

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI  
BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

1. ITA No. 687/Mum/2021 (A.Y. 2016-17)

2. ITA No. 544/Mum/2022 (A.Y. 2017-18)

&

3. ITA No. 2331/Mum/2022 (A.Y. 2018-19)

**Supermax Personal Care Pvt. Ltd.,**

Wagle Estate, PO-LBS Marg,

Thane (West),

Maharashtra-400 604

PAN – AAOCS7144Q

..... Appellant

Vs.

**DCIT – 3 (4),**

World Trade Centre, 29<sup>th</sup> Floor,

Cuffe Parade,

Mumbai-400 005

..... Respondent

Appellant by : Shri Subhash Gupta & Shri Ajinkya  
Kurdukar, Ld. ARs

Respondent by : Shri Rajesh Kumar Yadav, Ld. DR

Date of hearing : 01/02/2024

Date of pronouncement : 26/02/2024

## **ORDER**

### **PER GAGAN GOYAL, A.M:**

These appeals by assessee are directed against the order of Ld. CIT (DRP-2), Mumbai dated 24.02.2021, 21.12.2021 & 16.06.2022 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2016-17, 2017-18 & 2018-19 respectively. The assessee has raised the following grounds in ITA No. 687/Mum/2021 for A.Y. 2016-17:-

*On the facts and in the circumstances of the case and in law, the learned AO/learned TPO on fact and in law has:*

*1. Erred in determining the Appellant's total income at INR 73,69,91,370/- as against the returned income of INR 19,54,43,820/- disclosed under the normal provisions of the Act in the revised return filed by the Appellant.*

#### **Addition on account of transfer pricing adjustments**

##### **General**

*2. erred in making an adjustment of INR 49,33,80,333 to the total income of the Appellant under Section 92CA(3) of the Act on account of adjustment in the arm's length price of the international transaction of sale of raw materials and goods.*

##### **Rejection of functional and economic analysis undertaken by Appellant**

*3. erred in rejecting the functional and economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ("the Rules") in respect of the impugned international transaction of sale of raw materials and goods.*

*4. erred in violating the provisions of Rule 10B(1)(e) of the Rules, by not considering the comparison of net profit margin realized by the Appellant from an alleged controlled transaction vis-à-vis net profit margin realized by the Appellant from a similar uncontrolled transaction and thereby rejecting internal Transactional Net Margin Method ("TNMM") as the most appropriate method ('MAM').*

***Inappropriate acceptance of non-comparable companies and cherry-picking of comparable companies***

5. *without prejudice to the above, erred in including following companies as comparables, without undertaking any scientific search process for the purpose of identification of the said companies and without appreciating the functions performed, assets employed and risks undertaken:*

i. *Hindustan Unilever Limited (Personal Care segment);*

ii. *Colgate Palmolive (India) Limited; III. Gillette India Limited (Grooming segment);*

iv. *Procter and Gamble Hygiene and Healthcare Limited*

***Non consideration of the audited segmental profit and loss account***

6. *Erred in not considering the audited segmental profit and loss account submitted by the Appellant on the basis of untenable reasons.*

7. *Learned DRP has erred in upholding rejection of segment profit and loss accounts relying upon the DRP directions of AY 2012-13, AY 2013-14 and AY 2014-15, without appreciating the facts involved in AY 2016-17.*

***Incorrect computation of Appellant's entity level margin***

8. *without prejudice to the above, erred in computing the Appellant's net level margin at 0.41% (PLI as OP/OI), as against margin of 0.12% by considering Other Income of INR 339 lacs as non-operating, which comprises of insurance claim of INR 1 lacs and other miscellaneous income of INR 338 lacs.*

***Economic Adjustment***

9. *without prejudice to the above, appropriate economic adjustment should be granted to the Appellant for differences such as working capital employed by the Assessee vis a vis comparable companies.*

***Addition on account of corporate tax adjustments***

***Disallowance of additional depreciation under section 32(1) (ia) of the Act amounting to INR 3, 43,808/-***

10. *erred in disallowing 50% of the additional depreciation of INR 3,43,808 claimed under section 32(1)(ia) of the Act, by holding that such claim of 50% of the additional depreciation is not allowable in the immediately succeeding year to which the asset is put to use for less than 180 days.*

11. erred in not appreciating that the amendment to the third proviso to section 32(1) of the Act by Finance Act, 2015 allowing balance 50% of additional depreciation in the immediately succeeding year is clarificatory in nature and hence applicable to the captioned year.

**Disallowance of notional interest expenditure amounting to INR 73, 82,667/-**

12. Erred in disallowing notional interest amounting to INR 73, 82,667/- by holding that the Appellant has provided interest-free loans and advances.

13. Erred in not appreciating that where there are sufficient interest-free funds available, then it is to be presumed that interest free loans/ advances are given out of such interest-free funds and no disallowance of notional interest expenditure can be made.

**Non-grant of set-off of brought forward unabsorbed depreciation amounting to INR 4,04,40,744/-**

14. Erred in not allowing set-off of brought forward unabsorbed depreciation to the extent of INR 4, 04, 40,744/-, as claimed in the return of income filed under section 139(1) of the Act, while computing the total income of the Appellant.

**Non-grant of credit of self-assessment tax paid of INR 3, 93,730/-**

15. Erred in non-granting credit of self-assessment tax paid by the Appellant amounting to INR 3, 93,730/-.

**Incorrect levy of interest under section 234A of the Act of INR 44, 10,170/-**

16. erred in levying interest of INR 44,10,170 under section 234A of the Act without appreciating that the return of income was filed within the specified due date.

**Levy of interest under section 234B of the Act**

17. Erred in levying interest under section 234B of the Act.

*The above grounds of appeal are independent and without prejudice to each other.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Honorable Members to decide this appeal according to law.*

**ITA No. 544/Mum/2022 for AY 2017-18**

2. In the present appeal, the assessee has raised the following grounds:-

*On the facts and in the circumstances of the case and in law, the learned AO/ learned TPPO on fact and in law have:*

*1. Erred in determining the Appellant's total income at INR 77,37,46,936 as against the returned income of INR 22,45,33,750/- disclosed under the normal provisions of the Act in the revised return of income filed by the Appellant.*

**Addition on account of transfer pricing adjustments****General**

*2. Erred in making an adjustment of INR 54,92,13,186/- to the total income of the Appellant under Section 92CA(3) of the Act on account of adjustment in the arm's length price of the impugned international transaction relating to the manufacturing function.*

**Rejection of functional and economic analysis undertaken by Appellant**

*3. Erred in rejecting the functional and economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income-tax Rules, 1962 ("the Rules") in respect of the impugned international transaction relating to the manufacturing function.*

*4. Erred in violating the provisions of Rule 10B(1)(e) the Rules, by not considering the comparison of net profit margin realized by the Appellant from an alleged controlled transaction vis-à-vis net profit margin realized by the Appellant from a similar uncontrolled transaction and thereby rejecting Internal Transactional Net Margin Method ("TNMM") as the most appropriate method ('MAM').*

**Inappropriate acceptance of non-comparable companies and cherry-picking of comparable companies**

*5. without prejudice to the above, erred in including following companies as comparables, without undertaking any scientific search process for the purpose of identification of the said companies and without appreciating the functions performed, assets employed and risks undertaken:*

- i. Colgate-Palmolive (India) Ltd;*
- ii. Dabur India Ltd;*
- iii. Gillette India Ltd.;*

- iv. Hindustan Unilever Ltd.;
- V. McNroe Consumer Products Pvt Ltd;
- vi. Northern Aromatics Limited;
- vii. Oriental Aromatics Ltd;
- viii. Shingar Ltd;
- ix. VLCC Personal Care Ltd.
- X. Laser Shaving (India) Private Ltd; and
- xi. Proctor & Gamble Hygiene and Health Care Ltd

**Non consideration of the audited segmental profit and loss account**

6. Erred in not considering the audited segmental profit and loss account submitted by the Appellant on the basis of untenable reasons and without considering Appellant's own ITAT order for AY 2012-13.

7. Learned DRP has erred in upholding rejection of segment profit and loss accounts relying upon the DRP directions of AY 2012-13, AY 2013-14, AY 2014-15 and AY 2016-17, without appreciating the facts involved in AY 2017-18.

**Other grounds:**

*Excess levy of interest under section 234C of the Act*

8. Erred in levying excess interest of INR 33,030 under section 234C of the Act.

***Initiation of penalty***

9. Erred, in law and on facts, in initiating penalty proceedings under section 274 read with section 270A of the Act.

10. Erred, in law and on facts, in initiating penalty proceedings under section 271AA of the Act.

*The above grounds of appeal are independent and without prejudice to each other.*

*The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Members to decide this appeal according to law.*

**ITA No. 2331/Mum/2022 for AY 2018-19**

3. In the present appeal, the assessee has raised the following grounds:-

### **General Grounds**

*On the facts and in the circumstances of the case and in law, the learned AO / learned TPO on fact and in law have:*

*1. Erred in determining the Assessee's total income at INR 55,38,97,178/- as against the returned income of INR 30,01,55,680 disclosed under the normal provisions of the Act in the computation of income filed by the Assessee.*

### **Transfer Pricing Grounds**

*2. Erred in making an adjustment of INR 25,37,41,498/- to the total income of the Assessee under Section 92CA(3) of the Act on account of non-charging of interest from associate enterprises ('AEs') on outstanding trade receivables.*

### **Transfer pricing adjustment on account of notional interest on outstanding receivables amounting to INR 25,37,41,498/-**

*On the facts and in the circumstances of the case and in law*

### **Outstanding receivables is not an international transaction under section 92B of the Act**

*3. the learned TPO erred in appreciating the fact that the accounts receivables from AEs is an outcome of the international transaction and not an international transaction under section 92B of the Act, 1961 ('Act') and hence the transfer pricing regulations should not apply to the same.*

### **Recharacterisation of accounts receivables into loans is judicially not permissible**

*4. The learned TPO has erred in recharacterizing accounts receivables as loans without appreciating that recharacterisation of international transaction is not judicially permissible;*

*5. Erred in equating outstanding receivables with 'loan' or 'debt', considering the fact that 'loan' or 'debt' is extended under an agreement (express or implied) and is a specified sum of money which is always attached with an obligation of repayment.*

### **No business practice to charge interest on outstanding receivables or to pay interest on outstanding payables**

*6. The learned TPO erred in not considering the fact that there is no business practice in Appellant's business to charge interest on outstanding receivables and hence the Appellant has not charged interest from AEs as well as non AEs on delayed receivables. Thereby, no interest adjustment is warranted.*

**Outstanding receivables is inextricably linked with the principal transaction hence it is already benchmarked by the Appellant**

7. The learned TPO erred in not appreciating the fact that the overdue receivable from AEs should be aggregated with principal transaction of manufacturing and export of finished goods as it is directly and inextricably linked with it;

8. The learned TPO erred in not appreciating the fact that the Appellant had selected transactional net margin method ('TNMM') as the most appropriate method and accordingly the effect of outstanding receivables on its net operating margin was benchmarked along with other international transactions to which they are closely inter-linked, by undertaking a working capital adjustment.

9. without prejudice to the above, the learned TPO failed to appreciate that the Assessee has inherently factored interest element on outstanding receivables from AEs while pricing goods sold to AEs and when the invoices to AEs are discounted upfront with the banks, the said charges are recovered from the AEs without any mark-up.

**Other Grounds**

**Excess levy of interest under section 234C of the Act**

10. Erred in computing interest under section 234C of the Act on income determined under section 143(1) of the Act instead of the returned income, thereby levying excess interest of INR 10,396/-.

**Initiation of Penalty Proceedings under section 270A of the Act**

11. On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceedings under section 270A of the Act.

The above grounds of appeal are independent and without prejudice to each other.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Members to decide this appeal according to law.

4. These three appeals filed by the assessee and During the course of hearing, at the outset, we noticed that in the case of the assessee, the matter is pending before the Insolvency Professional in terms of the Insolvency and Bankruptcy

Code, 2016 ("the Code") and moratorium period has been declared as per section 14 of the Code. Apparently, the provisions of section 14 of the Insolvency and Bankruptcy Code, 2016, provides that all these suits or continuation of pending suits or proceedings against the corporate debtor including any **judgment or decree or order in any court of law, tribunal, arbitration panel or other authority cannot be passed during the moratorium period.** The period of moratorium shall have the effect from the date of such order till the completion of the corporate insolvency resolution process. In the present case, the appeal filed by the assessee is prohibited under section 14 of the Code. As held by the Supreme Court in case of *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P.) Ltd.* [2017] 88 taxmann.com 202, it has been held that even arbitration proceedings cannot be initiated after imposition of the moratorium under section 14(1) (a) has come into effect and it is not nice in law and could not have been allowed to continue. Further the Apex Court in the case of *Pr. CIT v Monnet Ispat and Energy Ltd.* [SLP (c) No: 6487 of 2018, dated 10-8-2018] has upheld overriding nature and supremacy of the provisions of the Code over any other enactment in case of conflicting provisions, by virtue of a *non-obstante* clause contained in section 238 of the Code. In view of this the appeals filed by the assessee cannot be continued to be allowed during the course of moratorium period. Further, the recent amendment to code provides that any resolution plan or liquidation order as decided by the competent authority would be binding on all the stakeholders **including the Central Govt., any State Govt. or local authority** to which a debt in respect of the payment of the dues may be owed. This will prevent State authorities, Regulatory bodies including Direct & Indirect Tax Departments from questioning the resolution plan or liquidation order as well as jurisdiction of

Tribunals with regard to the code. Thus therefore after recent amendment also there is no reason to continue with these appeals.

5. It was found that in terms of application filed by M/s. Nimbus Packaging LLP in its capacity as the Operational Creditors of the assessee (hereinafter referred to as Corporate Debtor), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4(1) of Insolvency and Bankruptcy (Application to adjudicating authority) Rules, 2016 before the Hon'ble Adjudicating Authority (A.A) i.e. National Company Law Tribunal at Mumbai Bench-IV (NCLT) for initiation of Corporate Insolvency Resolution Process (CIRP) of the corporate Debtor. The said application of CIRP has since been admitted by the Hon'ble NCLT, Mumbai-IV vide its order dated 11.01.2024 and consequent upon such admission the CIRP has commenced w.e.f. copy of order issued by the Hon'ble NCLT, Mumbai-IV is placed on record before us.

6. That pursuant to the admission of application of CIRP, the Hon'ble NCLT Mumbai-IV vide its said order has interalia appointed the Mr. Kshitiz Gupta (Registration Number: IBBI/IPA/-002/IP-N00721/2018-19/12140), as the Interim Resolution (IRP) for conducting the CIRP and exercise all powers and subject to all duties as contemplated under the provisions of the IBC. Moratorium period is also declared.

7. Further with respect to the appeals filed by the assessee also cannot be sustained as assessee did not furnish any permission obtained from National company law tribunal as held by the honourable madras High Court in *Mrs. Jai Rajkumar v. Standic Bank Ghana Ltd.* [2019] 101 taxmann.com 329 (Mad.). The assessee neither complied by filing proper letter of authority nor sought further

time. None of the directors remained present before us. Therefore, the appeal filed by the company in all the three appeals cannot be sustained in absence of any permission from the National company law tribunal or filing of the proper letter of authority by the insolvency resolution professional. Accordingly all the appeals with respect to above three companies filed by the assessee are dismissed with the liberty to file them a fresh appeal on completion of moratorium period or when corporate insolvency is resolved, as the situation may be.

8. In view of this, we dismiss the appeals filed by the assessee with the liberty to Assessee to file these appeals after moratorium period, if Assessee wants to continue with these proceedings, making the respective representative of committee of creditors, IRP. Thus, all the appeals of assessee with respect to these three years are dismissed.

**9. In the result, all the three appeals filed by the assessee are dismissed in above terms.**

Order pronounced in the open court on 26<sup>th</sup> day of February, 2024.

Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER  
Mumbai, दिनांक/Dated: 26/02/2024  
Sr. PS (Dhananjay)

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai

5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**