आयकर अपीलीय अधिकरण,'□□' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.:1957/Chny/2017**
निर्धारण वर्ष / Assessment Year: **2013-14**

M/s. Ambattur Clothing Ltd [Now demerged and known as M/s. Ambattur Fashion India Pvt. Ltd.] No.86/E-2, Ambattur Industrial Estate Ambattur, Chennai– 600 058.	vs.	**The Deputy Commissioner of Income-Tax,** Corporate Circle -1(1), Chennai.
[PAN:AAACA-4127-D] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. SP Chidambaram, Advocate.
प्रत्यर्थी की ओर से/Respondent by : Mr. ARV Sreenivasan, CIT.

सुनवाई की तारीख/Date of Hearing : 09.07.2025
घोषणा की तारीख/Date of Pronouncement : 31.07.2025

आदेश /O R D E R

PER S. R. RAGHUNATHA, AM :

The present appeal is filed by the assessee against the Final Assessment Order dated 21.06.2017 of the Deputy Commissioner of Income Tax, Corporate Circle 1(1) for the Assessment year 2013-14 passed in compliance to directions of Dispute Resolution Panel-2, Bengaluru (DRP) vide order dated 11.05.2017.

2. The brief facts of the case are that the Assessee is a Company engaged in the business of manufacturing and sale of readymade garments to AE and Non-AE's. The assessee filed its return of income for the A.Y.2013-14 on 30.11.2013 declaring a total income of Rs.11,57,20,670/-. The case was selected for scrutiny through CASS and accordingly statutory notices were issued to the assessee. A

reference u/s.92CA(1) of the Act was made for determination of ALP in respect of international transactions reported in Form No.3CEB.

3. The Assessee had undertaken international transactions which were in the nature of Purchase of raw materials, Sale of raw materials, Sale of readymade garments, Sale of machinery, Sale of intangible asset – designs, sale of spares, reimbursement. The Assessee in its TP documentation benchmarked these international transactions under CUP method. The TPO in the Transfer Pricing Order has observed the following:

> *"Purchase and sale of raw materials: The Assessee submitted that the extra stock available with itself and the AE are bought and sold at cost and thus the transaction is justified under CUP method. The assessee has adopted CUP as the MAM and has submitted that it requires to purchase only from accredited customer certified vendors in which case had the same it would have been on similar price and terms.*
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> *Sale of readymade garments: the Assessee has adopted CUP method and considered the AE as tested Buyers party for this transaction. The buyers for reasons of SCM place orders on Ambattur Clothing International WLL for manufacture of garments by the assessee. The assessee then ships the readymade garments after production directly to buyer but invoices the AE as per rates in the buyer purchase order, who in turn will re-invoice the buyer at the same price. Therefore, there is no margin to the AE for these transactions. The invoice value of both the invoice raised by ACL to Ambattur Clothing International WLL and the re-invoice of Ambattur Clothing International WLL to the buyer is same. The buyer remits the amount due on the invoice to Ambattur Clothing International WLL who in turn reminds the entire amount back to the assessee. The assessee furnished the AE's financials to show that the transaction with the assessee are excluded from it. Hence the taxpayer holds the transaction to be at arms length.*
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> *Sale of Machinery: The assessee has adopted CUP as MAM for this transaction. The Assessee has submitted that old machines were sold to their AE at a price higher than that offered by the other vendors. The assessee has submitted copies of quotes obtained from the local vendors as comparable under CUP. It is also seen that the machines are sold at a price higher than the WDV. Accordingly, the taxpayer holds the transaction to be at arms-length.*
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> *Sale of Intangible assets: One of the machines sold by the ASC has been acquired from. Vinte- Textile. A s, Turkey for which a layout and design fee was paid at the time of its purchase. At the time of sale of these machines to the E The layout and design fee which forms part of the set machinery were sold at book value to the AE. Accordingly, the taxpayer holds the transaction to be at arms length.*

Reimbursements of expenses: These are expenses such as courier expenses that have been reimbursed at cost and do not involve any service element."

3.1 Thus, the Assessee has claimed the transaction is at Arm's length.

3.2 The TPO vide his order dated 31.10.2016 accepted all the international transaction benchmarked under CUP method to be at arms-length except the international transaction of Sale of readymade garments. The TPO rejected the CUP method analysis for Sale of Readymade garments and adopted TNMM with external comparable companies and arrived at three comparable companies viz.,

- Mangalam Ventures Ltd.,

- Mwwnakshi (India) Ltd and

- Nash Fashions (India) Ltd

arriving at arithmetic mean of comparable at 8.83% against the PLI arrived by the assessee at -4.82% and proposed TP adjustment of Rs.15,99,52,588/- (page 16 to 18 of the TPO order) by passing an order u/s.92CA(3) of the Act dated 31.10.2016.

3.3 The AO passed a Draft Assessment Order dated 08.12.2016 wherein the AO made a disallowance under section 14A of the Act of Rs.1,57,67,288/- and also incorporated the TP adjustment proposed by the TPO and provided 30 days time to accept or to file an objection to DRP. Later the assessee filed an objection before the DRP. On perusal of the objections and after providing the opportunity to the assessee the directions dated 11.05.2017 are issued by confirming the adjustments proposed the TPO and the AO. Consequently, the impugned Final Assessment Order dated 21.06.2017 was passed sustaining the adjustment, but the total income was determined at "Nil" after setting off the losses. Later, the AO has issued a rectification order dated 07.07.2017 and the determined the gross demand payable at Rs.4,57,31,265/-. On being aggrieved, the assessee is in appeal before this us.

4. **Addl Grounds: Validity of assessment proceedings barred by limitation**

4.1 The ld.AR for the assessee submitted that said legal additional ground raised challenging the validity of the impugned final assessment order passed beyond the statutory limitation prescribed u/s.153(1) r.w.s.153(4) of the Act is not pressed.

4.2 Since the above ground is not pressed by the assessee and hence the same is dismissed.

5. **Ground No. 2.2 to 2.5: Erroneous rejection of Internal CUP method**:

5.1 The first issue raised by the assessee through its grounds of appeal Nos. 2.2 to 2.5 is regarding rejection of CUP method adopted by the Assessee for benchmarking the international transaction of Sale of readymade garments. The TPO at para 6.0 has held that the analysis of the assessee does not qualify as CUP and hence the TPO proposed to benchmark the transaction under TNMM. Thus, the TPO rejected CUP method for this international transaction and has considered TNMM as the most appropriate method by adopting three external comparable companies. Accordingly, the TPO has finally adopted the overall entity's margin of the Assessee at -4.82% vis a vis three comparable companies' margin at 8.83% and made an upward adjustment of Rs.15,99,52,588/-.

5.2 The DRP in its Direction has upheld the finding of the TPO and held that no independent third person would enter into such a transaction of mere issuing back to back invoices, without any commercial benefit and thus the DRP held that the action of the TPO in rejecting the TP study and application of TNMM cannot be faulted with.

5.3 At the outset, the ld.AR contended that the issue is squarely covered in favor of the Assessee as the TPO has conducted a TP assessment in the immediately succeeding AY 2014-15 and the TPO after examining the very same transaction has accepted that CUP as the most appropriate method and has not made any adjustment. Further, the Ld. AR reiterated that the Assessee has done back to back invoicing and it is undisputed fact that the price charged by the AE to the end customer and the price charged by the Assessee to the AE are exactly the same without any mark-up or difference in quantity. The Ld. AR also relied on email communications to substantiate the point that pricing of the products was also determined by Assessee directly with the end customer and the AE had no role in determining the price. Apart from these factors, the Ld.AR had filed audited financials of the AE wherein it is specifically mentioned by way of a Note that AE is acting as a pass through and therefore AE is not disclosing the sale done by the Assessee in their financials. The AE did not charge any commission because the Assessee was already reeling under losses. The loss is due to the fact that the

Assessee had excess employee cost and fixed cost which could not be observed and also because of shutting down of factories due to declining export orders in the subject AY. The TPO has accepted CUP method for other similar transactions viz., Purchase of raw materials and Sale of Raw materials. Alternatively, the Ld.AR submitted that if CUP is not accepted as the most appropriate method then Internal TNMM data already furnished by the Assessee before the TPO and DRP ought to be considered for the purpose of benchmarking.

5.4 The Ld.DR opposed to this proposition but could not make any argument or controvert factually or legally instead the Ld.DR contended that though the TPO in AY 2014-15 has decided the issue in favor of the Assessee and accepted CUP method, the TPO has included a caveat which stated that the decision in this AY is not applicable to any subsequent AY and therefore Assessee cannot rely on the same. Further, the Ld.DR submitted that the TPO has given specific reasons for rejecting Internal TNMM as well, which has been confirmed by the DRP, therefore, the Ld.DR submitted that the lower authorities have rightly rejected CUP method and Internal TNMM method and adopted TNMM with external comparable companies. Hence, no interference is called for.

5.5 We have considered the rival submissions perused the material available on record and gone through the orders of the lower authorities. We find the TPO has diligently perused all the materials/documents furnished by the Assessee and has also reproduced some excerpt in the body of the TP order. The Ld.AR had filed a paper book with specific details/documents as furnished before the lower authorities to buttress his contentions. To appraise the factual matrix, the Ld.AR has taken us through various documents in the paper book and more specifically the Ld.AR emphasized on certain documents such as back to back invoices, purchase orders, AE Financials and TP order for AY 2014-15 to substantiate the fact that in the facts and circumstances of the case, CUP method is the most appropriate method to benchmark the international transaction. We have perused the same and factually we find that commercial invoices raised by Assessee to AE at pages 496, 508, 520, 532, & 566 of paper book is raised by the Seller i.e. Ambattur Clothing Ltd, the Assessee herein on the buyer Ambattur Clothing International WLL, Bahrain, the AE herein and the shipment is done directly to the ultimate customer. Effectively, the Assessee has adopted “bill to” an entity and “ship to” another entity. Further, in this

commercial invoice the Style Number nos.1322045, 1322045P, 1322045T are mentioned, the quantity is mentioned as Total Quantity 2268 and unit price is mentioned as $17.30. Juxtapose commercial invoices at pages 507, 519, 531,542 and 578 of paper book raised by AE (i.e. Ambattur Clothing International WLL, Bahrain) on the ultimate purchaser all the details as appearing in the previous invoice is repeated. Even in the purchase order issued by Jill Acquisitions LLC, USA at page 505 of paper book, the price per unit is mentioned as $ 17.30. We have also perused certain email communication (at pages 494 & 495; 553 to 565 of paper book) of Assessee with third party customers (i.e. J.Jill through its Buying House: Orchards Brands and Talbots Inc through its Buying House: Li & Fung India Pvt Ltd) wherein it is apparent that pricing of the product has been directly negotiated and fixed by Assessee with its third party customer without the involvement of its AE. Thus, the contention of the Assessee that the international transaction is undertaken on the basis of back to back invoicing is explicitly clear and factually found to be correct and thus we accept the same. In fact, the TPO also agrees on this factual aspect and does not dispute the same. The main contention of the TPO is that the above analysis does not qualify as CUP and therefore the TPO proceeds to benchmark under TNMM. Further, the TPO gives a finding that when pricing was determined by the Assessee it is unclear as to why the AE is involved in the transaction. The TPO has also stated that full financials of the AE were not furnished and therefore the TPO was not sure whether the AE has received any commission from this transaction. For these reasons, the TPO has rejected application of CUP method.

5.6 The Ld.AR denied all the above allegations of the TPO. The Ld.AR contended and stressed on the point that full financials were furnished to the TPO and the same is also filed before us in the paper book at pages 587 to 612. In the said Financials, the Ld.AR invited our attention to page no.603 which is Note 13 Revenue which reads as under:

> *"The Company enters into transactions with its significant shareholder to purchase finished goods which are eventually sold to ACL's customers. The Company merely acts as a pass through for the transaction and there are no economic benefits associated with these transactions that flow to the Company, accordingly, the sale of the goods purchases from the significant shareholder is not considered as revenue of the Company. The transaction with the significant shareholder is given in the related party transactions (refer note 20)."*

5.7 In Note 20 under the title “Related Party Transaction” there is a sub-title at page 606 of paper book wherein the “Transactions during the year” is reported and the “purchase of finished goods from ACL (note13)” is disclosed at Bahraini Dinar 7,790,168 which if converted to Indian Rupees reflects the actual turnover of the Assessee with AE during the subject AY.

5.8 Further, the Ld.AR also pointed out that the Assessee has not paid any commission to its AE and to substantiate this fact, the Ld.AR referred to “Other income” schedule 15 in AE Financials at page 604 of paper book and contended the AE has received Agency Commission only from its other subsidiary (i.e. Sparrow). The relevant extract is under:

> *“ The Company acts as an agent for one of its subsidiary (Sparrow) and enters into transaction with subsidiary’s customers for sale of finished goods manufactured by the subsidiary. The commission of BD 350,790 (2012 BD: 539,319) from such transaction is included in ‘Agents Commission’”*

5.9 Basis the above, the Ld.AR contended that the AE has made these specific disclosure in their Financials which clearly goes to establish the fact that AE is acting only as a pass through and it is not recognizing any income in its financials and impliedly it is also proved that there is no commission paid by the Assessee as the other income schedule reflects only commission from some other subsidiary and there is a note which also states that in respect of that other subsidiary i.e. Sparrow, the AE has acted as an agent.

5.10 From the above, we find that the finding of the TPO is incorrect to state that full financial of AE is not furnished and the doubt of the TPO whether the AE would have received commission is unwarranted and it is proved beyond doubt that the AE has not received any such commission from the Assessee. The Ld.AR also clarified that the reason for the AE not charging commission is for the fact that the AE also has a manufacturing facility in Bahrain and the AE also supplies its products to the same customers. Therefore, for ease of Supply Chain Management, the AE acts as a single point of contact for the limited purpose of facilitating the transaction. We also find from the note disclosed in the financial of the AE wherein it is declared that it is acting only as a pass through without any economic benefit. Considering the entire factual matrix, it is undoubtedly and undisputedly clear that the AE has acted as a pass through entity and therefore the back to back invoicing could be considered for CUP analysis as rightly reported by the Assessee in its TP documentation.

Therefore, we hold that the TPO is not right in holding that the Assessee has not complied with provisions of Section 92C(3) of the Act. We are also of the view that when a perfect internal CUP data is available, the same would be more reliable and superior compared to TNMM with external comparable. The other contention of the TPO is that the transaction is not suitable for CUP analysis. However, the TPO disregarded the fact that CUP is the most direct method and it requires highest degree of product similarity. Under CUP method product comparability is the key and it should be alike, if not identical. In the instant case, it is the very same product which is considered for controlled as well as uncontrolled transaction. Further, in this case, the assessee claims that it has compared its transactions with AE with third party transactions. This view of ours is also supported by various judicial precedents. The relevant extracts are as under:

[2017] 82 taxmann.com 390 (Delhi - Trib.) DCIT Vs Calance Software (P.) Ltd:

> ***"5.*** *We find that, so far as the back to back transactions are concerned, the services rendered by the assessee to the AE are exactly the same as, in effect, rendered by the AE to the independent transaction. The price charged for the same service by the AE to the independent end customer is thus the best CUP input in respect of such a back to back transaction. If a unit sells a product to its AE for INR 100 and the AE sells the same product to an independent enterprise for INR 100, the intra AE transaction cannot but be termed as the arm's length transaction. The stand of the revenue however is that, as evident from FAR analysis, the functions performed by the Calance US are far more comprehensive, the assets employed Calance US are much more and risks assumed are much higher. What is, however, overlooked that this FAR analysis has to be with respect to the particular transaction, and when transaction is exactly the same, there cannot be any occasion for the FAR of the transaction being any different. In principle, thus, so far as back to back transactions at the same price are concerned-whether between the AEs or by the AE to the end customer independent enterprise, these are inherently arm's length transactions on the basis of CUP analysis. The distinction drawn by the TPO on the basis of FAR analysis of the enterprise rather than the transaction, which is sought to be justified before us by the learned Departmental Representative, is a distinction without any difference. It is also incorrect to proceed on the basis, as has been done by the TPO, that when TNMM in puts are available, the application of CUP can be rejected. CUP is not a residuary method. As a matter of fact, when perfect CUP inputs are available- as in this case in respect of back to back transaction, that is the best and inherently most suitable method, as it is a direct method and it hardly leaves any scope for distortion of results by extraneous factors."*

[2016] 72 taxmann.com 324 (Kolkata - Trib.) AT & S India (P.) Ltd. Vs DCIT

"In the instant case, the transactions involving sale of PCBs by the appellant to AE during the financial year2010-11 stood as controlled transactions, whereas the transactions involving sale of exactly the same PCBs in the same quantity as those transacted between the appellant and AE and by AE (i.e. one of the parties to the controlled transaction) to independent customers in Europe during the relevant financial year stood as comparable uncontrolled transactions. The prices at which PCBs were sold by the Assessee to AE are equal to the prices at which PCBs were sold by AE to independent customers. Thus the international transaction involving sale of finished goods by the assessee to AE adheres to the arm's length principle embodied in the Indian Transfer Pricing Regulation under the CUP Method. Besides the above the assessee has submitted back to back invoices and on which no adverse comment has been passed by the lower authorities on its genuineness. It was also observed that the financial distribution segment report of AE submitted by the assessee was rejected by the TPO without assigning any specific reasons and defects in the report. We therefore inclined to treat the price charged by the assessee of the goods exported to AE as ALP as the same price was charged by the AE from the other customers."

[2020] 113 taxmann.com 584 (Mumbai - Trib.) Arkay Logistics Ltd. Vs DCIT

"14. *We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Undisputedly, for providing support/broker service to ESML, the assessee has hired six vessels on voyage charter basis from third party vendors and provided/hired them to its AE ESML on voyage charter basis. The Transfer Pricing Officer himself has admitted that the hiring of vessels by third party vendors to the assessee and by the assessee to the AE is on back-to-back basis. No doubt, in the transfer pricing study report, the assessee has given precedence to TNMM as the most appropriate method in comparison to CUP method. The reason being, neither the assessee has provided same or similar service to third parties, nor the AE has entered into same or similar transaction with independent service provider and further, there is no publicly available information on price charged in independent transactions of similar or identical nature that are comparable to the transaction between the assessee and the AE. However, in the very same transfer pricing study report, the assessee did provide an alternative benchmarking under CUP method by applying the price at which the assessee has chartered ships from third parties as internal CUP to benchmark the price charged by the assessee to the AE for voyage charter of the very same vessels to the AE.A perusal of the impugned order of the Transfer Pricing Officer makes it clear that only because the assessee had treated TNMM as the most appropriate method over CUP, he has rejected CUP as the most appropriate method. No further reasoning has been provided by the Transfer Pricing Officer to strengthen his case that CUP cannot be applied as the most appropriate method.* ***Undisputedly, CUP is a more direct method compared to TNMM.*** *A reading of rule 10B)(1)(a)(i) makes it clear that if the price charged or paid for property transferred or service provided in a comparable uncontrolled transaction or a number of such transactions can be identified and are available, it can*

be applied to determine the arm's length price of the transaction between the related parties. ***In the present case, admitted factual position is, the assessee has taken on hire six vessels from third party vendors and in turn has hired them to the AE on back–to–back basis. The Revenue has also not disputed that the price charged by the third party vendors to the assessee for hiring vessels is lesser than the price charged by the assessee to the AE on hiring the very same vessels on back–to–back basis. This difference in price suggests that the transaction between the assessee and the AE is at arm's length. Therefore, when a valid internal CUP is available in the shape of price charged by non–AEs for hiring vessels to the assessee, CUP method, in our view, is the most appropriate method to determine the arm's length price.*** *The Co–ordinate Bench in Calance Software (P.) Ltd. (supra), has held that in case of back–to–back transaction, CUP is the most appropriate method. Merely because in the transfer pricing study report, the assessee had selected TNMM as the most appropriate method, it cannot be estopped from contending that CUP is the most appropriate method to benchmark the transaction. Of course, assessee's case stands on a much better footing as in the transfer pricing study report, the assessee has also provided an alternative benchmarking applying CUP method. If the assessee applies a wrong method, it is open for him as well as the Transfer Pricing Officer to benchmark the transaction by applying a more appropriate method. In fact, in a number of cases we have noticed that the method adopted by the assessee in transfer pricing study report having found to be unsuitable/inappropriate, the Transfer Pricing Officer rejects such method and applies a more suitable method to benchmark the transaction. Therefore, the method applied by the assessee to benchmark the transaction in the transfer pricing study report cannot be considered to be sacrosanct as one has to analyse the nature of transaction and the available data to apply a particular method as the most appropriate method as provided under section 92C r/w rule 10B. The decisions relied upon by the learned Authorised Representative also support this view. It is also relevant to observe, in assessee's own case in assessment year 2012–13, the Transfer Pricing Officer in order dated 28th January 2016, has accepted CUP as the most appropriate method to benchmark the international taxation with the AE relating to the provision of support/broker services. It is also submitted by the learned Authorised Representative that in subsequent assessment years also CUP has been accepted as the most appropriate method to benchmark the aforesaid transaction. Considering the above, we hold that CUP is the most appropriate method in the present case to benchmark the transaction with the AE. relating to the provision of support/broker service. The internal CUP applied by the assessee being a valid CUP, no further adjustment can be made to the price charged to AE. The addition made should be deleted." (emphasis supplied)*

5.11 It is also relevant to observe, in assessee's own case in the immediately succeeding Assessment Year 2014–15, the Transfer Pricing Officer vide order dated 28th January 2016 (page 616 of paper book), has accepted CUP as the most appropriate method to benchmark the international taxation with the AE relating to

sale of readymade garments. The Revenue having accepted CUP method in respect of assessment year 2014-15 cannot be allowed to sustain its differential stance in subject AY 2013-14. In this connection, the decision given by the Hon'ble Supreme Court of India in the matter of Radhasoami Satsang (supra) wherein the Hon'ble Supreme Court has inter alia held as under:—

> *"We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken.*
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> *Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted ..."*

5.12 Respectfully following the above principle laid down by the Apex Court, we hold that the TPO/DRP ought to have accepted CUP method as the most appropriate method to benchmark international transaction of sale of readymade garments instead of resorting to residual method of TNMM.

5.13 We also find that the TPO has accepted certain other similar international transaction like purchase/sale of raw materials and sale of machinery under CUP method. It is relevant note that for both these transactions the quotes of third-party vendors and the price charged by third party vendors are accepted to be uncontrolled transaction and comparison of the same with the controlled AE transaction has been accepted by the TPO. Since, the internal CUP has been accepted by the TPO in respect of two international transaction, the TPO erred in not accepting the same internal CUP method for sale of readymade garments alone and we find that the action of the TPO is opposed to the 'principle of consistency'.

Hence, we hold that the lower authorities were not justified in rejecting internal CUP for sale of readymade garments.

5.14 Having held that internal CUP method as selected by the Assessee is correct, it is imperative to ensure that price charged under CUP method is at arms' length. For this purpose, we may reckon the price at which AE sold to third party customer as an uncontrolled transaction which can be compared with the price at which the Assessee has sold to its AE which is a controlled transaction. The CUP method requires the highest degree of similarity in the product between the comparable uncontrolled transaction and the comparable controlled transaction. Since in the instant case, as found by the TPO as well as by us in the preceding paragraphs, the product, quantity, pricing are exactly the same between the comparable uncontrolled transaction and the comparable controlled transaction basis back to back invoicing and also because of the fair and true disclosure in the AE Financials, we hold that the international transaction of sale of readymade garments benchmarked by the Assessee under internal CUP method is at arms' length and therefore we hereby delete the entire TP adjustment on this account.

6. Ground No. 2.2 to 2.5: Erroneous rejection of Internal CUP method:

6.1 Alternatively, the Ld. AR contended that internal TNMM ought to be accepted as most appropriate method. This contention was also raised before the TPO. However, the TPO rejected the same on /the premise that the Assessee has not provided the detail of standard production and questioned the allocation of depreciation on the basis standard production. The DRP without any specific finding rejected on the same by relying on the finding of the TPO. The Ld. AR contended that appropriate allocation keys were used in preparation of internal segment and the allocation was based on actuals as far as raw materials and overheads were allocated on standard production cost per unit manufactured and hence the Ld.AR contended that the allocation is scientific and accurate.

6.2 We find that the TPO has held that allocation of employees cost between AE and Non-AE is appropriate but the same basis of allocation of depreciation is not correct and therefore the TPO rejected the segmental. We find that the Assessee while preparing the segmental has allocated raw materials used for manufacturing on direct cost allocation basis and other common expenses such as Employees cost,

Depreciation, manufacturing expenses are concerned, the Assessee has allocated the same on the basis of standard production cost. Though the Assessee has not given the details about standard production cost, the TPO has specifically given a finding that the employee cost allocated on the basis of standard production cost is acceptable but when it comes to depreciation, the TPO states that the said expense cannot be allocated on the basis of standard production. The TPO cannot blow hot and cold in the same breath i.e. when the TPO has accepted the basis of allocation in respect of employee cost, the TPO cannot reject the same when it comes to depreciation. In fact, when the TPO acknowledges that employees being common and therefore allocation of employee cost on the basis of standard production cost to be appropriate in the same manner when the assets are used in common between the AE and Non-AE segments in the manufacturing facility, the allocation of depreciation on the basis of standard production cost would be the most appropriate basis. This is countenanced by the TPO's acceptance of allocation of employees cost on the same basis. Therefore, the TPO cannot make a contradictory statement to throw out an otherwise valid and proper segmental for the purpose of internal TNMM. Accordingly, we hold that the segmental allocation between the AE and the Non-AE segments are acceptable. Further, we find that under internal TNMM (at page 452 of paper book), the margin in the AE segment is at -5.75% vis a vis non-AE segment the margin is at -4.80% which falls within the permissible limit of +/- 3% and even under this method the international transaction is at arms' length. We believe and have also held that internal TNMM is superior to external TNMM. Our view is supported by the jurisdictional Tribunal decision in the case of Prodapt Solutions (P.) Ltd. vs. Deputy Commissioner of Income-tax, Company Circle-5(2), Chennai [2019] 109 taxmann.com 282 (Chennai - Trib.):

> ***"4.1*** *With regard to issue of the DRP directing the AO to compute the ALP adjustment on the entire turnover (including revenue from third party customers) of the assessee, the Ld AR relied on the order of this this Tribunal in the case of Yongsan Automotive India (P.) Ltd. v. Asstt. CIT [IT Appeal No.357 (Mds.) of 2017, dated 16-11-2017]. The relevant portion of the order of this Tribunal is extracted as under:—*
>
> > *"7. This Tribunal is the considered opinion that under the scheme of the Income tax act, the transfer pricing adjustment has to be made only in respect of the transaction of the assessee being a tested party, with associated enterprise outside the country after comparing the transaction made by similarly placed company in uncontrolled transaction with non-Associated Enterprise. Therefore, we are unable to uphold the order of the Dispute Resolution Panel Accordingly the order of the DRP is set*

aside and the entire issue is remitted back to the file of the Assessing Officer."

5. *We heard the rival submissions and gone through relevant material. We find merit in the submissions of the Ld.AR. On the issue of rejection of segmentation, following the decisions of Birla Soft (supra), we set aside the order of the AO /TPO and remit this issue back to the file of the AO / TPO for determining the arm's length price in respect of the international transactions undertaken with the associated enterprise be determined by making internal comparison of profitability from the international transactions with unrelated parties after allocating respective revenues and expenses to both the segments."*

6.3 Following the aforesaid Tribunal decision, the jurisdictional Tribunal in the case of Pos Hyundai Steel Manufacturing India Private Limited Vs. DCIT in ITA No.2485/Chny/2024 order dated 04.06.2025 has upheld the application of internal TNMM over external TNMM. The relevant extract of this Tribunal in the case of POS-Hyundai is as under:

"10. In view of the above view of the judicial precedents we are also of the view that Internal TNMM is more superior than external TNMM more so when audited segmental are available. Accordingly, in principle we hold that in Internal TNMM is the most appropriate method."

6.4 Respectfully following the aforesaid judicial precedents, we also hold that when internal TNMM data is available the same should be considered over external TNMM. Accordingly, ground nos. 2.6 to 2.8 & 2.11 & 2.12 is decided in favour of the Assessee.

6.5 In conclusion, we hold that under both the methods i.e. internal CUP as well as internal TNMM are more suitable and most appropriate methods to benchmark the international transaction of sale of readymade garments and the said transaction under both these methods is at arms' length. Accordingly, we delete the entire TP adjustment. Since we have decided the main ground on application of CUP method and the supplementary ground of application of internal TNMM in favour of the Assessee, adjudication of other grounds on TP becomes academic and we refrain to deal with the same.

6.6 Accordingly, grounds of appeal 2.2 to 2.5 and 2.6 to 2.8 & 2.11 & 2.12 are allowed.

7. Gr No. 2.2 to 2.5: Disallowance under section 14A:

7.1 As far as disallowance u/s.14A of the Act is concerned it is discerned from the orders of the lower authorities that the Assessee has made investments in subsidiary and partnership firm and contended that these investments are strategic investments done for the purpose of business. Further, the Assessee has on its own made a disallowance of Rs.79,511/- and the basis of arriving at the same was also explained to the AO and the DRP. The Assessee has also submitted that during the subject A.Y.2013-14, it has not earned any dividend income and therefore there is no necessity to make any disallowance u/s.14A of the Act in the absence of exempt income.

7.2 We find that the Assessee had been carrying investments in subsidiary company and partnership firm. However, the Assessee has not earned exempt income during the subject A.Y.2013-14. Despite this fact, the Assessee has Suo motto disallowed Rs.79,511/- based on man hours spent for keeping track of the investment. The AO has computed expenditure in relation to investment by applying Rule 8D and disallowed the same u/s.14A of the Act. The DRP noted that since the Assessee has maintained common set of books of account for taxable and exempt income, the possibility of incurring common expenditure for both segments cannot be ruled out and therefore, there is no error in the AO's act of invoking rule 8D to compute the disallowance u/s.14A of the Act for the purpose of earning dividend and therefore the disallowance was confirmed. Aggrieved by the aforesaid action of DRP, the Assessee is in appeal before us. The Assessee submitted various arguments before us which we have summarised as follows:

- The investments made by the assessee in the subsidiary companies shall not attract disallowance u/s.14A of the Act as the same have been made for strategic reasons and not for the purpose of earning exempt income.

- No disallowance can be made u/s.14A of the Act in respect of investments from which no exempt income has been earned during the year.

- As per provisions of sub-section (2) and (3) to section 14A of the Act, the AO does not have power to compute disallowance u/s.14A of the Act as per provisions of Rule 8D, even for A.Ys.2008-09 and onwards, if the AO does not express dissatisfaction.

7.3 We have heard both the parties and perused the records. We note that the issue raised by the Assessee is no longer res integra; and in this regard, it is noted that the disallowance u/s.14A of the Act could be made only if there is any exempt income during the impugned A.Y. The jurisdictional High Court judgements and this Tribunal is also consistently taking the view that disallowance u/s.14A of the Act cannot be made when there is no exempt income. To this proposition, the revenue opposed but could not make any controvert factually. We note that this issue is covered by the decision of Commissioner of Income-tax, Central 1, Chennai vs. Chettinad Logistics (P.) Ltd. [2017] 80 taxmann.com 221 (Madras)/[2017] 248 Taxman 55 (Madras)[13-03-2017]. The relevant extract of Hon'ble Madras High Court order is as follows:

> *"9. In our opinion Section 14 A of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.*
>
> *9.1 The legislature, in order to do away with the pernicious practice adopted by the Assessees', to claim expenditure, against income exempt from tax, introduced the said provision.*
>
> *10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.*
>
> *10.1 Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.*
>
> *10.2 Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.*
>
> *10.3 According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.*
>
> *10.4 Rule 8 D, in our view, cannot go beyond what is provided in Section 14 A of the Act."*

7.4 In the present facts and circumstances of the case and by respectfully following the judicial precedent (supra), we are of the view that the action of the DRP cannot be countenanced and hence we direct the AO to delete the disallowance u/s.14A of the Act and allow the related grounds of appeal of the assessee.

7.5 In the result the appeal of the assessee is allowed.

Order pronounced in the court on 31st July, 2025 at Chennai.

Sd/-	Sd/-
(जॉर्ज जॉर्ज के)	**(**एस**.** आर**.** रघुनाथा**)**
(GEORGE GEORGE K)	**(S. R. RAGHUNATHA)**
उपाध्यक्ष **/VICE PRESIDENT**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 31st July, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF