

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1257/Del./2019
(ASSESSMENT YEAR : 2013-14)**

DCIT, Circle 5 (1),
New Delhi.

vs.

BWI Automotive Technologies Pvt. Ltd.,
104, Ashoka Estate,
Barakhamba Road,
New Delhi – 110 001.

(PAN : AADCB7841G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Indra Bansal, AR

REVENUE BY : Shri Mrinal Kumar Das, Sr. DR

Date of Hearing : 06.06.2023

Date of Order : 20.06.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.

CIT (Appeals)-44, New Delhi for the assessment year 2013-14.

2. The grounds of appeal taken by the Revenue read as under :-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in laying down strict standard of comparability and attempting to identify exact replica of the taxpayer for comparability analysis whereas Indian Law and International Jurisprudence recognized that there cannot be exact comparable in the given situation without any differences and without appreciating that such stringency

will defeat the purpose of flexibility provided in comparability analysis for determining of Arm's Length Price”

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in holding that the functional profile of the comparables must be same while making transfer pricing adjustments for the calculations of ALP and TNMM method.”
3. Brief facts of the case are that BWI India has its manufacturing facility in Greater Noida. It is currently engaged in the manufacturing of suspension products i.e. shock absorbers and strut modules. As per Form No.3CEB filed with the return for AY 2013-14, the assessee company had entered into international transaction with its Associated Enterprises/concerns during the year. Accordingly, reference was made to the TPO. The TPO has made transfer pricing adjustment of Rs.3,13,78,632. Against this order, assessee appealed before the Id. CIT(A). Ld. CIT (A) followed his order for AY 1012-13.
5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.
6. We note that for AY 2012-13, ld. CIT (A) order was dealt with by this ITAT in ITA No.275/Del/2019 for AY 2012-13 vide order dated 07.10.2022 as under :-

“The Ld. CIT(A) simply followed his predecessor's order dated 16.09.2016 for the preceding A.Y. 2011-12, on which, the assessee carried the matter in appeal before the Tribunal and Tribunal vide order dated 13.10.2021 in ITA.No.1669/Del./2017 partly allowed the appeal of the assessee by restoring the matter in

issue to the file of AO/TPO for fresh adjudication. The relevant observations of the Tribunal from paras 12 to 15 read as under:

“12. We have heard the rival submissions, perused the material on record and gone through the submissions of the assessee. The grievances of the assessee are in three fold, one that the appellant ought not to be considered as tested party, two the comparables selected by the TPO who are functionally different from the assessee having different business module and three not granting the appellant the option to choose a price that falls within the \pm range of arithmetic mean of comparables as contemplated under proviso of section 92C(2) of the Act. The Ld. CIT(A) has decided the issues against the assessee by observing as under:-

"I have considered the Transfer Pricing Order, written submission and oral arguments of the Ld. AR carefully. It is undisputed position that the tested party should be selected on the basis of simpler roles. The party which performs complex functions should be avoided from choosing the tested party. Further in respect of the tested party as well as the comparables reliable and verifiable data should not be present. The Ld AR is arguing that the appellant is performing simpler task. In subsequent grounds of appeal the Ld AR has taken the stand that the appellant is in nascent stage therefore, conducting manufacturing process as 3rd party contract manufacturers therefore, during this stage the appellant is completely dependent on its AE for technology trade norms and technology guidelines for its operation Appellant only does not take selling and marketing support and technology support from its AE but also imports vital raw materials from the AE. BWI Group is old establishment in automobile sector therefore, the function performed by these AEs for manufacturing of parts used by the appellant as raw materials cannot be said as simpler task just because those intermediate products are used by appellant as raw materials. The expenditure of the appellant is on the use of trade mark and technology expertise of the AE therefore, I am not convinced that the appellant is performing simpler function compare to its AE.

Further, Ld AR has not provided complete and reliable data in respect of its AE for bench marking the

international transactions which can be verified from the financials of the AE. Further, comparables data for AE as the tested party is also not verifiable with any statutory records. In the case of indigenous comparables the data of the comparables companies can be verified from authentic and statutory source such as data from MCA sites and BSE/ NSE sites. Considering the entire facts and significance of the case I confirm the decision of the TPO to reject AE and select the appellant as the tested party.

13. Further the Ld. CIT(A) also rejected the arguments of the assessee in respect of comparables selected by the TPO by observing as under:-

“I have considered order of the TPO and arguments of the Ld. AR.

The appellant has used facility of Delphi India Ltd. for manufacturing of auto components through contract manufacturing service agreement date 1st day of November 2009 between the appellant and Delphi auto motive system Ltd. This agreement is only for the use of manufacturing facility of Delphi India. There is no mention of marketing division for the sale of the products of the appellant. The facts remain that the raw materials are being provided by the appellant the production is carried out in accordance with and guidance of the appellant through the use of its AE's engineering consultancy marketing is done in the name of BWI Group therefore even though the appellant is using manufacturing facilities of other during the year, the facts remain that the appellant is in the manufacturing and sales of automobile parts three comparables namely Rane (Madras), Sona Somic Lemforder Components Ltd., and Gabriel India Ltd. Are in the business of manufacturing of auto component therefore, in my view slight variation of either engaging manpower and use of factory of its own or to a contract manufacturing will not alter the profitability much. In fact appellant has taken alternative TP study treating itself as tested party where also the comparables are taken of manufacturing of auto mobile components and not on the basis of contract manufacturers. As far as export turnover of the comparable namely Rane (Madras) Ltd. and

Gabriel India Ltd is concerned export turnover compared to its total turnover is less than 20% in the case of Rane Madras Ltd. and in the case of Gabriel India Ltd. it is 13%. Therefore, export turnover in both the comparables is less than 20% of the turnover. Therefore In my view small portion of export turnover, will not effect the change in the functionality which warrants exclusion of these comparables. As a result I approve all the three comparables in the final list. Accordingly, this grounds of appeal is dismissed.

14. We find merit into the contention of the learned counsel for the assessee that comparables selected by the TPO are functionally different on account of the fact that the assessee did not have its own manufacturing facility, the business model of the assessee is quite different coupled with fact that the appellant is operating only in domestic market whereas the comparables namely Rane (Madras) Limited and Gabriel India Ltd. had sufficient export turnover. We are conscious of the fact that two companies cannot be compared with accurate arithmetic precision; however, the factors that would influence the profit margin substantially should be kept in mind while rejecting the comparables. In the present case, this is first year of operation; the appellant does not have its own manufacturing facilities and is purely operating in domestic market. In our considered view, these factors certainly would have substantially impact on the profit margin of the assessee. Therefore, findings of the authorities below cannot be sustained under the facts and circumstances of the present case. The impugned order is therefore hereby set- aside and the issue of computation of Arm's Length Price is restored to the file of the Assessing Officer. The Assessing Officer would refer the matter to the TPO for making search for fresh set of comparables, who accordingly, recommend the computation of Arm's Length Price afresh. The grounds raised by the assessee are allowed in terms indicated hereinabove for statistical purposes only.

15. In the result, the appeal of the assessee is partly allowed for statistical purpose. "

6.3. During the course of hearing, both the parties in the present appeal are agreed that the grounds raised by the Revenue in the present appeal be restored to the file of A.O./TPO for fresh adjudication in line with the order of the Tribunal dated 13.10.2021 in ITA.No.1669/Del./2017. We, therefore, respectfully following the

reasons for the decision in the order of Coordinate Bench of Delhi Tribunal dated 13.10.2021 (supra), remit issues back to the file of A.O/TPO for fresh adjudication with a direction to the authorities below to give sufficient opportunity of being heard to the assessee-company. Accordingly, grounds raised by the Revenue are allowed for statistical purposes.”

7. Both the parties agreed that in line with the above ITAT order, this matter may be remanded to the TPO to following the same directions as above. Accordingly, we remit the issue to the file of AO/TPO for fresh adjudication in line with the earlier order of the Tribunal as cited above. Needless to add, assessee should be provided an opportunity of being heard.

8. In the result, the appeal of the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on this 20th day of June, 2023.

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 20th day of June, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.