

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:739/CHNY/2016  
निर्धारण वर्ष /Assessment Year: 2011 - 2012

M/s. Kubota Agricultural Machinery  
India Private Limited,  
No.15, Medavakkam Road,  
Sholinganallur,  
Chennai – 600 119.

Vs. The Assistant Commissioner of  
Income Tax,  
Corporate Circle – 4(2),  
Nungambakkam,  
Chennai – 600 034.

**PAN : AADCK 5472E**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. S. P. Chidambaram, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. Kumar Ajeet, CIT

सुनवाई की तारीख/Date of Hearing

: 18.05.2022

घोषणा की तारीख/Date of Pronouncement

: 25.05.2022

**आदेश /ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the Assessee is arising out of the assessment order passed by the Assistant Commissioner of Income Tax, Corporate Circle – 4(2), Chennai for the Assessment Year 2011 – 2012 u/s.143(3) r.w.s.144C(5) of the Income Tax Act, 1961 (hereinafter "the Act") dated 25.02.2016 in pursuance to the directions issued by the Dispute Resolution Panel-2, Bengaluru u/s.143(3) r.w.s.144C(1) of the Act vide directions dated

21.12.2015. The Transfer Pricing Officer [TPO]-2(1), Chennai passed an order to determine the ALP of the AE cost, u/s.92CA(3) of the Act vide order dated 23.01.2015 and draft assessment order was prepared by the Deputy Commissioner of Income Tax, Corporate Circle - 4(2), Chennai u/s.143(3) r.w.s.92C(A) of the Act vide order dated 23.03.2015.

2. The only issue in this appeal of the Assessee is against the order of the Assessing Officer [AO] / Transfer Pricing Officer [TPO] giving effect to the directions of Dispute Resolution Panel [DRP] in making the transfer pricing adjustment amounting to Rs.9,33,97,804/- to the international transaction of purchases made from the Associated Enterprises [AE] by applying the Transactional Net Margin Method [TNMM] as against the plea of the Assessee for applying Resale Price Method [RPM] as the most appropriate method because the Assessee is an independent distributor. For this issue, the Assessee has raised various grounds running into three pages, Ground Nos.2.1 to 2.18 which are argumentative and have different facets of the above issue. As the grounds raised are argumentative, hence we need not reproduce the same for the sake of brevity.

3. The brief facts of the case are that the draft assessment order was passed by the Assessing Officer as Transfer Pricing Officer determination of arm's length price U/s.92CA(1) of the Act and the

Transfer Pricing Officer suggested downward adjustment of Rs.9,33,97,804/- to the AE cost and was determined at Rs.29,19,98,664/-. The Transfer Pricing Officer adopted the TNMM method as the most appropriate method.

Aggrieved against the draft assessment order, the Assessee moved to the Dispute Resolution Panel and the DRP rejected all the objections raised before it. Aggrieved, the Assessee is now in appeal before the Tribunal.

4. We have heard the rival contentions and have gone through the facts and circumstances of the case. We noted that the Assessee Company being characterized as a Limited Risk Distributor or a Full-Fledged Distributor and Berry Ratio cannot be applied for distribution activities, if the distributor bears Inventory, Forex and Credit risks. It was the contention of the Assessee that it is a full-fledged distributor and bears all risks such as inventory risk, forex risk, credit risk, etc. The Assessee contended that the Resale Price Method [RPM] is the most appropriate method in the case of a full-fledged distributor. Thereby, the Assessee contended that the additional evidences filed before us for the first time which are as under may be considered:

Nature of risk	Appellant	AE	Nature of Evidence
Market Risk	Yes	No	<ul style="list-style-type: none"> <li>• Selection of Distributor / Dealer for selling the Kubota products in India</li> <li>• Advertisement in newspapers and magazines for distributing Kubota products.</li> <li>• Kubota India independently decides on the marketing and distribution strategy for India region</li> <li>• Relevant evidences are attached vide Appendix 1</li> </ul>
Price Risk	Yes	No	<ul style="list-style-type: none"> <li>• Sales team negotiates and determines the price with dealers based on market conditions.</li> <li>• Also, dealer discount to be provided is determined by the Appellant, e.g. cash discount, volume discount, etc.</li> <li>• Relevant evidences are attached vide Appendix 2.</li> </ul>
Inventory Risk	Yes	No	<ul style="list-style-type: none"> <li>• Extract from the financial statements to prove that the Appellant holds huge inventory during the year and bears the costs and related risks of holding such inventory.</li> <li>• Evidences for rent and warehouse charges paid by the Appellant.</li> <li>• Photographic proof of the inventory stored in the factory premises of the Appellant as on date.</li> <li>• Relevant evidences are attached vide Appendix 3.</li> </ul>
Product Liability Risk	No	Yes	<ul style="list-style-type: none"> <li>• As the products are manufactured by the AEs, the product liability risk is borne by the AE.</li> <li>• Extract from the financial statement for the cost incurred by the Appellant relating to repairs of products during warranty period.</li> <li>• Debit notes raised on the AEs for reimbursement of the warranty cost.</li> <li>• Relevant evidences are attached vide Appendix 4.</li> </ul>

Credit and Collection Risk	Yes	No	<ul style="list-style-type: none"> <li>• The Appellant independently enters into contract with dealers for distribution of Kubota products in India.</li> <li>• Extract from the financial statements for the balance of debtors in the books of accounts.</li> <li>• Extract from the financial statements of Financial Year 2016-17 for creating provision for doubtful debts.</li> <li>• Relevant evidences are attached vide Appendix 5.</li> </ul>
Foreign Exchange Risk	Yes	No	<ul style="list-style-type: none"> <li>• Extract from the financial statements to show that the gain / loss on foreign exchange fluctuation is borne by the Appellant.</li> <li>• Relevant evidences are attached vide Appendix 6.</li> </ul>

5. The learned Counsel of the Assessee stated that the Assessee is an exclusive distributor for India region, dealing in agricultural machinery, such as Tractors, Farm Machineries such as the Combine Harvesters and Rice Planters and related parts. To carry out this activity, the Assessee buys the machinery and the spare parts from the Associated Enterprises [AE] and undertakes resale of the same in the Indian market. It bears all the major risks borne by any full-fledged distributor, i.e. marketing risks, price risks, inventory risks, credit risks, foreign exchange risks, etc and employs tangible assets for the purpose of carrying out its distribution activities. The learned Counsel for the Assessee tried to explain the risks those which are in this business factors that exposes the company to the possibilities of

losses or damages. The learned Counsel of the Assessee explained that, in view of these arguments and the additional evidences filed before us, the same may be admitted and the matter may be referred back to the file of the Assessing Officer, who in turn will refer the matter to the Transfer Pricing Officer for determining as to whether for a distributor such as the Assessee, ALP be determined in terms of TNMM or RPM method. In terms of these arguments, the learned Counsel of the Assessee stated that the matter can be set aside and the Assessing Officer / Transfer Pricing Officer be directed to redo the method afresh as per the provisions of law.

6. When these facts were confronted to the learned CIT-DR, he fairly agreed that the matter can be restored back to the file of the Assessing Officer to determine the arm's length price but open directions be given to the Assessing Officer / Transfer Pricing Officer as to which method will apply to the given facts of the case. The Transfer Pricing Officer should be free after examining all the detailed facts filed by the Assessee and the most appropriate method for determining the ALP. In term of this, the learned CIT-DR agreed that the matter can be restored back to the Assessing Officer / Transfer Pricing Officer.

7. After hearing the rival contentions and going through the facts and circumstances of the case, the facts are undisputed as the

learned CIT-DR has not objected to the admissibility of the additional evidences and we admit these evidences as noted above in paragraph no.4 and we set aside the matter back to the file of the Assessing Officer / Transfer Pricing Officer who will determine the most appropriate method to be adopted for determining the ALP in the given facts and circumstances of the case as per law. Hence, the orders of the lower authorities are set aside and the matter remitted back to the Assessing Officer / Transfer Pricing Officer.

8. In the result, the appeal of the Assessee in I.T.A. No.739/Chny/2016 is allowed for statistical purposes.

Order pronounced in the court on 25<sup>th</sup> May, 2022 at Chennai.

**Sd/-**

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25<sup>th</sup> May, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to: 1. ँ पीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकर आयुक्त (ं पील)/CIT(A)  
4. आयकर आयुक्त/CIT  
5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF