

आयकर अपीलीय अधिकरण “सी” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “C”
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND SHRI G.D.PADMASHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.14/PUN/2018
निर्धारणवर्ष / Assessment Year : 2013-14

Mercedes-Benz India Private Limited, E-3, MIDC Chakan, Phase-III, Chakan Industrial Area, Kuruli & Nighoje, Tal.Khed, Pune – 410 501. PAN: AABCM 1786 L	Vs .	The ACIT, Circle-9, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Percy Pardiwala & Shri Darpan Kirpalani – AR
Revenue by	Shri Prashant Gadekar – DR
Date of hearing	26/08/2022
Date of pronouncement	29/09/2022

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee’s appeal for A.Y. 2013-14 arises against the ACIT, Circle-9, Pune’s assessment dated 07.11.2017 framed in furtherance to Dispute Resolution Panel-3, Mumbai “DRP”s directions dated 14.09.2017 passed in Objection no.27, involving proceedings under section 143(3) r.w. s. 144C(13) of the Income Tax Act, 1961 [in short “the Act”].

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal:

“On the facts and circumstances of the case and in law, the learned Assessing Officer:

A. Grounds of appeal in respect of Transfer pricing adjustment

Ground No.1 -Transfer pricing adjustment should be deleted as being bad in law

Erred in making the reference to the TPO without proper application of mind to the facts on records, without recording his reasons for any necessity or expediency, without legal and valid approval of CIT and ignoring the conditions stipulated in section 92C(3)/92CA(1) and hence, the same is not in accordance with the provisions of the Act.

The transfer pricing adjustment and the Transfer Pricing Order passed should be quashed as being bad in law or illegal or void ab initio.

Ground No. 2 - General ground related to Transfer pricing adjustment amounting to Rs.4,81,00,000

Erred in law and in circumstances by not considering the transfer pricing analysis documented in transfer pricing report for AY 2013-14.

Ground No. 3 - Rejecting the combined transaction approach

Erred in law and in facts by rejecting the Appellant’s combined transaction approach (using TNMM) by segregating and separately benchmarking the international transaction of import of Completely Built Unit (‘CBUs’).

Ground No. 4 - Comparing the gross margin of controlled transaction with another controlled transaction

Erred on the facts and in law by comparing the gross margin from international transaction pertaining to import of CBUs with the international transaction pertaining to import of spares (i.e. both being controlled transactions of the Appellant itself).

Ground No. 5 - Applying Resale Price Method and comparing gross margin from international transaction pertaining to import of CBUs with the international transaction pertaining to import of Spares

Erred on the facts and in law by applying Resale Price Method (‘RPM’) and comparing gross margin of controlled transaction of import of CBUs with gross margin of functionally non comparable

controlled transaction of import of spares of Appellant.

Ground No. 6 - Adjustment for differences in function, asset and risk profile

Erred in law and facts in making transfer pricing adjustment to the purchase price of CBUs without granting adjustment to account for differences in functions, assets and risks of the spares segment vis-a-vis CBU segment.

Ground No. 7 - Rejecting the separate Transaction Net Margin Method search

Erred in facts and in circumstances of the case by rejecting the separate TNMM search provided (on a without prejudice basis) by the Appellant for separate benchmarking of the international transaction of import of CBUs.

Ground No. 8 Adjustment for differences in import costs

Erred in facts and in the circumstances of the case in making transfer pricing adjustments to the purchase price of CBUs without granting adjustment to account for differences in the imports costs (i.e. custom duty) paid on import of CBUs vis-a-vis import of spares.

Ground No. 9 - Benefit of +/-3 percent as applicable

Erred in computing the arm's length price without granting the benefit of +/-3% as applicable.

B. Grounds related to corporate tax adjustments

Ground No. 10 - Disallowance of Royalty expenditure

Erred on the facts and in circumstances of the case in disallowing the royalty expenditure of Rs. 9,79,46,005 as capital expenditure for AY 2013-14

Ground No. 11 - Disallowance of Homologation expenditure

Erred on the facts and in circumstances of the case in disallowing the expenditure on homologation of Rs 3,18,16,489 as capital expenditure for AY 2013-14.”

3. Suffice to say, it transpires during the course of hearing that the assessee's three folded grievances raised in the instant appeal seek to reverse the learned lower authorities action making arms length price "ALP adjustment of Rs.48100000/- followed by their respective findings treating its royalty and homologation expenses amounting to Rs.97946005/- and Rs.31816489/-; respectively as capital than claimed to be revenue in nature, respectively.

4. Learned senior counsel first of all invited our attention to the DRP's directions comprised in 68 pages inter-alia making it clear that it had followed judicial consistency in light of its co-ordinate benches' similar view(s) in A.Ys 2010-11 to 2012-13; as the case may be. Mr.Pardiwala took us through the DRP's detailed discussion in para 5.3 onwards making it clear that the assessee has been facing similar adjustment and disallowances all along in preceding assessment years. This clinching factual position has gone unrebutted from the revenue's side.

5. We next note with the able assistance coming from both the parties that this tribunal's recent order in assessee's appeal ITA No.495/PUN/2017 dated 15.07.2022 for A.Y. 2012-13 has rejected Revenue's contentions regarding the first issue of sale of "CBU"s as follows:-

“5. Background relating to transfer pricing adjustment

MB India had entered into international transactions of import of raw materials, import of spare parts, import of Completely Built Units (‘CBUs’), import of capital goods, payment of royalty, payment for technical services availed, receipt of commission, reimbursement/ recovery of expenses, recovery of warranty, etc., with its Associated Enterprise (‘AE’) for AY 2012-13. MB India is primarily engaged in manufacturing activity for which it imports raw material, capital goods and makes payment for services / know-how. Further, as a part of its manufacturing and sales activity it needs to:

- a) import CBUs which are not locally manufactured which provides the customers access to the global range of cars and thereby build its customer base for potential sale of locally manufactured cars; and
- b) Service its customers in respect of the cars manufactured in India as well as the cars imported as CBUs, for which it imports spares for after sale services and warranty commitments.

(a) Since the above transactions are germane to the main business of MB India viz manufacturing of passenger cars, the said international transactions were considered as being closely linked as a part of MB India’s manufacturing activity and accordingly, have been aggregated for transfer pricing analysis and evaluated by adopting a ‘Combined Transaction Approach’. MB India accordingly identified the Transactional Net Margin Method (hereinafter referred to as ‘TNMM’) as the most appropriate method to benchmark its international transactions for AY 2012-13. The international transaction entered into by MB India during the year is as follows:

Sr. No.	Description of the transactions	Amount (Rs)
1	Import of raw materials	9,472,371,698
2	Import of spare parts	968,834,082
3	Import of Completely Built Units (CBUs)	2,123,461,081
4	Import of capital goods	55,911,021
5	Payment of royalty	119,154,170
6	Payment for Technical services	93,132,406
7	Receipt of commission	5221,549
8	Recovery of Expenses	7,86,36,505
9	Warranty Recovery	8,69,03,968
10	Reimbursement of Expenses	14,59,41,110
11	Total	1314,95,67,591

(b) For the application of TNMM, MB India had conducted search for comparable companies using multiple year data (current year and prior two years), a summary of which is tabulated below:

<i>Database used for research</i>	<i>PLI used</i>	<i>No of comparable companies</i>	<i>Margin of comparable companies</i>	<i>Margin of MB India</i>
<i>Dow Jones</i>	<i>Net operating profit/ Operating Income</i>	<i>9 (Asia Pacific regional comparables)</i>	<i>2.97 %</i>	<i>1.27%*</i>

** - The operating margin of MB India was computed post considering certain costs as non-operating in nature*

(c) Since the operating margin earned by MB India was within the \pm 5% range (permitted under the Act) of arithmetic mean of the operating margins earned by comparable companies, it was concluded that the various international transactions undertaken by MB India were at arm's length. However, the learned TPO did not accept the search conducted by the assessee in its transfer pricing study and rejected all the comparables identified by the assessee citing following reasons:

- Use of consolidated financials;*
- Annual report not available/ not available in English Language;*
- Comparables operating in different geographical market.*

(d) Further, during course of transfer pricing assessment proceedings ('TP Proceedings), upon the request of the learned TPO and on without prejudice to the assessee's approach in the TP Study, an alternative search process considering Indian companies engaged in the manufacturing of cars after eliminating the companies having related party transactions ('RPT') more than 25% were submitted vide submission dated 29 September 2015. The following companies were identified as comparable to the assessee:

Sr. No	Name of the company	Operating margin FY 2011-12
<i>1</i>	<i>Force Motors Ltd</i>	<i>2.99%</i>
<i>2</i>	<i>Hindustan Motors Ltd</i>	<i>-22.03%</i>
<i>3</i>	<i>Premier Ltd – Automotive Segment</i>	<i>3.14%</i>
	Arithmetic Mean	-5.30%

(e) The arithmetic mean of operating margin of comparable companies worked to -5.30% as against unadjusted MB India's margin of 0.04% (rejected

the non-operating items considered by MB India resulting into reduction of operating margin from 1.27% as per TP Study report) at entity level and accordingly, since the unadjusted margins earned by MB India were higher than the arithmetic mean of the comparable companies, the international transactions was concluded to be at arm's length price.

(f) However, the learned TPO rejected the Indian comparable companies (Force Motor Limited and Hindustan Motor Limited) identified by appellant and added Tata Motors and Mahindra and Mahindra as comparable by increasing the RPT filter from 25% to 30%.

(g) Further, the learned TPO did not accept approach followed by MB India of benchmarking international transactions following Combined Transaction Approach using the TNMM as the most appropriate method. The approach followed by the TPO is summarised below:

The learned TPO benchmarked the international transaction pertaining to import of CBUs using Resale Price method (hereinafter referred to as 'RPM') by inappropriately comparing gross margin earned from another controlled transaction of MB India (import of spares). Thus, the learned TPO compared gross margin earned from spares (i.e. 26.32%) with the gross margin earned from trading of CBUs purchased and sold during the year (i.e. 6.86%) and made differential adjustment to the international transaction of import of CBUs.

Further, the learned TPO also separately benchmarked the entity level operating margins of MB India with the operating margins of Indian comparable companies (as mentioned above). The arithmetic mean of operating margin of comparables identified by the Learned TPO is 5.99% vis-à-vis 2.31% of MB India (after considering adjustment made for CBU segment).

The summary of the transfer pricing adjustments is tabulated below:

Sr. No	Particulars	AY 2012-13 (Rs)
1	Adjustment pertaining to CBU segment	53,81,00,000
2	Adjustment at entity level	87,04,00,000
	Total	140,85,00,000

6. Aggrieved by the order, assessee filed an appeal before the Hon'ble DRP for the aforesaid adjustments.

Proceedings before the Hon'ble DRP

(a) *The Hon'ble DRP accepted Force Motors Ltd., as comparable company to MB India. However, for other comparables in dispute, Hon'ble DRP upheld the order of TPO. The final set of comparable as per Hon'ble DRP is tabulated below:*

Sr. No	Name of the company	Operating margin AY 2012-13
1	<i>Premier Ltd – Automotive Segment</i>	3.14%
2	<i>Force Motors Ltd</i>	2.99%
3	<i>Mahindra & Mahindra Ltd</i>	9.19%
4	<i>Tata Motors Ltd</i>	4.83%
	Arithmetic Mean	5.24%

(b) *Further, Hon'ble DRP directed the learned AO to exclude the royalty expenditure and homologation cost disallowed during the assessment proceedings while computing the operating margin of the manufacturing activity of the Appellant for application of TNMM. Hence, the revised operating margin of Appellant, post direction works out to 0.58%.*

(c) *For other grounds raised by assessee, the Hon'ble DRP upheld the contentions of TPO.*

The summary of transfer pricing adjustment, post DRP directions is tabulated below:

Sr. No.	Particulars	AY 2012-13 (Rs)
1	<i>Adjustment pertaining to CBU segment</i>	53,81,00,000
2	<i>Adjustment at entity level</i>	56,52,85,000
	Total	110,33,85,000

(d) Further, the Ld. AO in its Draft Assessment Order disallowed the royalty expenditure of INR 12,51,11,877 by considering it to be a capital expenditure. The Ld. AO relied on the assessment orders for AY 2004-05 to AY 2011-12 where similar disallowances were made. Reliance was also placed on the Hon'ble DRP's directions pertaining to AY 2007-08 to AY 2011-12 where the disallowances were upheld by the Hon'ble DRP.

(e) Similarly, the Ld. AO also disallowed the expenditure incurred on Homologation amounting to INR 2,34,85,773 by considering it to be a capital expenditure.

7. That referring to the grounds of appeal filed in the appeal memo, learned Senior Counsel submitted that ground Nos. 1 and 2 are general grounds. Ground No. 3 is with regard to rejecting the combined transaction approach. Ground No. 5 is with regard to comparing gross margin of controlled transaction with another controlled transaction. Ground No. 6 is with regard to applying resale price method and comparing gross margin from international transaction pertaining to import of CBUs with the international transaction pertaining to import of spares. Ground No. 7 is with regard to adjustment for differences in function, asset and risk profile of the spares segment vis-à-vis CBU segment. Ground No. 8 is with regard to rejecting the separate transactional net margin method search. That apart from submissions made by the assessee on this ground, it was submitted by the learned Senior Counsel that all the above mentioned grounds of appeal are covered by the decision of Pune Bench of the Tribunal in assessee's own case, lead year being A.Y. 2005-06 (ITA No. 1083/PN/2013, ITA No. 1107/PN/2013 and C.O. No. 60/PN/2014 which is annexed at pages 23 to 65 in the paper book wherein the Co-ordinate Bench of the Tribunal in its decision has analyzed the business model of the assessee in detail along with rationale for the aggregation approach followed by the assessee to benchmark its international transaction. Thereafter, the assessee submits that since all

the international transactions entered into by MB India with its AEs are germane to the main business of MB India, the said international transactions were considered as being closely linked as a part of MB India's manufacturing activity and accordingly, have been aggregated for transfer pricing analysis and evaluated by adopting a 'Combined Transaction Approach'. MB India identified TNMM as the most appropriate method. However, the learned TPO did not accept the approach followed by MB India of benchmarking international transactions following Combined Transaction Approach and benchmarked the international transaction pertaining to import of CBUs using RPM by inappropriately comparing gross margin from CBUs segment (6.86%) with the spares segment (26.32%).

(a) The learned TPO justified the use of RPM with the following contentions:

- The learned TPO stated that the nature of transaction or the quantum of transaction and characteristics of the transaction are similar as it employs common method of sale for CBU and spare parts.
- The functions performed and risks undertaken for these two segments of Assessee's business is same as because the Assessee has to assess the requirement of spare parts and those of CBUs and accordingly place orders with their principals and sell it to dealers.
- The TPO contended that difference if any in case of the assets employed on account of lesser requirement of storage space, inventory maintenance, marketing cost, labour cost etc. could have a bearing on the net profit earned by the Assessee but the same cannot affect the Assessee's gross earnings.

(b) **Import of CBU is closely linked with the manufacturing activity of MB India**

MB India has set up a manufacturing unit in India to manufacture Mercedes cars. Further, as a part of its manufacturing and sales activity it also needs to:

import CBUs which are not locally manufactured which provides the customers access to the global range of cars and thereby build its customer base for potential sale of locally manufactured cars; and

Service its customers in respect of the cars manufactured in India as well as the cars imported as CBUs, for which it imports spares for after sale services.

As discussed above and taking into consideration the business model of MB India, the Appellant submits that import of CBU and spares is closely linked to manufacturing activity.

(c) To support the aggregation of transaction approach, MB India relies on the following:

- Section 92(1) states "Any income arising from an international transaction shall be computed having regard to the arm's length price".

- Under section 92B of the Act meaning of expression 'international transaction' is provided i.e. transaction between two or more associated enterprise and section 92F(v) defines, transaction to include "an arrangement, understanding or action in concert....."
- Further, Rule 10A(d) explains the meaning of the expression "transaction" as follows:

"transaction includes number of closely linked transactions"

(d) From the above meaning of the expression "transaction", legislature intends to include transactions of similar nature which are closely linked to each other as a single transaction.

(e) Further, Rule 10B(1) states, "For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely.."

(f) From the above extract of Rule 10B and the meaning of the word **transaction** specified in the Rules, for the purpose of analysing the arm's length price, legislature intends that an Appellant should treat all the closely linked transaction as one transaction and perform a common analysis for these transactions, by following any of the prescribed method.

(g) MB India further draws reference from Accounting Standard 17 (**Refer page 530-531 of Paper book**) in support of its contention of aggregation of various international transactions.

(h) **Inappropriately comparing gross margin of controlled transaction with another controlled transaction**

The Assessee submits that for application of RPM method, the price charged in a comparable uncontrolled transaction (after requisite adjustments for differences) is taken to be an ALP. Since the activity of trading in spares parts is between the associated enterprises, it cannot be said to be an "uncontrolled transaction" and considering the legislation, it is not possible/ permissible to compare the said controlled transaction for benchmarking international transaction of import of CBUs.

(i) With respect to issue of controlled transaction, the Appellant places reliance on the following:

- Rule 10B(2) of the Rules provides that comparability of an international transaction with an **uncontrolled transaction** shall be judged with reference to the following:
 - (a) The specific characteristics.....
 - (b) The functions performed.....
 - (c) The contractual terms.....
 - (d) Conditions prevailing in the markets.....
- Rule 10B (3) of the Rules provides that an **uncontrolled transaction** shall be comparable to an international transaction if:
 - (a) None of the differences, if any, between the transactions.....
 - (b) Reasonably accurate adjustments.....
- Rule 10B (4) of the Rules provides that the data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into.....

(j) Basis the above, the assessee submits that the learned TPO has erred in comparing the controlled transaction of import of CBUs with another controlled transaction of import of spares to determine the arm's length price of the international transaction of import of CBU.

(k) Inappropriately selection of RPM as the most appropriate method

The learned TPO accepted TNMM as the most appropriate method in respect of all the international transactions undertaken by MB India except for import of CBUs which is benchmarked by learned TPO using RPM method. In this regard, the Assessee submits that RPM is not applicable because of following reasons:

(l) Same or similar products to be compared while using RPM

- Rule 10B (1) of the Income-tax Rules provides as follows:

For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, in the following manner, namely :—

b) *resale price method, by which,—*

- (i) *the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;*
- (ii) *such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the **purchase and resale of the same or similar property** or from obtaining and providing the same or similar services, in a **comparable uncontrolled transaction**, or a number of such transactions;*

- *The Assessee placed reliance on the above and submits that the basic requirement for using RPM as the most appropriate method for benchmarking the arm's length price is that the products to be compared should be same or similar, whereas the learned TPO **has compared CBUs (i.e. complete cars) with spares (parts of cars), which are two very different products.***

(m) Non-availability of comparable data

The Assessee has mentioned the following in its TP Study report with regard to selection of most appropriate method for benchmarking the international transaction of import of CBUs,

(n) *“As regards import of CBUs for resale, the search process as detailed hereunder did not yield any data of Indian companies engaged in distribution of products similar to those of MB India's CBUs. All the companies found as broad comparables in the Prowess database failed the required degree of comparability required for RPM.”*

(o) *Further, the RPM evaluates the arm's length nature of a controlled transaction by reference to the gross profit margin realised in a comparable uncontrolled transaction. But it is difficult to get data required for computing gross margins of comparable companies.*

(p) RPM requires Close comparability of Functions, Assets and Risks

The transaction of Import and resale of CBU and spares are different on the following grounds:

- *Spares and cars (i.e. CBUs) cannot be even said as same or similar products. While the car is a fully finished product, which is ready to use by a consumer, spare parts are a small part of the car, carrying a fraction of the car's value and to be used by a service provider (automobile service stations);*
- *The Assessee performs marketing functions only for sale of CBUs and not for sale of spares.*

- The market for spares and CBUs is very different; and
- CBU imports are restricted to only those models that are not manufactured in India whereas all the spares dealt in by MB India are for manufactured as well as imported cars.

(q) The Assessee submits that there are various functions which are not performed for CBU activity but are performed for spares activity namely maintenance of huge godown space, sorting of spares according to types and at appropriate places, packing, repacking and dispatch activity of spares, daily processing of orders, compliances to Central Excise Act, its' detailed procedures and the Standards of Weight and Measures Act and recruitment of the staff and staff cost to handle the spares. The differences in the functions performed, assets employed by MB India for the CBU and spares segment are detailed at page 561 to 563 of Paper book.

(r) **Thus, only because the products are imported and then resold to the third parties in India, the functions performed cannot be said to be same or similar.**

The learned TPO has also disregarded the fact that for additional functions, assets and risks the seller would increase the price which results in higher gross profit, as the cost of such higher functions, assets and risks is below gross profit and hence increases the gross profit. The learned TPO's argument that cost for higher functions, assets and risks would impact net margin is correct, however, he grossly fails to appreciate that the revenue for higher functions, assets and risks would be reflected in the Sales. Further, the Assessee submits that Rule 10B(2) which describes the methodology for application of RPM, states that it is necessary that the transactions being compared should be uncontrolled and it should be identified taking into account the functions performed, risks undertaken and assets employed. The learned TPO has failed to demonstrate that any of the above criteria have been met while identifying a controlled transaction of the Appellant itself as comparable.

Differences in function, asset and risk profile of the Spares segment vis-à-vis CBU segment

The Assessee has relied on Rule 10B(1(b)(iv)) of the Rules to factor the differences affecting the margins of the taxpayer vis-à-vis comparable. There are significant differences in the functions, assets utilized and risks assumed by MB India in case of import and sale of CBUs and that of spares sales which are mentioned below:

Parameters	Import spares	of	Import of CBUs
<i>Functions performed</i>	<i>Higher</i>		<i>Lower</i>
<i>Risks undertaken</i>	<i>Higher</i>		<i>Lower</i>
<i>Assets employed</i>	<i>Higher</i>		<i>Lower</i>
<i>Space requirement and storage cost</i>	<i>Higher</i>		<i>Nil</i>
<i>Manpower</i>	<i>Higher</i>		<i>Lower</i>
<i>Transportation and other related costs</i>	<i>Higher</i>		<i>Lower</i>

These factors need to be taken into account before making any adjustment.

8. We find that Pune Tribunal in assessee's own case for A.Y. 2005-06 (*supra*) has observed and held as follows:

(a) Decision of Hon'ble ITAT with respect to the combined transactions / aggregation approach (page 52 and 53 of paper book):

"32. Now, coming to the facts of present case, where the assessee was engaged in the activities of manufacture of passenger cars worldwide many models of Mercedes Benz were available. However, in the year under consideration the assessee was engaged only in manufacturing activity of C and E class brands of passenger cars. But in order to make available other brands available worldwide, to its customers in India and in the absence of manufacturing facility developed for such models, the assessee imports CBUs and resells the same to customers. The assessee has placed on record some models which were imported in the year under consideration are being manufactured by the assessee in later years, since the demand for such models had increased. In order to efficiently run its business, the assessee had adopted a methodology, under which the most popular models were being manufactured in India and in order to widen its customer base at par the requirement of customers or otherwise, the assessee was importing other models from its associated enterprises. Such import of CBUs and its resale was closely and interlinked to its basic activity of manufacture of passenger cars. Hence, the same has to be aggregated with import of raw materials and cannot be benchmarked independently.

33. The third segment was import of spare parts which were being imported from associated enterprises in order to fulfil warranty commitments of passenger cars sold by assessee i.e. both manufactured and imported CBUs and also in order to meet other requirements of customers. Undoubtedly, warranty commitments were being fulfilled by dealers but under a dealership agreement, wherein the dealer was to use only spare parts which were made available by assessee. Such imports were being made of spare parts in order to keep the standard of products sold and also to maintain efficiency of

passenger cars. The assessee had fairly admitted that it was covering cost of such spares, which were to be provided free of cost to customers under warranty commitments, from the cost of cars sold by it. In such scenario, the import of spare parts was an activity which was also closely connected with sale of manufactured and imported passenger cars and the same could not be benchmarked independently. **Accordingly, we hold that transactions of import of CBUs and import of spare parts were closely and interlinked to the manufacture of passenger cars by assessee and the said activity was to be benchmarked on an aggregate basis along with other transactions under the umbrella of ‘manufacturing activity’.**

- (b) **Decision of Hon’ble ITAT with respect to comparison of controlled transaction with a controlled transaction and selection of RPM as the most appropriate method (page 57 of paper book):**

“42. Following the above said principles, we hold that approach adopted by TPO in comparing margins of controlled transaction i.e. import of spare parts and import of CBUs from associated enterprises and proposing adjustment on account of arm’s length price of international transactions does not stand and the same is cancelled. Hence, the TPO had erred in applying RPM method. In any case, under the garb of RPM method, TPO has compared sale of spares with sale of passenger cars. Further, it may be pointed out that TPO compared margins of fully developed vehicles with margins of spare parts, but the two items cannot be said to be functionally comparable and hence, there is no merit in the stand of Assessing Officer / TPO in this regard.”

- (c) **The above decision has been followed by the Hon’ble Tribunal in Appellant’s subsequent year’s for AY 2006-07 to AY 2011-12as below:**

Assessment year	ITA No	Page reference of the paper book
AY 2006-07	(ITA 1468/PUN/2010)	12 to 16
AY 2007-08	(ITA 10/PUN/2012)	
AY 2008-09	(ITA 298/PUN/2013)	
AY 2009-10	(ITA 514/PUN/2014) (ITA 566/PUN/2014) (CO 24/PUN/2015)	1537 and 1539
AY 2010-11	(ITA No.380/PUN/2015) (ITA No.486/PUN/2015)	
AY 2011-12	(ITA No. 546/PUN/2016) (ITA No. 534/PUN/2016)	

9. We are in conformity with the view taken by the Tribunal in the aforestated lead case in regard to the assessee-company wherein it is held that the transactions of import of completely built unit (CBU) and import of spare parts were closely and inter-linked to the manufacture of passenger car by the assessee and the said activity is to be bench marked on an aggregate basis along with other transactions under the umbrella of “manufacturing activity. The Id. D.R.also could not demonstrate or bring on record any facts or difference evidences and therefore, we are of the considered view, respectfully following the aforestated judgment on the same facts and circumstances and on same parity of reasoning, ground Nos. 3, 5, 6, 7 and 8 stand allowed.”

6. The very factual position continuous regarding the latter twin issues of royalty and homologation charges (supra) as follows :

“27. Ground No. 16 is with regard to the disallowance of royalty expenditure. The assessee submits that it is a Company incorporated under the provisions of the Companies Act, 1956, and is engaged in the manufacture and sale of Mercedes-Benz passenger cars in the Indian market. Pursuant to a Technology License Agreement entered by the Appellant with Daimler AG, it had paid an amount of Rs.12,51,11,877 as royalty to Daimler AG during FY 2012-13. The key terms of the agreement, as amended from time to time provide the following:

- Grant to MB India a non-exclusive license within India to assemble, manufacture and sell licensed vehicles and engines (‘_licensed products’) including pertinent parts and components;
- Non-exclusive right to MB India to export such licensed products;
- Supply by Daimler AG to MB India of drawings and designs and full technical product documentation required for the manufacture of licensed products;
- Continuous support by Daimler AG to MB India of all technical information relating to improvements and developments in the manufacturing process of the licensed products;
- Right to use of the name and trademarks of Daimler AG during the currency of the agreement; and
- Providing training to MB India’s personnel at Daimler AG premises.

(a) In consideration of the above, as per Article 13 of the agreement, MB India is required to pay to Daimler AG, an annual royalty at 5% of the value addition on licensed vehicles sold after 1 January 1999. The agreement gets amended from time to time to amend/extend the scope by adding or deleting vehicles models. The terms of the agreement were further amended with effect from 1 October 2007 based on the perusal of various clauses of the agreement as summarized above, it can be seen that:

MB India has not acquired know-how from Daimler AG on an outright basis. MB India has only acquired a license/right to use know-how of Daimler AG in respect of the licensed products.

The agreement clearly provides that Daimler AG will remain the sole and exclusive owner of the technical know-how, technical information, trade mark etc. and that MB India is debarred from claiming any title

to the said rights. Such license right cannot be equated with ownership rights.

The right of MB India to manufacture and sell licensed products in India does not restrict the rights of Daimler AG to sell the Licensed Products in India.

No copyright has been transferred to MB India. In fact the agreement states that copyright of the technical product documentation, including any modifications as well as the know-how and any patents contained therein would remain the property of Daimler AG.

There are restrictions placed on MB India from divulging confidential information obtained under the agreement to any third party.

Upon the termination of the agreement, MB India is required to immediately discontinue all assembling/ manufacturing and sales operations of the licensed products.

(c) From the above terms and conditions, it is clear that MB India's rights under the agreement ends on termination of the agreement. It also evident that MB India has neither acquired any assets on an outright basis nor secured any enduring advantage. The benefit secured by MB India is essentially a license right to use the know-how for the period of the agreement and the royalty expenditure in this regard is therefore revenue in nature.

(e) In relation to AY 2012-13, as mentioned above, the Ld. AO relying on the orders passed by the erstwhile AO's during the assessment proceedings for AY 2004-05 to AY 2011-12 and further relying on the Hon'ble DRP's directions pertaining to AY 2007-08 to AY 2011-12 disallowed the royalty expenses by considering it to be a capital expenditure in its Draft Assessment order. The said ground was further raised before the Hon'ble DRP, however the DRP by considering it to be an issue similar previous year upheld the disallowance made by the Ld. AO.

(f) Further, the assessee submitted that the facts of the ground have already been considered in A.Y. 2002-03 to A.Y. 2013-14 and A.Y. 2014-15. In respect of the said issue in A.Y. 2002-03 the co-ordinate Bench Pune held that the royalty paid MB India is revenue expenditure. The relevant observation of Pune Bench Tribunal is as follows:

“ We find no infirmity in the above decision of the Ld.CIT(A). From the various terms and conditions of the agreement, we find the Assessee has neither acquired any asset on an outright basis nor secured any enduring advantage. We find force in the argument of Ld. Counsel for the Assessee that the benefit secured by the Assessee is essentially a licensed right to use

knowhow for the period of the agreement. Therefore, the royalty expenditure in this regard, in our opinion, is revenue in nature.”

7. The Revenue is fair enough in not pinpointing any distinction on facts or law; as the case may be, in all these assessment years. We thus allow the assessee's foregoing three substantive grounds and leave it open for the Transfer Pricing Officer to finalise his afresh consequential computation; contiguous with the preceding assessment years factual verification, as the case may be, in consequential proceedings. Ordered accordingly.

8. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 29th September, 2022.

Sd/-
(G.D.PADMASHALI)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th Sep, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.