

IT(TP)A Nos.560/Bang2015
IT(TP)A No.189/Bang/2016 &
IT(TP)A No.2089/Bang/2017

LM Wind Power Blades (India) Pvt. Ltd., Bangalore

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

IT(TP)A No.560/Bang/2015 IT(TP)A No.189/Bang/2016 & IT(TP)A No.2089/Bang/2017
Assessment Years: 2010-11, 2011-12 & 2013-14 respectively

LM Wind Power Blades (India) Pvt. Ltd. Plot No.85, KIADB Industrial Area Phase I, Thimmanayakana Halli Dabaspet Nelamangala Taluk Bangalore (Rural Dist) 562 111 Karnataka PAN NO : AAACL3093R	Vs.	DCIT Circle-4(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Dhanesh Bafna, Ms. Hirali Desai & Sri Kushal Goyal, A.Rs
Respondent by	:	Sri N. Senthil Kumar, D.R.

Date of Hearing	:	12.12.2024
Date of Pronouncement	:	16.12.2024

O R D E R

PER BENCH:

All these three appeals related to assessment years 2010-11, 2011-12 & 2013-14 arising from the order of ld. AO dated 3.2.2015, dated 18.12.2015 & dated 1.9.2017 respectively.

2. Since common issues involved in all these appeals, we are adjudicating all these appeals by way of this consolidated order.

3. Brief facts giving rise to the filing of these appeals are like this. We are taking assessment year 2010-11 as a lead year. The assessee is a company and engaged in the business of manufacturing blades to

be used in wind turbines. For the impugned assessment year 2010-11, it has filed its return of income on 26.9.2010 declaring an income of Rs.34.87 crores. The same was processed u/s 143(1) of the Income Tax Act, 1961 (in short "The Act") and thereafter selected for scrutiny after issuing statutory invoices. Since international transaction was involved in this case, a reference was made to the TPO for determining the ALP vis-à-vis international transactions entered into by the assessee. The ld. TPO vide its order dated 30.1.2014 made an adjustment of Rs.37,19,57,337/- u/s 92CA of the Act. It is pertinent to note here that while making TP adjustment the TPO has made an adjustment on account of payments made by the assessee to its AE under the head "information & technology fees" and determined the ALP of this transaction at NIL.

3.1 Aggrieved with the order of TPO, assessee filed its objection before ld. DRP and the ld. DRP vide its order dated 23.12.2014 modified the adjustment made by the TPO and reduced the quantum to the tune of Rs.17,15,84,423/-. Thereafter, the AO while completing the final assessment order the Ld AO also made a disallowance of Rs.2,13,24,188/- on account of payments made by the assessee to its AE under the head "information & technology fees" on protective basis. For AY 2011-12 also the fact is similar. For AY 2013-14 there is a small change in facts which are discussed in below Para(s) of this order.

3.2 Aggrieved with the order of the ld. AO, the assessee has come up in appeal before us.

4. Today when the matter was called for hearing, ld. Counsel for the assessee pointed out that the assessee has entered into Mutual Agreement Procedures (MAP) with the competent authority and the

competent authority by way of its letter dated 29.8.2024 has culminated the MAP proceedings. Ld. Counsel for the assessee further pointed out pursuant to MAP proceedings the assessee has filed revised grounds of appeal and the original grounds are not relevant now. In the revised ground of appeal, the assessee has basically withdrawn the issues related to the adjustments made by the TPO in respect of the transfer pricing issues. In revised ground of appeal, ground No.3, assessee has also pointed out that the assessee is only contending that addition of Rs.2,13,24,188/-, made by AO on protective basis is liable to be deleted since it is already covered by the MAP proceedings. Ld. Counsel for the assessee has drawn the attention of bench towards page **A1**, which is a communication from the competent authority's office dated 29.8.2024. A perusal of this communication would show that the amount of Rs.2,13,24,188/- has already been settled in MAP proceedings and accepted by the assessee.

5. Ld. D.R. relied upon the orders of authorities below.

6. After considering rival submissions, we are of the view that since the assessee has already settled its dispute with competent authority under MAP and has also accepted the adjustments made by the TPO on account of information technology fees amounting to Rs.2,13,24,188/-, the protective addition made by the AO in the present year is not tenable and hence, deserves to be deleted. It is settled position of law that when substantial addition has been confirmed/ settled as in this case, then protective addition has no legs to stand.

6.1 In assessment year 2011-12 also, the amount of Rs.1,91,02,847/- has been paid by the assessee on account of

information technology fees. This amount has also been accepted by the assessee in MAP proceedings before the competent authority. Therefore, in this year also no further disallowance u/s 37 of the Act, on protective basis is required to be sustained.

6.2 So far as assessment year 2013-14 is concerned, the amount in dispute is payment on commission made by the assessee on sales. Perusal of page A2 of the paper book, which is the part of communication made by competent authority would show that amount of Rs.22,62,95,388/- has also been accepted by the assessee under the head "commission on sales". It is relevant to mention here that this addition was in fact made by the ld. DRP during proceedings before the dispute resolution panel. Be that as it may, since the assessee has already offered this amount in MAP, no protective addition as made by the ld. DRP deserve to be sustained.

7. In the result, appeals of the assessee are allowed as indicated above.

Order pronounced in the open court on 16th Dec, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 16th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

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**Asst. Registrar,
ITAT, Bangalore.**