**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**RANCHI BENCH, RANCHI**

**BEFORES/SHRI GEORGE MATHAN, JUDICIAL MEMBER**
**AND RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.92/RAN/2022**
Assessment Year: 2017-18

**S.A.No.9/Ran/2025**

| | | |
|---|---|---|
| Timken India Limited, 39 to 42, Electronic City-Phase-1, Hosur Road, Bangalore | Vs. | Deputy Commissioner of Income Tax, Circle-1, Jamshedpur |
| PAN/GIR No.aabct 0596 j | | |
| **(Appellant)** | .. | ( **Respondent**) |

Assessee by : S/Shri K.M.Gupta/Krishan Shaw, ARs
Revenue by :Smt. Rinku Singh, CIT DR

**Date of Hearing : 12/06/2025**
**Date of Pronouncement : 12/06/2025**

**O R D E R**

**Per Bench**

This is an appeal filed by the assessee against the order of the ld TPO dated 25.8.2022 for the assessment year 2017-18..

2. S/ShriM.K.Gupta and Krishan Shaw,ld Ars appeared for the assessee and Smt. Rinku Singh, Ld CIT DR appeared for the revenue.

3. At the time of hearing ld AR submitted that the additional ground raised by the assessee in respect of non-mentioning of DIN is being withdrawn and ld AR has signed in the grounds of appeal to this effect. Consequently, additional ground stands dismissed as withdrawn.

4. It was the submission that in the grounds of appeal raised i.e. Ground No.1 to 4 is in regard to the transfer pricing addition. Ground No.5.1 and 5.2 related to the disallowance u/s.14A r.w. Rule 8D of the Act, both under the normal provisions of the Act as well as in respect of book profit computed under section 115JB of the Act. In regard to Ground No.6, it was the submission that this issue related to the incorrect payment of refund issue without issuing the refund per se and the connected issue of the interest u/s.234D has been raised in Ground No.7. At the time of hearing, it was informed to ld AR that said ground Nos. 6 & 7 related to refund is not an issue which could be adjudicated by the Tribunal and same requires administration action for which the assessee has to approach the proper forum. In regard to Ground No.8, same was against the non application of beneficial rate of tax under the India and Singapore Tax treaty in respect of dividend distribution during the year.

5. It was submitted by AR that the tax payable on the dividend should be restricted to the rate prescribed under Article 10 of India Singapore DTAA. At the time of hearing, it was informed to ld AR that this issue stands covered by the decision of Hon'ble Special Bench Mumbai in the case of DCIT v. Total Oil India

Pvt. Ltd., [2023] 149 taxmann.com 332 (Mumbai – Trib.) (SB). In the said decision, the Special Bench has categorically held in para 79 to 83 as follows:

> "79. As we have discussed earlier, the purpose of DTAA is to avoid double taxation/allocation of taxing rights between two Sovereign nations. When we hold that DDT is a tax not on the shareholder but on the amount declared, distributed, paid as the case may be, by way of dividend and being a tax on income of the company, there is no double taxation of the same income. DTAAs seek to reduce the impact of double taxation which has harmful effects on the international exchange of goods and services and cross-border movements of capital, technology and persons. Bilateral tax treaties address instances of double taxation by allocating taxing rights to the contracting states. Most existing bilateral tax treaties are concluded on the basis of a model, such as the OECD Model Tax Convention or the United Nations Model, which are direct descendants of the first Model of bilateral tax treaty drafted in 1928 by the League of Nations. As a result, while there can be substantial variations between one tax treaty and another, double tax treaties generally follow a relatively uniform structure, which can be viewed as a list of provisions performing separate and distinct functions: (i) Articles dealing with the scope and application of the tax treaty, (ii) Articles addressing the conflict of taxing jurisdiction, (iii) Articles providing for double taxation relief, (iv) Articles concerned with the prevention of tax avoidance and fiscal evasion, and (v) Articles addressing miscellaneous matters (e.g. administrative assistance). Articles 23A and 23B of the OECD model convention give methods to eliminate double taxation.
>
> 80. A reading of Article 10 of the model OECD DTAA shows that Dividends paid by a company which is a resident of a Contracting State, say India to a resident of the other Contracting State (say France) may be taxed in that other State (France). However, if the beneficial owner of the Dividend is a resident in France, the tax so charged shall not exceed specified percent. The first condition is that the non-resident in France should be taxed in India. We have to look at the DTAA from the receipients taxability perspective. DDT is paid by the domestic company resident in India. It is a tax on its income and not tax paid on behalf of the shareholder. In such circumstances, the domestic company u/s.115-O does not enter the domain of DTAA at all.
>
> 81. If domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect. In the Treaty between India and Hungary, the Contracting States have extended the Treaty protection to the dividend distribution tax. It has

been specifically provided in the protocol to the Indo Hungarian Tax Treaty that, when the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend. While making Reference in the case of TotalOil (supra), the ld. Division Bench has made the following observations on this aspect

f) Wherever the Contracting States to a tax treaty intended to extend the treaty protection to the dividend distribution tax, it has been so specifically provided in the tax treaty itself. For example, in India Hungry Double Taxation Avoidance Agreement [(2005) 274 ITR (Stat) 74; Indo Hungarian tax treaty, in short], it is specifically provided, In the protocol to the Indo Hungarian tax treaty it is specifically stated that "When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend". That is a provision in the protocol, which is essentially an integral part of the treaty, and the protocol to a treaty is as binding as the provisions in the main treaty itself. In the absence of such a provision in other tax treaties, it cannot be inferred as such because a protocol does not explain, but rather lays down, a treaty provision. No matter how desirable be such provisions in the other tax treaties, these provisions cannot be inferred on the basis of a rather aggressively creative process of interpretation of tax treaties. The tax treaties are agreements between the treaty partner jurisdictions, and agreements are to be interpreted as they exist and not on the basis of what ideally these agreements should have been.

(g) A tax treaty protects taxation of income in the hands of residents of the treaty partner jurisdictions in the other treaty partner jurisdiction. Therefore, in order to seek treaty protection of an income in India under the Indo French tax treaty, the person seeking such treaty protection has to be a resident of France. The expression 'resident' is defined, under article 4(1) of the Indo French tax treaty, as "any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile,residence, place of management or any othercriterion of a similar nature". Obviously, the company incorporated in India, i.e. the assessee before us, cannot seek treaty protection in India- except for the purpose of, in deserving cases, where the cases are covered by the nationality non-discrimination under article 26(1), deductibility non-discrimination under article 26(4), and ownership non-discrimination under article 24(5) as, for example, article 26(5) specifically extends the scope of tax treaty protection to the "enterprises of one of the Contracting States, the capital of which is wholly or partly owned or

controlled, directly or indirectly, by one or more residents of the other Contracting State". The same is the position with respect of the other non-discrimination provisions. No such extension of the scope of treaty protection is envisaged, or demonstrated, in the present case. When the taxes are paid by the resident of India, in respect of its own liability in India, such taxation in India, in our considered view, cannot be protected or influenced by a tax treaty provision, unless a specific provision exists in the related tax treaty enabling extension of the treaty protection.

(h) Taxation is a sovereign power of the State- collection and imposition of taxes are sovereign functions. Double Taxation Avoidance Agreement is in the nature of self-imposed limitations of a State's inherent right to tax, and these DTAAs divide tax sources, taxable objects amongst themselves. Inherent in the self-imposed restrictions imposed by the DTAA is the fact that outside of the limitations imposed by the DTAA, the State is free to levy taxes as per its own policy choices. The dividend distribution tax, not being a tax paid by or on behalf of a resident of treaty partner jurisdiction, cannot thus be curtailed by a tax treaty provision."

82. We are of the view that the above exposition of law is correct and we agree with the same. Therefore, the DTAA does not get triggered at all when a domestic company pays DDT u/s.115O of the Act.

Conclusion:

83. For the reasons give above, we hold that where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income-tax (Tax on Distributed Profits) referred to in sec.115-O of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in section 115-O of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income. Nevertheless, we are conscious of the sovereign's prerogative to extend the treaty protection to domestic companies paying dividend distribution tax through the mechanism of DTAAs. Thus, wherever the Contracting States to a tax treaty intend to extend the treaty protection to the domestic company paying dividend distribution tax, only then, the domestic company can claim benefit of the DTAA, if any. Thus, the question before the Special Bench is answered, accordingly. "

6. As this issue is now squarely covered by the Special Bench decision in the case of Total Oil India Pvt. Ltd (supra) this issue is held against the assessee. Consequently, Gound No.8 is dismissed.

7. Ground No.9 is in relation to charging of interest u/s.234B. Same is consequential in nature.

8. Ground No.10 is against initiation of penalty u/s.270A of the Act. This issue is consequential in nature.

9. Coming to issue raised in Ground No.1 to 4, which are transfer pricing addition. It was submitted by ld AR that the assessee is in the business of manufacturing and sale of bearings. It was the submission that the assessee manufactures various types of bearings. It was also the submission that there are some bearings, which the assesse do not manufacture but are required in the industries. Such bearings are manufactured by the AEs of the assessee. The assessee sources the bearings from its AEs on the basis of orders received by the assessee from the end users and sells the same to the end users. It was the further submission that the assessee is also doing the distribution and trading in respect of ancillary products such as grease, seal ware rings, adapters and sleeves. It was the submission that the assessee does not manufacture nor does any of the AEs any of these products being grease, seals, ware rings,adapters, etc. The assessee and its AEs are exclusively in the manufacture and sale of bearings. It was the submission that from the assessment year 2003-04 till the

impugned assessment years, no specific TP adjustment have ever been made on the assessee. It was the submission that during the relevant impugned assessment year, the AO rejected the TNMM method applied by the assessee and applied the resale price method for benchmarking the international transactions of purchase of finished goods, such as bearings for resale in the distribution segment without appreciating the business models of the assessee. It was the submission that in the distribution of the bearings, which was sourced from the AEs of the assessee, the same was treated as related transaction and the margin was determined at 7.30%. It was the submission that the assessee sourced the grease, seals, ware rings, adapters, etc., from local suppliers an in some cases from imports. The profit margin earned by the assessee on such unrelated products to the manufacturing activity of the assessee, the assesse earned 19.68% profit. The AO compared the profit margin on such unrelated products with that of the related products even though there is variation and accordingly determined shortfall in gross profit margin at 12.38% in respect of sales in regard to related products. It was the submission that for the application of resale price method, the same is normally applicable to distributors who are carrying risk in the market and stock inventory. It was the submission that in respect of related products, the assessee gets the order from end users and on the basis of the requirement of the end users, initiate orders with AEs, who manufacture such specific bearings, imports such bearings and sale it to the end users at the predetermined price. It was the submission that the assessee was

not holding any closing stock specifically much less any additional stock in relation to any of such bearings, which have been sold by the assessee by import from its AEs. It was the further submission that in relation to the unrelated products being grease, seals, ware rings, adapters, etc, the assessee acts as distributor and holds the stock of such items such items are sourced locally from the local manufactures and some portions are imported as required. It was the submission that these products are used for the installation of the bearings both manufactured by the assessee and such bearings as are imported and supplied to the end users. It was the submission that in relation to bearing which is considered as related segments, the assessee carries no market risk nor any inventory risk but acts only as a supply agent on the basis of the order that it receives from end users. Consequently, its margin is 7.3% and in respect of the unrelated products. It was the submission that the assessee did carry the market risk and the inventory risk insofar as the assessee was stocking such items for the purpose of the distribution and stock did not depend the orders received by the assessee. It was the submission that in regard to such unrelated items, if the items are not manufactured by the assessee nor tis AEs, the assessee derived profit margin at 19.68%. It was the submission that comparing the bearings as related products with the lubricants such as grease, seals, ware rings, adapters, etc, which are not manufactured by the assessee but purchased and sold as distributor by the are un-comparable insofar as the profit margin of the two products are normally different. It is not possible that the

assessee can at any point of time gets fixed percentage of profit in respect of all products that it sales. Each products would have a different margin. It was the further submission that in the TP study done by the assessee, the assessee had applied TNMM method. Ld AR drew our attention to TP study of the assessee, wherein in page 200 of PB, which is the para- H of TP study, the arithmeticalmeans in respect of comparable in the distribution segment was 3.7% whereas the profit margin of the assessee was 2.54%, which is seen from the segment -H, which reads as follows:

## H Search process and determination of arm's length price:

**Segment C - Distribution Segment**

We searched the two widely recognised corporate databases to identify potential uncontrolled comparables for TIL's transaction. We primarily relied on Prowess and extracted additional companies from CapitalinePlus, i.e., companies for which data was not available in Prowess.

To comply with the requirements of contemporaneous documentation to exist by the due date of filing the return of income as per the Indian Regulations, the Company has conducted a benchmarking analysis using information in databases updated till August 2017, focusing on the financial results of companies having financial years ended during the period April 1, 2014 and March 31, 2017.

Companies have been selected if they had relevant financial data for atleast[60]:

- data relating to FY 2016-17; or
- data relating to the financial year immediately preceding the current year i.e. FY 2015-16, if the data relating to the FY 2016-17 is not available

The search for comparables was undertaken, keeping in mind, that the company is involved in the trading activity.

Based on the search process, we arrived at 8 comparable companies / segments.

The final set for following 8 companies along with the weighted average NPM for financial years ("FY") 2014-15, 2015-16 and 2016-17 (wherever available) is summarized below:

**Table 18: Final Set of Comparable Companies**

| Sr. No. | Data Source[61] | Company Name[62] | NPM 2014-15 (%) | NPM 2015-16 (%) | NPM 2016-17 (%) | Weighted Average (%) |
|---|---|---|---|---|---|---|
| 1 | P | Associated Auto Parts Pvt. Ltd. | 5.35% | 6.12% | NA | 1.43% |
| 2 | P | J J Impex (Delhi) Pvt. Ltd. | 7.22% | 0.14% | NA | 3.81% |
| 3 | P | Jullundur Motor Agency (Delhi) Ltd. | 4.42% | 3.96% | NA | 4.19% |
| 4 | P | Stanes Motor Parts Ltd. | 4.21% | 1.98% | NA | 6.35% |
| 5 | P | India Motor Parts & Accessories Ltd. | 6.64% | 6.06% | NA | 3.08% |
| **Number of Companies** | | | | | | **8** |
| **Arithmetic Mean** | | | | | | **3.77%** |

[60] The data of such companies have been extracted only if they had relevant financial data for at least one out of the three financial years ending during the period April 1, 2013 and March 31, 2016
[61] Legend: P – Prowess; C – CapitalinePlus. P-Seg – Prowess Segmental, and C-Seg – CapitalinePlus Segmental
[62] Business Description of these selected comparable companies is provided in Appendix M

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10. In the further study of overall segment: which is at page 208 as follows:

## K Search process and determination of arm's length price:

### Overall Segment

We searched the two widely recognised corporate databases to identify potential uncontrolled comparables for TIL's transaction. We primarily relied on Prowess and extracted additional companies from CapitalinePlus, i.e., companies for which data was not available in Prowess.

To comply with the requirements of contemporaneous documentation to exist by the due date of filing the return of income as per the Indian Regulations, the Company has conducted a benchmarking analysis using information in databases updated till August 2017, focusing on the financial results of companies having financial years ended during the period April 1, 2014 and March 31, 2017.

Companies have been selected if they had relevant financial data for atleast[64]:

- data relating to FY 2016-17; or
- data relating to the financial year immediately preceding the current year i.e. FY 2015-16, if the data relating to the FY 2016-17 is not available

The search for comparables was undertaken, keeping in mind, that the company is involved in the manufacturing activity.

Based on the search process, we arrived at 4 comparable companies / segments.

The final set for following 4 companies along with the weighted average NPM for financial years ("FY") 2014-15, 2015-16 and 2016-17 (wherever available) is summarized below:

**Table 20: Final Set of Comparable Companies**

| Sr. No. | Data Source[65] | Company Name[66] | NPM 2014 (%) | NPM 2015 (%) | NPM 2016 (%) | Weighted Average (%) |
|---|---|---|---|---|---|---|
| 1 | P | Bharat Gears Ltd. | 1.93% | 3.32% | 2.32% | 2.52% |
| 2 | P | J M T Auto Ltd. | 6.52% | 7.22% | NA | 6.83% |
| 3 | P | N R B Bearings Ltd. | 13.32% | 11.65% | NA | 12.48% |
| 4 | P | Anand I-Power Ltd. | 6.15% | 5.86% | NA | 6.01% |
| **Number of Companies** | | | | | | **4** |
| **Arithmetic Mean** | | | | | | **6.96%** |
| **Median** | | | | | | **6.42%** |

[64] The data of such companies have been extracted only if they had relevant financial data for at least one out of the three financial years ending during the period April 1, 2014 and March 31, 2017

[65] Legend: P – Prowess; C – CapitalinePlus; P-Seg – Prowess Segmental; and C-Seg – CapitalinePlus Segmental

[66] Business Description of these selected comparable companies is provided in Appendix M

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Based on three years' data. i.e. financial years 2014-15. 2015-16 and 2016-17 (to the extent available), the weighted average NPM margin earned by these broadly comparable independent companies performing functions similar to a company engaged in manufacturing activity is an arithmetic mean of 6.96 percent.

The financial results of TIL provided to us indicate that the Company has a NPM of 11.97% during the year ended March 31, 2016. This indicates that the international transactions of TIL were in accordance with the arm's length standard required under the Indian Regulations.

11. The weighted average of the profit wis 6.42% in respect of comparable whereas the net profit margin of the assessee is shown at 11.97%. It was the submission that even for the assessment year 2012-13, similar study had been done which wasshown at page 392 of PB, which reads as follows

# *Timken India Limited*
# Transfer pricing analysis and report

## Financial Year 2012-13

Issued: [November, 2013]

Draft for Discussion Purposes

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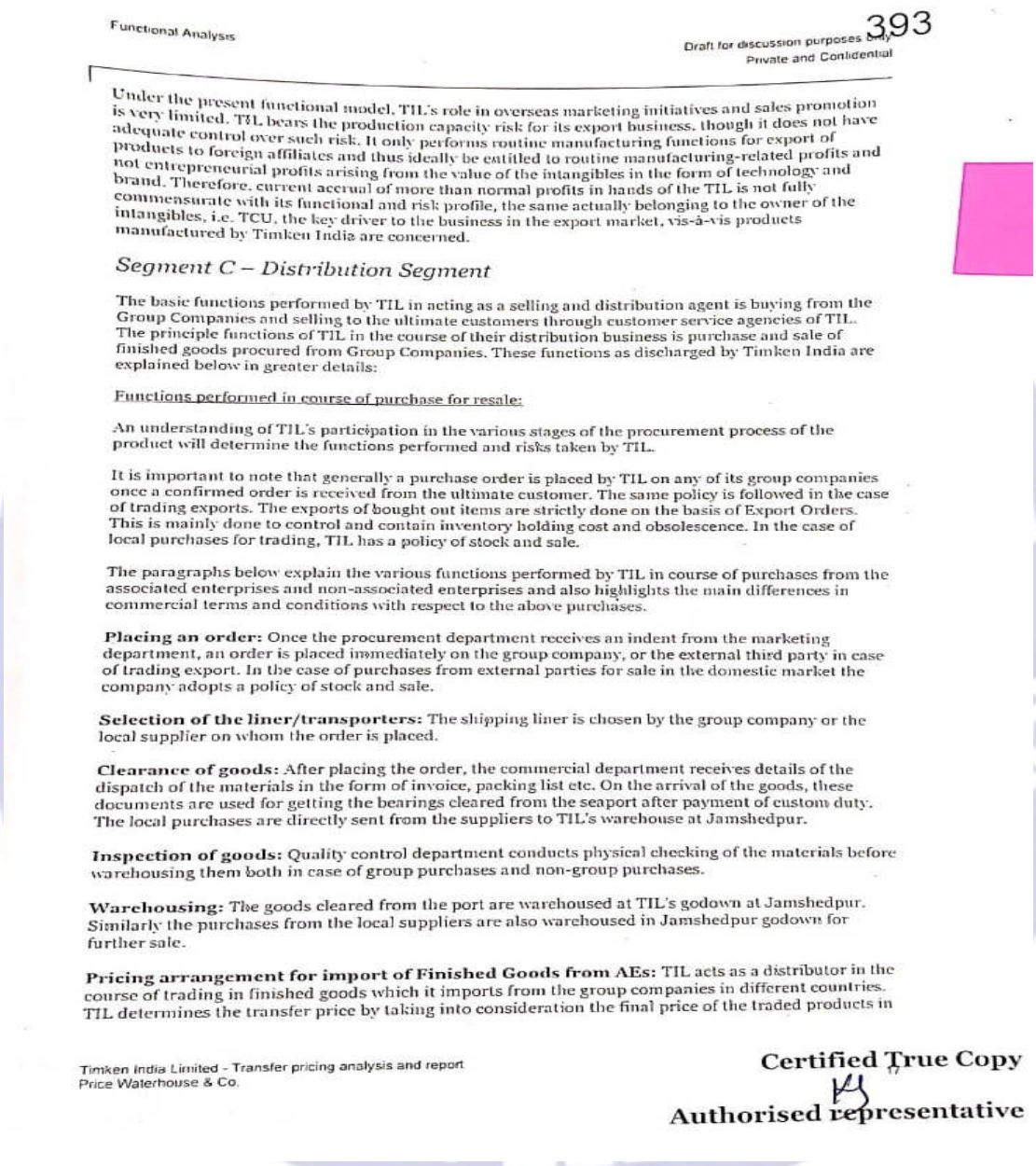

Functional Analysis

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Under the present functional model, TIL's role in overseas marketing initiatives and sales promotion is very limited. TIL bears the production capacity risk for its export business, though it does not have adequate control over such risk. It only performs routine manufacturing functions for export of products to foreign affiliates and thus ideally be entitled to routine manufacturing-related profits and not entrepreneurial profits arising from the value of the intangibles in the form of technology and brand. Therefore, current accrual of more than normal profits in hands of the TIL is not fully commensurate with its functional and risk profile, the same actually belonging to the owner of the intangibles, i.e. TCU, the key driver to the business in the export market, vis-à-vis products manufactured by Timken India are concerned.

*Segment C – Distribution Segment*

The basic functions performed by TIL in acting as a selling and distribution agent is buying from the Group Companies and selling to the ultimate customers through customer service agencies of TIL. The principle functions of TIL in the course of their distribution business is purchase and sale of finished goods procured from Group Companies. These functions as discharged by Timken India are explained below in greater details:

Functions performed in course of purchase for resale:

An understanding of TIL's participation in the various stages of the procurement process of the product will determine the functions performed and risks taken by TIL.

It is important to note that generally a purchase order is placed by TIL on any of its group companies once a confirmed order is received from the ultimate customer. The same policy is followed in the case of trading exports. The exports of bought out items are strictly done on the basis of Export Orders. This is mainly done to control and contain inventory holding cost and obsolescence. In the case of local purchases for trading, TIL has a policy of stock and sale.

The paragraphs below explain the various functions performed by TIL in course of purchases from the associated enterprises and non-associated enterprises and also highlights the main differences in commercial terms and conditions with respect to the above purchases.

**Placing an order:** Once the procurement department receives an indent from the marketing department, an order is placed immediately on the group company, or the external third party in case of trading export. In the case of purchases from external parties for sale in the domestic market the company adopts a policy of stock and sale.

**Selection of the liner/transporters:** The shipping liner is chosen by the group company or the local supplier on whom the order is placed.

**Clearance of goods:** After placing the order, the commercial department receives details of the dispatch of the materials in the form of invoice, packing list etc. On the arrival of the goods, these documents are used for getting the bearings cleared from the seaport after payment of custom duty. The local purchases are directly sent from the suppliers to TIL's warehouse at Jamshedpur.

**Inspection of goods:** Quality control department conducts physical checking of the materials before warehousing them both in case of group purchases and non-group purchases.

**Warehousing:** The goods cleared from the port are warehoused at TIL's godown at Jamshedpur. Similarly the purchases from the local suppliers are also warehoused in Jamshedpur godown for further sale.

**Pricing arrangement for import of Finished Goods from AEs:** TIL acts as a distributor in the course of trading in finished goods which it imports from the group companies in different countries. TIL determines the transfer price by taking into consideration the final price of the traded products in

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and the TPO order had been made in the case of the assesee for the assessment yea 2012-13 without making any adjustments. This was shown at page 398 &

399 of PB. It was the submission that the applicability of the resale price method by considering thetwo totally unrelated products would never give a comparable profit margin as each product gives different profit margin. It was further submitted that the trading activity of the related products being bearings, which were imported by the assessee and supplied to the end users at the demand of the end users was 211crores and trading of unrelated products being grease, seal ware rings, adapters and sleeves was only Rs.71 crores. It was the further submission that as the resale price method has been applied to totally unrelated products more so un-comparable products, theTNMM method which has been applied by the assesseeis liable to be adopted.

12. In reply, ld CIT DR submitted that the assessee in the business of distribution segment which is under dispute. There is no dispute in regard to manufacturing segment of the assessee and nor is there any dispute in regard to commission segment of the assessee. Only in regard to distribution segment, the dispute has arisen because the assessee has shown profit margin from import and sale supply of bearings had only 7.33 as against 19.68% on the purchase and sale of distribution of grease, seal ware rings, adapters and sleeves, which are ancillary to the use of such bearings. It was the submission that the adjustment as done by the TPO has been rightly made and same does not call for any interference. It wasthe submission that the resale price method has rightly been applied as it is the distribution of two connected products which have been compared.

13. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the issue under dispute inthe transfer pricing is in regard to whetherthe resale price method is to be applied or TNMM method is to be applied. The resale method admittedly has been applies where the assessee purchase of particular product when sale it. The profit margin should be comparable. Now what the assessee purchases is bearing. These bearings are purchased at the instance of the end-users. The assessee is not a stockist of such bearings. The assessee is facilitating end users in obtaining such bearings. The AO has compared the profitability in respect of such bearings with the profitability from the purchase and sale of grease, seal ware rings, adapters and sleeves. These are ancillary products for the effective installation and functioning of such bearings from the products made of the material used in the manufacture of these bearings either. These are totally unrelated products. Obviously, the profit margin in respect of totally unrelated cannot be compared. It would be like saying that the apple and orange are fruits and , therefore, they should both have same price of purchase and sale should have been provided. It is not possible. As the AO has applied the resale price method in resect of two totally uncomparable products, we are of the view that the method applied by the AO is erroneous. Even in the earlier years i.e. for the assessment year 2012-13, 2013-14 and 2014-15, similar TP study had been done, similar transaction had been done and they had been accepted. For the assessment year 2015-16 and 2016-17, there is noTP order and TP order has now been done for making

adjustment in the impugned assessment year 2017-18 for the first time. As mentioned earlier, the TPO has applied the profit margin to incomparable products, therefore, the resale price methos is inapplicable in the case of the assessee. Consequently, the AO is directed adopt TNMM method when computing the arm length price in the case of the assessee. Consequently Ground No. 1to 4 stands allowed.

14. In Ground No.5.1 and 5.2 the assessee has challenged the disallowance u/s.14A r.w.s 8D in regard to both normal provisions as well as book profit computed u/s.115J of the Act.

15. It was submitted by ld AR that under the normal provisions of the Act, regard to computation of the disallowance u/s.14 A of the Act r.w.s 8D Rules, the satisfaction recorded by the AO is not clear.

16. We have considered the rival submissions and we have gone through the assessment order. The AO has given categorical findings that there is variation in respect of disallowance under rule 8D9999 and same requires to be recomputed, we are of the view that the A has recorded the satisfaction and the disallowance made u/s.14A r.w.s 8D stands upheld.

17. In regard to computation u/s.115JB of the Act, it is noticed that this issue is now squarely covered by the decision of the Special Bench of this Tribunal Delhi Tribunal in the case of ACIT vs Vireet Investment (P Ld.,82 taxmann.com

415 (Del), by following the decision of Hon'ble Delhi High Court in the case of Bhusan Steel wherein, the Special Bench has held as follows:

> "6.2 Now the question before us is, whether the amount or amounts of expenditure relatable to exempt income as contemplated in clause (f) to Explanation 1 to section 115JB(2) could be arrived at by resorting to provisions of section 14A or not. The submission of ld Pr. CIT (DR) is that it cannot be disputed that the object of section 14A was only to determine the expenditure in relation to exempt income as noted earlier. His contention, therefore, is that the object of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same and, therefore, it cannot be disputed that section 14A cam be resorted to for finding out the expenditure relatable to any income which is exempt. In this regard, Ld PR CIT (DR) has referred to some of the well settled principles of statutory interpretation which are discussed hereunder.
>
> 6.3 When the question arises as to the applicability of similar provisions in different parts of the statute, then it is not only legitimate but proper to read both the provisions in their context. If context is same, different meaning cannot be assigned. It is to be found out that what mischief was intended to be remedied by inserting a particular section. The intention of the legislature once is manifested in a particular section in the statute then said intention cannot be given a different meaning, if a similar provision has been incorporated in a different section in the statute. The intention of the legislature must be found out by reading the statute as a whole.
>
> 6.4 Literal meaning cannot always be followed logically, because sometimes it tends to defeat the obvious intention of the legislature and results in producing a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result.
>
> 6.5 The Hon'ble Supreme Court in the case of N.B.Sanjana vs Elphinstone Spg&Wvg Mills Ltd., AIR 1971 SC examined Rule 10 under the Central Excise Act, 1944 observing, inter alia, as under:

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*"This rule relates to raising of demand for short-levy within a limit in cases where lesser amounts have been paid. The petitioners argued that where no payments had been made and where nil assessments have been made, there would be no application of this rule and no demand could be raised. The Supreme Court observed that we cannot take a literal interpretation in such a case. It should be an interpretation in the context which I mean appropriately that the word "paid" would include "ought to have been paid" and assessments would cover 'nil' assessment. The machinery of the tax - system should be made workable and the clear intention should not be prevented."*

**6.6** In the case of *Asstt. Collector of Central Excise* v. *National Tobacco Co. Ltd.* AIR 1972 SC 2563, the Hon'ble Supreme Court has observed as under:

*"This is a case under the Central Excises Act and Rules 1944 (as they 7 stood before 1-8-1959) where the Rules 10 and 10A have again come for further discussion even after it was settled in Sanjana's case (AIR 1971 SC 2039) that .while Rule 10 was for short-levy (for specified reasons), Rule 10A was for non-levy or short-levy or for reasons other than in Rule 10. Rule 10 covered cases of inadvertence, error, collusion, misconstruction and misstatement, In Sanjana's case the Supreme Court harmonised the two rules by indicating that Rule 10A which was residuary in character would be inapplicable if a case fell within a specified category of cases mentioned in Rule 10. Rule 10 is confined to cases where the demand is to be made for short-levy caused by the reasons in that Rule 10 itself so that an assessment has to be reopened. The High Court of Calcutta in this case had decided that the demand could not be raised under Rule 10 because it is a case of inadvertence. But the Supreme Court observed in this case that the High Court has called it a case of no assessment at all and in that case it falls under Rule 10A (which is for cases where there is no assessment, that is non-levy). Moreover, there are other circumstances such as insufficient information given by the petitioners which is not covered by Rule 10. That makes the demand valid under Rule 10A. If Rule 10 is interpreted very broadly as done by the Calcutta High Court then the Rule 10A would become useless. The Supreme Court, therefore, held the demand valid under Rule 10A which is where there has been no assessment or where there is short-levy due to reasons other than specified in Rule 10." Though Rule 10A was not mentioned in the demand, quoting a wrong rule does not make it invalid. The Supreme Court has elaborated the application of some fundamental principles of interpretation while setting aside the judgment of the Calcutta High Court.*

*First, the High Court considered the applicability of Rule 10 alone and not of Rule 10A since only Rule 10 was mentioned. The shutting out of the other Rule 10A, under which also demand could be valid, has been wrong. What the High Court followed was the maxim: Expressio unius est exclusio alteris. But this principle, observed the Supreme Court, is a valuable servant but a dangerous master. "The rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose and adopt a rule of construction which effectuates rather than on that which may defeat these." The High Court ignored in this case the legislative intent in having Rule 10A. Rule 10A was for "special circumstances not foreseen by the framers of the Act or the Rules". The High Court did not consider at all whether the demand would fail under Rule 10A but merely interpreted broadly Rule 10 to conclude that the demand did not fall in that rule. That clearly goes against the legislative might .*

*The Supreme Court therefore set aside the High Court order and upheld the demand under Rule 10A though that rule was not quoted in the demand doing so the Supreme Court upheld the basic*

*principle of legislative intent and purpose. "*

**6.7** Again in the case of *K.P. Varghese* v. *ITO* [1981] 7 Taxman 13 (SC), while examining the true meaning of section 52(2), which enabled the revenue to charge tax on the capital gains deemed to accrue, wherever the declared value for transfer of property was less by 15% or more compared to the fair market value, the Hon'ble Supreme Court refused to accept the strict literal meaning, calling it absurd. The Hon'ble Court gave some examples on the basis of strict interpretation and pointed out that it would be absurd and unreasonable to apply sec. 52(2) according to its strict literal construction. The Hon'ble Court further observed that -

> *"We must, therefore, give up literalness in the interpretation of sec. 52(2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless, of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation."*

It was further observed that -

> *'It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even "do some violence" to it so as to achieve the obvious intention of the legislature and produce a rational construction'.*

**6.8** Accordingly, Hon'ble Supreme Court held that a fair and reasonable construction would be that the revenue must show not only that the fair market value of the capital asset exceeds the declared value by 15% or more, and also that it is not a bona fide declaration and the assessee has actually received underhand payment apart from ..what has been actually declared by him.

**6.9** In the case of *Canada Sugar Refinery Co.* v. *R* [1898] AC 735. at page 742, it was observed that every clause of a statute is to be construed with reference to the context and other clauses of the Act as far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

**6.10** Thus, the submission of ld. CIT(DR) IS that when basic object and purpose of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same, then it cannot be said that merely because section 14A has not been mentioned in clause (f), therefore, it has no application. The mode of computation with same purpose cannot be differently made merely because section 115JB creates a deeming section. The object of deeming provisions is to substitute the total income computed under normal provisions by that computed under MAT provisions. Submission of ld. CIT(DR) is that this cannot be extended to computation for same items under normal as well as MAT provisions. Under the provisions of section 14A, both direct and indirect expenses in relation to earning of exempt income are to be reduced. Therefore, different meaning cannot be ascribed in clause (f) and, therefore, the submission of ld. counsel for the assessee that only directly relatable expenditure is to be reduced, cannot be accepted.

**6.11** Ld. CIT(DR) further submitted that the term "relatable to" used in clause (f) cannot be ascribed a restrictive meaning as compared to the term used "in relation to" in section 14A. Both terms are with the same purport and object.

**6.12** Ld. counsel has submitted that the AO cannot go beyond audited financial statements of the assessee while computing book profits u/s 115JB. However, the submission of ld. CIT(DR) is that this argument is fallacious, because here the AO is not going beyond the audited accounts but is computing the expenditure debited in the P&L A/c, which is relatable to earning of exempt income. This is as per clause (f) itself.

**6.13** Further reasoning advanced by ld. CIT(DR) is that section 14A has been incorporated much after the incorporation of Chapter XIIB in 1987. Section 14A was incorporated just after section 14, which classifies the head of income for computation of total income. This section was made applicable with respect to determination of total income. The MAT provisions are for computation of income from business in case of specific companies. Therefore, it cannot be said that section 14A had no applicability to MAT provisions, which were existing when section 14A was introduced for the first time. Therefore, section 14A is applicable for all kinds of incomes, which are claimed as exempt by assessee in the Income-tax Act.

**6.14** There cannot be any quarrel with the proposition that clause (f) of *Explanation 1* to section 115JB(2) is in conformity to matching principles of accounting. Ld. counsel has submitted that matching principle of accountancy provides that expenses are debited in the P&L A/c only to the extent relatable to the accrual of the corresponding income and, therefore, only expenses debited to the P&L A/c which have direct and proximate nexus with the exempt income credited to the P&L A/c are to be added back.

**6.15.** Ld. CIT(DR), however, submits that this argument. cannot be accepted because if assessee has made provision in respect of expenditure accrued, a part of which is relatable to exempt income, then it does not imply that to that extent the expenditure should not be added back.

**6.16** The submission of ld. CIT(DR) is, thus, that the phrase "in relation to" as used in section 14A and the expression "expenditure relatable to", as used in clause (f) of Explanation 1 to section 115JB(2), are in the same context and, therefore, have to be understood in the same sense.

**6.17** Ld. Principal CIT(DR) has pointed out that the phrase "expenditure relatable to" as used in clause (f) of Explanation 1 to section 115JB(2) will take its color from the phrase in "in relation to", used in section 14A. The contention of ld. CIT(DR) is that if we apply principles of literal interpretation, then that would lead to an-anomalous situation, in which higher expenditure, to the extent of indirect expenses, will be charged towards the earning of exempt income u/s 14A, thereby reducing the exempt income as compared to expenditure charge while computing book profits u/s 115JB because no indirect expenditure will be allocated towards earning of exempt income. The submission is that obviously, this cannot be the intention of legislature. As per the provisions of section 115JB(1), a comparison of the total income computed under the normal provisions of the Income-tax Act is to be made with the book profits as computed u/s 115JB. This makes it clear that total income as contemplated under normal provisions is inextricably linked to book profits under MAT provisions and it is -wrong to suggest that both operate in entirely different fields. This interpretation overlooks the very object of insertion of MAT provisions. Therefore, the submission is that when we resort to comparison between computation under normal provisions of the Income-tax Act and MAT provisions, the comparison will not be on same footing. Submission of ld. CIT(DR) is that it cannot be denied that the legislative intent regarding disallowance of expenditure relating to earning of exempt income was same, whether

under normal provisions or under the MAT provisions. Hence, the whole object of comparison between the total income under normal provisions and MAT provisions will get frustrated.

**6.18** Ld. CIT(DR) submitted that the above interpretation, will ensure in arriving at the same figure of expenditure relatable to exempt income under normal provisions and also while computing the book profits u/s 115JB. If different modes of computation are followed u/s 14A and in clause (f) of Explanation 1 to section 115JB(2), then the comparison will not be on same footing and will produce absurd results. He further clarified that even if we resort to plain meaning rule, the phrase "in relation to" used in section 14A and the phrase "expenditure relatable to earning of exempt income", under clause (f) of *Explanation 1* to section 115JB(2), the word "relatable to" has wider connotation than the words "in relation to", where the proximate relationship is required and, therefore, the contention of ld. counsel for the assessee that, while computing book profit u/s 115JB, only those expenses which have direct nexus to the earning of exempt income have to be considered under clause (f) of *Explanation 1* to section 115JB(2), cannot be accepted.

**6.19** Ld. CIT(DR)'s aforementioned submissions are fortified by the decision of.Hon'ble Delhi High court in the case of *Goetze (india) Ltd.* (*supra*). Admittedly the decision is on the point in issue under consideration. The submission of ld. Senior Counsel is that the decision of Hon'ble Delhi High Court is by way of concession by assessee as they have recorded the statement of assessee's counsel to answer the question of law. Per contra the submission of ld. Principal CIT(DR) is that the decision is after due consideration of provisions of law. We find considerable force in the submission of ld. CIT(DR) that the decision cannot be said to be by way of concession more particularly when a substantial question of law and not question of fact was under consideration of Hon'ble High Court. In that case proceedings u/s 263 were initiated, inter alia, on the ground that the expenditure of Rs. 183.63 lacs, incurred for earning of exempt dividend income u/s 14A of the Act was not disallowed, though the assessee had earned dividend income of Rs. 157.85 lacs, which was exempt u/s 10(33) of the Act. The computation of income was made u/s 115JA and in that context the Hon'ble High Court, inter alia, observed as under:

> *"By order dated May 16, 2012, the following substantial questions of law were framed in the present appeals.*
>
> (i) *Whether the Income-tax Appellate-Tribunal was right in holding that while computing the book profit under section 115JA (sic. Section 115JB) of the Income-tax Act, 1961, no disallowance under section 14A was required to be made?*
>
> (ii) *Whether the Income-tax Appellate Tribunal was right in deleting interest under section 234D of the Income-tax Act, 1961?*
>
> *Learned counsel for the respondent-assessee, during the course of hearing, has fairly conceded that the first question has to be answered in favour of the Revenue and against the assessee in view of the specific provisions in the Explanation 1 below section 115JB(2) clause (f). The Assessing Officer it is stated had made an addition of Rs. 88,292 to the book profits towards expenditure incurred having nexus with dividend income, which were exempt under section 10(33). Recording the said statement, the first question is answered in favour of the appellant-Revenue and against the respondent-assessee."*

**6.20** Thus, it cannot be said that Hon'ble Delhi High Court has not considered this issue and merely allowed the revenue's appeal on concession. The substantial question of law framed by Hon'ble Delhi High Court clearly shows that the specific issue was whether disallowance u/s 14A was required to be made while computing book profit u/s 115JA/ 115JB. The Hon'ble Delhi High Court has not only recorded assessee's plea of merely not contesting the issue in view of specific provisions but has recorded that the counsel fairly conceded. The expression "fairly" implies that Hon'ble High Court was also of the view that the provisions of section 14A were applicable with full force to the corresponding provisions u/s 115J.

**6.21** Ld. Principal CIT(DR) has, in this regard, referred to the decision of Hon'ble Supreme Court in the case of *K.Y. Pilliah & Sons* (*supra*), wherein in para 10, it has been observed as under:

*'10. The form of the second question needs some explanation. The Income-tax Officer worked out the gross profit on the estimated turnover of Rs. 12 lakhs at 6.5% and that the profit amounted to Rs. 78,000. The assessees had by their return disclosed a gross profit of Rs. 36,858. Inadopting the rate of 6.5% on the estimated turnover, the Income-tax Officer added to the income returned Rs. 41.142 been the additional profit, and levied tax thereon.*

*It was not suggested that there were any other admissible outgoings which could not debited against that amount. The question whether Rs. 41,142 were liable to be taxed .. falls to be. determined under the first question. The second question only relates to the amount of Rs. 7,000 which was the cash credit item which represented an unexplained entry in the books of account of the assessees. In respect of that amount, the Income-tax Officer held that the explanation of the assessee was untrue and the Appellate Assistant Commissioner and the Tribunal agreed with the view. The Income-tax Appellate Tribunal is the final fact finding authority and normally to should record its conclusion on every disputed question raised before, it setting out its reasons in support of its conclusion. But, in failing to record reasons, when the Appellate Tribunal fully agrees with the view expressed by the Appellate Assistant Commissioner and has no other ground to record in support of its conclusion, it does not act illegally or irregularly, merely because it does not repeat the grounds of the Appellate Assistant Commissioner on which the decision was given against the assessee or the department. The criticism made by the High Court that the Tribunal had "failed to perform its duty merely affirming, the conclusion of the Appellate Assistant Commissioner" is apparently unmerited. On the merits of the claim for exclusion of the amount of Rs. 7,000, there is no question of law which could be said to arise out of the order of the Tribunal. The assessees had credited Sampangappa with two sums of Rs. 6,000 and Rs. 1,000 in the months of November and December, 1950, respectively. It was clear that Sampangappa had not advanced at the material time any amount to the assessees. The explanation of the assessees was, therefore, untrue.'*

Thus, it is evident that in every case it is not necessary that long drawn reasoning should be given before arriving at any conclusion more particularly when both the parties are agreed on certain provision of law. We, therefore, reject the assessee's contention that the decision of Ho'nble jurisdictional High Court in *Goetze (India) Ltd's.* case (*supra*) does not constitute a binding precedent more particularly in respect of subordinate courts including Tribunal functioning within its jurisdiction.

However. Ld. Senior Counsel has relied on the decision in the case of *Bhushan Steel Ltd.* (*supra*) wherein it has been held as under:—

*PR. CIT .....Appellant*

*Through: Mr. N.P. Sahni, Senior Standing counsel with Mr. Nitin Gulati, Advocate.*

*versus*

*BHUSHAN STEEL LTD*

*Respondent*

*Through: Ms. Kavita Jha, Advocate with Ms. Roopali Gupta, Advocate.*

*ORDER*

*29.09.2015*

** ** **

1. ** ** **

*7. Question No. 6 concerns deletion of addition of Rs. 89,00,000 made by the AO for computation of the income for the purposes of Minimum Alternate Tax ('MAT') under Section 115 JB of the Act. This pertained to the expenditure incurred for earning exempt income under Section 14A read with Rule 8D. The ITAT has rightly held that this being in the nature of disallowance, and with Explanation 115JB not specifically mentioning Section 14A of the Act, the addition of Rs. 89,00,000 was not justified. The view taken by the 1TAT cannot be faulted with. It is consistent with the decision in* Apollo Tyres Ltd. *v.* Commissioner of Income Tax *255 ITR 273 (SC) which held that "the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J." The Court declines to frame a question on the above issue."*

Thus, this decision is also on the same issue taking contrary view. Under such circumstances the issue before us is as to follow which decision.

Ld. CIT(DR) in course of hearing filed the decision of Tribunal in the case of *Goetze (India) Ltd. supra*) and referred to para 6 of the said decision which is reproduced hereunder:—

*"6. Coming to the sustenance of disallowance of Rs.88,290/- u/s 115JB, the Commissioner of Income-tax (Appeals) has upheld the disallowance under clause (f) of Explanation to section 115JB(2) of the Act. Under section 115JB of the Act, the assessee is required to pay tax on its book profit subject to certain conditions. The books profit is to be determined u/s 115JB(2) as per Part II & III of Schedule VI to Company's Act, 1956. Explanation (I) to section II5JB(2) defines the expression "book profit" and means the net profit as shown in the P&L A/c for the relevant previous year prepared under sub-section (2) as increased by the amounts specified in clause (a) to (h) of the Explanation I. Clause (f) of the Explanation 1 refers to the amount or amounts or expenditure retable to any income to which section 10 (other than provisions contained in clause 38 thereof or section 11 or section 12 apply. For applying the provisions of clause (f) of Explanation to section 1I5JB(2), there should be nexus between the amount of expenditure relatable to the income exempt u/s 10 of the Act. The dividend*

*income is exempt u/s 10(33) for assessment year 2001-02. Since the expenditure incurred has not been identified and no nexus has been established with the dividend income, the expenditure could not be disallowed under clause (f) of the Explanation. As per the decision of Hon 'ble Supreme Court in the case of Apollo Tyres Ltd., the Assessing Officer is not entitled to tinker with the book profits as determined as per provisions of Company's Act unless the amount is specified in clauses (a) to (h) of the Explanation. The amount of Rs.88,290/- has not been established to have nexus with the dividend income. The amount of Rs.88,290/- has been estimated at 1% of the income. In our view, no disallowance could be made. Accordingly, we direct the Assessing Officer to delete the amount of Rs.88,290/- from the bookprofit."*

Thus, he submitted that the decision of Hon'ble Supreme Court in the case of *Apollo Tyres Ltd.* v. *CIT* [2002] 122 Taxman 562 was duly considered by Tribunal before taking contrary view in the matter. But Hon'ble Delhi High Court did not accept the Tribunal's reasoning Ld. CIT(DR) further submitted that the decision in the case of Bhushan Steel has been rendered without taking into consideration the decision in the case of *Goetze (India) Ltd.* (*supra*) of co-ordinate bench of equal strength as both sides had not, brought to the notice of the Bench the said decision in the case of *Goetze (India) Ltd.* (*supra*) and, therefore, does not constitute binding precedent. Ld. CIT(DR) vehemently contended that when decision in *Bhushan Steel Ltd's* case (*supra*) was rendered, the issue was no more res-integra in view of *Goetze (India) Ltd's.* case (*supra*). Ld. CIT(DR) submitted that Revenue had filed Review Petition before Hon'ble High Court in the case of *Bhushan Steel Ltd.* (*supra*) which has been dismissed *in-limine* at the threshold on the ground of delay in filing the said Review Petition and, therefore, does not constitute a binding precedent. In support of his contention he has relied on the commentary of Kanga & Palkhivala, vol. I, VIIth Edn.,page 43 which is reproduced hereunder:—

*43. Circumstances that Destroy or Weaken the Binding Force of Precedent.*

*A precedent losses all or some of its binding force in the following circumstances:*

(*i*) *if it is reversed or overruled by a higher court - reversal occurs when the same decision is taken on appeal and is reversed by the higher court, while overruling occurs when the higher court declares in another case that the earlier case was wrong decided;*

(*ii*) *when it is affirmed or reversed on a different ground, depending on the circumstances of such affirmation or reversal;*

(*iii*) *when the legislature enacts a state that is inconsistent with the precedent;*

(*iv*) *when it is inconsistent with the earlier decisions of a higher court or a court of the same rank;*

(*v*) *if it is a precedent sub silentio or not fully argued;*

(*vi*) *when it is rendered per incuriam, i.e., in ignorance of a statutory provision or binding precedent - however, the rule of per incuriam is of limited application, and if the provision of the Act was noticed and considered, then the judgment cannot be ignored as being per incuriam merely on the ground that it has erroneously reached the conclusion; and*

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(vii) *when it is an erroneous decision, i.e, a decision conflicting with the fundamental principles of law.*

Ld. Principal CIT(DR) further relied on the decision of Hon'ble Bombay High Court in the case of *CIT* v. *Thana Electricity Supply Ltd.* [1994] 206 ITR 727 wherein hon'ble court while summarizing the general principles with regard to precedents, inter-alia, observed as under:-

*(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.*

Ld. Principal CIT(DR) has also relied on following decisions :-

- *CIT* v. *Pamwi Tissues Ltd.* [2009] 313 ITR 137 (Bom.)
- *Indian Oil Corpn. Ltd.* v. *State of Bihar* [1987] 167 ITR 897 (SC)
- *Kunhayammed* v. *State of Kerala* [2000] 245 ITR 360/113 Taxman 470 (SC)

Ld. Principal CIT(DR) has submitted following written submissions in this regard :-

*'The assessee had filed a compilation of case laws on 20/04/2017 and the Deptt. had to reply to the above.*

*The reply of the Deptt. is as follows:—*

*1. The decision of the Hon'ble Supreme Court in the case of* Sundeep Kumar Bafna *v.* State of Maharashtra and another *AIR 2014 SC 1745 has held as follows in para 12 of the judgment :-*

*"if the third sentence of para 48 is discordant to Niranjan Singh, the view of the co-ordinate bench of earlier vintage must prevail, and this discipline demands and constrains as also to adhere to Niranjan Singh, ergo, we reiterate....."*

*Again in para 15 of the judgment it has been stated as follows.:-*

*15 "It cannot be over - emphasized that the discipline demanded by a precedent or the disqualification or dimunition of a decision on the application of the per incuriam rule of great importance, Since without it, certainity of law, consistency of rulings and comity of courts would become a costly casualty A decision or judgement can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgement can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgement of a co-equal or larger Bench, or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the 'ratio decidendi' and not to 'obiter dicta'. It is often encountered in High Courts that two are more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of 'per incuriam'.*

*Thus, both paras 12 and para 15 cited above, in the Supreme Court judgement in* Sandeep Kumar Bafna 's *case (*supra*) hold very clearly that the earlier decision is to be followed and not the later one of co-qual bench - when given in ignorance of the earlier decision -which in the present case -*

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*makes it very clear that the decision rendered in the case of Goetze should be followed and not the later decision given in the case of Bhushan Steel.*

*Further, the Hon'ble Supreme Court in the case of* Mamaleshwar Prasad *v.* Kanhaiya Lal (Dead) AIR 1975 SC 907 *observed as follows :-*

*"Certainity of the law, consistency of rulings and comity of Courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances where by obvious inadvertence or over sight a judgement fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. "*

*Although the above observations are not 'ratio' but then as held in the case of (1) Kharawala* v. *ITO 147 ITR pages 67, 85 :-*

*The observation of the Supreme Court on the true interpretation of sub-section (1) cannot, therefore, be regarded as mere passing observations. At the highest, they may be treated as an obiter dictum, that is to say the expression of opinion on a point which it was not necessary for the decision of the case. Even if they are conceivably regarded as obiter dictum it is settled that if an opinion is expressed by the supreme court on the interpretation of a section after careful consideration and such opinion is deliberately and advisedly given, the opinion would be binding on the High Court See* Mohandas Issardas v. A.N. Sattanathan *[1955] 56 BLR 1156; AIR 1955 Bom 113. Under these circumstances, were are unable to accede to this submission made on behalf of the Revenue.*

*(2) CIT* v. *AP Riding Club 168 ITR pages 393, 404*

*It is now-settled that even the obiter dictum of their Lordships of the Supreme Court is binding on the High Courts under article 141 of Constitution of India.*

*The 'obiter dicta' of Supreme Court has to be followed.*

*Hence, both the cases of* Sandeep Kumar Bafna and Mamaleshwar Prasad *v.* Kanhaiya Lal *- make it very clear that the earlier decision constitutes the 'binding precedent' and should be followed in preference . to the later decision given in ignorance of the earlier decision of co-equal strength.*

*Hence, it is requested that the Hon 'ble Special Bench may kindly follow the earlier decision of Goetze in preference to the later decision of Bhushan Steel.'*

Per contra, Ld. Senior Counsel, without prejudice to his submission that the decision in the case of *Goetze (India) Ltd.* (*supra*) on this issue was by of concession, submitted that in case of conflict/divergent view expressed in two separate pronouncements of a Court by a Bench of co-equal strength, the decision being later in point of time is binding on the lower courts. In support of this proposition of law he has relied on following decisions :-

1. *Bhika Ram* v. *Union of India* [1999] 238 ITR 113 (Delhi).
2. *Govindanaik G. Kalaghtigi* v. *West Patent Press Co. Ltd.*: AIR 1980 Kar 92 (FB).
3. *Vasant Tatoba Hargude* v. *Dikkaya Muttaya Pujari* : AIR 1980 Bom. 341.

4. *Peedikkakumbhi Joseph* v. *Special Tahsildar* : 2001 (1) KLT 747 (FB).

5. *Datamatics Financial Services Ltd.* v. *Jt. CIT* [2005] 95 ITD 23 (Mum. - Trib.)

The second proposition advanced by Ld. Senior Counsel is that in case of conflict/divergent view expressed in two separate pronouncements of a Court by a Bench of co-equal strength, the lower Court shall follow the judgment which appears to it to state the law more elaborately and accurately, in this regard he has relied on following decisions :-

1. *Indo Swiss Time Ltd.* v. *Umrao* AIR 1981 Punj. & Har. 213

2. *Amar Singh Yadav* v. *Shanti Devi* AIR 1987 Pat 191

3. *T.P.Naik* v.*Union of India* AIR 1998 MP 83

Third proposition advanced by Ld. Senior Counsel is that a lower authority/Court cannot declare a judgment of a higher Court as per incurium. In this regard he has relied on following decisions:-

1. *Cassel & Co. Ltd.* v. *Broome* [1972] 1 All ER 801 (HL)quoted in *ITO* v. *Modern International* ITA No. 1253/Kol/2011.

2. *CIT* v. *B.R. Constructions* [1993] 202 ITR 222/[1994] 73 Taxman 473 (AP) (FB).

Thus, we are pitted against two decisions of Hon'ble jurisdictional high court taking divergent views and, under such circumstances we have to decide which decision to follow. We find from the decisions relied upon by Ld. Senior Counsel more particularly in the case of *Bhika Ram* (*supra*) that later pronouncement by a bench of co-equal strength should be followed even if earlier decision was not considered. We are not convinced with the submission of ld. Senior Counsel that Tribunal can decide which decision state the law more elaborately and accurately. We are of the view that decision in the case of *Cassel & Co. Ltd.* v. *Broome* (*supra*) should guide the course of action wherein it has been observed as under:—

> *"Though a judgment rendered per incuriam can be ignored even by a lower court, yet it appears that such a course of action was not approved by the House of Lords in* Cassell & Co. Ltd. *v.* Broome *[1972] 1 All ER* 801,*wherein the House of Lords disapproved the judgment of the Court of Appeal treating an- earlier judgment of the House of Lords as per incurium. Lord Hailsham observed (at page 809) :*
>
> *'It is not open to the Court of appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way'.*
>
> *It is recognized that the rule of per incuriam is of limited application and will be applicable only in the rarest of rare cases. Therefore, when a learned single judge or a Division Bench doubts the correctness of an otherwise binding precedent, the appropriate course would be to refer the case to a Division Bench of Full Bench, as the case may be, for an authoritative pronouncement on. the question involved as indicated above. The above-said two questions are answefed as indicated above. "*

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In such a scenario, in our humble opinion, proper course would be to follow the decision of Hon'ble Supreme Court in the case of *CIT* v. *Vegetable Products Ltd.* [1973] 88 ITR 192. In this case the facts were like this. The relevant assessment year was 1960-61. In that regard the Income-tax Officer issued a notice under section 22(2) of the Indian Income-tax Act, 1922 on June 1, 1960, served on assessee on June 13, 1960, requiring the assessee to submit its return on or before July 18, 1960. Assessee sought extension of time for submitting its return which was extended by ITO for two months with rider for no further extension. The assessee failed to furnish the Return of Income within the extended time. Thereafter, a notice under section 28(3) of the 1922 Act was served on the assessee on January 16, 1961. On the very next day, viz., January 17, 1961, the assessee filed its return for the assessment year in question. The assessment was completed by ITO on October 31, 1962. Meanwhile, on April 1, 1962, the Income-tax Act, 1962( came into force. As under the provisions of section 297(2)(g) of the Act the proceedings for the imposition of the penalty had to be initiated and completed under the Act, a fresh notice was served on the assessee. The ITO determined the tax due from the assessee for the assessment year at Rs. 1,25,512,10, and on that basis, the penalty payable by the assessee was fixed at Rs. 12,734.10. It may be pointed out that on February 2, 1961. a provisional assessment was made by the ITO under section 23B of the 1922 Act. Immediately thereafter , the assessee deposited Rs. 92,294.55. In determining the penalty due from the assessee, the ITO took into consideration not the amount demanded under section 156 of the Act but the amount assessed under section 143 of the Act. In the back drop of these facts the controversy before Hon'ble Supreme Court was whether the penalty was to be levied on the tax assessed under section 143 or as demanded under section 156 being tax assessed minus the amount paid under the provisional assessment order. Hon'ble Supreme Court before resorting to the interpretation of term *in addition to the amount of the tax, if any, payable by him* as appearing in section 271(l)(a)(i) observed as under:—

> *"On the other hand, it two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction recognized by this court in several of its decisions. "*

Hon'ble Supreme Court held as under: -

> *'We must first determine what is the meaning of the expression "the amount of the tax, if any, payable by him" in section271(l)(a)(i). Does it mean the amount of tax assessed under section 143 or the amount of tax payable under section 156. The word "assessed" is a term often used in taxation law. It is used in several provisions in the Act. Quantification of the tax payable is always referred to in the Act as a tax "assessed". A tax payable is not the same thing as tax assessed. The tax payable is that amount for which is a demand notice is issued under section 156. In determining the tax payable, the tax already paid has to be deducted. Hence, there can be no doubt that the expression "the amount of the tax, if any, payable by him" referred to in the first part of section 271(1)(a)(i) refers to the tax payable under a demand notice.'*

We have ; therefore, to follow the later decision of Ho'nble Delhi High Court in the case of *Bhushan Steel* (*supra*).

**6.22** In view of above discussion, we answer the question referred to us in favour of asssessee by holding that the computation under clause (f) of *Explanation 1* to section 115JB(2). is to be made

without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962.

**7.** Now coming to the cross objection filed by assessee, wherein the main issue is in regard to mode of computation under Rule 8D(2)(iii). In order to appreciate the controversy, we reproduce Rule 8D

*"[Method for determining amount of expenditure in relation to income not includible in total income.*

*8D. (1) Where the Assessing Officer, having regard to the . accounts of the assessee. of a previous year, is not satisfied with-*

(a) *the correctness of the claim of expenditure made by the assessee; or*

(b) *the claim made by the assessee that no expenditure has been incurred,*

*in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).*

*(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*

(i) *the amount of expenditure directly relating to income which does not form part of total income;*

(ii) *in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-*

*A × B/C*

*Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;*

*B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and-the last day of the previous year;*

*C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;*

(iii) *an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.*

*(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.]"*

18. Consequently, the action of the AO in regard to the addition under Rule 8D in computing the book profit under 115JB stands upheld. Ground No.5.1 and 5.2 stands dismissed.

19. In the result, appeal of the assessee stands partly allowed.

20. As we have disposed of the appeal, the stay petition has become infructous

Order dictated and pronounced in the open court on 12/06/2025.

| Sd/- | Sd/- |
|---|---|
| **(RATNESH NANDAN SAHAY)** | **(GEORGE MATHAN)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Ranchi; Dated 12/06/2025
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. Timken India Limited, 39 to 42, Electronic City-Phase-1, Hosur Road, Bangalore
2. The respondent: Deputy Commissioner of Income Tax, Circle-1, Jamshedpur
3. The CIT(A)-
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.

//True Copy//

**By order**

Sr.Pvt.secretary
**ITAT, Ranchi**