

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

BEFORE SHRI AMIT SHUKLA, JM  
AND  
SHRI PRASHANT MAHARISHI, AM

**ITA No. 1575/Mum/2022**

(Assessment Year: 2012-13)

Torrecid India Private limited  
Flat No.29, 30,31, GIDC Savli,  
Alindra, Vadodra-Gujarat  
Gandhinagar, Gujarat-391775

Vs.

The Dy. Commissioner of  
Income Tax- 11(3)(1)  
Aaykar Bhavan,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No. AADCT4321M**

**Assessee by** : Shri Jitendra Singh, AR  
**Revenue by** : Shri Vivek Anand Perampurana,  
DR

**Date of hearing:** 19.02.2024

**Date of pronouncement :** 20.03.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Torrecid India Pvt. Ltd,[ assessee / appellant], for A.Y. 2012-13 against the appellate order passed by The Commissioner Of Income Tax (Appeals)-58, Mumbai [the learned CIT (A)] dated 9<sup>th</sup> May, 2022, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) read with section 144(3) of The Income-Tax Act, 1961 (The Act) dated 26<sup>th</sup> may, 2016, was partly allowed.
02. The assessee aggrieved with the same has raised following grounds of appeal:-

*"Based on the facts and circumstances of the case, and in law, Torrecid India Private Limited (hereinafter referred to as 'the Appellant') respectfully craves leave to prefer an appeal against the order passed by learned Assessing Officer ("ld. AO") dated 26 May 2016 / Learned Commissioner of Income-Tax (Appeals) ("Ld. CIT(A)") dated 09 May 2022 under Section 250 of the Income-tax Act, 1961 ('the Act') on the following grounds:*

*1. Transfer Pricing Adjustment: INR 1,66,15,022/-*

- On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in making an adjustment of INR 1,66,15,022/- by virtue of computation of arm's length price of international transaction of import of raw materials and import of finished goods and spares from AEs vide its impugned order dated May 09, 2022.*

*2. Unjust rejection of Comparable Uncontrolled Price Method as the most appropriate Method:*

- On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding/confirming the action of the Id. TPO in unjust/erroneous rejection of Comparable Uncontrolled Price ("CUP") Method as the most appropriate method for purchase of raw materials and finished goods and adopting Transactional Net Margin Method ("TNMM") for the purpose of benchmarking the international*

*transactions between the appellant and its Associated Enterprises ("AES") for import of raw materials and import of finished goods and spares.*

- *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) further erred in rejecting the details submitted in support of CUP method by placing reliance on the observations made by the Ld. TPO.*

*3. Rejection of Foreign Associated Enterprise as the Tested party*

- *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding/confirming the action of the Id. TPO in unjust/erroneous rejection of Foreign AEs as the tested party for the international transaction.. of import of raw materials and finished goods.*

*4. Erred in rejecting Nilchem Industries Ltd. and accepting Golden Chemicals Pvt Ltd. as comparable companies to the appellant*

- *On a without prejudice basis, based on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in rejecting Nilchem Industries Ltd, which was selected by the assessee in its Transfer Pricing Study report.*
- *On a without prejudice basis, based on the facts and in the circumstances of the case and in law,*

*the Ld. CIT(A) erred in not rejecting Golden Chemicals Pvt Ltd. as it has different financial year end as compared to the appellant.*

*The above grounds of appeal are mutually exclusive & without prejudice to each other.*

*The appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case."*

03. The only grievance in the appeal is with respect to the transfer pricing adjustment of ₹1,66,15,022/-.
04. Brief facts of the case shows that assessee is a company engaged in the business of manufacturing and trading of ceramics, crits, glazes, colors and digital inks. It filed its return of income on 30<sup>th</sup> November, 2012, at a loss of ₹4,00,81,644/-. The case of the assessee was picked up for scrutiny by issue of notice under Section 143(2) of the Income-tax Act, 1961 (the Act) on 13<sup>th</sup> September, 2013.
05. As the assessee has entered into international transaction reference was made to the Dy. Commissioner of income Tax, transfer pricing, 4(2)(2), Mumbai [ the Id TPO] for determination of Arm's Length Price of the international transaction. According to the form no.3CEB filed by the assessee, it has entered into international transaction of (i) purchases of raw material and samples of ₹14,76,42,030/-, (ii) purchase of finished goods of ₹84,879,789/-, (iii) purchase of spare parts of ₹1,18,52,081/-, (iv) sale of Ceramic Frits of ₹16,51,121/-,

(v) provision of Indenting services (commission Income) of ₹38,10,687/-, (vi) Provision of design services of ₹98,753/-, (vii) interest on ECB of ₹9,37,923/- and (viii) interest on delayed payment of ₹11,56,760/-. The assessee is subsidiary of its foreign Associated Enterprises. These international transactions were benchmarked by the assessee adopting Comparable Uncontrolled Price (CUP) method as the Most appropriate method [ MAM] selecting foreign Associated Enterprises as tested party prices compared by adopting internal comparables that Associated Enterprises has sold comparable products to assessee as well as other non-AEs under similar circumstances submitting the date of sales for the year. Thus, international transactions were stated to be at arm's length.

06. The learned Assessing Officer examined the detail of sales as well as copies of the invoices raised by Associated Enterprises on assessee as well as non-Associated Enterprises. He found that transactions are geographically located differently, the description in the invoices differs and assessee did not furnish comparable prices of the material purchased by it. Further, the invoices raised are in different currencies, whereas, the chart furnished to support the Comparable Uncontrolled Price (CUP) and its conversion is different. Therefore, show cause notice was issued to the assessee and after considering the reply of the assessee, the learned Transfer Pricing Officer proposed to adopt the Transaction Net Margin Method (TNMM), as The Most Appropriate method. Assessee, however,

supported the CUP method as the most appropriate method. Assessee also carried out the analysis adopting TNMM, taking the Associated Enterprises as tested party. The learned Transfer Pricing Officer held that the benchmarking considered by the assessee is not reliable taking the foreign party as tested party where the inadequate data is available. The learned Transfer Pricing Officer carried out independent search adopting TNMM as the most appropriate method, selected 24 comparables, whose Profit Level Indicator (PLI) of OP/ Sales at an average of 10.02%, computed the margin of the assessee which is (-) 6.37% and therefore, proposed an adjustment of ₹3,58,28,077/- of international transaction of purchases of raw material, finished goods and spares from Associated Enterprises. No other adjustment were proposed on other international transaction and order under Section 92CA (3) of the Act was passed on 28<sup>th</sup> January, 2016.

07. Accordingly, the draft assessment order was passed on 22<sup>nd</sup> February, 2016, determining the total income of the assessee at a loss of ₹1,16,90,237/-. Over and above, the transfer pricing adjustment and certain other corporate additions were made which is not part of appeal before us.
08. The assessee vide letter dated 13<sup>th</sup> May, 2016, conveyed that it did not want to agitate before the learned Dispute Resolution Panel and therefore, the assessment order was passed on 26<sup>th</sup> May, 2016, at a loss of ₹1,16,19,237/-.

09. The assessee preferred the appeal before the learned CIT (A), wherein the transfer pricing adjustment was contested. Before the learned CIT (A), the assessee challenged MAM rejected by the learned Transfer Pricing Officer. The learned CIT (A) rejected the argument of the assessee and confirmed the action of the learned Transfer Pricing Officer in rejecting the CUP method as the most appropriate method. Thus, TNMM was held to be the MAM. . The assessee submitted certain additional evidences which are admitted and thereafter report of the learned Transfer Pricing Officer was also obtained which was replied by the assessee. After discussion and considering the reply of the assessee, six comparable companies were selected whose average PLI was considered as 2.47% and assessee's PLI was computed at (-) 5.10% and accordingly, transfer pricing adjustment of ₹1,66,15,022/- was confirmed.
010. The assessee is aggrieved with the same. Before us, it was contested that assessee is aggrieved with inclusion of one comparable in the comparability analysis namely Golden Chemical Private Limited having PLI of 8.88%. The assessee also aggrieved with exclusion of one comparable Nilchem Industries Ltd. Confirmed by the learned CIT (A).
011. With respect to both the comparables, a written submission was placed on record. The learned Departmental Representative is also heard.
012. We have carefully considered the rival contentions and perused the orders of the lower authorities. Briefly stated



facts show that assessee is engaged in manufacturing and sale of products entered in to international transactions of purchase of material i.e. raw material with finished goods and spare parts from the Associated Enterprises. Now before us in the grounds of appeal, assessee has challenged the transfer pricing adjustment of ₹1,66,15,022/-.

013. By ground no.2, assessee has also challenged that CUP method selected by it should be considered as the most appropriate method and further foreign Associated Enterprises selected by the assessee as a tested party is not accepted by the learned Transfer Pricing Officer. However, both these ground are not contested before us.
014. Therefore, now the only issue remains is with respect to the inclusion and exclusion of comparables accepting the Transactional Net Margin Method and PLI of OP/Sales as the correct parameters for benchmarking.
015. The assessee has objected the inclusion of Golden Chemicals Pvt. Ltd. in the comparability analysis having PLI of 8.88% by showing the annual report of Golden Chemicals Ltd. that the reporting period for that company for this assessment year is only for 9 months starting from 1<sup>st</sup> April, 2011 to 31<sup>st</sup> December, 2011. As the relevant financial data of comparable company is available only for 9 months, whereas, the accounting period of the assessee is for 12 months and in absence of non-availability of the data in case of comparable company from 1<sup>st</sup> January, 2012, to 31<sup>st</sup> march, 2012, as same being Private Limited

company, the above comparable for this reason is required to be excluded. Accordingly, the learned Transfer Pricing Officer is directed to exclude Golden Chemical Pvt. Ltd. from the comparability analysis. The appeal of the assessee on this issue succeeds.

016. The second argument of the assessee is with respect to comparable Nilchem Industries Ltd. The assessee's appeal is that should be included whereas; the learned CIT (A) has rejected the same. We find that in paragraph no.6.3.1, the learned CIT (A) on request of the assessee rejected this comparable by excluding it. Now before us, the assessee pleads that this comparable company should be accepted as it was not at all argued before the LD CIT (A) for its exclusion but only with respect to accepting correct margin. PLI of Nilchem Industries Ltd. is -3.27% and therefore, assessee wants the same to be included in the comparability analysis. The claim of the assessee is that the assessee has accepted the same in its transfer pricing submission which was also accepted by the learned Transfer Pricing Officer in its order. Further, it is the claim of the assessee that assessee does not file any claim before the learned CIT (A) for exclusion of Nilchem Industries Ltd. We find that in the remand report proceedings, the learned Transfer Pricing Officer included the above comparable company i.e. Nilchem Industries Ltd. having the margin of 10.78%. The assessee did not object to this comparable company for its exclusion but provided the correction in the margin. The learned Transfer Pricing Officer recomputed the margin of (-)



3.23%. Thus, we find that Nilchem Industries Ltd. is a comparable not in dispute between the assessee and the learned Transfer Pricing Officer, could not have been excluded by the learned CIT (A) when none of the parties contended so. Accordingly, we direct the learned Transfer Pricing Officer/ Assessing Officer to include the Nilchem Industries Ltd. as a good comparable.

017. In the result, ground no.4 of the appeal of the assessee is allowed and ground nos.1 to 3 are dismissed.

018. Assessee has also raised an additional ground on the validity of the assessment order which is not pressed before us and therefore, same is dismissed.

019. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20.03. 2024.

Sd/-  
(AMIT SHUKLA)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.03. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai