

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 439/Chny/2016  
निर्धारण वर्ष / Assessment Year: 2011-12

M/s. Seoyon E-HWA Automotive  
Chennai Pvt Ltd.,  
(Formerly known as Hanyang  
Automotive India Pvt Ltd)  
Plot No. A5/1 SIPCOT Industrial  
Growth Centre, Mathur Village,  
Oraggadam, Sriperumbadur Taluk,  
Kancheepuram District – 602  
**[PAN: AACCH-1370-D]**

Deputy Commissioner of  
v. Income Tax,  
Corporate Circle -2(2),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. K. Senguttuvan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri. S. Palanikumar, CIT

सुनवाई की तारीख/Date of Hearing : 07.09.2022

घोषणा की तारीख/Date of Pronouncement : 04.11.2022

**आदेश / O R D E R**

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

This appeal filed by assessee is directed against final assessment order passed by the AO u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (hereinafter referred to as the "the Act") dated 04.01.2016, in pursuant to DRP

directions u/s. 144C(5) of the Act dated 28.12.2015 and pertains to assessment year 2011-12.

2. The brief facts of the case are that, the assessee company is engaged in the business of manufacturers of auto components, filed its return of income for the assessment year 2011-12 on 30.11.2011 declaring a loss of Rs. 5,01,61,459/-. The case has been selected for scrutiny under CASS, and during the course of assessment proceedings, a reference u/s. 92CA(1) of the Act was made to the Transfer Pricing Officer (TPO) to determine Arm's Length Price (ALP) with reference to international transactions reported in Form No. 3CEB. The TPO vide order dated 25.01.2016 suggested downward adjustment of Rs. 2,73,10,221/- in respect of international transactions. In pursuant to directions of the TPO, the AO passed draft assessment order u/s. 144C(1) of the Act and proposed the TP adjustment as suggested by the TPO. The assessee has filed objections against draft assessment order before the DRP, and the DRP, Bangalore vide their order dated 28.12.2015 upheld TP adjustments proposed by the Assessing Officer. In pursuant to DRP directions, the AO has passed final assessment order u/s. 143(3) r.w.s. 144C(13) of the Act on

04.01.2016 and made addition towards TP adjustment and other corporate tax issues. Being aggrieved by the final assessment order, the assessee preferred an appeal before the Tribunal.

3. The Ld. AR for the assessee submitted that the appeal filed by the assessee on the issue of transfer pricing adjustment towards international transactions with its Associate Enterprise (AE) should go back to the file of the AO for fresh consideration, in view of subsequent developments as per which for assessment year 2012-13, the assessee has followed internal CUP method to determine ALP of transactions with its AE. Although, for impugned assessment year, the assessee has followed TNMM method as most appropriate method, but subsequently it has been noted that internal CUP is the best method to determine ALP of international transactions and thus, the assessee has adopted internal CUP method for assessment year 2012-13 and the TPO has accepted the method followed by the assessee. Therefore, to give one more opportunity to the assessee, the matter may be remitted back to the file of the AO.

4. The Ld. DR, on the other hand, supporting the order of the DRP submitted that there is no change in method adopted by the Assessing Officer, while determining TP adjustment of international transactions with its AE. In fact, the TPO did not change method followed by the assessee. Therefore, appeal should not be set aside to file of the AO at this stage to give another chance to the assessee to come up with innovative arguments on most appropriate method.

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has followed TNMM as most appropriate method to determine ALP of international transactions with its AE. The TPO has accepted method followed by the assessee, but made certain adjustments towards international transactions. The assessee now claims that TNMM is not most appropriate method for international transactions of the assessee with its AE and further, internal CUP method is suitable method to determine ALP of international transactions. We find that the assessee is in initial year of operations and has adopted TNMM as most appropriate method. However, in subsequent assessment years and from assessment year

2012-13 onwards, it has followed internal CUP method as most appropriate method and claims that TPO has accepted internal CUP method followed by the assessee. If internal CUP method is most appropriate method to be followed to determine ALP of international transactions of the assessee, then why TNMM has been selected as most appropriate method was not explained by the assessee. However, the facts remains that when the assessee has adopted internal CUP method for assessment year 2012-13, the TPO has accepted claim of the assessee as claimed by the Id. Counsel for the assessee. Therefore, we are of the considered view that one more opportunity of hearing should be given to the assessee to justify its case with internal CUP method and thus, we set aside the issue to file of the AO/TPO and direct the TPO to re-consider the issue of TP adjustment, after giving one more opportunity of hearing to the assessee to justify its case that internal CUP method is most appropriate method.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 04<sup>th</sup> November, 2022 at Chennai.

**Sd/-**  
**(वी दुर्गा राव)**  
**(V. DURGA RAO)**  
**न्यायिकसदस्य/Judicial Member**

**Sd/-**  
**(जी. मंजुनाथ)**  
**(G. MANJUNATHA)**  
**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,  
दिनांक/Dated: 04<sup>th</sup> November, 2022  
**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF