

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 1560/DEL/2021 (A.Y 2017-18)

(THROUGH VIDEO CONFERENCING)

Grohe India Pvt. Ltd. 10 th Floor, Banni, Address One, Golf Course Road, Sector 56, Gurgaon, Haryana, 122011 PAN No. AACCG6062B (APPELLANT)	Vs	DCIT Circle 2(1) C. R. Building, IP Estate, New Delhi (RESPONDENT)
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Appellant by	Sh. K. M. Gupta, Adv, Ms. Shruti Khimta & Sh. Saloni Shital, AR
Respondent by	Sh. Surender Pal, CIT (DR)

Date of Hearing	10.02.2022
Date of Pronouncement	15.03.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee for Assessment Year 2017-18 against the order dated 29/09/2021 u/s 143(3) r/w Section 144C of Income tax Act, 1961, passed by DCIT, New Delhi.

2. The grounds of appeal are as under:-

“2.1 erroneously rejected the Resale Price Method (‘RPM’) as the most appropriate method and not undertaking the best method analysis for selection of most appropriate method;

2.2 disregarding the facts and in the circumstances of the case and in law in framing the order u/s 92CA of the Income Tax Act, 1961 ('the Act') on findings which are erroneous in law, contrary to the facts and based on mere conjectures and surmises;

2.3 appreciating the submissions made/ contentions raised by the Assessee and further erred in making several allegations, observations, assertions and inferences in the order, which were both factually incorrect as well as legally untenable;

3. The assessee is a Private Limited Company engaged in trading in sanitary wares. Return of income was filed on 30.11.2017 declaring total income of Rs.5,15,66,780/- which was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny for verification of a few issues including verification of large value of International Transactions. Since the issue was related to determination of Transfer Pricing, a reference was made to the Transfer Pricing Officer for determination of Arm's Length Price u/s 92CA(3) of the Act. On the other issues, a notice u/s 142(1) of the Act was issued to the assessee on 02.02.2021 followed by letters issued on 23.02.2021 and 01.03.2021 seeking clarifications on its reply. In response, the assessee furnished reply on 23.02.2021, 27.02.2021 and 05.03.2021 explaining the issues raised in the notices.

4. The TPO unit-2(1)(1), New Delhi vide its order dated 14.01.2021 passed u/s 92CA(3) of the Act made adjustment of Rs.7,51,50,945/- relating to purchase of trading goods. In view of these adjustments draft order u/s 144C of the I.T. Act was issued on 30.03.2021 by making adjustment of Rs.7,51,50,945/- to the total income. Aggrieved with the same, assessee filed objections before the Hon'ble DRP. The Hon'ble DRP-1, New Delhi, vide its order dated 31.08.2021 upheld the findings of the TPO and directed to remove inaccuracies in the computation of margins of the

comparable companies.

5. Consequent to the Hon'ble DRP's direction the DCIT TPO 2(1)(1), Delhi, passed giving effect order on 21.09.2021 with comment that "the margin calculation of the comparable companies was re-examined and found to be correct". Accordingly, the arm's length price of the international transaction related to purchase of trading goods remained as Rs. 7,51,50,946/-. Accordingly, the original adjustment of Rs. 7,51,50,946/- made u/s 92CA of the Act is remained to Rs.7,51,50,946/- consequent to the directions of the Hon'ble DRP-1, New Delhi.

6. During the year under consideration, the assessee has made following international transactions:-

<i>No</i>	<i>Nature of transaction</i>	<i>Method used</i>	<i>Value of transaction</i>
1	<i>Purchase of trading goods</i>	<i>RPM</i>	<i>2,293,224,413</i>
2	<i>Cost Allocations paid</i>	<i>Other Method</i>	<i>15,380,265</i>
3	<i>Cost Allocations received</i>	<i>Other Method</i>	<i>27,382,731</i>
4	<i>Reimbursement of expenses to AEs</i>	<i>Other Method</i>	<i>6,400,658</i>
5	<i>Reimbursement of expenses from AEs</i>	<i>Other Method</i>	<i>9,314,375</i>

7. The assessee has used resale price method to bench mark, the above said transaction by taking GP/sale as PLI.

8. The Ld. TPO observed that the assessee in its own case for Assessment Year 2012-13, 2013-14 and 2016-17 has considered TNMM as most appropriate method and in the Assessment Year 2011-12 DRP has accepted as MAM. However, after the year 2011-12, the assessee itself has considered TNMM as MAM. Further, there is no change in functional profile of the assessee from previous year. Thus, the TPO opined that

principle of consistency to be followed. Therefore, he observed that TNMM as most appropriate method for the Assessment Year 2017-18. Accordingly, he made the adjustment by enhancing the income of the assessee by Rs. 7,51,50,945/-. The A.O has passed draft assessment order on 30/03/2021 u/s 143(3) of IT Act by adding the adjustment of assessed income of the assessee at Rs. 13,16,71,310/- as against the declared total income of Rs. 5,15,66,780/-. The assessee filed its objection before the DRP and the DRP on considering the objection filed by the assessee, passed the order u/s 144C of Income Tax Act, 1961 on 31/08/2021. The Ld. DRP recording the following held that TNMM is the most appropriate method for the assessee in the relevant Assessment Year.

“(ii) It is stated by the assessee that the Ld. TPO in Assessment Year 2010-11 accepted RPM as MAM for benchmarking the transaction in relation to purchase of finished goods for distribution. Further, during Assessment Year 2011-12, the Hon’ble DRP ruled in favour of the assessee and directed the Ld. TPO to consider RPM as MAM. It is stated that vis-à-vis Assessment Year 2010-11 and 2011-12, there has been no fundamental change in the facts and circumstances, functions, assets and risk (FAR) profile of the assessee, business dynamics or the nature of international transactions undertaken by the assessee during the captioned Assessment Year. Since, there has been no change in the qualitative/business profile of the Assessee from one year to the next, therefore, changing the method for benchmarking, to TNMM from EPM is incorrect. As per the AY 2011-12. In AY 2016-17, the assessee has applied TNMM and the same was accepted by the Ld. TPO. It is stated that the assessee has adopted TNMM only in those

years where the assessee has also availed management services from its Assessment Year.

iii) The DRP has considered the matter. As per the transfer pricing study (Ref; 6.Cost allocation 6.1 functional analysis) submitted by the assessee, during FY 2016- 17, GROHE India had paid INR 15,380,265 to its AE on account of cost allocation pertaining to Information technology and central marketing expenses. Thus the assessee has apart from purchase of traded goods has also availed information technology and central marketing services from its AE, In the preceding year i.e. Assessment Year 2016-17, the assessee has himself applied TNMM method for determination of ALP of the International transactions. As the FAR remains the same, TNMM is the most appropriate method which has been applied by the Ld. TPO.”

9. Subsequent to the DRP directions, the assessment order has been passed u/s 143(3) of the IT Act by assessing the total income of the assessee at Rs. 13,16,71,315/- as against the declared income of Rs. 5,15,66,780/-.

10. Aggrieved by the assessment order dated 29/09/2021, the assessee filed the appeal urging the grounds mentioned above.

11. Ground No. 2.1 is in respect of most appropriate method applicable to the assessee in bench marking international transaction for the Assessment Year 2017-18 since the said ground goes into the root of the matter, we have heard the parties on the said issue.

12. Ld. AR took us through the records and contended that since assessee has not carried out management service for the Assessment Year 2012-13, 2013-14 and 2016-17 therefore, considered TNMM as most appropriate method for the said Assessment Year. Further, he contended that since there is a change in function and the nature of the transaction carried out by the Assessee, in Assessment Year 2017-18 which is under consideration, rightly adopted RPM as MAM.

13. The Ld. AR further contended that the appellant had used TNMM in the year 2011-12 and appellant had used RPM as MAM for the purchase of trading goods in the Assessment Year 2011-12 which can be corroborated with the TP order dated 07/01/2015. Therefore, he argued that the observation of Ld. TPO at Para 7.3.4 at page No. 14 of the order for the year under consideration is factually incorrect.

14. In so far as adoption of TNMM as MAM for the year 2012-13, 2013-14 & 2016-17 by the assessee in those years are concerned the Ld. AR referred to the TP study of the previous Assessment Year 2016-17 where the RPM has been acknowledged as MAM for bench marking trading segment, in so far as aggregation of transaction pertaining to the receipt of Management Support Services, the RPM has not been acknowledged as MAM. The relevant extract of the TP study for Assessment Year 2016-17 pertaining to the receipt of management support services is as under:-

“In this instant case, though RPM is also appropriate and applicable based on the facts of the case but arm’s length result for the trading operations of Grohe India have been determined by applying TNMM. This is due to the aggregation of the transaction pertaining to the receipt of management support services.”

(emphasis supplied)

15. Further, the Ld. AR argued that, in the Assessment Year 2012-13

and 2013-14, the appellant has adopted aggregation of transaction pertaining to receipt of management support service with the purchase of trading of goods, though the appellant had stated in TP Study that the RPM as MAM for purchase trading, however due to aggregation of intentional transaction, it has been adopted TNMM as bench mark purchase of trading goods. The assessee's FAR is constant as far as purchase of trading goods is concerned since the inception and there is no departure by the Assessee for adoption/selection for RPM as MAM for the purchase for trading of goods. The observation of the DRP/TPO that the 'assessee had itself applied TNMM in the AY 2016-17' is devoid of any merit to hold that the TNMM is MAM for the year under consideration for purchase of trading goods.

16. The assessee has relied upon the Order of the Tribunal reported in *Mattel Toys (I) (P.) Ltd. Vs DCIT* ([2013] 34 taxmann.com 203 (Mumbai - Trib.)), wherein it is held as follows.

“ wherein the coordinate bench has approved the position of the law that under the law there is no bar that the assessee cannot deviate from the method applied in own TP study for the year under consideration, if the facts of case warrants the adoption of the other methods for determination of the ALP of the international transactions in the following words:

41. Now coming to the argument of the learned Departmental Representative that once the assessee itself has chosen TNMM as most appropriate method in TPR, then it cannot resort to change its method at an assessment or appellate stage. In our opinion, such a contention cannot be upheld because if it is found on the facts of the case that a particular method will not result into proper determination of the ALP,

the TPO or the appellate authorities can very well hold that why a particular method can be applied for getting proper determination of ALP or the assessee can demonstrate a particular method to justify its ALP. Thus, even if the assessee had adopted TNMM as the most appropriate method in the transfer pricing report, then also it is not precluded from raising the contentions/objections before the TPO or the appellate Courts that such a method was not an appropriate method and is not resulting into proper determination of ALP and some other method should be resorted. The ultimate aim of the transfer pricing is to examine whether the price or the margin arising from an international transactions with the related party is at ALP or not. The determination of approximate ALP is the key factor for which most appropriate method is to be followed. Therefore, if at any stage of the proceedings, it is found that by adopting one of the prescribed methods other than chosen earlier, the most appropriate ALP can be determined, the assessment authorities as well as the appellate Courts should take into consideration such a plea before them provided, it is demonstrated as to how a change in the method will produce better or more appropriate ALP on the facts of the case. Accordingly, we reject the contentions of the learned Departmental Representative and also the observations of the Assessing Officer and the learned Commissioner (Appeals) that the assessee cannot resort to adoption of RPM method instead of TNMM)

(refer para 41 on page no. 88 of Case Law Compendium ('CLC'))

17. As per the above observation/Order of the Coordinate Bench, it is clearly evident that there is no bar or embargo to change MAM method even if the assessee himself adopted different method in its

own TP study for the year in dispute. The appellant's case is rather on a much better footing on account of the reason that it had consistently adopted RPM as MAM for purchase of trading goods over the years, however in some of the years aggregation approach is adopted due to receipt of the Management services which are absent in the year under consideration and further, the DRP in AY 2011-12 had rejected the action of the TPO to apply TNMM over RPM in its order which attained finality.

18. The Ld. AR, argued that the in the AY 2012-13, 2013-14 & 2016-17 the assessee adopted aggregation approach for purchase of trading goods and receipt of the Management services, the benchmarking was rejected by the Ld. TPO in its orders by placing the reliance on the various decisions, wherein it has been held that law statutorily required determination of ALP of the international transactions by following transaction by transaction approach.

19. Per contra, Ld. DR by relying on the order of TPO, DRP and AO submitted that, the assessee has to follow the principle of consistency. The assessee cannot change the MAM for benchmarking international transaction. Further, relying on the Order of this Tribunal in the case of Carraro India Ltd. Vs. DCIT (2008-TIOL-519-ITAT-Del), M/s DHL Express (India) Pvt. Ltd. Vs. DCIT Circle 4 (1), New Delhi, and in the case of M/s Li & Fung (India) Pvt. Ltd. Vs. DCIT Circle 4(1), New Delhi in ITA No. 5156/Del/2010, he contended that there is no res-judicata in the income tax proceedings and each assessment year is a separate unit and what is decided in one year shall not ipso facto apply in subsequent /earlier years and the Rule of consistency cannot be applied forever and the facts were not considered /discussed in earlier years. Further assessee in its own case for A.Y. 2012-13, A.Y. 2013-14 and A.Y. 2016-17 has considered TNMM as most appropriate method.

Assessee submitted that Hon'ble DRP in A.Y. 2011-12 has accepted RPM as MAM. However, after A.Y. 2011-12, assessee itself considered TNMM as MAM. Even in previous A.Y. 2016-17, assessee has considered TNMM as MAM and there is no such change in functional profile of the assessee from the previous year. Thus contended that the assessee itself is not following the Rule of Consistency and changing its MAM as per its appropriateness.

20. We have heard both the parties, gave our thought full consideration. In the year under consideration ie: 2017-18, the assessee has not received management support service as in the Assessment Year 2012-13, 2013-14 & 2016-17 wherein TNMM method has been applied as MAM. In our opinion, each assessment years is independent assessment year and what is applicable in one assessment year cannot be applied to another assessment year unless there is same set of facts and circumstances. It is also to be noted that in the assessment year 2012-13 and 2013-14, the appellant had adopted the aggregation of the transaction pertaining to the receipt of management support services with the purchase of trading of goods. Though the appellant had clearly stated in TP study that RPM is MAM for purchase of trading, however due to aggregation of the international transactions, it adopted TNMM to benchmark purchase of trading of goods. Thus, it is clearly evident that the appellant's FAR is constant as for as purchase of Trading of Goods is concerned since the inception and there is no departure by the appellant for adoption/selection of RPM as MAM for the purchase for trading of goods.

21. Therefore, in our considered view, since, there is no transaction of management service in the assessment year under consideration i.e Assessment Year 2017-18 unlike in the other Assessment Years, we hold

that in the assessment year under consideration RPM is the MAM and the same has to be applied. Accordingly the said ground urged by the Assessee deserves to be allowed.

22. Since we have agreed with application of RPM method as MAM to determine the ALP of the international transaction for AY in consideration, we remit all other grounds raised before us to the file of AO/TPO for fresh consideration after giving opportunity to the Assessee.

23. The appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 15th Day of March, 2022

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

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

Dated: 15/03/2022
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

