

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'I' NEW DELHI]**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 346/DEL/2022 (A.Y 2017-18)

Goodyear India Ltd. Mathura Road, Ballbhgarh, Faridabad, Haryana, 121001 PAN No. AAACG3511H (APPELLANT)	Vs.	DCIT Circle-10(1) New Delhi. (RESPONDENT)
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I.T.A. No. 1451/DEL/2022 (A.Y 2018-19)

Goodyear India Ltd. Mathura Road, Ballbhgarh, Faridabad, Haryana, 121001 PAN No. AAACG3511H (APPELLANT)	Vs.	ACIT Circle-10(1) New Delhi. (RESPONDENT)
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Assessee by :	Shri Ajay Vohra, Sr. Adv. Sh. Neeraj Jain, Adv & Mr. Abhishek Aggarwal, AR
Department by:	Shri Vivek Verma CIT (DR) and Sh. Kanv Bali, Sr. DR

Date of Hearing	03.05.2024
Date of Pronouncement	26.07.2024

ORDER

PER YOGESH KUMAR U.S., JM

These two appeals are filed by the assessee for Assessment Years 2017-18 and 2018-19 against the assessment orders passed by DCIT, New Delhi

dated 27/01/2022 and 30/05/2022 respectively u/s 143(3) r/w Section 144C (13) read with Section 144B of the Income tax Act, 1961, (Act for short).

2. The assessee has raised the following grounds of appeal:-

I.T.A. No. 346/DEL/2022 (A.Y 2017-18)

1. *That the impugned order of assessment framed by the assessing officer in pursuance of the directions of the Dispute Resolution Panel (hereinafter referred to as 'DRP') under Section 143(3) read with Section 144C of the Income-tax Act, 1961 ('Act'), is bad in law and unsustainable.*

1.1 *That the assessing officer erred on facts and in law in completing assessment under section 144C/ 143(3) of the Income-tax Act, 1961 ('the Act') at an income of Rs. 255,67,96,910 as against the income of Rs. 193,62,59,440 determined by the appellant in its income tax return.*

1.2 *That the assessing officer erred on facts and in law in making an aggregate addition of Rs. 58,43,68,022 allegedly on account of difference in arm's length price of various international transactions entered into by the appellant with its associated enterprises, on the basis of order passed by the Transfer Pricing Officer ('TPO') and sustained by the Dispute Resolution Panel ('DRP').*

2. *That the DRP/ TPO erred on facts and in law in making an addition of Rs. 10,38,00,000/-allegedly on account of difference in arm's length price of international transactions of payment of trademark fee entered into by the appellant with its associated enterprise, the Goodyear Tire & Rubber Company, USA.*

2.1 That the DRP/ TPO erred on facts and in law in holding the arm's length price of the international transaction of payment of trademark fee of Rs. 10,38,00,000 at Nil allegedly holding that the appellant has not received any benefit from using the 'trademark' and therefore the arm's length price of the trademark fees to the AE should be considered as NIL.

2.2 That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of royalty at NIL disregarding the CUP method appropriately applied by the appellant relying upon comparable instances, not correctly applying CUP method in terms of Rule 10B(1) of the Income Tax Rules, 1962.

2.3 That the DRP/ TPO erred on facts and in law in disregarding the comparable uncontrolled transaction considered for benchmarking the transaction of payment of royalty applying CUP method, in the Transfer Pricing Report.

2.4 That the DRP/ TPO erred on facts and in law in not appreciating that non-charging of trademark fee in earlier years by the associated enterprise cannot adversely affect its right to charge arm's length fee for providing access to valuable intangibles.

3. That the DRP/ TPO erred on facts and in law in making an adjustment of Rs. 10,04,075 by re-characterizing the alleged transaction of delay in receipts of receivables from the associated enterprise as unsecured loans advanced to the associated enterprises.

3.1 That the DRP/ TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an 'international transaction', per se, under section 92B of the Act but is

a consequence of an 'international transaction' undertaken in the form of sale of finished good/ services to the associated enterprise.

3.2 That the DRP/ TPO erred on facts and in law in not appreciating that the appellant huge outstanding payables to the associated enterprise and no interest has been charged by the associated enterprise on such delay in receipt of payables and therefore, on the parity of treatment, no interest ought to be imputed on delay in receipt of receivables.

3.3 Without prejudice, that the DRP/ TPO erred on facts and in law in not appreciating that the appellant has also not charged interest on delay in receipt of receivable from unrelated third parties and accordingly, considering the uniformity in approach of the appellant, no interest ought to be charged on the delay in receipt of receivables from associated enterprise.

3.4 That the TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked international transaction' of sale of finished goods/ services and since the profit earned by the appellant as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.

3.5 That the assessing officer/TPO erred on facts and in law in adding an ad-hoc mark-up of 400 points on the Libor rate of interest, arbitrarily on account of credit rating risk, security risk, transaction cost etc.

4. That the DRP/ TPO erred on facts and in law in making an addition of Rs. 1,52,85,800 in arm's length price of international

transactions of purchase and sale of finished goods by disregarding the economic analysis undertaken by the appellant, applying TNMM and instead applying RPM with internal comparable.

4.1 That the DRP/ TPO erred on facts and in law in disregarding the economic analysis undertaken by the appellant in the transfer pricing report, applying TNMM, erroneously concluding that the appellant has determined the ALP of trading transaction by comparing its entity wide margin with comparable companies.

4.2 That the DRP/ TPO erred on facts and in law in applying RPM with internal comparable not appreciating that the non-AE segment too, has substantial related party transaction as almost 80% of purchases of trading goods made in the segment is purchased from related party, Goodyear South Asia Tyres Private Limited ('GSATL').

4.3 That the DRP/ TPO erred on facts and in law in applying RPM with internal comparable not appreciating that there are functional differences in the AE and non-AE segment and therefore both the segment cannot be compared to each other.

4.4 That the DRP/ TPO erred on facts and in law in not appreciating that the benchmarking analysis undertaken by the appellant in its trading segment, applying TNMM with external comparable was consistently found to be appropriate in preceding years and no adverse inference was drawn in those years.

5. That the DRP/ TPO erred on facts and in law in making an addition of Rs. 46,05,42,787 allegedly on account of difference in the arm's length price of international transaction of payment of Regional Service Charges ('RSC') and Rs. 37,35,360 in respect of

international transaction payment of Accounting Support Services fees entered into by the appellant with its associated enterprise.

5.1 That the DRP/ TPO erred on facts and in law in holding the arm's length price of the international transaction of payment of RSC of Rs. 46,05,42,787 and payment of Accounting Support Services fees of Rs. 37,35,360 at Nil allegedly holding that no recognizable benefit has been passed on to the appellant and therefore there was no rationale for making such payment to the AE.

5.2 That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC and Accounting Support Services fees at NIL without bringing on record any comparable uncontrolled transaction and therefore, not correctly applying CUP method in terms of Rule 10B(1) of the Income Tax Rules, 1962.

5.3. That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC at NIL not applying any of the prescribed method provided under Rule 10B of the Income Tax Rules, 1962 for determination of arm's length price.

5.4 That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC and Accounting Support Services fees at NIL arbitrarily holding that the services are in the nature of 'shareholder services' and 'duplicative services'.

5.5. That the DRP/ TPO erred on facts and in law in not appreciating that the expenditure on the payment of RSC and

Accounting Support Services fees was wholly and exclusively for the purpose of business of the appellant.

5.6 Without prejudice, that the DRP/ TPO erred on facts and in law in not appreciating that since the total mark-up earned by group companies in the entire chain of provision of RSC at 2.05% falls within the range of 0% - 3%, in terms of decision of Hon'ble ITAT in case of another group company, GSATL, the transaction of payment of RSC ought to be considered to be at arm's length price.

5.7 That the DRP/ TPO erred on facts and in law in not appreciating that similar payment for RSC and Accounting Support Services fees has always been accepted to be at arm's length price in the preceding years and also accepted to be at arm's length price in the case of GSATL for the same assessment year, i.e. 2017-18, wherein, payment of RSC under the same agreement was made by GSATL to the AEs.

5.8 That the DRP/ TPO erred on facts and in law in disregarding the independent accountant's certificate filed by the appellant certifying the cost allocation methodology adopted for allocating costs to the appellant.

6. That the assessing officer erred on facts and in law in making an ad-hoc disallowance of Rs. 3,61,50,000 being 30% of the total expenditure of Rs. 12,05,00,000/- incurred by the appellant on advertisement and publicity following the finding in the preceding assessment year allegedly holding that the expenditure was incurred for the benefit of the enterprise who owns brand name.

6.1 That the assessing officer erred on facts and in law in relying on the decision of Hon'ble Delhi High Court in the case of Maruti

Suzuki India Limited to hold that if the brand name is not owned by the appellant, such expenditure is incurred for the benefits of the enterprise who own the brand name, not appreciating that the said decision was made redundant by the Hon'ble Supreme Court.

6.2 That the DRP erred on facts and in law in confirming the action of the AO by holding that the arguments of the appellant were bereft of any evidence, and that the assessee has not been able to counter the argument of Assessing Officer that the assessee was not the owner of the brand and therefore, such expenditure, incurred for the benefit of the enterprise who owned the brand name, must be reimbursed by that enterprise.

6.3 That the assessing officer/DRP erred on facts and in law in not appreciating that the advertisement and publicity expenses were incurred by the appellant in the course of carrying on of its business and were allowable deduction as business expenditure.

7. That the assessing officer erred on facts and in law in making disallowance of Rs. 19,452 in relation to late deposit of employee contribution to employee state insurance for the month of January 2017, without appreciating that the aforementioned contribution was deposited before the due date of filing of return of income and therefore, otherwise allowable under section 43B of the Act.

7.1 That while making disallowance of Rs. 19452, the assessing officer erred on facts and in law in relying on the Explanation 2 to section 36(l)(va) of the Act inserted vide Finance Act 2021, without appreciating that the amendment made by the Finance Act 2021 is prospective in nature and does not apply to the year under consideration, i.e. AY 2017-18.

8. That the assessing officer erred on the facts and in law in determining Dividend Distribution Tax ('DDT') payable of Rs. 9,29,76,804 (including interest of Rs. 3,66,27,226) in Computation Sheet issued along with order passed under section 143(3) r.w.s. 144C(13) of the Act, without appreciating that DDT was already paid by the appellant vide challan dated 02.09.2016 and Challan serial number 95022.

9. That the assessing officer erred on the facts and in law in charging interest under section 234C of the Act at Rs. 8,63,466 as against correct interest of Rs. 5,33,170.

10. That the assessing officer erred on the facts and in law in charging interest under section 234B of the Act.

11. That on the facts and circumstances of the case and in law, the assessing officer erred in proposing to initiate penalty proceedings under section 270A of the Act mechanically and without recording any adequate reasons for such initiation.

The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing.

I.T.A. No. 1451/DEL/2022 (A.Y 2018-19)

1. That the impugned order of assessment framed by the assessing officer in pursuance of the directions of the Dispute Resolution Panel (hereinafter referred to as 'DRP') under Section 143(3) read with Section 144C of the Income-tax Act, 1961 ('Act'), is bad in law and unsustainable.

1.1 That the assessing officer erred on facts and in law in completing assessment under section 144C/143(3) of the Income-tax Act, 1961 ('the Act') at an income of Rs. 2,64,51,24,290 as against the income of Rs. 2,02,41,95,780 determined by the appellant in its income tax return.

1.2 That the assessing officer erred on facts and in law in making an aggregate addition of Rs. 59,69,56,815 allegedly on account of difference in arm's length price of various international transactions entered into by the appellant with its associated enterprises, on the basis of order passed by the Transfer Pricing Officer ('TPO') and sustained by the Dispute Resolution Panel ('DRP').

2. That the DRP/ TPO erred on facts and in law in making an addition of Rs. 12,21,32,000/- allegedly on account of difference in arm's length price of international transactions of payment of trademark fee entered into by the appellant with its associated enterprise, The Goodyear Tire & Rubber Company, USA.

2.1 That the DRP/ TPO erred on facts and in law in determining/considering the arm's length price of the international transaction of payment of trademark fee of Rs.12,21,32,000/- to be Nil, allegedly holding that the appellant did not receive any benefit from using the 'trademark'.

2.2 That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of royalty at NIL, without bringing on record any comparable uncontrolled transaction and therefore, not correctly applying CUP method in terms of Rule 10B(1) of the Income Tax Rules, 1962.

2.3 *That the DRP/ TPO erred on facts and in law in disregarding the comparable uncontrolled agreements considered in the Transfer Pricing Report for benchmarking the international transaction of payment of royalty, applying CUP method.*

2.4 *That the DRP/ TPO erred on facts and in law in not appreciating that non-charging of trademark fee in earlier years by the associated enterprise cannot adversely affect its right to charge arm's length fee for providing access to valuable intangibles.*

3. *That the DRP/ TPO erred on facts and in law in making an adjustment of Rs. 7,17,113 by re-characterizing the alleged transaction of delay in receipts of receivables from the associated enterprise as unsecured loans advanced to the associated enterprises.*

3.1 *That the DRP/ TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an 'international transaction', per se, under section 92B of the Act but is a consequence of an 'international transaction' undertaken in the form of sale of finished good/ services to the associated enterprise.*

3.2 *That the DRP/ TPO erred on facts and in law in not appreciating that the appellant had huge outstanding payables to the associated enterprise and no interest has been charged by the associated enterprise on such delay in receipt of payables and therefore, on the parity of treatment, no interest ought to be imputed on delay in receipt of receivables.*

3.3 *Without prejudice, that the DRP/ TPO erred on facts and in law in not appreciating that the appellant has also not charged interest on delay in receipt of receivable from unrelated third parties and accordingly, considering the uniformity in approach of the appellant, no interest ought to be charged on the delay in receipt of receivables from associated enterprise.*

3.4 *That the TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked to the 'international transaction' of sale of finished goods/ services and since the profit earned by the appellant as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.*

3.5 *That the assessing officer/TPO erred on facts and in law in adding an ad-hoc markup of 400 points on the Libor rate of interest proposed to be charged on delay in receipt of receivables arbitrarily on account of credit rating risk, security risk, transaction cost etc.*

4. *That the DRP/ TPO erred on facts and in law in making an addition of Rs. 76,83,047 in arm's length price of international transactions of purchase and sale of finished goods by disregarding the economic analysis undertaken by the appellant, applying TNMM and instead applying RPM with internal comparable.*

4.1 *That the DRP./ TPO erred on facts and in law in disregarding the economic analysis undertaken by the appellant in the transfer pricing report, applying TNMM, erroneously concluding that the appellant has determined the ALP of trading transaction by comparing its entity wide margin with comparable companies.*

4.2 That the DRP/ TPO erred on facts and in law in applying RPM with internal comparable not appreciating that the non-AE segment too, has substantial related party transaction as almost 80% of purchases of trading goods made in the segment is purchased from related party, Goodyear South Asia Tyres Private Limited ' (‘GSATL’)

4.3 That the DRP/ TPO erred on facts and in law in applying RPM with internal comparable not appreciating that there are functional differences in the AE and non-AE segment and therefore both the segment cannot be compared to each other.

4.4 That the DRP/ TPO erred on facts and in law in not appreciating that the benchmarking analysis undertaken by the appellant in its trading segment, applying TNMM with external comparable was consistently found to be appropriate in preceding years and no adverse inference was drawn in those years.

5. That the DRP/ TPO erred on facts and in law in making an addition of Rs. 45,00,06,112 allegedly on account of difference in the arm’s length price of international transaction of payment of Regional Service Charges (‘RSC’) and Rs. 1,64,18,543 in respect of international transaction payment of Accounting Support Services fees entered into by the appellant with its associated enterprise.

5.1 That the DRP/ TPO erred on facts and in law in holding the arm’s length price of the international transaction of payment of RSC of Rs. 45,00,06,112 and payment of Accounting Support Services fees of Rs. 1,64,18,543 at Nil allegedly holding that no recognizable benefit has been passed on to the appellant and therefore there was no rationale for making such payment to the AE.

5.2 *That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC and Accounting Support Services fees at NIL without bringing on record any comparable uncontrolled transaction and therefore, not correctly applying CUP method in terms of Rule 10B(1) of the Income Tax Rules, 1962.*

5.3 *That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC at NIL not applying any of the prescribed method provided under Rule 10B of the Income Tax Rules, 1962 for determination of arm's length price.*

5.4 *That the DRP/ TPO erred on facts and in law in determining the arm's length price of international transaction of payment of RSC and Accounting Support Services fees at NIL arbitrarily holding that the services are in the nature of 'shareholder services' and 'duplicative services'.*

5.5 *That the DRP/ TPO erred on facts and in law in not appreciating that the expenditure on the payment of RSC and Accounting Support Services fees was wholly and exclusively for the purpose of business of the appellant.*

5.6 *Without prejudice, that the DRP/ TPO erred on facts and in law in not appreciating that since the total mark-up earned by group companies in the entire chain of provision of RSC at 2.11% falls within the range of 0% - 3%, in terms of decision of Hon'ble ITAT in case of another group company, GSATL, the transaction of payment of RSC ought to be considered to be at arm's length price.*

5.7 That the DRP/ TPO erred on facts and in law in not appreciating that similar payment for RSC and Accounting Support Services fees has always been accepted to be at arm's length price in the preceding years upto AY 2016-17 and also accepted to be at arm's length price in the case of GSATL for the assessment year, i.e. 2018-19, wherein, payment of RSC under the same agreement was made by GSATL to the AEs.

5.8 That the DRP/ TPO erred on facts and in law in disregarding the independent accountant's certificate filed by the appellant certifying the cost allocation methodology adopted for allocating costs to the appellant.

6. That the assessing officer erred on facts and in law in making an ad-hoc disallowance of Rs. 2,97,30,000 being 30% of the total expenditure of Rs. 9,91,00,000/- incurred by the appellant on advertisement and publicity following the finding in the preceding assessment year allegedly holding that the expenditure was incurred for the benefit of the enterprise who owns brand name.

6.1 That the assessing officer erred on facts and in law in arbitrarily relying on the decision of Hon'ble Delhi High Court in the case of Maruti Suzuki India Limited to hold that if the brand name is not owned by the appellant, such expenditure is incurred for the benefits of the enterprise who own the brand name, not appreciating that the said decision was set aside by the Hon'ble Supreme Court.

6.2 That the DRP erred on facts and in law in confirming the action of the AO by holding that the arguments of the appellant were bereft of any evidence, and that the assessee has not been able to

counter the argument of Assessing Officer that the assessee was not the owner of the brand and therefore, such expenditure, incurred for the benefit of the enterprise who owned the brand name, must be reimbursed by that enterprise.

6.3 That the assessing officer/DRP erred on facts and in law in not appreciating that the advertisement and publicity expenses were incurred by the appellant in the course of carrying on of its business and were allowable deduction as business expenditure.

7. That the assessing officer erred on the facts and in law in charging interest under section 234B of the Act.

8. That on the facts and circumstances of the case and in law, the assessing officer erred in proposing to initiate penalty proceedings under section 274 r.w.s. 270A of the Act mechanically and without recording any adequate reasons for such initiation.

The appellant craves leave to add, alter, amend or vary from the aforesaid grounds of appeal before or at the time of hearing.

3. Since the identical issues are involved in both the Appeals, the brief facts of the case for the A.Y. 2017-18 as mentioned in the Assessment Order has been considered for the sake of convenience, which are as follows: The Assessee filed its return of income on 30.11.2017 declaring total income of Rs. 193,62,59,440 /-. The return was processed vide intimation u/s 143(1) dated 29.03.2019. The case was selected for scrutiny under CASS with one of the reasons of the "TP Risk Parameter". The notice under section 143(2) dated

09.08.2018 that was duly served to the assessee. As per CBDT instruction No-3/2016 dated 10.03.2016, the case was mandatorily required to be referred to the TPO to determine the Arm's Length Price in respect of international transaction entered by the assessee with its Associated Enterprises as shown by the assessee in its tax audit report as well as in audited accounts. The said case was referred to the TPO for determination the- ALP of the international Transactions after approval from the appropriate authority.

4. Thereafter, a notice under section 142(1) of the Act dated 14.02.2021 and 05.03.2021 were issued to the assessee. In compliance with the said notices, the assessee filed reply on 05.03.2021 through the e - assessment proceedings which are part of e-proceedings. From the reply filed by the assessee company, it is seen that during the previous year under consideration, the Company was engaged in the business of manufacturing and trading of tires, tubes and flaps with manufacturing facility at Ballabgarh, Haryana, India. During the captioned year, the assessee company has earned income from business or profession and income from other sources, On the basis of the Return of income filed, copy of accounts and replies and documents filed during the assessment proceedings, a draft assessment order u/s 143(3) r.w.s. 144C(1) of the Income-tax Act, 1961, was passed on 30.03.2021 proposing to assess the total income of the assessee company for A.Y.2017-18 at Rs.262,19,15,200/-. The said order was duly served on the assessee. Consequently, the assessee filed objections before the Dispute

Resolution Panel against the draft assessment order. The DRP-I, New Delhi, issued directions u/s.144C(5) of the I.T. Act, 1961 dated 30.11.2021, disposing off the objections raised by the assessee. The issues involved in the proposed variation are finalized by the A.O as per the directions issued by the Ld. DRP. A final assessment order came to be passed u/s 143(3) read with Section 144C, read with 144B of the Income Tax Act vide order dated 27/01/2022 by computing the income of the assessee as under:-

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	<i>Income of the assessee as per intimation u/s 143(1) dated 29/03/2019</i>		Rs. 197,86,77,180
<i>Less:</i>	<i>Disallowance on account of inconsistency in the provision for the payment of gratuity as per the directions of DRP</i>	<i>Rs. 29,56,028/-</i>	
<i>Less:</i>	<i>Disallowance on account of inconsistency in amount disallowed u/s 43B in any preceding previous year as per the directions of DRP</i>	<i>3,94,42,265/-</i>	<i>Rs.4,23,98,293</i>
			<i>Rs. 193,62,78,887</i>
<i>Add:</i>	<i>Addition on account of TP Adjustment</i>	<i>Rs. 58,43,68,022/-</i>	
<i>Add:</i>	<i>Disallowance on account of brand building expense</i>	<i>Rs. 3,61,50,000/-</i>	<i>Rs. 62,05,18,022</i>
	Total Assessed Income		255,67,96,909
	Total Assessed Income Rounded off u/s 288A of I.T. Act		255,67,96,910

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5. Aggrieved by the final assessment order dated 27/01/2022, the assessee preferred the present appeal on the grounds mentioned above.

6. Ground No. 1-1.2 are general in nature which requires no adjudication. Ground No. 2-2.4 is in respect of transfer pricing adjustment of Rs. 10,38,00,000/- on account of difference in Arm's Length Price of international transaction of payment of trade mark fee. During the year under consideration, the assessee had entered into the transaction of payments of trade mark fee of Rs. 10,38,00,000/- in terms of trade mark licensable agreement entered with goodyear USA. As per the said agreement, the assessee was granted non exclusive, non transferable and non sub license right and licensed of use the name "Goodyear in its Company name and to use the licensed trademark in respect of all products, services, advertising and promotional materials dealt in by the assessee Company. In consideration of the rights and licenses granted to Goodyear India, Goodyear India agreed to pay Goodyear USA, a trade mark fee calculated as 1% of the (net) domestic sales and 2% of the (net)export sales of its manufactured products. The said arrangement of the payment of trade mark fee was allowed by the RBI.

7. In the Transfer pricing document, for bench marking the transaction of payment of trade mark fees, the assessee selected CUP Method as Most Appropriate Method (MAM). For applying CUP Method, the assessee selected 6 comparable license agreements which are at Arm's Length Range from 3% to 3.33% with a median of 3.17%. Since, the trade mark fees paid by the assessee to it's AE Goodyear USA calculated as 1% of (net) domestic sales and

2% of the (net) export sales of manufactured products which are lesser than the median of Arms Length rate of royalty at 3.17% the transaction of the payment of the trade mark fee was considered at Arm's length Price. The Ld. TPO vide its order dated 25/07/2021 determined the Arms Length Price of transaction of the payment of trade mark fees at NIL holding that no benefit has been received by the assessee from payment of trade mark fee and, therefore, there was no rational for paying such amount to the A.E. Accordingly, adjustment of Rs. 10,38,00,000/- made on account of payment of trade mark fee which has been confirmed by the DRP.

8. The Ld. Counsel for the assessee has submitted that the said issue has been considered by the Co-ordinate Bench of this Tribunal for Assessment Year 2007-08 to 2014-15 in ITA No. 5650/Del/2011, 6240/Del/2012, 916/Del/2014, 1516/Del/2015, 1004/Del/2016, 1706/Del/2017, 7716/Del/2017 & 8006/Del/2018 and recently vide order dated 11/08/2021 in ITA No. 467/Del/2021, the Tribunal has deleted the identical adjustment made by DRP, TPO for Assessment Year 2016-17.

9. Per contra, the Ld. DR vehemently argued on the said issue but failed to bring out any contrary decision or could not point out any factual differences in the year under consideration.

10. Heard and perused the material on record. The Co-ordinate Bench of the Tribunal in Assessee's own case in ITA No. 467/Del/2021 for AY 2016-17, vide order dated 11/08/2021, while deleting the similar addition held as under:-

8. We have heard the rival contentions and perused the material available on record. We find that the facts were identical as in ITA No.5650/Del/2011 wherein the Co-ordinate Bench of this Tribunal decided the issues in favour of the assessee. The relevant contents of the order are reproduced hereunder for ready-reference:-

8. "We have heard the rival contentions in light of the material produced and the decisions relied upon. Ld. Counsel of the assessee has emphasized on the benchmarking of payment of trademark as closely linked transaction with the manufacturing segment. The Ld. Counsel of the assessee has submitted that the royalty relates to the entire turnover/production of the appellant and constitutes an essential part of the cost of sales. The entire business model of the appellant is based on the licenses granted by the associated enterprise to manufacture the tires which have been highly successful and renowned throughout the world, and for providing all the I.P. rights and technology necessary for the same, for which the royalty payment has been made. Without which, the appellant's business will cease to exist and its entire operations would come to a halt. Accordingly, since the entire operation of the appellant is based on rights and licenses to manufacture the automobile tires and tubes, for which royalty is being paid, the royalty payments cannot be separately evaluated. In the case of the appellant, it is nobody's case that the company has

entered into diverse activities. The international transactions of the appellant primarily relate to its business of manufacturing of tyres and such international transactions are closely interlinked or inter-twined. It would also not be possible to determine separately profit from the international transactions of payment of trademark fees. Reliance in this regard is placed by the Ld. Assessee counsel on the decision of Hon'ble coordinate Bench of Tribunal, in a similar case of Maruti Suzuki India Limited vs. ACIT (ITA No. 5237/Del/2011), for assessment year 2005-06, too, held as under:

“13.1 Thus, we agree with the submission of the appellant’s counsel that the entire business model of the appellant is based on license from SMC, Japan for which royalty has been paid. Without such technology supply the appellant’s business will cease to exist and its entire operations would come to a halt. Thus, we agree with the appellant’s submission TPO has arbitrarily divided the license agreement of the appellant without appreciating that all the license agreement is a single in severable agreement.

9. Reliance has also been placed by the assessee on the decision of Delhi Bench of Tribunal in the case of Lumax Industries Ltd. vs. ACIT (ITA No. 4456/Del/2012), wherein, in the similar case of payment of royalty, this Tribunal concluded that:

7 “.....the payment of royalty cannot be examined divorced from the production and sales. Royalty is inextricably linked with these activities. In the absence of production and sale of products, there would be no question arising regarding payment of any royalty. Rule 10A(d) of the ITAT Rules defines

‘transaction’ as a number of closely linked transactions. Royalty, then, is a transaction closely linked with production and sales. It cannot be segregated from these activities of an enterprise, being embedded therein. That being so, royalty cannot be considered and examined in isolation on a standalone basis.....

Royalty is to be calculated on a specified agreed basis, on determining the net sales which, in the present case, are required to be determined after excluding the amounts of standard bought out components, etc., since such net sales do not stand recorded by the assessee in its books of account. Therefore, it is our considered opinion that the assessee was correct in employing an overall TNMM for examining the royalty. The TPO worked out the difference in the PLI of the outside party (the assessee) at 4.09% and the comparables at 7.05%. This has not been shown to fall outside the permissible range.” The Hon’ble Tribunal accordingly held that the assessee was correct in applying overall TNMM for examining royalty.

10. The aforesaid decision of this Tribunal has been upheld by the Hon’ble High Court in the case of ACIT vs. Lumax Industries Ltd. (ITA No. 102/2014).

11. The assessee has also rightly made reference to the decision of Delhi High Court in the case of Sony Ericsson Mobile Communications India Pvt. Ltd vs. CIT (ITA No 16/2014) reported at 374 ITR 118, wherein, the Court has upheld clubbing of closely linked transactions for undertaking benchmarking analysis applying entity wise TNMM. In fact, in the case of CIT vs. Reebok India Co Ltd

(ITA no 213/2014), being part of the decision of Hon'ble High Court in the case of Sony Erickson, the Court has held as under:

“185. Royalty payable for availing the right to use would depend upon corresponding price, which would have been paid by an independent or unrelated enterprise. This is judged by applying comparables. TPO has not rejected the quantum of royalty on the said principle. The reasoning given by the TPO is not only erroneous for the reasons stated above, but is also contrary to the Rules. Depending upon the method selected, net profit or gross profit of the assessed has to be compared with profit margins of related enterprise. The formula prescribed under the Rules does not accept the ratiocination adopted and applied by the TPO.”

12. Another contention of the TPO that the Goodyear Brand was weak and therefore does not require payment of royalty, is not brought out from the records. The AR of the assessee has made elaborate submission and placed evidence on record to show that 'Goodyear' brand is considered to be one of the top most acclaimed brand across the globe. Therefore, there is no merit in the allegation of the TPO that Goodyear brand has no worth and therefore, the payment made by the assessee for use of Goodyear brand is unwarranted.

13. The DRP has further added that since the sister concern of the assessee, Goodyear South Asia Private Limited, is not making payment of royalty, therefore, there shall be no payment of royalty by the assessee either. We have considered this aspect and found

that there is difference in business dynamics and commercial realities in both the companies in as much as 60% of the sales made by Goodyear South Asia Limited is made to its related parties itself. Nevertheless, the AR of the assessee has rightly pointed out that in terms of Rule 10B(1)(a) of the Rules, international transactions entered into by the assessee with its AE, Goodyear Inc. USA cannot be compared with the international transaction entered between another AE, Goodyear South Asia Pvt. Ltd. with Goodyear Inc. USA.

14. The AR of the assessee has rightly placed reliance on the decision of third Member Bench of the Mumbai Tribunal, in the case of Tecnimont ICB Pvt. Ltd. vs. ACIT (ITA No. 4608 & 5085/Mum/2010), wherein, while explaining the import of clause (i) of Rule 10B(e) of the Act, held that the Rules strictly provides that an uncontrolled transaction shall be a transaction undertaken between two unrelated parties and cannot be given a wider term to include transaction entered between two other related parties, as under:-

“14. What is an ‘uncontrolled transaction’ has been clearly defined under Rule 10A(a) to mean ‘a transaction between enterprises other than associated enterprises whether resident or non-resident’. A plain reading of the meaning given to the expression ‘uncontrolled transaction’ leaves no room for any doubt that it is a transaction between two non-associated enterprises. If the transaction is between two associated enterprises, it goes out of the ambit of ‘uncontrolled transaction’ under Rule 10A. When section 92C is read along with Rule 10B(e) and 10A, it becomes abundantly clear that in computing ALP under the transactional net margin method, a comparison

of the assessee's net profit margin from international transactions with its AEs has necessarily to be made with that of the net profit margin realized by the same enterprise or an unrelated enterprise from a comparable but definitely uncontrolled transaction, i.e., a transaction between non-associated enterprises. There is no statutory sanction for roping in a comparable controlled transaction for the purposes of benchmarking. When it has been clearly mandated in all the relevant methods for determining ALP that the comparison has to be made by the enterprise's international transaction with comparable uncontrolled transaction, by no sheer logic a comparable controlled transaction can be employed for the purposes of making comparison. There is no warrant for diluting the prescription given by the statute or rules when such prescription itself serves the ends of justice properly and is infallible. If the view of the Revenue that a controlled transaction should not be shunted out for the purposes of benchmarking, is accepted, then all the relevant provisions contained in Chapter X in this regard, will become otiose. If such a contention of making comparison with a comparable controlled transaction is taken to its logical conclusion, then there will never arise any need to take up any case for transfer pricing scrutiny. The reason is obvious. ALP is determined for application in respect of transactions between two AE so that the profit likely to arise from such transactions is not underreported visà-vis from similar transactions with third parties. If the comparison is made again with net profit margin realized from transactions between two AEs, instead of third parties, it may demonstrate the same cooked results in both the situations, thereby leaving no scope for any adjustment. In this

eventuality, the very object of such provisions will be frustrated. Thus, it follows that the ALP can be determined only by making comparison with a comparable uncontrolled transaction and not a comparable controlled transaction.”

15. *It is also not acceptable that an international transaction which is not undertaken in the preceding year, cannot be undertaken between parties subsequently. In pursuance to direction of the Bench, the appellant has submitted three documents as additional evidence, i.e. (i) certificate issued by the associated enterprise, i.e. The Goodyear Tire & Rubber Company, USA explaining the reasons for not charging royalty in the earlier years; (ii) Copy of extracts of Minutes of Board of Directors meeting dated 31.07.2006 regarding approval for execution of Trademark License Agreement and (iii) copy of an email exchanged between the appellant and the associated enterprise regarding payment of trade mark fee in July 2006. These evidences are admitted on record. The ld. DR has no objection to admit these evidences on record. In these evidences, the AE has clarified that it did not charge royalty in the earlier years in order to support the appellant who was yet to achieve higher market share, stabilize operations, maintain competitive pricing and was recovering from financial difficulties. Subsequently, when the financial position of the assessee improved, the AE started charging royalty in consideration for allowing the assessee to use its valuable brand name. The reasons given by the AR of the assessee, for not charging royalty by the AE, prior to the year under consideration is duly corroborated from the year to year profits shown by the company. It is valid reason that the AE was not charging royalty prior to financial year 2006-07 was due to the losses incurred by the assessee and prior to year 2000, no Indian companies were allowed*

to pay trademark fees under automatic route. Nevertheless, the Mumbai Bench of Tribunal has, in the case of Dresser- Rand India Pvt Ltd vs. ACIT (ITA No. 8753/Mum/2010 held that whether the services given by the AE to the assessee, without charging consideration, on gratuitous basis in the preceding year, cannot de bar the AE from charging fee for the same services subsequently. The observations are:

“8.....When evaluating the arm’s length price of a service, it is wholly irrelevant as to whether the assessee benefits from it or not; the real question which is to be determined in such cases is whether the price of this service is what an independent enterprise would have paid for the same. Similarly, whether the AE gave the same services to the assessee in the preceding years without any consideration or not is also irrelevant. The AE may have given the same service on gratuitous basis in the earlier period, but that does not mean that arm’s length price of these services is ‘nil’. The authorities below have been swayed by the considerations which are not at all relevant in the context of determining the arm’s length price of the costs incurred by the assessee in cost contribution arrangement.

16. In light of the above, we conclude that there exists a direct nexus between the revenue earned by the assessee and the payment of royalty made to the associated enterprise for using brand name, and therefore, it would be incorrect to analyze the transaction of payment of royalty in isolation. Further, the ld. DR had raised a contention that the assessee has not demonstrated how the payment for royalty beneficial to the taxpayer. We are of the opinion

that, ascertaining whether a service has actually benefitted the assessee is not within the prerogative of the tax authorities. The Hon'ble Delhi High Court in CIT v. Cushman & Wakefield (India) (P.) Ltd. (2014) 367 ITR 730(Del) has held that the authority of the TPO is limited to conducting transfer pricing analysis for determining the ALP of an international transaction and not to decide if such services exist or benefits did accrue to the assessee. Such later aspects have been held to be falling in the exclusive domain of the AO.

17. Accordingly, in view of the aforesaid, we are of the opinion that since the operating margin of the assessee at 6.96% is higher than the comparables at 2.77%, the international transaction of payment of royalty entered into by the assessee are to be considered being at arm's length applying TNMM as the most appropriate method.

18. We therefore direct the assessing officer to delete the adjustment on this account.”

This decision of the Tribunal has been followed in the preceding Assessment Years 2007-08 to 2012-13 and 2014-15 in ITA Nos. 5650/Del/2011, 6240/Del/2012, 916/Del/2014, 1516/Del/2015, 1004/Del/2016, 1706/Del/2017 and 8006/Del/2018 respectively.

9. There is no change into the facts and circumstances of the case in the present year. Therefore, taking a consistent view, we hereby direct the Assessing Officer to delete the addition in the light of decisions of the Tribunal pertaining to Assessment Years 2007-008 to 2012-13 and 2014-15 in assessee's own case. Thus, Ground Nos. 2 to 2.4 raised by the assessee in this appeal are allowed.

11. By respectfully following the above decision, taking consistent view, we hereby direct the Assessing Officer to delete the addition in the light of the above decision of the Assessee's own case. Thus, Ground No. 2 to 2.4 of the Assessee in the instant appeal are allowed.

12. Ground No. 3 to 3.5 regarding addition of Rs. 10,04,075/- made on account of Arms Length Price of outstanding receivables. The Ld. Counsel for the assessee submitted that, the outstanding payable to the respective AE's is no higher than receivable and the A.E has not changed interest on delaying payables made by the Assessee. But the Ld. TPO re-characterized the delay in receipt of receivables as unsecured loan advance to AE and imputed a notional interest @ 5.475%, being LIBOR +400 bps on the period of delay. The Assessee relied on the Tribunal decision of Hyderabad Bench in the case of Satyam Venture Engg. Services Pvt. Ltd. Vs. ACIT (ITA No. 431 & 432/Hyd/2015), wherein the Tribunal has deleted the adjustment considering the high value of outstanding payables. The Ld. Counsel for the assessee further submitted that, without prejudice to the above contention interest ought to be imputed on outstanding receivables and the said interest ought to be reduced by interest payable on outstanding payables to the Associated Enterprises. To substantiate the said contentions the Ld. Counsel for the assessee has relied on the following judgments:-

- Boston Scientific International BV India (40 SOT 11) (2010)
- Technimont JCB Vs. DCIT (ITA No. 487/Mum/2014)
- Contitech India Pvt. Ltd. Vs. DCIT (ITA No. 370/Del/2015)

13. Further contended that, the delay in receipt of receivable is not a separate international transaction and relied on the decision made in Principal CIT Vs. Kusum Healthcare Pvt. Ltd. (ITA No. 765/Del/2016) and the Avenue Asia Advisors Pvt. Ltd. Vs DCIT reported at 398 ITR 120, further submitted that, the interest cost has already been suitably factored in the sale price, wherein the Assessee's margin is 6.36% and a comparable margin is between 4.032 5.93%. The Ld. Counsel for the assessee has also relied on Kusum Health Care Pvt. Ltd. Vs. ACIT in ITA No. 6814/Del/2014 and Pr. CIT Vs. Inductis India Pvt. Ltd. ITA No. 144/2019.

14. Per contra, Ld. DR relied on the orders of the Lower Authorities and justified the action of the ld. TPO/DRP.

15. We have heard the parties, verified the material on record and gave out thoughtful consideration. During the course of TP proceedings, based on the details submitted by the assessee, re-characterized the delay in receipt of receivables as unsecured loans advanced to the A.E and imputed a notional interest @5.47% being LIBOR + 400 BPS on the period of delay.

16. During the course of hearing, the Ld. AR of the assessee submitted that the outstanding payable to the respective AE's is much higher the receivables and Associated Enterprises has not charged interest on delay in payment made by the assessee. The detail of receivables payable as on 31/03/2007 is made available by the assessee which is extracted as under:-

Name of AE's	Receivable as on 01.04.2016	Payable as on 01.04.2016	Receivable as on 31.03.2017	Payable as on 31.03.2017
The Goodyear Tire & Rubber Company	0	1165	0	1198
Goodyear Dunlop Tires Operations Sa	0	46	39	82
Goodyear Earthmover Pty Limited	0	469	0	0
PT. Goodyear Indonesia TBK	0	307	0	402
Goodyear Regional Business Services Inc.	0	12	0	10
Goodyear De Chile S.A.I.C.	0	120	20	102
Goodyear Dalian Tire Company	0	46	0	94
Goodyear (Thailand) Public Company Limited	0	5	0	2
Goodyear Malaysia Berhad	0	4	0	16
TC Debica S.A.	0	1	0	0
Goodyear Middle East, FZE	0	0	7	0
Goodyear & Dunlop Tyres (Australia) Pty Limited	11	0	0	0
Goodyear International Corporation	27	0	81	0
Goodyear Singapore Tyres	13	0	0	0
Goodyear South Africa(Pty) Limited	6	0	11	0
Goodyear & Dunlop Tyres (Nz) Limited	8	0	0	0
TOTAL	65	2175	158	1906
Net outstanding amount	2110(Payable)		1748 (Payable)	

17. From the aforesaid details, the assessee had net outstanding payable as on 01/04/2016 and on 31/03/2017 as well as no interest was charged by the AE on the delay in payment of such payables. In similar circumstances, the Hyderabad Bench of the Tribunal in the case of Satyam Venture Engg. Services Pvt. Ltd. Vs. ACIT (ITA No. 431 & 432/Hyd/2015), deleted the adjustment considering the high value of outstanding payables. The relevant portions of the order are extracted hereunder:-

“15.....From the said letter we extract the details of outstanding balances of account *payable and receivable, which are as under:

<i>Description</i>	<i>Balances as at March 31, 2010</i>	
	<i>Satyam Computers Services Ltd. & its affiliates</i>	<i>Venture Global Engg LLC & its affiliates</i>
<i>Receivables</i>	26,88,97,856	37,03,875
<i>Payables</i>	1,52,29,851	

16. The Id. AR submitted that the account payable by the assessee exceeds the account receivable from the 'AE' and further submitted that the appellant company followed the same policy of not charging interest on dues from the transactions of ITES for both AE debtors and non-AE debtors.

18. We have heard the arguments of both the parties and perused the material on record as well as the orders of revenue authorities. From the above, it may be perceived that appellant has not charged any interest to AE as well as non-AE entities. Moreover, the TPO has considered only the account receivable of AE without considering the

account payable to AEs. It is pertinent to note that account payable to AE and its affiliates are INR 28,58,98,204 compared to account receivables from AE and its affiliates of INR 26,88,97,856. We find that the account payables are more than the account receivables from AE. Hence, charging notional interest does not arise.

18. By relying on the binding decision of the Hyderabad Bench in the case of Satyam Venture Engineering Services Pvt. Ltd. (Supra) and by, considering the fact that the outstanding payable to the respective AE's is much higher than the receivable and the Associated Enterprises has not charged the interest on delay in payment made by the assessee, therefore, in our considered opinion, charging of notional interest on outstanding receivables does not arise. Accordingly, the addition of Rs. 10,04,075/- on account of Arm's Length Price of outstanding receivables are hereby deleted and the Assessee's Grounds of Appeal No. 3- 3.5 are allowed.

19. The Grounds of Appeal No. 4-4.4 are in respect of addition of Rs. 1,52,85,800/- in Arm's Length Price of international transaction of purchase of sale of finished goods. The assessee in order to cater to the customer requirements, imported certain specific variety of tires of overseas Goodyear Group Companies and sells to Indian third party customers in India. These tires comprises of portfolio i.e. not manufactured by the Assessee in India. During the year under consideration, the assessee entered into international transaction of purchase of such goods amounting to Rs. 33,23,21,633/- for trading purpose.

20. The assessee in the transfer pricing study benchmarked the transaction pertaining to trading segment using TNMM Method. The Arm's Length results from distribution segment are as under:-

S.No.	Name of the Company	WC Adj. 'OP/OR'
1	Associated Auto Parts Pvt. Ltd.	5.93%
2	India Motor Parts & Accessories Ltd.	6.46%
3	Jullundur Motor Agency (Delhi) Ltd.	4.30%
4	Stanes Motor Parts Ltd.	3.08%
5	Tirupati Tyres Ltd.	2.14%
6	Gemco Automotive Products Pvt. Ltd	4.03%
7	Frontline Corporation Ltd. (Trading)	12.52%
	Count	7
	35th Percentile	4.03%
	65th Percentile	5.93%
	Median	4.30%
	Appellant Margin	6.36%

21. The Ld. Counsel for the assessee submitted that, since operating profit margin earned by the Assessee at 6.36% is higher than the median of the range of operating margin earned by comparable companies at 4.30%, the transaction of the purchase and sale of finished goods is at Arm's Length Price.

22. During the course of transfer pricing assessment proceedings, the assessee furnished comparison of gross profit margin earned by it from sale of finished goods to AE and non-AE under trading segment which is extracted hereunder:-

<i>Particulars</i>	<i>AE Segment</i>	<i>Non AE Segment</i>	<i>TOTAL</i>
<i>Sales</i>	534,370,976	4,795,690,458	5,330,061,435
<i>Liabilities / provisions written back</i>	42,838	388,628	431,466
<i>Total Sales Revenue</i>	534,413,814	4,796,079,086	5,330,492,900
<i>Purchase of Finished goods</i>			
<i>Opening Stock - Finished Goods</i>	419,911,976	3,573,383,031	3,993,295,007
<i>Closing Stock - Finished Goods</i>		323,956,327	323,956,327
<i>Cost of Goods Sold</i>		(350,052,050)	(350,052,050)
<i>Gross Margin</i>	419,911,976	3,547,287,308	3,967,199,284
	11,45,01,838	124,87,91,779	36,32,93,616
<i>GP Margin</i>	21.4%,	26%	25.6°%

23. The Ld. TPO has rejected the bench marking analysis undertaken by the assessee, applying TNMM with external comparables and instead, basis the aforesaid comparison of gross profit margin earned from sale of goods made to AE and non AE and made adjustment of Rs. 152,85,800/-. The relevant portion of the Ld. TPO is as under:-

Perusal of the submission of the assessee underlines that despite of the facts, that assessee is performing functions like marketing and sales promotion, pricing functions and warranty management function on its sale to non-AE, the GP/sales margin of the assessee is still higher in the non-AE segment (26%) viz-a-viz AE (21.4%). Further, the assessee has itself submitted that the prices of goods pertaining to sales to AE is driven by the group's transfer pricing policy and the assessee is not free to negotiate the price, which clearly demonstrates that the assessee is not independent in framing/charging the prices on the sales to AEs.

6.2.1 In view of the discussion above, the Arm's Length Price to purchase off finished goods from the from the Associated Enterprises is computed as under.

Total value of transaction with AE(A)	RS.33,23,00,000/-
Gross Margin from AE segment(B)	Rs. 21.4%
Gross Margin from non-AE segment	26%
Difference in the Margin	4.60%
Proposed Transfer Pricing adjustment/s	= Rs. 1,52,85,800 92CA

The above said proposed adjustment made by the TPO has been upheld by the DRP.

24. The Ld. Counsel for the assessee submitted that in the segment profit analysis, the AE's segment includes (i) sale of finished goods to AE's amounting to Rs. 9,17,40,511/- and (ii) Purchase of trade goods from AE amounting to Rs. 33,23,21,633/- and sale of unrelated third parties in India, under AE Segment.

25. From the above analysis, the tested transaction was only purchase of traded goods from AE amounting to Rs. 33,32,21,633/- in respect of which transfer pricing adjustment of Rs. 1,52,85,800/- and other transaction of sale of finished goods to the AE is not disputed. Considering the tested transaction to purchase of traded goods from AE amounting to Rs. 33,23,21,633/-, the GP/sales earned by the assessee from sale of such traded goods are

determined and worked out to 25.38% as under:-

<i>Particulars</i>	AE Segment (For transaction of purchase of traded goods from AE)	<i>Non AE Segment</i>
<i>Sales</i>	44,53,10,988	4,795,690,458
<i>Liabilities / provisions written back</i>	35,698	388,628
Total Sales Revenue	44,53,46,686	4,796,079,086
<i>Purchase of finished Goods</i>	33,23,21,633	3,573,383,031
<i>Opening Stock -Finished Goods</i>		323,956,327
<i>Closing Stock-Finished Goods</i>	-	(350,052,050)
<i>Cost of Goods Sold</i>	33,23,21,633/-	3,547,287,308
<i>Gross Profit</i>	11,30,25,053	124,87,91,799
<i>GP Margin</i>	25.38%	26%

26. The Assessee has produced the detailed working capital profit margin of the assessee, which is reproduced as under:-

<i>Nature</i>	Total Manufacturing	Total Trading (AE+ NonAE)	Purchase from GSATL and sold to AE	Purchase from AEs and sold to third parties	Trading segment as filed for IPO	Total (Manufacturing + Trading)	As per audited FS
			(a)	(b)	(a+b)		
<i>Sales</i>	99672,16,681	53561,57,157	890,59,988	4453,10,988	5343,70,976	153233,73,839	153233,73,835
<i>Excise duty on goods manufactured</i>							
<i>Export Incentive</i>	178,94,885					178,94,885	178,94,885
<i>Liabilities/ provisions written back</i>	7,90,783	4,31,466	7,139	35,698	42,838	12,22,249	12,22,249
<i>Miscellaneous Income (Revenue scrap sale)</i>	409,73,197	-	-	-	-	409,73,197	409,73,197

TOTAL SALES REVENUE	100268,7 5,546	53565,88 ,623	890,67,1 27	4453,46 ,686	5344,13 ,814	153834,6 4,169	153834,6 4,166
EXPENDITURES							
Raw material consumption	57360,69, 473	0				57360,69, 473	57360,69, 473
Purchase of finished goods		39932,95 ,007	875,90,3 43	3323,21 ,633	4199,11 ,976	57360,69, 473	39932,95, 007
Cost of Goods Sold	57360694 73	39932,95 ,007	8759033 43.1	3323,21 ,633	4199,11 ,976		97293644 79
Gross Profit	57360694 73	3993295 007	14,76,78 4	1130,25 ,053	1145,01 ,838		
Gross Profit/Sales				25.38%	21.43%		

27. The assessee further contended that the GP Sales margin earned by the assessee is at 25.38% which will fall within the range of +/- 3% of GP Sales Margin as provided under second proviso to Section 92C of the Act in unrelated third party segment at 26%, thus, there is no requirement of any transfer pricing adjustment in this segment.

28. We have heard the rival contentions and the detailed submissions made by the both the parties. It is observed that the detailed working submitted by the assessee has not been examined at all either by the TPO or the DRP, therefore, it is in the interest of justice, issue is set aside to the file of the TPO for fresh adjudication by given due consideration to the submission made by the assessee. Accordingly, the Assessee's Ground No. 4 to 4.4 are partly allowed for statistical purpose.

29. Ground No. 5 to 5.8 are in respect of addition of Rs. 46,05,42,787/- in the Arm's Length Price of international transaction of payment of Regional Service Charges (RSC) and addition of Rs. 37,35,360/- in the Arm's Length Price of international transaction of receipt of accounting support services. The Ld. Counsel for the assessee submitted that, during the year under consideration, the assessee made payments of Regional Service Charges amounting to Rs. 55.23 crores as per RSC Agreement entered by the assessee with Goodyear USA and the assessee has availed certain general/administration, financial, sales and marketings, information technology, production and tyre performance and purchasing and material management services. As per the said RSC agreement, the assessee received assistance and had access to the centralized service of the Goodyear group to deliver operational efficiencies and carry out its day to day operations. The details of the amount paid by the assessee against each service are as under:-

<i>1</i>	<i>Nature of services</i>	<i>Amount (IN INR)</i>
<i>2</i>	<i>General Administration Services</i>	<i>142,970,312</i>
<i>3</i>	<i>Financial Services</i>	<i>59,347,981</i>
<i>4</i>	<i>Sales and Marketing Services</i>	<i>39,855,317</i>
<i>5</i>	<i>Information Technology Services</i>	<i>91,734,867</i>
<i>6</i>	<i>Purchase and Material Management Services</i>	<i>118,339,241</i>
<i>7</i>	<i>Production & Tyre performance/ Problem Resolution Service</i>	<i>100,029,933</i>
Total		552,277,654

30. It is the case of the assessee is that the Ld. TPO/AO have completely failed to understand the meaning of the shareholders services while making

the aforesaid remarks. The services mentioned above were rendered for the specific needs of the assessee and not just because the A|E has the share holding in the assessee company, further, the majority of the services which are availed by the assessee related to functions such as procurement, production, finance, administration, HR, IT, sales and marketings etc. which are comes under the responsibilities of the assessee and not its AE's, those services rendered by the A.E are for the purpose of assist in the assessee in discharging its own functions and not qualify as stewardship/share holders activities. The assessee has provided the details to the Authorities i.e. type of services, description of services, benefits availed from the receipt of services and also produced detailed descriptions of each class of services, need for such services by the assessee, functions performed by the group in rendering such services, evidence of receipt of such services and the benefit of such services to the assessee. But the Ld. TPO/A.O erroneously held that payment of RSC charges was not for the business purpose of the assessee except in IT Services which was held at Arm's Length and further the ALP of RSC Fee(for services other than IT Services has been determined as NIL and made adjustment of Rs. 46.05 crore in this regard) which is illegal and the same deserves to be deleted.

31. Per contra, the Ld. DR has relied on the orders of the Lower Authorities and sought for dismissal of the Ground No. 5 to 5.8.

32. We have heard the parties, perused the material on record. In the assessment order, the Ld. Assessing Officer has incorporated the findings of the DRP, which is reproduced as under:-

“The Panel has considered the rival arguments. It is noticed that the TPO recorded a clear finding at p. 7.3 onwards of his order, after analysis of documentary evidence and consideration of the evidence submitted by the assessee, that the assessee has not received the services listed under RSC (other than IT charges) and no recognizable benefit is passed on to the assessee in lieu of this payment without appreciating the evidences regarding the receipt of the services and benefits received there from as furnished by the assessee. The TPO, in fact, has classified these services y as 'shareholder' or 'duplicative services' and held on the basis of the documentary evidences for the majority of services that the assessee's role was limited only to the execution of production and tire performance services, while the strategy and guidelines for the same were devised by Goodyear USA, which makes the nature of activity performed by Goodyear USA to be that of a shareholder/stewardship activity. Thus, the analysis of the TPO is not reproduced here for the sake of brevity and the assessee has not been able to rebut the same in any manner before this Panel and has merely reiterated the submission made before the TPO. It is stated by the x assessee that the arm's length price of the transaction cannot be considered at Nil/-' The Panel however, finds that the TPO has not proposed the determination of arm's length price of the intra group services at NIL and has proceeded on the basis of the/ quantum of expenditure on such services paid/ approved by the independent parties. Thus, there is no error in*

the order of the TPO. The assessee further submits that "Region is responsible for the implementation of global HR policies and practices with the region including India, that the region is also responsible for review of manpower requisition and budgets prepared by GIL and screening of a senior personnel hired by GIL and that the Region assists in providing legal advice, including finalization of legal documentation, ensuring compliance with Goodyear Global policies. The role of the HR regional team is provide services aimed at increasing employees capability and commitment to Goodyear, However, the TPO has rightly noted that the addendum to the Service Agreement submitted by the assessee clearly demonstrates that the General Administrative Services provided by the AE to the assessee are aimed at aligning the policies of Goodyear India in sync with the Global policies of Goodyear USA. Further, the perusal of sample documents exhibits that the general administrative services provided by AEs of Goodyear are in the nature of employee engagement survey and employee learning week and do not seem to be in the nature of business development and planning. Further, the allocation key devised does not seem to serve any logic / rationale as the allocation key and the service provided are not in sync. In the context of payment for financial Services, the TPO notes that the assessee in addendum to his reply has submitted that Region is responsible for monthly review of the financial budgets and determining cost outlay in adherence with the overall objectives of the Group. The assessee has further provided sample documents for substantiating the receipt of financial services but the TPO is correct in observing that according to the assessee itself, the basic purpose for receipt of financial services was to determine cost outlay in adherence with the overall objectives of the Group which makes it amply clear that the aforementioned service is

being provided by Goodyear USA so that the financial objectives/goals / policies of Goodyear India are in line with the policies of the Group Company. For payment for sales and marketing services, the assessee in addendum to his reply has submitted that "GIL' s role is limited to the, operational and execution aspects of the function, with the entire policies, guidelines, strategies, reviews and roadmaps being provided by the region. Thus, the TPO is correct in his conclusion that GIL's role was limited only to the execution of sales and marketing expenses, while Goodyear USA devises the strategy and guidelines for the same, which makes the nature of activity performed by Goodyear USA to be that of a shareholder activity. For payment for Information Technology Services, the assessee in addendum to his reply has submitted that the region was responsible for formulating the IT strategy and IT roadmap for the Goodyear Group. Further, all technology platforms decisions, IT systems, Hardware configuration, software and applications, the interfaces, to be used are determined by the group, so also the decision to implement enterprise resources platform such as SAP on group vide basis, or up gradation of existing technologies. The assessee has also in addendum to his reply has submitted that the region manages various project implementations across the Goodyear Group Companies and that right from decision on the project to implement, determination of project specification and configuration, procurement for the project, project planning, project management, the regional also provides extensive support in maintenance of IT infrastructure such as servers for Lotus Notes (email server), SAP, Business Intelligence and Business warehouse, SBASE. It also does remote monitoring, planned periodic maintenance activity including upgrades of these services. Similarly, support in also provided for data warehouse, system data security

software by undertaking troubleshooting and routine support activities on this system. This admitted facts clearly demonstrate that the basic premise/nature of this service provided by Goodyear USA is that of a shareholder/stewardship activity.

3.4.2 A plea of consistency is pressed into service by stating that the TPO has failed to appreciate that the payment of RSC by the assessee has been accepted by the TPO in AY 2016-17 and earlier years as well (AY 2010-11 to AY 2015-16). Reliance is placed on the following decisions:

- I. Radhasoami Satsang v Commissioner of Income Tax 193 ITR 321 (Supreme Court)*
- II. Commissioner of Income Tax vs Kotrika Ramaswamy Chetty 64 ITR 388 (Andhra Pradesh High Court)*
- III. Dhansiram Agarwalla vs Commissioner Of Income Tax 217 ITR 4 (Gauhati High Court)*
- IV. Sardar Kehar Singh v Commissioner of Income Tax 195 ITR 769 (Rajasthan High Court)*

*V. The Panel is not convinced as any change in facts and circumstances of the case militates against the doctrine of consistency. The law in this regard was explained by the Hon'ble Supreme Court in **Radhasoami Satsang**, thus:*

"9. We are aware of the fact that, strictly speaking, res judicata does not apply to proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all

appropriate to allow the position to be changed in a subsequent year. One these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the CIT in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under ss. 11 and 12 of the IT Act of 1961."

What emerges from the above holding of the Hon'ble Supreme Court that the doctrine of consistency is applicable only when two conditions are met. Firstly, there a should be a decision in the earlier years, one way or the other and secondly, there must not be any material change justifying the Revenue to take a different view of the matter. In the instant case, there is no decision by the TPO on this issue in earlier orders. The question of applying the doctrine, therefore, does not arise.

*3.4.4 As per the detailed allocation mechanism of the AE to allocate the actual cost which is also certified bvan **independent auditor, the TPO has recorded a finding (in cited supra)** after the analysing the addendum to the assessee's reply that the allocation key devised by the assessee does not seem to pursue any logic or rationale as the allocation key and the service provided are not in sync. The Panel finds no reasons adduced by the assessee to*

take a different view. The Panel, accordingly, confirms the action of the TPO and dismisses the assessee's objection.

3.4.5 Another contention raised by the assessee is that the assessee's Group Company, Goodyear South Asia Tyres Pvt Ltd ('GSAT'), based out of Aurangabad, has received similar services from Goodyear US under similar agreement as entered between the assessee and Goodyear US and that the jurisdictional TPO of the said company has accepted the aforesaid services at arm's length for the relevant year, i.e. AY 2017-18. It is accordingly argued that when a transaction with same terms & conditions has been accepted at arm's length by a TPO, the same cannot be disregarded by another TPO. There cannot be two different arm's length prices of same transactions entered pursuant to similar agreements. A copy of the TPO order passed in the case of GSAT for assessment year 2017-18 has been filed before the Panel.

3.4.5.1 The Panel, however, does not find the argument acceptable for two reasons: firstly, to say that a decision taken by one TPO is binding on the other is fallacious because a decision of a TPO does not create a binding precedent and does not, in any manner, restrict, curtail or circumvent the discretion of any other authority, except where it is so mandated in law. Secondly, it is noticed that the TPO in the case of GSAT has not given any decision on this issue. The said order does not show any judicious consideration at the matter. The argument of the assessee, therefore, has no merits and is, accordingly, rejected.

3.4.6 A further contention is raised by the assessee to the effect that the Hon'ble Pune ITAT has analysed the arm's length nature of the aforesaid services including nature, need & benefit etc. in the

case of GSAT for AY 2014-15 & AY 2015-16 and has adjudicated in the favour of the assessee. A copy of the ITAT's order has been filed before the Panel.

3.4.6.1 The Panel, however, finds that the aforesaid findings of facts, recorded by the Tribunal in the case of another group concern, do not and cannot serve as a precedent for other group concern as the same has to be decided on the basis of facts obtaining in that case for every assessment year. This aspect was in fact reiterated by the Hon'ble ITAT in para 7 of the aforesaid order in the following words:

Be that as it may, the question of rendering of services is independent every year, which has to be proved on the basis of positive evidence. Simply because the assessee was found to have availed services in the preceding year, the same per se would not lead to inference that the services were also received in the current year. The factum of availing services needs to be established independently every year.”

The Panel accordingly, rejects this argument as well.”

33. We have gone through the assessment order and perused the material on record and also examined the method used as Most Appropriate Method (MAM). We are of the opinion that comparable Uncontrolled Price (CUP) has been rightly taken up by the TPO. We observe that the assessee has not demonstrated the impact of the services obtained on the business affairs of the assessee in terms of turnover and profit. The abstract words of greater operational efficiency have to be demonstrated in real terms in terms of benefit obtained by the assessee, the same has not been displayed by the assessee.

The cost incurred by the recipient and mark-up charges have not been given in detail by the Assessee. Hence, in the circumstances, it would be appropriate to refer the matter to the file of the TPO with direction to the assessee to demonstrate the actual expenses incurred by the A.E and the mark-up as well as the rendition of the service by the assessee to the AE's company with regard to the five international transactions of provision of services to the assessee (except Information & Technology Services). Accordingly the Ground No. 5-5.8 of the assessee are partly allowed for statistical purpose.

34. Grounds of Appeal No. 6 to 6.3 are in respect of disallowance of 30% advertising brand building and sales commercial expense. During the relevant previous year, in order to promote the sales of products produced/traded and marketed in India, the assessee incurred expenses amounting to Rs. 12,05,00,000/- on advertisement and sale promotion expenses respectively.

35. The Assessing Officer held that the assessee has incurred a large amount of advertisement and publicity which is resulting in benefit of AE's who own the brand, further observed that, the assessee was not able to demonstrate as to how it is wholly benefitted from such brand building and that whole arrangement was concocted to lower its profit and to save expenditure of the AE's. The Ld. A.O accordingly, made ad-hoc disallowance of Rs. 3,61,50,000/- being 30% of total expenditure of Rs. 12,05,00,000/-

incurred on advertisement and publicity relatable to promotion of brand in India.

36. The above issue has already been decided in favour of the assessee by the Coordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2007-08 to 2014-15 in ITA No. 5650/Del/2011, 6240/Del/2012, 916/Del/2014, 1516/Del/2015, 1004/Del/2016, 1706/Del/2017, 7716/Del/202017 and 8006/Del/2018. The Co-ordinate Bench of the Tribunal for Assessment Year 2007-08 in ITA No. 5650/Del/2011 held as under:-

"We have heard the rival contentions in the light of the material produced and precedent relied upon. We have already held that advertisement expenditure incurred by the appellant is incurred wholly for the purpose of its business and profession and ought to be allowed in entirety. Further the Assessing Officer has clearly made an ad-hoc disallowance of advertisement expenditure incurred by the appellant which is not permissible under the law. We are of the considered view that the AO was not justified in making such adhoc disallowance and therefore direct him to delete the adjustment on this account.

37. By respectfully following the above judicial pronouncement and finding the parity, we are inclined to allow the Grounds of Appeal No. 6 to 6.3 by deleting the disallowance made by DRP/A.O in the year under consideration.

38. Ground No. 7 and 7.1 are in respect of disallowance of Employees Contribution to ESI amounting to Rs. 19,452/-. The Assessing Officer has disallowed a sum of Rs. 19,452/- relying on the Explanation 2 to Section 36(1)(va) of the Act on the ground that the assessee has deposited Employees Contribution Funds ESI funds beyond the time period stipulated in the relevant ESI and PF Act.

39. The provision of the Income Tax Act provides for payment of the Employees Contribution of ESI/PF on or before the due date prescribed under the relevant PF Act. The Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, vide order dated 12/10/2022, categorically held that the Employees Contribution deposited after respective due date mentioned in the PF Act cannot be allowed as deduction u/s 36(1)(va) of the Act, In view of the same, we find no merit in Ground No. 7 & 7.1 of the Assessee, accordingly, the Ground No. 7 & 7.1 of the Assessee are dismissed.

40. The Ground No. 8 which is regarding Dividend Distribution Tax (DDT), is not pressed by the Assessee, accordingly we dismissed the Ground No. 8.

41. The Ground No. 9 is regarding incorrectly charging interest u/s 234C of the Act at Rs. 8,63,466/- as against correct interest of Rs. 5,33,170/- determined by the assessee in the return of income. By considering the facts

and circumstances, we inclined to set aside the said issue to the file of the A.O for de-novo consideration to determine the correct interest after hearing the assessee. Accordingly, the Ground No. 9 is partly allowed for statistical purpose.

42. The Ground No. 10 and 11 being consequential, same are dismissed.

43. In the result, the appeal of the assessee in ITA No. 346/Del/2022 (A.Y 2017-18) is allowed for statistical purpose.

44. In view of the deciding the Appeal in ITA No. 346/Del/2022, (A.Y 2017-18) the present Appeal in ITA No. 1451/Del/2022 (A.Y 2018-19) which involved similar issues comprising of identical grounds raised by the assessee, the present appeal is also decided in terms of the order in ITA No. 346/Del/2022. Accordingly, the Ground No. 1-1.2 are dismissed as general in nature, Ground No. 2-2.4 are allowed, Ground No. 3-3.5 are allowed, Ground No. 4-4.4 are partly allowed for statistical purposes with a direction to the TPO for de-novo adjudication after considering the contentions of the assessee, Ground No. 5-5.8 are partly allowed for statistical purposes with a direction to the TPO to decide the issue de -novo as per the directions given in AY 2017-18, Ground No. 6-6.3 are allowed in favour of the assessee, Ground No. 7 is consequential in nature hence not being adjudicated and Ground No.8 is regarding initiation of penalty which is premature in nature.

45. In the result, Appeal in ITA No. 1451/Del/2022 is partly allowed.

Order pronounced in the open court on : **26/07/2024**

Sd/-

**(G. S. PANNU)
VICE PRESIDENT**

Dated : 26/07/2024

**R.N* Sr. PS*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

