आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
249/Hyd/2021	2016-17	Zuari Cement Limited, Yerraguntla, Kadapa District [PAN: AAACZ1270E]	DCIT, Circle-1, Kurnool
132/Hyd/2022	2017-18		

निर्धारिती द्वारा / Assessee by: Shri Deepak Chopra &
Shri Pratishtha Singh &
Shri Nitin Narang, ARs

राजस्व द्वारा / Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 31/01/2023
घोषणा की तारीख/Pronouncement on: 15/02/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the final assessment orders passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of Zuari Cement Limited ("the assessee") for the assessment years 2016-17 & 2017-18, under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (for short "the Act") assessee filed these appeals. Since the facts involved in both these assessment years are similar and

mostly the grounds of appeal, we, therefore, deem it just and convenient to dispose of these appeals by way of this common order, taking the appeal in ITA No. 249/Hyd/2021 for the assessment year 2016-17 as a lead case.

2. Briefly stated relevant facts are that the assessee is engaged in the business of production and sale of Portland Cement which is used in commercial, industrial and residential construction activities. It manufactures blended cement, Portland cement and PRIMO concrete cements. Assessee was a JV between Zuari Industries Ltd., (ZIL) and Ciment Francais SA (CF) and existed as JV until 31/05/2006. Pursuant to CF's acquisition of 50% stake held by ZIL, the assessee company became a wholly owned subsidiary of CF, effective from 31/05/2006. The ultimate holding company is Italcementi S.p.A. Sri Vishnu Cement Ltd., was merged with ZCL with effect from 01/01/2007.

3. During the assessment year 2016-17, assessee entered into certain international transactions with its Associated Enterprises (AEs) and the summary thereof as could be found out from form 3CEB/TP Document is as follows:

S.No	Name of the AE	International Transactions	Amount (in Rs)	Method applied
1	Interbulk Trading SA	Purchase of raw materials	401315684	TNMM
2	Singha Cement Private Limited	Sale of clinker and cement	133685410	TNMM
3	Ciments Francais SA	Technical Knowhow	360062199	TNMM
4	Ciments Francais SA	Sub license fee for use of trademark	107457734	CUP supported by TNMM
5	Italcementi SpA	Procurement commission	4333578	TNMM
6	Italcementi SpA	IT services fee paid	17418064	TNMM
7	Bravo Solutions SpA	E Procurement Consultancy services fee paid	4320794	TNMM

8	CTG SpA	Consultancy services fee paid	18797730	TNMM
9	Singha Cement Private Limited	Sales commission	19997516	TNMM
10	Ciments Francais SA	Guarantee Fee	5466091	OM
11	Ciments Francais SA	Recovery of expenses	7982827	OM
12	Suez Cement Company SAE	Recovery of expenses	5080156	OM
13	Asia Cement	Recovery of expenses	1049162	OM

4. For the purpose of TP analysis, the assessee has aggregated the transactions, namely, purchase of raw materials, sales of clinker and cement, receipt of technic knowhow, sub-license fee paid, procurement commission paid, IT services fee paid, e-procurement consultancy services fee paid, sales commission paid, trade payables and trade receivables under the manufacturing function stating that the same are inter-linked with the main function of manufacturing, by choosing itself as a tested party. Assessee applied TNMM as the Most Appropriate Method (MAM), adopted OP/TS as PLI, to reach its PLI at 7.46% whereas the PLI of the comparable entities with a median of 7.77%. Assessee thereby stated that its PLI is within Arm's Length Price (ALP).

5. Learned Assessing Officer did not favour this aggregation of transactions of purchase of raw materials, sales of clinker and cement, receipt of technical knowhow, procurement commission paid, IT services fee paid, e-procurement consultancy services fee paid, sales commission paid, trade payables and trade receivables under the 'manufacturing function' stating that such a method has not been justified. According to the learned Assessing Officer, the transactions of purchase of raw materials, sale of finished goods are not closely linked with the payment of consultancy services fee to the AEs, and the pricing of purchase of raw materials from the AEs are not influenced the price of sub-license fee paid by the assessee to its AEs. Likewise, the outstanding receivables are also not to be aggregated under TNMM. Learned Assessing Officer, accordingly

rejected the aggregation of certain transactions and proceeded to determine the ALP of technical knowhow received and outstanding receivables/payables by adopting CUP method whereas other transactions by adopting other method.

6. Learned Transfer Pricing Officer (learned TPO) on his own analysis reached a conclusion that the determination of ALP of the international transaction needs upward adjustment by a sum of Rs. 53,81,24,693/- which the learned Assessing Officer added to the income of the assessee by way of Draft Assessment order.

7. Assessee filed objections before the learned Disputes Resolution Panel (learned DRP). Learned DRP after considering the material before them, upheld the approach of the learned TPO/learned Assessing Officer in respect of segregating certain transactions from the manufacturing process and applying CUP and other methods on the ground that such transactions cannot be interlinked with the manufacturing activity. Learned DRP upheld the various adjustments made by the learned TPO on account of the segregated method.

8. Assessee is, therefore, before us in this appeal primarily submitting that this issue relating to the MAM is no longer res integra and as a matter of fact, dealt with in detail by a Co-ordinate Bench of this Tribunal in assessee's own case for the assessment years 2009-10 to direct the learned Assessing Officer to consider the issue afresh first by determining the MAM and then, analysing the transactions under the provisions of TP. He further submitted that the findings of the Co-ordinate Bench of this Tribunal for the assessment year 2009-10 were followed in 2011-12 to 2014-15. He also filed a copy of the order dated 04/05/2022 in support of his contention that while giving effect to the directions of the Co-ordinate Bench of this Tribunal, the learned Assessing Officer accepted the contentions of the assessee and accepted the TNMM as the MAM thereby

proposing no TP adjustment. Basing on this, he further submitted that in this peculiar situation, all other grounds raised in this appeal including the specific ground relating to the sales commission are subsumed in the ground relating to the adoption of MAM, and such grounds become academic.

9. Per contra, learned DR vehemently opposed the relief sought in this appeal, stating that in the earlier assessment years, the Co-ordinate Bench of this Tribunal missed the point that the expenses claimed by the assessee like technical knowhow, sub-license fee, procurement commission, IT services, e-procurement consultancy, consultancy services towards sales commission, interest on delayed receivables etc., are independent transactions and are termed as intergroup services and they can stand alone from each other. He further submitted that as per the OECD guidelines, such transactions need to be benchmarked separately. Apart from this, according to him, Rule 10B of the Income Tax Rules, 1962 ('the Rules') mandates separate bench marking for each of the international transactions and does not speak about aggregation of transactions and consequent bench marking is alien to the TP proceedings.

10. Learned DR also submitted that it is legitimate for the learned Assessing Officer to verify whether the intra group services have been rendered, and when an activity is performed for one or more group members by another group member should depend on whether the activity provides a respective group member with economic or commercial value to enhance its commercial position. He also submitted that such a question can be determined by considering whether an independent enterprise in comparable circumstances would have been willing to pay for the activity if performed for it by an independent enterprise. If the activity or service is not the one for which the independent enterprises would have been willing to pay or perform for itself, the activity ordinarily should not be considered as an intragroup service under the Arm's Length

Principle. According to him, benefit obtained from an intragroup service purchase or benefit expected from the transaction must be analysed from the perspective of both the parties.

11. Pursuing this stream of argument, learned DR further submitted that once it is determined that an intra group has been rendered, it is necessary to determine whether the amount charged for the transaction is at Arm's Length, which means that the charge for intra group services should be that which have been made and accepted between independent enterprises in comparable circumstances, and to justify the arm's length nature intragroup services should be that which have been made and accepted between independent enterprises in comparable circumstances, and the next step in that direction would be to identify the actual arrangements to charge for intragroup services.

12. Learned DR while adverting to the charging methods submitted that the direct charging method is more suitable where it is obvious that a service has been rendered and especially if the multi national enterprise rendered the specific services to unrelated third parties at the same time and it has the ability to demonstrate a separate basis for charge; whereas the indirect charge method is applicable only if similar services are not rendered to independent parties; certain cost allocation and apportionment methods which necessitate some degree of estimation or approximation are adopted which must be sensitive to commercial features of individual case. Having said so, he argues that the crux of business in an uncontrolled situation, the assessee would resort to said transaction or not, and, therefore, the query goes to the basic question, whether these services solicited/rendered in an uncontrolled situation, if so whether these services have been actually rendered or not. According to him, this situation imperates the assessee to prove that these services were rendered without which the assessee is not justified the payments.

13. Learned DR adverted to the fact of italcementi group started its business in India by acquiring Yerraguntla Cement Plant on the basis of 50:50 joint venture with KK Birla Group in the financial year 2000-2001, its subsequent acquisition of full control of assessee through cements francais SA, which is the immediate holding company and also its acquisition is Sri Vishnu Cements Ltd., which was a sick company. He, therefore, submits that the assessee did not bring any technology to India in this field and it is only through acquisition of the existing industrial units the assessee has been pursuing its business and, therefore, the assessee cannot justify any payments towards royalty or other fee for technical services etc. Apart from this, by the so called services of its AEs, there is no apparent benefit to the assessee in its business receipts. He placed reliance on a decision of the Co-ordinate Bench of Bangalore Tribunal in the case of Gemplus India (P) Ltd., vs. ACIT [2010] 3 taxmann.com 755 (Bangalore – Trib.), in support of his argument that it is it is imperative for the assessee to establish before the TPO that payments were made commensurate to volume and quality of services and such costs were comparable.

14. In reply, learned AR submitted that in assessee's own case, the Tribunal has been taking a consistent view right from the assessment year 2009-10 and such settled view may not be disturbed for this particular year, without being any compelling reasons. He further submitted that by order dated 17/04/2015, the Co-ordinate Bench of this Tribunal took cognizance of the arguments of the department that the benefit test must be applied to various payments made by the assessee and rejected the same while returning a finding that all such transactions are linked to the process of manufacture and the learned Assessing Officer has to analyse the transactions under the TP provisions after determining the MAM.

15. We have gone through the record in the light of the submissions made on either side. Insofar as the functions performed, assets deployed,

and risks undertaken by the assessee are concerned, there is no change in this assessment year. Adoption of the MAM was considered by a Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2009-10 and the bench directed the learned Assessing Officer to consider the entire gamut of the issue relating to the selection of MAM and analyse it afresh, first by determining the MAM and then analysing the transactions under the provisions of the TP. For the sake of completeness, we deem it just and necessary to refer to the observations of the Bench, which read thus,-

> ***"Transfer Pricing Issues:***
>
> *7. Assessee being a wholly owned subsidiary of a foreign company, has various transactions with its AEs which were reported as the international transactions in 3CEB report. The TPO noted them in Page 2 of the order and after excluding non-operating items, both revenue and expenditure, arrived at (operating cost / operating revenues) at 27.12%, whereas (operating profits / operating cost) was arrived at 33.37%. Assessee in its 3CEB report claimed Transaction Net Margin Method [TNMM] as the most appropriate method, analysed its transactions and compared two sets of comparable companies. Under the first set of comparables as noted down by TPO in Page 4 of the order, it compared 11 companies which are in cement business whose average operating profit/operating cost was at 18.59% as against assessee's operating margin 29.36%. It also had another set of comparables wherein the average net margin on sale was at 21.67% as against assessee's margin of 29.36%. Assessee's TP study was rejected by TPO stating that just because the operating margin of the taxpayer is comparable with the operating margin of certain comparables, it cannot be said that all the transactions were transacted at Arm's Length. Relying on the principle of 'substance over form' as held by Hon'ble Supreme Court in the case of Union of India Vs. Gosalia Shipping P. Ltd., [113 ITR 307 (SC)], AO rejected the method of TNMM, consequently, the TP study conducted by the taxpayer. He also held that aggregation of transactions were not allowed and relied on the decisions of the co-ordinate bench in the case of Star India P. Ltd., Vs. ACIT [2008-TIOL-426-ITAT-MUM] and also UCB India Pvt. Ltd., [317 ITR 292 (AT) (Mum)], to come to a conclusion that any transaction that has bearing on profits can be analysed separately. Thereafter, he*

analysed various international transactions, mostly under the Comparable Uncontrolled Price (CUP) method for analyzing the arm's length nature of payments to its AEs. He further held that fees for technical know-how, fees for use of trade mark and fees for procurement etc., are a separate class of transactions, therefore, they have to be analysed separately, as each transaction has a bearing on profits. Accordingly, the transactions entered into by and between the taxpayer and its AEs are considered separately for the purpose of transfer pricing analysis. Ld.TPO noticed that assessee paid an amount of Rs.12,53,26,000/- to Ciments Francais S.A., as technical know-how and research and other service fee. This payment was paid on an agreement dt.02-08-2000 for getting technical know-how for a period of three calendar years from that effect date. As per renewal of clause at 12.2 it is mentioned that agreement was automatically be renewed subject to Government/Statutory approval for a period of one calendar year at a time in support of the transaction. Assessee has furnished a copy of agreement dt.06-06-2007 effective from 01-01-2007 for payment of royalty @ 2% on sales made to outside parties and 1% on sale to group companies. Even though assessee justified the payment, Ld.TPO however, considered that there is no addition of new technical know-how and compared with financial results of Sri Vishnu Cements Ltd., under the CUP method, to hold that there is no justification for payment of royalty. Accordingly he came to the conclusion that there is no need to pay any amount. Not only that, he also compared some external comparables and came to the conclusion that average pay out on account of technical services by those comparable companies was at 0.91% of net sales. Therefore, based on these two internal and external CUP analysis, TPO determined the payable royalty at 0.91% which comes to Rs.10.87 Crores. The additional amount of Rs.1,65,64,219/- was disallowed as an excess payment and was adjusted u/s.92CA.

8. Next item analysed by TPO was with reference to payment of Rs.6,26,62,000/- to Ciments Francais S.A., towards sub-license agreement. Ciments Francais S.A., an affiliated company of Italcementi Group is having sub-license agreement to use the trade mark. As per the agreement, royalty at 1% of net sales of licensed products has to be paid to Ciments Francais S.A., on quarterly basis. AO analysed the same under the CUP method and noticed that there is no need for paying any amount to Italcementi Group for use of trade mark as assessee's own trade mark of ZCL was well

established. He analysed the evolution of ZCL brand equity and noticed that assessee itself had entered into an agreement with M/s. Jindal Vijayanagar Ltd., for a fixed license of Rs.1,00/- per metric tonne for using the trade mark and accordingly, assessee has received amounts. Therefore, commercial exploitation of the trade mark aided by the marketing and advertising efforts of ZCL, resulted in creation of valuable intangible assets in India. Thereafter, analyzing the benefit test, the TPO came to the conclusion that new trade mark licensed to the tax payer does not have any value and therefore no license fee should be chargeable for its use. Thereafter, he has disallowed the entire amount of sub-license fee paid under the provisions of Section 92CA. Not only that he further analysed the co-branding of ZCL and 'Italcementi' Group and came to the conclusion that Italcementi Group got benefit by piggy riding on ZCL brand, which has tremendous value in the market and therefore, the same requires to be compensated at arm's length. He took the 10% of ALP expenses between 2001 and 2008 and arrived at the compensation payable to ZCL, for use of its trade mark at Rs.41,60,00,000/- and made the adjustment of the above in the impugned year.

9. In addition, TPO also analysed the payments from the intra group services of procurement fee of Rs.7,11,82,000/-. Considering that there is no need for any services, he disallowed the entire amount. Likewise, consultancy fees paid of Rs.38,10,000/- to Bravo Consultancy SPA and Rs.42,10,94,000/- to CTG SPA were also considered and disallowed the same reason and on the basis of the benefit test, in its entirety. Assessee's objections were rejected and the above amounts were disallowed. Another disallowance made by the AO was with reference to reimbursement of expenses under various heads totaling to Rs.51,72,995/-. Thus, in all, an amount of Rs.99,64,85,214/- was treated as adjustment u/s. 92CA. Assessee filed various objections before the DRP but more or less concurred with TPO vide its order dt.25-11-2013. Assessee is aggrieved.

10. Assessee's objections are multi-fold. Ground No.1 & 2 are general in nature. Ground No.3 & 4, is the method adopted by the TPO and Ground No.5 to 12 are on various disallowances made by the TPO out of various payments made to AE. Each ground has sub grounds which are more or less in the form of submissions.

11. Ld.AR submitted that TPO erred in rejecting the transfer pricing documentation as well as TNMM as most appropriate

method. It was the objection that there is no publicly available information on prices charged in independent transactions which are similar or identical in nature that reflects the characteristics of the services provided by the AEs to the assessee. It was further submitted that neither assessee nor AEs provide similar services under comparable circumstances to any independent third party. Therefore, application of CUP method is not tenable and given the facts of the case will not give reliable results. Assessee relied on the orders of the ITAT in Air Liqauide Engineering India Pvt. Ltd., in ITA No.1040/H/2011 and Lumax Industries in ITA No.7408 and 7641/Mum/2010. With reference to the T.P. adjustment of Rs.1,65,64,219/- relating to fee paid for technical services, it was contended that SVCL i.e., Sri Vishnu Cements Ltd., was a subsidiary of assessee, as a part of BIFR package from FY.2002-03. Before that, it was independent sick company and having acquired by the company, being sick, no royalty was charged to SVCL during the period 2002-03 to 2006-07 w.e.f. January 2007. The said SVCL was merged with assessee-company under the order of Hon'ble High Court of AP. Therefore, comparing with costs occurred about three years prior to the impugned period, was also not correct. Further, it was contended that TPO has taken a wrong information and ignored certain data in between which comparing annual earnings as can be seen from the table itself extracted in the order. Since TPO has not based his ultimate decision of SVCL, Ld.Counsel also referred to the three companies taken as external comparables, in arriving at 0.91% of royalty rate. It was submitted that the technical fee paid included in their annual report is not the royalty on sales, but expenses like royalty on lime stone, other fees paid to Government authorities which cannot be considered as royalty payment on sales. He referred to the order of the TPO and balance sheet of various companies to submit that the basis itself is not correct. With reference to sub-license fee of Rs.6,26,62,000/-, it was submitted that this agreement was entered in the year 2007 and objected to the method adopted by the TPO stating that the transaction is inextricably linked with the manufacturing operation, thereby aggregation of transaction with application of TNMM as a MAM cannot be ignored. It was further contended that there were no cogent reasons as to why CUP should be adopted and both TPO and DRP erred in determining the ALP at NIL. It was the submission that use of trade mark is a business decision and there are benefits to assessee for use of Italcementi Group trade mark and demonstrated by the support of growth in sales volume over a five year period and

increase in customer base in the five years and furnished the copies of evidences furnished to the TPO, in support of the submissions. It was further submitted that a publicly available information analysis was undertaken by assessee on the rate of royalty being charged by licensor to a licensee and that analysis came to the range of 1.93%. Therefore, the payment made by ZCL @ 1% on sale was to be considered as arm's length and TPO's determination at NIL cannot be supported, in view of the decision of the Hon'ble High Court of Delhi in the case of CIT Vs. EKL Appliances Ltd.,

11.1 Coming to the alleged transfer of economic value of Zuari trade mark to Italcementi Group trade mark, it was contended that there was no migration of economic value as the Zuari brand was owned by the company and is being used in all the sales. It was further contended that AE has not used 'Zuari' brand anywhere in the world for its operations to get any benefit as alleged by the TPO. Further, it was contended that Italcementi Group trade mark was being used from AY.2006-07 onwards and therefore, AO was wrong in taking the market expenses after that period also. With reference to the incorrect methodology for valuation of Zuari trade mark, it was further contended that transfer of trade mark will not happen year after year and TPO/ DRP has made a similar approach in AY.2008-09 and made the adjustment of Rs.31.74 Crores and in AY.2009-10, the adjustment was Rs.41.60 Crores. Therefore, the action of the TPO/DRP is irrational on the reason that proposing the transfer pricing adjustment for transfer of Zuari trade mark year after has no basis, without appreciating the fact that the transfer can take place only once. With reference to the consultancy fees for manufacturing a new plant, first objection was that the amount was not claimed as expenditure in the P&L A/c and was capitalized. While supporting the payment by way of services being provided by the AE in procuring the equipment for the new plant and also the necessity for taking various procurement services for a fee, it was the submission that TPO erred in ignoring the evidences and determining the ALP at NIL. Likewise, payment of consultancy fee to Bravo Consultancy SPA for use of 'easy supply' portal and the evidences furnished in this regard were totally ignored and wrongly determined the ALP at NIL. Likewise, the Ld.Counsel made detailed submissions on reimbursement of expenses and other various disallowances made by the TPO. Detailed submissions were filed issue- wise.

12. Ld.DR further referred to various observations of the TPO and findings of the DRP to submit that the adjustments made are warranted on the facts of the cases. He supported the orders of the TPO/DRP.

13. We have considered the issue and pursued the evidences on record, including the documents placed on the Paper Books. We are of the opinion that the approach of the TPO is not correct. Even though the payments made by assessee to the AEs are just a fraction of the total turnover of assessee, these transactions are invariably inter-linked to the manufacturing and trading of cement by the assessee-company. Therefore, the approach of the TPO in considering the CUP method for analyzing independent transactions is not fully justifiable. Apart from that, the methodology used in various analysis is also faulty. As far as the royalty payment on sales is concerned, as rightly pointed out by the Ld.Counsel, there are no comparable companies which are offering similar services. The TPO's comparison on transactions of assessee subsidiary company much prior to the year under consideration cannot be justified. Therefore, on that basis itself, the comparison cannot be considered as an internal CUP. Moreover, the need for not charging royalty from SVCL was also explained as the subsidiary company was a sick company and in the process of reviving the company, assessee has not charged any royalty to its subsidiary company. Therefore, on FAR analysis, SVSL's past record with that of present transactions of assessee-company is not correct. Then, coming to external comparables, we were surprised to note that the TPO considered the technical fee payments without analyzing the nature of the payments. In some cases, it is royalty for acquiring the lime stone from Govt., which is not a 'royalty' for getting the technology from foreign AE. There is foreign exchange expenditure also considered as 'technical know-how fee'. A detailed objections of the assessee were not even considered or discussed either by the TPO or by the DRP. Therefore, on the basis of an external CUP ALP of 0.91% itself is not correct. Therefore, the entire exercise undertaken by the TPO on this issue is erroneous and cannot be justified.

14. Leave alone that amount, even the sub license fee for the use of trade mark is also faulty. Under the guise of TPO provisions, the TPO cannot determine the ALP at NIL as held by the Hon'ble Delhi High Court in the case of CIT Vs. EKL Applicances Ltd., (supra). Therefore, rejecting the entire payment without there being any analysis on the CUP method cannot be accepted. In the guise of

analyzing the transactions in the CUP method, the TPO has not brought any evidence on record to reject the 1% payment made to Italcementi Group. Moreover, while determining the price at NIL on the issue, the TPO surprisingly holds that assessee has transferred its 'Zuari Brand' to 'Italcementi Group'. We are unable to understand this logic. Italcementi Group never obtained, acquired or used Zuari Brand anywhere in the world, so that this cannot be considered for Transfer Pricing analysis. It is the Italcementi Group brand which is used by assessee-company. The TPO's analysis of AMP expenses are also not correct. Even though Italcementi Group was being used from earlier years, AMP expenses of current year also included in this, which is not correct. Moreover, Italcementi Group itself is a 50% shareholder in the assessee-company from the beginning. Therefore, it cannot be stated that 'Zuari Cements' is exclusive brand owner of the Birla Group in exclusion of Italcementi Group. The entire approach by the TPO is biased and cannot be justified on the facts of the case. Therefore, we are not in a position to uphold any of the contentions raised by TPO in his order. Likewise, the disallowance of various service fees including reimbursements made by assessee to AE. Since we do not find any valid reason for TPO to disallow these expenditures, we have no other go than to set aside the entire order of the TPO which is based on wrong presumptions and propositions. DRP unfortunately, even though consisted of three senior officers, did not apply its mind to the valid objections raised by assessee. In view of this, without deciding the merits of various issues, we set aside the orders and direct the TPO to re-consider the entire order and analyse them in fresh, first by determining the most appropriate method and then analyzing the transactions under the provisions of the TP. The orders of the TPO/DRP on the TP issues are therefore set aside and the entire issue on TP analysis is restored to the file of AO for fresh consideration. The grounds raised are accordingly allowed for statistical purposes".

16. It is, therefore, clear that the tribunal considered the benefit test in respect of the services said to have been received by the assessee for which payments were made and also the propriety of the TNMM as the MAM. Though the Tribunal observed that the transactions are interlinked to manufacturing and trading of cement by the assessee, in the ultimate analysis, while setting aside the orders impugned, the learned Assessing

Officer was directed to reconsider the entire assessment order by analysing the facts afresh, first by determining the MAM and then, analysing the transactions under the provisions of the TP. There is no denial of the fact that subsequent to this direction of the Tribunal to determine the MAM first, the learned Assessing Officer having issued the show cause notice and after reply from the assessee, accepted the contentions of the assessee to adopt TNMM and thereby did not make any TP adjustment. The action of the learned Assessing Officer pursuant to the order dated 27/06/2022 in ITA No. 616/Hyd/2016 and batch for the assessment years 2011-12 to 2014-15 is not known.

17. In these circumstances, we are of the considered opinion that it would be in the fitness of things to set aside the impugned order for this year also with a direction to the learned Assessing Officer to determine the MAM first and to analyse the transaction under the TP provisions. Needless to say that in view of the decision of the Co-ordinate Bench of Bangalore Tribunal in the case of Gemplus India (P) Ltd., (supra), the assessee has to prove the actual rendition of various services by the AEs. We direct the learned Assessing Officer accordingly. Grounds No. 4 & 5 are accordingly treated as allowed for statistical purposes.

18. In view of the fact that the impugned order is set aside with a direction to have a fresh look as to the adoptability of MAM and to analyse the transactions under the TP provisions, all other grounds remains academic and need not specifically adjudicated.

ITA-TP No. 132/Hyd/2022 (AY. 2017-18) :

19. Since the facts of this appeal are identical to one as decided by us in ITA No. 249/Hyd/2021 (supra) for the assessment year 2016-17 and, therefore, our findings in the said appeal, mutatis mutandis, would apply to this appeal as well. Hence, Grounds 1 to 9 are treated as allowed for

statistical purposes. Insofar as the ground No. 10 relating to the benefit under section 80-IA of the Act, learned AR submitted that on the rectification application filed by the assessee under section 154 of the Act, by order dated 09/05/2022, the learned Assessing Officer reduced the assessed income of the assessee by an amount of Rs. 11,38,15,482/- and, therefore, the grievance of the assessee stands addressed. Accordingly, such a ground is not pressed and hence dismissed.

20. In the result, both the appeals preferred by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 15th day of February, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad,
Dated: 15/02/2023

TNMM

Copy forwarded to:

1. Zuari Cement Limited, Krishna Nagar, Yerraguntla, Kadapa Dist.
2. Deputy Commissioner of Income Tax, Circle-1, Kurnool.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD