

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I": NEW DELHI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3195/DEL/2017 Assessment Year: 2003-04
ITA No. 3196/DEL/2017 Assessment Year: 2004-05

Geodis Overseas Pvt.Ltd., Building No.5,Tower B, 10 th Floor, DLF Cyber City, Phase III, Gurgaon PIN: 122 002 PAN No. AAACC6168L	Vs.	Asstt. Commissioner of Income Tax, Company Circle- II(1), Chennai-34
(Appellant)		(Respondent)

Assessee by:	Shri Vishal Kalra, Adv. & Shri Kashish Gupta, AR
Department by:	Ms. Neeju Gupta, Sr. DR
Date of Hearing:	21.07.2025
Date of pronouncement:	13.08.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The assessee's appeals are against common order dated 16.03.2017 of Learned Commissioner of Income-Tax (Appeals)-37, New Delhi (hereinafter referred as "the Ld. CIT(A)") under Section 250 of the Income Tax Act, 1961 (hereinafter referred as "the Act") arising out of orders dated 02.03.2006 and 18.12.2006 of the Assistant Commissioner of Income Tax, Company Circle-II(2), Chennai-34 (hereinafter referred as "Ld. AO") for the Act for assessment year 2003-04 and 2004-05 respectively.

2. Both the appeals involve similar facts, grounds and issues. So, both were heard together and for sake of convenience.

3. Brief facts of ITA No.3195/Del/2017 are that assessee company is carrying on business in providing international freight forwarding services to various customers. For the assessment year 2003-04, it filed a return on 01.12.2003 admitting a loss of Rs.6,63,51,190/-. The case was taken up for scrutiny. In response to notices under Sections 143(2) and 142(1) of the Act, Shri D.C.Gupta, Sr. Manager (Finance & Accounts) of the company appeared and filed details.

4. The assessee had international transactions exceeding Rs.5 crores with its associated enterprises. Hence the case was referred to the Transfer Pricing Officer under section 92CA(1) of the Act. The Transfer Pricing Officer passed order under section 92CA(3) on 22-02-2006 wherein he determined an adjustment of Rs.2,23,96,778/- to be made to the value of international transactions entered into by the assessee. Hence, a sum of Rs.2,23,96,778/- is reduced from the loss shown by the assessee.

5. The assessee has claimed a sum of Rs.23,64,550/- as interest on working capital loan. The assessee has availed cash credit facility of Rs.20 million with Credit Lyonasis Bank carrying interest at 13% per annum. Against this loan, the assessee had to receive a sum of Rs.1,35,18,142/-from its own overseas

affiliates of Geodis Group and Rs.4,60,639/- was outstanding for more than 6 months. The total foreign currency debt stood at Rs.1.54 crores at the close of the year. Though huge amounts are outstanding from the associate concerns of the assessee on the billed amounts, the assessee was not charging any interest on such belated payments. On the contrary the assessee was paying 13% interest on cash, credit loan. On the above facts it can reasonably be inferred that the payment of interest at 13% on the amount outstanding of Rs.1,35,18,142/-from the associate concerns is not justified and cannot be considered as a reasonable expenditure incurred by the assessee especially when the assessee was not charging interest on the overdue outstanding due from its associated concerns. Therefore disallow 13% interest on the outstanding dues of Rs.1.35 crores as not an admissible deduction. The disallowance works out to Rs. 17,57,358/-.

6. Assessee has claimed a sum of Rs. 1,05,50,624/- as provision for doubtful debts and further claimed a sum of Rs.1,90,57,789/- as bad debts written off which were disallowed. The disallowance works out to be Rs.1,12,76,967/-.

7. The bad debts claimed also included write off of staff advances of Rs.1,47,659/- .To allow a claim of bad debts, one of the conditions laid down in sections 36(2) of the Act is that the debt should have been taken into account while computing the income of the assessee. The staff advances are not taken

into account while computing the income of the assessee, hence, the same was not allowed as a bad debts.

8. Miscellaneous expenses included donation of Rs.1052/- and short and excess of Rs.84,478/- which were not admissible deduction which goes to Rs.85,530/-. Ld. AO vide order dated 02.03.2006 finalized as under:

“The assessment is finalized as under:

Loss returned		(-) Rs.6,63,51,190
Less: Adjustment made pas TPO’s order	: 2,23,96,778	
u/s. 92CA(3)		
Disallowance of int. on cash credit loan	: 17,57,358	
Disallowance if provision for bad debts	: 1,12,76,967	
Disallowance of bad debts	: 1,47,659	
Disallowance under misc. expenses as discussed above.	: 85,530	
Disallowance under entertainment exp.	: 2,00,000	
Disallowance under communication exp	: 8,82,612	
Disallowance under travelling exp.	: <u>11,43,193</u>	<u>Rs.3,78,90,097</u>
		Rs.2,84,61,093”

9. Likewise, in ITA No,3196/Del/2017 for assessment year 2004-05, Ld. AO vide order dated 18.12.2006 computed income/loss of assessee as under:

“Loss declared by the assessee: (-) 2,95,31,820

Less:

i. Disallowance on a/c of bad debts as Discussed above. 6,18,505

ii)	Disallowance on a/c of provisions as discussed above.	10,76,500	
iii)	Disallowance on a/c of short/excess as discussed above.	51,786	
iv)	Disallowance on a/c of prior-period expenses – as discussed above.	9,03,600	
v)	Adjustment made as per TPO's order – as discussed above.	<u>5,20,84,814</u>	<u>5,47,35,205</u>
	Total income		2,52,03,385
	Less b/c losses		<u>2,52,03,385</u>
	Net payable income		NIL

10. Against orders dated 02.03.2006 and 18.12.2006 of Ld. AO, appellant/assessee preferred appeals before Ld. CIT(A) which were dismissed vide common order dated 16.03.2017.

11. Being aggrieved, appellant/assessee preferred present appeals with following grounds.

Ground of ITA No.3195/Del/2017:

“1. That on the facts and circumstances of the case and in law, the Assessing Officer ("AO") erred in completing the assessment of the Appellant at a loss of INR 2,84,61,093 as against returned loss of INR 6,63,51,190. Further, the CIT(A) has erred in confirming the additions /disallowances made in the assessment order/transfer pricing order.

2. That on the facts and circumstances of the case and in law, the order passed by the CIT(A) is erroneous in law as the same is non-speaking and arbitrarily upholds the additions /disallowance made by the AO / Transfer Pricing Officer ("TPO") on the basis of conjectures and surmises.

3. That on the facts and circumstances of the case and in law, the CIT(A) has erred in making factually incorrect / arbitrary averments while rejecting the grounds of appeal raised by the Appellant.

TRANSFER PRICING GROUNDS:

4. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the transfer pricing adjustment of INR 2,23,96,778 on account of provision and receipt of freight forwarding services made by the AO/Transfer Pricing Officer ("TPO") to the transfer price of the international transaction of the Appellant, alleging the same to be not at arm's length in terms of the provisions the Act.

5. That on facts and circumstances of the case and in law, the AO/ TPO erred in not appreciating the revenue split business model between the Appellant and its associated enterprises ("AE") in relation to international transactions pertaining to provision and receipt of freight forwarding services, and further, erred in making an upward adjustment alleging that the transactions were not at arm's length. The CIT(A), further erred in upholding the action of the AO/TPO.

5.1 That on facts and circumstances of the case and in law, the CIT(A) erred (a) in not admitting additional evidences produced by the Appellant, (b) the additional grounds raised by the Appellant, whichever were crucial for judicious disposal of the Appeal of the Appellant, especially when a remand report was also obtained from AO/TPO.

5.2 That on facts and circumstances of the case and in law, the CIT(A) erred in holding that the Appellant had not furnished any supporting documents in respect of the international transaction pertaining to freight charges paid / received.

6. That on the facts and circumstances of the case and in law, the CIT(A)/AO/TPO erred in not appreciating the business model, functional, asset and risk analysis undertaken by the Appellant and have further erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with Income-tax Rules, 1962 ("Rules") for the determination of the arm's length price.

7. That on the facts and circumstances of the case and in law, the AO/ TPO erred in not granting the economic adjustments on account of capacity utilization and working capital while computing the net profit

margin of the Appellant. The CIT(A), further erred in upholding the action of the AO/TPO.

8. That on the facts and circumstances of the case and in law, the AO/TPO erred in not according comparability and economic adjustments as required under Rule 10B(1)(e)(iii) of the Rules. The CIT(A), further erred in upholding the action of the AO/TPO.

9. That on facts and circumstances of the case and in law, the AO/ TPO erroneously re-computing the margins of the Appellant and the comparable companies. The CIT(A), further erred in upholding the action of the AO/TPO.

10. That on the facts and circumstances of the case and in law, the CIT(A) erred in not directing the AO/TPO to allow the benefit of (+/-) 5 percent range as provided by the proviso to section 92C (2) of the Act.

11. That on facts and circumstances of the case and in law, the CIT(A) have erred in not directing the AO/TPO to use multiple years data for comparable companies as advocated by the provisions of Rule 10B(4) of the Rules for the purposes of determination of arm's length price.

CORPORATE TAX GROUNDS:

12. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 17,57,358, being interest on working capital loan, made by the AO alleging that the Appellant should have recovered the proportionate interest from AES.

12.1 That on facts and circumstances of the case and in law, the CIT(A) erred in summarily disregarding the submissions and further erred in not admitting the additional evidence furnished by the Appellant in this regard.

12.2 That on facts and circumstances of the case and in law, the CIT(A) erred in holding that the additional evidence filed by the Appellant in respect of disallowance of interest on working capital was not accompanied with an application for admission of additional evidence as per Rule 46A of the Rules.

13. That on facts and circumstances of the case and in law, the CIT(A) erred in directing the AO to verify the admissibility of bad debts claimed

by the Appellant of INR 1,12,76,967, which were disallowed by the AO alleging the same to be in the nature of provision for doubtful debts.

13.1 That on facts and circumstances of the case and in law, the CIT(A) erred in setting it aside the issue relating to provision for doubtful debts to the file of the AO for verification, which was beyond the powers of CIT(A).

13.2 That on facts and circumstances of the case and in law, the CIT(A) erred in summarily disregarding the submissions and not admitting the additional evidence furnished by the Appellant in this regard.

14. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 84,478 made by the AO, being miscellaneous expenses representing short and excess adjustments, without appreciating the submissions furnished by the Appellant.

15. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 8,82,612, made by the AO being communication expenses incurred by the Appellant, alleging to be in the nature of provision.

15.1 That on facts and circumstances of the case and in law, the CIT(A) erred in summarily disregarding the submissions and not admitting the additional evidence furnished by the Appellant in this regard.”

11.1 **Ground of ITA No.3196/Del/2017:**

“1. That on the facts and circumstances of the case and in law, the Assessing Officer ("AO") erred in completing the assessment of the Appellant at an income of INR 2,52,03,385 as against returned loss of INR 2,95,31,820. Further, the CIT(A) has erred in confirming the additions/disallowances made in the assessment order/transfer pricing order.

2. That on the facts and circumstances of the case and in law, the order passed by the CIT(A) is erroneous in law as the same is non-speaking and arbitrarily upholds the additions /disallowance made by the AO/ Transfer Pricing Officer ("TPO") on the basis of conjectures and surmises.

3. That on the facts and circumstances of the case and in law, the CIT(A) has erred in making factually incorrect / arbitrary averments while rejecting the grounds of appeal raised by the Appellant.

TRANSFER PRICING GROUNDS:

4. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the transfer pricing adjustment of INR 5,20,84,814 on account of provision and receipt of freight forwarding services made by the AO / Transfer Pricing Officer ("TPO") to the transfer price of the international transaction of the Appellant, alleging the same to be not at arm's length in terms of the provisions the Act.

5. That on facts and circumstances of the case and in law, the AO/ TPO erred in not appreciating the revenue split business model between the Appellant and its associated enterprises ("AE") in relation to international transactions pertaining to provision and receipt of freight forwarding services, and further, erred in making an upward adjustment alleging that the transactions were not at arm's length. The CIT(A), further erred in upholding the action of the AO/TPO.

5.1 That on facts and circumstances of the case and in law, the CIT(A) erred (a) in not admitting additional evidences produced by the Appellant; (b) the additional grounds raised by the Appellant, whichever were crucial for judicious disposal of the Appeal of the Appellant, especially when a remand report was also obtained from AO/TPO.

5.2 That on facts and circumstances of the case and in law, the CIT(A) erred in holding that the Appellant had not furnished any supporting documents in respect of the international transaction pertaining to freight charges paid/received.

6. That on the facts and circumstances of the case and in law, the CIT(A) /AO/TPO erred in not appreciating the business model, functional, asset and risk analysis undertaken by the Appellant and have further erred in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with Income-tax Rules, 1962 ("Rules") for the determination of the arm's length price.

7. That on the facts and circumstances of the case and in law, the AO/ TPO erred in not granting the economic adjustments on account of capacity utilization and working capital while computing the net profit

margin of the Appellant. The CIT(A), further erred in upholding the action of the AO/TPO.

8. That on the facts and circumstances of the case and in law, the AO/TPO erred in not according comparability and economic adjustments as required under Rule 10B(1)(e)(iii) of the Rules. The CIT(A), further erred in upholding the action of the AO/TPO.

9. That on facts and circumstances of the case and in law, the AO/ TPO erroneously re-computing the margin of the Appellant. The CIT(A), further erred in upholding the action of the AO/TPO.

10. That on the facts and circumstances of the case and in law, the CIT(A) erred in not directing the AO/TPO to allow the benefit of (+/-) 5 percent range as provided by the proviso to section 92C (2) of the Act.

11. That on facts and circumstances of the case and in law, the CIT(A) have erred in not directing the AO/TPO to use multiple years data for comparable companies as advocated by the provisions of Rule 10B(4) of the Rules for the purposes of determination of arm's length price.

CORPORATE TAX GROUNDS:

12. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 6,18,505, being bad debts written off, made by the AO alleging that the Appellant did not furnish evidence of having offered the debts as income in earlier years.

12.1 That on facts and circumstances of the case and in law, the CIT(A) erred in summarily disregarding the submissions and evidence furnished by the Appellant in this regard.

13. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 10,76,500 made by the AO, being provisions made for legal & professional fees, alleging that the provisions made were contingent and ad-hoc in nature.

13.1 That on facts and circumstances of the case and in law, the CIT(A) erred in in summarily disregarding the submissions and not admitting the additional evidence furnished by the Appellant in this regard.

14. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 9,03,000, made by the AO

being prior-period expenses claimed by the Appellant, alleging that such expenses did not relate to the year under consideration.

14.1 That on facts and circumstances of the case and in law, the CIT(A) erred in summarily disregarding the submissions and evidence furnished by the Appellant in this regard.

14.2 Without prejudice to the above ground of appeal, the CIT(A) erred in disregarding that the AO has erred in making double disallowance in respect of legal and professional expenses amounting to INR 2,26,800, without considering that the same was included in the disallowance made in respect of legal and professional expenses as well as disallowance for prior period expenses.

15. That on facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance of INR 51,786 made by the AO, being miscellaneous expenses representing short and excess adjustments, without appreciating the submissions furnished by the Appellant.”

12. Learned Authorised Representative for the appellant/assessee submitted that in ITA No.3195/Del/2017, grounds of appeal nos. 1 to 3 are general.

12.1 Grounds of appeal nos.4 to 11 pertain to Transfer pricing adjustment amounting to INR 2,23,96,778/- on account of provision and receipt of freight forwarding services alleging that the same is not at arm's length in terms of the provisions of the Act. The Appellant has benchmarked the international transactions pertaining to freight forwarding using Transactional Net Margin Method ("TNMM") as the most appropriate method with net profit margin ("NPM") on sales (refer pages 461 to 469 of the paper book).

12.2 The TPO vide order dated February 22, 2006, has proposed adjustment of INR 2,23,96,778 by taking single year margins and modifying the comparable

set chosen by the Appellant for benchmarking the subject international transactions (refer page 66 of the appeal set).

12.3 The Appellant has challenged the transfer pricing adjustment made by the AO/ TPO by filing an appeal before the CIT(A). During appellate proceedings, the Appellant filed an application for admission of additional ground on 50:50 revenue split business model of the Appellant (refer pages 267 and 268 of the paper book). The Appellant vide application dated August 26, 2015 also submitted additional evidences, being the inter-company agreement between the Appellant and its AE's and also copy of invoices depicting 50:50 revenue sharing model adopted by the Appellant (refer pages 41 to 51, 107-130 and 131-138 of the paper book).

12.4 The CIT(A) vide order dated March 16, 2017 upheld the order of the AO/TPO on the following grounds: (refer page 22 to 26 of the appeal set)

- a. Rejected the additional evidence submitted by the Appellant summarily by relying on the remand report dated September 29, 2015 filed by the TPO.
- b. The Appellant has failed to furnish the copy of the agreement entered between Appellant and its AE's.
- c. Disregarding the favourable order passed by this Hon'ble Tribunal for assessment years 2006-07 to 2008-09 and the consequent transfer pricing orders passed by the TPO deleting the adjustment appreciating the 50:50 revenue sharing model and verifying the relevant documentary evidence on the ground that the said order does not bring out the factual information.

12.5 The allegations of the CIT(A) are false, baseless, made without appreciating the documents and submissions filed by the Appellant and blindly relying on the recommendation of the TPO in its remand report without any independent application of mind.

a. The CIT(A) are baseless, false and therefore, cannot be relied upon is evident from the fact that the CIT(A) has stated in her order numerous times that the Appellant has failed to furnish the copy of the agreement entered into by the Appellant with its AE's, without appreciating that the documents substantiating the 50:50 revenue sharing model of the Appellant, including the inter-company agreement, copies of invoices pertaining to transactions with AE's and third parties, were duly submitted during the course of proceedings before the CIT(A) vide submissions dated August 26, 2015, November 7, 2014, June 9, 2014 (refer pages 27 to 51, 67 to 94 and 105-138 of the paper book).

b. The CIT(A) has erred in summarily rejecting the additional evidence submitted by the Appellant for substantiating the 50:50 revenue sharing model. The Appellant had filed application for admission of additional evidence with the predecessor of CIT(A) which was forwarded the under Rule 46A to the jurisdictional Officer vide letter dated June 11, 2014. A remand report dated September 29, 2015 was filed by the Officer (refer Para 4 at Page 7 of the appeal set), wherein the Officer only submitted that the additional evidence deserves to be rejected on the ground that the Appellant had itself applied TNMM for benchmarking the freight forwarding transaction and never contended to apply comparable uncontrolled price ("CUP") method either in the transfer pricing study or during the assessment proceedings. The CIT(A) has erred in not appreciating that change in methodology for benchmarking a particular transaction during assessment proceedings cannot act as an estoppels against the assessee.

c. The CIT(A) has further erred in not appreciating that after calling of remand report, as contemplated in sub-Rule (3) of Rule 46A, the additional evidence deserves to be admitted. In other words, once the remand report has been called for by the CIT(A) from TPO as per sub-rule (3) of Rule 46A, the CIT(A) was duty bound to admit the evidence. Reliance in this regard is placed on the following decisions:

- a. - Dhanna Ram Garg vs ITO: [2012] 49 SOT 73 (Delhi)
b. - Shahrukh Khan vs DCIT: [2007] 13 SOT 61 (Mumbai)
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d. The CIT(A) has further erred in not following the order dated November 18, 2014 passed by this Hon'ble Bench of the Tribunal for assessment years 2006-07 to 2008-09 (refer pages 14 to 34 of the compilation of case laws). The Appellant, in those years, had filed an additional ground pertaining to 50:50 revenue split model for the first time before the Tribunal on account of various jurisprudence available in this respect for logistics and freight forwarding industry. Since, the said ground was raised for the first time, the Hon'ble Tribunal allowed the appeals by setting aside the said issue to the file of AO/TPO for examination of related facts. Further, the above orders of the Hon'ble Tribunal have been accepted by the Department and has not been appealed against before the High Court.

e. On remand, the TPO passed favourable orders for all three assessment years i.e. 2006-07 to 2008-09 by deleting the transfer pricing adjustment after verification of documentary evidence submitted to substantiate the profit split method adopted by the Appellant (refer pages 35 to 40 of the compilation of case laws).

f. Considering the facts involved in AYs 2006-07 to AY 2008-09, recently the Hon'ble Tribunal in Appellant's case for AY 2005-06, wherein similar facts were involved, has appreciated the contentions placed by the Appellant that once the CIT(A) has called for the remand report and had given the opportunity of rebuttal to the AO, all the conditions of sub-rules (1) and (2) of rule 46A should be construed as fulfilled and thereafter, the CIT(A) could not have denied taking the evidence placed by the Appellant on record, rather he has to consider the same on merits. In view thereof, this Hon'ble Tribunal following the orders passed in Appellant's own case for earlier AYs restored the issue to the file of AO/ TPO for examination the additional evidence and contentions of the Appellant afresh and to pass the order in light of the observations of the Tribunal in Appellant's own case for 2006-07 to AY 2008-09 after giving due opportunity of being heard to the Appellant. (refer pages 01 to 13 of the compilation of case laws).

In view of the above, the Hon'ble Bench may be pleased to delete the transfer pricing adjustment amounting to INR 2,23,96,778.

12.6 Learned Authorised Representative for the appellant/assessee submitted that ground nos. 12 to 12.2 are regarding upholding the disallowance that the Ld. CIT(A) has erred in upholding the disallowance of INR 17,57,358, being interest on working capital loan, made by the AO alleging that the Appellant should have recovered proportionate interest from AEs. Ld. CIT(A) has erred in disregarding the additional evidence submitted by the Appellant during the course proceedings. The AO made a disallowance amounting to INR 17,57,358 by the arbitrarily applying 13% on the being outstanding sum to be received by concluding that huge amounts are the outstanding from the associate concerns of the Appellant on the billed amount and the Appellant is not the belated payments. On the other hand, of the Appellant is paying 13% interest on the cash credit loans, (Refer page 54 of the Appeal set). The CIT(A) erroneously has concluded that the Appellant has not filed any application under Rule 46A for placing the additional evidence to negate the claim of the AO without considering the application admission of additional evidence in for relation to the appeal filed under affiliates. Similarly, overseas group affiliates also utilized the services of the Appellant for delivering goods in India. Therefore, the amount payable by the Appellant to the group affiliates is reflected under the head sundry creditors (refer page 409 read with page 178 of the paper book) and amount receivable from the group affiliates is reflected under the head sundry

debtors (refer page 408 read with page 175 of the paper book). While making the disallowance, the AO has only considered the receivables balance of the Appellant from its affiliate entities and completely ignored the payables amounting to INR 5,29,20,227/- to its affiliate entities. The amount payable by the Appellant to the group/affiliates is much higher than the amount receivables. This can be verified from the details submitted by the Appellant before the CIT(A). (Refer page 178 of the paper book). The amounts appearing as receivables from the group entities is on account of normal day to day business activities undertaken by the Appellant and the Appellant does not have any policy to charge interest from its debtors in routine course. Similarly, the amount appearing as payables to group entities is also on account of day-to-day business activities and the group entities do not charge interest on the delayed payments made to the group entities, this fact is also evident from page 416 read with page 411 of the paper book. The borrowings made by the Appellant from Credit Lyonnais Bank was used by the Appellant for its business operations and no part of such borrowings were utilized for providing advances to its group affiliates. The amounts receivables from group affiliates are on account of regular transactions of the Appellant in respect of its business of freight forwarding. Hence, the borrowings made by the Appellant do not have any nexus with the amount receivable from group affiliates and therefore disallowance is not warranted. It is further respectfully submitted that the TPO,

during the subject assessment year, has not made any adjustment in respect of the transaction pertaining to interest on outstanding receivables, thus, AO cannot make a disallowance in this regard by taking a contrary stand as that taken by the TPO. So, interest amounting to INR 17,57,358, paid on cash credit facility availed by the Appellant for its working capital, deserves to be allowed.

12.7 Cases wherein it is held that the Ld. AO should not make disallowances in relation to the transactions which has been accepted by the TPO to be at arm's length:

- Recold Thermo Limited vs. ACIT: ITA No.826/PN/2013;
- American Express Services India Ltd.: TS 63-ITAT-2012
- Eaton Industries Pvt. Ltd. ITA No.1146/Pune/2012.

12.8 Learned Authorised Representative for the appellant/assessee submitted that ground nos. 13 to 13.2 challenged that Ld. CIT(A)'s directions to the Ld. AO to verify the admissibility of bad debts claimed by the appellant amounting to INR 1,12,76,967/-, which were disallowed by the Ld. AO alleging that the same to be in the nature of provision for doubtful debts.

12.9 The Appellant had written off bad debts amounting to INR 1,90,57,785 (refer page 410 of the paper book) and the same were debited to the profit and loss account. The Appellant had also created a provision for bad debts amounting to INR 1,05,50,624 (refer page 410 of the paper book) in the books

of account and had also reversed the excess provision for bad debts created during the earlier years amounting to INR 1,90,41,046 (refer page 410 of the paper book). The Appellant has suo-moto disallowed the amount of provision for bad debt created during the year and reduced the excess provision reversal from the total income since the same was offered INR 1,90,41,046/- is a provision of bad and doubtful debts was reversed this year and treated as admissible item (as was not claimed as expense earlier) is correct or otherwise. (Refer page 25 of the Appeal set).

12.10 Disallowance made by the AO on this account is unwarranted and bad in law as the Appellant had itself disallowed the amount of provision for doubtful debts created during the year in the return of income and only claimed deduction for reversal of provision of doubtful debts which was created and offered to tax during the earlier assessment years (refer page 159 of the paper book). In the regard, reliance is placed on the computation of income for previous assessment years placed at pages 340, 347 and 354 of the paper book. Movement of provision for bad debts is as under:

Financial year	Provisions created and added back in the computation of income	Paper books referencing
2000-01	53,52,486	Page 340
2001-02	2,10,78,138	Page 347

2002-03	1,05,50,624	Page 396
Total	3,69,81,248	

The amount of INR 3,69,81,248 was not claimed by the Appellant as admissible but was disallowed in the aforesaid assessment years. Copies of the computation of income forms part of the paper book at pages 340, 347 and 396 of the paper book.

12.11 The amount of INR 1,90,57,785 represent the bad debts actually incurred during the year and the details of the same were filed by the Appellant during the course of proceedings, refer page 192 to 204 of the paper book. This amount was debited by the Appellant to its profit & loss account and claimed deduction of the same for the subject AY, however, the AO has erred in misunderstanding the details filed by the Appellant and coming to the conclusion that out of the total bad debts of INR 1,90,57,785, an amount of INR 1,12,76,967 is in the nature of provision only.

12.12 The CIT(A) vide her order directed the AO to verify whether the contentions made by the Appellant as regards amount of INR 1,90,41,046, being provision for doubtful debts reversed during the year and treated as admissible item, is correct or not. The CIT(A) also held that if the said averment of the Appellant is found correct after verification, the said ground would stand

decided in favour of the Appellant. In this regard, please note that no order giving effect to the order of the CIT(A) has been passed by the AO as on date.

12.13 Cases wherein it is held that, where the provisions were created during the previous years was disallowed while computing the total income, reversal of such provisions written back is allowed as deduction.

- a. Bank of Tokyo Ltd. vs. Joint Commissioner of Income Tax: [2010] 36 SOT 8 (Delhi) (URO).
- b. CIT, Gulbarga vs. Progathi Gramina Bank; [2018] 91 taxmann.com 343 (Karnataka);
- c. Integra Engineering India Ltd. vs ACIT: ITA No.1316/Ahd/2016.
- d. Harmuny Entertainment (P) Ltd. vs. DCIT [2023] 157 taxmann.com 547 (Kolkata Trib.);
- e. Rolls Royce Industrial Power India Ltd. vs. ADIT – ITA No.1599/Del/2011 [2010];
- f. Nivea India P. Ltd. Mumbai vs ACIT 10(3)(1) ITA/1105/Mum/2015 [2018].

12.14 Learned Authorised Representative for the appellant submitted that ground no.14 is qua upholding disallowance, it is submitted that Appellant had charged an expenditure amounting to INR 1,330,432 in the books of account under the head "Miscellaneous expenditure" (Refer page 410 of the 8 paper book). The expenditure debited under this head included miscellaneous items like short of excess, adjustment of minor differences under various accounts etc. Refer page 332 of the paper book.

12.15 The AO/CIT(A) have erred in not appreciating that the expenses disallowed are very much minuscule/ petty in nature and also the genuineness of

incurrence of these expenses has not been disputed by the AO during the course of assessment proceedings. The AO has disallowed this expenditure without giving any reasoning and without considering the principle laid down by the Courts that expenses which are petty in nature should be allowed as expenditure even though supporting documents are not available for the same. In view of the above, disallowance made by the AO amounting to INR 84,478 on account of miscellaneous expenses should be deleted. Cases wherein it is held that when the Ld. AO has not challenged the genuineness of expenses, disallowances cannot be made are:

- a. ACIT v. Oxigen Services India Pvt. Ltd. – ITA No.5467/Del/2016;
- b. Widex India Pvt. Ltd. v. DCIT : ITA No.60/Del/2011;
- c. ACIT vs. Anima Investment Ltd. – [2000] 73 ITD 125 (Del.)™;
- d. Smt. Neena Syal v. ACIT: [1999] 70 ITD 62 (Chd.).

12.16 Learned Authorised Representative for the appellant/assessee submitted that ground nos. 15 and 15.1 are regarding upholding of disallowance of Rs.8,82,612/-. Ld. Assessing Officer/CIT(A) has erred in upholding the disallowance of INR 8,82,612/- made by the Ld. AO being communication expenses incurred by the appellant alleging to be in the nature of provision. As per the accounting policy adopted by the appellant, it recognizes the communication expenses every month on an estimated basis and on receipt of actual bills, the same are squared off in the books of accounts on actual basis,

not provisions. Accounts regularly maintained in the course of business are to be taken as correct, unless there are strong and sufficient reasons to indicate that they are unreliable.

13. Learned Authorised Representative for the appellant/assessee submitted that in ITA No.3192/Del/2017, ground nos. 1 to 3 are general. Ground nos. 4 to 11 are regarding transfer pricing adjustment amounting to Rs.5,20,84,814/- on account of provision and receipt of freight forwarding services alleging that the same is not at arm's length in terms of the provisions of the Act.

13.1 Ld. CIT(A) has erred in upholding the disallowance of Rs.6,18,505/- being bad debts written off, made by the Ld. AO alleging that the appellant/assessee has failed to furnish the evidence to substantiate that debts have been offered as income of the earlier years. Ld. CIT(A) has erred in disregarding the submissions and evidence furnished by the appellant in this regard.

13.2. Ground nos. 13 to 13.1 regarding disallowance of Rs.120,76,500/- made by the Ld. AO being provision made for legal and professional fee alleging that the provisions made were contingent and ad hoc in nature.

13.13 During the year under consideration, the appellant/assessee had incurred certain expenditure on account of legal and professional expenses (refer page 368 of the paper books). The Ld. AO sought details of the expenses pertaining

to the same and in response the appellant/assessee submitted that the party-wise details legal and professional before the Ld. AO (refer pages 202 to 210 of the paper books). Cases wherein, it is held that legal and professional expenses incurred will be allowed as deduction while computing the income of the assessed are:

- a. Times Internet Ltd. v. ACIT: [2017] 88 taxmann.com 387 (Delhi-Trib.);
- b. CIT vs. Onmobile Global Ltd.: [2021] 129 taxmann.com 254 (Karnataka);
- c. CIT vs. HMA Data Systems (P) Ltd.: [2015] 63 taxmann.com 144 (Karnataka);
- d. Steller Films (P) Ltd. vs. ACIT: [2022] 145 taxmann.com 253 (Mumbai – Trib.);
- e. Elgi Equipments Ltd. vs. JCIT [2020] 120 taxmann.com 142 (Madras).

13.4 Learned Authorized Representative for the appellant/assessee submitted that ground nos. 14 to 14.2 regarding expenses paid, Ld. CIT(A) has erred in upholding the disallowance of Rs.9,03,000/- made by the Ld. AO being prior-period expenses claimed by the appellant/assessed, alleging that such expenses did not relate to the year under consideration. Ld. CIT(A) has erred in disregarding that the Ld. AO has erred in making the double disallowance in respect of legal and professional expenses amounting to Rs.2,26,800/-, without considering that the same was included in the disallowance made for legal and professional expenses. During the year under consideration, the Appellant had incurred expenditure on salary of managing director amounting to INR 450,000

and legal and professional expenses amounting to INR 453,600 and the same were disclosed as prior period expenditure in the financial statements (Refer page 369 of the paper book). Said expenses were claimed as allowable deduction in the return of income filed, since the liability was accrued and crystallized during the year under consideration. During the course of assessment proceedings, details pertaining to prior-period expenses were filed by the Appellant before the AO (refer page 218 of the paper book). Further, it was submitted before the AO that such expenses got crystallized during the year under consideration. However, without considering the submissions made by the Appellant, the AO made the additions on account of prior period expense.

13.5 Learned Authorised Representative for appellant/assessee submitted that ground no.15 is regarding upholding of disallowance made by Ld. AO of Rs.51,786/- regarding miscellaneous expenses. Appellant had charged an expenditure amounting to INR 6,54,006 in the books of account under the head "Miscellaneous expenditure" (Refer page 368 of the paper book). The expenditure debited under this head included miscellaneous items like short/excess and minor balances. Refer page 215 and 216 of the paper book. The Ld. AO/CIT(A) have erred in not appreciating that the expenses disallowed are very much minuscule/ petty in nature and also the genuineness of incurrence of these expenses has not been disputed by the AO during the course of assessment proceedings. Ld. AO has disallowed this expenditure without giving

any reasoning by merely stating that the same needs to be disallowed due to non-availability of evidence without considering the principles laid down by the courts that expenses which are petty in nature should be allowed as expenditure even though supporting documents are not available for the same. In view of above submissions, it is prayed that disallowance made by the Ld. AO amounting to Rs.51,786/- on account of miscellaneous expenses should be added.

14. Learned Authorised Representative for the for Revenue relied on orders of Departmental Authorities.

15. From examination of record in light of aforesaid rival contentions, it is crystal clear that ground of appeal nos. 1 and 2 of ITA No.3195/Del/2017 are general. Ground nos. 4 to 11 are regarding transfer pricing adjustment amounting to Rs.2,23,96,775/- on account of provision and receipt of freight forwarding services alleging that the same is not at arm's length in terms of the provisions of the Act.

16. Ld. CIT(A) summarily rejected additional evidence submitted by appellant/assessee for substantiating 50-50 revenue's sharing module. Appellant had filed application for admission of additional evidence under Rule 46A. A remand report dated 29.09.2015 was filed by Ld.

17. Ld. AO as per ratio of Dana Ram Garg vs. ITO, once a remand report called by Ld. CIT(A) from PPO as per sub rule (3) of Rule 46A, Ld. CIT(A) was duty bound to admit the evidence.

18. Ld. CIT(A) failed to follow order dated 18.11.2014 of the Tribunal in assessee's own case for assessment years 2006-07 to 2008-09. In order dated 18.11.2014, para nos. 5 to 7, are mentioned as under:

“5. There is no dispute about the fact that two recent judicial precedents recognize that 50:50 model of revenue split, after deducting transportation costs, is an industry norm so far as the logistics and freight forwarding industry, dealing with transportation of time sensitive consignments from destination in one country to another country, are concerned. While dealing with one such case, this very bench of the Tribunal, vide order of even date in the case of Toll Global Forwarding India Pvt Ltd Vs DCIT (ITA No. 5025/Del/10; assessment year 2006-07), has summed up the position as follows:

3. To adjudicate on this issue only a few material facts need to be taken note of. The assessee company is a joint venture BALtrans International (BVI) Limited- a company listed in Hongkong Stock Exchange, holding 74% equity, and Kapil Dev Dutta, holding balance 26% equity. As stated in the transfer pricing study report, it is engaged in the business of freight transportation, time defined air and ocean transport and freight forwarding. The assessee is primarily engaged in the business of freight forwarding through air and ocean transportation, but, unlike a business model in which the assessee owns or manages such means of transportation on his own and which includes rendition of related services outside India as well, the assessee is using services of other enterprises for these purposes. In the course of conducting this business, the assessee picks up or receives freight shipments from its customers, consolidates these shipments of various customers for common destinations, arranges for transportation of the consolidated freight to these destinations, and, at destination, distributes the shipments and effects delivery to the consignees. The assessee also facilitates

the custom clearances at the international points of entry. These services are offered either directly by the appellant to its customers, or, as a part of deliverables sold to overseas customers by the assessee's AEs as also unrelated third party agents abroad. In respect of the cases in which services are rendered to the overseas customers, the assessee receives these shipments from such AEs or independent third party associates, obtains customs clearance at the port of entry, and organizes delivery of these consignments to the consignees in India. In essence, thus, the assessee, along with its associated enterprise, offers multi modal transportation services to business to business shippers through global freight forwarding services. The company is having two types of international transactions – (a) arranging import of cargo from other countries to India by air and sea transportation and delivering the same to consignees in India; (b) arranging export of cargo from India to other countries by air and sea transportation wherein consignments are picked up in India by assessee and are sent to destination as per instruction of shippers/consigners for the purpose of delivering to consignees through its associated enterprises abroad. While the assessee controls pricing to the end customers in domestic market, pricing for end customers in connection with consignment picked up abroad is essentially determined by the associate abroad. However, in line with, what are stated to be, the global practices followed by the similar companies in freight forwarding industry, the profits earned, after deducting transportation costs, by the assessee and its AEs or independent third party business associates, in respect of import and export of cargo are shared in a 50:50 ratio. In the transfer pricing report submitted by the assessee, the assessee has adopted the Comparable Uncontrolled Price (CUP) method for determining the arm's length price. However, the A.O. rejected the said method and proceeded to adopt Transactional Net Margin (TNMM) method. The stand of the TPO was that the "CUP method chosen in the transfer pricing report for both imports and exports has not been demonstrated". It was also stated that "even in the International transactions ought to be analysed on CUP method, the assessee is required to furnish the documents/vouchers related to third party for export and import transactions related to controlled and uncontrolled transactions". It was also noted that while the transfer pricing study report mentions CUP as most appropriate method, the related column in the Form 3CEB states that TNMM (Transaction Net Margin Method) is most appropriate method, even as the assessee subsequently clarifies that

it was an inadvertent error to have typed in the TNMM in the place of CUP. It was explained by the assessee that as per the business model adopted industry-wise in respect of this type of transaction, residual profit, after deducting of related transportation cost, is shared equally between the associated parties and arrangement is as much in with the associated enterprises as much it is with the unrelated enterprises. While the TPO was fair enough to place on record the fact that “though it is not denied that in most companies engaged in similar business of logistics and freight forwarding adopt this revenue model but such an arrangement should have been demonstrated by the assessee in black and white along with supporting documents”, he did reject this business model as an acceptable evidence of arm’s length pricing and proceeded to adopt the Transactional Net Margin Method (TNMM) for determining the arm’s length price. In the computation of arm’s length price in accordance with TNMM, an arm’s length price adjustment of Rs 2,09,00,179, but, for the reasons we will set out in a short while, it is not really necessary to go into fine points about adjustments under TNMM in this case. Suffice to note that CUP was rejected at the assessment stage. Based on the arm’s length adjustment so recommended by the TPO, the Assessing Officer proposed to frame the assessment. The assessee was not satisfied with the assessment so proposed by the Assessing Officer and did raise the grievances before the Dispute Resolution Panel but without any success. It was in this backdrop that an arm’s length price adjustment of Rs 2,09,00,179 was made in the assessment order. The assessee is aggrieved and is in appeal before us.

4. We have heard the rival contention, perused the material available on record, and duly considered factual matrix of the case in the light of the applicable legal position.

5. We find that in the present case it is not really even in dispute that in this field of business activity, the 50:50 business model (i.e. the business model of sharing residual profits in equal ratio with the service provider at the other end of the transaction i.e. at the consignee’s end in the case of export transaction and at consigner’s end in the case of import transaction), is a standard practice. In other words, even with respect to the transaction with unrelated parties in this line of activity, it is admitted practice to share the residual profit in equal ratio and that is precisely the assessee claimed to have been adopted with the associated enterprise as

well. The trouble however is that while there is a standard formulae for computing the consideration, the data regarding precise amount charged or received for precisely the same services may not be available for comparison. While the assessee is pleading for acceptance of former as a valid comparable under the CUP, the authorities below are of the considered view that availability of precise amount having been charged for precisely the same service is a sine qua non for application of CUP method. As this data, about exactly the same amount having been charged for exactly the same service in the uncontrolled transactions, has not been furnished by the assessee, the TPO has held that it is not a fit case for application of CUP and, accordingly, the TNMM, which is usually referred to as method of last resort for computation of arm's length price, has been put in service resulting in impugned ALP adjustment of Rs 2,09,00,179.

6. Undoubtedly, CUP method is the most direct method, unaffected by all extraneous factors, of ascertaining arm's length price of a transaction, and it finds mention in the transfer pricing literature as such. That's the reason wherever it is practical to ascertain arm's length price under this method, all other methods of ascertaining arm's length price relegate into irrelevance. There cannot be, and there is no, dispute on this proposition in principle. The controversy, however, sometimes arises with respect to the functional aspects of CUP method, and the case before us indicates one such dimension.

7. Under rule 10 B (1)(a), the mechanism of determining arm's length price as per the comparable uncontrolled price method is set out as follows: (i) the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified; (ii) such price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market; and (iii) the adjusted price arrived at under sub-clause (ii) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction.

19. In view of above material facts and judicial precedents, respectfully following the same, it is considered expedient to restore the issue to the file of the Ld. CIT(A). Accordingly, ground nos. 4 to 11 are partly allowed.

20. Ground of appeal; nos. 12 to 12.2 are regarding disallowance of Rs.17,17,358 being interest on working capital loan, made by Ld. AO alleging that appellant should have recovered the proportionate interest from a AE Ld. CIT(A) erred in disregarding additional evidence submitted by appellant. Ld. AO only considered the receivable of the appellant from its affiliated entity and ignored the payable amount of Rs.5,29,20,227/- to its affiliates as is evident from 178 of the paper books. The amounts appeared as receivable from group entities is on account of normal day to day business activities undertaken by the appellant. The amount appearing as payable to group entities is also on account of day to day business activities and the group entities do not charge interest on the delayed payment as is evident from page nos. 416 of paper books. The borrowings made by appellant from Credit Lyonnais Bank by the appellant for business operation and no part of such borrowings were utilized for providing advances to its group affiliates. The Ld. TPO had not made any adjustment in respect of transactions pertaining to the interest on outstanding receivable, thus,, Ld. AO cannot make any disallowance by taking contrary stand.

21. As per ratio of deduction in Racold Thermo Limited vs. ACIT (ITA No.828/PN/2013), it is well settled principle of law that cases wherein it is held by Ld. AO should not make disallowance in relation to transaction which has been accepted by the Ld.TPO at arm's length, therefore, the interest of Rs.17,57,358 paid on cash credit facility deserves to be allowed. Accordingly, ground of appeal nos. 12 to 12.2 are allowed.

22. Ground nos. 13 to 13.2 are regarding directions to the Ld. AO to verify admissibility of bad debts amounting to Rs.1,12,76,967/- which were disallowed by Ld. AO alleging that the same to be in the nature of provision for doubtful debts. The computation of previous assessment years at page nos. 340 to 347 and 354 of paper books in tabular form are as under:

Financial year	Provisions created and added back in the computation of income	Paper books referencing
2000-01	53,52,486	Page 340
2001-02	2,10,78,138	Page 347
2002-03	1,05,50,624	Page 396
Total	3,69,81,248	

23. As per judgment in Bank of Tokyo Ltd. vs. Joint Commissioner of Income Tax [2010] 36 SOT 8 (Delhi) (URO), where the provisions were created

during the previous years was disallowed while computing the total income, reversal of such provisions written back is allowed as deduction. In view of above material facts and well settled principle of law, the directions of Ld. CIT(A) in directing Ld. AO to verify admissibility of bad debts deserves to be deleted. Accordingly, ground of appeal nos. 13 to 13.2 are allowed.

24. Ground of appeal no. 14 regarding upholding of disallowance made by Ld. AO amounting to Rs.84,478/- being miscellaneous expenses. Ld. AO and Ld. CIT(A) failed to appreciate that miscellaneous expenditure on page no.410 of paper books of the books of accounts was petty in nature. The genuineness of the incurrance of the expenses by assessee disputed by the Ld. AO during the assessment proceeding. Ld. AO had disallowed the expenditure without giving any reasoning and considering the plea that the expenses which are petty in nature should be allowed. Reference to judgment in ACIT vs. Oxigen Services India Pvt. Ltd. (ITA No.5467/Del/2016) in above context is important. Accordingly, ground no.14 is allowed.

25. Ground nos. 15 and 15.1 are regarding upholding of disallowance of Rs.8,82,612/- made by the Ld. AO being communication expenses incurred by the appellant, alleging to be in the nature of provision. Ld. AO and Ld. CIT(A) failed to appreciate that the accounting methodology consistently followed by the appellant. Amount of Rs.8,82,112/- appearing in the ledger, Ld. AO flagged

provision amounting to Rs.1,50,000/- for the month of December, 2002. The provision so created for the month of December 2002 was adjusted with actual expenditure incurred and excess was recovered on 31.01.2003 as is clear from page 251 of paper books of ledger and ledger account from page nos. 361 to 395 of paper books. Thus, the disallowance made by Ld. AO and upheld by Ld. CIT(A) deserves to be verified by the Ld. AO. Accordingly, ground nos. 15 and 15.1 are partly allowed.

26. Learned Authorised Representative for appellant/assessee and Revenue submitted that ground nos. 1 to 3 are general, ground nos. 4 to 11 are similar to ground of appeal nos. 4 to 11 of ITANo.3195/Del/2017.

27. Ground of appeal nos. 12 to 12.1 are similar to ground of appeal nos. 13 to 13.2 of ITA No.3195/Del/2017 are decided mutatis mutandis as the facts and circumstances are the same. Ground of appeal nos. 13 to 13.1 regarding details of legal and professional fees, alleging to be ad hoc, appellant had furnished copy of invoices for the services at page nos. 105 to 110 and 172 to 185 of paper books. Ld. CIT(A) disregarded the submissions and additional evidence which required to be verified. Therefore, in the interest of justice, it is considered to be expedient to set aside the findings of Ld. AO and Ld. CIT(A) and restore the matter to the file of Ld. AO. Therefore, ground nos. 13 to 13.1 are partly allowed.

28. Ground nos. 14 to 14.2 regarding upholding of disallowance of Rs.9,03,000/- made by the Ld. AO being prior period expenses claimed by the appellant, alleging that such expenses did not relate to the year under consideration. Appellant had filed details pertaining to prior period expenses before the Ld. AO. The expenses had got crystallized during the year under consideration. Ld. CIT(A) erred in disregarding making double disallowance in respect of legal and professional expenses amounting to Rs.2,26,800/- without considering that the same was included in disallowance made for legal and professional expenses . It is a fact that the amount got crystallized during the year under consideration and was an allowable. The matter requires to be verified by Ld. AO. Therefore, it is considered expedient to restore the matter to the file of the Ld. AO. Accordingly, ground nos. 14 to 14.1 are partly allowed.

29. Ground no. 15 being similar in facts and circumstances, hence, decided mutatis mutandis keeping in view the decision taken by us in ITA No.3195/Del/2017.

30. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the open court on 13th August, 2025.

Sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 13/08/2025

Mohan Lal

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi