

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.3141/Chny/2017**
(निर्धारण वर्ष / Assessment Year: 2013-14)

&

आयकर अपील सं./ **ITA No.3365/Chny/2018**
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT. Corporate Circle-4(1) Chennai.	बनाम/ Vs.	M/s. Motonic India Automotive Pvt Ltd. C/o. Shri Saji P.John, Liquidator 463, 13 th Cross, 10 th Main, Wilson Garden, Bengaluru-560 027.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAFCM-3603-F		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri A. Sasi Kumar (CIT)-Ld. DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Vikram Vijayaraghavan (Advocate) –Ld.AR
सुनवाई की तारीख/ Date of Hearing	:	12-06-2023
घोषणा की तारीख / Date of Pronouncement	:	12-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. During hearing of captioned appeals, the undisputed position that emerges is the fact that the appeals have to restored back to Ld. Transfer Pricing Officer (TPO) considering the decisions of Hon'ble High Court of Madras in assessee's own case in TCA No.138 of 2017 dated 07.02.2019 for Assessment Year (AY) 2009-10 and TCA No.920

of 2018 dated 21.07.2020 for AY 2012-13. The copies of the orders have been placed on record. In the said background, the appeals are disposed-off as under.

2. In AY 2013-14, Ld. TPO rejected the economic analysis undertaken by the assessee and proceeded to perform fresh economic analysis. The Ld. TPO disregarded the economic adjustments as claimed by the assessee in relation to excess custom duty paid, difference in foreign exchange rates and difference in working capital position vis-a-vis the comparable entities. Finally, an adjustment was proposed by Ld. TPO to the extent of Rs.1283.38 Lacs. The Ld. CIT(A), relying upon the decision of Tribunal for AY 2009-10, directed Ld. AO to grant customs duty adjustment and foreign exchange rate adjustment. The ground relating to working capital adjustment was not pressed. Aggrieved, the revenue is in further appeal before us. Similar are the facts in AY 2014-15.

3. We find the aforesaid decision of Tribunal for AY 2009-10 was subject matter of further challenge by revenue before Hon'ble High Court of Madras vide TCA No.138 of 2017 dated 07.02.2019 wherein it was held as under: -

6. From the above, it is clear that though the issue relating to customs duty adjustment, Air Freight Adjustment and foreign exchange adjustment were directed to be reconsidered by the Transfer Pricing Officer for determining the arm's length price (ALP) in the case of the assessee, the tribunal, has in fact fixed how much adjustments have to be made or not to be made. This hardly leaves any discretion to deal with these issues afresh with the Transfer Pricing Officer since the Transfer Pricing officer, being the lower authority, would be bound by the observations and findings of the tribunal.

7. This frustrates the very purpose of remand for inquiry by the Transfer Pricing Officer into these three issues by Transfer Pricing Officer, as directed by the Tribunal itself. Therefore, we allow the present appeal of the revenue and while upholding the remand order passed by the Tribunal, we observe that the Transfer Pricing Officer will pass such fresh orders in pursuance of the remand directions, uninfluenced by the observations of the Tribunal, on the merits of the case. It goes

without saying that the assessee will be again given the due opportunity of hearing to make out its case before the Transfer Pricing Officer and fresh orders may be passed by the Transfer Pricing Officer, after providing reasonable opportunity of hearing to the assessee in this regard.

9. With the above observation, the appeal of the revenue is allowed. No costs.

Respectfully following the aforesaid decision, we set-aside the impugned orders and remand the matter for both years to Ld. Transfer Pricing Officer (TPO) to redetermine ALP of the impugned transactions on similar lines.

4. Both the appeals stand allowed for statistical purposes.

Order pronounced on 12th June, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 12-06-2023
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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF