

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI

BEFORE KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

I.T.A. No. 553/Mum/2022
(Assessment Year 2017-18)

DHL LOGISTICS PRIVATE LIMITED 201A, SILVER UTOPIA CAREDINAL GRACIAS ROAD CHAKALA, ANDHERI (EAST) MUMBAI-400 099 PAN : AAACM6824H	vs	National e-Assessment Centre Delhi
APPELLANT		RESPONDENT

Assessee represented by	Shri Madhur Agrawal
Department represented by	Dr Yogesh Kamat, CIT DR

Date of hearing	19/10/2022
Date of Pronouncement	31/10/2022

ORDER

PER OM PRAKASH KANT (AM):

This appeal by the Assessee is directed against order dated 28/01/2022 passed by the Ld. National Faceless Appeal Centre(NFAC), Delhi [hereinafter shall be referred as the Learned First Appellate Authority or FAA] for Assessment Year 2017-18.

2. The grounds raised by the Revenue are reproduced as under:

"Each of the grounds and/ or sub-grounds of the appeal are independent and without prejudice to the others. .

1. On the facts and circumstances of the case and in law, the Ld. Dispute Resolution Panel ('DRP') erred in upholding the action of the Ld. Assessing Officer ('AO') / Ld. Transfer Pricing Officer ('Ld. TPO') in confirming the addition of INR 16, 83, 26,4267- to the income of the

Appellant by holding that its international transactions pertaining to its freight forwarding segment do not satisfy the arm's length principle envisaged under the Income Tax Act, 1961 ('the Act').

2. In doing so, The Ld. DRP / Ld. TPO/Ld. AO grossly erred in :
 - 2.1. disregarding the arm's length price ('ALP') and the scientific benchmarking process carried out by the Appellant in the Transfer Pricing ('TP') documentation maintained by the Appellant in terms of section 920 of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules');
 - 2.2. failing to appreciate the economic rationale of using "Operating Profit/ Value Added Expenses" as the Profit Level Indicator ('PLI'), and instead using "Operating Profit/ Total Cost" ('OP/TC') as the PLI. ;
 - 2.3. not allowing the exclusion of pass through costs of the appellant for AY 2017-18 and thereby enhancing the cost base for the purpose of computing the operating margin (OP/TC) of the assessee;
 - 2.4. disregarding all comparable companies selected by the Appellant in its TP documentation including Om Logistics Limited which is a functionally incomparable company in the final set of comparable companies.
 - 2.5 including Om Logistics Limited which is a functionally incomparable company in the final set of comparable companies.

The Appellant prays that the book value of the international transactions pertaining to the freight forwarding segment of the Appellant should be held to be the arm's length price of the said transactions as per the Appellant's TP documentation, and the addition made on account of the above grounds should be deleted.

3. Charge of interest under section 234B of the Act

3.1 On the facts and circumstances of the case and in law, the learned AO has erred in charging interest under section 234B of the Act. It is prayed that the learned AO be directed to delete the interest under section 234B of the Act.

4. TDS credit short granted by INR 1,76,71,2007

4.1. On the facts and circumstances of the case in law, the Appellant claimed TDS credit of INR 36,22,36,938/- in Return of Income, the learned AO has erred in not granting TDS credit of INR 1,76,72,200/-.

It is prayed that the learned AO be directed to grant tds credit of INR 1,76,71,2007-.

5. Penalty Proceeding under section 271AA and 270A of Income-tax Act, 1961 should be dropped.”

§.1; On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceedings under section 271AA of the Act without appreciating that the Appellant has maintained the information and documents in respect of the international transactions and the same were submitted before the Ld TPO and under section 270A of the Act without appreciating the fact the Appellant has not under-reported any income.”

3. Briefly stated facts of the case are that assessee filed its return of income on 30/11/2017 declaring gross total income of Rs.88,15,78,930/- and after claim of deduction under Chapter VIA of the Income-tax Act, 1961 (in short, the Act) of Rs.37,500/-, total income of Rs.86,17,75,520/- was declared. The return was further revised for claim of higher amount of TDS. The case was selected for scrutiny and statutory notices under the Act were issued and complied with. In view of international transaction carried out by the assessee, the matter of determination of arm's length price of the international transaction was referred to the TPO. The Ld.TPO, vide his order dated 24/01/2021 proposed adjustment of Rs.63,81,53,199/- to the international transaction of freight revenue and freight expenses. The assessee objected the transfer pricing adjustment communicated to it by way of draft assessment order. The Ld.DRP, after considering submission of the assessee on the objections, issued certain directions to the Ld.AO / TPO. After complying with the directions of the Ld.DRP, the Assessing

Officer passed impugned final assessment order. Aggrieved with the same, the assessee is before the Tribunal by way of raising the grounds as reproduced above.

4. Before us, the learned counsel of the assessee has filed two paper books containing pages 1 to 1245.

5. The Ground No.1 raised by the assessee is general in nature and, therefore, same is dismissed, as infructuous.

6. The Ground No.2.1 of the appeal was not specifically argued and, therefore, dismissed as not pressed.

7. Regarding ground No.2.2 of the appeal, the learned counsel of the assessee submitted that the issue in dispute is in respect of denominator of the profit level indicator (PLI). The Ld.TPO has taken operating profit / total cost (OP/TC) as the PLI whereas in the case of the assessee in preceding years, operating profit / (value added expenses)VAE. The learned counsel referred to the order of the Tribunals for A.Y. 2010-11 in ITA No.1030/Mum/2015as under:-

“24. We have deliberated at length on the issue under consideration i.e rejection by the lower authorities of the PLI of OP/VAE by the assessee and substitution of the same by PLI of OP/TC. As is discernible from the orders of the lower authorities the PLI of OP/VAE had been rejected for the reasons viz. (i). that, as the freight element booked in the books by the assessee has a component of profit (or value added), therefore, the assessee claiming the same as pass through costs had wrongly reduced the same from its turnover and costs while computing its margins; (ii). that, the recovery of third party costs at ports except for in few instances where invoices were produced by the assessee, in the absence of any evidence had wrongly been treated by the assessee as back to back costs; and (iii). that, the VAE could not be safely gathered from the „books of account“ of the comparables. We shall deliberate on the aforesaid aspects, as under: (i). For a proper appreciation of the business module of the assessee, we shall briefly deliberate on the transactions undertaken by the assessee during the year under consideration: (a). Inbound Collect – Air Shipments : Shipper (outside India) hands over the

consignments to DHL India's AE to forward the same via air to the consignee in India. DHL AE takes the assistance of DHL India for the same. DHL AE negotiates the terms of the transactions with the shipper. The consignee is assigned by the shipper to pay for the International freight. Accordingly, DHL AE assigns the collection responsibility (from the consignee) to DHL India. DHL AE pays the freight to the carrier. DHL India invoices and collects from the consignee the Origin Charges („OC“), Freight (Air) and Destination Charges („DC“). DHL AE invoices and collects from DHL India the OC and Freight. Only DC is considered as revenue for DHL India. *Page | 25* ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) Given that the actual amount of OC and Freight (Air) agreed between the Shipper and DHL AE are merely collected by DHL India from the consignee and passed on back to back basis to DHL AE, the OC and Freight (Air) are netted off in the Profit & Loss Account of DHL India i.e the assessee. (b). Inbound Collect – Ocean Shipments : The Shipper (outside India) hands over the consignment to DHL AE to forward the same via ocean to the consignee in India. DHL AE takes the assistance of DHL India for the same. DHL AE negotiates the terms of the transaction with the Shipper. In this case, the consignee pays for the freight (ocean). DHL India invoices and collects from the consignee the OC, Freight (ocean) and the DC. Freight and DC are considered as revenue for DHL India. DHL AE invoices and collects from DHL India the OC and Freight (ocean). (c). Inbound Prepaid : The Shipper (outside India) hands over the consignment to DHL AE to forward the same to the consignee in India. DHL AE takes the assistance of DHL India for the same. DHL AE negotiates the terms of the transaction with the Shipper. DHL AE invoices the shipper for OC and Freight. The Shipper pays for OC and Freight to DHL AE. DHL AE further pays the freight to the carrier. DHL India invoices and collects from the consignee the DC. The same is accounted as revenue by DHL India. (d). Outbound Collect : Shipper (India) hands over the consignment to DHL India to forward the same to the consignee (outside India). DHL India takes the assistance of DHL AE for the same. DHL India negotiates the terms of the transaction with the Shipper. The consignee pays the freight to DHL AE. DHL India pays the freight to the carrier. DHL India invoices and collects from the Shipper the OC. The same is booked as revenue. *Page | 26* ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) DHL AE invoices and collects from the consignee the freight and DC. (e). Outbound Prepaid : Shipper (India) hands over the consignment to DHL India to forward the same to the consignee (outside India). DHL India

takes the assistance of DHL AE for the same. DHL India negotiates the terms of the transaction with the Shipper. In the present case → the Shipper pays for the freight. DHL India invoices and collects from the Shipper the OC and freight. The same is → considered as revenue for DHL India. DHL India further pays the Freight to the carrier company. → DHL AE invoices and collects from the consignee the DC. → On a perusal of the aforesaid transactions carried out by the assessee in the course of its international logistic transactions, it can safely be gathered that the „Origin charges“ („OC“) in case of outbound shipments and „Destination charges“ („DC“) in case of inbound shipments, only form part of the revenue receipts/income of the assessee. (ii). As observed by the TPO, the main component of the income of the assessee is on account of differential freight element which it is able to obtain from the shipping companies on account of bulk booking of space on the liner. It was observed by the TPO, that the carriers in view of heavy turnover of the assessee group would provide them very competitive rates which otherwise would not be available to a normal exporter or importer. TPO observed, that the assessee group in anticipation of the expected shipments would book cargo spaces in bulk around the world at the competitive rates so offered to them by the shipping companies. The TPO held a conviction that the assessee after making bulk bookings with the carriers would enter into bargains depending upon the time, space and the paying capacity of the client. It was observed by the TPO, that though the assessee would collect freight from the customers at an amount in excess of the rate it had negotiated with the shipping company, however, it would issue a “House Airway Bill” of a similar amount of fare and the difference would be collected as handling charges. On the basis of his aforesaid observations, it was concluded by the TPO that the additional amount charged by the assessee from its client would in fact represent the „mark up“ on freight. Accordingly, it is in P a g e | 27 ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) the backdrop of his aforesaid observations that the TPO had concluded that the handling charges which were charged by the assessee varied from customer to customer because they were dependent upon the „mark up“ on freight which it was obtaining from them on the basis of negotiations. Accordingly, it was observed by the TPO that the freight element booked by the assessee in its books of accounts had a component of profit in it. In order to fortify his aforesaid observations, it was further observed by the TPO that the fact that the assessee had debited the „freight expenses“ and credited the „freight receipts“ in its books of accounts revealed that the operating profit of the assessee comprised not only of its

„handling charges“ but also the differential freight i.e the excess of the freight which it charged from its clients as against that paid to the shipping line. On the basis of the aforesaid observations, the TPO/DRP had rejected the adoption of PLI of OP/VAE by the assessee and had advocated the substitution of the same by PLI of OP/TC. (iii). We have perused the aforesaid observations of the TPO and are unable to persuade ourselves to subscribe to the same. As observed by us hereinabove, the costs pertaining to services obtained by the assessee from third parties viz. shippers/airliners, clearing and forwarding agents, transport service provider etc. neither involved any service element of the assessee nor the assessee had carried any risk or employed any of its assets with respect to the same. In our considered view, the net margin realised by the assessee pursuant to its international transactions with its AE's are to be determined only with reference to the cost incurred directly by the assessee itself and its profit margin cannot be imputed on the basis of the cost incurred by the third party or unrelated parties. We are of the considered view that the payment made by the assessee to the third party for and on behalf of the AE which had thereafter been reimbursed by the AE, cannot be included in the total costs of the assessee for the purpose of determining its profit margin. In fact, we find that Rule 10B(1)(e) does not enable consideration or imputation of cost incurred by third parties or unrelated enterprises to compute the assessee's „net profit“ margin for application of TNMM. Rule 10B(1)(e) provides that the „net profit“ margin realized by the enterprise from an international transaction entered into with an AE is to be computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise. As such, it contemplates determination of ALP with reference to the costs, assets, sales etc. of the P a g e | 28 ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) enterprise in question, i.e the assessee, as opposed to the AE or any third party. In our considered view, the considering of the freight cost of the airlines/ship liners in the total cost base of the assessee had resulted to a distorted picture of the „net margin“ realized by the assessee from its international transactions. Our aforesaid view is fortified by the order of the ITAT, Mumbai in the case of FedEx Express Transportation and Supply Chain Services India Pvt. Ltd. Vs. Dy. CIT, Range 8(1), Mumbai [ITA No. 435/Mum/2014; dated 10.12.2014]. In the said case, it was observed by the Tribunal that the payment made by the assessee to the third party for and on behalf of the AE which had been reimbursed by the AE, could not have been included in the total costs of the assessee for the purpose of determining its

profit margin. Also, the Hon`ble High Court of Delhi in the case of LI and Fung India Pvt. Ltd. Vs. CIT (2014) 361 ITR 85 (Del), had observed, that for applying the TNMM the assessee`s net profit margin realised from the international transactions had to be calculated only with reference to the cost incurred by it and not by any other entity either third party vendors or the associated enterprise. It was further observed by the Hon`ble High Court, that Rule 10B(e)(i) of the Income-tax Rules, 1962, does not enable consideration or imputation of cost incurred by third parties or unrelated parties for the purpose of computing the assessee`s „net profit“ margin for application of the TNMM. Accordingly, it was concluded by the Hon`ble High Court, that attribution by the TPO of the costs of the third party, when the assessee did not engage in that activity, and more importantly when those costs were clearly not the assessee`s cost, but those of a third party, was clearly impermissible. (iv). Apart from that, we find that from a perusal of the „agreements“ which the assessee had entered into with various carriers (i.e airlines) who are members of IATA, and also the sample „invoices“ raised by the assessee on its clients, it can safely be concluded that the assessee while providing logistics support services in “air business” had merely acted as an agent of the airlines. A perusal of the terms and conditions of “Cargo agency agreements” which the assessee had entered into with various airline carriers which were members of IATA, reveals that the assessee was to act as an „agent“ for the various member carriers. [(Page 804) of the assessee`s „Paper book“ (for short „APB“)]. As per the „agreement“, the assessee was vested with a limited authority to represent various member carriers while P a g e | 29 ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) selling the air cargo transportation services to the customers and was bound to adhere to the various terms and conditions imposed by the member carriers.(Page 805 of „APB“) In sum and substance, the assessee at all times was governed by the carriers. Also, as per the terms of the „agreement“ the assessee was bound to represent itself as an “agent” in all its communications viz. letterheads, telephone listings, office signs etc. with the customers, and was specifically prohibited from representing or projecting itself as a “Principal” (Page 806 of „APB“). Further, the „agreement“ also provided for indemnification of the assessee by the member carrier in the event of a loss/damage arising in the course of transportation pursuant to the sale made by the assessee.(Page 807 of „APB“). As such, the assessee did not assume any risks while undertaking its business. In order to fortify his aforesaid claim, the Id. A.R had drawn our attention to a sample “house airway bill” (Page 813-817 of „APB“) that was

issued by the assessee to its customer which revealed that the assessee had executed the same as an agent of the carrier. Also, we find that the functions (carriage of goods) and liabilities (indemnification of the loss etc.) assumed by the assessee vis-a-vis the customer (as per its standard terms and conditions) corresponds to those assumed by the carrier vis-à-vis assessee. Accordingly, we are of the considered view that the functions and liabilities were effectively delegated by the assessee to the carrier and no part of the same was effectively assumed by the assessee. On a similar footing, we find that in the case of "ocean business" also the assessee had merely acted as an agent. Further, we find that all the „agreements“ entered into by the assessee with the carriers (under both air and ocean business) were soft block agreements which provided an option to the assessee to cancel the same without incurring any penalty, therefore, no inventory risk was assumed by the assessee. (Page 860 to 865 of „APB“). As regards the observation of the TPO, that the main component of the income of the assessee is on account of the differential freight element which it is able to obtain from the shipping companies on account of bulk booking of space on the liner, we are in agreement with the contention advanced by the Id. A.R that the advantage to the assessee on account of bulk booking was on account of its value addition activities i.e generating more customers and not on account of transportation function. In fact, we are persuaded to subscribe to the claim of the Id. A.R that transportation cost could have been included as a base only if the assessee had undertaken the transportation activity itself or would have undertaken the risks associated P a g e | 30 ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited Vs. Deputy Commissioner of Income Tax, Circle 9(3)(1) with the transportation function. However, as in the present case, in the absence of either of the aforesaid factor there would be no justification for including the said third party costs i.e transportation costs as apart of the base. (v). As per the TPO, the element of freight could be considered as a pass through expense only if no profit or mark up is obtained on freight. However, as observed by the TPO, the case of the present assessee would not fall in the said category as the handling charges which were charged by the assessee varied from customer to customer, as they depended on the „mark up“ which it obtained from its customers based on negotiations. In our considered view, there is substantial force in the claim of the assessee that in order to characterize a particular item as pass through in nature an analysis has to be made with respect to the FAR of the assessee qua such activity. As the assessee does not perform any additional functions with respect to the third party cost, neither employs its assets, nor any risks are assumed for the same,

therefore, it can safely be concluded that the assessee does not undertake any activity in relation to the said costs. (vi). As regards the observation of the TPO that PLI of OP/VAE could not be safely applied as the reporting of various companies as regards classification of various expenses is not uniform, we are unable to find favour with the same. In our considered view, the assessee had only selected companies which had provided their VAE separately. Accordingly, in the backdrop of our aforesaid observations, we are of the considered view, that as in the case before us the costs pertaining to the services obtained by the assessee from the third parties viz. shippers/airliners, clearing and forwarding agents, transport service provider etc. neither involved any service element of the assessee nor the assessee had carried any risk or employed any of its assets with respect to the same, therefore, inclusion of the freight cost in the total cost base of the assessee by the TPO was not permissible. We thus are persuaded to subscribe to the claim of the assessee that the TPO/DRP were in error in rejecting the PLI of OP/VAE adopted by the assessee and substituting the same by PLI of OP/TC. As such, we herein restore the matter to the file of the A.O/TPO for the purpose of benchmarking the international transactions of the assessee by adopting the PLI of OP/VAE. Grounds of appeal Nos. 1, 3.1 and 3.2 are allowed in terms of our aforesaid observations. *P a g e | 31 ITA No.1030/Mum/2015 AY. 2010-11 DHL Logistics Private Limited.:*

8. Further, Tribunal has followed above finding in subsequent year as under:-

A.Y. 2011-12 ITA No.1923/Mum/2016 & Ors

“13. We have considered the submission of parties and gone through the order of Tribunal. We have noted that Tribunal in assessee's own case for A.Y. 2010-11 has accepted PLI of assessee on the basis of OP/VAE as noted in para-7 of this order. Considering the submission of ld.AR of assessee and the decision of Tribunal for A.Y. 2010-11, ground no.2.2 of the appeal is allowed.”

A.Y. 2015-16 ITA No.7166/Mum/2019

“4. Upon perusal of Ld. DRP's directions, we find that TP adjustment under both the heads i.e. (i) intra-group services; (ii) support services and inter corporate loans adjustment; has been confirmed following Ld. DRP's directions for AY 2012-13.”

A.Y. 2014-15 ITA No.7286/Mum/2018

“10. We find the facts narrated are identical and the selection of operating profits by value added expenses has to be considered as there is no change in assessee’s business model. We follow the judicial precedence and considering the facts presented in the course of hearing restore the disputed issue to the file of the AO / TPO with similar directions in respect of bench marking and adopting of PLI and allow the grounds of appeal for statistical purposes.”

8. The Ld.DR relied on the orders of lower authorities.

9. We have heard rival submissions of the parties on the issue in dispute and perused relevant materials on record. The Ld.DRP, following the findings of its predecessors upheld the OP/ OC as the appropriate profit level indicator (PLI), but the Tribunal (supra) has upheld OP/VAE is the Profit Level Indicator for comparison under TNMM. Respectfully following the finding of the Tribunal (supra), we direct the Ld.AO / TPO to adopt OP/VAE as the profit level indicator for comparison with the comparable cases. The ground of appeal of the assessee is accordingly allowed for statistical purpose.

10. The ground No.2.3 of the appeal was not pressed by the assessee as in view of the learned counsel, the same was rendered as academic. Accordingly, it is dismissed as infructuous.

11. Ground 2.4 was not pressed and hence, the same is dismissed as infructuous.

12. In ground 2.5, the assessee has challenged inclusion of comparable, M/s Om Logistics Ltd by the Ld.TPO / DRP.

13. Before us, the learned counsel of the assessee submitted that the said comparable is functionally incomparable in view of the assets comprising more than 5000 trucks owned by the said company. He submitted that this fact was duly submitted before the lower authorities, but same has not been taken into consideration. The Ld.Counsel further submitted that the comparable has been excluded in the case of the assessee in assessment years 2010-11; 2011-12; 2015-16 an

2014-15 of the Tribunal (supra). The relevant finding of the of the Tribunal (supra) for assessment year 2014-15 is reproduced as under:-

“16. Whereas, the ground of appeal No. 2.7 pertains to exclusion of comparable Om Logistic Ltd. The Ld. AR submitted that the comparable company is engaged in the transportation and logistics services of vehicle and tangible assets and in the assessee’s own case for A.Y 2015-16 it was excluded and dealt at page 13 Para 6 of the order as under:

6. In grounds Nos. 2.5 & 2.6, the assessee has contested the issue of comparable entities. However, Ld. AR during hearing, pleaded for exclusion of one comparable entity namely Om logistics Ltd in terms of Tribunal order for Assessment Year 2010-11. We find that vide para 30 & 31 of the order for Ay 2010-11, a finding has been rendered by the bench that though the assessee was not an asset owning company, M/s Om Logistics Ltd had significant asset and hence, functionally different and therefore, to be excluded from the list of comparable entities. Respectfully following the same, we direct for exclusion of the said entity from the list of comparable entities. These grounds stand allowed to the extent.

Accordingly, we direct the TPO to exclude the comparable in determination of ALP and allow the ground of appeal of the assessee.”

14. We find that the fact of assets owned by M/s Om Logistics Pvt Ltd has not been disputed whereas the assessee is only a low asset based company and, therefore, respectfully following the finding of the Tribunal (supra) in earlier years, we direct the Ld.AO / TRO to exclude the said company out of the set of the comparables and compute the adjustment accordingly.

15. Ground 3 relates to charge of interest under section 234B of the Act which is consequential in nature and, therefore, dismissed as infructuous.

16. Ground 4 of the appeal relates to claim of TDS short granted by the Assessing Officer amounting to Rs.1,76,71,200/-.

17. Before us, the Ld.Counsel of the assessee submitted that in the return of income, credit for TDS of Rs.36,22,36,938/- was claimed; however, a short credit of Rs.1,76,72,200/- was granted by the Assessing Officer and, therefore, matter may be restored to the file of the Ld.Assessing Officer for allowing TDS credit after verification of the Form 26AS. The Ld.Counsel of the assessee before us admitted that credit in respect of certain TDS has been received subsequent to the order passed by the Assessing Officer. In our opinion, the issue is merely a verification of the eligibility of the TDS credit of the assessee by the Assessing Officer and, therefore, same is restored back to the file of the Ld.Assessing Officer for allowing the TDS credit as per rules applicable. The ground of the appeal of the assessee is accordingly allowed for statistical purpose.

18. Ground 5 of the appeal relates to initiation of penalty under section 271AA and 270A of the Act. The levy of penalty is premature at this stage and, therefore, this ground of the appeal is infructuous and accordingly it is dismissed.

19. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the on 31st day of October, 2022 by way of display on notice board under Rule 34(4) of ITAT Rules, 1963.

Sd/-

(KULDIP SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 31/10/2022

/ Pavanan, Sr.PS

sd/-

(OM PRAKASHRI. KANT)

लेखा सदस्य/ACCOUNTANT MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai