IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1464/Mum/2021
(**निर्धारण वर्ष** / Assessment Year: 2015-16)

Lubrizol India Pvt. Ltd. Plant 9/3, Thane-Belapur Road, Turbhe, Navi Mumbai-400705.	**बनाम** / Vs.	ACIT, Circle-3(4) Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.

आयकर अपील सं/ I.T.A. No.586/Mum/2022
(**निर्धारण वर्ष** / Assessment Year: 2017-18)

Lubrizol India Pvt. Ltd. Plant 9/3, Thane-Belapur Road, Turbhe, Navi Mumbai-400705.	**बनाम** / Vs.	National Faceless Assessment Centre, Delhi.

आयकर अपील सं/ I.T.A. No.1576/Mum/2022
(**निर्धारण वर्ष** / Assessment Years: 2018-19)

Lubrizol India Pvt. Ltd. Plant 9/3, Thane-Belapur Road, Turbhe, Navi Mumbai-400705.	**बनाम** / Vs.	DCIT/ACIT, Circle-3(4) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL0126H		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Niraj Sheth/Ms. Urvi Mehta/Abdulkadir Jawadwala
Revenue by:	Shri Aditya M Rai (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 22/06/2023
घोषणा की तारीख /Date of Pronouncement: 30/06/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

The grievance of the appellant/assessee M/s. Lubrizol India Private Limited (LIPL' or 'the assessee') which is a 50:50 Joint Venture ('JV'), between M/s Lubrizol Corporation Inc. ('LZ US'), a US incorporated entity and Indian Oil Corporation Limited ('IOC'), a public sector undertaking in India. In all the above three (3) appeals for Assessment years 2015-16, 2017-18 & 2018-19 the issues raised before us are more or less the same. Therefore, the appeals were heard together and are now being disposed of by way of this consolidated order for the sake of convenience and brevity. It is an admitted position that adjudication in any one year on an issue shall apply to other years also since there was no change in facts or law except figures. With the consent of both sides, the assessee's appeal for AY 2015-16 is taken as the lead year for deciding the main issue of Transfer Pricing, and we proceed with the adjudication of all these appeals by adjudicating the appeal for AY2015-16.

ITA. NO. 1464/Mum/2021 (AY. 2015-16)

2. This is an appeal preferred by the assessee against the order of the Assessing Officer dated 28.06.2021 for AY. 2015-16 passed u/s 143(3) r.w.s. 263/144C(13) of the Income Tax Act, 1961 (hereinafter "the Act").

3. The main grievance of the assessee is against the action of the Ld. Transfer Pricing Officer (TPO)/Ld. Dispute Resolution Panel (DRP) in rejecting the application of Transactional Net Margin

Method (TNMM) as the Most Appropriate Method (MAM) as adopted by the assessee for benchmarking the International Transaction in respect of its Export of Chemical Additives to its Associated Enterprises (AEs) and instead adopting the CUP as the MAM (*by relying on the direction of Ld. DRP for AY. 2009-10*) and thus making Transfer Pricing adjustment of Rs.25,23,659/-.

4. The assessee has raised the following grounds of appeal regarding the issue of Transfer Pricing (TP) which reads as under: -

> "2.1 Under the facts and circumstances of the case and in law, the Ld. AO/TPO erred in proposing and the Hon'ble DRP further erred in upholding an adjustment of Rs.25,23,659/- in respect of the International transactions pertaining to export of chemical additives, alleging that the same to be not at arm's length in terms of the provisions of section 92C(1) and 92C(2) of the Act read with Rule 10D of the Income Tax Rules, 1962 ("Rules").
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> 2.2 Under the facts and circumstances of the case and in law, the Ld. TPO/DRP/AO erred in rejecting the application of Transactional Net Margin Method ("TNMM") as the Most Appropriate Method ("MAM") used by the appellant for benchmarking the International transaction in respect of its exports of chemical additives to its Associated Enterprise ("AEs").
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> 2.11 Under the facts and circumstances of the case and in law, the Ld. TPO/DRP/AO erred in rejecting the whole entity approach adopted by the appellant for benchmarking the exports of chemical additives which the revenue authorities (Department) had accepted in the previous assessments for AY.

2002-03, AY. 2003-04, AY. 2004-05, AY. 2005-06, AY. 2008-09 and AY. 2011-12.

2.12 Under the facts and circumstances of the case and in law, the Ld. TPO/DRP/AO has erred in not accepting the Hon'ble Income Tax Appellate Tribunal's ("the Tribunal") order in case of Appellant's appeal for AY. 2006-07, AY.2006-07, AY. 2007-08, AY. 2009-10, AY. 2010-11 & AY. 2012-13 and department's appeal for AY. 2005-06 for similar issue wherein the Tribunal had primarily accepted the Appellant's contention by using TNMM as the MAM for benchmarking the export of chemical additives transaction of the appellant."

5. As noted (supra) the Appellant is JV, between M/s Lubrizol Corporation Inc a US incorporated entity and Indian Oil Corporation Limited, a public sector undertaking of India. The Appellent is a specialty chemical company serving the needs of the petroleum industry and it develops, manufactures and markets additive systems for automotive and industrial lubricants for treatment of fuels. Out of the several international transactions undertaken by the assessee with its associated enterprises, the TPO did not accept the arm's length nature of the transactions of Export of chemical additives aggregating Rs. 94,02,10,548/-. The assessee had applied TNMM as MAM and showed that its Margin was 11.31% (refer page 180 of the paper-book) and Margins of the comparables selected by the appellant was shown as 7.41% (refer page 302 of the paper book). And during the transfer pricing proceedings, the TPO asked the assessee to provide updated margins of the comparables as per TNMM and the justification of the margins. Pursuant, to it, the assessee submitted the reply vide letter

dated 8 October 2018 (refer page No. 301 to 307 of the paper-book). However, the TPO rejected the same and proceeded to adopt CUP as the MAM relying upon the earlier directions issued by the Ld. DRP in Assessment Year 2009-10 (refer page nos. 8-9 of the TP Order dated 29 March 2019). Further, while deciding on the alternative ground about the need to make adjustments for quantifiable / non-quantifiable differences while applying CUP, the TPO has relied upon directions issued by the DRP in assessee's own case for Assessment Year 2013-14 (please refer to page Nos. 15 to 22 of the TP Order). Thus, the TPO arrived at a Transfer Pricing adjustment of Rs.25,23,659/- under the CUP method the details of which are given hereunder:

S/No.	Product	Sold to AE in Export Mkt				Sold to Non-AE mainly in Domestic Mkt				Price Diff.	Diff
		Qty (MT)	Avg. Lot Size (MT)	Rate, Rs. / Kg	Total Value, Rs. Lacs	Qty (MT)	Avg. Lot Size (MT)	Rate, Rs. / Kg	Total Value, Rs. Lacs	Rs. per Kg.	(Rs. In Lacs)
1	677A	10.75	10.750	270.79	29.11	245.53	2.505	284.24	697.90	13.45	1.45
2	9222K	41.95	20.975	187.86	78.81	77.97	4.332	205.14	159.95	17.13	7.18
3	16010J	30.34	10.113	159.49	48.39	100.67	2.341	175.88	177.05	16.39	4.97
4	16010L	53.59	10.718	180.40	96.68	733.46	6.012	189.20	1,387.69	8.94	4.79
5	5703	3.57	3.570	360.12	12.86	160.44	1.573	400.69	642.87	40.57	1.44
6	7077	27.54	6.885	133.31	36.71	1,054.85	5.893	141.14	1,488.82	7.86	2.17
7	A99	7.85	7.848	414.96	32.57	189.44	1.553	456.13	864.10	41.17	3.23
	Grand Total	175.59	10.328		335.13	2,562.36	3.746		5,418.28	14.37	25.23

After receipt of Transfer Pricing order, the AO passed the Draft Assessment order vide order dated 14.11.2019 by making an

adjustment of Rs.25,23,659/-. Aggrieved, the assessee preferred its objection before Ld. DRP and Ld. DRP confirmed the action of TPO/AO. Thus, addition of Rs.25,23,659/- was made by AO passing the final order.

6. The Ld. AR of the assessee Shri Niraj Sheth pointed out that the issue involved in this appeal is no longer res-integra and has been already decided by this Tribunal in favour of the assessee by accepting the action of Assessee adopting the application of TNMM as MAM for benchmarking the international transaction of export of chemical additives to its AE's. And it was also pointed out by the Ld AR that Revenue Authorities has accepted the action of assessee on this issue consistently for earlier AY 2002-03 to AY 2004-05, AY. 2008-09 and AY 2011-12. And this Tribunal has upheld the action of assessee regarding the T.P issue for AY. 2005-06, AY, 2006-07, AY. 2007-08, AY. 2009-10, AY. 2010-11 & AY. 2012-13. And drew our attention to the decision of this Tribunal in the case of the assessee [*M/s. Lubrizol India Pvt. Ltd. Vs. ACIT-LTU for AY. 2005-06, 2006-07 & 2007-08 decided on 20.11.2019*] wherein the Tribunal upheld the action of the assessee adopting TNMM as the MAM for benchmarking the International transaction of export of chemical additive to its AE's and did not accept the action of TPO/DRP adopting CUP Method as the MAM. It was pointed out by the Ld. AR that this Tribunal in other assessment year viz, AY. 2009-10, 2010-11 & 2012-13 as well as 2013-14 has followed the decision of the lead case for AY. 2005-06 onwards (supra). Therefore, according to the Ld. AR, the TPO/Ld.

DRP erred in rejecting the application of TNMM as the MAM adopted by the assessee for benchmarking the International Transaction in respect of its export of chemical additives to its AE's. Therefore, according to him, the issue is squarely covered by the decision of this Tribunal in assessee's own case for all the assessment years before us.

6. Per contra, Shri Aditya M Rai, Ld. CIT-DR submitted that principle of res-judicata does not apply in Income Tax proceedings. Therefore, even if, the department has accepted the assessee's action in an earlier year for benchmarking the International transaction as adopted by the assessee by applying TNMM as MAM, that doesn't in any way detract the TPO/DRP from finding in another year on the facts of that year, CUP as the correct MAM. And therefore according to him, the TPO/Ld. DRP's action to benchmark the International transaction by adopting CUP instead of TNMM should be accepted and no interference is warranted.

7. Having heard both the parties on the Transfer Pricing issue and after perusal of the relevant material on record including the decision of this Tribunal in assessee's own case as noted supra, we note that on this Transfer Pricing issue there is no change in facts or law with the earlier assessment years which has been decided by this Tribunal. Therefore, we find considerable merit in the contention of the assessee that since the facts are *pari-materia* with the earlier years and there is no change in law in respect of the captioned assessment years i.e. for AY. 2015-16, AY. 2017-18 & AY. 2018-19 with the earlier decided cases in assessee's own case (supra), according to assessee, we are

bound to follow the decision of this Tribunal on the Transfer Pricing issue. We note that in the captioned appeals also, the assessee has been adopting the TNMM as the Most Appropriate Method for benchmarking the International transaction in respect of its export of chemical additives to its AE's. It is true that principle of res-judicate doesn't apply to Income Tax Proceedings. However, principle of consistency has been approved by the Hon'ble Supreme Court for finality of issues when there is no change in facts or law. The Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC) has held as under: -

> "We are aware of the fact that, strictly speaking, res-judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year, unless there was any material change justifying the revenue to take a different view of the matter."

8. The Hon'ble Supreme Court in the case Bharat Sanchar Nigam Ltd. Vs. Union of India reported in (2006) (282 ITR 273), has held as under: -

> "Where facts and law in a subsequent assessment year are that same, no authority whether quasi-judicial or judicial can generally be per-mitted to take a different view. This mandate is

subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam."

9. We find that the assessee has been consistently adopting the TNMM method as MAM for benchmarking the International transaction as in the past years. And the consistent action of assessee adopting TNMM has been duly accepted by the Department in AY. 2002-03 to AY. 2004-05 as well as AY. 2008-09 & 2011-12. And the Tribunal has accepted the assessee's action of benchmarking the International transaction by adopting the method of TNMM for AY. 2005-06 to AY. 2007-08. And thereafter, also this Tribunal has upheld the action of the assessee adopting the TNMM method for AY. 2009-10, 2010-11 & 2012-13 vide order dated 27.07.2020 (ITA. No. 882/Mum/2014, 396/Mum/2015 & 6667/Mum/2016). And for AY. 2013-14 (ITA. No. 6393/Mum/2019) vide order dated 18.05.2021. Since the TPO/AO/Ld. DRP could not point out any difference in facts as well as law, according to us, the TPO/Ld. DRP ought not to have adopted different method [i.e. CUP] for benchmarking the International transaction of assessee with its AE's. Since the margin shown by the assessee under TNMM method have been shown to be within the ALP range, the impugned adjustment of Rs.25,23,659/- is directed to be deleted.

10. Ground no. 3 is against the action of the AO in not granting credit for taxes already paid by the assessee to the tune of Rs.1,18,87,440/-.

11. The only grievance of the assessee that the AO has not granted Credit for tax already paid by assessee of Rs. 1,18,87,440/-. This issue is restored back to the file of AO for verification and if it is found that the assessee has already made the payment of tax to the tune of Rs.1,18,87,440/-, then after verification, it may be granted in accordance to law after hearing the assessee.

12. The only other ground is against the action of the AO regarding computation of interest u/s 234B, 234C & 234D of the Act. We direct the AO to compute interest in accordance with law after hearing the assessee.

Resultantly, the appeal of assessee stand partly allowed to the extent indicated (supra).

ITA. NO. 586/Mum/2022 (AY 2017-18)

13. This is an appeal preferred by the assessee against the order of the Assessing Officer dated 04.02.2022 for AY. 2017-18 passed u/s 143(3) r.w.s. 144C(13) of the Act.

14. According to the assessee, in respect of the Transfer Pricing issue, facts in this AY 2017-18 are similar to that of AY. 2015-16, and therefore, the decision of ours on TP issue for AY. 2015-16 would apply *mutatis mutandis* to AY. 2017-18. We note that the similar adjustment of Rs.3,57,51,374/- has been made in respect of the International transaction pertaining to the export of chemical additives

by applying CUP method which has been upheld by the Ld. DRP. Since no change in facts and law could be brought to our notice, the decision of ours for AY. 2015-16 shall apply mutatis mutandis for this year (AY. 2017-18). And we direct deletion of the impugned TP Adjustment. So, therefore, the ground no. 2 to 14 are allowed.

15. Ground nos. 15 & 16 are as under: -

> "15. The Ld. AO has erred in raising a demand of Rs.19,54,33,412/- on account of Dividend Distribution tax (DDT) payable. The Ld. AO erred in not granting credit for DDT of Rs.19,54,33,412/- which is already paid by the appellant and details of which are furnished in return of income (Schedule-DDT). The appellant prays that the DDT credit be granted and the demand be deleted as it does not survive.
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> 16. The Ld. AO has erred in charging interest Rs.12,41,00,217/- under section 115P of the Act considering the appellant has not paid DDT of Rs.19,54,33,412/- within the time allowed under section 115-O(3) of the Act. The appellant prays that DDT credit of Rs.19,54,33,412/- be granted, pursuant to which, the DDT interest will not survive and be deleted."

16. The main grievance of the assessee are against the action of AO not giving credit for Dividend Distribution Tax (DDT) of Rs.19,54,33,412/- which has already been paid by assessee and details of which has been furnished in the return of income (Schedule-DDT). According to the assessee, the DDT credit ought to have been granted and the demand raised of Rs. 19,54,33,412/- ignoring the fact of payment needs to be deleted. Further, according to the assessee, the AO erred in-charging interest of Rs.12,41,00,217/- u/s 115P of the Act

on the reasoning that the assessee has not paid DDT of Rs.19,54,33,412/- within the time allowed u/s 115-O(3) of the Act. In this regard our attention has been drawn by the Ld. AR to page no. 474 to 480 wherein the challan evidencing payment of DDT has been placed. In the light of the evidence submitted which prima facie show that DDT has been paid, then it ought to have been allowed by AO. Be that as it may be, since this fact has not been verified by the AO, we restore this issue back to the file of the AO for the limited purpose of verification and if it is found to be correct then the credit to be given in accordance to law.

Resultantly, the appeal stand partly allowed to the extent indicated above.

ITA. NO. 1576/Mum/2022 (AY 2018-19)

17. This is an appeal preferred by the assessee against the order of the Assessing Officer dated 29.04.2022 for AY. 2018-19 passed u/s 143(3) r.w.s. 144C(13) of the Act.

18. Regarding Transfer Pricing issue, it has been pointed out that facts of this year are similar to that of AY 2015-16 and that the decision of ours in respect of TP issue for AY. 2015-16 would apply mutatis mutandis for this year also. It is noted that an adjustment of Rs.1,32,11,150/- has been made regarding the TP issue by applying the CUP method which action has been upheld by the Ld. DRP. We note that the facts and law are the same for the earlier assessment year ie. AY. 2015-16 and no change in facts or law could be pointed out to us. Therefore, the decision of ours in respect of TP issue for AY. 2015-15

shall apply mutatis mutandis to this year AY. 2018-19. Therefore, we direct the deletion of the TP adjustment of Rs.1,32,11,150/- on the same reasoning for allowing the TP issue for AY. 2015-16. Therefore, ground nos. 2 to 13 are allowed.

19. Ground no. 14 is regarding levy of interest u/s 234D of the Act. The AO is directed to compute interest u/s 234D of the Act in accordance to law after hearing the assessee.

20. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on this 30/06/2023.

Sd/-	Sd/-
(AMARJIT SINGH)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30/06/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**