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

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.4780/Mum/2017
(**Assessment Year :2010-11**)
&
ITA No.4781/Mum/2017
(**Assessment Year :2011-12**)

The Dy. Commissioner of Income Tax-9(2)(1) Room No.665A, 6th Floor Aayakar Bhavan M.K. Marg Mumbai – 400 020	Vs.	M/s. Bunge India Pvt. Ltd., The Capital, 601C & 601D, 6th Floor,C-70 G Block, Bandra Kurla Complex, Bandra (E) Mumbai-400 051
PAN/GIR No.AAACG7034K		
(Appellant)	..	**(Respondent)**

CO No.322/Mum/2018
(Arising out of ITA No.4780/Mum/2017)
(**Assessment Year :2010-11**)
&
CO No.324/Mum/2018
(Arising out of ITA No.4781/Mum/2017)
(**Assessment Year :2011-12**)

M/s. Bunge India Pvt. Ltd., The Capital, 601C & 601D, 6th Floor,C-70 G Block, Bandra Kurla Complex, Bandra (E) Mumbai-400 051	Vs.	The Dy. Commissioner of Income Tax-9(2)(1) Room No.665A, 6th Floor Aayakar Bhavan M.K. Marg Mumbai – 400 020
PAN/GIR No.AAACG7034K		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Vispi T Patel
Revenue by	Shri Byomkesh Panda
Date of Hearing	**01/05/2024**
Date of Pronouncement	**08/05/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the Revenue and cross objections by the assessee against separate impugned order of even date 30/03/2017 passed by CIT(A)-55, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 92CA(4) for the A.Y.2010-11 and 2011-12.

2. The common grounds raised in both the appeals are same except for variation of figures which reads as under:-

A.Y. 2010-11

"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.40,34,85,185/-(40,46,74,637 - 11,89,452) out of Rs.40,46,74,637/- u/s 92CA of the Income-tax Act, 1961, made by the Transfer Pricing Officer/ Assessing Officer, by upholding the CUP method adopted by the assessee ignoring the fact that the TPO had applied TNMM method which has been upheld by the ITAT in the assessee's case for A.Y.2005-06, A.Y.2006-07 and A.Y.2007-08"

A.Y.2011-12

Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the adjustment of Rs. 10,87,40,644/-(10,90,79,024 -3,38,380) out of Rs. 10,90,79,024/-

u/s 92CA of the Income-tax Act, 1961, made by the Transfer Pricing Officer/ Assessing Officer, by upholding the CUP method adopted by the assessee ignoring the fact that the TPO had applied TNMM method which has been upheld by the ITAT in the assessee's case for A.Y.2005-06, A.Y.2006-07 and A.Y.2007-08"

3. At the outset ld. Counsel for the assessee Shri Vispi T Patel submitted that this issue now stands covered by the decision of ITAT in assessee's own case right from A.Y.2005-06 to 2009-10 and for A.Y.2012-13. He further submitted that ITAT order for A.Y.2005-06 and 2006-07 have also been confirmed by the Hon'ble High Court in revenue's appeal.

4. The controversy in short here is, whether adjustment should be applied on international transaction only or at entity level even if TNMM is treated as Most Appropriate Method. **In cross objection the assessee has stated that benefit of proviso to Section 92C(2) (+/-) 5% shall be given when that is taken into consideration then, no adjustment can be made**.

5. The brief facts are that Assessee Company is engaged in the business of oil seed crushing and refining and producing solvent oil, refined oil and Vanaspati. The assessee in his form 3CEB has reported various international transactions and adjustment has been made on the transaction of import of soyabean oil , palm oil etc., from "Bunge Singapore" for manufacturing activity. In the TP study report, assessee applied CUP as MAM for determining the ALP for import of crude oil, that is, the price at which the same product were sold by Bunge Singapore to independent third parties in India. The ld. TPO observed that in the earlier years CUP method has been rejected and TNMM has been

applied as Most Appropriate Method and accordingly, the ld. TPO by taking external comparables under TNMM made upward adjustment of Rs.40,46,74,637/- in the A.Y.2010-11 and Rs.10,90,79,024/- in the A.Y.2011-12. The ld. TPO has searched for comparable companies dealing in vegetable oil and proposed to apply mean operating margin of 1.79% of these comparables on the assessee which was arrived by adopting operating profit upon sales (OP/ Sales) at entity level and applied the same on entire operating sales of Rs.1426.13 Crores for A.Y. 2010-11; and by taking arithmetic mean of 2.33% OP/Sales on entire sales at Rs.1473.35 Crores in A.Y.2011-12.

6. Before the ld. CIT(A) it was contended that in the past, i.e. for A.Y. 2006-07 to A.Y. 2009-10, CUP method has been consistently accepted by ld. CIT(A) and has been upheld that the CUP method as applied by the assessee is a valid external CUP in this transaction, therefore, no adjustment is called for. He has deleted the adjustment by appplying CUP as benchmarkerd by the assessee.

7. We find that this issue has been discussed in the Tribunal order consistently right from A.Yrs. 2005-06 onwards. For the sake of ready reference, the Tribunal order for A.Y.2012-13 wherein earlier order has been considered reads as under:-

33. We note that in the case of the Assessee, the appeal for the Assessment Year 2008-09 and 2009-10 were disposed off by the Tribunal vide common order, dated 08/04/2021 passed in ITA No. 7738/Mum/2012 & 4771/Mum/2015, Cross Objection Nos. 234/ Mum/2014 & 149/Mum /2015 [Reported in [2021] 127 taxmann.com 21 (Mumbai Trib.)) holding as under:

5 The learned AR supported the adoption of CUP method by submitting that this method has been accepted in earlier as well as subsequent Assessment. Further, the benchmarking analysis carried out by the company was in accordance with provisions of Section 92C(1) read with rule 108(1)(a) and having regards to benefit of tolerance range as available under second proviso to Section 92C(2) of the Act. It was also submitted that since the assessee was in possession of valid internal as well as external CUP, the said methodology was most appropriate method to benchmark the transactions.

6. However, the Ld.AR was confronted with Tribunal order for AYS 2005-06 to 2007-08 which upheld the application of TNMM to benchmark these transactions. In that eventuality. Ld.AR alternatively assailed the benchmarking done by Ld. TPO using TNMM method. It was submitted that the adjustments, if any. was to be restricted to the extent of international transactions carried out by the assessee only and not to the entire segment of manufacturing activity. The Ld. AR submitted that it the adjustments were so restricted, the margin would be within permissible limit of +5% and therefore, the additions would not be sustainable. The working of the same has been placed on record. The Ld. AR submitted that no adjustment shall remain as per the above calculation, duly following the Tribunal order in assessee's own case for AY 2005-06. The Ld. DR, on the other hand, assailed the impugned order by supporting the benchmarking done by Ld. TPO by adoption TNMM method. The Ld. DR drew our attention to para-10 of the Tribunal order.

7. We find that the impugned issue is recurring in nature in assessee's case. The dispute as to adoption of most appropriate method as well as computation of margins etc. using TNMM method was the subject matter of revenue's appeals as well as assessee's cross-objections before this Tribunal in AYs 2005-06 to 2007-08 (ITA Nos. 4336/M/2009 & ors, common order dated 18/05/2016). Upon perusal of the same, we find that this issue has been adjudicated by the Tribunal for AY 2005-06 in the following manner:

7 Next two grounds deal with deleting of additions by the FAA with regard to import of raw material and related issues including the treatment to be given to the segmental accounts. During the TP proceedings, the TPO found that the assessee had entered into International Transaction relating to import of soyabean oil, palm oil and Palmoline oil as well as export of soya bean meal and rapeseed meal, that it had used CUP method with regard to the international transactions. However TPO was of the opinion that CUP was not the MAM. So, he applied TNMM. He drew segmented 8 account and examined the performance of segment other than MTA and other incomes. According to the TPO's working operating profit of the assessee was ()6.94%. For applying TNMM he took 26 comparables but later on excluded 5. In response to the show cause notice issued by TPO, the assessee contended that it had correctly used the CUP method, that in the earlier two years TPO had accepted the said method for determining the ALP, that the rates of CUP with regard to import of crude oil could not be compared to rates of merchanting trade of the same commodity. The TPO observed under the TP Regulation ALP of a transaction could vary year to year depending upon economic conditions and comparability of the provisions, that CUP rates, applied by the assessee, were not exactly identifiable, that the same commodity was transacted at different rates in MTA, that assessee was not able to provide the resale margin of the crude oil sold in the local market, that soyabean meal was sold at a different rate as compared to the export to the AEs.

8. During the appellate proceedings, the FAA directed the TPO to submit a remand report. The TPO issued a show cause notice and proposed operating profit margin of Rs.2.92 crores to be applied on the operating income of Rs.806.56 crores as against assessee's operating loss of Rs.56.01 crores. After considering the submission of the assessee, the TPO re-worked the operating margin of comparable companies@ 2.63%. After making adjustment to the operating expenses (unutilized capacity and non operating expenses) of the assessee, the operating loss was reduced to Rs.29.54 crore. Accordingly, the mean operating margin of the comparables, i.e. 2.36% was applied to the operating income of Rs.809.54 crore resulting in arms length profit of Rs. 19.10 crore. He adjusted the loss, entered by the

assessee, of Rs.29.54 crores and made an adjustment of Rs.48.65 crore to the import price. As a result there was an overall reduction in the import price of the assessee. As it was more than 5% (54.27%) allowable under the proviso to section 92C(2) of the Act, so, the assessee was not given the benefit.

Before the FAA, it was argued that CUP was MAM, that the imports made were for its own consumption, that it was not possible for the assessee to identify specific shipment with consumption in manufacturing or re-sale, that the TPO had failed in applying CUP, that he had not brought any evidence or document to reject other comparable transaction as provided by the assessee, that while applying the TNMM he had not accepted all the adjustment proposed by the assessee, that the unutilized capacity in respect of power, fuel etc, was considered at nil as against 20% claimed by the assessee, that it resulted in a higher operating loss by Rs.3.81crore, that factory, salary and wages on account of under utilisation capacity was also taken at nil by the TPO as against 70% claimed by the assessee, that it resulted in a higher operating loss by about Rs.5.46 crore, that the depreciation on tangible assets and under utilisation resulted in higher loss of Rs.2.20 crore, that the deferred revenue expenditure of Rs.1.05 crores resulted in a reduction of operating expenses by Rs.1.05 crores, that the claim made by the assessee to accept revised margin of 1.07% was not conceded by the TPO.

The FAA held that the computation of revised margin was not considered by the TPO, that TPO was not correct in his remand report that no reasons were given by the assessee for taking segmental results of six companies whereas whole company results for remaining 20 companies, that for rejecting the CUP method TPO had given valid reasons, that TNMM was more appropriate method with regard to adjustment to be made. The FAA held that the TPO in the remand report had summarily concluded that non operating expenses, resulting from abnormal items, were correctly accounted for, that the contention of the TPO was not factually correct, that the TPO 9 had allowed, while considering the claim for reduction of operating expenditure, due to unutilised capacity as abnormal depreciation on tangible assets, that he had adopted 50% of the total expenditure, that he had considered the optimum capacity at 60% and not 100% that he

had arrived at abnormal expense of 50% of total expenses by the assessee as against 70%. The FAA allowed Rs.3.81 crores under the head power and fuel, repairs and maintenance of building plant and machinery to the extent of 5/7th of the expenses and observed that the loss would be reduced by Rs.2.72crore. The FAA allowed Rs.5.46 crore under the heads salary and wages(5/7th of the expenses) further reducing the loss by Rs.3.90 crore. Deferred Revenue expenditure of Rs.1.05 crore was also allowed, increasing the loss by the same amount. The FAA re-worked the segment account to determine the ALP and arrived at the conclusion that there was a difference of Rs. 43.07crore to the operating cost of the assessee. He observed that if the difference was to be allocated on import of goods from AEs, as done by the TPO, the adjustment would lead to an overall reduction of 31.15% to the import price of goods from the AEs. It was further observed by the FAA that while making adjustment to ALP of export vis-a-vis MTA the TPO had applied arithmetic mean of operating margin on cost on uncontrolled companies of 6.44%, that it was applied to international transaction of sale to the AEs, that same resulted in adjustment of 6.24% of the value, that the TPO had denied the benefit of proviso to section 92C(2), that when comparable trading companies 'operating margin on cost of 0.94%was applied it was clear that assessee's OPM was higher than comparable margin, that the export to AEs was at arm's length, that the ALP for export was lower than the export recorded in the books of account, that the TPO had made adjustment vis-a-viz only the import of goods from the AEs, that manufacturing operations had resulted in loss after the assessee acquired various businesses during the year under consideration. The assessee had requested that adjustment of Rs. 43.07crore should be spared over the total operating cost of Rs. 790.44 crore after giving effect to ± 5% range. Finally, the FAA concluded that the adjustment made by TPO resulted in overall reduction to the import price of goods by 54%, that even after providing additional relief there was only partial reduction in the TP adjustment, that it went against the very principle of profit based method, that the adjustment had no consonance to the reality of the situation, that the TPO had approached an incorrect method, that the application of CUP analysis showed that fluctuation in prices of agricultural commodities was at maximum 5%, that adjustment of high discount of 54% or lower could not be said to be in justifiable, that transfer pricing was not an exact

science, that it was an art wherein principles of law, economics and business were applied to achieve equitable results, that application of CUP and TNMM gave very wide variation, that TNMM led to adjustment of 31.15% even after allowance of partial relief as compared to an adjustment under CUP of about 5%, that assessee was justified in claiming that while applying TNMM totality of the operations should be considered, that the exercise should not be centered on international transactions. After making above observations, the FAA reworked the ALP of international transaction of import of goods in manufacturing activity as under:

	Rupees
Adjusted operating expenses of the assessee shown in (E) above.	*7,90,44,26,285*
105% of the above (applying ± 5% as per Proviso to Section 92C(2)- Arms length operating cost-(F)	*8,29,96,47,599*
Total Operating expenses of the assessee as per (B) above	*8,33,51,92,616*
Difference to be adjusted towards international transactions of import of goods from AEs assessee (F-B) assessee (G)	*(3,55,45,017)*
International transactions of goods imported from AEs - (H)	*138,28,94,614*
Arms length price of international transactions of goods imported from AEs assessee (H-G) assessee - (I)	*134,73,49,597*

On the basis of above adjustment, the import price of goods was determined at Rs.3.55 Crore as against Rs.48.65 Crores determined by the TPO. As a result, the assessee got a relief of Rs.45.09 Crores.

9. Before us, the DR relied upon the order of the TPO. The AR argued that the assessee had acquired DALDA brand from HLL, that the said acquisition would take some years to fructify, that the assessee had to be extra ordinary costs in that regard, that it had to incur significant start-up costs to establish the newly acquired brands in the initial years of acquisition, it was not able to fully utilise its manufacturing capacity, that there was extraordinary unutilised capacity, that it had calculated revised margin of 20 comparables selected by the TPO and had arrived at the arithmetic mean of 1.07% (page 222 of the paper book), that the same was not considered by the TPO, that though the FAA had stated that revised margin (1.07%) had to be taken he had erroneously, by oversight, took 2.36% while calculating the adjustment, that if the correct margin (1.07%) of comparables was taken then the international transactions of the assessee of import of oil would be within the permissible limit of +/-5%, that TP adjustment should have been made only on international transactions, that the FAA had calculated the amount of adjustment to Rs. 3.55 crores, that if the correct margin of 1.07% of the comparables was adapted then the assessee's international transaction of import of oil would be within the permissible limit of+/-5%.

10. We find that the TPO had made an adjustment of Rs. 48.65 crores to the entire segment of manufacturing activities instead of making the adjustment to only international transactions, that it had an effect of reducing the import price by 54.27%, that the FAA had reworked the adjustment after considering the extra ordinary items that would affect the profit margin of the assessee for the year under consideration, that the factors like underutilisation of capacity and non-operating expenditure was given due importance by the FAA, that the assessee had calculated revised margin of the 20 comparables selected by the TPO, that the arithmetic mean arrived at by the assessee was not considered by him, that FAA had held that TPO was incorrect in not considering the revised calculation of margins, that the FAA had objected to the treatment given to the six comparable where the TPO had not taken the segments based on their economy profile, that the FAA had mentioned that revised margin (1.07%) had to be adapted for determining adjustments and the resultant ALP. In our opinion, the

TPO was not justified in making adjustment to the entire segment of manufacturing activity and not restricting the same to the international transactions. We find that in the cases of Tara Jewels Exports Pvt. Ltd(ITA No.1814 of 2013) and Thyssen Krupp Industries India Pvt. Ltd. (ITA No. 2201 of 2013), the honorable Bombay High Court has held that for making adjustment as per the provisions of chapter X of the act transaction with AEs of an assessee had to be considered. We would like to reproduce the relevant portion of the judgement of Thyssen Krupp Industries India Pvt. Ltd. (supra)

> *"We find that in terms of chapter X of the Act, the determination of the consideration is to be done only with regard to income arising from international transactions on determination of ALP. The adjustment which is mandated is only in respect of international transaction and not transactions entered into by assessee with independent unrelated third parties. This is particularly so as there is no issue of avoidance of tax requiring adjustment in the valuation in respect of transactions entered into with independent third parties. The adjustment as proposed by the revenue if allowed would result in increasing the profit in respect of transactions entered into with non-AE. The adjustment is beyond the scope and ambit of chapter X of the Act.*
>
> *We find that while reworking the adjustment, the FAA had taken the margin at the rate of 2.36%. We find that the assessee had not filed any application before the FAA pointing out the apparent mistake in adopting the revised margin i.e. adopting the rate of 2.36% instead of rate of 1.07%. Considering these facts, we are of the opinion that matter should be restored back to the file of the AO/TPO to verify the fact and decide the value of the adjustment by taking appropriate revised margin rate. Grounds No 2 and 3 are decided accordingly."*

8. We find that revenue assailed the aforesaid adjudication of Tribunal before Hon'ble Bombay High Court vide ITA Nos. 445 of 2017, AY 2005-06; dated 03/06/2019 wherein Hon'ble Court has refused to admit substantial question of law with following observations:

"2. The issues arise out of the Tribunal's judgment concerning the correct method to be applied for determining arm's length price of the international transaction between the assessee and the associated enterprise. The Transfer Pricing Officer ("TPO" for short) had made the adjustment to the entire segment of the manufacturing activity instead of making the adjustment for only international transaction. The Tribunal held that the TPO was not justified in making adjustment to the entire segment of manufacturing activity without restricting the same to the manufacturing transaction. The Tribunal in the process relied upon and referred to the decision of the Division Bench of this Court in case of Commissioner of Income Tax Vs. Tara Jewels Exports P. Limited. The principles laid down in the said decision have been followed consistently in later decisions such as in cases of Commissioner of Income Tax Vs. ThyssenKrupp Industries India P. Ltd. and Commissioner of Income Tax Vs. Alstom Projects India Ltd. In the result, do not find any error in view of the Tribunal. The appeal is dismissed."

Therefore, we find that the issue of adoption of TNMM and the issue of manner of TP adjustment which is to be done, as of now, has attained finality and the aforesaid decision is binding upon us.

9. Proceeding further, straightway going to the alternative plea of Ld. AR that even if TNMM method is accepted, the assessee's margin. after providing benefit of tolerance range of +5%, would be within Arm's Length Price. The working of the same has been placed in the paper-book. Keeping in view the earlier decision of Tribunal as referred to in paras 7 & 8, the bench is inclined to accept this plea. Therefore, without delving much deeper into the issue, we direct Ld. TPO to apply TNMM but restrict the adjustments only to the extent of international transactions carried out by the assessee and not to entire segment of manufacturing activity. The Ld. TPO is directed to verify the computations made by the assessee and decide accordingly. The benefit of tolerance range of +5%, as provided in law, would be available to the assessee.

Consequently, the revenue's ground, to that extent, stands allowed which would render assessee's cross-objection (Emphasis Supplied)

8. From the perusal of the aforesaid order, it is seen that the Tribunal has decided this issue on a very different ground. The Tribunal instead of going on the issue, whether CUP is valid MAM qua this transaction of import of oil or not, albeit has gone on alternative plea that even if TNMM is accepted is applied as done by the by the TPO on his set of comparables, then he cannot make adjustment on the entire segment of manufacturing activities, instead adjustment should be restricted to international transaction. It was held that TPO is not justified in making adjustment to the entire segment of manufacturing activity and it was accordingly restricted to the international transaction of import of oil only even if TNMM is held to be as Most Appropriate Method is applied then TP adjustment should be restricted to international transaction only and benefit of tolerance range of +/-5% has to be granted to the assessee.

9. We further find that in earlier years exactly same issue had travelled up to the Hon'ble Bombay High Court in the appeal filed by the Revenue u/s.260A, wherein following question of law was admitted.

"(i) Whether on the facts and circumstances of the case and in law, the ITAT was correct in setting aside the adjustment made by the TPO in respect of import of raw material to the file of the TPO, for pro-rata adjustment considering only the AE transactions, when this was not a ground raised either by Revenue or by the assessee and segmental accounts (in respect of AE and non-AE transactions were not available in the case?

(ii) Whether on the facts and circumstances of the case and in law, the ITAT was correct in facts Priya Soparkar 225 itxa 445-17-o and circumstances of case and in law, in terms of Rule 10B(1)(e), under the Transaction Net Margin Method (TNMM), it is permissible to apply the net profit margin realized by the assessee from the entity as a whole in place of the net profit margin realized by the assessee from the international transaction entered into with the AE?"

Hon'ble High Court in ITA No.445/Mum/2017, judgment and order dated 03/06/2019, had observed and held as under:-

"2. The issues arise out of the Tribunal's judgment concerning the correct method to be applied for determining arm's length price of the international transaction between the assessee and the associated enterprise. The Transfer Pricing Officer ("TPO" for short) had made the adjustment to the entire segment of the manufacturing activity instead of making the adjustment for only international transaction. The Tribunal held that the TPO was not justified in making adjustment to the entire segment of manufacturing activity without restricting the same to the manufacturing transaction. The Tribunal in the process relied upon and referred to the decision of the Division Bench of this Court in case of Commissioner of Income-Tax Vs. Tara Jewels Exports P. Limited1. The principles laid down in the said decision have been followed consistently in later decisions such as in cases of Commissioner of Income Tax Vs. Thyssen 1 (2016) 381 ITR 404 (Bom) Priya Soparkar 3 25 itxa 445-17-o Krupp Industries India P. Ltd.1 and Commissioner of Income Tax Vs. Alstom Projects India Ltd. 2. In the result, do not find any error in view of the Tribunal. The appeal is dismissed."

9.1 Exactly similar matter has been decided in Income Tax Appeal No.445 of 2017 also by Hon'ble Bombay High Court in order dated 03/06/2019.

10. Thus, once this issue has been settled from the stage of Hon'ble High Court holding that TPO cannot make adjustment to the entire segment of manufacturing activity and only to the extent of international transactions, which is also in conformity with the earlier judgments of Hon'ble Bombay High Court in the case of CIT vs. Tara Jewels Exports Pvt. Ltd reported in 381 ITR 404 and CIT vs. Alstom Projects India Ltd. reported in 394 ITR 141, then consistent with the view, we hold that adjustment should be made only on international transaction. Further, as per law, assessee should be given benefit of *proviso* to Section 92C (2) of +/-5%. And if that is so, then no adjustment is left to be made then, transaction is at arm's length. For the sake of ready reference, the working of +/-5% range for A.Y.2010-11 and 2011-12 is reproduced hereunder:-

Analysis of 5% range for AY 2010-11 (**Actual Calculation)**

Particulars		Amount in INR
Operating Income as per TP Order	(A)	14,26,31,91,879
Operating Expenses as per TP Order	(B)	14,41,25,55,381
Operating Profit		-14,93,63,502
International Transaction (import)	(C)	69,35,84,287

Proportionate operating income	(D) = A * C/B	68,63,96,375
Arm's Length Profit Margin earned by comparable companies (OP/OI) as per TP Order	(E)	1.79%
Arms' Length Profit	(F) - E * D	1,22,86,495
Arm's Length Import Price	(G) = D - F	67,41,09,880
Difference between ALP and IT	(H) - C - G	1,94,74,407
+/-5% of International Transaction	(I) = C * 5%	3,46,79,214
Adjustment to international transaction (Since, H < I, there is no transfer pricing adjustment)		**NIL**

Analysis of 5% range for AY 2011-12 (**Actual Calculation)**

Particulars		Amount in INR
Operating Income as per TP Order	(A)	14,73,35,02,056
Operating Expenses as per TP Order	(B)	14,49,92,90,482

Operating Profit		23,42,11,574
International Transaction (import)	(C)	73,86,55,101
Proportionate operating income	(D) = C * A/B	75,05,86,828
Arm's Length Profit Margin earned by comparable companies (OP/01) as per TP Order	(E)	2.33%
Arms' Length Profit	(F) - E * D	1,74,88,673
Arm's Length Import Price	(G) = D - F	73,30,98,155
Difference between ALP and IT	(H) = C - G	55,56,946
+1-5% of International Transaction	(I) = C * 5%	3,69,32,755
Adjustment to international transaction (Since, H < I, there is no transfer pricing adjustment)		**NIL**

11. Thus, in these years no adjustment is left to be made. Accordingly, the appeals of the Revenue are dismissed and cross objections of the assessee are allowed.

12. In the result, appeals of the Revenue are dismissed and Cross Objections of the assessee are allowed.

Order pronounced on 8th May, 2024.

Sd/-	**Sd/-**
(RENU JAUHRI)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 08/05/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy// BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai