

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2232/Del/2017 : Asstt. Year: 2003-04

ITA No. 2233/Del/2017 : Asstt. Year: 2004-05

ITA No. 1405/Del/2017 : Asstt. Year: 2005-06

ITA No. 1406/Del/2017 : Asstt. Year: 2007-08

ITA No. 1932/Del/2017 : Asstt. Year: 2008-09

ITA No. 1407/Del/2017 : Asstt. Year: 2010-11

ITA No. 6940/Del/2019 : Asstt. Year: 2011-12

Global Green Company Ltd., Thapar House, 124, Janpath, New Delhi-110001 (APPELLANT)	Vs.	DCIT, Circle-10(1), New Delhi (RESPONDENT)
PAN No. AAACR0635H		

ITA No. 1307/Del/2017 : Asstt. Year: 2007-08

ITA No. 1917/Del/2017 : Asstt. Year: 2008-09

ITA No. 1308/Del/2017 : Asstt. Year: 2010-11

ITA No. 7541/Del/2019 : Asstt. Year: 2011-12

DCIT, Circle-10(1), New Delhi (APPELLANT)	Vs.	Global Green Company Ltd., Thapar House, 124, Janpath, New Delhi-110001 (RESPONDENT)
PAN No. AAACR0635H		

**Assessee by : Sh. Yogesh Thar, CA
Sh. Ankit Aggarwal, CA
Ms. Alka Shah, CA
Ms. Komal Goyal, CA**

Revenue by : Sh. Mrinal Kumar Das, Sr. DR

Date of Hearing: 20.03.2023

Date of Pronouncement: 20.06.2023

ORDER

Per Bench

The present appeals have been filed by the assessee and the Revenue against the orders of Id. CIT(A)-37, New Delhi.

2. The assessee has raised the following grounds of appeal in ITA No. 2232/Del/2017 for A.Y. 2003-04:

"GROUND I: ADDITION OF INVENTORY AMOUNTING TO Rs.74,62,933/-, WHICH WAS WRITTEN OFF BY DEBITING THE SHARE PREMIUM ACCOUNT.

1.1 *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income tax (Appeals), 37, New Delhi ["the CIT(A)"] erred in upholding the order of the Assessing Officer (AO) in enhancing the total income of the Appellant by the amount of inventory written off amounting to Rs. 74,62,933/- by debiting the securities premium account, even though the said write-off was neither debited to the profit and loss account nor claimed as deduction while computing the total income of the Appellant.*

1.2 *The Appellant humbly prays that the said addition made by the AO be deleted.*

GROUND II: DISALLOWANCE OF ADMINISTRATION EXPENSES OF Rs. 1,06,74,505/- PAID TO M/S BALLARPUR INDUSTRIES LTD.

2.1 *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in disallowing the administration expenses of Rs. 1,06,74,505/- paid by the Appellant to M/s. Ballarpur Industries Limited which was incurred in relation to corporate support services provided by them to the Appellant.*

2.2 *The Appellant prays that it be held that the said expenses were incurred wholly and exclusively for the purposes of business and hence is allowable in the hands of the Appellant u/s 37(1).*

GROUND III: TRANSFER PRICING ADJUSTMENT OF RS. 3,21,37,116/- U/S. 92CA(3) OF THE ACT IN RESPECT OF EXPORT OF GOODS TO ASSOCIATED ENTERPRISE.

- 3.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the order of the AO/TPO in making transfer pricing adjustment of Rs.3,21,37,116/- in respect of export of goods by the Appellant to its Associated Enterprise (AE).*
- 3.2 *The CIT(A) erred in not holding that in absence of application of mind of the AO to the transfer pricing adjustment proposed by the TPO, the assessment order passed by the AO in respect of this addition is bad-in-law u/s. 92CA(4), prior to its amendment vide Finance Act, 2007.*
- 3.3 *The Ld. CIT(A) erred in not holding that the approach adopted by the AO/TPO in computing arm's length price under the comparable uncontrolled price method was unjustified and also does not consider the impact of variation in geographical markets, volume of sales, level of market, date of transaction, etc. between the AES and non-AES, while determining the arm's length price of the transaction.*
- 3.4 *The Ld. CIT(A) erred in upholding the order of the AO/TPO of not allowing the adjustment for permissible variance of 5% range mentioned in proviso to section 92C(2) of the Act.*
- 3.5 *The CIT(A) erred in ignoring the effect of negative variation while determining the arm's length price based on the method adopted by the AO/TPO.*
- 3.6 *The CIT(A) erred in ignoring that there were some differences in the functions performed and the risk characterization in respect of transactions between the Appellant and its associated enterprise and with third parties;*
- 3.7 *The CIT(A) erred in not holding that the approach of the TPO is flawed and erroneous since the TPO has considered non-comparable grades of products for comparison and made various other arithmetical errors.*
- 3.8 *The CIT(A) further erred in not holding that there are more appropriate methods for benchmarking the said transaction.*
- 3.9 *Also, the Ld. CIT(A) erred in not holding that the business value chain of the Appellant cannot be disregarded while benchmarking an international transaction and that even*

if any adjustment is to be made, it cannot exceed the total profit element realized in the entire value chain surrounding the international transaction.

3.10 *The Appellant humbly prays that the Transfer Pricing Adjustment made by the AO/TPO be deleted.*

3.11 *Without prejudice to the above, the Appellant further prays that it be held that the total adjustment on any international transaction cannot exceed the total profit element embedded in the entire value chain encircling the said transaction and accordingly, the said adjustment ought to be deleted.*

GROUND IV: TRANSFER PRICING ADJUSTMENT OF Rs.7,90,535/- U/S 92CA(3) OF THE ACT IN RESPECT OF PURCHASE OF PACKING MATERIALS FROM ASSOCIATED ENTERPRISE.

4.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the transfer pricing addition of Rs. 7,90,535/- made by the AO/TPO in respect of transaction of purchase of packing materials from an associated enterprise.*

4.2 *The Appellant humbly prays that since the purchase price at which the Appellant has entered into the international transaction of purchase of packing material is less than the ALP determined by the TPO, the Appellant has in fact offered higher income in respect of said transaction and accordingly, the said difference in the ALP and the purchase price cannot be added to the total income of the Appellant u/s 92 of the Act.*

4.3 *Without prejudice to the above, the Appellant prays that the difference between the arm's length price and the transaction price has been wrongly computed by the TPO as Rs. 790,535 instead of Rs. 602,350/-.*

GROUND V: DISALLOWANCE OF PROVISION FOR BAD AND DOUBTFUL FARMER ADVANCES OF RS. 61,86,982/-.

5.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of deduction of provision for bad and doubtful farmer advances of Rs. 61,86,982.*

5.2 *The Ld. CIT(A) further erred in not holding that in view of the decision of the Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT (190 taxman 257) (2010), where the*

provision is rightly made by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then there was actual write off and therefore, the same is allowable under the provisions of the Act.

- 5.3 *The Appellant humbly prays that it be held that the provision for bad and doubtful farmers advances is allowable as deduction/business loss under the provisions of the Act.*

GROUND VI: DISALLOWANCE OF PROVISION FOR TRADE DEBTS OF RS. 14,39,391/-.

- 6.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of deduction of provision for bad and doubtful trade debtors of Rs. 14,39,391/-.*
- 6.2 *The Ld. CIT(A) further erred in not holding that in view of the decision of the Hon'ble Supreme Court in the case of Vijaya Bank vs. CIT (190 taxman 257)(2010), where the provision is rightly made by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then there was actual write off and therefore, the same is allowable under the provisions of the Act.*
- 6.3 *The Appellant humbly prays that it be held that the provision for bad and doubtful farmers advances is allowable as deduction/business loss under the provisions of the Act.*

GROUND VII: DISALLOWANCE OF PROVISION FOR BAD AND DOUBTFUL ADVANCES OF RS.12,12,000/-.

- 7.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of deduction of provision for bad and doubtful other advances of Rs. 12,12,000/-.*
- 7.2 *The Ld. CIT(A) further erred in not holding that in view of the decision of the Hon'ble Supreme Court in the case of Vijaya Bank vs CIT (190 taxman 257) (2010), where the provision is rightly made by debiting the amount of bad*

debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then there was actual write off and therefore, the same is allowable under the provisions of the Act.

7.3 *The Appellant humbly prays that it be held that the provision for bad and doubtful advances is allowable as deduction/business loss under the provisions of the Act.*

GROUND VIII: DISALLOWANCE OF EMPLOYEES' CONTRIBUTION TO PROVIDENT FUND OF RS.33,80,326/-.

8.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of disallowance of employees' contributions of Rs. 33,80,326/- to Provident Fund.*

8.2 *The Appellant humbly prays that it be held that the employees' contributions to Provident Fund is allowable as deduction/business loss under the provisions of the Act since the same was deposited within the due date of filing of return of income as required by the first proviso to section 438 of the Act.*

GROUND IX: DISALLOWANCE OF EMPLOYER'S CONTRIBUTION TO PROVIDENT FUND OF RS. 33,80,326/-.

9.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of disallowance of employer's contributions of Rs. 33,80,326/- to Provident Fund.*

9.2 *The Appellant humbly prays that it be held that the employer's contributions to Provident Fund is allowable as deduction/business loss under the provisions of the Act since the same was deposited within the due date of filing of return of income as required by the first proviso to section 43B of the Act.*

GROUND X: DISALLOWANCE OF EMPLOYEES' CONTRIBUTION TO EMPLOYEE STATE INSURANCE CORPORATION OF RS. 91,935/-.

10.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of disallowance of employees' contributions of Rs. 91,935/- to Employee State Insurance Corporation.*

10.2 The Appellant humbly prays that it be held that the employees' contributions to Employee State Insurance Corporation is allowable as deduction/business loss under the provisions of the Act since the same was deposited within the due date of filing of return of income as required by the first proviso to section 43B of the Act.

GROUND XI: DISALLOWANCE OF EMPLOYER'S CONTRIBUTION TO EMPLOYEE STATE INSURANCE CORPORATION OF RS. 2,16,888/-.

11.1 On the facts and in the circumstances of the case and in law, the CIT(A) erred in not adjudicating the issue of disallowance of employer's contributions of Rs. 2,16,888/- to Employee State Insurance Corporation.

11.2 The Appellant humbly prays that it be held that the employer's contributions to Employee State Insurance Corporation is allowable as deduction/business loss under the provisions of the Act since the same was deposited within the due date of filing of return of income as required by the first proviso to section 43B of the Act.

GROUND XII: ADDITION OF PROVISION FOR BAD AND DOUBTFUL FARMER ADVANCES OF RS. 1,56,84,359/- TO THE BOOK PROFITS U/S. 115JB.

12.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the order of the AO of treating the provision for bad and doubtful farmer advances of Rs. 1,56,84,359 as provision for diminution in value of assets and thereby, adding the same to the book profits u/s. 115JB of the Act.

12.2 The Ld. CIT(A) further erred in not holding that where the provision is rightly made by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then such provision should be regarded as an actual write off and accordingly, cannot be regarded as provision for diminution in value of assets.

12.3 The Appellant humbly prays that the foregoing addition of provision for bad and doubtful farmer advances (which were netted off against advances in the books of the Appellant) to the book profit u/s. 115JB be deleted.

**WITHOUT PREJUDICE TO THE GROUND XII, GROUND XIII:
ADDITION OF PROVISION FOR BAD AND DOUBTFUL
FARMER ADVANCES OF RS. 1,56,84,359/-TO THE BOOK
PROFITS U/S. 115JB BE RESTRICTED TO RS. 61,86,982/-**

13.1 *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not restricting the addition of provision for bad and doubtful farmer advances of Rs. 1,56,84,359/- to RS. 61,86,982/-, which is actual amount of provision created during the year, debited to the profit and loss account and claimed as deduction while computing the book profit.*

13.2 *The Appellant humbly prays that if the addition of provision for doubtful farmer advances to the book profit is upheld, the said addition should be restricted to only Rs. 61,86,982, since the Appellant had claimed only that amount as deduction.*

**GROUND XIV: ADDITION OF PROVISION FOR BAD AND
DOUBTFUL TRADE DEBTORS OF RS. 14,39,391 TO THE
BOOK PROFITS U/S. 115JB.**

14.1 *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the order of the AO of treating the provision for bad and doubtful trade debtors of Rs. 14,39,391 as provision for diminution in value of assets and thereby, adding the same to the book profits u/s. 115JB of the Act.*

14.2 *The Ld. CIT(A) further erred in not holding that where the provision is rightly made by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then such provision should be regarded as an actual write off and accordingly, cannot be regarded as provision for diminution in value of assets.*

14.3 *The Appellant humbly prays that the foregoing addition of provision for bad and doubtful trade debtors (which were netted off against debtors in the books of the Appellant) to the book profit u/s. 115JB be deleted.*

**GROUND XV: ADDITION OF PROVISION FOR BAD AND
DOUBTFUL ADVANCES OF RS. 12,12,000 TO THE BOOK
PROFITS U/S. 115JB.**

15.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the order of the AO of treating the provision doubtful advances of Rs. 12,12,000 as provision for diminution in value of assets and thereby, adding the same to the book profits u/s. 115JB of the Act.

15.2 The Ld. CIT(A) further erred in not holding that where the provision is rightly made by debiting the amount of bad debt to the profit and loss account so as to reduce the profits of the year and simultaneously, the amount of loans and advances or debtors is reduced and consequently, the provision account stands obliterated, then such provision should be regarded as an actual write off and accordingly, cannot be regarded as provision for diminution in value of assets.

15.3 The Appellant humbly prays that the foregoing addition of provision for doubtful advances (which were netted off against loans and advances in the books of the Appellant) to the book profit u/s. 115JB be deleted."

3. The revenue has raised the following grounds of appeal in ITA No. 1307/Del/2017 for AY 2007-08:

"1. Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 28,97,157/- being 50% of total reduction of Rs. 57,94,313/- irrespective of the facts as mentioned by the AO that majority of the stock written off is in the nature of product loss & packing material loss.

2. Whether the Ld CIT (A) was justified in laying down stringent standards of comparability and attempting to identify exact re;ica of the taxpayer for comparability analysis, whereas the Indian Law and the international jurisprudence recognize the reality that there cannot be an exact comparable in a given situation without any differences without appreciation that such astringency will defeat the purpose of flexibility provided in comparability analysis for determination of ALP."

ITA No. 2232/Del/2017: A.Y. 2003-04 (Assessee)**Inventory Written off:**

4. At the outset, it was submitted that the assessee has not claimed deduction in the P&L account and hence no disallowance is called for. We are in agreement with the contention of the Id. AR that no disallowance is called for unless claimed in the P&L account. The AO is directed to examine and delete the addition after verification in case the expenditure is not claimed in the P&L account.

Administrative Expenses – Ballarpur Industries:

5. The similar expenses disallowed by the revenue have been allowed by the revenue for A.Y. 2007-08 and A.Y. 2010-11 and by the ITAT vide order dated 19.01.2023 in ITA No. 1931/Del/2017 for A.Y. 2002-03. In the absence of any change in the factual matrix, we hereby direct that the addition be deleted.

Provision for Bad & Doubtful Debts/Farmers Advance:

6. The AO is directed to allow the amount on write off basis. The assessee shall produce the written off details before the AO.

ESI/PF Contribution:

7. It is contended that out of Rs.33,80,326/- an amount of Rs.25,12,116/- was paid within the due date. The AO may examine the exact details of payment of Employee Contribution & Employer Contribution and disallow the amount not paid

within the due date as per the judgment of Hon'ble Apex Court in the case Checkmate Services Pvt. Ltd. Vs. CIT 448 ITR 518.

Section 115JB on provisions for Doubtful Debts:

8. It is submitted that the amount of Rs.1,56,84,359/- be corrected to Rs.61,86,982/-. The AO to pass rectification order after verification.

9. All the debts which have been rightly obliterated even though the terminology used was "provision" was directed to be excluded from the purview of computation of Section 115JB.

Adjustment u/s 92CA(3):

Relevant facts are as under:

10. Global Green Company Limited (GGCL) is engaged in the business of 'processing and export of pickled Gherkins (Baby cucumber). 68.8% of the shares of the assessee company are held by M/s Bilt Trading & Infrastructure Pvt. Ltd. In turn, the assessee is a 100% holding company of Tiffy International BV(Tiffy), with whom if had undertaken international transactions.

11. During the year, the assessee has undertaken the following international transaction:

S. No.	Description	of Method	Value (in Rs.)	
			Book Value	ALP as per 3CEB
1	Export of processed Gherkins	CUP	16,93,48,285	16,93,48,285
2	Purchase of packing and processing	CUP	74,70,311	80,72,661

12. The assessee company has relied upon comparable Uncontrolled Price Method (CUP) as per Form 3CEB submitted with the return of income and while determining the arm's length price in respect of purchase of packing and processing material, on its own revised the price upward as mentioned in table above. However, in respect of export of processed Gherkins same value as is in books of account has been adopted as arm's length price.

13. The TPO held that the documentation does not contain any indication and material as to how the "CUP" has been applied by the assessee company. The TPO also held that after going through the Transfer Pricing report it could not be ascertained whether the assessee company is relying upon CUP or is intending to apply Transactional Net Margin Method (TNMM).

14. The assessee company submitted data pertaining to sale of goods to associated enterprises and comparable prices charged from unrelated parties. In these circumstances it was submitted before the revenue that Comparable Uncontrolled Price Method (CUP) is the most appropriate method to benchmark the international transactions carried out by the assessee company.

15. Out of the total export of Rs. 51.33 crores during the year under reference of processed gherkins, the assessee company made total export exports worth 16.93 crores is to the related party (Tiffy International B.V.) and the remaining about 34 crores to unrelated parties. The nature of the products sold to the related party is similar to what is being sold to unrelated parties. In these circumstances when an exact comparable price of the product is available from the record of the assessee, the

benchmarking of international transaction of export of processed Gherkins would be done on the basis of prices charged from unrelated party.

16. Before making comparison of the prices of products sold to related party with unrelated, a product wise segregation of total turnover to the related party was obtained by the TPO which is as under:

Product description	Package	Amount
Gherkins in vinegar	Bulk	86,934,568
Gherkins in vinegar	Jars	38632434
Gherkins in vinegar	Cans	1046626
Gherkins in brine	Bulk	3510347
Gherkins in acetic acid	Jars	38756188
Non Gherkin products		288123
		169,168,286

17. It can be seen from above that the major export is in relation to Gherkins in Vinegar bulk (8.69 crores), Gherkins in Vinegar Jars (3.86 crores) and Gherkins in Acetic Acid Jars (3.87 crores). The assessee company was asked by the TPO to submit the details of related as well as unrelated party sale in respect of all the above said products and their price variations.

18. The TPO noticed that each category of the products has further specification that are denoted as 'grades'. The prices of each category vary according to different grades. In view of the fact that more than one prices of the same product were available therefore, for the proposes of benchmarking international transaction the prices were taken on the basis of weighted average for every grade in each category of product.

19. This exercise of arriving at weighted average of the prices of products sold to unrelated party was carried out in the presence of Authorized representative of the assessee company from the sheets submitted in transfer pricing proceedings pertaining to the details of transactions with unrelated party.

20. In this manner, for each category of product, the difference in per unit price was determined. The result of the same two was summarized as under:

Annexure I		
Sr. No.	Product	Difference
1	Gherkins in Vinegar (Bulk)	78,51,397
2	Gherkins in Vinegar (Jars)	1,97,78,014
3	Gherkins in acetic acid (Jars)	35,68,309
	Total	3,11,97,720
Annexure II		
1	Gherkins in Vinegar (Cans)	3,79,772
2	Gherkins in Brine (Bulk)	5,59,624
3	Non Gherkins product	-
	Total	9,39,396

21. The total difference in sale price and arm's length price of gherkin products was therefore Rs. 3,21,37,116/- being the total of Rs. 3,11,97,720/- and Rs.9,39,396/-.

22. The TPO held that the assessee company did not furnish any reply and no objection of any kind was filed against the aforesaid calculation. Keeping in view the facts, the TPO determined the ALP of the international transactions of export of gherkin products by the assessee to its AE at Rs.20,14,85,401/- as against Rs.16,93,48,285/- declared by the assessee. Hence, a sum of Rs.3,21,37,116/- was added to the income of the assessee on account of international transaction of export of gherkin products.

23. In respect of second international transaction entered into by the assessee with its associated enterprises regarding purchase of packing material the assessee has determined its arm's length price at Rs. 80,72,661/- as compared to book value of Rs. 74,70,311/- the difference on this account is Rs. 6,02,350/-.

24. The assessee was asked by the TPO to submit detailed working of this difference and vide reply dated 29.12.2005. The assessee submitted working of the difference of Rs. 602350/- and also taken benefit of negative variation on account of Arm's Length Price and set off it against positive variation.

25. Under the Indian Transfer Pricing Regulations the arm's length price of each transaction is to be computed separately. In this regard it is pertinent to have a look at provisions of Section 92(1):

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

26. The AO held that the intention of legislature is to compute the impact of each international transaction, separately on the income of the assessee. In the manner discussed above, the ALP of each international transaction undertaken by the assessee with AE in this category of imports has been computed and wherever the difference between the price charged by the assessee and ALP is more than 5%, such difference has been computed. The AO held that no downward revision of Arm's length price is permitted and hence setting off is disallowed.

27. Finally, the TPO determined the arm's length price of international transaction of "Purchase of packing and processing material" reworked and negative figure was ignored and difference of Rs.7,90,535/- was determined to be added to the income of the assessee on this account.

28. Heard the arguments of both the parties and perused the material available on record.

29. OECD in its Transfer Pricing Guidelines (2017) observes as under:

Para 2.14 "The CUP method compares the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances. If there is any difference between the two prices, this may indicate that the condition of the commercial and financial relations of the AEs are not at arm's length, and that the price in the uncontrolled transaction may need to be substituted for the price in the controlled transaction."

Para 2.19 "Under the CUP method, the arm's length price for commodity transactions may be determined by reference to comparable uncontrolled transactions and by reference to comparable uncontrolled arrangements represented by the quoted price".

30. The steps involved in the application of this method are:

- i. Identify the price charged or paid in comparable uncontrolled transactions;

- ii. The above price should be adjusted for transaction level differences on the basis of functions performed, assets used and risks taken (FAR) analysis and enterprise level differences if any;
- iii. The adjusted price is the arm's length price;

31. Reasonable and accurate adjustment can be made for differences in:

- a. Type and quality of products
- b. Delivery terms
- c. Volume of sales and related discounts
- d. Product characteristics
- e. Contractual terms
- f. Risk incurred
- g. Geographical factors

32. In the instant case, the TPO undertook an invoice by invoice comparison of the export made by the assessee to its AEs. The TPO compared the price charged by the assessee from its AEs for each transaction with the weighed average selling price (WASP) of the sales made by it to third parties.

33. The main argument of the Id. AR was that while doing so, the TPO arbitrarily adopted third parties sale transaction and in most of the cases compared the selling price of different grades of GHERKINS sold to the AEs with the WASP of different grades sold to the third parties. It was also submitted that the foreign currency conversion undertaken by the TPO was erroneous.

34. We hold that internal CUP is the most appropriate method for undertaking the determination of Arm's Length Price. Hence, we direct that the economic analysis be conducted afresh by taking into consideration the "like with the like" and following right foreign currency conversion. The AO is also directed to accord reasonable and accurate adjustment to Product characteristics, contractual terms, risk incurred and geographical factors.

ITA No. 2233/Del/2017 : A.Y. 2004-05 (Assessee)

ALP Adjustment u/s 92CA(3):

35. Same ratio as in the A.Y. 2003-04 applies.

PF/ESI - Employees Contribution:

36. The issue is covered against the assessee by the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. 448 ITR 518.

Disallowance for provision for bonus:

37. It was submitted that a provision of Rs.10,76,743/- was wrongly disallowed in computation of income instead of Rs.6,73,249/-. The AO may verify and pass rectification order accordingly.

Disallowance of bonus paid:

38. The Id. CIT(A) has not adjudicated on this issue as per the grounds. In the interest of speedy justice, the matter is referred to the AO to verify and allow the same if paid during the year.

Provision for bad debts – farmers/trade:

39. Directed to be allowed on actual write off basis.

Administrative Expenses – Ballarpur Industries:

40. As adjudicated above in this order.

ITA No. 1405/Del/2017: A.Y. 2005-06 (Assessee)

Administrative Expenses – Ballarpur Industries:

41. As adjudicated above in this order.

TP Adjustment:

42. Not pressed owing to smallness of amount.

Provision for bad debts – farmers/trade:

43. Directed to be allowed on actual write off basis.

Loss on Foreign Exchange Fluctuation:

44. The AO disallowed the loss on exchange fluctuation holding it to be notional. The AO held that actual loss would arise only at the time of remittances and not before. The AO also held that the assessee may make entries in the books of accounts as per the Companies Act but income has to be computed as per the provisions of Income Tax Act. The Id. CIT(A) concurred with the order of the Assessing Officer on the grounds that the basic fact relating to the cancellation of forward contract pertaining to which the losses claimed have not been submitted. Keeping in

view, the judgments of Hon'ble Apex Court in the case of ONGC Vs. CIT 322 ITR 180 and CIT Vs. Woodward Governor 312 ITR 254, we hold that the Loss on Foreign Exchange Fluctuation is an allowable expenditure.

Set off of C/F Business Loss:

45. The Id. CIT(A) has dismissed the grounds taken up holding that the appeal memo for the year doesn't elaborate or shed any light on said matter. However, we find that the assessee has taken up this issue at ground no. 6 in the grounds filed before the Id. CIT(A). However, in the interest of justice, we direct the AO to consider afresh, the issue of set off as per the provisions of the I.T. Act.

ITA No. 1406/Del/2017 : A.Y. 2007-08 (Assessee)

Provision for bad debts – farmers/trade:

46. Directed to be allowed on actual write off basis.

TP Adjustment:

47. As adjudicated above in this order.

TP – ALP on Interest Received:

48. The assessee has provided loan to its AE and the rate of interest charged was 3.08%. The AO held that in independent unrelated transaction involving loans, the party advancing loan expects financial compensation in the form of interest as prevalent during the period and after examining the various corporate bonds and the interest rate prevalent in the debt

market and after considering the EURIBOR + 700 basic points as no securities is offered by the subsidiaries and the taxpayer is not into lending and borrowing money. The AO considered interest @ 14% per annum. The Id. CIT(A) directed the AO to rework the interest charged after taking into considering, the decision of the Hon'ble jurisdictional High Court in Cotton Naturals in ITA No. 233/2014 dated 27.03.2015. The question examined was as to whether the interest rate prevailing in India should be applied, for the lender who was an Indian company, or the lending rate prevalent in the state of recipient company should be applied. By adopting a commonsensical and pragmatic reasoning, it was held that interest should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. It was clarified that interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. The Hon'ble Court concluded that the currency in which the loan is to be repaid normally determines the rate of return on the money lent. The Hon'ble Court also held that in case of capital investment borrowing rate will apply whereas in case of credit allowed to a customer on sale of goods, the lending rate would apply. This would require examination of loan agreement. The AO shall charge suitable interest after examination of the loan agreement as per the guidelines given above.

Profits u/s 115JB:

49. All the debts which have been rightly obliterated even though the terminology used was "provision" was directed to be excluded from the purview of computation of Section 115JB.

ITA No. 1307/Del/2017 : A.Y. 2007-08 (Revenue)**Deletion of Inventory of Rs.28,97,157/-:**

50. The facts of the case and adjudication of the Id. CIT(A), Ms. Y. Kakkar is as under:

"5.2 The list of goods written off are part of same and in a fast moving standard/norms confirming packaged food products (perishable) and having limited shelf life having a stock of damaged goods or bundle of labels/wrappers/cartons etc., no longer needed is not uncommon and is a practical reality as its not necessary to have a bulk repeat orders of supply of gherkins from the same house to whom the first bulk lot has been dispatched (and for whom bulk wrappers/cartons etc. were procured to obtain quantity advantage etc.). The assessee has already written off the said goods in accordance with law and as such the matter needs to be decided in favour of appellant. The AO also strangely disallowed 50% of the total sums written off by the appellant of Rs.57,94,313/- which comes to Rs.28,97,157/- which is ridiculous to say the least. If for say example of the total quantity of say gherkins (with expired shelf life/defective taste etc.) of Rs.1000/- is discarded and written off by appellant, then with what logic can one allow disallowance of Rs.500/- and disallow the rest as in any case the total product of Rs.1000/- was non-saleable/non useable due to certain defect/etc. Further, the written off items also include pesticides etc. Its difficult to logically understand as to how a pesticide past its expiry date can be utilized at 50% prorata disallowance, as done by AO. Its absolutely ridiculous. Either the perishable good is ok or not ok as per FDS norms. How can a 50% disallowance be sustained in this practica view of the matter. This adhoc disallowance restriction to 50% as made by the AO has no basis and being untenable in law is reversed in totality and as such the appellant gets relief of Rs.28,97,157/-. Held as such."

51. The order of the Id. CIT(A) is totally reasonable and based on facts. In the absence of any material contra, the adjudication of the Id. CIT(A) is affirmed on this issue.

ALP Adjustment:

52. As adjudicated above in this order.

ITA No. 1932/Del/2017 : A.Y. 2008-09 (Assessee)

Provision for bad debts – farmers/trade:

53. Directed to be allowed on actual write off basis.

TP Adjustment:

54. As adjudicated above in this order.

Book Profits u/s 115JB- Provisions:

55. As adjudicated above in this order.

ITA No. 1917/Del/2017 : A.Y. 2008-09 (Revenue)

ALP:

56. As adjudicated above in this order.

ITA No. 1407/Del/2017 : A.Y. 2010-11 (Assessee)

TP Adjustment:

57. As adjudicated above in this order.

Corporate Guarantee Commission:

58. The TPO in its order dated 20.01.2014 has stated that,

"GG INV was established in Belgium to act as a holding company for the subsidiaries of GG India in Europe. During the financial year

ended March 31, 2010, GG India has provided a Corporate guarantee to the tune of Rs. 45,42,00,000/- to an unrelated bank for rendering financial assistance INV. The assessee submits that entire amount of guarantee was in force during the FY 2009-10.....4.4 On the issue of interest saving approach method, the assessee submitted that despite the Corporate Guarantee taken from the taxpayer, AE has paid interest to the banks comparable to the prevailing rates in the market. However, the assessee has not furnished any evidence in support of this claim. Another question arise here that if taxpayer has given Corporate Guarantee to an unrelated party, it would have charged similar to that of prevailing in the market where taxpayer is residing in. Hence, argument of the assessee is not acceptable.....”

59. The TPO made an adjustment of Rs.2,07,11,520/- after calling for information from varied banks.

60. It was submitted that a lower guarantee fees is in order as the guarantee was advanced to a party under the same management and control of the appellant (being its AE) and the re-exist decision ranging from holding that corporate guarantee fee should not be charged. The Id. CIT(A) relying in case of Kohinoor Foods Ltd [2014] 54 taxmann.com 454 held that corporate guarantee fee of 1% to be reasonable.

61. Heard the arguments of both the parties and perused the material available on record.

62. The issue of considering the corporate guarantees as an International Transaction amenable to adjustment has been settled by the order of the Hon'ble High Court of Madras in the case of PCIT Vs. M/s Redington (India) Limited on 10 December, 2020. The Hon'ble High Court of Delhi after detailed analysis in

the case of Cotton Naturals (supra) held that intercompany loans and guarantees are becoming common International Transactions between related parties due to management of cross-border funding within group entities of an MNE group. Transfer pricing of inter-company loans and guarantees are increasingly being considered some of the most complex transfer pricing issues in India. The Indian transfer pricing administration has followed a quite sophisticated methodology for pricing inter-company loans which revolves around:

- Examination of the loan agreement;
- A comparison of terms and conditions of loan agreements;
- The determination of credit ratings of lender and borrower;
- The identification of comparable third party loan agreements;
- Suitable adjustments to enhance comparability.

63. The issue of credit guarantee fees has been examined by the Hon'ble Court. It was held that the increase in outbound investments, the Indian transfer pricing administration has come across cases of corporate guarantees extended by Indian parents to its associated entities abroad, where the Indian parent as guarantor agrees to pay the entire amount due on a loan instrument on default by the borrower. The guarantee helps an associated entity of the Indian parent to secure a loan from the bank. The Indian transfer pricing administration generally determines the ALP of such guarantee under the Comparable Uncontrolled Price Method. In most cases, interest rates quotes and guarantee rate quotes available from banking companies are taken as the benchmark rate to arrive at the ALP. The difference in the credit ratings between the parent in

India and the foreign subsidiary is taken into account and the rate of interest specific to a credit rating of Indian bonds is also considered for determination of the arm's length price of such guarantees.

64. The Hon'ble Court opined that the Indian transfer pricing administration is facing a challenge due to non-availability of specialized databases and of comparable transfer prices for cases of complex intercompany loans as well as mergers and acquisitions that involve complex inter-company loan instruments as well as an implicit element of guarantee from the parent company in securing debt.

65. The Hon'ble Court held that there would be a difference between the lending rate and borrowing rate in each country. The Hon'ble Court held in case of a capital investment, the borrowing rate will apply, whereas in case of credit allowed to a customer on sale of goods, the lending rate would apply. With regard to Corporate Guarantees, the Co-ordinate Bench of ITAT in the case of Kohinoor Foods Ltd. Vs. ACIT in ITA No. 3689/Del/2012 vide order dated 21.06.2014 held that commission at the rate of 1% is fair and reasonable. In Havells India Ltd. 140 Taxmann.com 575, the corporate guarantees determined @ 0.5%. In the specific facts of the instant case, we hold that 0.5% can be considered as the justifiable corporate guarantee commission.

Write off- Trade Debts/Farmer Advance:

66. Write off to be allowed on actual basis.

Provision- 115JB:

67. As adjudicated above in this order.

ITA No. 1308/Del/2017 : A.Y. 2010-11 (Revenue)**Corporate Guarantees:**

68. As adjudicated above in this order.

Disallowance u/s 36(1)(iii):

69. The AO disallowed the interest on the amounts invested in the subsidiary company. The Id. CIT(A) relying on the judgment of Hon'ble Apex Court in the case of Hero Cycle 379 ITR 347 held that the disallowance of interest on the investments in the subsidiaries cannot be disallowed in the absence of evidence that the said investment had no element of commercial expediency from the business point of view. Since, the decision of the Id. CIT(A) is based on the order of the Hon'ble Apex Court, we decline to interfere with the adjudication of the Id. CIT(A).

ITA No. 6940/Del/2019 : A.Y. 2011-12 (Assessee)**Corporate Guarantees:**

70. As adjudicated above

TP Adjustment-ALP on Export:

71. As adjudicated above

Write off – Advances:

72. Write off to be allowed on actual basis.

ITA No. 7541/Del/2019 : A.Y. 2011-12 (Revenue)

ALP on Export Sales:

73. As adjudicated above

Corporate Guarantees:

74. As adjudicated above

Disallowance u/s 36(1)(iii):

75. As adjudicated above

Write off – Bad Debts:

76. Write off to be allowed on actual basis.

77. In the result, the appeals of the assessee are partly allowed for statistical purpose and the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 20/06/2023.

Sd/-

(C. N. Prasad)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 20/06/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR