



2. At the very outset, the ld. counsel for the assessee drew our attention to an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 dated NIL filed for admission of additional evidence in connection with Ground No. 5, 6 and 7 of the Grounds of appeal.

3. The provisions contained in Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, provides that the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal. The provisions contained in the said rule are pari materia with the Order 41 Rule 27 of the Code of Civil Procedure, 1908, which also does not allow the party to the appeal to adduce any additional evidence unless and until such exceptional circumstances are set out. We are therefore required to examine whether we require the evidence in deciding the issues at hand in the instant case.

4. In this application, the assessee has prayed for admission of additional evidence with reference to Ground Nos. 5, 6 and 7 which reads as under:

**"With respect to Grounds No 5, 6 and 7 of the said appeal pertaining to disallowance of 'excess expenditure for purchase of**

goods' under section 40A(2) of the Income Tax Act, 1961 ('the Act') amounting to INR 19,79,87,266, the Appellant wish to respectfully submit that during the course of proceedings before the Hon'ble DRP, the Appellant had filed segmental financial statement before the Hon'ble DRP to substantiate that transaction with respect to purchase of goods from AE was undertaken at arm's length price. However, the Hon'ble DRP rejected the segmental financial statement on account of not being reliable in nature. In this regard, it is humbly submitted that to address such rejection, the Appellant now wishes to respectfully submit the segmental financial statement before your Honour which is certified by an independent accountant as additional evidence under Rule 29 of the Rules, for proper adjudication of the captioned case. It may be appreciated that said additional evidence is vital and essential for the proper disposal of above-referred grounds of appeal and hence the Appellant humbly requests the Hon'ble Bench to kindly consider them in the interest of substantial justice."

5. The ld. counsel for the assessee placed strong reliance on the decisions of the following High Court cases:

- i) CIT v. Kum. Satya Setia, [1983] 15 Taxman 345 (MP)
- ii) Anaikar Trades & Estates (P). Ltd v. CIT, [1991] 56 Taxman 170 (Mad)
- iii) R.S.S. Shanmugam Pillai & Sons v . CIT, [1974] 95 ITR 109 (Mad.)
- iv) CIT Vs Text Hundred India Pvt Ltd 351 ITR 57 (Del)

6. The ld. counsel for the assessee argued that the segmental financial statement produced as additional evidence along with the present application is necessary and pertinent for adjudication as the internal TNMM method followed by the assessee was rejected merely on the ground that since the segmental financial statement was not audited, hence was not reliable.

7. Per contra, the ld. DR opposed the admission of additional evidence and submitted that the CA's report dated 27.10.2021 is different from the earlier report. He further argued that the additional evidence in the form of CA's report is being filed at such a belated stage in 2022, after a gap of nine years from FY 2012-13, and hence same should not be admitted. The ld DR relied on the decision of Hon'ble Supreme Court in the case of Sanjay Kumar Singh in Civil Appeal no 1760 of 2022 dated 10.03.2022 and UOI Vs Ibrahim Uddin in Civil appeal no 1374 of 2008 dated 17.07.2012 for the proposition that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. The ld DR also relied on the Hon'ble Bombay High Court decision in the case of Smt Kamal C Mahboobani (1995) 214 ITR 15 (Bom) for the proposition that where order could be passed on the basis of materials on record, Tribunal can

refuse to admit additional evidence. Alternatively, it was stated that if these are to be admitted, then an opportunity needs to be given to the Assessing Officer.

8. The ld. AR in his rebuttal countered the ld DR argument of belated filing of additional evidence by stating that appeal before ITAT was filed in November 2017 and the need for filing additional evidence was realized subsequently. The ld AR also pointed out that the decisions of Hon'ble Supreme Court (supra) relied on by the DR is actually in favour of the assessee as it permits the admission of additional evidence where the additional evidence have a direct bearing on pronouncing the judgement or for any other substantial cause. The ld AR of the assessee also relied on the decision of the Hon'ble Jurisdictional High Court in the case of Text Hundred India Pvt Ltd 351 ITR 57(Del) for the proposition that it is the discretion of the Tribunal to admit evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter.

9. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsels, we have considered the documentary evidences brought on record in the form of a letter from the CA dated 27.10.2021 in light of Rule 29 of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

10. Having heard the rival submissions, we find that in the instant case, the assessee, for benchmarking the specified domestic transaction of purchase of goods by the assessee from its AE, Luminous Teleinfra Ltd (LTL), has considered internal TNMM as most appropriate method. The assessee has taken the sale made to the third party Amar Raja Batteries Ltd (ARBL) for comparison. On the basis of the TPO report, the DRP held that the products sold by LTL to ARBL and to itself are different and that the segmental accounts of LTL is not reliable as it is not audited. Accordingly, the DRP rejected the application of internal TNMM method.

11. It therefore emerges that the segmental financial statement being presented before us as additional evidence, was furnished by the assessee during the proceedings before the DRP. The DRP had rejected

the same on the ground that the segmental accounts of LTL with regard to ARBL segment and the assessee segment were not audited, and hence not reliable. This segmental financial statement has now been certified by an independent accountant and being produced before the Tribunal as additional evidence. We are of considered opinion that the segmental financial statement will facilitate proper appreciation and comparison of the transactions entered into with ARBL and itself.

12. As regards to the admission of the additional evidence, it is fruitful to refer to the Hon'ble Madhya Pradesh High Court in the case of Commissioner of Income-tax v. Kum. Satya Setia, [1983] 15 Taxman 345 (MP) wherein it has been held as under:

*"The learned standing counsel for the revenue invited our attention to rule 29 of the Income- tax (Appellate Tribunal) Rules, 1963. This rule is in pari materia with Order XLI, rule 27, of the Code of Civil Procedure. It is within the discretion of the appellate authority to allow production of additional evidence if the said authority requires any document to enable it to pass orders or for any other substantial cause. Therefore, even if the assessee had failed to file the said agreement before the ITA and the AAC, the Tribunal had the jurisdiction in the interest of justice to allow production of a crucial document. In Kali Charan*

*Ram Chander v. CIT [197 8] 112 ITR 405 , the Calcutta High Court held that where the Tribunal is of the opinion that the appeal cannot be properly decided without taking into account further evidence, it has jurisdiction to admit further evidence and either to decide the appeal itself or to remand it to the authorities below for deciding the matter afresh after taking into account the additional evidence produced before it."*

13. The above decision of the Hon'ble Madhya Pradesh High Court was reiterated in the case of Anaikar Trades & Estates (P). Ltd v. Commissioner of Income-Tax, [1991] 56 Taxman 170 (Madras) wherein it has been held as under:

*"We may also refer to Kum. Satya Setia's case (supra) where it has been laid down that under rule 29, it was within the discretion of the Tribunal to allow the production of additional evidence and even if there was a failure to produce the documents before the ITO and the AAC, the Tribunal had the jurisdiction in the interest of justice to allow the production of such vital documents. "*

14. The decision of the Hon'ble Madras high Court in the case of R.S.S. Shanmugam Pillai & Sons v. Commissioner of Income-tax, [1974] 95 ITR 109 (MAD.) similarly was held as under:

*"It is no doubt true that the Tribunal has got a discretion either to admit the documents as additional evidence or to reject the same at the stage of the appeal. But the said discretion cannot be exercised in an arbitrary manner. If the Tribunal finds that the documents filed are quite relevant for the purpose of deciding the issue before it, it would be well within its powers to admit the evidence, consider the same or remit the matter to the lower authorities for the purpose of finding out the genuineness of the letters and considering the relevancy of the same. But if the Tribunal finds that the evidence adduced at the stage of the appeal is not quite relevant or that it is not necessary for the proper disposal of the appeal before it, in that case, the Tribunal could straightaway reject the evidence, which was sought to be produced for the first time at the stage of the appeal. "*

15. In the case of Text Hundred India Pvt Ltd (supra), the hon'able Delhi High Court, in the context of Rule 29 of ITAT Rules, held that the

*"it is the discretion of the Tribunal to admit evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter....the aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice. It is well settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent*

*error or omission on the part of one of the parties to lead evidence at the appropriate stage.”*

16. The Hon’ble Supreme Court in the case of Sanjay Kumar Singh in Civil Appeal no 1760 of 2022 dated 10.03.2022 and UOI Vs Ibrahim Uddin in Civil appeal no 1374 of 2008 dated 17.07.2012, in the context of Order XLI, Rule 27, of the Code of Civil Procedure which is pari materia with Rule 29 of ITAT Rules, has laid down that ***“where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.”***

17. Having heard the rival submissions, and the legal position culled out from various judgements as cited above with respect to the Rule 29 of the ITAT Rules, we are of the opinion that this segmental financial statement has direct bearing on the issue of deciding the method to be adopted to determine the Arms Length Price. Without considering the segmental analysis of the transaction with ARBL and itself, the rejection of internal TNMM method may not adhere to the principals of natural justice. We are therefore, of considered view that

the additional evidence, now being furnished, has a direct and important bearing to adjudicate the present controversy and hence admitted keeping in view the principles of natural justice.

18. In the result, the application of the assessee for limited purpose of admitting the additional evidence in ITA No. 6996/DEL/2017 is allowed.

19. The order is pronounced in the open court on 30.05.2024.

**Sd/-**

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

**Sd/-**

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 30<sup>th</sup> MAY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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