

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.7675/Del./2017  
(ASSESSMENT YEAR : 2013-14)**

Carrier Midea India Private Ltd., vs. DCIT, Circle 2 (1),  
Plot No.51, 1<sup>st</sup> Floor, Pearl Tower, Gurgaon.  
Sector 32, institutional Area,  
Gurgaon.

**(PAN : AA ECC5616R)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Ved Jain, Advocate  
Shri Ashish Goel, CA  
REVENUE BY : Shri Surender Pal, CIT DR

**Date of Hearing : 19.03.2021  
Date of Order : 01.04.2021**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Present appeal has come up before the Bench for a limited purpose to decide Grounds No.2 & 3 i.e. :-

**“2. The Ld. TPO, Ld. AO and Hon’ble DRP erred on facts and in law in disregarding the Gross Profit based profit approach for benchmarking the Appellant’s international transactions relating to the manufacturing segment based on erroneous reasons and instead, applying Net Profit based approach by selecting Transactional Net Margin Method (TNMM) as the most appropriate method.**

**3. The Ld. TPO, Ld. AO and Hon'ble DRP erred on facts and in law in indentifying Blue Star Limited as comparable to the Appellant disregarding the fact that the same was inappropriate comparable owing to differences in FAR profile ('Function performed, Assets utilized and Risk assumed').**

which remained undecided in the **order dated 22.11.2018** passed by the coordinate Bench of the Tribunal and subsequently Tribunal vide **order dated 29.06.2020 passed in MA No.425/Del/2019** has ordered to decide afresh grounds no.2 & 3 qua the "Most Appropriate Method" for determination of Arm's Length Price (ALP) of taxpayer's manufacturing segment.

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Carrier Midea India Pvt. Ltd., the taxpayer is into manufacturing and trading of light commercial air-conditioning systems. During the year under consideration, the taxpayer reported to have entered into international transactions with its Associated Enterprises (AE) as under :-

<b>1</b>	<b>Purchase of raw material</b>
<b>2</b>	<b>Purchase of finished goods</b>
<b>3</b>	<b>Payment of freight and insurance charges on purchase of finished goods and raw material</b>
<b>4</b>	<b>Receipt of commission</b>
<b>5</b>	<b>Purchase of fixed assets</b>
<b>6</b>	<b>Payment of license fee</b>
<b>7</b>	<b>Availing of management charges</b>
<b>8</b>	<b>Issue of equity shares</b>

3. The taxpayer in its Transfer Pricing study in order to benchmark its international transactions qua manufacturing

segment rejected Resale Price Method (RPM) and applied “other method” by considering gross margin of comparable companies with gross margin earned by it (taxpayer). Needless to say that the international transaction entered into between the taxpayer and its AE qua intra group adjustment has otherwise been found at arm’s length by the Tribunal.

4. However, ld. TPO in order to benchmark the international transactions qua import of raw material for manufacturing operations applied Transactional Net Margin Method (TNMM) and thereby made an adjustment of Rs.16,04,47,763/-.

5. The taxpayer carried the matter before the ld. DRP by way of filing the objections who confirmed the TNMM adopted by the TPO by partly accepting the objections and confirmed the adjustment made by the TPO to the extent of Rs.15,51,55,954/- as against adjustment of Rs.16,04,47,763/-.

6. Now, the appeal before the Tribunal is for limited purpose for adjudicating the issue as to whether “other method” applied by the taxpayer to benchmark its international transactions is the MAM as against TNMM applied by the TPO/ld.DRP.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

8. At the very outset, Id. AR for the taxpayer challenging the impugned approach of Id. TPO/DRP rejecting the “other method” applied by the taxpayer to benchmark the international transactions qua its manufacturing operation and applying the TNMM contended that this is its first year of manufacturing undertaken by the taxpayer who is constantly following the other method in the succeeding years which has been accepted by the TPO and to support its arguments brought on record copy of the orders passed by the TPO as well as Id. DRP for Assessment Years 2014-15, 2015-16, 2016-17 & 2017-18, available at pages 910 to 1126 of the paper book. This fact has not been controverted by the Id. DR for the Revenue who has rather relied upon the orders passed by the TPO as well as Id. DRP.

9. No doubt, it is settled principle of law that every year of assessment is to be examined separately and independently to frame the assessment but, at the same time, it is settled principle of law that when there is no material change in the facts and circumstances of the case, the “rule of consistency” has to be followed by the Revenue authorities in framing the assessment as

has been held by **Hon'ble Supreme Court in case of Radhasoami Satsang vs. CIT 193 ITR 321.**

10. Coordinate Bench of the Tribunal in cases of **Greaves Travel India Pvt. Ltd. vs. ACIT in ITA No.6722/Del/2015 order dated 24.10.2018 & JCIT vs. M/s. Michelin India Pvt. Ltd. 2018 (1) TMI 976-ITAT Delhi** dealt with the identical issue as to applying “the rule of consistency” while applying the MAM for benchmarking the international transactions when there is no change in the business model of the taxpayer.

11. When undisputedly there is no change in the business model of the taxpayer during the year under consideration and in the succeeding assessments years i.e. 2014-15 to 2017-18, in which TPO/DRP have accepted “the other method” applied by the taxpayer to benchmark the international transactions qua its manufacturing operation, the rule of consistency has to be followed by the Revenue Authorities, otherwise it will lead to multiplicity of the litigation at different forums and will also lead to the uncertainty in the termination of litigation.

12. So, when there are no distinguishing features and no change in the business model of the taxpayer, this issue is required to be remitted back to the TPO to decide afresh as to whether “other method” applied by the taxpayer to benchmark its international

transactions qua manufacturing segment is the MAM afresh by providing an opportunity of being heard to the taxpayer. Consequently, grounds no.2 & 3 are determined in favour of the taxpayer for statistical purposes.

12. Resultantly, the appeal of the taxpayer to that extent is allowed for statistical purposes.

**Order pronounced in open court on this 1<sup>st</sup> day of April, 2021.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 1<sup>st</sup> day of April, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.DRP
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**