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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.502/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Zuari Cement Limited, Kadapa District (A.P.) PAN:AAACZ1270E	Vs.	Dy. Commissioner of Income Tax, Circle-1, Nellore.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:		Shri Deepak Chopra, Advocate and Shri Nitin Narang, C.A.
राजस्व द्वारा / Revenue by:		Shri Kumar Pranav, CIT-DR
सुनवाई की तारीख / Date of hearing:		20/11/2024
घोषणा की तारीख / Pronouncement:		30/12/2024

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by M/s. Zuari Cement Limited ("the assessee"), feeling aggrieved by the order passed by the Dy. Commissioner of Income Tax, Circle-1, Nellore ("Ld. AO"), dated 28.07.2022 for the A.Y. 2018-19.

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

"1. That on the facts and circumstances of the case and in law, the order of assessment framed by the Deputy Commissioner of Income Tax, Circle 1, Nellore (hereinafter referred to as "AO") pursuant to the

directions passed by the Dispute Resolution Panel (hereinafter referred to as "DRP") under Section 144C(5) of the Income-tax Act, 1961 ("the Act"), is a vitiated order having been passed in violation of principles of natural justice and is otherwise arbitrary and is thus bad in law and void-ab-initio.

2. That the DRP directions are bad in law to the extent the same are prejudicial to the Appellant.

Grounds on Transfer Pricing ("TP")

3. That the AO has erred on the facts and in law in making the TP adjustment of INR 56,38,26,985 in respect of the international transactions.

Ground on Rejection of the bonafide TP Documentation/Economic Analysis maintained by the Appellant

4. That the Transfer Pricing Officer ("TPO") and DRP erred on the facts and in law, in rejecting the economic analysis in the TP documentation filed by the Appellant in terms of the Section 92D of the Act read with Rule 10D of the Income Tax Rules, 1962 ("the Rules") and proceeded to make the TP addition based on re-determination of the arm's length price ("ALP") of the international transactions.

Grounds on Rejection of combined Transactional Net Margin Method ("TNMM") selected as Most Appropriate Method ("MAM") by the Appellant and adopting Comparable Uncontrolled Price ("CUP") Method/ Other Method without any comparable transaction or any basis for applying such method.

5. That on the facts and circumstances of the case and in law, the TPO/ DRP has erred by not accepting the combined TNMM analysis

undertaken by the Appellant to establish ALP of the international transactions and instead conducting separate analysis for following international transactions namely:

- a) Payment for Technical service fee and license fee;*
- b) Sub License Fee for Trademark;*
- c) Intra-group service fee; and*
- d) Interest on outstanding receivables.*

(Hereinafter referred as 'impugned transactions')

using CUP Method/ Other Method and holding that the value of these impugned transactions are not at arm's length. In doing so, the TPO/ DRP erred in not giving cognizance to the functions, risks and assets ("FAR") analysis of the Appellant vis-à-vis its associated enterprises ("AES") in relation to the impugned transactions.

6. That on the facts and circumstances of the case and in law, the TPO/ DRP erred in adopting CUP Method/Other Method and determined the ALP of the impugned transactions without any analysis of comparable uncontrolled transactions ("CUT"), thereby not following the procedure prescribed under the Act and the Rules.

Grounds on the applicability of the precedence order in the Appellant's own case for previous years

7. That on the facts and circumstances of the case and in law, the TPO/ DRP has erred in not taking cognizance of the decision of the Hon'ble Income Tax Appellate Tribunal ("Hon'ble ITAT") in Appellant's own case for AY 2009-10 and AY 2010-11, wherein the Hon'ble ITAT has held that these impugned transactions are closely interlinked and approach of TPO in considering CUP/ Other method is not justified.

8. That the Hon'ble ITAT has followed the judgment for AY 2009-10 and applied the same corollary for AY 2011-12 to AY 2014-15 and held

that these impugned transactions are closely interlinked and approach of TPO in considering CUP/ Other method is not justifiable.

Grounds on Incorrect Economic Analysis of Payment of Technical service fee and license fee undertaken by the TPO/ DRP-INR 33,51,64,959.

9. *The DRP/TPO/ AO have erred, on facts and in law, by determining the ALP of payment of technical service fee and license fee at 'NIL' using Other Method, accordingly, arriving at the TP adjustment amounting to INR 33,51,64,959.*

10. *The DRP/ TPO/ AO failed to examine the detailed evidence including the commercial agreement filed by the Appellant to demonstrate that the expenditure was incurred for obtaining operational efficiency in the production of cement.*

11. *The DRP/TPO/ AO erred in questioning the commercial expediency of the Appellant with respect to the international transaction of payment of technical service fee and license fee.*

12. *Without prejudice and notwithstanding the fact that payment of technical service fee and license fee is to be benchmarked using combined TNMM approach, the Appellant undertook an external corroborative CUT search to substantiate the ALP of the said international transaction. The corroborative analysis was rejected by the TPO and affirmed by the DRP without providing any cogent reasons thereof.*

13. *The DRP/TPO erred in the inappropriate application of the Other Method without providing any particulars for the comparability of the independent transactions.*

Grounds on Incorrect Economic Analysis of Payment of Sub-license fee undertaken by the TPO and DRP-INR 11,37,28,509

14. *The DRP/TPO/ AO have erred, on facts and in law, by determining the ALP of payment of sub-license fee for the use of the trademark at 'NIL' using Other Method, accordingly, arriving at the TP adjustment amounting to INR 11,37,28,509.*

15. *The DRP/ TPO erred by applying commercial expediency and thereby concluded that no tangible benefit and no corresponding economic or commercial value was derived by the Appellant.*

16. *The DRP/TPO erred in disregarding the commercial agreement entered with the AE and did not give cognizance to the evidence filed by the Appellant to demonstrate the benefits received by it from the use of the trademark of the AE.*

17. *Without prejudice and notwithstanding the fact that payment of sub-license fee is to be benchmarked using combined TNMM approach, the Appellant undertook an external corroborative CUT search to substantiate the ALP of the said transaction.. The corroborative analysis was rejected by the TPO and affirmed by the DRP without providing any cogent reasons thereof.*

18. *The DRP/TPO erred in the inappropriate application of the Other Method without providing any particulars for the comparability of the independent transactions.*

Grounds on Incorrect Economic Analysis of Payment of Intra Group Service fee undertaken by the TPO and DRP-INR 5,52,48,148.

19. *The DRP/ TPO has erred, on facts and in law, by determining the ALP of payment of management charges, payment of IT service fee,*

payment of technical service fee and payment of freight charges (collectively referred to as "Intra Group Services") at 'NIL' using Other Method, accordingly, arriving at the TP adjustment amounting to INR 5,52,48,148.

20. The TPO has made a mistake apparent from records by not taking cognizance of the directions made by the DRP for AY 2018-19, wherein the DRP has held that the payment of IT service fee is in accordance with the agreements between the Appellant and the AEs amounting to INR 50,09,363, and accordingly the adjustment needs to be deleted.

21. The DRP/TPO erred by applying commercial expediency and thereby, concluded that there was no tangible benefit for paying the Intra Group service fee as there was no scope for the AEs to provide services that the Appellant was already performing or could perform and accordingly, erred in determining the ALP of the transaction as Nil.

22. The DRP/TPO erred in erroneously disregarding the evidence submitted by the Appellant to substantiate the need, actual receipt and benefits derived from the procurement services obtained from the AES.

23. The DRP/TPO erred by not giving cognizance to the submissions submitted by the Appellant and concluded that the services provided by the AE were in the nature of "shareholder activity" and duplicative in nature and therefore, did not warrant any payment to be made.

24. The DRP/TPO erred in assessing that the payment towards Intra Group service fee is based on an apportionment of expenses basis the agreements despite the fact that same is based on actual receipt of services from the AE.

25. *The DRP/TPO erred in assessing that the ALP for the Intra Group services is Nil stating that no Functions, Assets and Risk ("FAR") analysis was submitted by the Assessee in its TP Documentation.*

26. *The DRP/TPO erred in the inappropriate application of the Other Method without providing any particulars for the comparability of the independent transactions.*

Grounds on Incorrect Economic Analysis in relation to Payment of Interest on Masala Bonds undertaken by the TPO and DRP - INR 5,83,39,725.

27. *The DRP/TPO/ AO has erred, on facts and in law, by determining the ALP of payment of interest on masala bonds using Other Method, accordingly, arriving at the TP adjustment amounting to INR 5,83,39,725.*

28. *The DRP/TPO erred in rejecting the economic analysis undertaken by the Appellant in the TP documentation.*

29. *The DRP/TPO has erred, on the facts and in law, in applying an arbitrary interest rate at 7.53 percent while determining the interest on the masala bonds without providing any cogent reasons.*

30. *The DRP/TPO erred by not appreciating the order passed by the TPO in the Appellant's own case for AY 2017-18, wherein the said transaction was considered to be at arm's length and no adverse inferences were held in the TP order.*

Grounds on Incorrect Economic Analysis in relation to Interest on outstanding receivables undertaken by the TPO and DRP - INR 13,45,644.

31. *The TPO has made a mistake apparent from records by not taking cognizance of the observations made by the DRP, wherein the DRP ordered the TPO to compute the net interest liability by adjusting the interest on payables against the interest on receivables, and accordingly, the adjustment needs to be deleted.*

32. *Without prejudice to the above, the DRP/TPO/ AO have erred, on facts and in law, in making the TP adjustment of INR 13,45,644 by failing to appreciate that the outstanding receivables are emanating from the primary international transactions and not a separate international transaction. Further, the DRP/ TPO erred by re-characterizing the outstanding receivables from AES of the Appellant as an unsecured loan and thereby, computed notional interest on alleged delays in the realization of payment from the AEs against the invoices raised.*

33. *The DRP/ TPO erred in imputing interest on the outstanding receivables from the AEs ignoring the fact that the Appellant had followed a consistent policy of not charging any interest on trade receivables from both AEs as well as Non-AEs.*

34. *The DRP/TPO erred, on the facts and in law, in applying arbitrary interest rate of SBI short- term deposit rate, i.e., at 6.90 percent while determining the notional interest on the alleged delays in collection of receivables from the AEs.*

35. *The DRP/ TPO erred in computing notional interest on the entire outstanding receivables for the period of 10 months, without considering the actual period of recovery by the Assessee for the invoices raised on the AEs.*

Grounds on Corporate Tax

Grounds on adjustment towards claim of refund of excess dividend distribution tax ("DDT")

36. *The AO has not given cognizance to the DDT already paid by the Appellant and the documentary evidence substantiating the same furnished during the assessment proceedings, and accordingly, the demand thus created should be deleted.*

37. *The DRP/ AO has erred, on the facts and in law, in rejecting the claim of refund of excess DDT paid by the Appellant, which was claimed during the assessment proceedings.*

38. *The DRP/ AO has erred, on the facts of the case, in not allowing the refund of the excess DDT paid by the Assessee inadvertently at the rate of 20.92 percent instead of 20.357 percent amounting to INR 46.83 lakhs.*

Other Grounds on Erroneous Computation

39. *The AO has erred by not allowing the set-off of the Minimum Alternate Tax ("MAT") credit amounting to INR 15,33,21,507 while determining the net tax liability of the Appellant, at the time of passing the final assessment order.*

40. *The AO has erred by not granting the partial credit for Tax Collected at Source ("TCS") while determining the net tax liability of the Appellant, at the time of passing the final assessment order, while there is no discussion about these in the order of the AO.*

41. *Based on the facts and circumstances of the case and in law, the AO has erred in proposing to initiate penalty proceedings under Section 270A of the Act, against the Appellant.*

42. *Based on the facts and circumstances of the case and in law, the AO has erred in proposing to levy interest under Section 234B and Section 234C of the Act.”*

3. The brief facts of the case are that, the assessee is a limited company, filed its Return of Income for A.Y. 2018-19 on 30.11.2018 declaring total income of Rs.75,31,12,150/-. The case of the assessee was selected for scrutiny under CASS. In view of the international transactions, for determination of Arm's Length Price (“ALP”), the case of the assessee was referred to Learned Transfer Pricing Officer (“Ld. TPO”). The Ld. TPO as per his order dated 31.07.2021 proposed upward adjustment of Rs.56,38,26,985/- in respect of international transactions. Accordingly, the Ld. AO passed draft assessment order on 25.09.2021. Aggrieved, the assessee preferred objections before the Learned Dispute Resolution Panel (“Ld. DRP”) and pursuant to the directions of Ld. DRP dated 14.06.2022, the Ld. AO finalized the assessment on 28.07.2022 making addition of Rs.56,38,26,985/- on account of international transactions.

4. Aggrieved with the order of Ld. AO, the assessee is in appeal before us. The Learned Authorised Representative (“Ld. AR”) submitted that, the ground nos.1 & 2 of the appeal are general in

nature, whereas ground nos. 41 & 42 are consequential in nature, therefore they do not require any separate adjudication. With regards to ground nos.3 to 8, the Ld. AR submitted that, during the year under consideration, the assessee entered into the following international transactions with its Associated Enterprises (“AEs”) :-

<i>S.No.</i>	<i>Name of AE</i>	<i>Nature of transaction</i>	<i>Amount (INR)</i>
1	HC Trading Malta Limited	Purchase of pet coke	27,78,11,105
2	Singha Cement Pvt. Ltd.	Sale of cement	76,51,840
3	Italcementi S p A	Technical know how	27,80,94,234
4	Heidelberg Cement AG	Technical know how paid	5,70,70,725
5	Italcementi S p A	Trademark	11,37,28,509
6	Italcementi S p A	IT services fee	50,09,363
7	Heidelberg Cement AG	Management charges	2,33,90,705
8	Heidelberg Cement Asia Pte Limited	Technical services fees	44,23,008
9	Heidelberg Cement AG	IT Support services	8,80,050
10	HC Trading Malta Limited	Freight charges	2,24,25,072
11	Heidelberg Cement AG	Borrowing	43,38,08,215
12	Ciments Francais S A	Recovery of expenses	2,01,550
13	HC Trading Malta Limited	Recovery of expenses	2,15,60,010
14	Suez Cement Company SAE	Recovery of expenses	14,77,328
15	Singha Cement Pvt. Ltd.	Recovery of expenses	1,11,17,498
16	Heidelberg Cement AG	Reimbursement of expenses	13,62,750
17	Heidelberg Cement Asia Pte Limited	Reimbursement of expenses	9,80,139
18	Singha Cement Pvt. Ltd.	Trade Receivables	33,52,854
19	HC Trading Malta Limited	Trade Receivables	2,15,60,010
20	Ciments Calcia SA	Trade Payables	17,78,547
21	HC Trading Malta Limited	Trade Payables	2,24,25,072
22	Italcement S p A	Trade Payables	14,49,24,523
23	Heidelberg Cement AG	Trade Payables	7,27,54,364
24	Heidelberg Cement Asia Pte Limited	Trade Payables	49,60,847
25	C T C G S p A	Trade Payables	7,46,106
26	Ciments Francais S A	Trade Payables	3,75,05,066
27	Buta Heide Bergcement SDN BHD	Advances received	6,89,539

28	Heidelberg Cement AG	Interest payable	8,34,22,808
29	Heidelberg Cement AG	Outstanding loan balance	5,00,00,00,000

4.1 The Ld. AR further submitted that, the assessee had adopted the aggregate transactions approach and applied Transactional Net Margin Method (“TNMM”) for bench marking of the international transactions. However, the Ld. TPO and Ld. DRP adopted the Comparable Uncontrolled Price (“CUP”) and Other Method (“OM”) and rejected the TNMM adopted by the assessee. The Ld. AR further submitted that, under the similar issue, in assessee's own case, the co-ordinate bench of Tribunal in A.Y. 2009-10, has accepted the aggregate transactions approach and application of the TNMM for bench marking of the international transactions. Further, following the decision of the co-ordinate bench of ITAT in assessee's own case for A.Y. 2009-10, the co-ordinate bench of ITAT in assessee's own case for A.Ys. 2011-12 to 2014-15, 2016-17 & 2017-18, decided the issue in favour of the assessee. Therefore, the Ld. AR prayed before the bench to make a suitable direction to Ld. TPO to adopt the

aggregate transaction approach and to apply TNMM for bench marking of the international transactions.

5. Per contra, the Ld. DR relied on the order of Ld. TPO/Ld. DRP. The Ld. DR further submitted that, the co-ordinate bench of ITAT in assessee's own case for A.Ys. 2011-12 to 2014-15, 2016-17 & 2017-18, decided the issue in favour of the assessee, following the decision of the Tribunal in assessee's own case for A.Y. 2009-10. The Ld. DR also submitted that, there occurs a substantial change in the nature of services and the service providers in A.Y. 2018-19 as compared to A.Y. 2009-10. Therefore, the bench marking of A.Y. 2018-19 cannot be decided on the basis of A.Y. 2009-10. He further submitted that, there must be a close inter-linking between all the transactions, to adopt the aggregate transactions approach and to apply TNMM for bench marking. He stated that, the Ld. TPO at page no.7 of his report has specifically mentioned that “aggregation approach has not been substantiated by the assessee with any evidence.” Therefore, the Ld. DR submitted that, unless the aggregation approach is substantiated by the assessee with

documentary evidence, the claim of the assessee for aggregation approach should not be accepted.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. The limited issue before us under this ground is whether close inter-linking between all the transactions exist or not, so as to justify the aggregation approach. If a number of transactions are closely linked or continuous in nature and arising from a continuous transactions of supply of amenity or services, the transactions can be permitted as closely linked transactions for the purpose of transfer pricing and in terms of Rule 10A(d). Aggregation and clubbing of the closely linked transaction are permitted under the Rules and it is also supported by OECD transfer pricing guidelines. In order to examine whether the number of transactions are closely linked or continuous so as to aggregate for the purpose of evaluation it is to be considered that one transaction is follow-on of the earlier transaction and then the subsequent transaction is carried out and dependent wholly or substantially on the earlier transaction. It can be vice-versa when the earlier transaction has been entered into between parties by keeping in

mind that a continuous transaction of similar nature will be entered into between the parties thereafter. Therefore, when the transactions are influenced by each other and particularly in determining the price and profit involved in the transactions then those transactions can safely be regarded as closely linked transactions. The OECD guidelines has referred a portfolio approach as business strategy consisting of tax payers bundling certain transaction for the purpose of earning an appropriate return across portfolio rather than single product. For instance some products may be marketed by the tax payer with a low profit or even at loss because they create a demand for other products or related services of the same tax payer that are then sold or provide high profit. Some of the examples given in the OECD guidelines for transfer pricing are the equipment and captive after market consumables such as vending coffee machines and coffee capsules, or printers and cartridges. Thus, portfolio approach is business strategy that may need to be taken into account in comparability analysis. Therefore, if two or more transactions between the same parties i.e., the Assessee and its AEs can be said to be closely linked if the transactions are interlinked and terms and

condition as well as prices between the parties are determined based on the totality of the transactions and not on individual and separate transactions.

6.1 In the case before us, the Assessee has taken a number of services from more than one AEs. In the business decisions when number of transactions are entered into between two parties then it is a very important and material factor to consider a portfolio approach rather than the individual transaction approach for determination of price of the transactions between the parties. Even otherwise the scheme of Transfer pricing provisions is to avoid Base Erosion and Profit Shifting from one tax jurisdiction to another tax jurisdiction. Therefore, the receipt of services for the purpose of business can be aggregated for the purpose of determination of ALP only to the extent of the transactions or to the extent of number of transactions with each AE. In other words the transactions carried out with different AEs cannot be clubbed or aggregated because they cannot be termed as closely linked or continuous so as to influence the price in aggregate or the profit of the parties arising from these transactions.

6.2 There is no dispute about the fact that, the aggregation transaction approach can be adopted only where, there exists a close inter-linking between all the transactions. There is also no dispute about the fact that, there is a substantial change occurred in the nature of services received by the assessee and the service provider in A.Y. 2018-19 as compared to A.Y. 2009-10. It is therefore crucial to go through the details of the nature of services received by the assessee and the service provider for these two years. The details for A.Y. 2018-19 has already been provided herein above and the details for A.Y. 2009-10 are reproduced as under :

<i>Name of AE</i>	<i>Nature of transaction</i>	<i>Amount (INR)</i>
<i>Climent Francais SA</i>	<i>Technical know and research and other fee</i>	<i>12,53,26,000</i>
<i>Climent Francais SA</i>	<i>Sub-license fee for use of trade mark</i>	<i>6,26,62,000</i>
<i>Italcementi Fabbriche Riunite Cemkento SPA</i>	<i>Procurement service fee paid</i>	<i>7,11,82,000</i>
<i>Bravo Solutions SPA</i>	<i>Consultancy fee paid</i>	<i>38,10,000</i>
<i>CTGA SPA</i>	<i>Consultancy service fee paid</i>	<i>42,10,94,000</i>
<i>Climent Francais SA</i>	<i>Reimbursement of expenses</i>	<i>82,95,000</i>
<i>Bravo Solutions SPA</i>	<i>Reimbursement of expenses</i>	<i>4,07,000</i>
<i>Climent Francais SA</i>	<i>Reimbursement of expenses</i>	<i>13,25,000</i>

<i>Italcementi Fabbriche Riunite Cemkento SPA</i>	<i>Reimbursement expenses</i>	<i>of</i>	<i>26,79,000</i>
<i>CTGA SPA</i>	<i>Reimbursement expenses</i>	<i>of</i>	<i>9,29,000</i>

On going through the above details, it is abundantly clear that there is a substantial change in the nature of services received by the assessee and the service provider in A.Y. 2018-19 as compared to A.Y. 2009-10. It is also a fact that, the co-ordinate bench of ITAT in assessee's own case for A.Ys. 2011-12 to 2014-15, 2016-17 and 2017-18 has given their findings in favour of the assessee relying on the findings of A.Y. 2009-10. As there is substantial changes in the nature of services received by the assessee and the service provider in A.Y. 2018-19 as compared to A.Y. 2009-10, the facts on the basis of which the Tribunal has decided the issue in A.Y. 2009-10, has got substantially changed. Therefore, we are of the considered opinion that, the close inter-linking between all the transactions are required to be established with documentary evidence, before deciding, whether aggregate transactions approach can be adopted or not. Therefore, we set aside the issue to the file of Ld. TPO to verify with the documentary evidence and confirm whether there is any close inter-

linking between all the transactions or not and decide as per law.

Accordingly, the grounds of the assessee are dismissed.

7. Ground nos.9 to 13 are related to adjustment for payment of technical know-how and related services fees, ground nos.14 to 18 are related to adjustment for payment of sub-licence fees for the use of italcementi trademark, ground nos.19 to 26 are related to adjustment for payment of intra group service fees. Ground nos.31 to 35 are related to adjustment in relation to interest on outstanding receivables. The findings of all these grounds will depend on the findings of Ld. TPO as per our directions made under para no.6 above. Therefore, the issue involved under all these grounds are also set aside to Ld. TPO to decide the issue as per law on the basis of his findings as per our directions made under para no.6 above. Accordingly, the issues involved under all these grounds are set-aside to the Ld. AO/TPO for statistical purpose.

8. Ground nos.27 to 30 are related to adjustment for payment of interest on Masala Bond.

9. The Ld. AR submitted that, the assessee has paid interest on Masala Bond @ 8.70% per annum. However, the Ld. TPO bench marked the same at 7.53% per annum. The Ld. AR submitted that, the assessee has entered into an Advance Price Agreement (“APA”) (copy enclosed at Annexure 9 of paper book) for A.Y. 2021-22 to 2025-26, wherein, the rate of interest on Masala Bond has been agreed at 8.70%. Ld. AR further submitted that, in A.Y. 2017-18 no adverse inference has been taken by the Ld. TPO with regards to bench marking of interest on Masala Bond. Therefore, the Ld. AR prayed before the bench to accept the bench marking of interest at 8.70% per annum as per APA.

10. Per contra, the Ld. DR relied on the order of Ld. TPO / Ld. DRP and prayed before the bench to dismiss these grounds of the assessee.

11. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through the APA entered into by the assessee (Annexure 9 of paper book), wherein, the rate of interest on Masala Bond for A.Y. 2021-22 to A.Y. 2025-26 has been agreed at 8.70% per annum.

Further, in A.Y. 2017-18 no adverse inference has been taken by the Ld. TPO with regards to bench marking of interest on Masala Bond. No changes in facts and circumstances affecting the bench marking of the rate of interest on Masala Bond has been brought to our notice by the Revenue. Therefore, considering the factual matrix of the case, we are of the opinion that, the bench marking of the interest on Masala Bond can be taken at 8.70% per annum. Therefore, we direct the Ld. TPO to consider the rate of interest on Masala Bond at 8.70% per annum and delete the addition. Accordingly, these grounds of assessee are allowed.

12. With regards to ground nos.36 to 38, regarding refund of excess Dividend Distribution Tax (“DDT”), the Ld. AR fairly accepted that, their case is covered by the decision of Special Bench of ITAT in the case of JCIT Vs. Total Oil India Pvt. Ltd. in ITA No.6797/Mum/2019 for A.Y. 2016-17 dated 20.04.2023, wherein, the ITAT has held the issue against the assessee. However, the only submission of the Ld. AR is that, the assessee has erroneously paid DDT @ 20.92% instead of applicable rate of 20.37%. Therefore, the

Ld. AR prayed before the bench that, the excess payment may be refunded to the assessee subject to verification by Ld. AO.

13. Per contra, the Ld. DR conceded to the submission of Ld. AR.

14. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We are of the considered opinion that, if any tax has been paid erroneously in excess over the applicable rate, then, it should be refunded to the assessee. Therefore, we direct to the Ld. AO to verify the same from the record and issue the refund towards the excess payment, if any, made by the assessee. Accordingly, these ground of the assessee are allowed for statistical purposes.

15. With regard to ground nos.39 & 40, the Ld. AR submitted that, the Ld. AO in his assessment order allowed less credit on account of MAT and TCS. Therefore, the Ld. AR prayed before the bench to make a suitable direction to the Ld. AO to allow the same after verification.

16. Per contra, the Ld. DR conceded to the submission of Ld. AR.

17. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We are of the considered opinion that, the eligible credit on account of MAT and TCS should be provided to the assessee. Accordingly, we make a direction to the Ld. AO to allow necessary credit on account of MAT and TCS after verification of the record, as per law. Accordingly, these grounds of the assessee are allowed for statistical purposes.

18. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 30th Dec., 2024.

Sd/-

**(VIJAY PAL RAO)
VICE PRESIDENT**

Hyderabad.

Dated: 30.12.2024.

** Reddy gp*

Copy of the Order forwarded to :

1. M/s. Zuari Cement Limited, Krishna Nagar,
Yerraguntla, Kadapa District - 516 311
2. DCIT/ACIT, Circle 1, Nellore.
3. Pr.CIT, Tirupati.
4. DR, ITAT, Hyderabad.
5. Guard file.

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

BY ORDER,

