IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI

BEFORE,
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.5225/Del/2011
(ASSESSMENT YEAR 2002-03)

Asst. CIT Circle-25(1) New Delhi	Vs.	M/s Thales DIS India Pvt. Ltd. (Earlier known as Gemalto Digital Security Pvt. Ltd.) 4th Floor, A-Wing, Lotus Tower, Community Centre, New Friends Colony, New Delhi PAN-AABCS 5455P
(Appellant)		**(Respondent)**

Appellant by	Shri Rajesh Kumar, CIT-DR
Respondent by	Ms. Shashi M. Kapila, Advocate Shri R.R.Maura, Pravesh Sharma and Sushil Kumar, Advs.

Date of Hearing	03/04/2023
Date of Pronouncement	11/05/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-XX, New Delhi ["Ld. CIT(A)", for short], dated 22/09/2011 for Assessment Year 2002-03. Grounds raised by the Revenue in this appeal are as under:

"1. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs.11,33,95,067/- made by the AO on account of Transfer Pricing Issue.

2. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in accepting the additional evidence, even though the conditions laid down in Rule 46A(1) were not satisfied.

3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."

2. The subject matter and the issues involved in the present appeal are the deletion of addition by the Ld. CIT(A) of Rs. 11,33,95,067/- made by the A.O. on account of transfer pricing issues and accepting the assessee's additional evidence contrary to the conditions laid down in Rule 46A(1) of the Income Tax Rules 1962.

3. As per the records the brief facts of the case are as under:- The assessee company belongs to the Schlumberger Group and is a wholly owned subsidiary of Schlumberger B.V., Netherlands. During the year, the assessee had entered into international transactions as under:

Transactions of repurchase of traded/furnished goods	Rs. 56,17,99,102/-
Purchase of fixed assets	Rs. 35,25,038/-
Borrowings	Rs. 7,56,48,687/-

The assessee filed its return of income declaring a loss of Rs. 10,86,15,300/-.

4. The facts of the case are that the assessee company is a reseller of products of Schlumberger Sema, dealing only in items purchased from its AEs. The assessee has eroded its net worth as a result of continuing losses year after year since its inception. The details submitted by the assessee company reveal that its gross margin ratio fell to 6.35% as against 23.26% in the immediately preceding year i.e., 2000-01. In light of these facts, the issue was referred to Transfer Pricing Officer for necessary orders u/s 92CA.

5. The Transfer Pricing Officer noted that the assessee company was purchasing from its holding company Schlumberger Owing Mills, USA (hereafter "US-AE") and Schlumberger Technologies (Asia) Ltd, Hong Kong (hereafter "HK-AE") at different rates while the product(8k SIM Card) are sold in the Indian market at almost the same rate. This

difference regarding 8K SIM Cards is summarized as under:

	Purchase Quantity	**Amount**	**Average rate**
HK-AE	22,52,550	Rs. 15,00,51,640	Rs.66.614
US-AE	20,43,614	Rs.20,59,06,967	Rs. 100.756

6. While the average rate of purchase of 8k SIMs from the HK-AE is around Rs.66.60, the purchase price of 8k SIMs from US-AE is around Rs. 100.75. These SIMs were sold in India at an average price of Rs.104.On this count, the TPO calculated the adjustment using Resale Price Method to be Rs.11,83,33,940/-. The total adjustment was calculated by the TPO to be Rs.13,21,88434/- as under:

Item	***Difference between ALP and transaction***
8K Sim Cards	Rs. 11,83,33,940
E-Cards	Rs.50,21,903
Pay-phone/cards	Rs.38,31,925
WOS	Rs.50,00,666
Total	*Rs.13,21,88,434*

7. The assessment order came to be passed on 31/12/2014 wherein the A.O. made an addition on account of foreign exchange fluctuation loss of Rs. 77,75,000/-, in addition to the adjustment u/s 92CA(3) of Rs. 13,21,88,434/-.

8. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). The Ld. CIT(A) passed the order on 22/09/2011 deleting the addition of Rs.11,33,95,067/- made by the A.O on account of transfer pricing issue in following manners:-

> **6.7.** "*Reasons for the decision:*
>
> *At this stage, .it is necessary to highlight the factual position emerging from the order of the TPO and the submissions made by the appellant. (1) TPO asked for the Comparable Uncontrolled Price (CUP) of 8K cards sold by the related party to unrelated entities. (2) Appellant could not produce the details during the course of the TP proceedings due to unavoidable reasons. (3) The CUP details were produced as additional evidences during the appeal proceedings. (4) The additional evidence was given to TPO but in his remand report TPO did not comment anything on the CUP data produced by the appellant. (5) The product, namely, 8K card is same in terms of its quality, utility, product code (M64LM11), physical attributes, etc. in all the years. (6) The appellant has purchased the same card from its US AE as well as from its Hong Kong AE. There is no difference between the 8K cards purchased from its US AE and Hong Kong AE in terms of its quality, attributes and utility.*
>
> *However, the data produced by the assessee during the appeal proceedings related to earlier years. Technology changes very fast, and along with it the old technology becomes obsolete. Price of the out dated technology falls very drastically. In assessee's own admission, the 8K cards were becoming out dated.*

The business cycle was for 12 to 18 months as per the assessee's submission. This is self evident that during FY 2001-02, the US-AE did not sell 8K cards to anybody else except to assessee. If the product is becoming out dated, it's price declines drastically. Therefore it is difficult accept the proposition that the earlier year prices were having significant influence over the current year prices in this case. On the contrary, the evidence only show that the prices of the product i.e. 8K card is in the decline. Comparison of the price of the current year to the price of the earlier years will certainly give a misleading answer. This is all the more true because the same 8K card is being purchased by the assessee at a lower price from its own AE at Hong Kong in the same financial year.

Therefore, comparing the earlier year data is not appropriate in case of such products. In view of this the additional evidence in the form of CUP data sales made by US-AE to unrelated parties cannot be used in this case. Even though the additional evidence is admitted in principle, they are of no help to the assessee.

6.8. *8K card was passing through the end of a product cycle is clear. I hold that due to this factor alone, the bench marking of the transactions should be done on a different footing. I hold that the peculiarity of the market and the efforts of the assessee to hold on to the market share are real life situations which cannot be wished away. It is possible that the assessee would have continued to sell 8K card even in subsequent years, but that does not take away the fact that these cards were at a phase out stage. Classic example of phase out or dying out of a product is floppy drive and floppies. It is possible that some company would be selling floppies, but undeniably the product market was dead because of innovation. In view of this, I hold that 8K card should be separately bench marked. The most appropriate method to do*

so is CUP.

In view of the above, I hold that when there is direct CUP available it desirable to apply the same instead of going for Resale Price Method (RPM) which is more distant from the product comparability.

6.9. *At this stage, it is important to appreciate that the appellant had submitted the 8K cards purchase details from its Hong Kong AE before the TPO. The selling price range of 8K card by Hong Kong AE to the appellant was from USD 1.16 to USD 1.69 per card. However, the selling price range AE in Malaysia was from USD 1.21 to USD 1.86 per card and the selling price range to third parties in Hong Kong was from USD U59 to USD 2.53 per card. As mentioned earlier, these prices are FOB prices. It is important to note that they are SIM cards and therefore transportation cost involved was literally negligible because of its weight and size. The sales made by the AE in Hong Kong are in the same FY 2001-02. Since, the determination of arm's length price of the international transaction is for the purchases made in FY 2001- 02, the CUP available for the same financial year is more suitable instead of using the data for the earlier years. This is also justified because the technology involved in this area of business is fast changing and evolving. Higher memory cards are produced at cheaper rates at the time goes by. Even though the quality, usability, physical attributes, utility etc. of 8K cards might have been same for the earlier years as compared to the FY 2001-02, the price of this kind of products are more influenced by other products of similar nature either of higher quality in terms of speed or in terms of storage capacity or shrinking of the physical size of the cards. Therefore, element of time has a strong bearing on the product prices. In view of this, I am of the opinion that the CUP available in the same financial year is more suitable for*

benchmarking purposes since they are not much affected bv the time factor in comparability. Therefore, selling price of the 8K cards of Hong Kong AE to the unrelated parties should be taken as a CUP. They should be used to evaluate .the arm's length nature of the purchases made from the US-AE.

6.10. *Next question is the geographical/ market difference that has to be encountered if the price of 8K card sold by HK-AE is compared to the price of 8K cards sold by US-AE. It is important to keep it in mind that (1) the product being compared is exactly same, comparing the item with the same product code, same utility, same size (2) The value/ price is Free On Board (FOB) (3) for the same year i.e. FY 2001-02 (4) AE has sold the same product to 3rd parties who are unrelated. The cost of production in US may not be the same as in Hong Kong, There is no need to elaborate on the difference between US market and Hong Kong market which is well known. But according to me, they are not material to the comparison since CUP method is used. It is common knowledge that electronic items have world market. The traditional geographical differences are immaterial in case of many new technology items.*

To illustrate, commodity market quotes are accepted as a CUP in case of commodity trade. The quotes may be from London commodity market or New York commodity market. The product or the commodity would have been bought or sold in any other part of the world, may be Brazil, South Africa or Russia. But the comparable price is the London commodity market rate. The cost of production of these commodities may never be the same in Brazil, South Africa and Russia. Still, this is a valid CUP. Therefore, the issues of geographical market or cost of production differentials between US & Hong Kong should not come in the way of use of the CUP in the present case.

6.11. *The TPO has mentioned in para 4.4 of the order that 'on being asked about the rates at which 8K cards were supplied by US-AE and HK-AE to the other AEs and also to independent buyers, details in respect of HK-AE were furnished through letter dated 27.02.2004. Based on the details submitted by the appellant it is seen that the average price of 8K cards sold to non AEs are at USD 2.53", 1.59, 1.21, 1.88, 2.25, 2, 1.78, 1.82, 1.69, 1.68, 2.5 during the entire financial year. The average of these rates comes to USD 1.90 per card. a As this is the average selling price of the AE, the appellant gets the benefit of this rate per card which comes to USD 1.99 per card i.e. the appellant have paid upto USD 1.99 per card and still the transaction could be at arm's length. The appellant had purchased 8K cards much below this rate from its HK-AE and therefore purchase of 8K card from HK-AE is to be held at arm's length. However, appellant had purchased 8K cards from US-AE at the rate of USD 2.2 per card for the entire period. Therefore, difference between the purchase price of 8K card at USD 2.2 and arm's length price of 8K card at USD 1.99 should be the addition made per card. Through the Annexure V of the submission dated 16.01.2006 (page no. 26), the appellant has given the breakup of number of cards purchased from US-AE and its HK-AE. The total number of 8K cards purchased from US-AE is 19,78,164. The average rate of exchange between US Dollar and Indian Rupees was Rs. 47.3 per dollar. Therefore, the total addition on account of this isRs. 187,93,367/-.*

Rest of the additions made under the segment 8K sim cards is to be deleted. The AO is directed to add Rs. 1,87,93,367/- to *the returned income of the assessee.*

9. As against the order of the CIT(A), the Department of Revenue preferred the present Appeal on the grounds mentioned above.

10. Ground No. 1 of the Revenue is directed against deletion of addition of Rs.11,33,95,067/- out of TP Adjustment of Rs. 13,21,99,434/- and the Ground No. 2 is regarding admission of additional evidence by the ld. CIT(A) 'against provisions of Rule 46A Income Tax Rules'.

11. The Ld. DR vehemently submitted that the CIT(A) has committed error in adopting the CUP method for benchmarking the purchase of 8K SIM cards by the assessee from its AEs and rejecting the RPM method adopted by the TPO without any justification. The Ld. DR further submitted that the CUP method was rejected by the assessee itself in its TP report and also that the assessee did not take any ground before the CIT(A) for selection of incorrect method (RPM) by the TPO. Therefore, the ld. DR submitted that the CIT(A) committed an error in adopting the CUP method for benchmarking, without even providing an opportunity to the TPO/A.O. The Ld. DR has also filed detailed written submissions on merit in support of the contentions.

Further, the Ld. DR has also submitted on the Ground No. 2 that the Ld. CIT(A) has committed an error in accepting the additional evidence though the Assessee has not satisfied the conditions laid down in Rule 46A(1) of the Income Tax Rules.

12. On the other hand, the Ld. AR has relied on the order of the CIT(A), justified the order impugned and the Ld. AR submitted that the 8K SIM card had become obsolete and it was in process of being phased out in India and most of the manufacturers had already shifted to producing 16K and 24K cards and the assessee had to necessarily supply 8K cards at a loss in order to service the large number of phones already in use. Thus justified the order of the Ld. CIT(A) and also taken us through the various documents.

13. In so far as admission of additional evidence is concerned, the Ld. AR submitted that the CIT(A) himself made it clear that 'even though the additional evidence is admitted in principle, they are of no help to the assessee', therefore, the Ground No. 2 of the Revenue requires no adjudication since the additional evidence has not made any impact on the order of Ld.CIT(A).

Ground No. 1

13. We have heard both the parties and perused the material available on record. To adjudicate the issue involved in Ground No. 1 of the present appeal, it is inevitable to go through the TP analysis made by the assessee, which is reads as under:

		(Rs. in lakhs)	MAM
a)	Borrowings	Rs.756.48	CUP
b)	Import of finished goods	Rs. 5617.99	RPM
c)	Purchase of fixed assets	Rs. 35.25	CUP

Import of finished goods

i)	Tested party	: Assessee
ii)	MAM	:RPMN(Single segment excepting 8K cards)
iii)	PLI	:Gross margin to sales.
iv)	Basis for search of comparables	:Keywords "economic activity" and Products"
v)	No. of comparables selected Gross margin of assessee	: 8 Arithmetical mean 19.81%
vi)	Gross margin of assessee if 8K segment included	: 6.34%

14. It is not in dispute that the assessee Company itself chose Resale Price Method ('RPM') as the Most Appropriate Method in the TP Analysis. Further, the Ld. DR had also brought our attention to the TP Auditor's report produced at Page No. 114 of Paper Book 2, wherein it is clearly remarked that *'CUP cannot be applied in the absence of internal or external comparables'*. The

relevant portion of the TP auditor's findings is reproduced here under:-

> *"However, due to lack of reliable, detailed and accurate information on specific items dealt in by those companies, risks assumed, assets employed and functions performed by contracting parties, we found it unfeasible to compare sale prices charged by those companies to those ranged by SMSIL for its products in India. Further analysis revealed that it was rather impossible to extract sales prices charged by these companies for specific items, being comparable to those sold by SMSIL per data available in the public domain.*
>
> ***Conclusion on CUP***
>
> ***Based on the above discussion, in view of the absence of external comparables, it is not possible to apply CUP method in respect of cards,*** *POS and terminals imports by SMSIL with comparable goods dealt by independent parties.*
>
> ***(Emphasis supplied)***

15. The Ld. CIT(A) placed reliance on the sales data of HK-AE instead and found that the HK-AE sold 8k SIM cards to a non-AE in Malaysia at USD 1.21 to USD 1.86 per card and the selling price range to third parties in Hong Kong was from USD 1.59 to USD 2.53 per card. The ld. CIT(A) considered an average of the third-party rates of HK-AE (along with a margin of 5%) as an appropriate ALP for the US-AE transactions and determined the

total adjustments to be Rs.1,87,93,367/-. The ld. CIT(A) also termed the geographical differences between US and Hong Kong markets as "not-material".

16. The Ld. CIT(A) further also directed that the remaining purchase segments be clubbed and benchmarked at an entity level using RPM.

17. It is the case of the Department before us that the Ld. CIT(A) has erred in considering the HK-AE sales data as CUP data for the US-AE sales. The Ld. DR made a written submission before us that the details of sales like volume, item-wise price, name of the parties, taxes paid etc. were not submitted by the assessee either before the TPO or CIT(A). It was also submitted that the ld. CIT(A) has not appreciated the fact that geographical differences have been recognized by various High Courts and is reflected in the prices charged by the US-AE and HK-AE to third parties. It was further submitted that the assessee was able to procure SIM cards at much lower rate from HK-AE due to the price negotiations, while no such evidence of any negotiation with US-AE is provided before the authorities, in spite of the much higher rates. On the issue of aggregation of transactions, Ld. DR relied

on various judgments of ITAT and High Courts to submit that the remaining non-8k purchase transactions should be benchmarked separately.

18. On the issue of considering HK-AE's transactions with third parties as comparables, we find merit in the Revenue's argument. The ld. CIT(A)'s reasoning that geographical differences are immaterial to electronics market cannot be upheld based on the facts of the case. Further, it is clear that the ld. CIT(A) has decided that the HK-AE's sale price to third parties as comparable, without any information regarding the name of the parties the sale was made to, volume of sale, terms of sale etc. The said aspects are important factors in determining the sale price and the comparability cannot be decided in the absence of such details.

19. On the issue of comparability method to be employed, we find that during the TP Proceedings or during the appeal proceedings before the CIT(A), the assessee has not raised the issue that there was an incorrect selection of method (i.e., RPM) by the TPO. However, the Ld. CIT(A) adopted CUP based on incomplete data and ignoring geographical differences, which is

contrary to TP Auditor's findings and contrary to TP Analysis wherein the Assessee Company itself chose Resale Price Method ('RPM') as the Most Appropriate Method.

20. On the issue of aggregation of transactions, we find that the ld. CIT(A) has clubbed the non-8k SIM purchase transactions and benchmarked them at an entity level. It is a settled proposition that the international transactions should be segregated for the purpose of benchmarking unless they are inextricably linked. Reliance is placed on the judgment of Hon'ble Punjab and Haryana High Court in case of *Knorr-Bremse India (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle-I, Faridabad* [2015] [63 taxmann.com 186 (Punjab & Haryana)] wherein the Hon'ble High Court has held that the closely linked transactions can, in a given situation, be components of a single composite transaction but the assessee would, however, have to prove that although each sale and each provision of service is priced separately, they were all provided under one composite agreement which constitutes an international transaction. The Hon'ble High Court has further held as under:-

> *"The TNM Method may establish the aggregate price paid for the goods and services received under independent transactions to be an arm's length price. This, however, would give a skewed picture. One of these independent transactions may be at a bargain and the pricing, therefore, is not objected to by the department. This bargain may be for a variety of reasons and in a variety of circumstances unconnected however to the other transactions. The value of the other transactions, on the other hand, may be overestimated and would not be at the arm's length price. In that event, for the purpose of the Act, the price of the second transaction cannot possibly be taken to be the arm's length price for it was not the arm's length price. It does not become the arm's length price merely because the bargain struck with respect to the first transaction balanced the inflated price of the second although the two transactions were independent of each other. The two transactions are different and, therefore,the arm's length price of each of them must be determined separately."*

21. The Hon'ble ITAT Delhi in case of Gruner India Pvt. Ltd. [2016] [70 taxmann.com 240 (Delhi - Trib.)] has also held that only inextricably linked transactions can be aggregated for the purpose of benchmarking after considering the above judgment of the Hon'ble High Court and other judgements. The relevant extract of the above judgment is given below:

"5.2 The key question which, therefore, falls for our consideration is whether the segregation of these two transactions of payment of Royalty and Fees for technical services from the other international transactions, is justified?

5.3 The Hon'ble jurisdictional High Court in Sony Ericson Mobile Communication India (P.) Ltd. v. CIT [2015] 374 ITR118/231 Taxman 113/55 taxmann.com 240 (Delhi), has dealt with the circumstances in which aggregation can be done in the context of AMP expenses. The principles laid down in this case are universally applicable and are not confined to the peculiar facts of that case alone. It has been held that 'transaction includes the number of closely linked transactions.' Dealing with AMP expenses, it held vide paras 80 and 81 that inter-connected international transactions can be aggregated and section 92(3) does not prohibit the set off. Further, in paras 91, 121 and others, it held that the ALP of AMP expenses should be determined preferably in a bundled manner with the distribution activity. Vide paras 194 (i), (ii), (viii) and others it held that for determining the ALP of these transactions in a bundled manner, suitable comparables having undertaken similar activities of distribution of the products and also incurring of AMP expenses should be chosen. It still further held in paras 100, 121, and 194 (Hi), (vi) and (xi) that if adjustment is not possible or comparables are not available, then, TNMM on entity level should not be applied and the international transaction of AMP should be viewed in a defunded or a segregated manner. In separately determining the ALP of the AMP expenses, the Hon'ble High

Court held that the TPO is free to choose any other suitable method and in making TP adjustment on account of AMP expenses, appropriate set off/purchase price adjustment should be allowed from the other transaction of distribution of the products. The Hon'ble High Court also held in page 92 of its judgment that 'it would not be proper and appropriate to apply the TNMM method in case the Indian assessed is engaged in manufacturing activities and distribution and marketing of imported and manufactured products as interconnected transactions. Import of raw material for manufacture would possibly be an independent transaction viz., marketing and distribution activities or functions.' A careful perusal of the judgment of the Hon'ble jurisdictional High Court divulges that though a number of closely linked transactions can be aggregated, but, the transactions which are not closely related to each other would require determination in a segregated manner."

(Emphasis Added)

22. In view of the various judicial pronouncements discussed above we hold that for the purpose of benchmarking international transactions pertaining to imports- the purchases of E- Cards, Pay Phone Cards and POS Component cannot be aggregated together as they are not inextricably linked, and they are required to benchmarked separately.

23. Apart from adopted CUP based on incomplete data and ignoring geographical differences, further also committed an error by giving benefit of *"+5% on the average rate to USD 1.90 per card and calculated the rate per card to USD 1.99"* and held that the transaction could be at Arm's Length. The said approach of the CIT(A) is found to be erroneous.

24. In view of the above discussion, we hold that the ld. CIT(A) has incorrectly applied the CUP method based on incomplete data, ignoring geographical differences and contrary to the Assessee's own TP Analysis and contrary to TP Auditor's Report. The ld. CIT(A) has also erroneously aggregated the transactions despite judicial pronouncements on the issue. The various judicial pronouncements relied by the Ld. AR is not applicable in view of the above peculiar facts and circumstances of the present case. Thus, in our opinion, the order of the Ld. CIT (A) deserves to be set aside and the order of the TPO/A.O. shall be upheld by allowing the Ground No. 1 of the Revenue.

Ground No.2 (Violation of Rule 46A)

25. Further in the Ground No. 2, the Revenue is aggrieved by the acceptance of additional evidence. It is the case of the Revenue that though the conditions laid down in Section 46A(1) were not

satisfied, the CIT(A) has committed an error in accepting the additional evidence. On the other hand, the Ld. AR has drawn our attention to the order of the CIT(A) wherein the Ld. CIT(A) while dealing with the admission of additional evidence held as under:-

> *"Therefore, comparing the earlier year data is not appropriate in case of such products. In view of this the additional evidence in the form of CUP data sales made by US-AE to unrelated parties cannot be used in this case. Even though the additional evidence is admitted in principle, they are of no help to the assessee."*

26. It was before the CIT (A) that the assessee, for the first time, produced additional evidence in the form of details of sales made by its US-AE to unrelated parties and submitted that CUP method should be applied in its case. The documents were sent to the TPO for remand report through a letter dated 23.01.2006, and the remand report was submitted on 24.08.2009. The TPO submitted that the additional evidence should not be accepted because the TPO had given adequate time to the assessee to produce the same during the TP proceedings. However, the Ld. CIT(A) accepted the plea of the assessee that the details of sales

made by the US-AE could not be provided to the TPO on time due to organizational restructuring in the Schlumberger group. The ld. CIT(A) held that the failure of the Assessee to produce the evidence as required by the TPO was based on reasonable cause.

27. On merits of the additional evidence (sales made by the US-AE to third parties) submitted by the assessee, the ld. CIT(A) noted that the data pertains to years 1999, 2000 and 2001, while the relevant assessment year is 2002-03. Therefore the ld. CIT(A) observed that the 'said data cannot be used in this case and even though additional evidence is admitted in principle, it is of no help to the assessee'.

28. Considering the above facts since the additional evidence admitted by the CIT(A) has not been helped the assessee in making the decision by the CIT(A), the Ground No. 2 urged by the Revenue has become only academic. Further, considering the fact that the ld. CIT(A) has recorded its reasons while admitting the additional evidence submitted by the Assessee and also considering the fact that the Ld. CIT(A) has provided opportunity to the TPO to examine the evidence submitted by the assessee, we find no violation of Rule 46A of the Income

Tax Rules. Accordingly, we do not find merit in the Ground No. 2 of the Revenue, accordingly, Ground No. 2 of the Revenue is dismissed.

29. In the result, the order of the Ld. CIT(A) dated 22/09/2011 is set aside and the assessment order dated 31/12/2004 is restored/upheld and the Appeal of the Revenue in ITA No. 5225/Del/2011 is partly allowed.

Order pronounced in the open Court on 11th May, 2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 11/05/2023
Pk/R.N, Sr. PS

opy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI