IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A. No. 1764/Ahd/2013

(**निर्धारणवर्ष** / Assessment Years: 2007-08)

Bundy India Limited Plot No. 2, GIDC Industrial Estate, Markarpura, Vadodara - 390010	**बनाम**/ Vs.	**Dy. Commissioner ofIncome Tax** Circle–1(1),Baroda
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACB3039M		
(**Appellant**)	..	(**Respondent**)

अपीलार्थीओरसे/**Appellant by :**	Shri S. N. Soparkar, Sr. Advocate & Shri Parin Shah, A.R.
प्रत्यर्थीकीओरसे/**Respondentby:**	Dr. DarsiSumanRatnam, CIT. DR

Date of Hearing	30/04/2024
Date of Pronouncement	10/06/2024

ORDER

PER SHRINARENDRA PRASAD SINHA, AM:

This appealof the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, Baroda, (in short 'the CIT(A)')dated 22.03.2013for the Assessment Year 2007-08.

2. The brief facts of the case are thatthe assesse company, M/s Bundy India Ltd., is engaged in manufacturing of tubes, automotive components and tubular products primarily for the auto industry and manufacturing of auto components (brake and fuelline system) as per customers' specification. The assessee

company also provides IT enabled services to some of the group entities. The return of income for A.Y. 2007-08 was filed on 30.10.2007 declaring total income of Rs.3,21,86,520/-. In the course of assessment proceedings, the AO noticed from Form No. 3CEB that the assessee had entered into international transactions with its associated enterprises (AE), in view of which a reference to Transfer Pricing Officer (TPO) was made for determining the Arm's Length Price (ALP) of these international transaction. The international services were in respect of manufacturing segment, management support services and IT enabled support services (ITES). The TPO vide order u/s. 92CA(3) of the Act dated 21.10.2010 proposed a total TP adjustment of Rs.6,29,55,148/- as under:

S. No.	International Transaction	Amout (Rs.) of adjustment
1	Import of raw materials for manufacturing	4,39,53,971
2	Income from ITES segment	44,47,175
3	Payment of management charges	1,45,54,002
	Total TO adjustment	6,29,55,148

3. The AO completed the assessment in conformity with the additions proposed by the TPO. A draft order u/s 143(3) r.w.s. 144C(1) of the Act was passed on 20.12.2010 and as the assessee did not file any objection before DRP, the assessment was completed u/s. 143(3) r.w.s. 144C(4) of the Act on 31.01.2011 at total income of Rs.9,63,85,420/-. Apart from the addition on account of TP adjustment, certain other additions were also made in the final order. The assessee had preferred

an appeal before the CIT(A) which was only partly allowed. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

4. The grounds raised by the assessee in this appeal are as under:

"1. The order passed by the learned Assessing Officer (AO) is erroneous and contrary to the provisions of law, facts and circumstances of the case and therefore requires to be modified.

2. The AO erred in law and on facts in making and Commissioner of Income-tax (Appeals) (CIT(A)') in upholding upward adjustment of Rs.41,931,175 in respect of international transactions of the Appellant u/s 92CA(3) of the Income-tax Act, 1961 ('the Act').

3. The ld. AO erred in law and on facts in making the adjustment to the international transactions of the appellant without establishing that the pre-conditions specified in section 92C(3) read with section 92CA(3) of the Act were satisfied.

4. ***Manufacturing segment (Adjustment of Rs.22,929,998)***

4.1 The AO/CIT(A) erred in law and on facts, in holding that the international transaction of import of raw material by the Appellant from the associated enterprises ('AEs') in not at arm's length and rejecting transfer pricing documentation.

4.2 The AO/CIT(A) erred in law and on facts in disregarding methodical search process undertaken by the appellant and rejecting 5 (five) out of 8 (eight) comparable companies selected by the Appellant, without taking cognizance of Rule 10B(2) of the Income Tax Rules, 1962 ('the Rules").

4.3 The AO violated the principle of natural justice by not providing/sharing complete details of the benchmarking analysis carried out by him and adopting arbitrary approach in selection of additional alleged comparables.

4.3.1 The CIT(A) erred in law and on facts in disregarding the data for export turnover submitted by the appellant for alleged comparable companies selected by the AO.

4.3.2 The AO/CIT(A) erred in law and on facts in disregarding the publicly available data in respect of FCC Rico Lid, provided to substantiate the erroneous selection of alleged comparable company and rejected the contention of the appellant without providing reason for rejection of data.

4.3.3 The AO/CIT(A) erred in law and on facts in disregarding documents submitted by the appellant with regard to selection/rejection of comparable companies such as product profiles, intangible assets etc.

4.4 The AO/CIT(A) erred in law and on facts in selecting additional 8 (eight) alleged comparable companies without taking cognizance of Rule 108(2), (3) and (4) of the Rules.

5. ***ITES segment (Adjustment of Rs. 4,447,175)***

5.1 The ld. AO erred in law and on facts, in holding that the international transaction of providing hack-office support services by the appellant to its associated enterprises is not at arm's length and making an adjustment of Rs. 4,447,175.

5.2 The ld. AO erred in law and on facts in disregarding methodical search process undertaken by the appellant and rejecting 7 (seven) out of 12 (twelve) comparable companies selected by the Appellant, without taking cognizance of Rule 108(2) of the Income Tax Rules, 1962 ('the Rules')

5.3 The ld. AO violated the principle of natural justice by not providing/sharing complete details of the benchmarking analysis carried out by him and adopting arbitrary approach in selection of additional 6 (six) alleged comparables

5.4 The ld. AO erred in law and on facts in selecting additional 6 (six) alleged comparable companies without taking cognizance of Rule 108(2), (3) and (4) of the Rules.

5.4.1 The ld. AO erred in law and on facts in rejecting the contention raised by the appellant with regard to erroneous selection of companies having abnormal increase in sales and super normal profits.

5.4.2 The ld. AO erred in law and on facts in disregarding publicly available documentary evidence submitted by the appellant during the assessment proceedings.

5.4.3 The ld. AO erred in law and on facts in selecting comparable company having substantial related party transaction in this regard and also in disregarding documentary evidences submitted thereof.

5.5 The ld. AO erred in law and on facts in arbitrarily rejecting loss making companies and thus cherry picked the alleged comparables.

6. ***Disallowance of management charges (Adjustment of Rs. 14,554,002)***

6.1 The ld. AO erred in law and on facts, in holding that the international transaction of payment of management fees by the appellant to its

associated enterprises is not at arm's length and considering arm's length price of management charges as Nil.

6.2 *The AO/CIT(A) erred in law and on facts in contending and ld. CIT(A) in upholding that the management fees have not been benchmarked and rejecting transfer pricing study in not submitted by the appellant.*

6.3 *The AO/CIT(A) erred in law and on facts, in disregarding aggregation of management fees with the manufacturing segment as adopted by the appellant for benchmarking the international transactions.*

6.4 *The AO/CIT(A) erred in law and on facts, in holding that benefit received by the appellant on paying management fees is not adequate and conveniently neglected detailed management recharge analysis and evidences submitted by the appellant to support its contentions.*

6.5 *The AO/CIT(A) erred in law and on facts in upholding that the documentary evidences have not been submitted by the appellant to substantiate the allocation methodology.*

6.6 *The ld. AO erred in law and on facts, in not providing any observation/findings on various documentary evidences submitted by the appellant to support arm's length of management fees.*

6.7 *The ld. AO erred in law and on facts, in arbitrarily holding that the basis of allocation of management charges adopted by the appellant is not appropriate, without providing any cogent reasons.*

6.8 *Without prejudice to the contentions of the appellant that no adjustment is warranted in case of the appellant, it is submitted that as the amount of Rs. 14,353,642 (excluding markup of Rs. 201,360) incurred by the associated enterprise represents share of actual cost, directly or indirectly, related to the appellant and be allowed as reimbursement of expenses by the appellant to the associated enterprise.*

7. ***Standard deduction of 5% variation as provided u/s 92C(2) of the Act***

7.1 *Without prejudice to our contention that no adjustment ought to have been made in case of the Appellant, the ld. AO ought to have applied the beneficial provision regarding the arm's length range as contained within the proviso to section 92C(2) of the Act as it stood during the financial year ended 31 March 2007 and not as it stood after the amendment by the Finance Act (No.2), 2009.*

7.2 *Without prejudice, in applying the benefit of 5% variation as permitted by the proviso to section 92C(2) of the Act (prior to the amendment by Finance (No. 2) Act, 2009), the ld. AO / TPO should apply 5% variation to the arm's length price of the international transaction between the Appellant and its AEs.*

8. The learned CIT(A) erred by upholding the action of assessing officer of disallowing the claim of write-off of proportionate amount of jigs and fixtures, aggregating Rs. 31,49,367 as revenue expenditure and treating the same as capital expenditure eligible for depreciation.

8.1 The learned CIT(A) failed to appreciate the facts of the case that the aforesaid jigs and fixtures are made specifically for individual customer and would become useless if there is change in customer requirement.

8.2 The learned CIT(A) also failed to appreciate the facts of the case that the useful life of the jigs and fixtures is around two years having regard to the nature of the business of the appellant.

9. The learned CITA(A) erred in law in dismissing appellant's grounds of appeal in relation to charging of interest under section 234B and 234D of the Act and withdrawal of interest due on refund under section 244A of the Act. The same should have been considered as consequential.

10. The Appellant submits that each grounds of appeal is without prejudice to one another."

5. An additional ground was raised by the assessee in this appeal, which is as under:

"(i) The Appellant ought to have been granted working capital adjustment while determining the arm's length price of the International transactions by the Learned Assessing Officer/Transfer Pricing Officer ("Ld. AO/TPO) and/or by the Hon'ble Commissioner of Income-tax Appeals [Hon'ble CIT(A)]."

6. Ground Nos. 1 and 2 are general in nature and were not pressed, hence dismissed.

7. <u>Ground number 3-Non-Satisfaction of conditions</u>:

7.1 Shri S. N. Soparkar, Sr. Advocateappearing for the assesse,submitted that the AO/TPO had not explicitly established that any situation envisaged in section 92C(3) Of the Act was fulfilled before making adjustment to the international transactions. He contended that the AO/TPO had not pointed

out any deficiency in the T P study report prepared by the assesse nor pointed out furnishing of any inaccurate details, so as to warrant alteration and re-computation of ALP. The search process adopted by the assessee was not disputed, except rejection of certain comparable selected by the assessee and inclusion of some additional comparable, which had no basis.

7.2 The CIT (DR) on the other hand supported the order of the lower authorities.

7.3 We have carefully considered the rival submissions and the materials on record. Though the TPO had not explicitly pointed out any deficiency in the document prepared by the assessee, it is evident that the information or data used by the assessee in computation of ALP in its TP study report was not held as reliable or correct, which is a precondition under section 92C(3) of the Act. It is found that the primary objective of the study report prepared by the assessee was to review the transfer pricing arrangement for international transactions with its associate enterprises during the year ended on 31st March 2 007. Thus, this study report was not intended to determine the ALP of international transactions with AEs for the current year in accordance with the IT Rules. In essence, this T P study report was in the nature of policy making document and not for determining the ALP. It was for the purpose of policy making that past two years data were utilized in this study report and not a single data of current year was imported. It is difficult to accept that no data for financial year 2006–07 was available when the study report was prepared in the month of October 2007.

7.4 It is specifically provided in Rule 10B of the IT Rules that the data relating to current year shall be used for determining ALP. Only if the data relating to the current year is not available at the time of furnishing of income tax return by the assessee, then the data relating to immediate preceding financial year or earlier two years can be utilized to determine the ALP. In the present case, the assessee has not demonstrated that the data relating to the current year was not available at all before the due date of furnishing of return. Further, the Ld. CIT(A) has also pointed out certain infirmities in the TP study report of the assessee in his order, which has not been controverted.

7.5 Hon'ble Delhi High Court has held in the case of *Chryscapital Investment Advisers(India)(Pvt.) Limited Vs DCIT (56 taxmann.com, 417) (Delhi)* that while determining the comparability of transactions, multiple year data can only be included in the manner provided in rule 10 B(4) and as a general rule, it is not open to the assessee to rely upon previous year's data. To quote from the order:

> **35**. As regards the relevance of multiple year data for transfer pricing determination, this Court is of the opinion that the general rule as prescribed in Rule 10B(4) mandates the tax authorities to take into account only the relevant assessment year's data. The proviso to Rule 10B(4) permits data relating to two years prior to the relevant assessment year to be taken into account in the event that they have an influence on the determination of price. However, in such instances, the onus lies upon the assessee to establish the relevance of such data. The language of Rule 10B(4) does not leave any scope for ambiguity on this issue. This Court notices that this very ground- i.e applicability of previous years' data for reaching out comparables, was sought to be urged in *Marubeni India (P.) Ltd.* v. *DIT* [2013] 354 ITR 638/215 Taxman 122 (Mag.)/33 taxmann.com 100 (Delhi) but deliberately left moot, because the assessee had given it up before the Tribunal. The TPO in his order dated 03.10.2011 has comprehensively examined the authorities on this issue and rightly held that ordinarily, the revenue has to consider only the relevant assessment year's data under Rule 10B(4) and that data from earlier period may also be considered if "it reveals certain facts which have an influence on the determination of transfer prices in relation to the transaction being considered". The

assessee has placed significant reliance on the OECD guidelines to contend the admissibility of previous year's data for transfer pricing determination. However, for reasons given in the paragraphs below, this Court is of the opinion that the OECD guidelines have no bearing on this issue.

7.6 It is a well settled principle that the assessee is required to perform FunctionalAsset and Risk (FAR) analysis for each year and it is quite possible that the FAR analysis can be different for each of the years. If so, the principle applicable to one particular year cannot be extrapolated automatically and made applicable to other years. To do so, it is necessary to first establish that the facts and attendant factors have remained the same so that the factors of comparability are the same. The assessee has not done any such analysis and established that the factors of comparability for the years as selected by it were identical to the facts and factors of the current year.

7.7 In view of the above facts and the judicial pronouncement, the reliance of the assessee on previous two years data and not using any current year data was not in accordance with the provisions of law and, therefore, the TP study report of the assessee was rightly rejected. The ground taken by the assessee is dismissed.

8.0 Ground Number-4 : TP adjustment in manufacturing segment

8.1 This ground pertains to TP adjustment of ₹ 22929998/- made in respect of manufacturing segment, as upheld by the Ld. CIT(A). Sri Soparkar, the Ld. Senior Counsel submitted that the TPO was not correct in disregarding the methodical search process undertaken by the assessee and rejecting 5 out of 8 comparable without taking into consideration Rule 10B(2) of the IT rules. He further submitted that the TPO was also not correct in selecting 8 additional comparable companies without taking

cognizance of the Rule 10B(2),(3) & (4) of the Rules. As per TP study carried out by the assessee adopting TNMM as most appropriate method, the assessee had selected eightbroadly comparable independent companies to benchmark its international transactions under manufacturing and ITES segment. Out of 8 companies, TPO had rejected five companies as comparables for the reason that they were engaged in other business and were functionally not comparable.

8.2 Sri Soparkar explained that the assessee had selected operating profit to sales as the profit level indicator (PLI) to benchmark international transactions under the manufacturing segment, which was also accepted by the TPO as an appropriate PLI. The assessee had earned operating margin of 5.58% on sales under its manufacturing segment compared to average operating margin of 4.82% on sales earned by the set of comparable companies selected by the assessee. Therefore, all the international transactions of the assesse under its manufacturing segment were concluded at ALP and no TP adjustment was required. The TPO had not disputed this fact, except rejection of some comparable selected by the assessee. The Ld. Counsel contended that the TPO was not correct in including certain comparable, which had abnormal increase in sales and had super normal profits. Similarly, the TPO had also erred in selecting companies having substantial related party transactions and disregarding the documentary evidences submitted by the assesse in this regard. It was submitted that publicly available documentary evidence submitted by the assessee in the course of proceedings before the TPO was disregarded. Further, the TPO had also erred in arbitrarily rejecting loss-making companies and cherry picking the comparable. The Ld. Counsel has painstakingly taken us through the accounts of the comparable companies

contested by the assessee, the details of which were filed in multiple volumes of paper book, to drive home his point.

8.3 Per contra, Dr. Darsi Suman Ratnam, the Ld. CIT (DR), supported the stand of the TPO and the CIT(A). He submitted that the TPO was well within his jurisdiction and power to reject the comparables which were functionally not comparable. Further, there was nothing wrong in selection of other functionally comparable companies to benchmark the international transaction with the AEs. He submitted that comparability of the case is to be tested for each and every year independently and separately for the purpose of determination of ALP. The international transaction has to be compared with uncontrolled and unrelated transaction by using data relating to financial year in which international transaction was entered into and not merely on the basis of data of earlier years. The Ld. CIT(DR) also gave his counter submissions with regard to each and every comparable rejected/included by the TPO and strongly supported the order of the Ld. CIT(A).

8.4 We have carefully considered the rival submissions and the materials brought on the record. The TPO had conducted search in 'Prowess' Database and selected 14 companies as comparable. The Ld. CIT(A) after considering the submissions of the assessee had directed that out of the comparable as selected by the TPO and the comparables as adopted by the assessee, only 11 comparable should be utilized for computing the ALP of the assessee. It is found that the operating margin of the comparable companies as per TP study report of the assessee was 5.58% whereas the margin of the comparables as determined by the TPO was 10.25%. On the other hand, the margin of the comparables upheld by the Ld. CIT(A) had

marginally increased to 10.27%. The anssessee has objection to inclusion of certain comparable as per CIT(A) list and also to exclusion of some of the comparables as selected by it. The assessee has submitted a summary chart of comparables of manufacturing segment, which summarizes the comparable not disputed, erroneous exclusion of comparables from assessee's set and erroneous inclusion of some of the comparable in CIT(A) set. The said chart is reproduced below:

Sr. No.	Comparables **Comparables not disputed**	Comparable selected by	Unadjusted margins as per CIT(A)	WCA margins
1	Bosch Chassis Systems India Ltd.	Assessee	8.11%	7.53%
2	Canara Workshops Ltd.	Assessee	5.73%	1.47%
3	Rane Brake Linings Ltd.	Assessee	5.50%	3.35%
4	Deepak Industries Ltd.	Department	5.90%	6.17%
5	STI Sanoh India Ltd.	Department	10.67%	8.37%
6	C M Smith & Sons Ltd.	Department	6.90%	6.75%
7	Ceekay Daikin Ltd. (Exedy India Limited)	Department	7.51%	3.57%
8	Special Engineering Services Limited	Department	7.38%	5.95%
	Erroneous exclusions from appellant's set			
9	Coventry Coil-O-Matic (Haryana) Ltd.	Assessee	-0.55%	-1.94%
10	Frontier Springs Ltd.	Assessee	6.88%	3.93%
11	Gabriel India Ltd.	Assessee	3.87%	2.64%
12	Jamna Auto Industries Limited	Assessee	6.94%	6.44%
	Erroneous inclusions from CIT(A)'s set			
13	FCC Rico Ltd.	Department	14.99%	16.78%
14	Setco Automotive Ltd.	Department	13.99%	14.77%
15	ANG Industries Ltd.	Department	26.34%	21.46%

Thus, the dispute in the manufacturing segment is in respect of exclusion of four comparable from assessee's set and in respect of inclusion of three comparable by the TPO, as upheld by the Ld. CIT(A).

8.5 It is found from Schedule 12 of the accounts of the assesse for the F.Y. 2006-07 as well as from the TP Study Report that the products manufactured by it were **"Single wall Tubes / Copper coated steel Tubes, Brakes and Fuel Lines and other components**". For the purpose of manufacturing the tubes and auto components, it was importing copper plated steel strips from its AEs. These components were used as brake and fuel carrying systems in automobiles. The major raw material of the assessee for manufacturing of auto components and tubes was copper coated steel stripes and sheetswhich accounted for 70% of total raw materials. The TPO had rejected some of the comparable as selected by the assessee for the reason that they were functionally not comparable. According to TPO, these comparables were coil and spring making companies which used steel, whereas the assessee was engaged in manufacturing of auto components by using copper coated materials. Keeping these functional aspects into consideration, we will examine the objection of the assessee in respect of the comparables.

8.6 We now proceed to examine and consider each of the comparable included in the TPO list and against which the assessee has objection.

8.7 Coventry Coil-O-Matic (Haryana) Ltd.(CCHL): This company was selected as a comparable by the assessee. The

TPO has rejected it as a comparable for the reason that CCHL was engaged in manufacturing of coil and spring for auto component. The Ld. AR submitted that in TNMM analyses one has to go by the broad comparability.

8.7.1 It is found from the audited account of CCHL that this company was a leading manufacturer of Auto Suspension Springs and was one of the leading market players in springs for other Industrial Application. Business from the Auto Suspension Springs accounted for more than 67% of the turnover. The raw material consumed for manufacturing of coil springs was wires. Thus CCHL is found to be engaged in manufacture of altogether different product and raw material utilized by it was also different. CCHL was manufacturing Auto Suspension Springs and Coil Springs while the assesse was manufacturing tubular products. The raw materials of CCHL was steel wires whereas the assessee's raw materials were copper coated steel strips and sheets. As the product as well as the raw material of CCHL was different from that of the assessee, the two companies were not functionally comparable. Hence, CCHL was correctly rejected by the TPO as a comparable.

8.8 Frontier Springs Ltd.(FSL):This company was manufacturing coil springs and the raw materials were indigenous springs steel round. There was no import of any raw material by this company. Not only the product profile and raw material of this company is different, all the raw materials are found to be indigenously acquired by FSL whereas in the case of assesse 50% of the raw materials were imported. When the assessee has requested for application of 'export filter'

while choosing the comparable; by the same logic 'import filter' also has to be applied to the comparable. And when we consider the import filter, this company can't be considered as functionally comparable to the assesse. Hence, rejection of this company as a comparable by the TPO is upheld.

8.9 Gabriel India Ltd.(GIL): This company was manufacturing shock absorbers, struts, front forks, bimetal strips and bimetal bearings. On the other hand, the assesse was manufacturing tubular products. The raw materials utilized by GIL were tubes, bright bars, shock fluid, non-ferrous metals and steel strips. In addition components such as Pressed Parts, Die Castings, Rubber Parts, Sintered Parts and Forgings etc. were also utilized. Shock absorber is altogether different type of spring which can't be compared with the products being manufactured by the assesse. The other products manufactured by GIL are also found different from the products manufactured by the assessee as there is no similarity in the product profile. Considering the difference in the product profile of the two companies the rejection of GIL as a comparable is upheld.

8.10 Jamna Auto Industries Ltd.(JAIL): In the case of Jamna Auto Industries Ltd., the manufacturing product was Spring & Spring Leaves and the raw material consumed was spring steel flats. Further, all the raw material of JAIL was indigenously acquired and there was no import of any raw material. Considering this difference in the product and in mode of acquisition of raw materials viz. the import filter, this company couldn't have been considered as a comparable. Hence, rejection of JAIL as a comparable by the TPO is upheld.

8.11 The Ld. AR has relied upon the decision of Co-ordinate Bench of this Tribunal in the assessee's own case in ITA No.683/Ahd/2015 for A.Y. 2010-11 in support of its contention that the entity was engaged in manufacturing activity of auto ancillary parts and that the comparable selected by it were also engaged in manufacture of auto ancilliary part and, therefore, broad coamparability should be considered. Merely because a company is engaged in production of auto ancillary part, it does not qualify itself as a comparable. In any automobile several types of components are used and a company manufacturing certain ancillary part by utilizing different type of material cannot be held to be comparable. We have to carefully analyze the products being manufactured and the raw materials utilized for it as well as the source of its acquisition. The material utilized by the assesse was copper coated material, which was entirely different from the normal steel used by the above companies selected by the assessee as a comparable. Further as already discussed above, there is difference in mode of acquisition of raw materials in certain cases. In the case of the assessee, 50% of the raw material was imported whereas in some of the compatibles, there was no import of raw material at all. In view of these factors and functional differences, the rejection of the above four comparable by the TPO is upheld.

8.12 We now consider the erroneous exclusion of comparable companies by the TPO from the assessee's list as contended by the assessee.

8.13 FCC Rico Ltd.(FCC): It is found that the assessee has filed account of FCC Rico Ltd. for the Financial Year 2007-08 in which the figures for

Financial Year 2006-07 are also available. From the related party disclosures appearing in the accounts, it is found that this company had the following percentage of purchases of raw materials from related parties during the Financial Year 2006-07:

(i) FCC Co. Ltd.		8.25%
(ii) Rico Auto India Ltd.		18.72%
(iii) FCC (Philippines) Corporation		4.62%
(iv) FCC (Thailand) Co. Ltd.		1.69%
(v) Chengdu Yonghua FCC Clutches Co. Ltd.		0.97%
(vi) FCC Europe Ltd.		2.09%
(vii) FCC (Brasil)		0.16%
(viii) PT. FCC Indonesia		0.66%
(ix) FCC Taiwan		0.01%
Total	:	37.17%

It is found from the above chart that the related party transaction of FCC in respect of purchase of raw materials during the year was 37.17%. It is also seen from the order of the Ld. CIT(A) that he had rejected the comparable, where the related party transaction was in excess of 25%. As the **related party transaction in this case also exceeds 25%, it is directed that FCC should also be excluded from the set of comparable.**

8.14 Setco Automotive Ltd.:The contention of the assessee is that this company has different product profile and there was abnormal event of acquisitions as reported in the audited accounts under Management Discussions and Analysis. It was further submitted that due to presence of intangibles, this company was not a comparable. It was contended that another company, Clutch Auto, was selected by TPO as comparable but the same was dropped by CIT(A) as comparable in the A.Y. 2008-09 due to presence of intangibles. The Ld. Sr. Counsel

relied upon the decision of ITAT Bangalore in the case of *3 DPLM Software Solutions Ltd. vs. DCIT, (42 taxmann.com 333)* in this regard. The Ld. CIT(DR) on the other hand submitted that the assessee had not demonstrated as to how intangibles effect the margin of the comparable.

8.14.1 We have considered the rival submissions. It is found that Setco was manufacturing clutch drive plate and clutch cover assembly which is identical to the brake &fuel line product of the assessee company, as the brake and clutch work in tandem. Clutch and brake plates are used to transfer torque from the driving part to the driven part of the device. Clutch plates are placed in clutch and brakes, depending on the way the plate pack is compressed. Clutch plate has friction linings, similar to brake linings. Thus, the product profile of this comparable was similar to that of the assessee company. As regarding abnormal events of acquisition, it is found that Setco had set up a new export orient unit (EOU) at Kalol to meet the growing export market and to derive the tax benefit under the EOU Scheme. Further, Setco had also acquired a new business unit at Paris in December 2006 through Setco Automotive (NA). The assessee had not explained as to how the events of set up of EOU and acquisition of new business through another entity had any effect on the profitability/business results of this comparable company.

8.14.2 The main objection of the assessee towards Setco as a comparable is presence of intangibles. In the case of *3 DPLM*

Software Solutions Ltd. (supra), it was held that a company engaged in proprietary software products and owning its own tangible cannot be held as a comparable with another company who is a software service provider. Thus, nature of the activity in that case was totally different where the assessee was a software service provider. In the case of software service, the intangible, such as license,provide significant value which leads to huge revenue from software products. Therefore, the ratio of that decision cannot be imported to the facts of the present case as the assessee is engaged in altogether different activity. The assessee has not pointed out as to how the intangible as owned by Setco had any effect on their margin. The finding given by the ld. CIT(A) in respect of this comparable is as under:

> *"ii) The other contention of the appellant relates to comparables owning intangibles. It is seen from the order of TPO in appellant's own case for A.Y. 2008-09 that Clutch Auto Limited was not considered as a comparable on account of being owner of many intangibles Patent & Trade Mark. But at the same time the TPO analyzed the intangibles owned by Setco Automotive Ltd. and stated that intangible assets owned by this company are not in the nature of those that could affect the margin by enabling the entity to earn the higher margins such as goodwill and technical knowhow. The intangibles having large volumes are computer software and product development. The appellant in the present case also has not demonstrated as to how these intangibles will effect the margins of this comparable. Hence, the selection of Setco Automotive Ltd. is confirmed and that of Clutch Auto Ltd. is rejected."*

8.14.3 The presence of any intangible doesn't make a company ineligible to be considered as a comparable. One has to find out as to how the intangible is effecting the margin of the comparable company. The assessee has not brought out anything on record to demonstrate that the intangible had an

impact on the margin ofthis comparable company. Rather the TPO had analyzed the intangibles owned by Setco Automotive Ltd. and stated that intangible assets owned by this company was not in the nature of those that could affect the margin by enabling the entity to earn the higher margins; which has not been controverted by the assesse.Therefore, the objection of the assessee to this comparable is rejected and the order of the CIT(A) in this regard is upheld.

8.15 ANG Industries Ltd.: It was submitted that this company is export oriented and the export turnover exceeds the domestic turnover and, therefore, this cannot be treated as a comparable. TPO had not applied the export filter while choosing this company as a comparable. The Ld. DR on the other hand submitted that no such contention was raised by the assesse either before the TPO or before the CIT(A).

8.15.1 We have considered the rival submissions. It is found from the accounts that the export sales of this company was Rs. 65.24 crores against domestic sales of Rs.48.22 crores during the Financial Year 2006-07. On the other hand the export to turnover ratio of the assesse company was only 4.72%. As this issue of export filter was neither raised before nor examined by the lower authorities the matter is set aside to the TPO to examine the objection of the assesse on the ground of 'export filter' in respect of this comparable.

8.16 In the result, this ground is partly allowed.

9. Ground No. 5: TP adjustment in ITES segment

9.1 This ground pertains to TP adjustment of Rs.44,47,175/- in ITES Segment. The assessee company was providing back office support service to its AEs. The ALP of the service was determined by the TPO and an adjustment of Rs.44,47,175/- was made. The assessee had contested this adjustment before the Ld. CIT(A) in respect of rejection of seven out of twelve comparable companies selected by it. Further the assessee had also objected to the six new comparable selected by the TPO. The operating profit (OP) margin earned by the assesse from its manufacturing activity was 10.36% which was compared with OP margin of 26.7% of the comparables selected by the TPO and accordingly an adjustment of Rs.44,47,175/- was made to ITES segment. The Ld. CIT(A) rejected the objection of the assesse in respect of comparable used by the TPO and upheld the TP adjustment in this segment.

9.2 The Ld. A.R. submitted that the assessee company had opted for Mutual Agreement Procedure (MAP) in respect of TP adjustment pertaining to transactions with United Kingdom (UK) AE. The assessee had accepted the terms mutually agreed under MAP resolution in respect of transactions made with UK Tax Residents AEs and a copy of the relief under MAP with UK companies has been brought on record. As a result of the MAP resolution, the assessee company has filed revised Ground of Appeal withdrawing the grounds challenging the TP adjustment in respect of its transactions with AE of UK. The Ld. A.R. explained that the margin as per assessee's TP study was 10.36% whereas ALP as determined by TPO and upheld by Ld. CIT(A) was 26.7%. On the other hand the margin as agreed upon under MAP resolution was 18% only. The Ld. A.R. requested that the margin of 18% determined under MAP may be applied to adjustment in respect of transactions with AEs of other than UK Countries

in respect of ITES service. In this regard, he placed reliance on the decision in the case of *J.P. Morgan Services India (Pvt.) Ltd. Vs. DCIT (Mum-Trib.) reported in 70 taxmann.com 228.* He pointed out that the appeal filed by the Department against this decision was dismissed by the Hon'bleBombay High Court and the SLP was also dismissed by the Hon'ble Supreme Court.

9.3 The Ld. D.R. on the other hand relied upon the order of the Ld. CIT(A).

9.4 We have heard the rival submissions and gone through the material placed before us. A copy of Letter F. No.480/01/2014-APA dated 18.09.2016 of the CBDT has been brought on record in which relief under MAP with UK in the case of BundiyIndia Pvt. Ltd. for the Assessment Years 2007-08 to 2009-10 has been specified. It is found that the ALP of ITES transactions of the assesse with UK entities was settled at 118% of Operating Cost (OC) for all the three years. It is further found that for the Asst. Year 2007-08, the cost pertaining to UK entity in ITES Segment was Rs.112,02,382/- which was 41.16% only of total Operating Cost in ITES segment. The contention of the assessee is that the margin of 18% as determined under MAP resolution for 41.16% of the transactions with UK entities should be applied in respect of remaining 58.48% of ITES transactions with non-UK entities.

9.5 We have given a careful thought to the request of the assessee and also considered the decision in the case of *J.P. Morgan Service India Pvt. Ltd. (supra)* as relied upon. It is found that in the case of J.P. Morgan Services India Pvt. Ltd., MAP resolution was in respect of US related transactions with whom the company had 96% of the transactions.

Considering this fact, the Ld. ITAT had held that the margin as adopted for US entities should also apply to remaining 4% transactions with non-US entities. In the present case, however, the transactions covered under MAP resolution is only the 41.16%. Thus, the facts of the two cases are found to be distinctly different as the transaction not covered under MAP in that case was a miniscule 4% whereas such transactions in this case is substantial 58.48%. Further, this issue can be decided after undertaking FAR analysis of non-UK transactions in order to find out whether there is any distinction in the factors influencing the price between UK and non-UK transactions. The assessee has not brought on record any similarities of factors that influenced the price between UK and non-UK transactions. Therefore, we are of the considered opinion that the matter may be restored to the file of the TPO/AO for analysis of factors influencing the price between UK and non-UK AE transactions for ITES segment. If it is found that the factors influencing the price are similar between UK and non-UK transactions, the price adopted for UK transactions may also be adopted for non-UK transactions. In this regard we are guided by decision of the Ld. ITAT, Bangalore in the case of *Dell International Services India (Pvt.) Ltd. Vs. DCIT (73 taxmann.com 24),*wherein it was held that if after taking a FAR analysis of non-US transactions, it is found that factors influencing the price were similar between US and non-US AE transactions, same price fixed under MAP can be adopted for all the transactions. The ground is allowed for statistical purpose.

10. Ground No. 6: TP adjustment in management charge

10.1 This grounds pertains to TP adjustment of Rs.145,54,002/- in respect of management charges. The assessee has filed a letter dated 28.02.2019

informing that MAP was initiated under Article 27 of Double Tax Avoidance Agreement (DTAA) between India and the United Kingdom (UK) in respect of management fee adjustment of Rs.145,54,002/- pertaining to tranactions with AE in the UK. The Ld. AR informed that after examination of the facts of the case and the issue involved a resolution was arrived in terms of section 90 of the Act read with Article 27 of the India UK DTAA and Rule 44H of I.T. Rules. As per MAP order dated 18.08.2016, 70% of the management fee adjustment was allowed and, therefore, the assessee has requested for withdrawal of the ground in respect of disallowance of management charges.

10.2 We have considered the request of the assessee. It is found from the letter dated 18.08.2016 of the CBDT that payment of management charges by the assessee to TI Group Automatic System Ltd., UK was settled at 30% of TP adjustment of Rs.145,54,002/-. As this ground has been withdrawn by the assessee, the same is dismissed as withdrawn.

11. Ground No. 7:5% variation

11.1 The ground regarding standard deduction of 5% variation as provided U/s 92C(2) of the Act was not pressed by the assessee. Therefore, this ground is dismissed.

12. Ground No. 8: Revenue expenditure of Jigs and Fixtures.

12.1 The assessee had claimed write off of proportionate amount of jigs and fixtures aggregating to Rs.31,49,367/- as revenue expenditure which was disallowed by the A.O. The Ld. CIT(A) while upholding the

disallowance had directed to allow depreciation on the WDV brought forward from the earlier years in respect of jigs and fixtures. The Ld. Counsel explained that the jigs and fixtures are for specific purpose and are obtained specifically for individual customers and that they do not provide enduring benefit to the company. It was also submitted that the jigs and fixtures included wooden gauges, thumb vendor, misc. fixtures and tools for fabrication and were not in the nature of plant and machinery at all. For treating these items as revenue expenditure, reliance was placed on the decision of ITAT Chennai in the case of *Ucal Machine Tools (P.) Ltd. Vs. ITO 71 taxmann.com 230 (Chennai-Trib.).*

12.2 The Ld. D.R. on the other hand submitted that this issue was involved in the earlier year as well and the jigs and fixtures were all along treated as capital expenditure. He strongly supported the order of the Ld. CIT(A).

12.3 We have carefully considered the facts of the case and the submissions made by the rival parties. It is found that the assessee company is not treating the jigs and fixtures as revenue expenditure in its books of accounts. The company had a policy of writing off of the expense over a period of two years since long term enduring benefit was derived from jigs and fixtures. Undoubtedly, the jigs and fixtures are not in the nature of repairs and maintenance, so as to claim it as a revenue expenditure. They are utilized in the manufacturing process and the assessee has admitted that long term enduring benefit of at least two years is derived from them. The facts of the case *Ucal Machine Tools (P.) Ltd. (supra)* relied upon by the assessee are found to be different. In that case, the issue involved was expenditure on tools such as screw drivers, spanners which are purchased

along with the machineries and their replacement was claimed as revenue expenditure. In the present case, the assessee itself is not treating the expenditure in respect of jigs and fixtures as revenue expenditure, rather it is writing off the same in the accounts over two years period.

12.4 In view of the above facts and the treatment as given in the earlier years, the decision of the Ld. CIT(A) to treat the expenditure on jigs and fixtures as capital expenditure and allow depreciation on the brought forward WDV is upheld. Therefore, this ground is dismissed.

13. Ground No. 9- Interest

13.1 The ground charging of interest U/s 234B and 234D as well as withdrawal of interest on refund U/s 244A is only consequential in nature and need not be adjudicated. The ground is dismissed.

14. Additional Ground no. 1: Working Capital adjustment

14.1 The assessee had raised an additional ground for granting working capital adjustment while determining the ALP of the international transactions. The Ld. A.R. submitted that the TPO had accepted the assessee's request for working capital adjustment for A.Y. 2009-10 and 2010-11. Accordingly, the working capital adjustment may also be allowed in this year as well. The Ld. DR submitted that no such contention was raised in this year before the AO/TPO or before the Ld. CIT(A).

14.2 We have considered the request of the assessee. The matter is set aside to the file of the TPO to verify whether any working capital

adjustment was granted while determining the ALP of the international transactions in the A.Y. 2009-10 and 2010-11, as claimed by the assessee. If yes, a similar adjustment may be allowed in the current year as well. The ground is allowed for statistical purpose.

15. In the result, the appeal preferred by the assessee is allowed in part.

This Order pronounced on 10/06/2024

Sd/-	Sd/-
(T.R. SENTHIL KUMAR)	(NARENDRA PRASAD SINHA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/06/2024

S. K. SINHA

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad