

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2086/MUM/2022
(Assessment Year: 2017-18)

Jindal Drugs Pvt. Ltd.,
12A, 12th Floor, Bakhtawar,
229, Nariman Point,
Mumbai - 400021
[PAN: AAACJ1000A]

Appellant

Vs

The Assistant Commissioner of Income
Tax, Circle, 3(2)(1), Mumbai
Aaykar Bhavan, Chuchgate,
Mumbai - 400020

Respondent

Appearances

For the Appellant/Assessee : Sh. Vijay Mehta
Sh. Anuj Kisnadwala
For the Respondent/Department : Ms. Samruddhi Dhananjay Hande
Date of conclusion of hearing : 15.11.2022
Date of pronouncement of order : 08.02.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against the Final Assessment Order dated, 28.07.2022, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions, dated 22.06.2022, issued by the CIT (Dispute Resolution Panel-1), Mumbai-1 (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Year 2017-18.
2. The Appellant has raised following grounds of appeal:
 - "1. *The order passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) of the Act is bad in law and against the principles of natural justice.*

2. *The draft assessment order passed by the Assessing Officer u/s. 144C of the Act is bad in law since it is in contravention of the provisions of the Act namely. Faceless Assessment Scheme, 2019 read with the corresponding Standard Operating Procedure (the SOP') and as a result the entire proceeding based on such invalid draft assessment order is bad in law.*
 3. *The Assessing Officer, under the directions of the Dispute Resolution Panel (DRP), has erred in law and on facts in adding Rs. 1,98,42,000/- u/s 68 of the Act while computing income under normal provisions of the Act.*
 4. *The Assessing Officer, under the directions of the DRP, has erred in law and on facts in adding Rs. 1,98,42,000/- u/s 68 of the Act while computing income u/s 115JB of the Act.*
 5. *The Assessing Officer, under the directions of the DRP, has erred in law and on facts in disallowing a sum of Rs. 1,19,90,747/- u/s. 14A of the Act r.w.r. 8D of I.T. Rules while computing income under normal provisions of the Act.*
 6. *The Assessing Officer, under the directions of the DRP, has erred in law and on facts in disallowing a sum of Rs. 1,19,90,747/- u/s. 14A of the Act r.w.r. 8D of IT. Rules while computing income u/s 115JB of the Act.*
 7. *The Assessing Officer, under the directions of the DRP, has erred in law and on facts in making transfer pricing adjustment of Rs. 2,87,575/-.*
 8. *The Assessing Officer has erred in law and on facts in levying interest u/s 234D of the Act."*
3. Brief facts of the case are that the Appellant is a company engaged, inter alia, in the business of manufacturing menthol and essential oils for which the Appellant procures raw materials from farmers in Barabanki, Uttar Pradesh. The Appellant makes payments to farmers for raw material in cash either directly by itself or through agents. According to the Appellant, the aforesaid practice followed by the Appellant is normal business practice followed by the companies engaged in the business of manufacturing agri-products and is specifically covered under the

exemption provided by Section 40A(3) of the Act read with Rule 6DD of the Income Tax Rules, 1962.

- 3.1. The Appellant filed its return of income for the Assessment Year 2017-18 on 30.11.2017 declaring total income of INR 46,64,52,230/-. The case of the Appellant was selected for Complete Scrutiny Assessment under the E-Assessment Scheme, 2019.
- 3.2. Vide Draft Assessment Order, dated 29.09.2021, the Assessing Officer proposed (a) addition of INR 1,98,42,000/- under Section 68 of the Act, (b) addition of INR 1,19,90,747/- under Section 14A of the Act read with Rule 8D, and (c) the Transfer Pricing Adjustment of INR 2,87,757/- under the normal provisions of the Act as well as for the purpose of computing Book Profits under Section 115JB of the Act. The Appellant filed objections before DRP against the proposed additions. The DRP rejected all the objections raised by the Appellant except Objection No. 5 which was partly allowed as the DRP issued direction that the Transfer Pricing Adjustment cannot be added to Net Profits while computing Book Profits as per Section 115JB of the Act.
- 3.3. In accordance with the directions issued by the DRP, vide order dated 22.06.2022, the Assessing Officer passed the Final Assessment Order, dated 28.07.2022 which has been impugned by way of the present appeal on the Grounds reproduced in paragraph 2 above. The Grounds raised in appeal are taken up in seriatim hereinafter.

Ground No. 1

4. Ground No. 1 is disposed of as being general in nature not requiring any adjudication.

Ground No. 2

5. Ground No. 2 is disposed of as being not pressed in view of the statement made by the Learned Authorised Representative for the Appellant during the course of the hearing.

Ground No. 3

6. Ground No. 3 pertains to addition of INR 1,98,42,000/- made by the Assessing Officer under Section 68 of the Act under normal provisions of the Act.

- 6.1. During the assessment proceedings, the Assessing Officer noted that the Appellant had deposited cash during the demonetization period, the details of which are as under:

<i>Period</i>	<i>Inward Cash</i>	<i>Outward Cash</i>
16.11.2016 to 30.11.2016	2,18,72,186	2,35,63,828
16.02.2017 to 28.02.2017	12,60,50,000	10,96,19,326
01.03.2017 to 15.03.2017	9,75,50,000	11,20,79,490
16.03.2017 to 31.03.2017	10,02,00,000	11,19,75,362

- 6.2. The Assessing Officer noted that the Appellant had received cash of INR 1,98,42,000 from M/s Gupta Suppliers Company. In response to the query raised by the Assessing Officer in relation to the aforesaid cash deposit, the Appellant submitted that M/s Gupta Suppliers Company acted as an agent for procurement of raw material from the farmers. Just before demonetization funds were transferred through banking channels to M/s Gupta Suppliers Company for procurement of raw material and making payment in cash to large number of farmers from whom raw material was purchased in small quantities. Since the farmers did not have access to banking facilities the payment to such farmers was to be made in cash. This was a normal business practice being followed by the Appellant for

a number of years just like other companies engaged in the manufacture of agri-products which were specifically covered under the exemption provided by Rule 6DD of the Rules. M/s Gupta Suppliers Company had also withdrawn cash from the bank account for making payment to the farmers. However, due to demonetization, the same could not be used for making payments to the farmers and therefore, the cash was returned by M/s Gupta Suppliers Company to the Appellant by way of making deposit in cash in the bank account of the Appellant. The aforesaid facts were duly disclosed on the portal of the Income Tax Department in December 2016 under the heading Cash Transaction 2016. The Assessee also furnished the details of M/s Gupta Suppliers Company which included the Permanent Account Number (PAN) and email address. The Appellant had informed the Assessing Officer that tax at source has been deducted at the rate of 5% under Section 194H of the Act in respect of commission charged by M/s Gupta Suppliers Company for procurement of crude Menthol Oil from local farmers on behalf of the Appellant. The Appellant also submitted a copy of Ledger account giving details of transactions with M/s Gupta Suppliers Company and confirmation, dated 19.11.2016 issued by M/s Gupta Suppliers Company. It was submitted that transactions with M/s Gupta Suppliers Company were undertaken normally through the banking channel and it was only during the demonetization period that cash was received/paid by M/s Gupta Suppliers Company. However, the Assessing Officer was not convinced with the explanation submitted by the Appellant. The Assessing Officer also drew adverse inference from the fact that notices issued under Section 133(6) of the Act to M/s Gupta Suppliers Company were not complied with as neither anyone appeared before the Assessing Officer nor any reply was filed by M/s Gupta Suppliers Company. Therefore, the Assessing Officer

concluded that the Appellant had failed to furnish details/documents necessary to establish identity, creditworthiness and genuineness of the transaction and accordingly proposed addition of INR 1,98,42,000/- under Section 68 of the Act under normal provisions of the Act and for the purpose of computing Book Profit and Section 115JB of the Act. The DRP rejected the objections raised by the Appellant against the proposed addition of INR 1,98,42,000/- and therefore, in the Final Assessment Order, the Assessing Officer made the addition as proposed in the Draft Assessment Order.

- 6.3. In appellate proceedings before us the Learned Authorised Representative for the Appellant reiterated the submissions made before the Assessing Officer and the DRP. He vehemently contended that the Assessing Officer had failed to appreciate that the all the relevant details/documents including PAN of M/s Gupta Suppliers Company, ledger account maintained by the Appellant showing transactions with M/s Gupta Suppliers Company during the relevant previous year through normal banking channels, as well as the confirmation issued by M/s Gupta Suppliers Company, were furnished by the Appellant. The Appellant had thereby, discharge the initial onus cast upon the Appellant under Section 68 of the Act. Merely because notice issued under Section 133(6) of the Act were not complied with by M/s Gupta Suppliers Company, adverse inference cannot be drawn against the Appellant in view of the documents placed before the Assessing Officer by the Appellant.
- 6.4. Per contra, the Learned Departmental Representative relied upon the Draft Assessment Order, dated 29.09.2021, and the directions issued by DRP on 22.06.2022. He submitted that huge amount of cash of INR 1,98,42,000/- was deposited by M/s Gupta Suppliers

Company directly into the account of the Appellant. The Appellant had failed to establish that there was a requirement to hold such huge amount in cash for the purpose of making payment to the farmers. The confirmation issued by M/s Gupta Suppliers Company is cannot be relied upon as it is not clear who executed the same. Further, the notice issued under Section 133(6) of the Act to M/s Gupta Suppliers Company was not complied with. Thus, the Assessing Officer was correct in holding that the Appellant had failed to discharge its onus in terms of Section 68 of the Act and therefore, making addition of INR 1,98,42,000/-.

- 6.5. In rejoinder, the Learned Authorised Representative for the Appellant submitted that vide letter, dated 06.09.2021, all the relevant details including Mandi Receipts & Goods Receipt Register for purchases from farmers in Uttar Pradesh were filed before the Assessing Officer as Annexure-1a. The same established the need for holding the amount of INR 1,98,42,000/- in cash. However, the Assessing Officer and DRP failed to appreciate the same.
- 6.6. We have considered the rival submissions and perused the material on record. As per the Ledger Account (placed at page 62 to 70 of the paper-book) regular transactions were undertaken by the Appellant with M/s Gupta Suppliers Company during the relevant previous year. The Ledger Account reflected debit balance of INR 3,41,60,608/- on 30.09.2016, and debit balance of INR 3,10,95,643/- as on 31.10.2016. Thus, normally payments were made by the Appellant to M/s Gupta Suppliers Company in advance through normal banking channels to M/s Gupta Suppliers Company for making payments to the farmers in cash. The normal practice followed by the Appellant has been accepted by the Assessing Officer as being in compliance with Section 40A(3) read with Rule

6DD. As per the ledger account, debit balance of INR 3,03,97,507/- was reflected as on 08.11.2016. On 19.11.2016, credit entries of INR 1,32,82,000/- and INR 65,60,000/- are reflected in the ledger account which show that aggregate cash of INR 19,84,200/- has been deposited by M/s Gupta Suppliers Company in cash in the bank account of the Appellant. The Assessing Officer has held that the Appellant has failed to explain, inter alia, the genuineness of the transaction of deposit of cash in the bank account of the Appellant during the demonization period. Whereas, the Appellant has sought to explain the deposit of cash in the Appellant's bank account by M/s Gupta Suppliers Company as being money transferred to M/s Gupta Suppliers Company for purchase of raw material which was withdrawn by M/s Gupta Suppliers Company, but could not be used for making payments to farmers on account of demonetization and was, therefore, deposited back in the bank account of the Appellant. The Appellant has filed a confirmation issued on the letter head of M/s Gupta Suppliers Company (placed on page 58 of the paper-book) and is dated 19.11.2016. It has been signed by '*Authorised Signatory*'. However, the name and details of the authorized signatory are not stated therein. The notice issued by the Appellant under Section 133(6) of the Act has also not been complied with. Therefore, the confirmation letter does not inspire confidence. The confirmation states that cash has been withdrawn from bank out of funds transferred to M/s Gupta Suppliers Co. It also states that the same is being returned to the Appellant as M/s Gupta Suppliers Co can no longer hold this cash on account of demonetization. During the course of hearing, the Ld. Authorised Representative for the Appellant had submitted that after the transaction pertaining to deposit of cash the relationship between the Appellant and M/s Gupta Suppliers Company had soured and therefore, no adverse inference could be drawn against the

Appellant on account of non-compliance of notice issued by the Assessing Officer under Section 133(6) of the Act by M/s Gupta Suppliers Co. Thus, the issue that requires verification is whether the money transferred by the Appellant to the bank account of M/s Gupta Suppliers Company has been withdrawn for making payment to farmers for purchase of the raw material and thereafter, deposited in the bank account of the Appellant in cash as the currency note withdrawn would not have amounted to legal tender on account of demonetization. In view of the aforesaid and after taking into consideration the facts and circumstances of the case, we remand this issue to the file of Assessing Officer with following directions:

- (1) The Appellant is directed to furnish the details of bank account of M/s Gupta Suppliers Company in which payments were through banking channels along with the relevant extract of the bank statement of the Appellant exhibiting the aforesaid payments;
- (2) The Assessing Officer is directed to obtain the bank statement of M/s Gupta Suppliers Company for the relevant period from M/s Gupta Suppliers Company, and/or from the concerned bank by exercising powers as per the provisions of the Act including Section 133(6) of the Act;
- (3) In case the cash withdrawals made by M/s Gupta Suppliers Company from the aforesaid bank account are sufficient to account for deposit of cash made by M/s Gupta Suppliers Company into the account of the Appellant, then the Assessing Officer is directed to delete the addition under Section 68 of the Act to the extent of

such cash withdrawals;

- (4) As regards, the balance amount of addition made under Section 68 of the Act left (*after deletion as aforesaid*), if any, the Assessing Officer is directed to consider the details/documents furnished by the Appellant and gather such further information/documents from M/s Gupta Suppliers Company or any other source as it may deem fit, and decide the issue afresh as per law;
- (5) The Assessing Officer shall grant sufficient opportunity of being heard to the Appellant.

In terms of the above, Ground No. 3 raised by the Appellant is allowed for statistical purposes.

Ground No. 4

7. Ground No. 4 is directed against the increase of the Net Profits as per Profit & Loss Statement of the Appellant by INR 1,98,42,000/-, being addition made under Section 68 of the Act, for computing 'Book Profit' under Section 115JB of the Act.
 - 7.1. We have remitted the issue related to addition of INR 1,98,42,000/- made under Section 68 of the Act while computing income under normal provisions of the Act back to file of the Assessing Officer with directions in paragraph 6.6 above while disposing off Ground No.3. The issue raised in Ground No. 4 relating to computation of 'Book Profits' as per Section 115JB of the Act. We note that the transactions related to deposit of cash of INR 1,98,42,000/- is recorded in the books of accounts of the Appellant. The accounts prepared by the Appellant have been certified by the Auditor as having been prepared in compliance

with the provisions of the Companies Act, 2013. Once the accounts including the profit and loss account are certified by the authorities under the Companies Act it is not open to the Assessing Officer to contend that the Profit And Loss Account has not been prepared in accordance with the provisions of the Companies Act, 2013. The Assessing Officer, thereafter, has the limited power of making increase and reductions as provided for in the Explanation to the Section 115JB of the Act. The Assessing Officer does not have the jurisdiction to go behind the 'Net Profit' shown in the profit and loss account except to the extent provided in the Explanation to section 115JB of the Act as held by the Hon'ble Supreme Court has, in the case of Apollo Tyres Ltd. Versus CIT:255 ITR 73 (SC). Accordingly, keeping in view the facts and circumstances of the present case, Ground No. 4 raised by the Appellant is allowed.

Ground No. 5

8. In addition to the above, the Assessing Officer also proposed an addition of INR 1,19,90,747/- under Section 14A of the Act read with Rule 8D.
- 8.1. During the assessment proceeding, the Assessing Officer noted that the Appellant has earned dividend income of INR 96,031/- from equity oriented mutual funds. The Appellant voluntarily disallowance of INR 3,643/- under Section 14A of the Act as common administrative expenses allocated for earning exempt income. The Assessing Officer noted that the Appellant had incurred finance cost and had claimed deduction for interest expenses of INR 4,14,99,106/- in respect of borrowed capital. The Appellant had investment of INR 119,90,54,050/- in subsidiary company and had also maintained portfolio of investments.

According to the Assessing Officer, interest bearing funds were used for making investments for earning exempt income, and therefore, the Assessing Officer computed disallowance at INR 1,19,90,747/- as per provisions of Section 14A of the Act read with Rule 8D as applicable to Assessment Year 2017-18. The disallowance of INR 1,19,90,747/- proposed by the Assessing Officer in the Draft Assessment Order, dated 29.09.2021 was incorporated in the Final Assessment Order, dated 28.07.2022 as the objections filed by the Appellant against the proposed disallowance were rejected by the DRP by issuing directions dated 22.06.2022.

- 8.2. Being aggrieved, the Appellant is before us. The Ld. Authorised Representative for the Appellant submitted that it is settled legal position that disallowance made under Section 14A of the Act cannot exceed the amount of exempt income earned by the Appellant during the relevant previous year. Further, he submitted that in view of the decision of the Special Bench of the Tribunal in the case of Assistant Commissioner of Income Tax - Circle 17(1), New Delhi vs. Vireet Investment Private Limited: [2017] 188 TTJ 1 (Delhi - Trib.) (SB), only income yielding exempt income are to be considered while computing disallowance in terms of Section 14A of the Act read with Rule 8D of the Rules.
- 8.3. Per contra, Ld. Departmental Representative relied upon the Draft Assessment Order and the directions issued by the DRP on this issue. The Learned Departmental Representative relied upon the amendments to Section 14A introduced by the Finance Act 2022, and submitted that the law stands amended retrospectively and therefore, the provisions contained in Section 14A of the Act are now to be interpreted taking into account the Explanation inserted

by the Finance Act 2022, and therefore, the deduction under Section 14A of the Act cannot be restricted to the amount of exempt income.

- 8.4. In response, the Learned Authorised Representative for Appellant relied upon the decision of the Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] and submitted that the contention of the Revenue that amendments to Section 14A of the Act introduced by the Finance Act, 2022 shall have retrospective effect has been rejected by the Hon'ble Delhi High Court.
- 8.5. We have considered the rival submissions and perused the material on record. We note that Rule 8D(2) was substituted w.e.f. 02.06.2016, while the judgment of the Special Bench of the Tribunal in the case of Vireet Investments (supra) was rendered in relation to Rule 8D(2) as it existed prior to the aforesaid amendment in Rule 8D(2). Accordingly, the decision of the Special Bench of the Tribunal will not be applicable to the facts of the present case. However, we find merit in the contention advanced by the Ld. Authorised Representative for the Appellant that amount of disallowance under Section 14A of the Act cannot exceed the amount of exempt income as held by the Hon'ble Supreme Court in the case of DCIT Vs State Bank of Patiala: 99 Taxmann.com 286 SC, which was followed by the Hon'ble Bombay High Court in the case of DCIT Vs. Reliance Ports and Terminals Ltd: 114 Taxmann.com 529 Bombay. The Hon'ble Delhi High Court has, in the case of Era Infrastructure India Ltd (supra), held that the amendments to Section 14A introduced by the Finance Act, 2022 shall apply from Assessment Year 2022-23. Thus, there

is no change in law with respect to assessment years prior to 2022-2023. Accordingly, for the Assessment Year 2017-18 before us, the disallowance made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Rules is restricted to INR 96,031/- and the balance amount is deleted. Ground No. 5 raised by the Appellant is partly allowed.

Ground No. 6

9. Ground No. 6 pertains to addition of INR 1,19,90,747/- made to the Net Profits while computing 'Book Profits' under Section 115JB of the Act. On perusal of Clause (f) of Explanation 1 to Section 115JB(2) of the Act it is clear that the computation under clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under Section 14A of the Act read with Rule 8D of the Rules. Therefore, the Assessing Officer erred in adding INR 1,19,90,747/- to the Net Profits while computing 'Book Profits' under Section 115JB of the Act. Accordingly, we remand this issue back to the file of Assessing Officer for determining the amount of expenditure deductible to earning exempt dividend income of INR 96,031/- which is to be added to the Net Profits while computing Book Profit as per Clause (f) of Explanation 1 to Section 115JB(2) of the Act having regard to the provisions contained in Section 14A the Act (without resorting to the computation as contemplated under Rule 8D of the Rules). Accordingly, in terms of the aforesaid, Ground No. 6 raised by the Appellant is allowed for statistical purposes.

Ground No. 7

10. Ground No. 7 pertains to making transfer pricing adjustment of INR 2,87,575/-.
- 10.1 The relevant facts for adjudication of the issue under consideration

are that as per Form 3CEB, the Appellant had Units eligible for deduction under Section 80IB of the Act (hereinafter referred to as '80IB Units') which have entered into specified domestic transactions Non-Section 80IB Units during previous year 2016-17 relevant to the Assessment Year 2017-18. For determining ALP of the specified domestic transaction of sale of Chocolate of INR 1,21,92,676/- by Choco Bari Brahmana, one of the 80IB Unit, to Cocoa Mumbai, a Non-80IB Unit. The Appellant benchmarked the transaction using Internal Comparable Uncontrolled Price (CUP) Method. The Appellant submitted Invoice-wise listing of sales made to third parties/non-AEs vis-a-vis Cocoa Mumbai/AE and sample invoices. From the perusal of details submitted by the Appellant, the TPO concluded that the rate at which product was transferred by the Appellant's 80IB Unit to a non-80IB Unit was lower than the rate at which the same product were sold to third party/non-AEs sales in few cases, and therefore, proposed upward transfer pricing adjustment of INR 2,87,575/-, vide order dated 28.01.2021, passed under section 92CA(3) of the Act as per following table:

Inv. No.	Date	Qty	Rate	Total	Bench Mark price	Party referred	Rate Diff	Adj
154	13/09 /2016	3,000	160	571,875	150	Bunge India Pvt. Ltd.	(10)	(30,000)
164	24/09 /2016	2,500	160	476,563	143	Purotos Foods Ingredients India Pvt. Ltd.	(17)	(42,825)
21	15/04 /2016	2,000	150	337,500	110	Changulani Enterprises, Lucknow	(40)	(80,000)
99	15/07 /2016	5,500	143	880,000	118	Bunge India Pvt. Ltd.	(25)	(134,750)
				2,265,938				(287,575)

- 10.2 The objections against the proposed transfer pricing adjustment were rejected by the DRP and therefore, in the Final Assessment Order, dated 28.07.2022, transfer pricing addition of INR 2,87,575/- was made by the Assessing Officer. Being aggrieved, the Appellant is before us in appeal.
- 10.3 The Ld. Authorised Representative for the Appellant submitted that before DRP it was contended by on behalf of the Appellant that the benchmarking exercise carried out by the TPO is incorrect as the TPO had chosen to consider highest price for that particular product prevailing on date of transaction, instead of adopting weekly average of benchmark external prices. Placing on record a sheet containing the details of sales made by the Appellant to Associated Enterprises (AEs) and Non-AEs, he submitted that the TPO has ignored the transactions where difference in the rates were favourable to the Appellant while making the transfer pricing adjustment.
- 10.4 Per contra, Ld. Departmental Representative supported the order passed by TPO and submitted that Appellant had failed to provide any reason for adopting weekly average either before the TPO or before DRP. She submitted that under CUP method selected by the Appellant each transaction is to be considered separately and therefore, the TPO was justified in taking the adopting the highest price for the particular product prevailing on date of transaction.
- 10.5 We have heard the rival contentions and perused the material on record. The grievance of the Appellant is that the TPO has, while computing the transfer pricing adjustment, not taken weekly average, and without prejudice to the aforesaid, the TPO has erred in only taking into account the variations in favour of the Revenue

while ignoring the variations in favour of the Appellant. As pointed out by the Ld. Departmental Representative no case has been made out on behalf of the Appellant for adopting weekly average. Further, we note that the rate at which the product has been sold to non-AEs on the same date is identical whereas rate at which the product has been sold to AEs varies even when sale is made on the same date and under same invoice. Though the product has been sold to AEs at different prices on the same date, no reason has been furnished for this variation in the rate. In the cases where rate at which sales were made to AE were less than the rate at which sales were made to non-AEs, the TPO has proposed transfer pricing adjustment. Whereas in cases where the rate at which sale was made to AE was equal to or more than sale made to non-AE, no transfer pricing adjustment was called for and therefore, the TPO has accepted the same. In view of the aforesaid, we do not find any reason to interfere with the transfer pricing adjustment of INR 2,87,575/- made in the Final Assessment Order, dated 28.07.2022. Accordingly, Ground No. 7 raised by the Appellant is dismissed.

Ground No. 8

11. Ground No. 8 pertains to levy interest under Section 234D of the Act, and is disposed off as being consequential in nature.

In the result, the present appeal is partly allowed.

Order pronounced on 08.02.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.02.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai