

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)

AND

SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

**ITA No. 4639/MUM/2024
Assessment Year: 2020-21**

Sirona Dental Systems Private
Limited
Unit No. Ga 10 and 11, Ground
Floor A Wing, Art Guild House,
Phoenix Market City, Lbs Marg Kurla
West,
Mumbai - 400070.
PAN NO. AARCS1760K
Appellant

Vs.

ACIT, Circle 14(1)(2)
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Shri Pranay Gandhi a/w Shri Anish
Thacker
Revenue by : Shri Uodal Raj Singh Sr. DR

Date of Hearing : 17/10/2024
Date of pronouncement : 08/01/2025

ORDER

PER OMKARESHWAR CHIDARA, AM

This appeal by the assessee is directed against order dated 15.06.2024 passed by the Ld. Commissioner of Income-tax Mumbai (Appeals), [in short 'the Ld. CIT(A)'] for assessment year 2020-21.



2. The above cited appellant company filed an appeal with the following Grounds of Appeal for the A.Y. 2020-21 :

“Based on the facts and circumstances of the case and in law, Sirona Dental Systems Private Limited (hereinafter referred to as the Appellant) craves leave to prefer an appeal against the order dated 19 July 2024 passed by the learned Assessment Unt, Income-tax Department (hereinafter referred to as Mamed Assessing Officer or learned AD) under section 143(3) read with section 144C(13) read with section 144(8) of the Income-tax Act 1961 (hereinafter referred to as the 'Act') in pursuance of the directions issued by the Hon'ble Dispute Resolution Panel-1, (hereinafter referred to as the Hon'ble DRP) on the following grounds, each of which are without prejudice to one another

On the facts and in the circumstances of the case and in law, on the directions of the Hon'ble DRP/ the learned AD/ Deputy Commissioner of Income-tax (Transfer Pricing)4(1)(1), Mumbai [learned Transfer Pricing Officer (TPO), has:

Grounds of appeal

General

1. erred in not accepting the returned income of INR 2,85,48,550/- declared by the Appellant in the Income-tax return of AY 2020-21 and making transfer pricing adjustment of INR 45,78,792.

Final assessment order barred by limitation:

2. erred in not passing the final assessment order within the time limit prescribed under section 153 of the Act which is the outer time limit for passing the final assessment order and hence, the assessment proceedings is time barred and liable to be quashed;

Validity of the final assessment order passed:

3. erred in not passing the final assessment order in accordance with the directions of the Hon'ble DRP, thereby, rendering the impugned order as bad in law and invalid.

4. erred in not granting opportunity of being heard before making enhancement in the order passed under section 92CA of the Act in pursuance of the directions issued by the Hon'ble DRP, thereby,



rendering the impugned order as bad in law and arbitrary, contrary to facts, law and circumstances of the case and liable to be quashed.

Profit level indicator ("PLI") computation:

5. *erred in making TP adjustment of Rs. 45,78,792, in respect of purchase of goods from AE by:*

5.1 *failure to consider the audited financials of the Appellant for computing the PLI of the Appellant:*

5.2 *erroneously considering the value of operating assistance at INR 4,65,54,272 instead of INR 4,75,39,584;*

5.3 *not considering prior period expenditure, penalty interest and loss on sale of assets as non-operating expenses though the same were classified as non-operating in the original transfer pricing order; and*

5.4 *not considering "warranty provision written back" amounting to INR 31,81,643 credited to profit & loss account as operating in nature without appreciating that "provision written back" amounting to INR 3,58,485 was considered to be operating in nature.*

6. *erred in rejecting Systopic Laboratories Pvt Ltd as an inappropriate comparable without providing any reason for rejection.*

7. *Without prejudice to the ground no. 5, where warranty provision written back is considered to be non-operating in nature, the appellant prays that the "provision for doubtful debts" amount to INR 23,43,491 and "provision for doubtful balances with government authorities" amount to INR 4,92,230, debited to profit & loss account, ought to also be considered as non-operating in nature.*

8. *erred in initiating penalty proceedings u/s 270A of the Act mechanically and without recording any adequate satisfaction for such initiation.*

The above grounds are without prejudice to each other. The Appellant craves to leave to add, withdraw, alter, modify, amend or vary the above grounds of appeal before or at the time of hearing."

3. The appellant company, Sirona Dental, was incorporated on 16/02/2012 is engaged in trading and distribution of dental equipment in India. The company is also engaged in limited product support services in the form of Armal Maintenance Contracts.



4. In the assessment order, the Ld. AO made an adjustment of Rs. 45,78,792/- while giving effect to the Ld. DRP'S directions towards "ALP adjustment for purchase of goods after operating assistance received", at the time of completing scrutiny assessment. Originally, the TPO has made an adjustment of Rs. 32,44,059/- for the reasons mentioned TP order, but the Ld. DRP computed the same at Rs. 45,78,792/- and considering the directions of DRP, an amount of Rs. 45,78,792/- was added.

5. Aggrieved by this order of Ld. A.O, the appellant filed an appeal to ITAT with the grounds of appeal mentioned in page 2 & 3 of this order.

6. As far as the limitation issue is concerned, the Ld. AR of appellant has filed a letter dated 16/10/2024, during the proceedings before ITAT, stating that the appellant is withdrawing this legal ground based on the decision of Roca Bathroom Products pvt. ltd. of Madras High Court dated 09/06/2022, as it would prolong the appeal process. In view of the same this ground relating to limitation is dismissed, as "withdrawn".

7. Coming to the merits of the case are considered, the Ld. AR of appellant company has argued that since the warranty provision created in earlier years was treated as "operative" in nature the provisions written back during this year also should be taken "operative" in nature. It was submitted that if the warranty



provisions are written back is considered as operating income, the revised margin computation of OP/OR would be 6.01% and as the Ld. TPO determined the range to be 5.29% to 6.82%, it would be within the Arm's length range computed by TPO. In support of the same, the Ld. AR of appellant has filed the financials and adjustment to be made as follows :

<i>Particulars</i>	<i>Amount (In INR)</i>	<i>Amount (In INR)</i>
<u><i>Income</i></u>		
<i>Revenue from operations:</i>		
<i>Sale of products</i>	18,60,04,837	
<i>Sale of services</i>	72,64,920	
	19,32,69,757	
<i>Other operating revenue:</i>		
<i>Operating Assistance</i>	4,75,39,584	
<i>Other income:</i>		
<i>Warranty provision written back</i>	31,81,643	
<i>Total Operating Income [A]</i>		24,39,90,984
<i>Total operating Cost [B]</i>		22,93,26,150
<i>Operating Profit C = [A - B]</i>		1,46,64,834
<i>Operating Profit / Operating Revenue D = [C / A]</i>		6.01%

8. Finally, the AR of appellant has submitted that, Ld. TPO may be directed to include the warranty provision written back as operating revenue, as this treatment was followed by appellant company consistently in prior years also, which was supported by judicial precedents.

9. Per contra, the Ld. AR has argued that the Ld. AO has computed the PLI using draft financials provided by Assessee Company. The Ld. DRP has directed the TPO to compute PLI only after considering the figures as per audited financials based on



which the income was computed by appellant company. As there were no specific directions in Ld. DRP's order with respect to "Warranty Provisions" written back, because this ground was not raised by the appellant before the Ld. DRP. The Ld. DR has finally argued that since this ground of "Warranty Provisions" was not raised before the Ld. DRP, the appellant company's plea to set aside the matter to the Ld. TPO with the direction to look into warranty provisions, should not be entertained by ITAT.

10. Considering the facts and circumstances of the case, it is decided that an opportunity is given to appellant company to demonstrate its case relating to issue of "Warranty Provisions" before the Ld. AO, as all the facts are borne out of record and no fresh evidences were filed by the appellant company. Accordingly, the appeal is remitted back to the Ld. AO, for the limited purpose of "Warranty Provisions" was included in earlier years to reckon "operative income" and determine the ALP. No other grounds should be entertained before the Ld. AO because this is the only issue agitated by the Ld. AR of appellant before ITAT.

11. The Ld. AO is directed to give an opportunity to the appellant company and complete the assessment at the earliest.



12. The appeal of appellant company is allowed for statistical purposes.

Order pronounced in the open Court on 08/01/2025.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 08/01/2025
Poonam Mirashi,
Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai