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

BEFORE SHRI GEORGE GEORGE K AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos.3433 Bang/2018 & 1599/Bang/2019
Assessment Years : 2014-15 & 2015-16

M/s.Bhuwalka Steel Industries Ltd., 10th Mile, Old Madras Road, Bandapura Village, Bengaluru – 560 049. **PAN : AAACB 7389 J**	Vs.	Income Tax Officer, Ward – 1(1)(4) / DCIT, Circle 1(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. T. Srinivasa, CA
Revenue by	:	Shri. Sunil Kumar Singh, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.05.2023
Date of Pronouncement	:	31.05.2023

O R D E R

Per Laxmi Prasad Sahu, Accountant Member :

These are two appeals filed by the assessee against separate Assessment Orders passed by the AO under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter called 'the Act'), vide order dated 30.10.2018 and 09.05.2019 respectively.

Grounds of appeal in ITA No.3433/Bang/2018 for Assessment Year 2014-15

1. *The orders of the TPO /DRP /Assessing Officer in so far as they are against the appellant, are opposed to law, weight to evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.*

2. *The appellant denies itself to be assessed on a total income of Rs. 32,09,91,705/- as against returned loss of Rs. 28,82,10,558/ declared by the appellant.*

3. *The addition of Rs. 60,92,02,263/- being adjustment under section 92CA, 234B and general disallowance of the Act made by the Assessing Officer is bad in law.*

4. *The TPO, DRP and the Assessing Officer erred in –*

   - *Rejecting the TP study of the appellant.*
   - *Selecting TNM Method for determining the Arm's Length Price (ALP) as against the CUP Method followed by the Company resulting in an illogical comparison of financial data.*
   - *Without prejudice to CUP method selected by the Company, we would like to bring to your kind attention that the provisions of Sec, 92C(1) required taxpayer to select the method that under the facts and circumstances provides the most reliable measure of Arm's Length Price.*
   - *Based on the facts and circumstances, the most reliable measure of the Arm's Length Price is CUP method. However, the other immediate most appropriate method which would be applicable for Company is Resale Price Method (RPM).*

5. *The authorities have erred in not giving effect to the reduction in scope of Transfer Pricing for Specified Domestic Transaction vide Finance Act, 2017. Company is having only specified domestic transactions under section 92BA read with 40A(2)(b).*

6. *The Learned AO and TPO has erred in determining Arm's Length Price/ Fair Market Value of the transactions with related parties by applying comparable margins on the whole of Company's turnover, the computation of Arm's Length Price under TNMM, shall be determined only on the Transaction with related party and not on company as a whole, as per Rule 10B(i).*

7. *The learned AO has erred in disallowing the unconfirmed creditors by taking a stand that it is not payable by the Company based on the letters returned as unserved.*

8. *The learned AO has erred in calculating the Assessed income / (Loss) without giving effect to the bought forward business losses and unabsorbed depreciation loss.*

9. *The assessment order of the Learned Assessing Officer is bad in law as the mandatory conditions to invoke the jurisdiction under section 92CA of the Act did not exist or having not been compiled with and consequently the order of the Learned Assessing Officer is bad in law want of requisite jurisdiction. The Learned Assessing Officer erred in not providing the copy of the approval granted by the Commissioner which is in violation of the settled principles of natural justice and thus the draft order of assessment needs to be set aside.*

10. *The Learned TPO and DRP has erred that the purchases made from party has gone in manufacturing activity as well as trading activity, whereas the assessee has procured material form related party solely for trading purpose. Hence, the ALP adjustment shall be restricted only to the value of SDT with related party.*

11. *The Submissions made by the appellant company before the TPO have not be considered and have not be discussed anywhere in the order passed by TPO. Hence, the order passed by TPO is not a speaking order, which is against the principals of natural justice and beyond the parameters of the income tax law.*

12. *The authorities have erred in selecting Method for determining the ARM's length Price (ALP), as against the CUP Method following by the appellant resulting in an illogical comparison of financial data. It has also erred in the selecting TNMM Method as Resale Price Method should be selected as next most appropriate method.*

13. *The TPO, DRP and the CO failed to understand the spirit and intent of Rule 10B(1)(e)(ii) as per which even if one of the comparables*

selected by the appellant satisfies the computation mechanism for determination of the ALP, the determination of ALP by using arithmetic mean of difference comparables is not warranted under the facts and circumstances of the case.

14. *The appellant denies itself liable to be levied to interest under sections 234B of the Act and further, the computation of interest under sections 234B was not provided to the appellant as regard to the rate, period and method of calculations of interest under the facts and circumstances of the case.*

15. *The appellant craves leave to add, alter, delete, and modify any of the grounds which are urged above.*

16. *For the above and such other grounds as may be urged at the time of hearing the appellant prays your Honour to consider the facts and circumstances of the case and justice be rendered.*

Grounds of appeal in ITA No.1599/Bang/2019 for Assessment Year 2015-16

1. *The Learned Transfer Pricing Officer (TPO) and the Learned Assessing Officer (AO) has failed to consider the fact that the Company is having only specified domestic transactions under section 92BA read with 40A(2)(b) on which TP Adjustment made by the learned TPO/AO. However, as per para 166 of Budget speech of Finance Bill, 2017, the transfer pricing provisions were amended to exclude specified domestic transactions which are under section 92BA read with 40(2)(b) from the purview of transfer pricing regulations.*
2. *The Learned Transfer Pricing Officer (TPO) and the Learned Assessing Officer (AO) has erred in selecting TNM Method for determining the Arm's Length Price (ALP) as against the CUP Method followed by the Company resulting in an illogical comparison of financial data.*
3. *Without prejudice to CUP Method selected by the Company, the Learned TPO erred in determining Arm's Length Price of the*

transactions by applying comparable margins on the whole of Company's turnover, whereas the learned TPO was supposed to determine the Arm's Length Price only on the segment of Trading, for the goods purchased from its related parties.

4. *The provisions of Sec. 92C(1) requires taxpayer to select the method that under the facts and circumstances provides the most reliable measure of Arm's Length Price.*

2. From the above grounds of appeal, it is clear that the TP issue involved in both the Assessment Years are common and other 2 issues raised in ground No. 07 & 08 are only for the Assessment Year 2014-15. Therefore, for the sake of convenience and brevity, we are taking first the Assessment Year 2014-15 in ITA No.3433/Bang/2018 and the decision of this case in regard to the issue involved in Assessment Year 2015-16 shall apply mutatis mutandis.

ITA No.3433/Bang/2018

3. The brief facts of the case are that the assessee filed its return of income on 26.09.2014 declaring current year loss of Rs.28,82,10,558/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. The assessee filed reply and it was observed that the assessee had international transaction of Rs.21,15,692/- and Specified Domestic Transactions (SDT) of Rs.35,64,44,188/-. Therefore with the prior approval of the CIT , Bengaluru – 1, Bengaluru, a reference was made to the TPO to determine ALP as per provisions of section 92CA of the Act. After receipt of the reference, the TPO issued notice to the assessee to file details and it was noticed that for determination of ALP by the assessee for international transactions as

well as specified domestic transactions (SDT). CUP method was adopted by the assessee. The learned TPO after examining the details, rejected the CUP method and applied TNMM method and he determined the adjustment of Rs. 25,72,10,127/-. The AO after receipt of the order under section 92CA passed by the TPO, proceeded to complete the assessment. The AO further observed that the assessee had creditors to which the AO issued notice under section 133(6) of the Act to 13 creditors to ascertain the turnover and also to confirm the balance as on 31.03.2014. The AO partly received replies from the creditors and after examining the information received from the creditors, he observed differences in the closing balance shown by the creditors in their books and the assessee's books and he summarized in the chart as under :

Name	Ledger Extract	Replied	Difference
Nava Karnataka Steels Pvt Ltd	1,45,42,41,671	1,45,42,41,671	NIL
Triveni Movers Pvt Ltd	1,91,88,192	18735117	4,53,075
Nizam Coal Pvt Ltd	5,54,475		5,54,475
M S Metals & Steels	5,46,618	5,43,319	3299
Mandovi Casting Pvt Ltd	1,00,94,268	1,00,94,268	
Lakshmi Metallurgy Ltd	73,71,051		73,71,051
HRG Alloys & Steels			
Hindupur Steel and Alloy	27,18,107	NIL	27,18,107
HCL Coal Int Pvt Ltd	10,36,221		10,36,221
Durga Trade Links	31,68,36,520		31,68,36,520
Bhuwalka Metal Industries	16,59,65,266	16,59,65,266	NIL
NKSP Ltd			
Bharath Infra Exports & Imports	6,74,25,068		6,74,25,068
Total			**40,64,92,084**

4. As per the above noted differences, the AO made adjustment to the tune of Rs.40,64,92,084/- and completed the assessment without setting off of losses as claimed by the assessee and assessed income of

Rs. 37,54,91,653/- and passed order on 27.12.2017. Aggrieved from the above order, the assessee filed objection before the DRP and the DRP granted marginal relief to the assessee and by order dated 18.09.2018.

4.1 After receipt of the directions of the DRP, the AO proceeded to pass the final Assessment Order and the TP adjustment was reduced to Rs.20,27,10,179/- and the AO determined the net taxable income at Rs. 32,09,91,705/- and passed order on 30.10.2018. Aggrieved from the above order, the assessee filed appeal before the Tribunal.

5. The learned AR reiterated the submissions made before the lower authorities and submitted that the international transactions done by the assessee is below Rs.1 Crore and the other transactions with the related parties were SDT since from the Financial Year 2017, section 92BA(i) has been omitted. The adjustment made by the TPO with reference to the transactions executed by the assessee with its AEs located in India are covered under clause (i) of section 92BA of the Act as it stood before being amended vide Finance Act, 2017. He further submitted that the information submitted by the creditors to the AO against the notice issued under section 133(6) of the Act directly without confronting to the assessee, the additions made is wrong and the AO has not rightly added the differences noted in the closing balance of the creditors with the assessee's closing balance as on 31.03.2014.

6. The ld. DR relied on the order of lower authorities and submitted that the ld. TPO has rightly computed the addition as per section 92CA of the

Act. He further submitted that the addition made towards difference in closing balance is correct.

7. Considering the rival submissions, and perusing the material on record, we note that the assessee has raised issue in regard to the applicability of section 92BA(i) on the SDT. It is clear that the assessee has undertaken SDT with its AEs of Rs. 35,76,44,188/-. The TPO suggested for adjustment of Rs. 25,72,10,127- & the assessee has also undertaken other international transactions of Rs. 21,15,692/- as is evident from the TPO order at para No. 3. This issue was raised before the ld. DRP but they did not accept the objection of the assessee. Before deciding this issue, first we refer to the Memorandum of the Finance Bill 2012 in this regard which is as under:-

TRANSFER PRICING REGULATIONS TO APPLY TO CERTAIN DOMESTIC TRANSACTIONS

Section 40A of the Act empowers the Assessing Officer to disallow unreasonable expenditure incurred between related parties. Further, under Chapter VI-A and section 10AA, the Assessing Officer is empowered to re-compute the income (based on fair market value) of the undertaking to which profit linked deduction is provided if there are transactions with the related parties or other undertakings of the same entity. However, no specific method to determine reasonableness of expenditure or fair market value to re-compute the income in such related transactions is provided under these sections.

The Supreme Court in the case of CIT v. Glaxo SmithKlineAsia (P.) Ltd., in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.

The application and extension of scope of transfer pricing regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonableness of expenditure between related domestic parties. It will create legally enforceable obligation on

assessees to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions will lead to increase in compliance burden on all assessees which may not be desirable.

Therefore, the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA. The concerns of administrative and compliance burden are addressed by restricting its applicability to the transactions, which exceed a monetary threshold of Rs. 5 crores in aggregate during the year. In view of the circumstances which were present in the case before the Supreme Court, there is a need to expand the definition of related parties for purpose of section 40A to cover cases of companies which have the same parent company.

It is, therefore, proposed to amend the Act to provide applicability of transfer pricing regulations (including procedural and penalty provisions) to transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of sections 40A, 80-IA, 10AA, 80A, sections where reference is made to section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceeds Rupees 5 crore in a year. It is further proposed to amend the meaning of related persons as provided in section 40A to include companies having the same holding company.

This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-14 and subsequent assessment years.

[Clauses 12, 23, 29, 33, 35, 37, 38, 92, 94, 97]

7.1. For the sake of convenience we are reproducing the relevant clause of the Finance Bill 2017 as under:-

Scope of section 92BA of the Income-tax Act relating to Specified Domestic Transactions

The existing provisions of section 92BA of the Act, inter-alia provide that any expenditure in respect of which payment has been made by the assessee to certain "specified persons" under section 40A(2)(b) are covered within the ambit of specified domestic transactions.

As a matter of compliance and reporting, taxpayers need to obtain the chartered accountant's certificate in Form 3CEB providing the details such as list of related parties, nature and value of specified domestic transactions (SDTs), method used to determine the arm's length price for SDTs, positions taken with regard to certain transactions not considered as SDTs, etc. This has considerably increased the compliance burden of the taxpayers.

In order to reduce the compliance burden of taxpayers, it is proposed to provide that expenditure in respect of which payment has been made by the assessee to a person referred to in under section 40A(2)(b) are to be excluded from the scope of section 92BA of the Act. Accordingly, it is also proposed to make a consequential amendment in section 40(A)(2)(b) of the Act.
These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

7.2. It is clear from the above that the SDTs have to be examined in the light of section 40(A)(2)(b) of the Act. We note from the section 92BA that section 92BA(i) has been omitted by the Finance Act. 2017 w.e.f. 01.04.2017. Since, this effect of omission of clause (i) of sec. 92BA of the Act by the Finance Act. 2017 relating to the specified domestic transactions has been examined by the coordinate bench in the case of Edelweiss Rural and Corporate Services Ltd., Vs. DCIT in ITA No.7475/Mum/2017 dated 24/06/2022 by following the decision rendered by the Hon'ble High Court in the case of Pr.CIT Vs. Texport Overseas Pvt. Ltd., (2020) 114.taxmann.com 568/271 Taxman 170, in which, it has been held that the reference made to ld.TPO under clause – (i) of sec. 92BA of the Act is not valid and consequently transfer pricing adjustment in respect of specified domestic transaction is liable to be deleted. Further in the recent decision of the coordinate bench of the ITAT, Bangalore Bench in the case of Nava Karnataka Steels Pvt. Ltd., Vs. DCIT in ITA No.1947/Bang/2017 for the assessment year 2013-14 order dated 29/04/2022, wherein it has been held as under:-

"11. We heard the rival submissions and perused the material on record. We notice that co-ordinate bench of the Tribunal in the case of Texport Overseas (P.) Ltd. (supra) has considered the similar issue, wherein it is held that-

4. The learned AR invited our attention that provision of section 92BA was brought on statute by the Finance Act, 2012 w.e.f. 1-4-2013 relevant to assessment year 2013-14. Therefore, it is the first year when the transactions

are to be examined in the light of provision of section 92BA of the Act. The AO having observed that the assessee has entered into specified domestic transaction covered under section 92BA of the IT Act and made a reference under section 92CA, to TPO for computation of ALP. Accordingly, TPO has computed the ALP which, was objected to by the assessee before the DRP and DRP disposed off the objections with certain findings/directions.

5. The learned counsel for the assessee further contended that sub clause (I) of section 92BA under which has undertaken the transactions which has exceeded the prescribed limit, was omitted by the Finance Act, 2017 w.e.f. 1-4-2017. Since clause (i) has been omitted from the statute by virtue of the amendment, this particular sub clause shall be deemed not to be on the statute since the beginning. In support of his contention, the learned counsel for the assessee has placed a heavy reliance upon the judgment of the Apex Court in the case of KolliapurCanesugar Works Ltd. v. Union of India in Appeal (Civil) 2132 of 1994 vide judgment dated 1-2-2000 in which the constitution bench has held that section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not as a Rule. It was further clarified by the Apex Court that in such a case the court is to look to the provisions in the rule which has been introduced after omission, of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by section 6 of the General Clauses Act or there is a parimateria provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. A further reliance was also placed upon the judgment of the Apex Court in the case of General Finance Co. v. Assistant Commissioner of Income-tax 257 ITR 38 ($.). in which the Apex Court has held that the principle underlying section 6 as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, Omission being different from repeal as held in the aforesaid decisions. Reliance was also placed upon the order of the Tribunal in the case of CT v. GE Thermometrics India Pvt. Ltd. in ITA No. 876/2008 in which while dealing the omission sub-section (9) of section 1OB the Hon'ble High Court has held that once the section is omitted from the statute book, the result is it had never been passed and be considered as a law that never exists and therefore, when the assessment orders were passed, the AU was not justified in taking note of a provision which was not in the statute book and denying benefit to the , Therefore, in the light of these judicial pronouncements, sub-section (i) of section 92BA shall be deemed to be not on the statute since beginning.

6. The learned DR on the other hand has contended that even if it is held that the clause (i) of section 92BA relating to expenditures in respect of which payment has been made or is to be made to person referred to in clause (b) of sub section 2 of section 40A of the Act is not on the statute since beginning in view of the amendment and in the light of various judicial pronouncements the reference made by AO to TPO is bad in law, the AO is required to examine the claim of the in the light of other provisions of the Act.

7. Having carefully examined the orders of authorities below in the light of rival submissions and relevant provisions and various judicial pronouncements, we find that by virtue of the insertion of section 92BA on the statute as per clause (1), any expenditure in respect of which payment has been made or is to be made to person referred to in clause (b) of sub section 2 of section 40A exceeds the prescribed limit, it would be a specified domestic transaction for which AU is required to make a reference to TPO under section 92CA of the Act for determination of the ALP. In the instant case, since the transaction exceeds the prescribed limit it becomes the specified domestic transaction for which reference was made by the AO to the TPO under section 92CA for determination of the ALP. Consequently, the TPO submitted a report which was objected to by the learned counsel for the assessee and filed a objection before the DRP. Having adjudicated the objections, the DRP has issued certain directions and consequently the AO passed an order. Subsequently, by Finance Act, 2017 w.e.f. 1-4-2017, clause (i) of section 92BA was omitted from the statute. Now the question arises as to whether on account of omission of clause (1) from the statute, the proceedings already initiated or action taken under clause (1) becomes redundant or otiose. In this regard, our attention was invited to judgment of the Apex Court in the case of KoihapurCanesugar Works Ltd., (supra) in which the impact of omission of old rule 10 and I OA was examined.
Having carefully examined the issue in the light of provisions of section 6 of the General Clauses Act, their Lordship has observed "that in such a case, the court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by section 6 of the General Clauses Act or there is a parimatenia provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provisions in the statute or in the rule, the pending proceeding will lapse under rule under which the notice was issued or proceeding being omitted or deleted'.

8. In the case of General Finance Co., v. ACIT, their Lordship of the Apex Court has again examined the issue and held that the principle underlying

section 6 as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in different cases. Following the aforesaid judgments, the jurisdictional High Court has also expressed the same view in the case of CIT v. GE Thermoinetnics India Pvt. Ltd. The relevant observation of the jurisdictional High Court is extracted hereunder:

"8. Admittedly, in the instant case, there is no saving clause or provision introduced by way of an amendment while omitting sub-section (9) of section 1OB. Therefore, once the aforesaid section is omitted from the statute book, the result is it had never been passed and be considered as a law that never exists and therefore, when the assessment orders were passed in 2006, the AU was not justified in taking note of a provision which was not in the statute book and denying benefit to the assessee. The whole object of such omission is to extend the benefit under section 1OB of the Act irrespective of the fact whether during the period to which they are entitled to the benefit, the owners continues with the original assessee or it is transferred to another person. Benefit is to the undertaking and not to the person who is running the business. We do not see any merit in these appeals. The substantial question of law is answered in favour of the assessee and against the revenue. Accordingly, the appeals are dismissed."

9. From the aforesaid judgments, it has become abundantly clear that once a particular provision of section is omitted from the statute, it shall be deemed to be omitted from its inception unless and until there is some saving clause or provision to make it clear that action taken or proceeding initiated under that provision or section would continue and would not be left on account of omission.

10. In the instant case, undisputedly, by the Finance Act, 2017, clause (1) of section 92BA has been omitted w.e.f. 14-20 17. Once this clause is omitted by subsequent amendment, it would be deemed that clause (i) was never been on the statute. While omitting the clause (i) of section 92BA, nothing was specified whether the proceeding initiated or action taken on this continue. Therefore, the proceeding initiated or action taken under that clause would not survive at all. In this legal position, the cognizance taken by the AO under section 9213(i) and reference made to TPO under section 92CA is invalid and bad in law. Therefore, the consequential order passed by the TPO and DRP is also not sustainable in the eyes of law.

11. Under these circumstances, where this clause (i) is omitted from the statute since its inception, the AO ought have required to frame the assessment in normal course after making necessary enquiries of particular claim of expenditure in accordance with law. But this exercise could not have

been done on account of provisions of section 92BA clause (i) of the Act. Now when this clause (i) has been omitted from the statute by virtue of the aforesaid amendments, the AO is required to adjudicate the issue of claim of expenditures in accordance with law after affording opportunity of being heard to the assessee. We therefore set aside the orders of the AO and the DRP and restore the matter to the AO with the direction to re-adjudicate the issue of claim of expenditure incurred in respect of which payment has been made or is to be made to person referred to in clause (b) of sub section 2 of section 40A of the Act. Accordingly, since we have restored the matter to the AO, we find no justification to deal with the other issues on merit. Accordingly, appeal of the assessee stand allowed for statistical purposes.'

12. The Hon'ble Karnataka High Court upheld the above decision of the Tribunal with the following observations.

> *1. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of section 92BA of the Act came to be omitted w.e.f. 01.04.2019 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res intigra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of Kolhapur Canesugar Works Ltd. v. Union of India AIR 2000 SC 811 whereunder Apex Court has examined the effect of repeal of a statute vis-a-vis deletion/addition of a provision in an enactment and its effect thereof. The import of section 6 of General Clauses Act has also been examined and it came to be held:*
>
> > *"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings*

shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

6. In fact, Co-ordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of section 10B. In the matter of General Finance Co. v. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92BI and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law.

7. It is for this precise reason, tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd. referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of M/s. GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra.

7.3. Respectfully following the above judgement, we hold that the reference made to the TPO in respect of specified domestic transactions mentioned in clause (i) of sec. 92BA is not valid, as the said provision is omitted since inception. We also note in the above judgment that the issue has been remitted for fresh examination with respect to the claim of SDT in terms of the provision of sec. 40A(2)(b) of the Act. Since in this case the assessee has undertaken international transactions of Rs.21,15,692 which is less than Rs.1 crore, therefore the TP adjustment should not be made. With these

observations, we remit this issue to the file of the AO for examination and decide as per law. This issue is allowed for statistical purpose. The other grounds raised by the assessee with regard to adjustment towards international transactions are left open.

8. In respect of ground No.7, the assessee has raised the issue that the unconfirmed creditors which were based on the letter written as unserved and addition made towards differences noted by the AO are baseless and no proper opportunity was granted to the assessee. This issue was also raised before the ld. DRP but the DRP decided the issue against the assessee. The ld. AR of the assessee undertook that if a chance is given to the assessee for verification of the creditors, the assessee would be able to prove that the creditors are genuine. Considering the prayer of the assessee, this issue is remitted back to the AO to decide the issue as per law after giving reasonable opportunity to the assessee and the assessee is directed not to seek unnecessary adjournments. Accordingly ground No.7 is allowed for statistical purposes.

9. The next ground No.8 is with regard to not giving setting off of loss form the brought forward business loss and unobserved depreciation loss as observed in ground No.8. This issue has been addressed by the AO at para No.9 in the final Assessment Order at the request of the learned AR. This issue is also remitted back to the AO for deciding the issue afresh in accordance with law and the assessee is directed to produce necessary documents for substantiating its case and not to seek

unnecessary adjournments. The AO shall give reasonable opportunity of being heard to the assessee and decide the issue as per law. We have decided only the grounds contested before us. Therefore, the other grounds raised by the assessee are dismissed as not pressed.

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

ITA No.1599/Bang/2018 in Assessment Year 2015-16

11. The issue involved in regard to TP issue is similar as for the Assessment Year 2014-15. Therefore, the decision as decided by us (supra) shall apply in this year. Therefore, the grounds raised by the assessee in regard to the TPO issue are allowed for statistical purposes. Other grounds were not argued by the assessee. Therefore, these grounds are dismissed as not pressed.

9. In the result, both the appeals of the assessee are allowed for statistical purposes. Common order passed (supra) shall be kept in respective cases.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(GEORGE GEORGE K)	**(LAXMI PRASAD SAHU)**
Judicial Member	**Accountant Member**

Bangalore,
Dated: 31.05.2023.
/NS/* /*Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,
ITAT, Bangalore.