

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7270/DEL/2018
Assessment Year 2013-14

Addl. CIT Special Range-03 New Delhi	Vs.	M/s. Dayco Power Transmission Pvt. Ltd. M-34, Saket New Delhi-110017
TAN/PAN: AADCD5219J		
(Appellant)		(Respondent)

Appellant by:	Shri Sumit Kumar Bansal, CA		
Respondent by:	Ms. Ambika Aggarwal, Sr.DR		
Date of hearing:	02	04	2024
Date of pronouncement:	04	04	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-44, New Delhi ('CIT(A)' in short) dated 22.08.2018 arising from the assessment order dated 10.01.2017 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 144C(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the assessee read as under:

"1. Whether on facts and in circumstances of the case, the CIT(A) has erred in directing to exclude "Roto Pumps" from the final list of Comparables without appreciating the facts on the basis of which this company was included in the final list of Comparable by the TPO"

2. Whether on facts and in circumstances of the case, the CIT(A) has erred in directing to exclude "Simmonds Marshall Ltd.' from the final list of Comparables without appreciating the facts on the basis of which this company was included in the final list of Comparable by the TPO.

3. Whether on facts and in circumstances of the case, the CIT(A) has erred in directing to exclude the Interest earned on fixed deposit as operating profit while calculating the profit level indicator."

4. *Whether on facts and in circumstances of the case, the CIT(A) has erred in directing to consider the foreign exchange gain/loss as Non-operating while calculating the margin of assessee company as well as comparable companies.”*

3. Briefly stated, the assessee-company is stated to be engaged in manufacturing and distribution of broad range of timing belt tensioners / FEAD for automotive markets. Timing belt tensioners is stated to account for more than 90% of total sales. The activities performed by the company are spring characterization, milling, spring case assembly, riveting, pulley blot assembly and pressing. The assessee filed return of income declaring ‘Nil’ income and book profit of Rs.1,74,00,109/- for A.Y. 2013-14 in question. The assessee-company entered into international transactions of Rs.98,69,72,889/- as per report of the Chartered Accountant furnished under Section 92E relating to international transactions in Form No.3CEB prescribed for this purpose. The matter was referred to Transfer Pricing Officer under Section 92CA(1) for computation of arm’s length price (ALP) in relation to such international transactions. The Transfer Pricing Officer vide order dated 10.10.2016 under Section 92CA(3) applied TNMM as most appropriate method with OP/OC as PLI towards sale of finished goods to its AEs. The TPO however identified three more companies statedly engaged in manufacturing assembly of similar products in addition to the companies selected in the TP study report filed by the assessee for the purposes of benchmarking the international transactions and for arriving at arm’s length price of sale of finished goods. Based on the inclusion of the new comparables, the TPO proposed adjustment of Rs.3,45,20,524/- while determining computation of arm’s length price. The AO accordingly adopted the TP adjustment recommended by the TPO while framing the assessment order dated 10.01.2017 under Section 143(3) r.w. Section 144C of the Act and enhanced the returned income by such proposed adjustment.

4. Aggrieved, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee *inter alia* challenged consideration of two

companies as comparables for the purposes of determination of ALP by the TPO and in turn by the AO.

4.1 The assessee challenged the inclusion of comparable namely 'Roto Pumps Ltd.' and 'Simmonds Marshall Ltd.' on the grounds of product dissimilarity. It was contended that Roto Pumps Ltd. manufactures pumps mainly for non-auto sector such as oil, gas, sugar, marine, chemicals, foods and beverages etc. whereas the assessee-company manufactures core engine part for four wheelers. Consequently, the operating margins of the product manufactured by Roto Pumps are not comparable with that of assessee-company.

4.2 Similarly, it was contended before the CIT(A) that Simmonds Marshall Ltd. also cannot be treated as comparable company for the determination of ALP owing to Product dissimilarity. This company manufactures fastener such as nuts, bolts and screws which are non-core auto components as compared to four wheelers engine components manufactured by the assessee-company. It was thus contended that the PLI of such comparables are not functionally comparable with that of assessee-company.

4.3 The CIT(A) on consideration of the factual matrix found merit in such plea and excluded the comparables namely, Roto Pumps and Simmonds Marshal Ltd. for the purpose of determination of ALP which were earlier introduced by the TPO/AO. The CIT(A) dealt with the issue as under:

"3.13 Ground No. 6 pertains to various contentions raised by the appellant pertaining to the application of TNMM method and rejection of segmental accounts by the AO/TPO. The specific contention of the appellant are discussed as follows: -

(A) The appellant has submitted that the AO/TPO had erred in modifying the transfer pricing analysis of the appellant and including three more comparables. The appellant has objected to the following comparables:

(i) Roto Pumps:

(a) The main contention of the appellant is that the above mentioned

company manufactures centrifugal pumps which are not used in auto industry but are used in other sectors. The appellant has submitted that the above-mentioned company manufactures pumps mainly for non-auto sector such as oil, gas, sugar, marine, chemicals, food and beverages etc. The appellant has stated that it is not comparable to the above mentioned company as it is engaged in manufacture of core-engine part of four wheelers.

(b) The appellant has relied upon the Annual Report of the company placed on record. I agree with the contention of the appellant that the above-mentioned company is functionally dissimilar to the appellant as the taxpayer is engaged in the manufacture of timing belt tension which is a component for the auto industry. In view of the above the AO/TPO is directed to exclude the above-mentioned company from the final set of comparables. The contention of the appellant is accordingly disposed off.

(ii) Simmonds Marshall Ltd:

(a) The main contention of the appellant is that the above-mentioned company manufactures fasteners and hence is functionally dissimilar to the appellant which is engaged in the manufacture of timing belt tension which is a component for the auto industry. The appellant has submitted that the above-mentioned company manufactures fasteners like nuts, boards and screws which are non-code auto components as compared to the four wheeler engine components manufactured by it.

(b) The appellant has relied upon the Annual Report of the company placed on record. In view of the above, the AO/TPO is directed to exclude the above-mentioned company from the final set of comparables. The contention of the appellant is accordingly disposed off.

(B) The appellant has also submitted that the AO/TPO had ignored the capacity utilisation adjustment submitted by the appellant during the course of assessment proceedings. The appellant has not submitted any data regarding the capacity utilisation of the comparable companies selected in the final set. While the contention of the appellant may be theoretically correct, it is not possible to uphold the same as the appellant has not compared the capacity utilisation of the comparable companies with itself. In view of the same the contention of the appellant is not accepted. The contention of the appellant is accordingly disposed off.

(C) The appellant has submitted that the AO/TPO calculated the profit level indicator on the basis of current data and did not take into account previous two years data as had been done by the appellant. The contention of the appellant is not accepted as the taxpayer has not shown how previous years economic financial and commercial variables impacted its profitability in the current year. The contention of the appellant is accordingly disposed off.”

5. Aggrieved by the exclusion of two comparables named above, the Revenue preferred appeal before the Tribunal as per Grounds No.1 and 2 of the appeal.

6. At the time of hearing, the Id. DR for the Revenue referred to and relied upon the order of the TPO and that of AO.

7. Per contra, the Id. counsel for the assessee supported the order of the CIT(A) and submitted that the product manufactured by the assessee-company are wholly different from that of the products manufactured by Roto Pumps and Simmonds Marshall Ltd. as demonstrable from the Annual Report of these companies and consequently, the AO/TPO had clearly erred in modifying the Transfer Pricing Analysis of the assessee by including these two comparables for the purpose of determination of ALP of international transactions. The CIT(A) has rightly held that the exclusion of these two comparables for the purposes of determination of ALP is justified on account of gross functional dissimilarity in nature of product manufactured.

8. We have carefully considered the rival submissions and perused the material available on record.

9. We take note of the contentions of the assessee and observe at the outset that the comparable companies in dispute namely, Roto Pumps and Simmonds Marshal Ltd. are engaged in totally dissimilar business and financials of such comparable companies selected by the TPO would give wholly incongruent results owing to overwhelming product dissimilarity. The AO/TPO to our mind wrongly modified transfer pricing analysis of the assessee by wrongfully including these two companies with inherent dissimilarity. The CIT(A) has set right the glaring error committed by the AO/TPO. We thus see no reason to interfere with the finding of facts arrived at by the CIT(A). The grievances raised by the Revenue as per its grounds no.1 and 2 are thus devoid of any merit. Hence, we decline to interfere.

10. Grounds No.1 and 2 of the Revenue's Appeal are thus dismissed.

11. We now advert to Ground No.3 of the Revenue's Appeal whereby the Revenue has challenged the action of the CIT(A) to include the

interest earned on fixed deposits as part of operating profit while calculating Profit Level Indicator (PLI) for the purposes of comparability analysis.

11.1 In this regard, the ld. counsel for the assessee *inter alia* submitted that the view was taken in favour of the assessee by the CIT(A) based on alternative ground i.e. ground no. 6(d) of its grounds of appeal before CIT(A). In this regard, the ld. counsel submits that once the comparables namely, Roto Pumps and Simmonds Marshall Ltd. are excluded for the purposes of comparability analysis and determination of ALP, nothing turns on grievances of the Revenue in present appeal emanating from alternative ground raised before the CIT(A).

11.2 The Revenue has not rebutted such observations on behalf of the assessee.

11.3 Ground No.3 thus does not call for any adjudication in the absence of any adverse impact on the interest of the Revenue.

11.4 Ground No.3 is thus summarily dismissed as infructuous.

12. Ground No.4 concerns the challenge of the Revenue on the action of the CIT(A) to consider foreign exchange gain / loss as non-operating in nature while calculating the margins of the assessee-company as well as comparable companies for the purposes of determination of ALP.

12.1 The ld. counsel for the assessee pointed out on the similar footings that once the comparative analysis with reference to Roto Pumps and Simmonds Marshall Ltd. is set right are excluded, the adjudication of such grievance raised on behalf of the Revenue becomes inconsequential due to absence of any adverse impact on the interest of the Revenue.

12.2 The Revenue has again not rebutted such observation.

12.3 In consonance with the view taken in Ground No.3 of the Revenue's Appeal, we do not see any perceptible reason to examine the

point in issue being immaterial at this stage.

12.4 Ground No.4 of the Revenue's Appeal is thus summarily dismissed as infructuous.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 04/04/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: **/04/2024**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**