

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI  
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।  
Before Shri S.S. Viswanethra Ravi, Judicial Member &  
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.(TP)A. No.62/Chny/2018 and I.T.A. No. 3089/Chny/2017  
निर्धारण वर्ष/Assessment Years: 2014-15 and 2013-14

M/s. Kubota Agricultural Machinery  
India Private Limited, No. 15,  
Medavakkam Road, Sholinganallur,  
Chennai 600 119.

Vs. The Asstt./Dy. Commissioner of  
Income Tax,  
Corporate Circle 4(2),  
Chennai 600 034.

**[PAN: AADCK5472E]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Sampath Raghunathan, Advocate  
& Shri S.P. Chidambaram, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri A. Sasikumar, CIT  
सुनवाई की तारीख/ Date of hearing : 20.05.2024  
घोषणा की तारीख /Date of Pronouncement : 07.08.2024

**आदेश /O R D E R**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:**

Both the appeals in IT(TP)A No. 62/Chny/2018 and ITA No. 3089/Chny/2017 filed by the assessee are directed against the final assessment orders dated 03.10.2018 and 10.10.2017 passed under section 143(3) r.w.s. 92CA(3) of the Income Tax Act, 1961 ["Act" in short] for the assessment years 2014-15 and 2013-14 respectively.

2. Since the issues raised in these appeals are similar basing on the same identical facts, with the consent of both the parties, we proceed to

hear both the appeals together and pass common order for the sake of convenience.

3. The Id. AR requested to take up the appeal for the assessment year 2014-15 in IT(TP)A No. 62/Chny/2018 as lead case. Therefore, we proceed to take the same as lead case.

4. We shall take up appeal in IT(TP)A No. 62/Chny/2018–AY: 2014-15

5. Ground Nos. 1, 2 & 11 are general in nature and requires no adjudication.

6. Ground Nos. 3 & 4 raised by the assessee in challenging the action of the AO/DRP/TPO for rejecting Resale Price Method [RPM] as Most Appropriate Method [MAM] and erroneous application of Berry Ratio at the profit level indicator in the facts and circumstances of the case.

7. Brief facts as emanating from the record are that the assessee is a private limited company, incorporated in the year 2008. Further, its shares are jointly held by Kubota Corporation, Japan and Sumitomo Corporation, Japan having 60% and 40% respectively. The assessee is engaged in the business with the objective of distribution of agricultural machinery in India. The assessee entered into international transactions and the details

of transactions are reflecting in para 4 of the TPO's order. The assessee preferred Resale Price Method as most appropriate method in respect of transactions pertaining to purchase of goods from its Associated Enterprises (AE). The assessee was asked to explain in adopting resale price method by the TPO. The assessee have given its explanation, which is reflected in para 7 of the TPO's order. According to the TPO, the assessee is not just a trader, but, provides value added services to its AE, which is a prominent factor; the cost incurred for such value added services is huge and closely interlinked with the distribution function of the assessee. He held that the resale price method is not most appropriate method and proceeded to adopt Berry Ratio as most appropriate method. Accordingly, a downward adjustment is suggested and ALP of AE cost was determined. The DRP, basing on its earlier findings for AY 2013-14 confirmed the views of the Assessing Officer in rejecting resale price method and adopting Berry Ratio as most appropriate method vide its finding at para 3.1 of the DRP's order.

8. The Id. AR brought on record, before us, copy of order dated 25.05.2022 in ITA No. 739/Chny/2016 passed by the ITAT Chennai in assessee's own case for AY 2011-12 and drew out attention to para 4 of the said order. He submits that the assessee brought on record before

the ITAT for AY 2011-12 by stating that those additional evidences were filed for first time and there was no occasion before the DRP and TPO for verification. The Id. AR further drew our attention to the additional evidences in paper book consisting of 154 pages and submits that these evidences could not be filed before the TPO/DRP and prayed to adopt same finding of ITAT Benches in assessee's own case for AY 2011-12 in remanding the matter to the file of the TPO for fresh consideration in terms of the additional evidences. The relevant para 7 in ITAT order in assessee's own case is reproduced hereinbelow:

*“7. After hearing the rival contentions and going through the facts and circumstances of the case, the facts are undisputed as the learned CIT-DR has not objected to the admissibility of the additional evidences and we admit these evidences as noted above in paragraph no. 4 and we set aside the matter back to the file of the Assessing Officer/Transfer Pricing Officer who will determine the most appropriate method to be adopted for determining the ALP in the given facts and circumstances of the case as per law. Hence, the orders of the lower authorities are set aside and the matter remitted back to the Assessing Officer/Transfer Pricing Officer.”*

9. On perusal of the additional evidences, we find that the assessee filed Appendix 1 to 6 consisting of determination of dealer prices across various regions, letter of intent, etc.

10. The Id. DR reported no objection in remanding the matter to the file of TPO for fresh consideration in view of the finding of the ITAT in AY 2011-12. Therefore, we deem it proper to remand the matter to the file of the AO/TPO with a direction to admit the above said additional evidences

and determine the most appropriate method for adopting the ALP in the facts and circumstances of the case. Thus, ground Nos. 3 & 4 raised by the assessee are allowed for statistical purposes.

11. Ground Nos. 5 to 9: In view of our decision in ground Nos. 3 & 4, we find the ground Nos. 5, 6, 7, 8 and 9 becomes infructuous, requiring no adjudication. Accordingly, ground Nos. 5 to 9 are dismissed as infructuous.

12. Ground No. 10 is consequential in nature and requires no adjudication.

13. The Id. AR submits that the assessee is not interest in prosecuting additional grounds raised by them. Accordingly, additional grounds raised by the assessee are dismissed as not pressed.

14. Now, we shall take up appeal in ITA No. 3089/Chny/2017 for AY 2013-14.

15. Ground Nos. 1 & 2 are general in nature and requires no adjudication.

16. We find that ground Nos. 3 & 4 raised by the assessee are similar grounds 3 & 4 raised in IT(TP)A No. 62/Chny/2018 for AY 2014-

15, wherein, basing on the finding of the ITAT Chennai in assessee's own case for AY 2011-12 vide order dated 25.05.2022 in ITA No. 739/Chny/2016, remanded the matter back to the file of the TPO for fresh adjudication in view of the additional evidences, brought on record, applying direction to admit the same and determine the most appropriate method and ALP in the above mentioned paragraphs. We hold that the same view is applicable in ground Nos. 3 & 4 also. Thus, ground Nos. 3 & 4 raised by the assessee are allowed for statistical purposes.

17. Ground Nos. 5 to 8: In view of our decision in ground Nos. 3 & 4, we find that the assessee's ground Nos. 5, 6, 7 & 8 becomes infructuous requiring no adjudication. Accordingly, ground Nos. 5 to 8 are dismissed as infructuous.

18. Ground No. 9 raised by the assessee in challenging the disallowance of business promotion expenditure in the facts and circumstances of the case.

19. We note that the assessee debited an amount of ₹.4,13,11,041/- under the head "other expenses" relating to business promotion expenses. According to the Assessing Officer, no explanation was offered by the assessee in response to the request to furnish the details of said

expenditure. For having no details, the Assessing Officer disallowed ₹.82,62,200/- and added to the total income of the assessee, which was confirmed by the DRP.

20. The Id. AR drew our attention to para 4 of the DRP order in AY 2014-15 and submits that the assessee furnished additional evidence before the DRP, which in turn, having obtained the remand report from the Assessing Officer, deleted the addition made in AY 2014-15. The Id. AR requested that the matter may be remanded to the Assessing Officer for his fresh consideration and the assessee is ready to file evidences in support of its claim.

21. The Id. DR reported no objection, but, however pointed out that there is no evidence before the DRP as well as before this Tribunal in the year under consideration. Considering the submissions of both the parties and taking into account the undertaking given by the Id. AR that the assessee is ready to file evidences before the Assessing Officer, in the interest of justice, we deem it proper to remit the matter back to the file of the Assessing Officer for fresh adjudication. Thus, ground No. 9 raised by the assessee is allowed for statistical purposes.

22. Ground No. 10 raised by the assessee is consequential in nature and requires no adjudication.

23. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on 07<sup>th</sup> August, 2024 at Chennai.

Sd/-  
(JAGADISH)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. VISWANETHRA RAVI)  
JUDICIAL MEMBER

Chennai, Dated, 07.08.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.