

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1063/SRT/2024

Assessment Year: (2016-17)

(Hybrid Hearing)

Assistant Commissioner of Income-tax, Vapi Circle, Fortune Square II, 7 th Floor, Daman Road, Chala, Vapi-396 191	Vs.	Wheel Flexible Packaging, C-24/25, Zero Tax Industrial Estate, Dadra, Dadra & Nagar Haveli –396230
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAPW 2971 Q		
(Appellant)		(Respondent)

Cross Objection No.30/SRT/2024

(a/o ITA No.1063/SRT/2024)

Assessment Year: (2016-17)

Wheel Flexible Packaging, C-24/25, Zero Tax Industrial Estate, Dadra, Dadra & Nagar Haveli – 396230	Vs.	Assistant Commissioner of Income-tax, Vapi Circle, Fortune Square II, 7 th Floor, Daman Road, Chala, Vapi-396 191
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAPW 2971 Q		
(Applicant)		(Respondent)

निर्धारिती की ओर से /Appellant by	Shri A. Gopalkrishnan Aiyer, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, CIT-DR
सुनवाई की तारीख/Date of Hearing	01/05/2025
उद्घोषणा की तारीख/Date of Pronouncement	30/06/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the Revenue and Cross Objection (CO) thereto by assessee are emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 28.08.2024 by the Commissioner of

Income-tax (Appeal)-13, Ahmedabad [in short, 'CIT(A)'], for the Assessment Year (AY) 2016-17, which in turn arises out of assessment order passed by Assessing Officer (AO) u/s 143(3) r.w.s. 144C(3) of the Act on 16.12.2019.

2. The grounds of appeal raised by the revenue are as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the upward adjustment made u/s. 92BA(i) of the Act of Rs.4,95,72,880/-.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that section 92BA(i) has been omitted w.e.f. 01.04.2017 and effect given retrospectively. However, the omission of the section 92BA(i) w.e.f. 01.04.2017 would not be applicable retrospectively, particularly when the statute itself explicitly stated it to be prospective in nature.

3. It is, therefore, prayed that the order of the Ld. CIT (A) be set aside and that the order of the AO be restored.

4. The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.

In view of the above, appeal memo and grounds of appeal are prepared and put up for kind perusal, approval and signature please."

3. On service of memorandum of appeal, assessee filed its CO raising following grounds:

"1. On appreciation of facts and circumstances of the case and law, the Learned Commissioner of Income-tax (Appeals) has rightly deleted the upward adjustment of Rs.4,95,72,880/-made u/s 92BA(i) of the Act by the Learned Assessing Office. It is therefore prayed that the order of the Learned Commissioner of Income-tax (Appeals) be upheld.

2. On appreciation of facts and circumstances of the case the Learned CIT(Appeals) has rightly held that Section 92BA(i) has been omitted from the statute and has rightly given the effect thereof as per law while adjudicating the issue in dispute. The statute has explicitly stated that Clause (i) of Section 92BA of the Act has been omitted absolutely without saving clause.

3. On appreciation of facts and circumstances of the case and law, the Learned Commissioner of Income-tax (Appeals) has rightly deleted the upward

adjustment made by the Learned Assessing Officer after considering all submissions/materials produced before him by the appellant and remand report(s) submitted by the Learned Assessing Officer on such submission. It is therefore prayed that the order of the Learned Commissioner of Income-tax (Appeals) be upheld.

4. Alternatively, and without prejudice, on appreciation of facts and circumstances of the case and law, the Learned Commissioner of Income-tax (Appeals) ought to have held that the CUP method adopted by the appellant firm is the Most Appropriate Method for determining the ALP of the specified domestic transaction entered into by the appellant-firm.

5. Without prejudice to ground No.1 to 3 and alternatively the Learned Commissioner of Income-tax (Appeals) ought to have considered selection of the comparable and working of ALP as per TNMM by the appellant-firm as correct and ought to have deleted the upward adjustment made by the learned Transfer Pricing Officer in this regard.

6. The respondent craves to add, amend, modify or alter the above grounds of cross objection at any stage of appellate proceedings.

7. The respondent humbly prays that the cross objection be accepted in too and the appeal filed by the petitioner be dismissed.”

4. Brief facts of the case are that assessee filed its return of income on 29.11.2016 declaring total income of Rs.1,68,82,402/-. The case was selected for scrutiny under CASS. The assessee filed various details in response to notices u/s 143(2) and 142(1) of the Act. Subsequently, AO made reference to the DCIT(TPO-2), Ahmedabad for determining arm's length price (ALP) in respect of specified domestic transactions of assessee with its AE for the year under consideration. After receipt of the order u/s 92CA of the Act, an upward adjustment of Rs.4,95,72,880/- was proposed, in response to which the assessee reiterated its submission made before the TPO. Since the said submissions had been duly considered by the TPO while passing the order u/s

92CA(3) of the Act, the AO made upward adjustment of Rs.4,95,72,880/- and the total income was computed at Rs.6,64,55,300/- as against returned income of Rs.1,68,82,420/-.

5. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). The CIT(A) issued 5 notices u/s 250 of the Act. In response to the notices, assessee filed various details and additional evidences. The CIT(A) has extracted the grounds of appeal, statement of facts, order of the AO, written submissions of appellant and request for admission of additional evidences in the appellate order. The CIT(A) forwarded the additional evidences and grounds of appeal regarding jurisdiction of TPO to pass order u/s 92CA(3) of the Act post amendment in section 92BA(i) to the AO/TPO for comment. The remand report received from the AO and rejoinder of the appellant are reproduced at paras-9 & 10 of the appellate order. After considering all these above, the CIT(A) has decided the appeal in favour of appellant by relying on the decision of Hon'ble Karnataka High Court in case of PCIT vs. Texport Overseas Pvt. Ltd. (2020) 114 taxmann.com 568 (Kar) and the decisions of ITAT Ahmedabad in case of Abhilasha Pharma (P.) Ltd. (2024) 162 taxmann.com 695 (Ahmedabad-Trib.) and Ammann India (P.) Ltd. (2022) 134 taxmann.com 10 (Ahmedabad-Trib.). The ITAT Ahmedabad in case of Abhilasha Pharma (P.) Ltd. (supra) held that adjustment by TPO/AO invoking section 92BA(i) of the Act was not justified as the said section stood omitted with effect from 01.04.2017 from the statute itself. Therefore, the order of CIT(A) deleting upward

adjustment made by TPO/AO was upheld. The CIT(A) has followed the above decisions and deleted the adjustment made by TPO/AO.

6. Further aggrieved by the order of CIT(A), the revenue has filed present appeal before the Tribunal. The learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) for the revenue supported the order of TPO/AO. He submitted that the amendment to Section 92BA(i) of the Act was effective from 01.04.2017, i.e., from AY 2017-18 onwards. Since the year involved in the present appeal was AY 2016-17, the CIT(A) could not have applied the amendment retrospectively.

7. On the other hand, learned Authorized Representative (Id. AR) of the assessee filed 3 paper books including case laws and has relied on the order of CIT(A). He submitted that similar issue was decided in favour of assessee by Hon'ble Karnataka High Court in case of Texprot Overseas (P.) Ltd. (supra), Abhilasha Pharma (P.) Ltd. (supra), Ammann India (P.) Ltd. (supra) and Ashish Subodhchandra Shah vs. PCIT (2021) 129 taxmann.com 140 (Ahmedabad – Trib.) and also by various other Tribunals.

8. We have heard both the parties and perused the materials available on record. We have also deliberated upon the case laws relied upon by Id. AR. The issue involved in the present appeal are squarely covered in favour of assessee by the decisions of Hon'ble Karnataka High Court in the case of Texport Overseas (P.) Ltd. (supra) and decisions of ITAT Ahmedabad in cases of Abhilasha Pharma (P.) Ltd. (supra), Ammann India (P.) Ltd. (supra) and Ashish

Subodhchandra Shah (supra). The Ld. CIT-DR submitted that provisions of Section 92BA(i) of the Act were omitted by the Finance Act, 2017 with effect from 01.04.2017 and, hence, it was not applicable for AY 2016-17. We have again considered the issue in view of the submission made by Ld.CIT-DR. By the omission of clause(i) of Section 92BA, expenditure in respect of which payment has been made or is to be made by the assessee to a person referred to in section 40A(2)(b) has been excluded from the scope of specified domestic transaction in section 92BA of the Act. The omission was made by the Finance Act, 2017 w.e.f 01.04.2017. The Hon'ble Karnataka High Court in case of Texport Overseas (P.) Ltd. (supra) was considering similar issue for AY 2013-14 and 2014-15. It held that clause(i) of Section 92BA having been omitted by Finance Act, 2017 w.e.f. 01.04.2017 from the statute, resultant effect is that it had never been passed and, hence, decision taken by the AO under effect of section 92BA and reference made to TPO u/s 92CA was invalid and bad in law. The ITAT Ahmedabad in case of Abhilasha Pharma (P.) Ltd. (supra) was considering appeal filed by Revenue for AY 2015-16 and held that since clause(i) of section 92BA was omitted by Finance Act, 2017 w.e.f. 01.04.2017, the same cannot be made applicable in pending proceedings and the said provisions would be considered *non-est* in statue, as if it had never been passed. It is, thus, clear that the Hon'ble High Court and ITAT Ahmedabad have decided the issue in favour of assessee for AYs 2013-14, 2014-15 and 2015-16, which all were prior to AY 2017-18. Therefore, argument of the Ld.CIT-DR that

amendment to section 92BA(i) cannot be applied for AY 2016-17 is not acceptable. Respectfully following the decisions of cited supra, the appeal filed by the Revenue is dismissed.

9. In the result, Revenue's appeal is dismissed.

CO No.30/SRT/2024 (AY.2016-17):

10. As regards the C.O. of the assessee, the same is supportive of the order of CIT(A). Since the Revenue's appeal is dismissed, the C.O. of the assessee is dismissed as infructuous.

11. **In the result, the appeal of the Revenue as well as C.O. of assessee are dismissed in *limine*.**

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on
30/06/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 30/06/2025

Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat