

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 8227/DEL/2018 [A.Y 2014-15]

M/s Munjal Showa Ltd
9-11, Maruti
Industrial Area
Sector 18, Gurgaon

Vs.

The J.C.I.T
Special Range -6
New Delhi

PAN: AAAMC 0070 D

(Applicant)

(Respondent)

Assessee By : Ms. Sweta Gupta, CA
Department By : Shri Surender Pal, CIT-DR

Date of Hearing : 27.01.2022
Date of Pronouncement : 27.01.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 16.10.2018 framed under section 143(3) r.w.s 144C the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] for Assessment Year 2014-15.

2. Though the assessee has raised as many as six grounds of appeal, but the only ground argued before us is as under:

"In law and on facts and circumstances of the case, the Assessing Officer/DRP erred in rejecting the export turnover filter of rejecting companies having export turnover of more than 10% of the total sales applied by the appellant and instead applying filter of rejecting companies having export sales of more than 15% of the total sales."

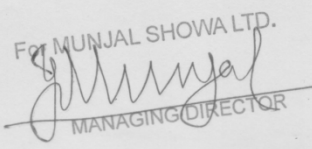
3. Briefly stated, the facts of the case are that the appellant operates as an ancillary and manufactures shock absorbers and struts for leading two wheelers and four wheelers primary products being front, forks, shock absorbers, struts, gas springs and window balancers for sale in domestic market. The appellant has three manufacturing locations, two in Haryana and one in Uttarakhand.

4. The following international transactions/specified domestic transactions have been entered into by the assessee during the year under consideration:

Nature of Transaction	Method adopted	Munjal Showa Ltd. (Tested Party)		Uncontrolled Transactions	Comparables	
		Transfer Price (INR)	Rate/Margin		Arm's Length Price/Margin	Whether tested
International Transactions						
Purchase of raw materials		449,240,048				
Sale of goods		1,221,193				
Royalty paid		411,949,297				
Payment of design & drawing fees	TNMM (using OP/Sales as PLI) ¹	23,436,300	4.86%	Comparable search from databases: (Capitaline Plus - 1.2.4.5 & Prowess Release - 4.15)	3.98%	Yes
Payment of technician fee		3,384,482				
Travelling & conveyance expenses paid		2,634,824				

Nature of Transaction	Method adopted	Munjal Showa Ltd. (Tested Party)		Uncontrolled Transactions	Comparables	
		Transfer Price (INR)	Rate/Margin		Arm's Length Price/Margin	Whether tested
International Transactions						
Payment of interest on L/C	TNMM (using OP/Sales as PLI)	1,035,726	4.86%	Comparable search from databases: (Capitaline Plus - 1.2.4.5 & Prowess Release - 4.15)	3.98%	Yes
Trade payables	NA ²	364,179,952	NA	Refer Note - I	364,179,952	Yes
Trade receivables	NA	52,979	NA	Refer Note - I	52,979	Yes
Specified Domestic Transactions (SDT)						
Director's Remuneration	TNMM (using OP/Sales as PLI)	58,667,452		Comparable search from databases: (Capitaline Plus - 1.2.4.5 & Prowess Release - 4.15)	3.98%	Yes
Director's sitting fees		940,000	4.86%			Yes
Purchase of goods		118,264,837				Yes
Transactions between the tested party and its wholly owned subsidiary, Munjal Showa Engineering Pvt. Ltd. (MSE) as referred to in section 90A(2)(A) of the Act.						
Sale of raw materials	CUP ³	2,791,562		Cost to cost		Yes
Sale of semi finished goods	CPM ⁴	13,446	5% mark up on cost	Internal Segment	10.41%	Yes

Nature of Transaction	Method adopted	Munjal Showa Ltd. (Tested Party)		Uncontrolled Transactions	Comparables	
		Transfer Price (INR)	Rate/Margin		Arm's Length Price/Margin	Whether tested
Transactions between the tested party and its wholly owned subsidiary, Munjal Showa Engineering Pvt. Ltd. (MSE) as referred to in section 90A(2)(A) of the Act.						
Purchase of raw materials	CLIP	41,939,323		Cost to cost		Yes
Purchase of semi finished goods	CPM	40,494,055	5% mark up on cost	Internal Segment	2.71%	Yes

For MUNJAL SHOWA LTD.

 MANAGING DIRECTOR



5. One of the filters adopted by the assessee in his TP approach in respect of comparables was export sales less than/equal to 10% of sales. This filter was rejected by the TPO who was of the opinion that it is an inappropriate filter as no justification has been given by the assessee for applying this filter.

6. We find that the details of the export sales of total sales in the case of the assessee furnished before the TPO is as under:

Export at FOB Value [A]	Rs.	68,42,794/-
Gross Sales [B]	Rs.	17,34,66,50,876/-
% of earning in foreign exchange on gross sales [A & B]		0.04%

7. It can be seen from the above that out of total sales made by the assessee, 99.96% of the total sales were made to the OEMs in India. In our considered opinion, in order to find comparables commensurate with geographical locations in which the assessee is functioning, application of

filter of 10% applied by the assessee is most reasonable. We further find that in the preceding Assessment Year i.e 2013-14, the DRP itself had accepted the filter of export sales less than /equal to 10% of export sales as an appropriate factor for comparability analysis.

8. Considering the past history of the assessee, we direct the TPO to exclude the comparable companies where export sales are more than 10% of the total sales and decide the issue afresh. With these directions, the appeal is allowed.

9. In the result, appeal of the assessee in ITA No. 8227/DEL/2018 is allowed.

The order is pronounced in the open court on 27.01.2022 in the presence of both the representatives.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 27th January 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	28.1.2022
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	