

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI N.V VASUDEVAN, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

IT(TP)A No.2806/Bang/2017
Assessment Year : 2013-14

M/s. Toyota Tsusho India Pvt. Ltd. Plot No.33 & 34, Bidadi Industrial Area Ramanagar District Bangalore 562 109 PAN NO : AADCS 6230 N	Vs.	The Dy. Commissioner of Income-tax, Circle-3(1)(1), Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Darpan Kirpalani, Advocate
Respondent by	:	Shri Sunil Kumar Singh, CIT (D.R)

Date of Hearing	:	10.01.2023
Date of Pronouncement	:	02.03.2023

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the final assessment order passed u/s 143(3) r.w.s 144C(13) r.w.s 144B of the Act by the AO dated 21.07.2022 with the following grounds of appeal:-

"1. That the order of the Learned Deputy Commissioner of Income-tax, Circle - 3(1)(1) ("Assessing Officer" or "Learned AO"), which is in conformity with the directions of the Dispute Resolution Panel - II, Bangalore ("DRP", "Learned Panel") and the order of the Learned Deputy Commissioner of Income-tax (Transfer Pricing - 2(2)(2) ("Learned TPO") to the extent prejudicial to the Appellant, is bad in law and liable to be quashed.

2. *That on the facts and in the circumstances of the case, the Learned AO/ Learned Panel erred in making the transfer pricing adjustment to the arm's length price of the Appellant's international transactions by INR 292,875,727.*

3. *That the Learned AO/ Learned Panel erred in upholding the rejection of the Transfer Pricing ("TP") documentation maintained by the Appellant.*

4. *That the Learned AO/ Learned Panel erred in upholding the rejection of comparability analysis of the Appellant as per the TP documentation and confirming the comparability analysis adopted by the Learned TPO.*

5. *That the Learned AO/ Learned Panel erred in disregarding application of multiple year data and upholding that only current year data has to be used for comparability analysis, which was not available in the public domain at the time, the transfer pricing documentation was prepared by the Appellant.*

6. *That the Learned AO/ Learned Panel erred in upholding the Learned TPO's approach of considering the foreign exchange loss borne by the Appellant for the purpose of computing the Appellant's operating margin as well as to arrive at the arm's length price.*

7. *That the Learned AO/ Learned Panel erred in the computation of proportionate adjustment, thereby ignoring the fact that any transfer pricing adjustment with respect to the manufacturing/ trading segment should be restricted to the amount of international transactions, pertaining to manufacturing / trading segment only instead of entity level transactions.*

Grounds specific to the trading segment

8. *That the Learned AO/ Learned Panel upheld the action of the Learned TPO of rejecting functionally comparable companies listed below, initially selected by the Learned TPO at the time of assessment, with respect to the trading segment.*

- *Rohan Motors Limited*
- *Sicagen India Limited*

9. *That the Learned AO/ Learned Panel has erred in considering 1% variance under Section 92C(2), instead of 3%, with respect to the trading segment and also changing the functional profile of the Appellant to a wholesale trader instead of a Sogo Shosha establishment.*

10. *That the Learned AO/ Learned Panel erred in rejection of the use of Berry Ratio as the appropriate profit level indicator ("PL") in order to*

benchmark the international transactions relating to the trading segment.

Grounds specific to manufacturing segment

11. That the Learned AO/ Learned Panel erred in considering Operating Profit ("OP")/ Operating Cost ("OC") as the PLI instead of OP/ Sales with respect to the manufacturing segment, without providing any reason for rejecting the PLI used by the Appellant in the TP Documentation, which is incorrect since the controlled transaction is cost and not sales.

12. That on the facts and circumstances of the case, the Learned AO/ Learned Panel erred in considering extraordinary expenses, forex loss and finance cost as operating in nature and hence, erred in adding the same to the operating cost of the manufacturing segment. These expenses deserve to be excluded from the operating cost for the purpose of computation of return on sales in the interest of justice.

13. That the Learned AO/ Learned Panel erred in considering the amount of INR 163,402,941 as / extraordinary expenses in the operating margin computation of the Appellant. The correct bifurcation of the amounts, as provided below was ignored by the Learned AO/ Learned Panel.

Particulars	Amount (in INR)
Finance cost	68,717,963
Forex loss relating to purchase of capital goods	24,494,064
Forex loss	41,897,297
Extraordinary expenses	28,293,617
Total	163,402,941

14. That the Learned AO/ Learned Panel erred in the computation of operating mark-up]es for comparable companies listed below with respect to the manufacturing segment.

- *Aditya Ispat*
- *Chase Bright Steel Limited*
- *Nitin Alloys Global Limited*
- *Sharda Ispat Limited*
- *Sirhind Steel Limited*

CORPOJTE TAX RELATED

15. That the Learned AO/ Learned Panel erred in disallowing an amount of INR 2,377,290 under Section 35D in relation to the expenditure incurred for increase in authorized share capital.

16. That the learned AO erred in consequently levying interest under section 234B of the Act. Under any case, the levy of interest is unwarranted and highly excessive.

That the Appellant craves leave to add to and / or to alter, amend, rescind, modify, the grounds herein above or produce further documents before or at the time of hearing of this Appeal."

2. The assessee filed additional grounds of appeal, which are as under:-

"1.The appellant has filed the above said appeal bearing ITA No. 2806/Bang/2017 in pursuance of the order dated 25.10.2017 passed by the Ld. DCII, Circle - 3(1)(1), Bengaluru under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961.

2. In the present case the TPO had proposed an adjustment of Rs.31,26,65,872/on account of arm's length price vide its order dated 21 .10.2016, out of which the adjustment of Rs.25,23,76,5211- was made in the trading segment, and the adjustment of Rs.6,02,89,3511- was made in the manufacturing segment. The said adjustment was incorporated by the AO in its draft order dated 21 .12.2016

3. Aggrieved by the draft order of the AO, the assessee came in appeal before the Ld. DRIP. The Ld. DRIP vide its direction dated 26.09.2017 has restricted the adjustment proposed by the AO in its draft order to Rs.29,28,75,727/- on account of correction of operating margin of a comparable company in the trading segment and has dismissed other grounds of appeal raised by the assessee

4. The Ld. AO, vide order dated 25.10.2017 has confirmed the adjustment to the tune of Rs.29,28,75,7271- as per the directions of the DRP. Aggrieved by this order of the Ld. AO, the assessee has filed this appeal before this Hon'ble Tribunal.

5. That while filing the appeal, the applicant has raised sixteen grounds of appeal, challenging the adjustment made in the trading segment in Grounds No. 8 to 10, and the adjustment made in the manufacturing segment in Grounds No. 11 to 14.

6. That while filing the appeal the appellant had inadvertently forgotten to take the ground with regard to exclusion of certain comparables while computing the adjustment to be made in the manufacturing segment.

7. That accordingly, the applicant is filing the following additional ground of appeal.

8. That it is submitted that the following additional ground of appeal may kindly be taken in addition to the grounds originally taken in Form 36B.

"17. That the learned AO / learned DRP Panel has grossly erred in including the following companies in the final set of corn parables even though they are not comparable to the appellant in terms of functions performed, assets employed and risks assumed.-

- *Aditya Ispat Limited*
- *Nitin Alloys Global Limited*
- *Chase Bright Steel Limited"*

9. That in these circumstances, it is prayed that the additional ground filed by the appellant may kindly be taken on record.

3. The brief facts of the case are that the assessee filed its return of income on 29/11/2013 by declaring a loss of Rs.10,86,90,508/-. The case was selected for scrutiny and statutory notices were issued to the assessee. In response to notices, the Id.AR of the assessee appeared and submitted the details called for. After verification of the same, it was observed that the assessee is doing trading in automobile components, processing of steel products and providing logistic services primarily catering to the automotive industry. The assessee company declared a receipt of Rs.1183,70,88,121/- from such activity. As per Form No.3CB, it was noticed that the assessee company had international transaction with its associated enterprises for more than Rs.15 crores, therefore, as per the guidelines, the matter was referred to the TPO for determination of arms length price with prior approval of the Id. CIT(A). After receipt of reference, the TPO observed that the assessee has two segments viz., trading segment and manufacturing segment. As per financial statements, it was noticed that the assessee has

entered into the international transactions with its associated enterprises as under:-

Toyota Tsusho India P. Ltd

Particulars	Amount
Purchase spare parts	16,381,693
Traded goods purchased	6,370,884,066
Sale of goods	289,214,088
Purchase capital goods	708,506,505
Commission Received	247,990,639
Service and inspection income received	10,216,910
West Usage fee paid	22,170,591
Professional technical and service fee paid	28,118,747
Training expenses paid	502,010
Equity contribution charged	926,083,860
GSCM Licensee fee paid	11,869,480
Reimbursement of expenses received	25,600,372
Balance written off income	2,304,556
Provision for doubtful debts paid	328,565

Recovery of expenses	23,886,729
Balance written off expenses	17,385
Traded goods received	243,503,773
Total	8,682,915,586

2.1 The financials of the taxpayer for the F.Y. 2012-13 are as under:

Toyota Tsusho India P. Ltd Particulars	A.Y. 2013-14	
	Amount	Amount
Total Operating Income	11,834,830,538	
Less: Other Income	47,887,903	
Operating Income		11,786,942,635
Total Operating Cost	11,830,099,589	
Less: Finance cost	68,717,963	
Less: Donations and Contributions	105,272	
Operating Cost		11,761,276,354
Operating Profit		25,666,281
OP/OC		0.22%
OP/OR		0.22%

2.2 The segmental financials of taxpayer are in Annexure J of TP document. Same is as under:

Toyota Tsusho			
Particulars	Trading	Manufacturing	Total
Revenue from operations	10,839,031,891	943,420,296	11,782,452,187
Sale of Scrap	6,717,690	1,284,685	8,002,375
	10,845,749,581	944,704,981	11,790,454,562
Less: Cost of goods sold	9,823,153,918	483,077,996	10,306,231,914
Gross Profit	1,022,595,663	461,626,984	1,484,222,647
Less: Operating expenses	-	-	-
Personnel costs	227,241,008	113,835,733	341,076,741
Administration and other expenses	636,194,954	179,500,692	815,695,647
Depreciation	56,813,379	146,878,968	203,692,348
Total Operating costs	920,249,341	440,215,394	1,360,464,735
Operating Profit	102,346,322	21,411,591	123,757,912
Cash profit	117,262,403	168,290,559	

4. The Id.TPO further observed from the TP study report as under:-

“3.1 Profile of the taxpayer: Toyota Tsusho India P. Ltd. 1TIPL was incorporated on April 01, 1999 pursuant to a joint venture agreement between ITC and Kirloskar systems Limited. During the year ended March 31, 2006, KSL transferred its shares to Kirloskar Oil engines Limited, India (KOEL). During the year ended March 31, 2010, KOEL transferred its entire shares in the company to KSL. During the year ended March 31, 2012 shares held by KSL were transferred to TIC and Toyota Tsusho Singapore Pte Limited. The joint Venture agreement between TIC and KSL ceased to be operational.

3.2 TP study of taxpayer: The taxpayer has two segments, namely trading segment and manufacturing segment. The trading segment is involved in purchase and distribution of auto ancillaries and components. In the trading segment, taxpayer has a OP/OR margin of 0.94% whereas the weighted average net profit margin of comparables is 3.54%. For FY 2012-13, the tolerance range for trading activity is +1- 1%. Hence, the assessee is not at arms length as per its own TP study.

The manufacturing segment purchases "flat products" (there are two kinds of steel products: long products and flat products. Flat products like coils, sheets etc are used in vehicles) from its AEs and processes them as per ske and shape requirements of its client. It also gets polypropylene resin pellets manufactured through a contractor. The manufacturing segment is benchmarked against companies involved in steel processing industry.”

4.1 The TPO examined the trading segments, transfer pricing study report and he also noticed various inconsistencies and the TPO rejected the observation of AO, which is as under:-

“4 The TP study conducted by the taxpayer has multiple inconsistencies, and hence fails the tests of transfer pricing principles. These discrepancies are as under:

a. Non-application of RPT filter: The quantitative and qualitative filters applied by the taxpayer are perused. It is seen that the taxpayer has not applied any RPT filter. It is one of the basic principles of transfer pricing to compare the company with uncontrolled comparables. That's why we apply RPT filter. Some of the comparables chosen by taxpayer have RPT above 25%. ITATs have held that companies with RPT above 25% or 15% should never be considered as appropriate comparables. India Motor Parts & Accessories Ltd and Sai Service Spares & Accessories Ltd have RP'I' more than 25%.

b. Three years' data: it is now an established position of law in tribunals that only current year data has to be considered for computing the arms length price. However, the taxpayer has considered weighted average of three years' data. This is incorrect.

c. Erroneous application of turnover filter: As per the TP study report, companies with turnover less than Rs. 1 Crs have not been considered. Yet, one of the comparables selected, namely Seven Star Electrodes Pvt. Ltd, has turnover less than Rs. 1 Crs. It is also noted that the taxpayer's trading segment has a turnover of Rs. 1084 Crs, which means it's a huge distributor with advantages of economy of scale. Yet, no turnover range has been taken.”

4.2 From the TP study for the distribution segment, the assessee company calculated mean of 3.54% as under:-

Table 5: Arm's Length Results of Distribution and related services segment

S. No.	Name of the Company ⁴⁶	Data Source ⁴⁷	Average NPI
1	India Motor Parts & Accessories Ltd.	P	8.54%
2	Jullundur Motor Agency (Delhi) Ltd.	P	6.44%
3	Sai Service Spares & Accessories Ltd.	P	5.25%
4	Stanes Motor Parts Ltd.	P	3.93%
5	Seven Star Electrodes Pvt. Ltd.	P	5.41%
6	Competent Automobiles Co. Ltd.	P	1.92%
7	Sai Service Station Ltd.	P	2.95%
8	Shriram Automall India Ltd.	P	-6.09%
	Mean		3.54%
	Median		4.59%
	Lower Quartile		2.69%
	Upper Quartile		5.67%

4.3 The TPO after observing various inconsistencies on the above comparable selected by the assessee, he rejected seven companies and only the Jullundur Agency Motor Agency (Delhi) Ltd., was accepted. After observing the above, the TPO started fresh search for comparables on Prowess and Capital Line, taking the following filters:-

"5. Owing to the above reasons, the TP study of taxpayer's trading segment is rejected. The TPO conducts his own search for comparables on Prowess and Capitaline, taking the following filters:

I. Keyword search: Keywords searched are 'automobile ancillaries' and 'trade in transport equipments'.

II. Turnover filter: The taxpayer's trading segment has a turnover of Rs. 1084 Crs. Marginal pricing in trading activity is affected by economies of scale. Turnover determines the kind of logistics is developed (automated logistics, automated processing etc) and warehousing facilities (including automation in warehousing). Hence, turnover is important for functional comparability. Hence, companies with turnover much lower cannot be compared to the company. At the same time, companies with much higher turnover will be rendered in-comparable to taxpayer due to higher economies of scale. Hence a dynamic turnover filter of T/4 to 4T is placed. That is, companies with turnover 1/4" that of taxpayer to 4 times that of

taxpayer. This translates to lower turnover filter Of Rs. 271 Crs and upper turnover filter of Rs. 4336 Crs.

HI. *Manufacturing filter: Companies with manufacturing sales to total sales less than 25% were selected*

IV. *Trading sales filter: Companies with trading sales more than 75% of total sales were selected and rest were rejected*

V. *Persistent loss making filter: Companies which have persistently made losses in last three years have been rejected*

VI. *Negative net worth filter: Companies with negative networth were rejected.*

VII. *RPT Filter: Companies with RPT to sales ratio below 25% were selected*

VIII. *Functional filter: Companies trading in auto parts and auto components were only selected. Companies trading in automobile vehicles or secondhand vehicles were rejected."*

4.4 After applying the above filters, the TPO observed that these five companies are good comparables and calculated mean at 4.00%. He further noticed that the assessee's taxpayer's margin is 0.94%. The ALP calculated OP/OR is not within the \pm 1% tolerance range. Accordingly, he proposed to make adjustment so as to arrive at mean margin of 4% as under:-

Sl	Name of company	OP/OC	OP/OR
1	Jullundur Motor Agency (Delhi) Ltd	5.51%	5.22%
2	Meritor H V S (India) Ltd	5.41%	5.13%
3	Rohan Motors Ltd	2.71%	2.64%
4	Sicagen India Ltd	3.12%	3.03%
5	Silver Jubilee Motors Ltd	4.16%	4.00%
	MEAN		4.00%

5. The assessee was issued show cause notice and assessee filed objections on the following points and which was dealt by the TPO as under:-

6. On RPT Filter: Taxpayer's study was rejected because RPT filter was not used, and no turnover filter was used. The taxpayer did not give any specific objection to TPO using RPT filter.

6.1 On turnover filter: Applying a lower turnover filter of T/4 removes only one comparable of taxpayer, namely Stanes Motor Parts Ltd. This company has a turnover of Rs. 25 Crs and such a company cannot be compared to a trader with turnover of Rs. 1200 Crs. In trading, volume always gets you premium. A company that can deal in volumes can afford to inculcate automation and mechanisation in the process of logistics, transportation, and warehousing. Automation helps reduce costs. Large volume also helps a company be more competitive. Hence, the taxpayer's net margins cannot be compared to that of Stanes Motor Parts.

6.2 Comparability of Mentor HVS (India) Ltd: The taxpayer points that Mentor HVS (India) Ltd cannot be taken as a comparable because it fails RPT filter. Same is cross-verified to be true. Hence rejected by the TPO too.

6.3 Berry Ratio: The taxpayer has come and stated that rather than OP/OR or OP/OC, Berry Ratio should be taken as the appropriate PLI in the taxpayer's case. The CBDT circular had come in April 2013, immediately after FY 2012-13 ended. The taxpayer did its TP study much after that. In that TP study, they had taken OP/OR as the appropriate PU. But now, on seeing that as per its own TP study it is not at arms length, it is giving a contradictory argument. Taxpayer is contradicting its own TP study just for the sake of getting relief from force of justice.

6.4 Berry Ratio analysis on merits: The merits of berry ratio was discussed with the AR in detail vide order sheet dtd 06.10.2016. She stated that Berry Ratio is a better PU under TNMM because the effect of inventory is less. The AR has quoted Sutnitoino Corporation India case in Delhi High Court stating that Berry ratio is the most appropriate PLI for benchmarking the distribution segment. The TPO retorts that in the same case, Delhi High Court has stated that berry ratio can effectively be applied only in certain cases, such as stripped down distributors as they have no financial exposure and risk in respect of goods distributed by them.

6.4.1 The TPO notes that a normal distributor incurs the following business risks:

A. Logistics issues and damages in logistic value chain

B. Risks of damages in warehousing and inventory management

C. Foreign exchange risk in importing goods for wholesaling

6.4.2 The TPO asks if the taxpayer incurs these major risks. The AR states that the taxpayer has minimal warehousing facilities. It places order to its AL only when it receives PO from its customers. This argument is factually wrong, as evident from the documents submitted by the taxpayer.

6.4.3 *It is noted from the Annual report that the taxpayer has incurred 'sales commission expense' of Rs. 2,39,39,961/-. The AR reasons that this is paid to some small traders who help the taxpayer in distribution. How can the taxpayer be called a 'stripped-down distributor' if it takes risks of distribution?*

6.4.4 *The linkedin profiles of some of the employees were perused in front of AR. Their declared functions in Toyota Tsusho are detailed in the order sheet entry. B.S. Negi is an employee involved in demand planning, supply scheduling, import freight forwarding, warehousing, and delivery distribution. Each of the steps involves risks and financial outlays. Sri VG Sankar is involved in channel management, marketing strategy, customer relationship management etc. Even here, the company acts as a full-risk distributor.*

6.4.5 *The judgment of Hon'ble High Court quoted by taxpayer itself gives conditions for taking berry ratio as PU, and the taxpayer fails these conditions. Hence, contentions of taxpayer are not accepted.*

6.5 *Rohan Motors Ltd & Sicagen India: The taxpayer found a mistake in computation of Rohan Motors Ltd. On revisiting their margins, it was seen that the taxpayer was correct on OP/OR margins. However, the company has raw material purchase of Rs. 840 Crs and sales of Rs. 911 Crs. The company has manufacturing activities. It fails trading sales filter. Hence, it was removed. Similar findings were made for Sicagen India Ltd. It was also removed."*

5.1 The TPO after considering the objections of the assessee, he removed the companies Meritor HVS India Ltd., Rohan Motors Ltd., and Sicagen India Ltd.,

5.2 The TPO in the case of Rohan Motors Ltd., and Sicagen India Ltd., noticed that these companies have manufacturing activities and fails trading sales filter. Accordingly he calculated mean OP/OR at 4.72%.

5.3 The TPO calculated OP/OR margin of 4.72%. Accordingly, excess in AEs transaction to be adjusted was calculated at Rs.24,25,56,996/-. Accordingly, the arms length price on OP/OR margin was calculated at 4.95%. The receipt of commission fee (aggregated with trading segment in TP study) and adjustment was made. Accordingly, the excess AEs transaction was

calculated by the TPO @ 25,23,76,521/- and the adjustment was proposed by the TPO for trading segment is Rs.25,23,76,521/-

Manufacturing Segment :-

6. From the documents submitted by the assessee in the segmental report, the assessee claimed pre-operative expenses of Rs.16.03 crores as non operating expenses for its segmental financials. In this regard, the assessee was confronted and he submitted reply on 06/10/2016 that these relate to setting of blanking line in the manufacturing plant and it becomes operational in the financial year 2013-14. The TPO observed that on this capital nature expenses, the assessee should not claim depreciation and if the assessee claims depreciation that means it has been put to use and capital expenses should be treated as operating in nature. In this regard, the assessee could not give any satisfactory answer. In the opinion of the AO, he also noted from the computation of income that no such adjustment was made by the assessee. Accordingly, he noted that two different opinions cannot be taken in two different offices of the Income-tax Department and this tantamount to mensrea and furnishing of inaccurate particulars.

7. After considering the entire submission, the TPO considered it as operational expenses. Since the plant and machinery has been put to use in financial year 2012-13 and the revised segment of the manufacturing segment was calculated as under:-

OR as per Appendix J	944,704,981
OC as per Appendix J	923,293,390
<i>Add:</i> Expenses removed in the guise of 'pre-operative and other expenses'	163,402,941
Operating Cost	1,086,696,331
Operating Profit	-141,991,350
OP/OC	-13.07%
OP/OR	-15.03%

7.1 Further, as per the order sheet entry dated 06/10/2016 and from the TP study report, the TPO observed that the assessee has applied upper turn over limit of Rs.100 crores as turnover filter. However, when doing a segmental search for comparables, it had not taken upper turnover filter and the assessee considered the turnover company which has more than Rs.10,000/- crores as comparable companies. The assessee selected sixteen companies, out of which, the TPO however noted some inconsistencies as filters applied by him and rejected on different grounds.

16. The TPO rejected some companies and the tax payers did not raise any objections before the TPO in regard to functional, economical or statistical analysis. Finally, the TPO computed the five companies as comparables which is as under and TNMM method was applied by the TPO.

Page 15 of 51

8.6 The final list of comparables and their margins are as under:

	OP/OC in FY 2012- 13
Aditya Ispat	5.15%
Chase Bright Steel Ltd	3.13%
Nitin Alloys Global Ltd	8.21%
Sharda Ispat Ltd	2.78%
Sirhind Steel Ltd	-2.00%
Average	3.45%

8.7 The computation of adjustment on sales to AE of Rs. 289,214,088/-(and professional and technical fees of Rs. 28,118,747/- aggregated under TNMM) is as under:

Arms length OP/OC	A	3.45%
Operating Cost	B	1,086,696,331
Arms Length OR	C = (100+A)% of B	1124187354
OR of taxpayer	D	944,704,981
Difference	E = D - C	179482373.4
Sales to AE	F	317,332,835
AE transactions as ratio of total OC	G = F/D	33.59%

Excess in AE transactions to be adjusted	K = G% of E	60289351.21
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7.2 Finally, the TPO for trading and manufacturing segment proposed to make adjustment of Rs.31,26,65,872/- (25,23,76,521+6,02,89,351) and passed order on 21/10/2016.

7.3 After receipt of the TPO order, the AO proceeded to complete the draft assessment order. During the assessment proceedings from the computation of income, it is noticed that the assessee claimed expenditure of Rs.23,77,290/- u/s 35D of the Act. The assessee submitted that the entire amount pertained to stamp duty expenses incurred on account of increase in authorized share capital of assessee company and he also submitted that the same has been claimed as expenditure as

per sec. 35D(2)(d) of the Act and the assessee also relied on the judgment of ITAT Mumbai in the case of West Gujarat Express Way Ltd. The AO further noted that Hon'ble Bombay High Court in the case of Bombay Burmah Trading Corporation held that the expenditure incurred for increasing in authorized capital is not allowable expenditure as the same was in the nature of capital expenditure. Hence expenditure is not allowable as per sec. 35D of the Act and it was added into the total income of the assessee and the AO passed Draft Assessment Order on 21.12.2016.

8. Aggrieved from the Draft Assessment Order, the assessee filed objections before the ld. DRP and made elaborate submissions.

9. The ld. DRP gave some marginal relief to the assessee and they gave direction on 26.09.2017. Accordingly, the TPO vide his order dated 06.10.2017 reworked and determined the adjustment to Arms Length Price at Rs.29,28,75,727/- and he passed order on 25.10.2017.

10. Aggrieved from the above order, the assessee filed appeal before the ITAT.

10.1 We are deciding the grounds only to which the arguments made by the ld. A.R. for the assessee, which are as under:

Ground No.7

11. In respect of the ground No.7, the ld.AR of the assessee submitted that proportionate adjustment has not been made by

the TPO in respect of the manufacturing/trading segment and it should be restricted to the amount of international transactions with its AEs pertaining to manufacturing/trading segment only instead of entity level transactions. He further submitted that only international transactions are covered by Chapter X of TPO Regulations and the transaction which have no international transaction cannot become the subject matter of adjustment. He relied on the judgment in the assessee's own case for the assessment year 2012-13 in IT(TP)A No.623/Bang/2017, wherein it has been held that adjustment has to be made only with regard to the transactions carried out with its AEs. He relied on the judgment in the assessee's own case for the assessment year 2006-07 in IT(TP)A No.140/Bang/2010 and he further submitted that the entity level transactions cannot be considered for computation of TP adjustment. He also relied on the judgments of Hon'ble Delhi High Court in the case of CIT vs Keihin Panalfa Ltd. [2016] 381 ITR 407 & Hon'ble Bombay High Court in the case of CIT vs Alstom Projects India Ltd. [2017] 394 ITR 141.

11.1 The ld.DR relied on the order of the lower authorities and he submitted that the DRP has rightly gave exemption in his order. The ld. DR further submitted that the assessee relied on the judgment as cited supra in objections before the ld. DRP and the same formula and the factual matrix was not brought into the notice of the authorities and, therefore, the decisions relied by the ld.AR of the assessee are not applicable.

11.2 Considering the submissions, the Id.AR of the assessee raised the issue before the DRP relating to proportionate adjustment, whether it should be restricted to international transactions with its AEs only or on the entity level. This issue has been decided by the coordinate bench of the Tribunal in assessee's own case for the assessment year 2012-13 cited supra. The relevant para for the sake of convenience is reproduced as under :

"14. The next issue is with regard to adjustment to be made in respect of international transaction or in respect of AE transactions only. In this regard, we find that identical issue has been decided by the Tribunal in the case of Ika India Pvt. Ltd., (surpa) and the Tribunal held as follows:

"44. Section 92(1) of the Act provides as under:-

"Any income arising from an international transaction shall be computed having regard to the arm's length price".

45. Section 92B defines the term "international transaction" to mean "a transaction between two or more associated enterprises".

46. A conjoint reading of section 92 with section 92B clearly brings out that computation of income at ALP is permissible only in respect of international transaction, which, in turn, means a transaction between two or more associated enterprises. Similar position has been reiterated in the machinery provision contained in section 92C dealing with the manner of computation of ALP. Sub-section (1) of section 92C stipulates that:-

"The arm's length price in relation to an international transaction shall be determined by any of the following methods.....".

47. It is the plea of the assessee that addition by way of transfer pricing adjustment is mandated only in respect of transactions between two or more AEs. The profit from comparable transactions of the assessee with non-AEs is one of the subtle and most reliable modes for determining ALP of the international transactions. The Act does not contemplate an addition by way of TP adjustment in respect of transaction with non-AEs.

48. The TPO determined addition to total income, consequent to determination of ALP only in relation to international transaction i.e., transactions with AE in the export of finished goods segment by

considering the value of international transaction at Rs.3,31,50,982 which is the value of export of finished goods by the assessee to its AE and not on the total sales in the finished goods segment of Rs.39,19,74,355 (vide para 8.3 of the TPO's order).

49. *The Hon'ble Bombay High Court in the case of Phoenix Mecano (India) Private Limited [ITA No. 1182 of 2014], had to deal with the following question of law suggested by the revenue:-*

6.1 Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was correct in directing the AO to restrict the determination of the ALP to transactions with the AE rather than on the entire turnover of the Company.

6.2 Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct while issuing the above directions without appreciating the observations of the DRP that there was no segmental audit of the transactions of AE and non AE and therefore there was no method whereby the AO could come to a fair determination of ALP by only restricting to transactions with AE."

50. *The Hon'ble Bombay High Court on the above questions of law held as follows:-*

"5. With the assistance of the learned counsel for respective parties, we have considered the submissions and the judgment of the Tribunal. The Tribunal in para 7 of its order has observed as under:-

"7. We have heard both the parties and their contention have carefully been considered. So far it relates to grievance of the assessee that the TP adjustment can only be applied to international transactions of the assessee with the AE and it cannot be applied at entity level, the issue is found to be covered by the aforementioned decision of the Tribunal in the case of Thyssen Krupp Industries India Pvt. Ltd. (supra). Therefore, we hold that determination of arms length price should be restricted only to international transaction of the assessee with its AE. It was pointed out that the figures are available with the AO, details of which has also been filed before us at page 170 of the paperbook. Therefore, we direct the AO to take only the international transactions of the assessee with its AE for the purpose of determining arms length price. We direct accordingly."

*6. The Tribunal has held that the figures are available with the Assessing Officer, the details of which has also been filed with the Tribunal at page 170 of the paperbook. **It would be clear that the details of the international transaction are specifically made available and therefore the apprehension of the department as such is misplaced.***

.....

7. Considering the provisions of Section 92 of the Income Tax Act, so also the reasoning adopted by the Tribunal suggesting that separate figures of international transaction are available, so also the order referred above. No substantial question of law arises for consideration. As such the appeal is dismissed with no costs."

(Emphasis supplied)

51. The Hon'ble Mumbai Tribunal in the case of Thyssen Krupp Industries India Pvt. Ltd. [ITA No. 7032/Mum/2011] held that the ALP can only be determined on the value of international transaction alone and not on the entire turnover of the assessee at entity level. This decision was further upheld by the Hon'ble Bombay High Court in the case of Thyssen Krupp Industries India Pvt. Ltd. [ITA No. 2201 of 2013], which held as below:-

"2.

(a) Whether on facts and the circumstances of the case and law, the Tribunal was justified in law in restricting the Transfer Pricing (TP) adjustment only to the transaction between the Associated Enterprises (AEs.)?

3.

(e) We find that **in terms of Chapter X of the Act, redetermination of the consideration is to be done only with regard to income arising from International Transactions on determination of ALP. The adjustment which is mandated is only in respect of International Transaction and not transactions entered into by assessee with independent unrelated third parties.** This is particularly so as there is no issue of avoidance of tax requiring adjustment in the valuation in respect of transactions entered into with independent third parties. The adjustment as proposed by the Revenue if allowed would result in increasing the profit in respect of transactions entered to with non-AE. This adjustment is beyond the scope and ambit of Chapter X of the Act.

5. In the above view, as the provisions of the Act in respect of transfer pricing are self evidence, Question No.(a) as proposed does not give rise to any substantial question of law. Thus not entertained."

52. The ITAT Bangalore in the case of Kirloskar Toyota Textile Machinery Pvt. Ltd. v. ACIT [IT(TP)A No.1401/Bang/2010 held as under:-

"Taking into consideration of these factors, we accept the first fold of submission made by the learned counsel for the assessee and direct the Assessing Officer to confine the adjustment, qua the purchases made by the assessee from the AE. To be more specific, the adjustment is to be made only to the purchases made from the AE

.....

(emphasis supplied)

53. *The CIT(A) in exercise of his powers of enhancement of income took the view that the ALP has to be determined on the basis of the entire sales in the finished goods segment including transactions with Non-AE also. The reasoning adopted by the CIT(A) for doing so was as follows:-*

“10.0 While examining the working of ALP in the case of appellant, it was observed that the TPO has reduced the adjustment proportionately by holding that only 8.46% of revenue of the appellant is from AE. She accordingly adopted 8.46% of the operating revenue and 8.46% of the Operating cost for purpose of the determination of ALP. However, this method is not the correct approach as the ALP determination should have been based on the entire operating revenue and entire operating cost. Since this change in method would have amounted to enhancement of the income of the appellant, so opportunity of being heard was given to the appellant vide order sheet entry dated 11.08.2017, as to why the proportionate reduction done by the TPO should not be disregarded. The appellant sought time to file written submissions and the same was allowed. The appellant filed written submissions vide letter dt 29.08.2017. The same have duly been considered and the issue is being decided as follows:

10.1 In the case under consideration, the appellant is selling its product to AE as well as to non AEs, for the manufacture of which, part purchases are from AEs and remaining from the non AEs. The TPO has considered OP/OR for purpose of computation of the ALP as the quantum of sales to AE are lesser than the purchase from AE and thus lesser controlled. When a product is sold, only overall profit margin is recorded without any data as to what would be the profit in relation to purchases from AE. So this cannot be presumed that the profit percentage earned in relation to costs related to AE transactions as well as non-AE transactions was same. Since costs are common to the products ultimately sold by the appellant, and the same includes AE transactions, so it is always possible that the margin of profit percentage vis-a-vis costs related to AE transaction is not the same as profit margin on costs related to non-AE transactions but ultimately overall certain profits are being shown. Further, the transactions with non-AEs can be presumed to be at arm's length as there is no reason to earn lesser profit. But in case of transactions with AEs, there is always a likelihood of earning lesser profits as transactions are controlled and decisions are influenced by AE. Thus the overall profits on account of transactions with AE as well as non-AE gets suppressed.”

54. *We have heard the rival submissions. The ld. counsel for the assessee reiterated submissions made before the CIT(A) that transaction with non-AE cannot be subject matter of determination of ALP because section 92 clearly speaks of determination of ALP only in respect of transactions with*

AE. He also referred to certain decisions of the Tribunal for the proposition that section 92 of the Act is not applicable to non-AE transactions. These decisions have already been extracted in the earlier paragraphs. The ld. DR relied on the order of the CIT(Appeals).

55. We have considered the rival submissions. The reasoning of the CIT(A) for considering the entire sales in manufactured finished goods segment for determination of ALP is that certain components and raw materials used in manufacture of finished goods are also sourced from AE and there is a possibility of the cost of such component having been bargained at a price which is not at arm's length. This presumption of the CIT(Appeals) is without any basis. He has not demonstrated with actual figures as to how there would be impact on profit margin on sale of finished products to AE because of purchases of some components from AE. He has given examples which are imaginary figures. Apart from this, the TPO has accepted that purchase of raw material and components by the assessee from its AE is at arm's length. Therefore, the basis on which the CIT(A) proceeded to apply the ALP test for transactions with non-AE is neither correct on facts nor permissible in law. As rightly contended by the assessee, section 92 of the Act can be applied only in respect of international transactions i.e., transactions with AE.

56. In view of the above transfer pricing provisions and various judicial precedents, we hold that the transfer pricing adjustment should be restricted only to the AE related transactions of the assessee.”

11.3 Respectfully following the above judgment of coordinate bench of the Tribunal, we allow this ground of the assessee.

Ground No.8

12. The ld.AR of the assessee submitted that Rohan Motors Ltd., and Sicagen India Ltd., were considered by the TPO as comparable companies after applying the certain filters. These companies were passed all the filters and selected as comparables of the assessee company and calculated mean of 4% but later on both the companies were excluded by the ld.TPO on the premises that in the case of Rohan Motors Ltd., there was purchase of materials of Rs.840/- crores and sales is Rs.911/-

crores and the company is also in manufacturing activities. Therefore, the trading sale filter fails and it was excluded from the final set of comparables and in the case the of Sicagen India Ltd., observation of the Id.TPO was same and this company was also excluded from the final set of comparables. The Id.TPO calculated mean at 4.72% approximately as PLI. The Id.AR further submitted that there is no purchase of raw materials and only purchase of traded goods exists and 100% of the revenue earned by the company is derived from trading activities. Further, in the case of Sicagen India Ltd., the trading/sales ratio is approximately 95% and only about 6% raw materials purchased out of total materials purchased. Therefore, both the companies should not be excluded for the computation of arms length price and these companies are qualified for inclusion. He also referred to the financial statements of both the companies.

12.1 On the other hand, the Id.DR relied on the order of the lower authorities. He further submitted that the Id.TPO has wrongly picked the figure as per financial statements because Rohan Motor Ltd., has wrongly reported the figures in it's profit and loss account under the manufacturing segments, whereas the company is in trading segment. The Rohan Motors Ltd., is authorized dealer of Maruthi Suzuki India Ltd., and the dominant purpose of the company is purchase and sale of motor cars. Further, the Rohan Motors Ltd., also offers free services to the buyers of the motor cars and on perusal of the trading and profit and loss account, the company is earning revenue from sale of products of Rs. 849,57,59,112/- crores and revenue from service

is Rs.28,09,87,950/- and other operating revenue is Rs 33,37,24,965/- . In view of this, the submission made by the ld. AR is wrong that 100% revenue is derived from trading of goods, whereas, the assessee company is engaged in automobiles components, processing of steel products and providing logistic services, primarily catering to the automotive industry, sale of manufactured goods, logistic and support services. Accordingly, this company is not functionally comparable. This is a basic criteria for selecting the company as a comparable. The TPO also rejected the trade in automobile vehicles and sale of second hand vehicles were also rejected but due to wrong reporting the figures in the financial statement, this company was retained as comparable company.

12.2 Considering the rival submissions, we noted that the Rohan Motors Ltd., was initially considered as a comparable company by the ld.TPO, whereas later on this has been excluded on the basis that the Rohan Motors Ltd., was engaged in manufacturing segments. On going through the financial statements of Rohan Motors Ltd., placed at paper book page Nos.62 to 204 and further on going through page no.163 which is segment reporting and at para No.2.29 it says as under:-

“The company is a authorized dealer of Maruthi Suzuki India Ltd., for its entry of (automotive vehicle) both new and free owned) and spare parts is at different location in the state/union territories of UP, Hariyana Delhi Uttarakhand and as a Korolory, the company is also carrying on the business of repairing and insurance of Maruthi vehicles at motor driving schools.

12.3 Further on perusal of the profit and loss account placed at page No.185, the assessee has shown revenue as under:-

	(Rs. In crores)
1) Revenue from sale of products	- 849.58
2) Revenue from sale of services	- 28.10
3) Other operating revenue	- 33.37
4) Total revenue from operations	- 9011.05
5) Other income	- 3.85
6) Total revenue	- 914.93
7) Purchase of stock in trade	- 840.96

12.4 Further, we noticed from the additional information of profit and loss account at page No.188, there is domestic sale traded goods of Rs.849.58 crores. Further, on perusal of the TP study report at page no.374, the business profile of the assessee is as under:-

“Our analysis recognizes that TTIPL was involved in undertaking following activities during the financial year ended 31/03/2013 increased its operations” -

- a) Distribution activities (manually in auto parts) and other related services comprising of logistic, sourcing and inventory carrying services; and*
- b) Manufacturing of polypropylene Pressing Pellets and Steel process*

12.5 TTIPL, through its operations ensures uninterrupted supply of materials and components for the production of Toyota Kirloskar Motor Private Limited Ltd.(TKMPL) ,

12.6 From the above business profile of the assessee, it is noticed that the comparable company is different. However, Id.TPO has wrongly considered that it passes functional filter & other filters but later on, he has removed it from the comparable companies.

As per our observations, this company is functionally dissimilar. Therefore, this company cannot be considered as a comparable company. Further, we note that the ld.TPO has wrongly removed from the comparable companies by ascertaining that it is engaged in the manufacturing segment which is also not correct, this company is not in manufacturing activities. The Tribunal has power to correct the mistake committed by the lower authorities and in support of our decision, we rely on the judgment of coordinate bench of the Tribunal in ITA No.2198/Bang/2019 for the assessment year 2010-11 in the case of Shri G Natraj Vs. ITO vide order dated 18/02/2021, the observation of Hon'ble Coordinate Bench is as under:-

5. Learned Counsel for the assessee submitted that the impugned addition was made by the AO by invoking provisions of section 68 of the Income Tax Act, 1961 (hereinafter called 'the Act'). For application of Sec.68 of the Act, credit entry should be found in the books of accounts of the assessee. It was submitted that the bank statement cannot be considered as books of accounts and consequently the addition made under section 68 of the Act cannot be sustained. It was also submitted by him that the Tribunal cannot take recourse to the provisions of section 69A of the Act and in this regard relied on the decision of Hon'ble Allahabad High Court in the case of Smt. Sarika Jain Vs. CIT 407 ITR 254 (Allahabad) wherein the Hon'ble High Court took the view that the Tribunal does not have the power to change the addition made under section 68 of the Act and sustain addition under section 69A of the Act. Learned DR on the other hand submitted that the Hon'ble Karnataka High Court in the case of Fidelity Business Services India Pvt. Ltd., Vs. ACIT ITA No.512/Bang/2017 judgment dated 23.07.2018 has taken a view that the Tribunal has such powers. It was also pointed out that the Hon'ble Karnataka High Court did not follow the ratio laid down by the Hon'ble Allahabad High Court in the case of Smt. Sarika Jain (supra).

6. I have given a careful consideration to the rival submissions and I am of the view that the impugned addition can be examined within the parameters of section 69A of the Act as that would be the proper provision of law applicable in the present case. As rightly contended

Page 27 of 51

by the learned DR, the Hon'ble Karnataka High Court has not chosen to follow the ratio laid down by the Hon'ble Allahabad High Court in the case of Smt. Sarika Jain (supra) and has upheld powers of Tribunal in an appeal as encompassing very wide range."

12.7 Respectfully following the above judgment and the facts noted by us, cited supra, we did not accept the arguments advanced by the Id.AR of the assessee. Therefore, Rohan Motor Ltd., cannot be considered as functionally comparable company with the assessee company.

Sicagen India Ltd.,

12.8 The Id.AR submitted that the Sicagen India Ltd., is initially selected by the TPO but same has not been considered while calculating the final comparables of the company. As per observation of the Rohan Motors Ltd., he further submitted that trading sales/sales ratio of Sicagen India Ltd., is approximately 95%. Further, out of the total material cost of Sicagen Ltd., purchase of raw materials amounts to only 6% of total purchases. He also referred to the financial statements at schedule No.19 and 20, 21 which are at paper book page Nos. 249 & 250, wherein he submitted that the manufacturing goods is Rs.37.84 crores only. Therefore, the company is engaged in trading activity of commercial vehicles. The revenue authorities wrongly excluded in the final list of comparables, it passes all the fillers applied by the TPO. Therefore, he requested that it should be retained as a comparable.

12.9 On the other hand, the Id.DR relied on the order of the lower authorities and reiterated the submissions made in the case of Rohan Motors Ltd. He further submitted that the goods traded by Sicagen Ltd. are different. It is engaged in the various kinds of trading of goods, which are not in line with the assessee company.

12.10 After hearing rival submission, we note that initially this company was considered by the TPO as comparable but in the final set of comparables, it has been excluded and the Id.AR submitted that it passed all the filters and 95% of turnover is from the trading sales. On going through the financial statements, we noted from the director's reports as under:-

During the year under review, the Company has posted operating and financial results with a turnover of Rs.89,220 Lakhs and a profit after tax of Rs.1,330 Lakhs when compared to Rs.94,312 Lakhs and Rs.1,951 Lakhs respectively in 2011-12.

Due to slow down on the construction related industries and general recessionary trend prevailed in all commercial sectors during the year, the performance of the building material division of the Company got affected during the year. The division has posted a turn-over of Rs.42,792.36 Lakhs and earned a net profit of Rs.578.57 Lakhs.

During the year, the commercial vehicles division has achieved a total turn-over of Rs.37,911.13 Lakhs with a net profit of Rs.624.12 Lakhs. Even though the operational performance of this division was declined, / the profitability was increased due to improved efficiency in internal cost control measures.

The performance of Goodwill Governors Services division was remarkable with an achievement of a total turnover of Rs.2334.20 Lakhs and record net profit of Rs.444.27 Lakhs during the year.

As far as the Boat Building division is concerned, the performance was almost double with an all time high net profit of Rs.783.08 Lakhs in recent times by delivering 34 Motor Tug Launches to BEML.

During the year, the operational performance of Speciality Chemicals division was also impressive by posting a marginal profit of Rs.116.28 lakhs i.e 24% on the total turnover.

Due to restrictive power supply in the manufacturing industries, the operations of the factories got affected during the year. Hence there was a decline on the performance of drums division for which the management is taking adequate steps to overcome.”

64. Further, we gone to the note No.19 which is as under:-

19. Revenue From Operation		(Rs. in Lakhs)	
	For the Year ended March 2013	For the Year ended 31 st March 2012	
Sale of products			
Traded Goods	80675	86348	
Manufactured Goods	3784	4425	
Sub Total	84459	90773	
Sale of services	4128	3383	
Other operating revenues			
Scrap Sales	177	194	
Commission Income	73	70	
Others	3		
Less			
Excise duty	422	431	
Total	88418	93989	

19.1 The Board of Directors have approved re-classification of Goodwill Governor Services, Goodwill Engineering Works and Speciality Chemicals as Continuing Operations from the Financial Year 2012-13.

19.2 Details of Products Sold		(Rs. in Lakhs)	
	For the Year ended 31 st March 2013	For the Year ended 31 st March 2012	
Traded Goods			
Steel Pipes	22499	21913	
Steel	11483	13430	
PVC Pipes	734	585	
Cables	6112	4926	
Vehicles	35873	41910	
Spares and Others	3974	3584	
Sub Total	80675	86348	
Manufactured Goods			
Drums	3312	4036	
Others	472	389	
Cables	-	-	
Sub Total	3784	4425	
Total	84459	90773	

12.11 As per the above financial statements, the company is engaged in different segments, whereas no segmental details are available before us. The company is also engaged in the manufacturing activities and sale of other products as stated in above financial statements, we found fault on the submissions made by the Id.AR. After comparing the above figures it is showing different results as stated by the Id.AR of the assessee. It is also clear from the director's report that the company's revenue is generated from various sectors. The company is also in the manufacturing sectors as observed by the Id.TPO. As per the above schedule No.19.2, the traded goods are not in line with the assessee company. Considering the totality of the facts, the lower authorities have rightly not considered as functionally comparable. The case law relied by us in the above paragraph no.12.6 is also applicable on this issue for correcting the mistakes committed by lower authorities by the Tribunal. In the result, the arguments advanced by the assessee are rejected on this issue and the ground is dismissed.

Ground No.9

13. The Id.AR of the assessee submitted that the TPO has considered the tolerance range in trading activity $\pm 1\%$, whereas the assessee's comparables margin is 3.54%. The OP/OR of the assessee is 0.94%. The TPO for trading segment computed OP/OR at 0.22%. The tolerance range of 1% as notified by the CBDT on April 15th, 2013 vide notification No.30/2013 (F.No.500/185/2011-FDT-1 for whole sale traders and 3% for

other cases shall be applicable for the financial year 2012-13. However, there was no definition of wholesale traders was given in the said notification. Further the central government issued another notification No.86/2015 dated 29/10/2015. The term whole sale trader was defined in the expression to the notification as under:-

3. Further, Central government issued notification. 86/2015) dated. 29.10.2015, the term wholesale traders was defined in the explanation to the notification as under:

"Explanation.—For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:—

*purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and
average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities."*

13.1 He further referred to the chart submitted, which is as under:-

4. The definition requires twin conditions for application of term Wholesale Traders"

First Condition: Purchase cost of finished goods is eighty Percent or more of the total cost pertaining to such trading activities;

In the present case, purchase cost of finished goods is Rs. 10,06,99,08,117/- and total cost 10,74,34,03,259/- pertaining to trading activities and thus it is 93.73% of the total cost and satisfies the First criteria.

Second condition: Average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities

In the present case, Assessee's total inventory of traded goods as on 31 .3.2013 is Rs. 122,99,44,688/- and as on 31 .03.2012 is Rs. 110,03,72,957/- and thus average inventory is Rs. 116,51,58,822/ (FIB Pg. 301) which is more than 10% of total sales of trading goods is Rs. 103,68,56,2581-(10% of 1036,85,62,584) (PB Pg. 300)

Page 32 of 51

Since, Average inventory i.e., is higher than 10% of total sales of traded goods the assessee does not lie in the definition of Wholesale traders and thus tolerance band of +/-3% is applicable to the assessee.

5. Therefore, assessee being not a wholesaler trader and accordingly, selected 3% tolerance band as the appropriate tolerance band applicable, in accordance with the activities Carried out by the Assessee.

13.2 He further submitted that in the assessee's own case for the assessment year 2014-15 in IT(TP)A No.3372/Bang/2018, the Tribunal held that tolerance limit of 3% which would apply in assessee's case and not 1% as held by the TPO.

13.3 The Id.DR relied on the order of the lower authorities. He further referred to the notification issued by the CBDT dated 15/04/2013. The assessee is a wholesale trader in automobile parts, therefore, notification is clearly applicable in the present case. Since the assessee has imported huge traded goods of Rs.637/- crores approximately, therefore, notification issued by the CBDT is squarely applicable. He further submitted that the assessee has not provided data in terms of the Circulars. He further submitted that it was the primary duty of the assessee to prove itself that it does not come under the definition as notified by the CBDT.

13.4 After hearing rival context from both the sides, we noted that the assessee has challenged tolerance range of $\pm 1\%$ applied by the TPO, whereas as per the opinion of the assessee, the assessee is not a wholesale trader, therefore, it should not be applied. The assessee submitted that the case is squarely covered in favour of the assessee for the assessment year 2014-

15 in ITA No.3372/Bang/2018, the relevant paras of the judgment are as under:-

24. Ground No. 15 is against classification of the functional profile of the assessee as that of the "whole sale trader". The assessee's case is that, it is not a whole sale trader and that it is an ordinary trader and at best it can be classified as a 'Sogo Sosha establishment.' The learned Counsel for the assessee Mr. Sashank Dundu relies on the Circular of the CBDT and submits that the DRP was wrong in rejecting the contentions made by the assessee along with factual details based on this circular. He vehemently contended that the assessee cannot be classified as a whole sale trader, when the binding Circular of the Board is applied to the facts of the case. The learned CIT-DR on the other hand, relied on the order of the DRP and submitted that appropriate data was not furnished by the assessee. On a query from the Bench, the learned CIT-DR submitted that the Circular of the Board is binding and if the required data is furnished by the assessee as claimed, then the issue may be set aside to the file of the AO for verification of the data and thereafter for applying the Circular in question.

25. After hearing the rival contentions, we find that the Ministry of Finance (Department of Revenue) issued a notification No.45/2014/F.No.500- 1-2014APA dated 23.09.2014-11 which reads as follows: "SO. 2478(E).—In exercise of the powers conferred by the second proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 196)], the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2014-15.

- *Explanation. For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:)*
 -) purchase cost of finished goods is eighty percent or more of the total pertaining to such trading activities; and*
 -) Average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities."*

26. It is well settled that the AO and the TPO are bound by the Circular. The Circular has to be implemented though the assessee has demonstrated with data that if the circular is applied, it cannot be classified as a "whole sale trader"

27. We find that the assessee has given the relevant data before the authorities below. While rejected this claim of the assessee, the TPO has not referred to any FAR analysis. In our view, the DRP committed factual error in recording that the TPO has passed this decision on the basis of FAR analysis and rejecting the objection of the assessee.

28. In view of the above discussion, we direct the AO to apply Circular of the Ministry referred above on this issue to the facts of the case and fix the tolerance limit in question at 3% by classifying the assessee as a "trader" and not a "whole sale trader".

13.5 On going through the above judgment, we noted that the assessee provided data in terms of the notification No.45/2014/F No.500 -1- 2014-APA dated 23/09/2014-II. However, we noted that the assessee has not provided the data in terms of the explanation of notification dated 23/09/2012 before the authorities below. Before us, the assessee submitted written synopsis cited supra but it has not been verified by any of the authorities below as submitted by the ld. DR., therefore, this issue is remitted back to the file of the AO/TPO/DRP for verification of data provided and to determine whether the assessee comes under the definition in terms of notification of wholesale trader or not. The judgment relied by the ld.AR is not applicable because the data was not provided. If the AO/TPO/DRP finds that the assessee has satisfied the terms of notification as cited above then the tolerance range of $\pm 1\%$ is to be given . Therefore, this ground of appeal of the assessee on issue is allowed for statistical purposes.

Ground No.11

14. The Id.AR submitted that the TPO has wrongly adopted the OP/OC for calculation of PLI instead of OP/OR as a correct method for determination of PLI in respect of manufacturing segment. He further submitted that the Id.TPO decided without any reason as to why the OP/OC should be considered as PLI. The Id.AR further submitted that in the case of controlled transaction in the manufacturing segment comprises of various cost and the AE sales in this segment is insignificant vis-à-vis the AE cost. He further submitted that in the assessment year 2010-11 and 2012-13, the Id.TPO as well as Id. DRP accepted that the PLI for manufacturing segment to be OP/sales and there is no change in the facts for assessment year 2013-14 vis-a-vis the aforementioned years, which would warrant a change in the PLI. The DRP has given reference to OECD guidelines, which states that profit over cost/sales in denominator is decided based on the controlled transaction. In this context, he submitted that the tax payer is having both the transaction with its AEs [cost and sales], whereas cost transaction with its AEs is more than the sale transaction, hence OP/OC cannot be taken as PLI indicator.

14.1 The Id.DR relied on the order of the lower authorities.

14.2 Considering the rival submissions, the TPO has considered the OP/OC for manufacturing segment to which the Id.AR has raised the issue that the OC/OR should be taken as PLI. On going through the findings of DRP at para No.7.1, the DRP has observed as under:-

“4. As per OCD guide line, the profit over cost/sales in denominator is decided based on the international transactions. In this, tax payer is having both the transaction with AE (cost and sales), whereas cost transaction with AEs is more than the sales transaction. Hence OP/OC can not be taken as PLI indicator. Accordingly, objection of the assessee is not acceptable”

14.3 On perusal of the findings of the Id.DRP, he has concluded that OP/OC cannot be taken as PLI indicator but in the conclusion they have not accepted the plea of the assessee. Before the Id. DRP, the assessee has raised the issue that the OP/OC cannot be taken as PLI indicator. It should be OP/OR for PLI indicator. The Id.DRP has accepted the plea of the assessee. However, he has rejected the objections of the assessee in one hand and on the other hand, he has accepted and rejected the plea of the assessee.

14.4 On going through the order passed by the TPO for the assessment year 2012-13 as well as 2011-12 the OP/sales has taken as profit level indicator. Following the rule of consistency, since the facts are the remain same, we direct the AO/TPO/DRP that the OP/OR should be taken as PLI and remit the issue for fresh consideration. This ground of assessee is allowed for statistical purposes.

Ground No.12

15. In this ground, the Id.AR of the assessee submitted that the extraordinary expenses, forex loss and finance cost should not be considered as operating cost in nature in the case of manufacturing segment, he submitted that this should be excluded from the operating cost for the purpose of computation of return on sales in the interest of justice. He further submitted

that in assessee's own case for the assessment year 2012-13 in IT(TP)A No.623/Bang/2017, the coordinate bench has held that pre-operative expenses had to be excluded while computing the PLI.

15.1 He reiterated the submissions made before the lower authorities, for the sake of convenience we are reproducing the same as under:-

Exclusion of extraordinary expenses. Forex Losses and Finance cost as part of operating cost

1. In the transfer pricing study maintained by the Assessee, an amount of Rs.163,402,941 was considered to be non-operating expenses, which included pre-operative expenses, foreign exchange loss and finance cost. The amount mentioned in the TIP report of Rs. 163,402,941, includes the following amounts:

Particulars	Amount
Finance cost	68,717,963
Forex loss relating to purchase of capital goods	24,494,064
Forex loss	41,897,297
Pre-operative expenses	28,293,617
Total	163,402,941

2. The Learned TPO has considered the entire amount of Rs. 163,402,941 as operating in nature by considering it to be preoperative expenses.

Forex Loss relating to purchase of capital goods

3. Without prejudice to the Assessee's contentions of treating the entire forex loss as non-operating in nature in Ground No. 6, with respect to foreign exchange loss of Rs.24,494,064, pertaining to settlement of capital creditors, this amount has been disallowed by the Assessee in the computation of income for the subject year. The relevant extract of the computation of income

4. *As this forex loss is considered to be capital in nature, in the computation of income of the Assessee, the same ought to be treated as non-operating in nature for the purpose of computation of margin of TTipl.*

5. *Further, foreign exchange losses pertaining to manufacturing is to be considered in Manufacturing segment and pertaining to Trading is to be considered in trading segment.*

Regarding the Finance cost

6. *The Learned TPO has considered finance cost, as operating in nature for margin computation of the Assessee, whereas the finance cost is considered as non-operating in nature, with respect to the comparable companies by the Learned TPO. There is a difference in the treatment of finance cost of the comparables and the Assessee, and accordingly these cannot be compared with each other.*

Regarding Extra ordinary expenses

7. *During the year under consideration, the assessee company incurred an amount of Rs. 28,293,617 to set-up the new blanking division. This fact is evident from the installation certificate in this regard, enclosed at PB Pg.213.*

8. *This was in pursuance to the request of M/s Toyota Kirloskar Motor Pvt. Ltd. to increase the steel processing capacity, which is enclosed at PB 212*

9. *The TPO has included the said expenditure of Rs. 163,402,941/- as operating expenses and has calculated the margin (i.e. OP/Sales ratio) as -15.03% as compared to the margin computed by assessee at 2.27%. This is evident from the TPO's order at Page 4 and 10.*

10. *The Assessee would like to submit that the depreciation of the blanking machines during the trial run period amounting to INR 28,293,617 are pre-operative in nature being incurred before this division commenced operations and accordingly removed from the cost base while computing the operating margin of the manufacturing division*

11. *The above facts clearly show that the said expenditure incurred was extraordinary in nature, in the sense that the same was not to be incurred generally in the normal course of business, and thus, has to be excluded while computing the operating margin of the assessee company.*

12. *Reliance in this regard is placed on the judgment of Hon'ble ITAT Mumbai in the case of Pangea3 and Legal Database Systems Pvt. Ltd. v.*

ITO [2017] 57 ITR(Trib.) 242, wherein the Hon'ble Tribunal has held as under:

Whether all operating expenses should be taken into account and once any item is appearing as an operating cost which is taken into determining the PLI, then there cannot be any reason to exclude any part of the cost subsequently in the garb of making comparability adjustment? - Held that; - We are unable to fully subscribe to such proposition above because, even if an item is taken as an operating cost, however the rule as enshrined under 1 O (1)(e)(iii) and 10B(3) clearly contemplates that any difference or abnormality or any extraordinary item which materially affects the cost base or profit, the same needs to be adjusted so as to eliminate the material effect of such difference. Because, the whole spirit of the transfer pricing exercise is to determine the appropriate arm's length price. Such an adjustment definitely warrants at times the tinkering of PLI in the exercise of determination of arm's length price. If any peculiar abnormality or extraordinary event which has arisen specific in the case of the 'tested party' then same needs to be analysed, firstly, by comparing it with uncontrolled transactions with independent entity; and secondly, if such peculiarity is not found in the case of the uncontrolled comparable transactions then the rule envisages that reasonable accurate adjustment

should be made which materially affects the cost or profit. Hence, the contention put forth by Ld. CITDR in our humble opinion is not acceptable."

13. Reliance is further placed on the judgment of Hon'ble ITAT Pune in the case of HOV Services Ltd. v. JCIT in ITA No. 18961PN12013 dated 31.08.2016, whereby the Hon'ble Tribunal has held that the extraordinary expenses have to be excluded for computing the operating margin of the assessee.

14. Therefore, since the expenses incurred by assessee for setting up a new blanking line, which started its commercial production in the next year, such extraordinary expenses are to be excluded for the purpose of computation of operating margin of the assessee.

15. In view of above, and after excluding the above items, operating cost comes to Rs. 92,32,93,390/-

15.2 In addition to the above, the Ld.AR further submitted that during the financial year 2012-13, TTIPL incurred certain cost to set up blanking division and blanking division started commercial production only in financial year 2013-14. The

installation certificate dated 01/03/2013 was enclosed during the course of TP proceedings. He further submitted that during the trial run operation, the depreciation in blanking machines was of Rs.2,82,93,617/- and was also a pre-operative in nature have incurred before this division commenced its operations. Accordingly, it should be removed from the operating cost and he relied on the two judgments in ITA No.1748/Bang/2013 for the assessment year 2003-04. He further relied on the judgements of coordinate bench of the Tribunal in the case of KHF Component India Private Ltd and in the case of Vishy Components India Ltd., in ITA No.133/PN/2011 for the assessment year 2006-07 on this issue.

15.3 On the other hand, the ld.DR reiterated that the TPO has rightly taken it as operating expenditure. He further submitted that on the one hand, the assessee has claimed depreciation on the entire fixed assets and on the other hand he wanted to capitalize the expenditure to which the ld.TPO has rightly examined that the assessee is taking two different stands before two different officers of the Income-tax Department. The ld. DRP has rightly followed the judgment of coordinate bench of ITAT, Bangalore Bench in the case of SAP Lab India Pvt. Ltd., [2010]-TTIL-44-ITAT-Bang-TP.

15.4 Considering the rival submissions, we note from the submission of the assessee that the entire pre-operative expenses of Rs.16.34 crores consists of forex loss relating to settlement of capital creditors arising out of purchase of capital

goods of Rs.2,44,94,064/-. In this regard, the ld. AR of the assessee submitted that while computing taxable income of the assessee, the assessee himself has disallowed in his computation. Therefore, this issue is remitted back to the file of AO/TPO/DRP for the verification of Rs.2,44,94,064/- whether the assessee himself has disallowed in his computation of income or not. If the revenue authorities find it as appropriate, this should not be considered as an operating cost. The ld. AR did not make any submissions in respect of Forex Loss of Rs. 4,18,97,297/- .

15.5 The ld.AR further stated that the pre-operative expenses has been decided by the coordinate bench of the Tribunal in favour of the assessee in assessee's own case for the assessment year 2012-13 in ITA No.623/Bang/2017. We have gone through para 8 and 13 of the judgment in assessee's own case, which is as under:-

8. In the objections before the DRP with regard to excluding pre operating expenses from the operating expenses, the assessee submitted that the TPO erred in considering pre-operative expenses as operating in nature and hence, erred in adding the same to the operating cost of the manufacturing segment. In this regard, it was submitted that Toyota Kirloskar Motor Private Limited ("TKML") requested the Assessee to increase steel processing capacity for TKML's new project 800L / 801L, to accommodate the increase in the volume of vehicle production during future years. Under the new project 800L/ 801L, the Assessee apart from steel cutting, also entered into a commercial arrangement with TKML to additionally undertake blanking of steel sheets on behalf of TKML. The processing of steel sheets consisted only of cutting the mother steel sheets and mother steel coils in different shapes and sizes based on the specifications provided by TKML. For carrying out the additional production requirement for TKML, the Assessee had to set up a new steel blanking plant wherein new blanking machines needed to be procured and installed. The Assessee submitted that blanking line machine was required for the 800L/ 801L project of TKML.

During FY 2011-12, the Assessee incurred certain cost to set-up the blanking division. However, the blanking division started commercial production only in FY 2012-13. The Assessee submitted that in relation to the expenses incurred amounting to INR 20,45,10,506 with respect to the steel blanking division are preoperative in nature being incurred before this division commenced operations. The TPO acknowledged the same to pre-operative in nature, however, still treated it as operating in nature. The Assessee placed reliance on the Pune Tribunal judgment in the case of Vishay Components India Pvt. Ltd. (ITA No. 133/PN/11 : Asstt. Year: 2006-07) wherein the Tribunal allowed the exclusion of start-up activity costs while computing operating margin of assessee, being extraordinary expenses. The observations made by the Pune bench are as follows:

"13. Furthermore, the appellant pointed out that the Comparable Companies, have not incurred any start-up activity cost as is amply clear from the Annual Reports.

14. In view of the aforesaid discussion, in our view, the assessee ought to succeed on this Ground and we accordingly direct the AO/TPO to examine the claim of the assessee in the light of the directions contained in the order of the Tribunal in the case of Demag Cranes & components (India) Pvt. Ltd (supra) dated 4-1-2012.

*Relying on the above decision, the Assessee submitted that the expenses were incurred for setting-up the blanking division which was in the start-up phase and no revenue was earned by the Assessee from this division during the FY 2011-12. It was **submitted that** the TPO has also acknowledged that the sum in question is preoperative in nature. The Assessee therefore prayed that expenses incurred with respect to this division should be treated as non-operating in nature, thereby excluded from cost base in computing the margin computation of the Assessee.*

13. We are of the view that the grievance of the Assessee in this regard deserves to be accepted. The AO is directed to adopt similar approach as directed in the decision referred to above and examine the issue of allowing deduction on account of pre operating expenses. In this regard, we find that the DRP in its directions has not dealt with this issue in proper perspective and has concluded that the pre operative expenses has already been allowed as revenue expenses, which aspect in our view would not be relevant."

15.6 We noted from the above judgment that before the revenue authorities, the assessee submitted that the commercial production started in the financial year 2012-13, however, in the impugned assessment year, the objections filed before the DRP, it is mentioned that the commercial production started in the financial year 2013-14. The coordinate bench has already allowed after accepting the argument of the assessee that the assessee credited as a part of the capital expenditure and the assessee has also claimed depreciation on the blanking machinery. Since the assessee, for the assessment year 2012-13 submitted that the commercial production started in the financial year 2012-13 and in the impugned assessment year, the assessee submitted that the commercial production started in the subsequent assessment year. These two views are taken by the assessee on different financial year. The ld.AR of the assessee produced installation certificate, which has been placed at paper book page No.213. As per the certificate, the date of installation is on 01/03/2013 and it is self serving document. As per the submission, the assessee has stated that the commercial production was started in the financial year 2013-14 and not produced any credible evidence viz., pollution control certificate, NOC from Fire Department, Certificate from the related State Govt. deptt., Electricity Bill, purchase of Raw materials & related expenses etc.. The assessee has also claimed depreciation on the fixed assets installed for the blanking machines. Considering the entire findings of the ld.TPO as well as the ld.DRP and also on perusal of the judgement placed by ld.DRP of the co-ordinate

bench in the case of SAP Lab India Ltd., we reject the arguments of the assessee. The ld.AR of the assessee also relied on the judgments in the assessee's own case for the assessment year 2012-13 in which he has clearly stated that the commercial production started in the financial year 2012-13, therefore, the case law relied by the ld.AR of the assessee for the assessment year 2012-13 in assessee's own case is also not applicable. We further note that the Rs.16.24 crores consist of finance cost of Rs.6,87,17,963/-. The details have also not been provided. If the details have not been provided the same cannot be allowed. Accordingly, this issue is covered against the assessee in the case of M/s Tasty Bite Eatables Limited., Vs. ACIT in ITA No.335/Pune /2013 reported in 68 Taxman.com 272 Pune, in which, it has been held that non furnishing of detailed information, it can be considered as non operating expenses, the relevant para is as under:-

- 27. The assessee vide additional ground of appeal No.1 has raised the issue of computation of PLI i.e. operating margins / operating expenses of the assessee with the submission that non-operating expenses i.e. interest on finance cost should be excluded while computing PLI.*
- 28. The learned Authorized Representative for the assessee pointed out that the facts in this regard were before both the TPO and DRP and such an adjustment was asked for. However, the same has not been allowed to the assessee. The learned Authorized Representative for the assessee pointed out that similar exercise should be carried out in PLI of concern selected as comparable.*
- 29. The learned Departmental Representative for the Revenue relied on the order of Assessing Officer / TPO. ITA No.335/PN/2013 Tasty Bite Eatables Ltd. 20*
- 30. We have heard the rival contentions and perused the record. While computing the PLI of concern of costs, which are relatable to carrying on of the business are to be considered as part of operating margins /*

operating expenses. Only such items which are not relatable to carrying on of business are to be excluded while computing the operating margins / operating expenses of the assessee, in turn, working out the PLI of the company. The assessee before us has claimed that the non-operating expenses of interest on finance cost needs to be excluded while calculating PLI of the assessee company. The perusal of Profit & Loss Account of the assessee company shows that the major revenue is from business carried on by the assessee and some part of the income is shown as other income. We find no merit in the claim of the assessee that the interest on finance cost is to be excluded while calculating PLI of the assessee company being non-operating expenses. The assessee has failed to furnish the complete details in this regard and in the absence of the same, we reject the claim of the assessee."

15.7 Respectfully following the above judgment of co-ordinate bench of the Tribunal, we find no merit in the claim of the assessee that the finance cost is to be excluded while calculating PLI of the assessee company being non-operating expenses. Accordingly, this ground is allowed for statistical purposes.

Ground No.15

16. The ld.AR of the assessee reiterated the submissions made before the lower authorities. He further submitted that sec. 35D of the Act is an enabling provision, which enables the assessee to eligible for amortization of certain expenditure which is otherwise capital in nature and this amount was paid to the Registrar of Companies towards Stamp Duty for increase in authorized share capital of the company and in support of his argument, he relied on the judgment of West Gujarat Express Way Ltd., (2015) 54 ITD 103, in which it has been held that the assessee is eligible for amortization of amount of stamp duty paid in relation to increase in authorized share capital and allowable u/s 35D(2)(d) of the Act.

16.1 On the other hand, the ld.DR relied on the order of the lower authorities and he submitted that the ld.DRP has rightly disallowed the claim of the assessee as per sec.35D of the Act by relying on the judgment of Bombay Burmah Trading Corporation, wherein it has been held that the expenditure incurred in accordance with authorization of capital is not allowable as an expenditure and the same was to be held as capital expenditure. He also relied on the judgment of Hon'ble Supreme Court of India in the case of Brooke Bond India Ltd. v. Commissioner of Income-tax reported in [1997] 91 Taxman 26 (SC) & submitted that the expenses incurred towards increase in share capital cannot be treated as revenue expenditure.

16.2 Considering the rival submissions, we note that the assessee has claimed a Rs.23,77,290/- expenditure u/s 35D of the Act towards increase in authorized share capital of the company for payment of stamp duty to Registrar of Companies. On going through the sec.35(D) of the Act, we do not find anywhere that this expenditure has been mentioned for eligibility of deduction u/s 35D of the Act.

16.3 ON going through section 35D of the Act, there is no reference in regard to the eligibility for getting deduction towards expenditure for increase in authorized share capital of the company and the Hon'ble High Court in the case of Burhma Trading Corporation Ltd., has held that it is capital in nature. In the judgment of Hon'ble Supreme Court of India relied by the ld.

DR cited (supra), it has been held that expenses incurred towards increase in share capital is capital expenditure and not allowable as expenditure. It is also not covered u/s 35D of the Act. Considering the entire facts of the case and the case law relied by both the parties, we dismiss this ground of appeal of the assessee.

Additional grounds:

17. The assessee has filed additional grounds in regard to manufacturing segment, in which the assessee contested that the depreciation adjustment should be granted since the ratio of depreciation to sales is higher as compared to comparable companies, therefore, it requires suitable adjustment and the difference in accounting treatment for depreciation warrants suitable adjustment for comparability purposes and he submitted that in the assessee's own case for the assessment year 2014-15 in IT(TP)A No.3372/Bang/2018, where coordinate bench granted depreciation adjustment and he also relied on the case law cited by the assessee.

17.1 The Id.DR relied on the order of the AO and submitted that the depreciation adjustment should not be given only on the quantum of depreciation with the assessee company.

17.2 Considering the rival submissions, we note that the similar issue was raised by the assessee for the subsequent years in assessee's own case in ITA No.3372/Bang/2018 for the

assessment year 2014-15. The observation of the Tribunal is as under:-

“14. Ground No. 11 is on the issue of disallowance of the assessee's claim for depreciation adjustment while computing ALP. The claim was made by the assessee before the TPO after perusing the order of the TPO as well as the DRP, we are of the considered opinion that this adjustment on account of differences in depreciation rates etc., has to be granted. The AO is directed to verify the data and compute the adjustment that is required to be granted on account of variation in the rate of depreciation claimed and then grant the same to the assessee.

15. In the result, this ground is allowed for statistical purposes.”

17.3 On going through the above judgment, we note that if there is difference in rate of depreciation with the comparable companies then the suitable adjustment may be given as held by the coordinate bench of the Tribunal in para No.14 in assessee's own case in ITA No.3372/Bang/2018 cited (supra)of the judgement as noted above. We observe that the assessee has neither brought out before us the method of depreciation and rate of depreciation applied by the comparable companies, therefore, considering to the issue and following the judgment of coordinate bench in subsequent years, we remit this issue for determination of the rate of depreciation and method adopted by the comparable companies and if it is find that there is difference in rate & method adopted for depreciation the suitable adjustment is to be given. This ground is allowed for statistical purposes.

17.4 The assessee has raised two additional grounds on different dates towards working capital adjustment to be provided for

difference in the working capital possession of the assessee vis-à-vis with the comparable companies in respect to trading and manufacturing segments. On going through the submission made by the Id.AR of the assessee and considering the arguments advanced by the Id.DR, we note that in subsequent year in IT(TP)A NO. 3372/Bang/2018 for the AY 2014-15, the coordinate bench of the Tribunal has granted working capital adjustment by holding as under:-

10. Ground No. 08 is on the issue of working capital adjustment. We find that the assessee in its TP study has in annexure G, given working of the working capital adjustment and claimed grant of working capital adjustment while determining the ALP. After perusing the order of the DRP and considering the arguments of the Id. CIT(DR) , we are of the considered opinion that this issue should be restored to the file of the AO for examining the data furnished by the assessee and thereafter grant working capital adjustment as requested by the assessee.

11. In the result , this ground of the assessee is allowed for statistical purpose.

17.5 Before us, the assessee has taken by way of additional ground in regard to adjustment towards working capital but the assessee has not provided any data in respect of the calculation of working capital adjustment. The assessee is directed to provide necessary data for computation of working capital adjustment. Respectfully following the judgment of the coordinate bench of the Tribunal in assessee's own case for subsequent assessment year, we remit this issue to the file of AO/TPO/DRP in terms of the above decision.

17.6 These additional grounds are allowed for statistical purposes.

18. The assessee has raised as many as 16 grounds and 08 additional grounds but we have decided the grounds which are argued by the assessee and rest of the grounds are dismissed as not pressed.

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

Order pronounced in the court on 2nd March, 2023.

Sd/-

(N.V Vasudevan)
Vice President

Sd/-

(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 2nd March, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed.....