

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

**BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.61/Hyd/2023		
Assessment Year: 2014-15		
R.A.K. Ceramics India Private Limited, P.O Box No.11, ADB Road, Samalkot, Andhra Pradesh. Pin - 53340, PAN : AACCR6424N.	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Aliasagar Rampurwala, C.A.	
Revenue by:	B. Balakrishna - CIT DR	
Date of hearing:	01.05.2024	
Date of pronouncement:	09.05.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2014-15 arises from the assessment order of the Deputy Commissioner of Income Tax, Circle - 3(1), Hyderabad passed u/s 143(3) r.w.s. 144C(13) r.w.s. 254 of the Income Tax Act dated 28.11.2022.

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

“1. On the facts and in the circumstances of the case and in law, the consequential assessment order passed by Deputy Commissioner of Income Tax, Circle 3(1) pursuant to directions of the Hon'ble Dispute Resolution Panel ('Hon'ble Panel') and order of Hon'ble Income Tax Appellate Tribunal ('Hon'ble ITAT') under Section 143(3) read with Sections 144C(13) and 254 of the Income Tax Act, 1961 ('the Act') to the extent prejudicial to the Appellant, is bad in law and is liable to be quashed.

2. On the facts and in the circumstances of the case and in law, Hon'ble Panel erred in upholding the action of the learned Transfer Pricing Officer ('Ld. TPO') / Learned Assessing Officer ('Ld. AO') in proposing an adjustment of INR 3,33,61,422 to the international transactions pertaining to purchase of raw materials / finished goods by the Appellant to its Associated Enterprises ('AEs').

3. On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO / Hon'ble Panel has erred in including companies in the comparable set which are not comparable to the Appellant's functions, asset base and risk profile, viz., (a) Cera Sanitary Ware Limited and (b) HSIL Limited.

4. On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO / Hon'ble Panel has erred in considering certain cost elements as non-operating in nature while computing operating margins of tested party and comparable companies.

5. On the facts and in the circumstances of the case and in law, Ld. AO has erred in crystalizing tax demand by ignoring the MAT credit carried forward from previous assessment years.”

3. The brief facts of the case are that assessee is a wholly owned subsidiary of RAK Ceramics PSC, UAE and was engaged in the business of manufacturing and sale of ceramic tiles and sanitary wares. Assessee company e-filed its return of income on 30.11.2014 declaring total income of Rs.4,74,96,090/-. The case was selected for scrutiny under CASS and notice u/s 143(2) dt.28.08.2015 was issued and served upon the assessee. In response, assessee furnished the information. Thereafter, the case was referred to TPO

on 20.10.2016, who passed order dt.31.10.2017 u/s 92CA(3) of the Act computing the adjustment for the purpose of arms length price at Rs.2,87,68,954/-. Accordingly, the total adjustments amounting to Rs.2,87,68,954/- were added to the income of the assessee. Thereafter, penalty proceedings u/s 271BA were initiated separately.

3.1. Aggrieved to the addition, assessee company filed objection before the Dispute Resolution Panel, Bangalore, who directed to recompute the adjustments. As per the directions of DRP, Assessing Officer vide order dt.24.10.2018 has recomputed the final adjustment for the purpose of arms length price at Rs.2,87,68,954/- and the same was added to the income of the assessee company. Thus, assessment was completed u/s.143(3) r.w.s 144C(13) on 30.10.2018 determining total taxable income at Rs.7,62,65,040/-. Subsequently, the assessee preferred an appeal against the assessment order before ITAT. The Hon'ble ITAT restored the issue back to the Hon'ble DRP to adjudicate the same afresh. The DRP vide order u/s.144C(5) r.w.s. 260A dated.31.10.2022 directed to recompute the adjustments. Accordingly, as per the direction of the DRP, the DCIT/ACIT, TP3 Hyderabad has recomputed and revised arms length price at Rs.3,33,61,422.

4. Before us, at the outset, the ld. AR for the assessee submitted that ground nos.1 and 2 are general grounds and ground no.4 is not pressed and ground no.5 is consequential in nature. The only effective ground raised by the assessee is no.3 which is to the following effect :

3. *On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO / Hon'ble Panel has erred in including companies in the comparable set which are not comparable to the Appellant's functions, asset base and risk profile, viz., (a) Cera Sanitary Ware Limited and (b) HSIL Limited.*

5. In this regard, the ld. AR has drawn our attention to the order of DRP and our attention was drawn to Para 2 to 2.22. which is to the following effect :

2.1.1 It is contended by the assessee that HSIL Limited is not comparable to the assessee company as HSIL Limited is engaged in manufacture diversified products such as sanitary ware, faucets, kitchen appliances, wellness products such as massage tubs, multi-functions, shower panels, shower enclosures, tiles, extractor fans, glass containers, PET bottles, etc. It was also pleaded that if at all, only the building product division which is engaged in manufacture of sanitary tiles is comparable. It was further argued that the company has not provided the segmental results for its building product division and the packing product division in its annual report, and therefore, in the absence of such information, this company cannot be considered as comparable. The assessee also pleaded that the company has incurred substantial R&D expenditure, and whereas the assessee company did not incur any such expenditure, and therefore, this company has to be excluded.

2.1.2 Having considered the submissions, and on perusal of the annual reports of this company for the financial years 2012-13 and 2013-14, we note that the company is engaged in manufacture of tiles and other allied products apart from manufacture of container glass. The company has broadly two divisions - the Building Product division, which manufactures tiles and allied products; the packaging product division - which manufactures container glass bottles. We also note that the company has given its segmental results in its consolidated financial results, wherein it has reported revenue and profit relating to Building product division, Packing product division and Other Revenue. We have noted the following relevant information from the annual reports of the company, which are summarized as under:-

2.1.3 As per Annexure to the Profit & Loss account of HSIL in its financial statement (Refer page 86 of the annual report for F.Y. 2013-14 and page 112 of the annual report for F.Y. 2013-14)

FY ENDING	31.03.2014	31.03.2013
Sale of products	1855.71 Cr	1681.89 Cr
Sale of Sanitary products	910.14 Cr	771.61 Cr
Sale of glass containers	944.00 Cr	908.62 Cr
Others	1.57 Cr	1.66 Cr

2.1.4 As per information in the annual report (Refer page 35 of the annual report for F.Y. 2014-15 and page 33 of the annual report for F.Y. 2013-14). 2.

	31.03.2014	31.03.2013
Gross Turnover	1855.71 Cr	1681.89 Cr
Net Turnover (Gross turnover - Excise duty)	1716. 83 Cr	1550.28 Cr
(-) others	1.57 Cr	1.66 Cr
Net Turnover	1715.26 Cr	1548.62 Cr

2.1.5 As per information in the consolidated financial statement (Refer page 176 of the annual report for F.Y. 2014-15 and page 162 of the annual report for FY 2013-14)

•	31.03.2014	31.03.2013
Building division	863.35	731.06
	851.91	817.55
Packing division	1715.26	1548.61
Sub-total		
Others	112.63	188.06
	1827.89	1736.80
Profit from building division	182.80	135.79
Profit margin from building division over Revenue	21.17%	18.57%

2.1.6 From the above, it can be seen that there is no difference in net turnover of the company as reported in its financial statement (standalone) and the net turnover taken in the consolidated financial results (refer tables above). The segmental results reported in the consolidated financial statement reflects the financial performance of the divisions of the company HSIL. We further note as per information given (at page 179 and 180 of the annual report of this company for F.Y. 2014-15, information at page 168 of annual report for F.Y. 2013-14 and information at page 152 of annual report for F.Y. 2012-13), the subsidiaries pertaining to the Building product division have very meagre operational income of rupees one crore or less during these years (i.e., F.Y. 2012-13 - Rs.86.39 lakh, Rs.93.61 lakh for F.Y. 2013-14) and have also shown substantial losses in all these years. These information further strengthens our view that the segmental results given in the consolidated financial statement pertain to the building division of the company HSIL and can be reliably taken for the comparable analysis. Even otherwise, considering the low operating turnover and losses of the subsidiaries, and their corresponding impact in reducing the profit margin of HSIL, at the consolidated level, we note that the assessee is not adversely affected, as only a reduced margin is considered for comparable analysis. Accordingly, the AO / TPO is directed to take the following margins, pertaining, to the building product division of HSIL for the comparable analysis.

F.Y.	
2012-13	18.57%
2013-14	21.17%

2.1.7 As to plea of R&D expenditure, we note that the TPO has given detailed reasons for rejecting this plea. This company has incurred Rs.57.78.85 lakhs during FY 2013-14 which constitutes meagre 0.03% of its gross turnover of Rs.188,535 lakhs. As against the above, the assessee company has incurred Rs.14.41 crore @ 3% of sales towards payment of royalty for these years, towards technical know-how and technology up gradation. Thus, the expenditure incurred by the assessee company is substantially more compared to the R & D spend of HSIL. Therefore, as such there is no functional difference on account of R & D spend and accordingly, the pleas raised in this regard are rejected.

2.2 *CERA Sanitaryware Limited (CERA) - 12.85% (Inclusion)*

- *Functionally different*
- *Diversified business*
- *Faucet manufacturing company cannot be compared to ceramics manufacturer*
- *Segmental financials not available*

2.2.1. *It was contended by the assessee that the company Cera Sanitary Ware Limited is not comparable to the assessee company as Cera Sanitary Ware Limited is engaged in manufacture of sanitary ware, faucet ware, trading of bathroom tiles whereas the assessee is engaged in manufacture and sale of vitrified tiles. It was also contended that Cera Sanitary Ware Limited is engaged in R&D activities hence, cannot be compared with the assessee company.*

2.2.2 *Having considered the submissions, we note from the assessee's financial statement, under the head company overview, it is stated that, "the company is in the business of manufacture and trading of ceramic wall and floor tiles, vitrified tiles and sanitary ware". Thus, there is not much difference in the products dealt with. Besides, under TNMM method, comparability with reference to broad -product range would be sufficient, and there is no requirement to have identical product profile. It is also relevant to note that the assessee in its TP study report (at page 25) while selecting TNMM as the MAM, has noted, "Under the TNMM, comparable transactions need to be broadly similar, significant product diversity and some functional diversity between the controlled and uncontrolled parties are acceptable". Thus, it is an admitted position that product diversity is tolerant under TNMM. In view of these, we do not find merit in the pleas raised. With regard to the plea of R & D expenditure, we note that the TPO has brought on record as to the expenditure incurred by the assessee towards technology by way of royalty payment and thus, there is no functional difference in regard to comparability on account of R & D spend. Accordingly, we uphold the selection of this company as comparable."*

6. The Id. AR further submitted that in the first round, the Tribunal vide its order in ITA No.2378/Hyd/2008 dt. 15.09.2021 has remanded back the issue to the file of DRP with the following directions.

“4. *Learned department representative fails to dispute that the DRP herein has nowhere taken into consideration the assessee's detailed objections quoting functional similarity, lack of the relevant segmental financials and engagement of the said twin entities in R & D activities, whilst declining the impugned objection in a cryptic manner.*

5. *Faced with this situation, we deem it appropriate to restore the assessee's instant substantive grounds back to the DRP for its afresh adjudication on merits after considering all the detailed evidence filed; as per law within three effective opportunities of hearing.”*

7. The Id. AR further submitted that the impugned order was passed by the DRP in pursuance to the directions of the Tribunal reproduced hereinabove and that the HSIL Limited has been wrongly included by the DRP despite the fact that the said company is not functionally comparable with the assessee company.

8. It was submitted by the Id. AR that the Tribunal in the subsequent assessment year has rejected the grounds of assessee and upheld the order of DRP and thereby held that the HSIL Limited is a comparable which is required to be included in the list of comparables.

8.1. The Id.AR relied upon the submission made by him before the lower authorities for excluding the HISL Limited as comparable.

8.2. The Id.DR on the other hand, relied upon the decision of the Tribunal in the case of the assessee in ITA No.1407/Hyd/2019.

8.3 We have heard the rival submissions of the parties and perused the material available on record including the decision of the co-ordinate Bench of the Tribunal in the case of the assessee for A.Y. 2015-16. The Tribunal vide order dt.31.08.2023 in Paragraph 21 to 24 has decided the issue in the following manner :

“21. Learned DR submitted that functionally both HSIL Ltd., and Cera Sanitaryware Ltd., are similar to the assessee and merely by enumerating the differences emanating from the use of generic terms in the website, giving an impression that the HSIL Ltd., and Cera Sanitaryware Ltd., into diversified business, assessee cannot escape from the core business of these three entities. He submitted that when compared to the expenditure met by the assessee for securing the benefits of new technology, the other two entities are spending very small amount. R&D is undertaken by those two entities directly whereas assessee outsourced the same. Since the assessee is spending 3% on this pursuit, assessee cannot say that because the other two entities conduct R&D on their own cannot be compared to it, when such an expenditure is 0.03% or 0.13% by others respectively. Lastly he submitted that comparison of functions is different from comparing the variety of products that result in the similar function. He submitted that the manufacture of faucets and glasses by other two companies is miniscule and as a matter of fact, as rightly observed by the learned DRP in their order segmental information is very much available for the HSIL Ltd., also. He submitted that when the figures relating to consolidated financial results are correlating with the figures in the financial statement standalone, such figures relating to consolidated financial results are reliable and clue can be had from such figures for the comparability of this entity. Further, as observed by the learned DRP, for the suitability of TNMM as MAM, assessee itself said in their TP study report that under the TNMM, comparable transactions need to be broadly similar, significant product diversity and some functional diversity between the controlled and un-controlled parties are acceptable. Here in this case, what all the assessee pleaded is only some degree of product diversity, but little functional diversity.

22. We have gone through the record in the light of the submissions made on either side. It cannot be disputed that HSIL Ltd., under the brand name ‘Hindware’ is in the business of manufacturing and selling sanitaryware products and related accessories. On the aspect of functional dissimilarity, all the enumeration made by the learned AR boils down to the fact that HSIL Ltd., is doing business in building division and packaging division. There is segmental information in

consolidated financial statements though it is not to be found in the financial statement standalone. Assessee says that because non-availability of segmental information in the financial statements (standalone), that too when HSIL Ltd., operates in more than one segment, it is not a good comparable.

23. On a perusal of the annual reports of HSIL Ltd., learned DRP found as a matter of fact that this entity has broadly two divisions, namely, building products division and packaging products division. In the building product division they are manufacturing tiles and allied products. The sales of the sanitary products were Rs. 963.71 crores with a profitability of Rs. 177.89 crores with a profit margin of 19.47%. Learned DRP perused the financial statement standalone and also the consolidated financial results and gave a factual finding that there is no difference in net turnover of the company as reported in its financial statement (standalone) and the net turnover taken in the consolidated financial results and the segmental results reported in the consolidated financial statement reflect the financial performance of the divisions. To this extent, no contrary material is placed before us. We, therefore, find it difficult that for non-availability of segmental information in the financial statement (standalone), this entity needs to be eliminated from the list of comparables. The approach of the learned DRP is reasonable and correct and a very pragmatic one. By this approach, learned DRP segregated the margins of packing division and culled out the margins of sanitary products.

24. Coming to functional aspect, the submission of learned AR that the annual report shows that HSIL Ltd., is manufacturing 3.8 million pieces sanitaryware and 3 million pieces of faucets and, therefore, significant amount of material that goes into faucet manufacturing. We are not prepared to agree with this approach. Functional comparability cannot take place like this. For every piece of sanitaryware, there would be equal or more number of nuts and bolts or some other thing making the sanitaryware meaningful. That does not mean that such other allied things will constitute the significant portion. With reference to the figures, learned AR took us to Note 25 in the significant accounting policies, where clay, soda ash, cullets, quartz/feldspar and others are mentioned, to say that the assessee does not deal with cullets and quartz/feldspar. Firstly, cullets and quartz/feldspar are useful only in packing division and we are not considering it now. There is no material to show that the other material that is used has nothing to do with the sanitaryware production. Even if some fraction of it is used, ultimately, the learned DRP while referring to the consolidated financial results held that the segmental results reported therein are agreeing with the figures in the financial statement (standalone) and reflect reliable financial performance of the divisions. When the functions are broadly

agreeing with each other, it is not possible to count the differences in the description of the products and to eliminate the entity. Though the terms used are generic in nature giving an impression that the company is engaged in diversified activities, the core activity of both the entities is dealing in tiles and sanitaryware. One shall not lose sight of the fact that information contained in the websites of any entity and sometimes in the annual report would be intended to give a very attractive picture of such company and its areas of activity will be mentioned in usually general and widespread terms to attract the customers and the same cannot be given much weight. In these circumstances, we agree with the findings of the learned DRP and decline to exclude HSIL Ltd., from the list of comparables.”

8.4. Respectfully, following the decision of the co-ordinate Bench of the Tribunal in the case of assessee for the A.Y. 2015-16, we decline to exclude the HSIL Limited from the list of comparables. Accordingly, this ground is dismissed.

8.5. For the other comparable Cera Sanitary Ware Limited, it was pointed out by the Id. AR that the Tribunal has directed to include Cera Sanitary Ware Limited, included this comparable and our attention was drawn to the order of the Tribunal for A.Y. 2015-16 which is to the following effect :

25. Coming to the Cera Sanitaryware Ltd., broadly, this company also performs the same functions insofar as production of sanitaryware is concerned. However, at the outset, learned AR brought to our notice that Note 22 forming part of the accounts shows out of the total consumption of material worth Rs. 709 crores, the consumption of material of Rs. 323 alone is relevant for the sanitaryware production and Rs. 366 crores goes for brass ingots and components, whereas in the profit and loss account, the revenue from operations to the tune of Rs. 822 crores are shown as one segment and that too from the sale of vitreous China sanitaryware, faucet ware, fittings, tiles and allied products. He submitted that this clarifies that this company is deriving almost equal amount of revenues from faucetware manufacturing as it has been deriving from the sale of vitreous China sanitaryware, tiles etc. On this ground, he seeks exclusion of this entity from the list of comparables.

26. *Unlike in the case of HSIL Ltd., in this case, the consumption of raw material suggests the proportions of different activities of this entity, but without any clue about the proportionate revenues. In the case of HSIL Ltd., learned DRP was able to draw figures of sale and profit in respect of sanitaryware division and packing division, but it is not so in this case. Considering this aspect vis-à-vis the financials of the company, we are of the considered opinion that in the absence of such information, it would not be safe to compare the assessee with this entity to draw the correct margins. We, therefore, direct the learned Assessing Officer/learned TPO to exclude this company from the list of comparables. With these observations, we allow ground No. 3 in part.*

9. On the basis of the above and also on the basis of the financials of the Cera Sanitary Ware Limited for the assessment year under consideration, it was pointed that there is no change of facts and our attention was drawn to Page 643 of the paper book wherein the Revenue from Operations was mentioned at Rs.6,63,69,23,780/- vide Note No.20. It was submitted that quite similar to A.Y. 2015-16, the cost of Materials consumed was mentioned at Rs.64,91,40,425/- vide Note 22.

10. It was submitted that since the Cera Sanitary Ware Limited is dealing in various verticals including the Faucet manufacturing including facilities like manufacturing tiles etc and therefore, this company is not comparable with the assessee company and therefore the DRP was wrong in including this comparable from the list of comparable. Furthermore, since the same company has been examined by the Tribunal in the subsequent year and there is no change in facts and therefore, this company should not be included and is required to be excluded from the list of comparables.

11. Per contra, the ld. DR has submitted that the Tribunal in its finding in para 25 has held that this company has performed as that of the HSIL Limited company and therefore, the subsequent finding of the Tribunal whereby the Tribunal has compared the raw material cost in para 26, is of no use as for the purpose of determining the benchmarking and comparability. The parameters laid down as per Rule 10B(1)(e) for TNMM are required to be considered. Further, the ld. DR has drawn our attention to Rule 10B(1)(e) of the Act which is to the following effect :

“Transactional Net Margin Method, By Which,-

- i. *the net profit margin realised by the enterprise from an international transaction or a specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;*
- ii. *the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;*
- iii. **the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;**
- iv. *the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);*
- v. *the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction”*

12. The Id. DR further submitted that though the Tribunal has decided the issue in subsequent assessment years in favour of the assessee but every year is a separate assessment year and the principle of res judicata is not applicable.

13. We have heard the rival submissions and perused the material on record. The perusal of Rule 10(B)(1)(e) clearly mentioned that the net profit margin realized by the assessee from the international transactions is required to be compared in relation to the cost incurred or the assets employed by enterprise (assessee). In the present case, as noted by the Tribunal in its finding in para 25 the functions performed by the assessee and that of the Cera Sanitaryware Limited are comparable and what was distinguished by the Tribunal in its earlier order is that with the consumption of raw material used by the company (Cera) for different activities is not relatable to the proportion of the revenue by the said activities. In our understanding, once the assessee company is broadly compared with the Cera Sanitaryware Limited, then what is required to be seen is the net profit margin earned by the company (Cera Sanitaryware Limited) with that of the assessee.

14. In the present case, the DRP has considered the submission of the assessee and thereafter, in para 2.2.2 reproduced hereinabove, had concluded that this company is comparable with the assessee and accordingly, the Assessing Officer based on the direction of the DRP has made the assessment in the hands of the assessee.

15. Since this company was excluded by the Tribunal in the case of the assessee for A.Y. 2015-16 in ITA No.1407/Hyd/2019, therefore, respectfully following the decision of the co-ordinate Bench of the Tribunal, we direct the learned Assessing Officer/TPO to exclude this comparable from the list of comparables.

16. The last ground raised by the assessee i.e., ground No.5 is with respect to consideration. With respect to this ground, we direct the Assessing Officer to grant the MAT credit as admissible in law. Accordingly, this ground is allowed.

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

Order pronounced in the Open Court on 9th May, 2024.

Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 9th May, 2024.
TYNN/sps

Copy to:

S.No	Addresses
1	R.A.K. Ceramics India Private Limited, P.O Box No.11, ADB Road, Samalkot, Andhra Pradesh. Pin – 53340.
2	The Deputy Commissioner of Income Tax, Circle 3(1), Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru.
4	Director of Income Tax (IT & TP), Hyderabad.
5	PrI.CIT (Central), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order