accountant of the company was also hospitalized and ultimately died. After examining the cause of delay, as explained by the assessee, we are satisfied that the delay in filing the appeal was due to a reasonable cause; hence, we are inclined to condone the delay and admit the appeal for adjudication on merits.

3. At the outset, Dr. P. Daniel, the learned Counsel for the assessee submitted, the primary issue raised by the assessee relates to applicability of internal transactional net margin method (TNMM) as adopted by the assessee as against external TNMM selected by the Transfer Pricing Officer (TPO). In this context, he drew our attention to ground 3(v). He submitted, in case this issue is decided in favour of the assessee all other grounds raised by the assessee would become academic. Proceeding further, he submitted, the applicability of internal TNMM, as adopted by the assessee, has been accepted by the Tribunal in assessee's own case while deciding appeals for assessment years 2011-12 and 2012-13. In this context, he drew our attention to the relevant observations of the Tribunal in the orders passed.

4. The learned Departmental Representative, though, agreed that the issue of most appropriate method applicable to determine the arm's length price (ALP) has been decided in favour of the assessee in the preceding assessment years; however, he relied upon the observations of the Transfer Pricing Officer and learned DRP.

5. We have considered rival submissions and perused materials on record. As stated by the TPO, the assessee, a resident company, is engaged in the business of importing raw materials like diamond, gold, colour stones from Associated

Enterprises (AE). For benchmarking the international transactions with the AEs, the assessee had aggregated all the transactions and applied internal TNMM to determine the ALP. Since, the profit margin of the assessee was within the average margin of the selected comparables (non-AE transactions), the assessee claimed the transaction with AE to be at arm's length. However, the TPO, on verifying record found that in assessment year 2011-12 assessee's benchmarking applying internal TNMM has been rejected and external TNMM has been applied for determining the ALP and adjustment has been proposed. Therefore, consistent with the view taken by him in assessment year 2011-12, the TPO rejected assessee's transfer pricing analysis and proceeded to determine the ALP by applying external TNMM. While doing so, he proposed an adjustment of Rs.3,32,88,161/- which was added to the income of the assessee in the draft assessment order. Though, the assessee objected to the aforesaid addition before the learned DRP; however, it was unsuccessful. As we find, while deciding the issue of applicability of internal TNMM as opposed to external TNMM, the Tribunal in assessee's own case for Assessment Year 2011-12, vide ITA No.5189/Mum/2015 dated 03-05-2017, has held that internal TNMM as adopted by the assessee is the most appropriate method to benchmark the transaction with the AE. Following the aforesaid decision, the Tribunal while deciding assessee's appeal for Assessment Year 2012-13 in IT(TP)ANo.51/Mum/2017 dated 26-11-2019 has reiterated that internal TNMM is the most appropriate method to benchmark the transaction with AE. Thus, following the consistent view of the Tribunal in assessee's own case, as referred to above, we hold that the international transaction with the AE has to be benchmarked by applying internal TNMM as adopted by the assessee. Accordingly, we restore the issue back to the

Assessing Officer for examining assessee's benchmarking under internal TNMM and in case the assessee is able to justify its own benchmarking, then it has to be accepted. Of course, the Assessing Officer while deciding the issue must provide due opportunity of hearing to the assessee.

6. In view of our decision above, the other grounds raised by the assessee having become academic, as submitted by the learned Counsel for the assessee, there is no need to adjudicate them in this order.

7. In the result, appeal is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 24/02/2021.

Sd/-

sd/-

<b>(RAJESH KUMAR)</b>	<b>(SAKTIJIT DEY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated : 24/ 02/2021.

Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

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By order

I.T.A.T., Mumbai.

