

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 747/Mum/2022**

(Assessment Year 2017-18)

Spica Elastica Pvt. Ltd  
477, Chandra Chowk Seth  
Mooljee Jaitha Cloth Market,  
Shaik Memon Street, Kalbadevi,  
Mumbai-400 002

Vs.

National Faceless Assessment  
Centre  
Delhi

**(Appellant)**

**(Respondent)**

**PAN No. AAACS6153K**

**Assessee by** : Shri Bhavin Shah, AR  
**Revenue by** : Shri Samuel Pitta, DR

**Date of hearing:** 08.09.2022  
**Date of pronouncement :** 20.09.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by assessee against Assessment order passed by National faceless assessment Centre [ NFAC] [The Id AO ] u/s 143 (3) read with Section 144C (13) read with Section 144B of The Income Tax Act (The Act) dated 9/3/2022 for Assessment Year 2017 - 18 raising several grounds of appeal. However, only grievance of the assessee is that the National faceless assessment Centre has made transfer pricing adjustment of Rs. 219,00,415/- and not restricted to Rs. 44,70,673/- as directed by the learned Dispute Resolution Panel as per the remand report of the TPO dated 3<sup>rd</sup> February, 2022.
02. Assessee is a company engaged in manufacturer of quality elastic narrow fabrics in India. It filed its return of income on 28/10/2017 declaring a total income of ₹

46,000,280/- . Case of assessee was selected for scrutiny. It was found that assessee has entered into international transaction as per form number 3CEB; therefore, reference was made to the learned transfer-pricing officer to determine the arm's-length price.

03. The learned transfer-pricing officer found that during the year the assessee has received a royalty income of ₹ 46,695,981/- from its associated enterprises from Vietnam. Assessee has benchmarked this international transaction applying transactional net margin method as the most appropriate method. The learned transfer pricing officer found it untenable and noted that assessee has not given any benchmarking of the transaction of the royalty income. The notices were issued to the assessee went unnoticed and unresponded. Therefore the learned transfer pricing officer benchmarked this transaction adopting Transactional Net Margin Method by comparing the assessee's margin of operating profit against operating cost with three years' weighted average of comparables in the textile manufacturing industry, selecting 5 comparables , whose mean margin was 11.75% , whereas the margin of the assessee is computed at (-) 34.34% , and, therefore, amount of royalty of ₹ 46,695,981 was benchmarked for arm's-length price by making a proportionate adjustment of RS. 2,19,00,415/- as the difference between the margin of the assessee and margin of comparable is 46.90%. The learned transfer pricing officer passed an order u/s 92CA (3) of the act as per order dated 21/11/2019.



04. Based on this the draft assessment order was passed by the learned National e-assessment Centre at Rs Nil for the reason that the current year loss was higher than the transfer pricing adjustment.
05. Assessee aggrieved with the assessment order preferred objection before the learned dispute resolution panel. Assessee submitted that it could not represent its case before the learned transfer-pricing officer for the certain reasons and submitted a detailed paper book wherein it submitted several documents including TP Study Report. Assessee further challenged the jurisdiction of the learned transfer-pricing officer also. It also explained its benchmarking methodology.
06. Based on this, the learned dispute resolution panel directed the learned transfer pricing officer to submit a remand report after providing an opportunity to the assessee.
07. The learned transfer-pricing officer submitted remand report on 3/2/2022. In the remand report, assessee submitted additional evidences. In the additional evidences assessee has also submitted a transfer pricing study report where the transaction has been benchmarked adopting the transactional net margin method as the most appropriate method but taking the associated enterprise as tested party. According to Vietnam transfer pricing rules, Assessee selected the comparable profit method, which was found to be equivalent to Transactional Net Margin Method in India. Thereafter it was examined by the

learned transfer-pricing officer and he found that the adjustment accepting the above contention of the assessee could be of ₹ 4,470,673/- only. Assessee also submitted written submission before the learned dispute resolution panel on remand report. The learned dispute resolution panel disposed of the objection of the assessee that in the remand report the transfer pricing adjustment proposed by the learned transfer-pricing officer is also acceptable to the assessee and therefore it may be adopted.

08. Based on this the learned National faceless assessment Centre passed an assessment order on 9/3/2022 wherein the transfer pricing adjustment made by the learned transfer pricing officer Under Section 92CA (4) of Rs 219,00,415/- was repeated and the total income of the assessee was computed at a loss of ₹ 24,099,865/-
09. Therefore, the assessee is aggrieved with the same. The only contention of the learned authorised representative is that when learned transfer pricing officer, in remand report requested by the learned dispute resolution panel has accepted that benchmarking made by the assessee in its transfer pricing study report taking the foreign AE as a tested party is proper and addition could have been at the maximum of ₹ 4,470,673/-, the learned National faceless assessment Centre should not have repeated the adjustment made by the learned transfer pricing officer in his original order.



010. The learned departmental representative supported the order of the National faceless assessment Centre.
011. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact in short shows that assessee is in receipt of royalty income of ₹ 46,695,981/- from its associated enterprises. The assessee selected the transactional net margin method as the most appropriate method for benchmarking of this transaction taking its associated enterprise in Vietnam as tested party. When this benchmarking methodology submitted before the learned transfer pricing officer, assessee could not remain present before him, could not submit the details, therefore, it was rejected. The Id TPO accepted the transactional net margin method as the most appropriate method, but took assessee as tested party and after selecting five comparables computed the adjustment on account of A-L P of ₹ 21,900,415/-. On objection before the learned dispute resolution panel, the remand report of the learned transfer-pricing officer was obtained. The assessee submitted the transfer pricing study report which was examined by the learned transfer pricing officer and he found that assessee has benchmarked above transaction by adopting transactional net margin method by taking Vietnam associated Enterprises as tested party and has selected comparable profit method which is same as transactional net margin method. He examined the transfer pricing documentation. He also examined the profit level indicator of operating profit/operating cost earned by the associated enterprise

and found that it is above the inter quartile range of comparables. He therefore held that even if the submission of the assessee is taken into consideration and benchmarking method adopted by the assessee is followed by applying transactional net margin method and taking the associated enterprise as the tested party the adjustment would at best be restricted to ₹ 4,470,673/-. We find that in the transfer pricing study report available before the learned transfer-pricing officer in remand report, the learned TPO could not find any defect in the transfer pricing approach of the assessee. In fact he accepted the same in toto. However, he reiterated his transfer pricing adjustment as per his order. The learned dispute resolution panel also did not give any clear-cut finding whether the transfer pricing approach of the assessee is correct or the transfer pricing approach adopted by the learned TPO is correct. We find that when the transfer pricing study report submitted by the assessee in the remand proceedings, which assessee could not submit in the TP assessment, if no defect is pointed out by the learned transfer-pricing officer, the arm's-length price determined by the assessee should have been accepted. The learned transfer-pricing officer is also suggesting the same in his remand report. According to that the adjustment at the best could have been restricted to ₹ 4,470,673/-. The learned dispute resolution panel did not give any of his finding about the correct approach. Therefore, the learned AO repeated the same addition as it was suggested by the learned transfer-pricing officer. We find that when the approach adopted by



the assessee is found to be acceptable, the adjustment determined by the learned transfer-pricing officer in the remand report of ₹ 4,470,673/- deserves to be accepted. Accordingly we direct the learned AO to restrict the addition on account of arm's-length price of the international transaction of receipt of royalty income from Vietnam associated enterprise of the assessee of ₹ 4,470,673/-. Accordingly, ground number 5 of the appeal of the assessee is allowed.

012. All other grounds of the appeal are merely supportive to ground number 5 of the appeal. Therefore, those grounds are not adjudicated and hence dismissed.

013. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20.09.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.09.2022

*Sudip Sarkar, Sr.PS/dragon*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai