आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/**ITA No. 598/Ahd/2024** - निर्धारण वर्ष/**AY 2016-17**
AND
Cross Objection No.10/Ahd/2024 - निर्धारण वर्ष/**AY 2016-17**
(in ITA No.598/Ahd/2024 – AY 2016-17)

The ACIT Circle-2(1)(1), Ahmedabad	**बनाम/ v/s.**	Inductotherm (India) Pvt.Ltd. SM-6, Road No.11 Sanand II Industrial Estate Bol Village, Sanand Ahmedabad – 382 170 (Gujarat)
स्थायी लेखा सं./**PAN: AAACI 3672 B**		

अपीलार्थी/ (Appellant)	…..	**प्रत्यर्थी/** (Respondent) & Cross Objector)

Assessee by :	Ms. Chandni Shah, AR
Revenue by :	Shri Prateek Sharma, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **08/10/2024**
घोषणा की तारीख /**Date of Pronouncement**: **21/10/2024**

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Ahmedabad-13 [hereinafter referred to as "CIT(A)"] dated 03.02.2024 for the Assessment Year (AY) 2016-17, wherein the CIT(A) allowed the appeal of the assessee against the order

passed by Assessing Officer [hereinafter referred to as "AO"] under Section 143(3) read with Section 144C(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"]. The assessee has filed a Cross Objection against the said appeal filed by the Revenue. We deal and decide with both the appeal and cross objection together for the sake of convenience.

Facts of the Case:

2. The assessee is engaged in the business of manufacturing melting, heating, and welding equipment and providing solutions for a wide range of industrial applications. The assessee filed its return of income for the AY 2016-17 on 28.11.2016, declaring a total income of Rs.77,13,87,480/-. The return was selected for scrutiny under the Centralized Scrutiny Selection (CASS) on account of Transfer Pricing (TP) risk parameters, as the assessee had international transactions with its Associated Enterprises (AEs) amounting to Rs.76,89,45,119/-. Accordingly, notice under Section 143(2) of the Act was issued on 22.08.2017. During the course of assessment, the case was referred to the Transfer Pricing Officer (TPO) under Section 92CA(1) of the Act for determining the Arm's Length Price (ALP) of the international transactions. The TPO, in his order dated 30.10.2018, made an upward adjustment of Rs.2,67,13,481/-, primarily by rejecting the aggregation approach adopted by the assessee and applying the Internal Cost-Plus Method (CPM) for certain comparable transactions. The Assessing Officer (AO), vide assessment order dated 10.01.2020 under Section 143(3) read with Section 144C(3) of the Act, adopted the TPO's findings and passed an assessment order determining the total income of the assessee at Rs.80,85,45,535/-, after making the following adjustments:

- Transfer Pricing Adjustment of Rs.2,67,13,481/-.

- Disallowance under Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 for Rs.3,987/-, resulting in the corresponding addition to the book profits under Section 115JB of the Act.

- Disallowance of Rs.46,07,317/- under Section 40(a)(i) of the Act for payments made to non-residents without deducting tax at source under Section 195 of the Act.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A), who deleted the above additions and granted relief to the assessee. The Revenue has now preferred the present appeal before us raising the following grounds:

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the upward adjustment of Rs.2,67,13,480/ made by the TPO in respect of international transaction of the assessee.*

2. *Whether in the fact of the case and in law, the Ld. CIT(A) erred in ignoring the fact that the assessee had failed to benchmark the transaction with its AE as per law thereby filing to discharge the primary onus cast upon it by the Act?*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing aggregation of transaction which is contrary to the provisions of section 92C and Rule 10A to 10C of Income Tax Rules?*

4. *Whether on facts and in the circumstances of the case and in law, the ld.CIT(A) has erred in accepting the ALP of the assessee determined by ignoring the guidelines laid down under the I.T. Act and Rules and thereby violating the ratio laid down by the Hon'ble Supreme Court in the case of SAP Labs India Pvt. Ltd. vs ITO?*

5. *Whether on the facts and in the circumstances of the case and in law, the ld.CIT(A) was justified in deleting the addition made in the book profit u/s 115JB of the Act on account of disallowance u/s 14A of the Act r.w. Rule 8D(2)(iii) of I.T. Rules.*

6. *Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in deleting the addition of Rs.46,07,3 17/- paid to non-resident by invoking provisions of section 40(a)(i) of the Act, without appreciating the fact that the assessee has failed to comply the provisions of section 195 of the Act?*

7. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*

8. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."*

3.1. Grounds raised by the Assessee in its CO No. 10/Ahd/2024 for AY 2016-17 arising out of ITA No. 598/Ahd/2024 for AY 2016-17 of the Revenue.

"The below mentioned grounds are without prejudice to the relief granted by the Hon'ble Commissioner of Income Tax (Appeals) ('CIT(A)') in relation to the addition made by the Learned Assessing Officer (Ld. AO)/Ld. Transfer Pricing Officer (Ld. TPO) on the international transactions of sale of goods entered by the cross-objector / respondent with its associated enterprises ('AEs) and grant of interest under section 244A of the Act.

1. *On the facts and circumstances of the case and in law, the Hon'ble CIT(A) / Ld. AO / Ld. TPO erred in not considering the internal transactional net margin method as the most appropriate method even though the said workings were submitted by the Assessee on without prejudice basis. It is therefore prayed that the transfer pricing adjustment made by the Ld. AO / Ld. TPO be deleted based on the internal transactional net margin method approach.*

2. *On the facts and circumstances of the case and in law, the Ld. AO erred in not granting interest on refund under section 244A of the Act up to the date of the refund.*

It is therefore prayed that the Ld. AO be directed to grant the interest on refund under section 244A of the Act upto the date of actual receipt of refund.

The Assessee craves leave to add, alter, amend or withdraw all or any of the Cross Objections and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

4. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that all the grounds of raised by the Revenue are covered by decision of the Co-ordinate Bench in assessee's own case relating to earlier years. On the other hand, the Departmental Representative (DR) relied on the order of AO.

5. We now deal with the various grounds of the Revenue as follows:

Ground numbers 1 to 4 of the Revenue relating to Transfer Pricing Adjustment of Rs.2,67,13,480/-.

5.1. The primary dispute revolves around the upward transfer pricing adjustment of Rs.2,67,13,480/- made by the Transfer Pricing Officer (TPO) and sustained by the Assessing Officer (AO) in respect of the international transactions of the assessee with its Associated Enterprises (AEs). The TPO, applying the Cost Plus Method (CPM), observed that the gross profit margin on AE sales was 39.52%, while the gross profit margin on non-AE sales was 66.60%, thus leading to the substantial adjustment. The key issue raised by the revenue is the rejection of the Transactional Net Margin Method (TNMM) applied by the assessee, which was upheld by the CIT(A) but contested by the AO and TPO. The assessee, in its transfer pricing study, aggregated its transactions and adopted TNMM on an entity-wide basis, justifying that it was the most appropriate method for benchmarking its international transactions due to the volume, complexity, and the nature of its business.

Key details from AO's Order are such that –

- The TPO's rejection of TNMM was based on an analysis that showed a significant difference in profit margins between AE and non-AE sales. The TPO compared 143 products sold to both AE and non-AE entities and concluded that the gross profit margin for AE sales (39.52%) was lower than that of non-AE sales (66.60%). The TPO used this differential to justify the upward adjustment of Rs.2,67,13,480/-.

- The AO and TPO rejected the aggregation of transactions under TNMM, opting instead to compare transactions on a product-by-product basis using CPM. They argued that the differences in profit margins between AE and non-AE sales demonstrated that TNMM was inappropriate.

- The AO also alleged that the assessee had failed to properly benchmark its international transactions, asserting that the onus was on the assessee to demonstrate that its AE transactions were at arm's length.

5.2. The CIT(A) while dealing with the contentions of the AO and the TPO upheld the assessee's use of TNMM as the most appropriate method for benchmarking its international transactions. The CIT(A) reasoned that the assessee's business model, involving multiple interrelated transactions across various products, was more suited to an entity-level analysis. The CIT(A) further noted that the AO and the TPO had failed to consider the volume of transactions, geographic differences, and market-level considerations when applying CPM. The CIT(A) emphasized that the aggregation of transactions was valid and appropriate in this case, given that the AE and the non-AE transactions were not directly comparable. AE sales were primarily bulk transactions for further manufacturing or assembly, while non-AE sales were often end-use transactions or for repairs and replacements. This functional difference justified the use of

TNMM on an aggregated basis rather than product-by-product comparison. The CIT(A) ruled that the assessee had adequately discharged its primary onus under the law by submitting a detailed transfer pricing study, which demonstrated that its overall profitability (with an operating margin of 6.5% under TNMM) was within the acceptable arm's length range when compared with comparable companies. The CIT(A) observed that the AO had not made the necessary adjustments for volume discounts, geographical differences, and market conditions while rejecting TNMM. The CIT(A) heavily relied on the decision of this bench in the assessee's own case for earlier assessment years, dated 24 May 2017 (ITA Nos.3108 of 2020, 2609 of 2012, 671 of 2014, 243 of 2015 and 370/Ahd/2016). In that decision, the Co-ordinate Bench had upheld TNMM as the most appropriate method and rejected the product-level benchmarking under CPM. The CIT(A) noted that the facts of the present case were identical to those in the earlier years, making the earlier ruling applicable.

5.3. Upon considering the detailed findings of both the AO and the CIT(A), the co-ordinate bench concluded that the CIT(A)'s approach in accepting the TNMM and deleting the upward adjustment is appropriate for the following reasons:

- The TPO's reliance on CPM was flawed due to the inappropriate comparison of AE and non-AE transactions. The Co-ordinate Bench found that the functional differences between AE and non-AE sales, as well as geographical and market variations, make it unsuitable to apply CPM. TNMM, on the other hand, takes into account the overall profitability and is more suited to the assessee's business model. As

observed in the decision of this bench in assessee's own case of earlier years, TNMM provides a better reflection of the entity's profitability across its entire operations.

- We agree with the CIT(A) that the aggregation of transactions under TNMM is justified given the nature of the assessee's business, which involves over 2,500 product types and multiple interdependent transactions. The arm's length price (ALP) for such a diversified business is better determined at the entity level rather than on a product-by-product basis. This Bench's ruling in the earlier years also upheld the aggregation of transactions, making it applicable in the present case as well.

- We find that the assessee had properly discharged its primary onus under Section 92C of the Act by conducting a comprehensive transfer pricing study. The operating margin of 6.5% under TNMM falls within the acceptable range, and the AO's focus on gross profit margins alone without considering other factors (such as volume, geographic market, and functional differences) was insufficient to justify the adjustment. The AO's argument that the assessee failed to benchmark the transactions properly is without merit.

- The facts of the present case are identical to the earlier years, where this bench had ruled in favour of the assessee, upholding TNMM and rejecting the TPO's product-level approach. No new facts have emerged that would warrant a deviation from the ITAT's earlier ruling. As such, the decision in the assessee's own case for previous years is fully applicable to the present case.

5.4. In view of the detailed findings and analysis, we conclude that the CIT(A) was justified in deleting the upward adjustment of Rs.2,67,13,480/- made by the AO. The TNMM remains the most appropriate method for benchmarking the international transactions of the assessee, and the aggregation of transactions under TNMM is appropriate given the nature of the assessee's business. The assessee has

sufficiently discharged its onus by providing a detailed transfer pricing study, and the AO's reliance on product-level comparability under CPM was erroneous. Accordingly, ground numbers 1 to 4 of the Revenue are dismissed.

Ground No.5 of the Revenue relating to addition made in the book profit u/s 115JB of the Act on account of disallowance u/s 14A of the Act r.w. Rule 8D(2)(iii) of I.T. Rules.

6. The Assessing Officer (AO) made an addition to the assessee's book profit under Section 115JB of the Act based on the disallowance under Section 14A of the Act r.w. Rule 8D(2)(iii) of the Income Tax Rules, 1962. The AO disallowed Rs.3,987/- in the regular computation under Section 14A of the Act, asserting that expenses incurred in relation to earning exempt dividend income should not be allowed as a deduction. The AO extended this disallowance to the book profit calculation under Section 115JB of the Act, reasoning that since Section 14A of the Act disallows such expenses in the regular computation, it should also adjust the book profit under the Minimum Alternate Tax (MAT) provisions. The AO took the view that the computation of book profit under Section 115JB of the Act should also account for expenses disallowed under Section 14A of the Act, even though Section 115JB of the Act provides for specific adjustments to the net profit as shown in the profit and loss account.

6.1. The CIT(A) disagreed with the AO's approach and deleted the addition. The CIT(A) explained that Section 115JB of the Act provides a distinct mechanism for the computation of book profit, and the adjustments to book profit are limited to those specified in the Explanation

to Section 115JB(2) of the Act. Since Section 14A of the Act disallowances are not included in these prescribed adjustments, the CIT(A) concluded that the AO's addition was not legally sustainable. Since Section 14A of the Act disallowance is not one of the prescribed adjustments under Section 115JB of the Act, the CIT(A) held that the AO's decision to add it to the book profit was legally unsound. The CIT(A) relied on the decision of the Co-ordinate Bench in case of **DCIT vs. Adani Wilmar Ltd. [ITA No. 243/Ahd/2020, dated 21.03.2023]**, wherein it was ruled that Section 14A of the Act disallowances cannot be added to the book profit for MAT purposes under Section 115JB of the Act. The CIT(A) also referred to several other judicial precedents, including the Supreme Court's ruling in **Atria Power Corporation Ltd. [2022] 142 taxmann.com 413 (SC)**, wherein the Court dismissed the Department's SLP and upheld the High Court's decision that disallowances under Section 14A of the Act cannot be added to the book profit under Section 115JB of the Act. Additionally, the **Hon'ble Karnataka High Court in J.J. Glastronics (P.) Ltd. [2022] 139 taxmann.com 375 (Karnataka)** and the **Delhi Tribunal in Vireet Investment (P.) Ltd. [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB)** both confirmed that disallowances under Section 14A of the Act should not affect the computation of book profit.

6.2. The issue of whether the disallowance under Section 14A of the Act can be added to the book profit under Section 115JB of the Act was dealt with in the assessee's own case for the earlier year by this bench in its order dated 24 May 2017, wherein it was categorically held that disallowance under Section 14A of the Act has no bearing on the computation of book

profit under Section 115JB of the Act. It was observed that Section 115JB of the Act provides a self-contained mechanism for the computation of book profit, which involves adjusting the net profit as shown in the profit and loss account by only those items listed under the Explanation to Section 115JB(2) of the Act. Disallowances made under Section 14A of the Act do not fall within the scope of the adjustments specified under Section 115JB of the Act. The Co-ordinate Bench had previously ruled that the disallowance under Section 14A of the Act, which is intended for the normal computation of taxable income, should not be automatically applied to the computation of book profits under MAT unless specifically provided for. The Bench, in the earlier year relied on consistent judicial precedents, including **Goetze (India) Ltd. vs, CIT [(2014) 361 ITR 505 (Del)]** and **DCIT vs. Viraj Profiles Ltd. [(2016) 161 ITD 393]**, which had held that Section 14A of the Act disallowance cannot be added to the book profit under Section 115JB of the Act. These rulings were based on the clear distinction between the normal tax computation and the computation under MAT. The Bench, in the earlier year, also held that the book profit under Section 115JB of the Act must be computed based on the profit and loss account prepared under the Companies Act, and the only adjustments allowed are those specified in the Explanation 1 to Section 115JB(2) of the Act. Since Section 14A of the Act disallowance is not one of the specified adjustments, the Co-ordinate Bench had ruled that no addition for such disallowance could be made in the computation of book profit.

6.3. After considering the facts and the legal position, agrees with the CIT(A)'s decision and conclude that Section 115JB of the Act provides a

specific methodology for calculating book profit, which is distinct from the regular income tax computation. The adjustments to the net profit, as per the profit and loss account, are clearly defined in Explanation 1 to Section 115JB(2) of the Act. The disallowances under Section 14A of the Act are not included in these adjustments, and therefore, the AO's action of adding them to the book profit was incorrect. Judicial precedents confirm that Section 14A of the Act disallowances are relevant only for the computation of taxable income under normal provisions, and they cannot be used to adjust the book profit under the MAT provisions.

6.4. In view of the above, the Tribunal holds that the CIT(A) was justified in deleting the addition of Rs.3,987/- made by the AO while computing the book profit under Section 115JB of the Act. The addition based on Section 14A disallowance was not legally sustainable, and the CIT(A)'s reliance on the **Adani Wilmar Ltd.** case and other judicial precedents was correct. Accordingly, the appeal of the Revenue on this ground is dismissed, and the order of the CIT(A) is upheld.

Ground No.6 of the Revenue relates to deletion of the addition of Rs.46,07,317/- paid to non-resident by invoking provisions of section 40(a)(i) of the Act read with section 195 of the Act.

7. The AO disallowed the amount of Rs.46,07,317/- paid by the assessee to foreign agents on the grounds of non-compliance with Section 195 of the Act. The AO invoked Section 40(a)(i) of the Act, which mandates disallowance of expenses such as payments to non-residents if tax has not been deducted at source as required under Section 195. The AO argued that the assessee was obligated to deduct tax at source on these payments, as they

constituted commission to foreign agents. The AO further held that the assessee failed to demonstrate that the payments were not taxable in India and, thus, tax should have been deducted at source. Since the tax was not withheld under Section 195, the AO disallowed the amount paid to the non-resident agents under Section 40(a)(i) of the Act.

7.1. The CIT(A) deleted the disallowance made by the AO, relying on the decision of the Co-ordinate Bench in assessee's own case of the earlier years. The CIT(A) accepted the assessee's contention that the commission paid to foreign agents was not taxable in India, as the agents operated outside India and provided services solely outside India. Hence, the income did not accrue or arise in India. Relying on the Hon'ble Supreme Court ruling in **CIT vs. Toshoku Ltd. (1980) 125 ITR 525 (SC)**, the CIT(A) concluded that commission payments to foreign agents, who operate exclusively outside India do not attract tax liability in India. Therefore, there was no requirement to deduct tax at source under Section 195 of the Act. The CIT(A) observed that Section 195 of the Act applies only if the payment to the non-resident is taxable in India. Since the commission was not taxable in India, the obligation to deduct tax under Section 195 of the Act did not arise. In the assessee's own case for the earlier year (AY 2012-13) in ITA No.975/Ahd/2018 dated 23-09-2021, this Bench had dealt with a similar issue concerning the disallowance of commission paid to non-residents under Section 40(a)(i) of the Act due to non-compliance with Section 195 of the Act. The Co-ordinate Bench held that Section 195 of the Act is applicable only when the income of the non-resident is chargeable to tax in India. In this case, the commission paid to the foreign agents did not accrue or arise in India, and the foreign agents had no business

connection or permanent establishment in India. Therefore, the income was not taxable in India. Since the payment to foreign agents was not taxable in India, the Co-ordinate Bench ruled that the assessee was under no obligation to deduct tax at source under Section 195 of the Act. Consequently, the Co-ordinate Bench directed the AO to delete the disallowance.

7.2. We find no reason to take a different view than taken by the Co-ordinate Bench in the assessee's own case in earlier years. The issue regarding the disallowance under Section 40(a)(i) of the Act due to non-compliance with Section 195 of the Act has already been dealt with in the earlier year, where the Co-ordinate Bench consistently ruled in favour of the assessee. As noted by the Co-ordinate Bench, the recipient of the commission did not have any tax liability in India in respect of the income embedded in such payments. Under the settled legal position, the liability to deduct tax at source under Section 195 of the Act of the Act arises only when the income of the non-resident is chargeable to tax in India. Since the commission was paid for services rendered outside India by foreign agents with no business connection or permanent establishment in India, their income was not taxable in India. Consequently, the assessee cannot be faulted for not having deducted tax at source, and the disallowance under Section 40(a)(i) of the Act does not come into play.

7.3. In this regard, we respectfully follow the views expressed by the Co-ordinate Bench in the earlier year, with which we are in complete agreement. The CIT(A)'s decision to delete the disallowance of Rs.46,07,317/- is in line with judicial precedents, including the **Hon'ble Supreme Court ruling in the**

case of CIT vs. Toshoku Ltd. (1980) 125 ITR 525 (SC). Accordingly, we uphold the plea of the assessee and direct the Assessing Officer to delete the disallowance. The appeal of the Revenue on this ground is, therefore, dismissed.

8. Other grounds of the Revenue's appeal are general in nature, hence not adjudicated.

9. In light of the fact that all grounds of the Revenue's appeal are dismissed. The Cross-Objection filed by the Assessee are deemed as infructuous and, therefore, the same is dismissed as such. Thus, there is no need for further adjudication on these grounds.

10. In the combined result, the appeal of the Revenue is dismissed and the grounds of Cross Objection filed by the Assessee are also dismissed as infructuous.

Order pronounced in the Open Court on 21st October, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(MAKARAND V. MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 21/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-Ahmedabad-13.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR,ITAT, Ahmedabad,
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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad