

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No.429/Bang/2022
Assessment Year : 2017-18

M/s. AMC Cookware (India) Private Limited, No.1180, 12 th B Main, 1 st Cross, HAL 2 nd Stage, Indira Nagar, Bengaluru – 560 008. PAN : AACCA 4970 G	Vs.	ITO, Ward – 1(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. P. Srinivas, CA
Revenue by	:	Shri. V. S. Chakrapani, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	01.09.2022
Date of Pronouncement	:	07.09.2022

ORDER

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the final Order of Assessment dated 30.03.2022 passed by the ITO, Ward – 1(1)(1) of National Faceless Assessment Centre, Delhi, passed under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1962 (hereinafter called ‘the Act’) in relation to Assessment Year 2017-18.

2. The only dispute raised by the assessee in this appeal is as to whether the Revenue authorities were justified in determining the shortfall in Arm’s Length Price (ALP) of an international transaction at Rs.2,37,87,122/- and

making an addition of the said sum to the total income of the assessee. Grounds of appeal raised by the assessee in this regard reads as follows:

1. *The learned Transfer Pricing Officer ("TPO") and Dispute Resolution Panel ("DRP") erred in rejecting the Resale Price Method (*RPM') adopted by your appellant and instead adopted Transactional Net Margin Method ('TNMM') as the most appropriate method ('MAM') to determine the arm's length price of the international transactions with its associated enterprises (**AEs") in the Distribution segment. Consequently, the TPO has erred in considering operating net margins as the Profit Level Indicator ("PLI") instead of adopting Gross Profit Margins as PLI.*
2. *The learned TPO and DRP has grievously erred in rejecting Novel Appliances Private Limited which was selected by your appellant as comparable to its distribution segment on the contention that its exact functional profile is not ascertainable from the information in its Annual report.*
3. *The learned TPO and DRP has grievously erred in rejecting Partani Appliances Limited which was selected by your appellant as comparable to its distribution segment on the contention that it is functionally dissimilar.*
4. *The learned TPO and DRP has grievously erred in rejecting WonderChef Home Appliances Private Limited which was selected by your appellant as comparable to its distribution segment on the contention that it is functionally dissimilar and due to lack of segmental information.*
5. *The learned TPO and DRP has grievously erred in rejecting Evershine Appliances Limited which was selected by your appellant as comparable to its distribution segment on the contention that it is functionally dissimilar.*
6. *The learned TPO and DRP has erred in considering Hawkins Cookers Limited as comparable company to your Appellant's distribution segment business as this company is functionally dissimilar and has a different business model of selling products through a chain of wholesalers and retailers as against the 'direct selling model' of your appellant.*
7. *The learned TPO and DRP has erred in considering Nirlep Appliances Private Limited as comparable company to your*

Appellant's distribution segment business as this company is functionally dissimilar and has a different business model of selling products through a chain of wholesalers and retailers as against the 'direct selling model' of your appellant.

8. *The learned TPO and DRP has erred in considering Butterfly Gandhimathi Appliances Limited as comparable company to your Appellant's distribution segment business as this company is functionally dissimilar and has a different business model of selling products through a chain of wholesalers and retailers as against the 'direct selling model' of your appellant.*
9. *For these and other grounds that may be adduced at the time of hearing, the order of the learned TPO as upheld by the DRP may be set aside to the extent appealed against and this appeal be allowed.*

3. The disputed international transaction is a transaction whereby the assessee imports semi-finished or finished stainless steel cookware and accessories from AMC international and undertakes assembling and polishing of the semi-finished products for sales along with the other finished products and accessories in the domestic market. There is no dispute that the aforesaid transaction was an international transaction and the ALP in respect of the aforesaid transaction had to be determined and the income from the international transaction has to be determined having regard to the ALP as laid down in section 92 of the Act. The following were the purchases effected by the assessee from its AE:

Sr. No	Particulars	Name of AEs	Amount (in INR)
1	<i>Purchase of consumables</i>	<i>Alfa Metal Corporation SPA</i>	3,72,61,268
2	<i>Purchase of consumables</i>	<i>AMC Deutschland</i>	63,91,754
3	<i>Purchase of finished goods</i>	<i>AMC Deutschland</i>	5,54,253
4	<i>Purchase of Gift Items</i>	<i>Alfa Metal Corporation SPA</i>	2,84,247
5	<i>Purchase of Gift Items</i>	<i>AMC International, Alfa Metalcraft Corporation</i>	3,14,473
		TOTAL	4,48,05,995

4. In its TP analysis filed in support of the assessee's claim that the price paid to the AE was at arm's length, the assessee chose to Resale Price Method (RPM) as the MAM for determination of ALP. The price at which the assessee resells the cookware products in India and the cost of goods sold showed the gross profit margin of 45.77%.

Sr. No	Particulars	Amount (in INR)
1.	Total Resale Value	14,62,56,738
2.	Total Cost of Goods Sold	7,93,12,882
3.	Gross Profit (A-B)	6,69,43,856
4.	Gross margin (C/A)	45.77%

5. The assessee chose 5 comparable companies whose average profit margin was 17%. Since the assessee's profit margin was more than that of the comparable companies, the assessee claimed that the price paid to the AE was at arm's length. The computation of the gross margin of the assessee in the comparable companies as given in the TP study was as follows:

Sr. No.	Company Name	FY 2014-15	FY 2015-16	FY 2016-17	Weighted Average Mean
1.	Jaipan Industries Ltd.	19.67%	28.04%	22.01%	22.83%
2.	Novel Appliances Pvt. Ltd.	4.45%	12.59%	8.98%	8.55%
3.	Partani Appliances Ltd.	-0.32%	-0.44%	NA	-0.38%
4.	Wonderchef Home Appliances Pvt. Ltd.	18.19%	5.25%	36.79%	22.87%
5.	Ever Shine Appliances Pvt. Ltd.	23.42%	33.65%	35.26%	31.14%
Simple Average					17.00%

6. The TPO to whom the question of determination of ALP was referred to by the AO did not accept RPM as the Most Appropriate Method (MAM). He chose TNMM as the MAM and chose 3 comparable companies which were as follows:

Sl. No.	Company Name	AVERAGE OP/OC
1	Hawkins Cookers Ltd.	15.00%
2	Nirlep Appliances Pvt. Ltd.	-6.69%
3	Butterfly Gandhimathi Appliances Ltd.	-6.36%
Average		2.95%

7. The TPO worked out the OP/Sales of the assessee at -20.44% and determined the ALP of the international transaction as follows:

“15. DETERMINATION OF ARMS LENGTH PRICE:

As the PLI (OP/Sales), of the taxpayer is (-20.44%) and the average PLI OP/Sales of the uncontrolled comparables of the TPO is 5.08%, the arm's length price of the international transactions in the distribution segment is determined as under by using the **TNMM** as the most appropriate method.

Sl. No.	Particulars	Amount
1	Arm's Length Margin on revenue	5.08%
2	Operating revenue of Distribution segment	14,62,56,738
3	Arm's Length Price of operating costs in Rs.(100-5.08% of OR)]	13,88,26,896
4	Operating costs of the tax payer (Distribution segment) [B]	30,05,44,219
5	Variation between ALP and Operating costs [A-B]	16,17,17,323
6	% of AE transactions in operating costs	14.71%
7	ALP Adjustment (restricted to quantum of international transactions) i.e., 16,17,17,323 * 14.71	2,37,87,122

8. The assessee challenged the order of the TPO on the ground that the TPO was not justified in rejecting RPM as the MAM of determining ALP and also challenged the manner of determination of ALP by the TPO under

the TNMM. The DRP, however, did not accept any of the contentions of the assessee. Hence, the assessee is in appeal before the Tribunal.

9. The learned Counsel for the assessee brought to our notice that the issue as to whether RPM should be adopted as the MAM or TNMM as the MAM had come up for consideration in assessee's own case in Assessment Years 2012-13 and 2013-14 and the Tribunal in two separate orders in IT(TP)A No.182/Bang/2017, order dated 29.11.2021 for Assessment Year 2012-13 and IT(TP)A No.2201/Bang/2017, order dated 10.01.2022 for Assessment Year 2013-14 was please to hold that the MAM would be RPM and accordingly the Tribunal set aside the order of the AO and directed the AO/TPO to determine the ALP using RPM as the MAM. The following were the relevant observations of the Tribunal in Assessment Year 2012-13:

“12. The argument of the Ld.AR is that the assessee imports finished and semi-finished products of high quality stainless steel cookware and accessories from AMC International and re-sells the imported goods in the Indian market to end consumers under the direct selling model, after minimal value additions like assembling, polishing and fixing of handles etc to the semi-finished goods and re-selling the finished goods. In case of goods, there is no value additions for that RSM method is most appropriate method and on the other hand in case of semi-finished goods, TNMM method could be applied. In our opinion, these facts has to be verified for which fresh TP study should be carried out at the end of the TPO. Accordingly, this issue is remitted to the file of TPO to conduct fresh TP study and if there is no value addition in respect of finished goods, RSM method should be applied. On the other hand, in case of semi-finished goods, TNMM should be applied if the assessee furnished the finance of these segments so as to apply. With these observation, the issue is remitted to the AO/TPO for fresh consideration.”

10. We are of the view that in the light of the decision of the Tribunal in assessee's own case on identical facts in Assessment Years 2012-13 and 2013-14, the matter should be remanded to the TPO/AO as directed by the

Tribunal in its order for Assessment Year 2012-13 referred to above. We may also mention that similar order was passed for Assessment Year 2013-14 by the Tribunal. The TPO/AO is directed to adopt RPM as the MAM and determine the ALP of the international transaction as directed by the Tribunal in for Assessment Year 2012-13.

11. In view of the above conclusion on the MAM, the other grounds of appeal raised by the assessee in the grounds of appeal do not require any consideration as they relate to the selection of comparables under TNMM.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 07.09.2022.
/NS/*

Sd/-
(N. V. VASUDEVAN)
Vice President

Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.