

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, CHENNAI**

**मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं**  
**मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON’BLE SHRI MANU KUMAR GIRI, JM**

**आयकर अपील सं. ITA No.1834/Chny/2017**  
**(निर्धारणवर्ष / Assessment Year: 2013-14)**

<b>M/s. Iljin Automotive Private Limited</b> Plot No.B1 & B2, SIPCOT Industrial Park Irungattukottai, Sriperumbudur Kanchipuram-602 105.	<b>बनाम/</b> <b>Vs.</b>	<b>DCIT</b> Corporate Circle-2(2), Chennai.
<b>स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACI-2641-E</b>		
<b>(अपीलार्थी/Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

<b>अपीलार्थीकी ओरसे/ Appellant by</b>	<b>:</b>	<b>Shri Sandeep Bagmar (Advocate) - Ld. AR</b>
<b>प्रत्यर्थीकी ओरसे/Respondent by</b>	<b>:</b>	<b>Shri A. Sasikumar (CIT) - Ld. DR</b>

<b>सुनवाईकी तारीख/Date of Hearing</b>	<b>:</b>	<b>19-11-2024</b>
<b>घोषणाकी तारीख /Date of Pronouncement</b>	<b>:</b>	<b>03-12-2024</b>

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 is a recalled matter since the appeal was disposed-off by Tribunal vide common order dated 03-08-2022. However, the order has subsequently been recalled in MA Nos.8/Chny/2023 & ors. order dated 03-11-2023. Accordingly, the appeal has come up for fresh hearing before the bench. This appeal arises out of final assessment order dated 18-05-2017 passed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s.144C(13) of the Act pursuant to the directions of Ld. Dispute Resolution Panel-2,

Bengaluru (DRP) u/s 144C(5) dated 28-04-2017. Since the assessee carried out certain international transactions with its Associated Enterprises (AE), the same were referred to Ld. DCIT (TPO)-2(1), Chennai (TPO) for determination of Arm's Length Price (ALP). The Ld. TPO passed an order u/s 92CA (3) on 25-10-2016 proposing certain Transfer Pricing (TP) adjustment. Incorporating the same, a draft assessment order was passed on 16-11-2016 which was subjected to assessee's objections before Ld. DRP. Pursuant to the directions of Ld. DR, Ld.AO passed final assessment order dated 18-05-2017 which is in further appeal before us.

## 1.2 The grounds raised by the assessee read as under:-

The grounds of appeal stated hereunder are independent of, and without prejudice to one another:

### **GROUND OF APPEAL**

#### **1. General**

On the facts and the circumstances of the case, the impugned order passed by the learned Deputy Commissioner of Income Tax / Assessing Officer ('AO') is erroneous and contrary to the principles of natural justice and bad in law.

#### **2. Grounds in relation to transfer pricing adjustment**

The learned Transfer Pricing Officer ('TPO') and the learned AO, under the directions issued by the Hon'ble Dispute Resolution Panel ('DRP'):

2.1 Erred in law and on facts in rejecting the Transfer Pricing (TP) Study maintained by the Appellant and undertaking fresh benchmarking search, thereby violating Section 92C(3) of the Income-tax Act, 1961 ('the Act').

2.2 Erred in law and on facts in rejecting the usage of multiple year data for comparability analysis.

2.3 Erred in law and on facts by rejecting comparable companies selected by the Appellant in the transfer pricing documentation. Further, erred in rejecting comparable companies whose products are broadly comparable to that of the Appellant.

Erred in law and on facts by disregarding the rule of consistency and rejecting comparable companies which were consistently selected and accepted by the Ld. TPO year on year.

2.4 Erred in law by selecting a company having significant related party transaction as a comparable company.

2.5 Erred in law by selecting companies which are functionally not comparable to that of the Appellant.

2.6 Erred in law and on facts in considering entity level margins of JBM Auto Ltd. instead of segmental margins.

2.7 Erred in computing the Net Profit Margin of the Appellant by treating foreign exchange losses as operating in nature.

2.8 Erred in law and on facts in not allowing appropriate economic adjustment in the nature of customs duty adjustment to account for functional differences between the Appellant and the comparable companies.

### **Other than Transfer Pricing**

The learned AO, under the directions issued by the Hon'ble DRP:

#### **Claim of Additional Depreciation**

3.1 Erred in law by rejecting the claim of additional depreciation of INR 13,426,943 on new Plant and machinery made during the course of assessment proceedings by stating that the claim was not supported by a revised return.

3.2 The Learned AO has failed to appreciate that the Appellant is eligible for claim of additional depreciation in accordance with Explanation 5 to clause (1) of Section 32 of the Act irrespective of whether the Appellant has claimed the same in computing its income as per the return of income.

#### **4. Disallowance under Section 43A of the Act**

4.1 Erred in law in disallowing the total Foreign Exchange ('forex') loss of INR 126,207,203 under section 43A of the Act as capital in nature.

4.2 Failed to appreciate that the aforesaid total forex loss includes INR 109,085,767 pertaining to buyer's credit which is revenue in nature.

4.3 Erred in computing the total unrealized loss on buyer's credit amounting to INR 16,435,794 disregarding the fact that the Appellant had earned an unrealized profit of INR 430,820.

4.4 Failed to appreciate that forex loss of INR 109,085,767 is allowable under section 37(1) of the Act.

#### **5. Erred in law and on facts in initiating penalty u/s 271(1)(c) of the Act**

5.1 The learned AO erred in levying penalty on an adjustment which has resulted from a mere difference of opinion between the learned AO / TPO and the Appellant.

5.2 The Learned AO has failed to appreciate that there was neither any concealment of particulars of income nor furnishing of any inaccurate particulars of such income by the Appellant.

5.3 The learned AO has failed to appreciate that a mere disallowance of a claim does not automatically result in levy of penalty.

5.4 The learned AO has failed to appreciate that the Appellant had acted in good faith and with due diligence, and therefore it was not a case of deemed concealment in terms of Explanation 7 to section 271(1)(c) of the Act.

1.3 The Ld. AR placed on record ground-wise chart and advanced arguments by referring to the findings of lower authorities. Our attention has been drawn to various documents as placed in concise paper book as filed on 19-11-2024. Reference has also been made to the decision of Tribunal in assessee's own case in earlier years. The Ld. CIT-DR also advanced arguments and supported the findings of Ld. DRP. Having heard rival submission and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be operating assembling plant in Chennai and is a

leading assembler of wheel bearings. The assessee is subsidiary of Iljin, Korea. Three issues that fall for our consideration are (i) Transfer Pricing Adjustment; (ii) Disallowance u/s 43A; (iii) Claim of Additional Depreciation. The other grounds, being consequential in nature, do not require our indulgence.

## **2. Transfer Pricing Adjustment**

2.1 The assessee carried out various international transactions with its AEs which include import of raw material, tools, stores and Machineries etc. The assessee was characterized as routine assembler exposed to less than normal risk associated with carrying out such business. The assessee compared its margins with weighted average of comparable companies. The assessee's PLI (OP/OI) was computed as 2.5%. The Ld. TPO rejected the weighted approach and in independent search from proress database, identified 4 entities having mean margin of 5.5%. The assessee assailed comparability matrix and also sought various economic adjustment viz. customs duty adjustment and forex adjustment. However, Ld. TPO rejected all the arguments and proposed adjustment of Rs.554.61 Lacs. The 4 entities as selected by Ld. TPO were as under:-

<b>No.</b>	<b>Name</b>	<b>PLI</b>
1.	JBM Auto Ltd.	8.14 %
2.	Omax Autos Ltd.	2.73 %
3.	Spicer India Ltd.	7.69 %
4.	Subros Ltd.	3.44 %
	<b>Average</b>	<b>5.5%</b>

2.2 Before Ld. DRP, the assessee, inter-alia, assailed inclusion of JBM Auto Ltd. and Spicer India Ltd. on the ground that these entities were not functionally comparable. The Ld. DRP rejected the same on the ground that Ld. TPO had provided the search process and filter applied. The

assessee could not establish that the comparable entities fail any of the filters as applied by Ld. TPO. M/s JBM Auto Ltd. was engaged in manufacturing of sheet metal components, tools, dies and moulds which was in similar line of activity. Similarly, M/s Spicer India Ltd. was engaged in manufacturing of drive-train products and parts which could be said to be functionally comparable to the assessee. Under TNMM, strict product comparability was not necessary but broad functional comparability was the requirement. The assessee objected to rejection of comparable entities viz. M/s Automotive Stamping and Assemblies Ltd and M/s Majestic Auto Ltd. The same was rejected on the ground that these were loss making entities. The Ld. TPO reported that these two entities had negative PLI during this year only and these were not persistent loss making entities. However, these entities did not appear in the product filter. Considering the same, Ld. DRP upheld the exclusion of both these entities. The forex loss adjustment as claimed by the assessee was rejected considering the decision of Hon'ble High Court of Madras in the case of **Pentsoft Technologies Ltd. (347 ITR 578)** holding that foreign exchange was directly related to exports sales and therefore, it cannot be treated as other than part of profit from export. The custom duty adjustment was also not accepted on the ground that the assessee did not provide any such adjustment in its own TP study. Finally, the adjustments were upheld against which the assessee is in further appeal before us.

2.3 We have gone through the ground-wise chart as placed by Ld. AR on record. The Ld. AR has assailed rejection of usage of multiple years' data. The same stand rejected at the outset since comparability has to be done on contemporaneous data as per extant rules. The Ld. AR

seeks inclusion of M/s Automotive Stamping Assemblies Ltd. and M/s Majestic Ltd. From the facts, it emerges that these entities were initially selected as comparable entities. However, the same could not pass product filter. The Ld. TPO rejected the same since both these entities were loss making entities. However, during proceedings before Ld. DRP, Ld. TPO reported that both these entities were not persistent loss making entities but these entities had incurred loss only in the current year. Since, TNMM require broad comparability and these entities were initially selected as comparable entities and in view of the reporting made by Ld. TPO, we direct Ld. AO / Ld. TPO to accept both these entities as comparable entities. The assessee is directed to provide the requisite data of these entities.

2.4 The Ld. AR seeks exclusion of M/s Spicer India Pvt. Ltd. on the ground that this entity has significant related party transactions. Similarly, the assessee seeks exclusion of M/s JBM Auto Ltd. on the ground that this entity is functionally not comparable. To support the same, Ld. AR has placed on record (Page Nos.14 to 17) the product information as available in public domain. However, the same is not supported by any segmental data or financials of these entities. Therefore, merely on the basis of product information as available in public domain, such argument cannot be accepted. We are also of the opinion that TNMM require broad comparability only and therefore, if business model is same, these entities could be accepted. Therefore, M/s Spicer India Pvt. Ltd. has rightly been included. The Ld. AR stated that segmental of M/s JBM Auto Ltd. is available and the assessee is in a position to provide the requisite details thereof. Considering the same, the issue *qua* this entity is restored back to the file of Ld. AO / Ld. TPO with a direction to

the assessee to provide segmental information. The Ld. AO / Ld. TPO is directed to re-adjudicate the issue with respect to this entity.

2.5 The Ld. AR has stated that forex exchange loss would be non-operating in nature. However, this argument could not be accepted since the assessee has carried out import transactions and forex loss has direct linkage with the international transactions as carried out by the assessee. Therefore, forex losses / gains have to be considered as operating in nature.

2.6 The Ld. AR has sought various economic adjustments. However, it was admitted position that these adjustments were not granted by Tribunal in earlier years. Therefore, no indulgence is required on the same.

2.7 No other ground has been urged in the appeal. All the corresponding grounds stands disposed-off accordingly,

### **3. Disallowance as per the provisions of Sec.43A**

3.1 The assessee claimed forex loss of Rs.1257.76 Lacs and accordingly it was directed to provide the working thereof. Upon perusal of the same, the Ld. AO observed that the assessee, following AS-11, made adjustment of Rs.14.33 Crores for foreign exchange loss by making addition to the fixed assets. The Ld. AO held that since there were unrealized amounts, the said adjustment could not be allowed u/s 43A. As per Sec. 43A, as amended w.e.f. 01-04-2003, where capital asset is acquired from a foreign country, the adjustment of actual cost of the asset on account for change in forex rates shall be allowed only on the basis of rupee liability at the time of actual payment by the assessee towards the cost of the asset or repayment of foreign loan or interest for the purpose of computing the allowance on account of depreciation

irrespective of method of accounting as adopted by the assessee. The treatment of forex loss on foreign currency loan for acquisition of capital asset was specifically provided u/s 43A and AS-11 is superseded by Sec. 43A of the act. Therefore, such an adjustment could not have been made by the assessee. Accordingly, unrealized loss on ECB Loan (provision) for Rs.252.64 Lacs was disallowed u/s 43A and added to the total income of the assessee. In addition to the above, the assessee arrived at Profit on exchange on loan for Rs.67.60 Lacs whereas loss was for Rs.1077.03 Lacs. Since the ECB loan had increased, the net loss of Rs.1009.42 Lacs was also disallowed u/s 43A on which depreciation was allowed at 15%. Finally, the amount of Rs.1262.07 Lacs was disallowed and depreciation of Rs.151.41 Lacs was allowed.

3.2 During DRP proceedings, the assessee submitted the working of loss as under: -

Particulars	Nature	Realized (Rs. In Lac)	Unrealized (Rs. in Lacs)	Total (Rs. In Lacs)
ECB	Capital	78.62	88.28	166.90
Buyer's Credit	Revenue	930.80	160.04	1090.85
<b>Total</b>		<b>1009.42</b>	<b>248.33</b>	<b>1257.76</b>

The Ld. DRP held that it would be necessary to see the nature of utilization of foreign currency loan amount. If it was for capital purpose, loss would not be deductible being capital in nature. In this year, the assessee claimed forex loss, both realized and unrealized, pertaining to ECB loan which was claimed to be capital in nature whereas forex loss pertaining to Buyer's credit was claimed as revenue in nature. However, the claim was not supported by the necessary details and documents. The claim of the assessee was required to be supported by clear bifurcation of loss linking to the specific loan amount in order to decide

whether a particular claim is capital or revenue in nature. The assessee did not furnish the breakup of the loss linking to the specific borrowing though asked to file a chart for the same. Accordingly, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

3.3 It could be seen that the assessee has failed to provide the requisite details of forex loss before lower authorities. The Ld. AR has submitted that the impugned loss has two components i.e., ECB Loan which is capital in nature and second component is forex on Buyer's credit which is revenue in nature. Since adequate details thereof were not filed before lower authorities, we restore this issue back to the file of Ld. AO for fresh adjudication with a direction to the assessee to substantiate its case. The corresponding grounds stand allowed for statistical purpose.

#### **4. Claim of Additional Depreciation**

4.1 The assessee claimed additional depreciation of Rs.134.26 Lacs which was not allowed by Ld. AO in the absence of revised return. The Ld. DRP upheld the action of Ld. AO against which the assessee is in further appeal before us.

4.2 It is admitted position that the assessee has claimed depreciation in subsequent years on WDV of the assets. The additional depreciation was neither provided in the books nor claimed in the return of income. In such a case, the allowance of claim would disturb the working of depreciation in all the subsequent years which could not be permitted at this stage. Even otherwise also, this claim would be revenue neutral since the assessee has claimed as well as allowed depreciation on WDV of the assets in subsequent years. This being so, this claim cannot be

accepted in this year. The corresponding grounds raised by the assessee stand dismissed.

5. Ground No.1 is general in nature. Ground Nos. 2 stand partly allowed. Ground No. 3 stand dismissed. Ground No.4 stand allowed for statistical purposes. No indulgence is required on Ground No.5 which is related with initiation of penalty u/s 271(1)(c).

6. The appeal stand partly allowed in terms of our above order.

*Order pronounced on 3<sup>rd</sup> December, 2024*

**Sd/-**  
**(MANU KUMAR GIRI)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :03-12-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF