

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

श्री वी.दुर्गा राव., माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.548/Chny/2016 & ITA No.3281/Chny/2019

निर्धारणवर्ष/Assessment Years: 2011-12 & 2002-03

M/s. Madura Coats Pvt. Ltd.,  
7<sup>th</sup> Floor, Jupiter 2A Prestige,  
Tech Park, Marathahalli -  
Sarjapur Outer Ring Road,  
Marathahalli,  
Bengaluru,  
Karnataka-560 103.

v. The Dy. Commissioner-  
of Income Tax,  
Company Circle-1/Circle-2,  
Madurai.

[PAN:AABCM 8279 K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Mr. Ajay Rotti, CA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. S.Palani Kumar, CIT & Mr.D.Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	03.08.2022
घोषणाकीतारीख /Date of Pronouncement	:	12.08.2022

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

These two appeals filed by the assessee are directed against separate but identical orders of Dispute Resolution Panel-2, Bangalore, dated 24.11.2015, for the AY 2011-12 and order of the Commissioner of Income Tax(Appeals)-1, Madurai, dated 30.09.2019, for the AY 2002-03. Since, facts are identical and issues are common, for the sake of

:: 2 ::

convenience, appeals filed by the assessee are being heard and disposed off by this consolidated order.

**2.** The assessee has, more or less, raised common grounds of appeal for both the assessment years and the solitary issue that needs to be decided from the grounds of appeal filed by the assessee is transfer pricing adjustment made towards international transactions of the assessee with its associated enterprises (in short "AEs"). Therefore, we deem it not appropriate to reproduce various grounds raised by the assessee for the sake of brevity.

**3.** The brief facts of the case are that M/s.Madura Coats Pvt. Ltd., is engaged in the business of manufacture and sale of threads and accessories. M/s.Madura Coats Pvt. Ltd., has three divisions. The Coats India Division of M/s.Madura Coats Pvt. Ltd., is the marketer of the sewing thread. The Division named Madhura Industrial Textiles, manufactures range of textiles. The third division, Global Thread Supply India, manages day to day operations and administration of spinning and twisting facilities. During the FY 2010-11 relevant to AY 2011-12, the assessee has entered into following international transaction with its AEs:-

<b>Sl.No.</b>	<b>Nature of Transaction</b>	<b>Amount(Rs.)</b>
1	Import of Raw Material	47,667,120
2	Import of Shade Cards	347,475
3	Export of Threads	2,407,837,982
4	Import of Machinery	21,736,129
5	Payment of Royalty	340,435,147
6	Payment of Management Service fee	44,668,113

**:: 3 ::**

7	<i>Payment of Commission on exports</i>	<i>1,560,648</i>
8	<i>Reimbursement of expenses paid</i>	<i>105,987,436</i>
9	<i>Reimbursement of expenses received</i>	<i>2,868,009</i>

The assessee has bench marked transactions with its AEs by adopting TNMM as most appropriate method. During the course of assessment proceedings, a reference was made to TPO to determine ALP of international transaction of the assessee with its AEs. The TPO has rejected TNMM method applied by the assessee and has substituted CUP method and worked out an upward adjustment of Rs.50,35,211/- only in respect of export of threads to AEs.

**4.** In pursuant to directions of the TPO, the AO has passed draft assessment order u/s.143(3) r.w.s.144C of the Act, and made upward adjustment of Rs.50,35,211 to total income. The assessee has filed objection before the DRP-2, Bangalore, and challenged upward adjustment suggested by the TPO on various grounds including rejection of TNMM method and adoption of CUP method as most appropriate method. The sum and substance of arguments of the assessee before the DRP was that when the TPO has accepted 99.95% of the transaction pertaining to export of threads, erred in applying CUP method for 0.05% of transactions with its AEs. The DRP rejected the arguments of the assessee and sustained addition made towards TP adjustment by holding that an identical issue has been considered for the AY 2009-10 by the ITAT, where the assessee had undertaken to furnish external comparables in respect of transactions considered for CUP method and thus, rejected

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the arguments of the assessee and sustained additions made by the AO towards TP adjustment in respect of export of threads to AEs.

**5.** In pursuant to directions of the DRP, the AO had passed final assessment order u/s.143(3) r.w.s144C of the Act, on 19.01.2016 and determined total income at Rs.80,39,11,840/- by making TP adjustment of Rs.50,35,211/-. The assessee has challenged final assessment order passed by the AO before the Tribunal and the ITAT vide its order dated 05.04.2018 in ITA No.548/Chny/2016 set aside the issue to the file of the TPO/AO to determine ALP of transactions and CUP method in line with directions given by the Tribunal for the AY 2009-10. The assessee has challenged the order of the Tribunal dated 05.04.2018 in ITA No.548/Chny/2016 before the Hon'ble Madras High Court and the Hon'ble Madras High Court vide their order in TCA No.799 of 2018 dated 30.09.2020 set aside the order of the Tribunal and restored the appeal to the file of the Tribunal with a direction to decide the issue without remanding the matter back to the file of the TPO/AO. Thus, the present appeals are listed in pursuance to the directions of the Hon'ble Madras High Court.

**6.** The Ld.AR for the assessee submitted that the DRP is erred in applying CUP method as the most appropriate method to determine 0.05% of international transactions pertain to export of threads to AEs without appreciating the fact that the TPO has accepted 99.95% transaction with AEs under TNMM method. The Ld.AR for the assessee

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further referring to the decision of ITAT Pune Bench, in the case of Amphenol Interconnect India Pvt. Ltd. v. DCIT in ITA No.1486/PN/2019 argued that the Tribunal held that when the TPO has accepted 90% of transactions under TNMM method is erred in applying CUP method for remaining 10% transactions by cherry picking few transactions out of total transactions of the assessee with its AEs. The Ld.AR for the further assessee submitted that the Hon'ble Bombay High Court in the case of PCIT v. Amphenol Interconnect India (P.) Ltd., reported in [2018] 91 taxmann.com 441 (Bombay), has upheld the decision of ITAT Pune Bench and held that when the TPO has accepted TNMM as most appropriate method for majority of export to AE, erred in applying CUP method for balance transactions. He further submitted that in the present case, the TPO has accepted 99.95% transactions under TNMM. However, cherry picked 0.05% transactions and applied CUP method without there being any reason to justify his stand.

**7.** The Ld.DR, on the other hand, supporting order of the DRP submitted that the matter travelled to the jurisdictional High Court, where the Madras High has remanded the matter back to the file of the Tribunal with a direction to decide most appropriate method to benchmark international transactions of the assessee with its AEs, with a direction to the assessee to furnish external comparables for CUP method. However, when it comes to most appropriate method, the Tribunal has upheld

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adoption of CUP method for few transactions and said findings are not intervened by the Hon'ble Madras High Court. Therefore, the question of now going into the aspect, what is the appropriate method to bench mark transactions is outside the scope of the powers of the Tribunal and thus, the issue may be decided in line with the direction of the Hon'ble High Courts.

**8.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee entered into various international transactions with its AEs right from import of raw materials, export of finished goods, payment of royalty payment of management service fee and import of machinery etc. The assessee has aggregated all transactions and applied TNMM as most appropriate method and considered to be a tested party. The TPO has accepted TNMM as most appropriate method in respect of all transactions including export of threads to AEs to the extent of 99.95% transactions of export of threads. However, in respect of 0.05% of transactions pertains to export of threads, he has applied CUP method by cherry picking few transactions and made TPO adjustment of Rs.50,35,211/-. The TPO has never disputed TNMM method adopted by the assessee and has accepted the fact that the TNMM as most appropriate method in respect of 100% of transactions, except few transactions of export of threads. Further, in respect of export of threads to AEs, the assessee has

:: 7 ::

entered into a transaction worth Rs.240.78 crores and the TPO has accepted 99.95% transactions pertains to export of threads to AE without suggesting any adjustment towards ALP. However, cherry picked about 12-13 transactions of export of threads to AEs and then compared with export of threads to non-AEs to make adjustment of Rs.50,35,211/- without assigning any reasons, as to why, and how a small portion of transactions are not at ALP. It is a well settled principles of law by the decision of various Courts & Tribunal that most appropriate method should be selected to bench mark international transactions of the assessee with its AEs based on nature of transaction. However, it is incorrect to adopt two methods for one class of transactions and bench mark such transactions by cherry picking few transactions out of a lot of transactions undertaken by the assessee with its AEs and this principle is supported by the decision of ITAT Pune Bench in the case of Amphenol Interconnect India Pvt. Ltd. (supra), where an identical issue has been decided by the Tribunal and after considering relevant facts held that when the TPO has accepted 90% of export to the AEs are at ALP, there is no reason to apply CUP method for remaining part of the exports. The Hon'ble Bombay High Court in the case of Amphenol Interconnect India (P.) Ltd., has held that when the TPO has accepted TNMM as most appropriate method for an overwhelming majority of exports to AEs, then there is no reason why for the balance of exports of goods, TNMM method should be not be applied. In this case, the TPO has accepted 99.95% of

:: 8 ::

export of threads to AEs under TNMM method, but he had cherry picked 0.05% of transactions and applied CUP method without there being any valid reason. Therefore, we are of the considered view that the TPO is erred in adopting CUP method for few transactions when he has accepted overwhelming majority of transactions under TNMM method. The DRP without appreciating the above facts, simply sustained TP adjustment suggested by the TPO. Hence, we direct the AO/TPO to delete TP adjustment made towards few transactions by adopting CUP as most appropriate method.

**9.** In the result, the appeal filed by the assessee in ITA No.548/Chny/2016 for the AY 2011-12 is allowed.

**ITA No.3281/Chny/2019 for the AY 2002-03**

**10.** The facts and issues involved in this appeal are identical to the facts and issues which we had already been considered in ITA No.548/Chny/2016 for the AY 2011-12. The reasons given by us in the preceding paragraphs shall *mutatis mutandis* to this appeal, as well. Therefore, for similar reasons, we direct the AO/TPO to delete TP adjustment made towards few international transactions by adopting CUP as most appropriate method.

:: 9 ::

**11.** In the result, the appeal filed by the assessee in ITA No.3281/Chny/2019 for the AY 2002-03 is allowed.

Order pronounced on the day of 12<sup>th</sup> August, 2022, in Chennai.

Sd/-

Sd/-

(वी दुर्गा राव .)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12<sup>th</sup> August, 2022.

**TLN**

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकरआयुक्त/CIT

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF