

IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 944/MUM/2020
Assessment Year: 2012-13**

Novateur Electrical and Digital Systems Pvt. Ltd. 61/62, Kalpataru Square, 6 th Floor, off. Andheri Kurla Road, Mumbai – 400 059 (PAN : AACCE4671N)	Vs.	Deputy Commissioner of Income-tax- 10(3)(1), Mumbai
(Appellant)		(Respondent)

**ITA No. 1189/MUM/2020
Assessment Year: 2012-13**

Deputy Commissioner of Income-tax – 10(3)(1), Mumbai	Vs.	Novateur Electrical and Digital Systems Pvt. Ltd. 61/62, Kalpataru Square, 6 th Floor, off. Andheri Kurla Road, Mumbai – 400 059 (PAN : AACCE4671N)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Nikhil Tiwari and Shri Lekh Mehta, CAs

Revenue : Shri Pankaj Kumar, CIT DR

Date of Hearing : 02.06.2025

Date of Pronouncement : 25.08.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two cross appeals filed by assessee and revenue are against the order of CIT (A)-57, Mumbai, vide order no. CIT(A)(A)-57/Arr. 265/2019-20, dated 29.11.2019 passed against the assessment order by Dy. Commissioner of Income Tax – 10(3)(1), Mumbai, u/s. 143(3) r.w.s. 144C(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 20.04.2016 for AY 2012-13.

2. Grounds taken by the assessee are reproduced as under:

“Ground 1-General Ground

a) erred in computing the total income at INR 71,57,13,650 instead of loss of INR 9,60,84,412,

Ground 2-Depreciation on Goodwill

a) erred in disallowance of depreciation amounting to Rs 60,97,69,927 on goodwill acquired during last year on purchase of switchgear division from Indo Asian Fusegear Limited on slump sale basis;

b) erred in denying depreciation on goodwill on the ground that in case of amalgamation as per 6 proviso to section 32 of the Income Tax Act, 1961 (‘the Act’), aggregate depreciation of amalgamated company and amalgamating company cannot exceed the depreciation which would have been allowed if there was no amalgamation, without appreciating that in the present case, goodwill is acquired through slump sale and not under amalgamation.

c) erred in upholding disallowance on the ground that depreciation on opening WDV of goodwill is not the issue under consideration for AY 2012-13; without appreciating the fact that the appellant had acquired the switchgear division in AY 2011-12 through slump sale from Indo Asian Fusegear Limited and the Hon’ble CIT(A) for AY 2011-12 has mistakenly treated the transaction of slump sale as amalgamation.

Ground 3-Transfer pricing adjustments

General ground

a) erred in confirming the action of learned Transfer Pricing Officer (‘TPO’)/Assessing Officer (AO) in determining arm’s length price of transaction of export of finished goods to its Associated Enterprises (‘AEs) of INR 18,26,260 and confirming the adjustment on the transaction of import of raw material, sample spare parts and finished goods to the extent of INR 11.10.85,819, and

b) erred in applying the provisions of Chapter X of the Income Tax Act, 1961 (the Act) without appreciating that reference made by the learned AO to the learned TPO is not in accordance with the provisions of Section 92CA(1) of the Act,

Adjustment on account of export of finished goods of INR 18,26,260

c) erred in rejecting the economic analysis conducted by the Appellant wherein the appellant applied Transactional Net Margin Method (TNMM), while the learned TPO selectively applied CUP for benchmarking the transaction of export of certain finished goods,

d) erred in not considering the approach of the Appellant under TNMM analysis and erred in considering alleged CUP for certain finished goods while accepting TNMM for balance finished goods, thus, being inconsistent in the approach vis-à-vis benchmarking the transaction of export of finished goods to AEs;

e) erred in selection of CUP as the most appropriate method for determination of the arm's length price for certain finished goods, without appreciating that goods sold to third party and product sold to AE are not comparable and thereby CUP method fails as CUP method requires high degree of product comparability:

f) Without prejudice to the above, even if CUP method is applied, erred in not granting the suitable adjustments in CUP in relation to the portfolio approach, cash discount, excise, freight expenses, admin and finance expenses, warehousing expenses and other dissimilarities to make the CUP data comparable;

g) erred in not rejecting the CUP method on the ground that accurate adjustment on account of difference in products sold to AE and products sold to third party cannot be reasonably determined, leading to CUP being faulty method in the present case,

h) erred in not granting benefit of proviso to section 92C(2) of the Act while making an adjustment to the arm's length price where benefit is within the prescribed limit.

Adjustment on account of import of raw material, sample spare parts and finished goods of INR 11,10,85,819

i) erred in stating that depreciation on goodwill to be considered as non-operating for the purpose computation of PLI only in case depreciation on goodwill is disallowed without appreciating that the said depreciation on goodwill and non-compete fees are exceptional/extraordinary in nature and cannot be linked with its allowability under section 32;

j) erred in rejecting the economic analysis conducted by the Appellant wherein the appellant applied TNMM with respect to benchmarking the transaction of import of raw material, sample spares parts and finished goods from AE;

k) erred in considering depreciation on goodwill and amortization of non-compete fees as operating expense while calculating operating margin of tested party

without appreciating that depreciation/amortization on goodwill and non-compete are exceptional/extraordinary in nature,

l) erred in considering depreciation on goodwill and amortization of non-compete fees as operating expenses on the ground that as per transfer pricing provisions there is no mechanism under which an adjustment can be made to tested party, without appreciating that it is trite law that only operational expenses/income should be considered for the purpose of computation of operating margin of tested party, whereas depreciation of goodwill and non-compete fees being exceptional/extra ordinary in nature should be excluded from margin computation of tested party

m) Without prejudice to the above, erred in rejecting the alternate contention to consider the cash profits as PLI (ie operating profit before depreciation/amortization on tangible and intangible assets) to eliminate the difference in exceptional/extra ordinary depreciation so as to make an apple to apple comparison

n) erred in treating foreign exchange loss as operating in nature while computing the margins of the Appellant disregarding the fact that the said loss is on account of differences in currency rates resulting from interplay of demand and supply factors of foreign currency markets and not solely a function of business operations;

o) erred in disregarding the rejection of loss-making comparable company Reed Relays & Electronic India Ltd from the set of comparable companies by the learned TPO without appreciation that it is not a persistent loss-making company.

p) erred in disregarding the ground of considering the margins of comparable companies, Titan Time Products Limited and Akasaka Electronics Limited, annual reports of which were not available earlier at the time of TP Assessment proceedings but available subsequently during the course of CIT(A) proceedings,

q) erred in applying arbitrary turnover filter for rejecting certain comparables having turnover less than INR 50 crores, even though the same are functionally comparable with the Appellant and without demonstrating that the turnover influences operating profits of the comparables;

r) erred in ignoring the provisions of Rule 10B(3) of the Income Tax Rules, 1962, which envisages usage of multiple year data of comparable companies for the purpose of determination of the arm's length price as defined under section 92F(ii) of the Act,

s) erred in not granting benefit of proviso to section 92C(2) of the Act while making an adjustment to the arm's length price where benefit is within the prescribed limit,"

2.1 Grounds taken by the Revenue are reproduced as under:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in directing to exclude the depreciation on goodwill from operating cost for the purpose of calculating PLI of the assessee on the ground that the same

was disallowed by the AO and upheld by the CIT (A), even though the assessee has debited the said depreciation to the profit and loss account and the same was claimed by the assessee as an expense while computing the taxable income without appreciating the fact that operating cost relating to PLI working for TP comparability purpose has got nothing to do with the disallowance made on corporate issues.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in directing to exclude the depreciation from operating cost for the purpose of calculating PLI of the assessee, without understanding the nuances of TP procedures that such exclusion would lead to skewed results in IP comparability as all the depreciation in the nature of operating expenses have been taken into account in comparables as operating cost while working out the PLI of comparables and that exclusion of the same in the hands of assessee alone is not correct.

3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.”

3. Assessee moved an application dated 17.09.2023 for admission of additional legal grounds which was admitted. However, subsequently, assessee made a request for withdrawal of the additional grounds so filed by it vide application dated 14.03.2024 filed on 16.04.2024. Accordingly, additional grounds raised vide application dated 17.09.2023 are dismissed as withdrawn.

3.1. Later, assessee moved another application dated 17.01.2025 for filing of additional grounds. Since there was no contrary submission on their admission, the same were admitted for adjudication. The additional grounds so raised are as under:

“Comparable SPEL Semiconductor Limited rejected without any cogent reason

4. erred in not considering/ selecting SPEL Semiconductor Ltd as comparable company without providing any cogent reason and without appreciating that SOEL Semiconductor Limited is functionally similar and passes the filter applied by the Learned TPO.

Havells India Limited' is not a comparable due to extraordinary event

5. erred in selecting Havells India Limited as comparable company Ignoring the fact that it has undergone amalgamation during the relevant year which is an extraordinary event that misleads its financial data and also engaged into

extensive R&D activities whereas assessee and other comparables does not undertake any such R&D activities and therefore the same should not be considered as suitable comparable vis-à-vis-assessee.

In continuation to ground No. 3 (I and k) - Exclusion of depreciation on goodwill and non-compete fee while computing operating margins

6. Ought to have excluded depreciation on goodwill and non-compete fee while computing the Appellant's operating margins to bring parity with the operating margins of the comparables.

Erroneous computation of margins of comparable companies

7. erred in wrongly computing the single year operating margin, i.e. operating profit/ operating revenue of Easun Reyrolle Ltd. at 6.63% instead of correct margin of 4.90% and Larsen and Toubro Ltd. at 10.16% instead of correct margin of 4.15% without providing any reason.”

4. Ground No. 1 is general in nature and therefore not adjudicated separately and will be dealt along with other grounds. Ground No.2 deals with corporate issue in respect of depreciation on goodwill. Ground no.3 to 6 relates to transfer pricing adjustments. We will take up the grounds seriatim.

5. Brief facts of the case are that assessee is a company engaged in business of manufacturing and sale of miniature circuit breakers, residual current circuit breakers and wiring accessories and trading of distribution boards and circuit breakers. It was incorporated on 11.08.2010 in the name of Era Electricals Pvt Ltd. (EEPL). It acquired the business of switch gear division of Indo Asian Fusegear Ltd. (IAFL) who was an unrelated third-party seller, through a slump sale on 22.07.2010 for which the effective date of business transfer was 09.09.2010. Name of the assessee after the said acquisition was changed to Indo Asian Electric Pvt. ltd. (IAEPL) on 14.04.2011. Later, assessee again changed its name on 21.03.2012 to Novateur Electrical and Digital Systems Pvt. Ltd. (hereinafter referred to as 'Novateur' or the 'assessee'). Assessee filed its return of income on 30.11.2012 reporting

a loss at Rs.69,68,351/-. The return was revised on 28.11.2013 reporting total loss at Rs.9,60,84,412/-. During the year, assessee had entered into international transactions with Associate Enterprises (AEs) in respect of which ld. Assessing Officer made a reference u/s.92CA(i) to the Transfer Pricing Officer (TPO) for determination of their Arm's Length Price (ALP). Ld. TPO completed the transfer pricing assessment and passed the order u/s.92CA(iii) on 20.01.2016, whereby an upward ALP adjustment of Rs.11,29,12,079/- was proposed. Further, in the course of assessment proceedings, ld. Assessing Officer noted that assessee had claimed depreciation of Rs.60,97,69,927/- towards goodwill. He, from the perusal of records relating to Assessment Year 2011-12 noted that depreciation of Rs.81,30,26,569/- was disallowed on account of goodwill in the said assessment year as claimed by the assessee. To this effect, a show cause notice was issued. Assessee made a detailed submission to justify the claim of depreciation. However, ld. Assessing Officer concluded adversely by noting that assessee's own case for Assessment Year 2011-12 on this issue is pending for disposal before the ld. CIT(A) and thus, disallowed the claim of depreciation and made the addition.

5.1. Assessee had acquired switchgear division of Indo Asian Fusegear Limited through business transfer agreement, dated 22.07.2010 by way of slump sale on a going concern basis for total consideration of Rs.600 Crores. This transaction of slump sale is relevant to Assessment Year 2011-12. To record the transaction of slump sale in the books of accounts, based on valuation report, purchase price allocation was undertaken to record the assets and liabilities. The details of such allocation are tabulated as under:

Particular	Amount (in Rs. Crores)
Current Assets	63.51
Less: Current Liabilities	-35.75
Net Current Assets – (A)	27.76
Add: Tangible Fixed Assets	55.04
Add: Software	1.26
Total Net Assets – (B)	84.06
Add: Intangible Fixed Assets	
Brand	43.60
Non-compete Fees	70.00
Distribution Network	77.13
Goodwill	325.21
Total consideration paid	600.00

5.2. Based on the aforesaid purchase price allocation, the difference of Rs.325.21 Crores between the consideration paid for acquisition of switchgear division over the value of assets and liabilities transferred was recorded as goodwill in the books of accounts of the assessee. Assessee claimed depreciation on goodwill so accounted for, it being goodwill arising on account of acquisition of switchgear division, not being a self-generated goodwill.

5.3. Claim of depreciation on the said goodwill in Assessment Year 2011-12 was disallowed by the Id. Assessing Officer on the premise that fair market value adjustment made to land, building and plant and machinery is not correct. Ld. CIT(A) also confirmed the said disallowance made by the Id. Assessing Officer. While confirming this disallowance, Id. CIT(A) referred to the provisions under the Act which dealt with case of amalgamation wherein goodwill arose. He referred to

the sixth proviso (fifth proviso) of section 32(1), explanation 7 to section 43(1) and explanation 2 to section 43(6)(c). Ld. CIT(A) also noted while accepting the arguments of the assessee that ld. Assessing Officer had not brought on record anything concrete showing that the valuation report for the purpose of purchase price allocation is incorrect. Ld. Assessing Officer did not refer the matter to DVO, in case he was not in agreement with the valuation made by the assessee. Thus, he noted that action of ld. Assessing Officer cannot be sustained on such nonspecific concrete ground.

5.4. Assessee took up the matter before the Tribunal in ITA No.2767/Mum/2024, dated 31.12.2024, contesting the disallowance of depreciation of goodwill. It is important to note that Revenue did not come up in appeal on this issue where ld. CIT(A) had made a positive finding on the valuation aspect in respect of purchase price allocation for the transaction of slump sale which gave rise to the goodwill, while acquiring the switchgear division by the assessee. The Coordinate Bench vide its order, allowed the appeal of the assessee on the jurisdiction issue by holding that the impugned assessment order for Assessment Year 2011-12 was barred by limitation and therefore bad in law. The said assessment order was thus quashed without adjudicating on the merits of the case. Owing to this order of Coordinate Bench, the position of assessee got restored to the total income returned by it, meaning thereby, the claim of depreciation on the goodwill so acquired got allowed.

5.5. Assessee made its claim of depreciation on good will in the year under consideration, i.e., Assessment Year 2012-13 by working out the opening written down value (WDV) for the year. The working of

depreciation so claimed by the assessee on this goodwill in the year Assessment Year 2011-12 and 2012-13 is tabulated below:

Particular	Amount (in Rs.)
Goodwill on account of purchase of Switchgear Division from IAFL in Assessment Year 2011-12	325,21,06,276
Depreciation claimed in AY 2011-12 at rate of 25%	81,30,26,569
Opening WDV in AY 2012-13	243,90,79,707
Depreciation claimed in AY 2012-13 at rate of 25%	60,97,69,927

5.6. In the year under consideration, both ld. Assessing Officer and ld. CIT(A) disallowed the claim of depreciation of the goodwill by making the reference to the treatment given by them in Assessment Year 2011-12. It was noted by them that since depreciation on goodwill was not allowed in Assessment Year 2011-12, there is no opening WDV and therefore depreciation cannot be allowed in Assessment Year 2012-13. No independent finding is given on the allowability of depreciation on goodwill except for stating that the same would be allowed if there is an opening WDV on the asset. Claim of the assessee in this respect is that now when the assessment order for Assessment Year 2011-12 stands quashed by the order of Coordinate Bench, the disallowance for the claim of depreciation so made also stands deleted which would give rise to opening WDV for the block of assets in respect of goodwill. Therefore, on this premise alone, the statement made by ld. CIT(A) while sustaining the addition is effaced. Thus, assessee asserted that once the asset is included in the block of assets and depreciation of such an asset is allowed in the year in which addition is made, depreciation should also be allowed in the subsequent years.

6. It is undisputed fact that the claim of assessee in respect of depreciation on goodwill arising on account of slump sale transaction stands on the strength of decision of the Coordinate Bench held in favour of the assessee on the jurisdictional issue without going to the merits of the claim. The assessment order itself had been quashed as bad in law, being barred by limitation. The transaction of slump sale giving rise to goodwill on account of acquiring switchgear division by the assessee, is not in dispute except for the issue raised by the Id. Assessing Officer regarding the valuation of assets. In respect of this, from the perusal of the impugned assessment order, from para-4.4, we note that Id. Assessing Officer has stated that there are no detailed working or comparable transactions discussed about the fair value adjustments, while referring to the valuation report filed by the assessee. Id. Assessing Officer took note of certain factual position about the fair market value of the assets and the allocation done by the valuer, which is tabulated below:

(In Rs. million)

Particulars	Net Book value	Fair Value Adjustment	Fair Value
Fair value of invested capital	560.8	5439.2	6000
Fair value of tangible assets	548.2	279.8	828
Fair value of intangible assets	12.6	5159.4	5172

6.1. According to him, the fair value adjustment of the large areas of the land, building and plant and machinery amounts to a sum of Rs.27.98 Crores which does not appeal to a reasonable person. He further, noted that Id. Assessing Officer is not bound by the valuation report and he has to determine the veracity of the report for which assessee has not discharged its onus to prove the claim of depreciation.

6.2. Having gone through the observations of the Id. Assessing Officer, they are in the nature of conjectures and surmises without bringing anything cogent on record to disprove the claim of the assessee on its merit. The basis adopted by the authorities below are treating the transaction of slump sale analogous to amalgamation and reading the provisions of the Act with that perspective to dislodge the claim of the assessee. It is noted that Id. Assessing Officer has not questioned the allowability of depreciation on goodwill u/s.32 of the Act. He has only questioned the valuation of the assets under the valuation report furnished by the assessee and purchase price allocation made in accordance therewith. Also, Id. CIT(A) has upheld the disallowance on the basis that it has not been allowed in Assessment Year 2011-12 and therefore, there is no opening WDV to allow the same in the year under consideration.

6.3. Further, Id. CIT(A) has given his findings while dealing with the transfer pricing adjustment on the treatment of depreciation on goodwill as operating expense or otherwise. On page 28-29, Id. CIT(A) while dealing with the issue where Id. TPO has considered the depreciation on goodwill and non-compete fees as operating in nature for computing the profit level indication (PLI) for the transactions of import of raw materials, etc., he noted that payment of goodwill and non-compete fees is related to the business of the assessee which is substantiated by gradual increase in the business of the assessee in the subsequent years and thus, upheld the findings of the Id. TPO of treating the depreciation as operating in nature. However, according to him, since the depreciation on goodwill itself has been disallowed, he held that the same should not form part of expenses while computing the operating margin. Thus, he directed the Id. TPO that in case the depreciation on

goodwill is held as allowable in subsequent appellate proceedings, then in that case, the depreciation on goodwill is to be treated as operative expense while computing the margin. We will deal with this aspect of depreciation on goodwill separately while adjudicating upon the grounds relating to transfer pricing adjustment.

7. For the present issue raised vide ground no.2 along with its sub-grounds, we note that goodwill *per se* is an intangible asset within the meaning of explanation 3 to section 32(1)(ii) and is thus eligible for depreciation. We draw our force from the decision of Hon'ble Supreme Court in the case of SMIFS Securities Ltd. [2012] 348 ITR 302 (SC) wherein it is held that excess consideration paid by it over the value of net assets acquired amounts to goodwill. Further, it was held that goodwill falls within the expression "*any other business or commercial right of a similar nature*" and is therefore an asset under explanation 3 to section 32(1) and thus eligible for depreciation.

7.1. In the present case before us, it is an undisputed fact that assessee had acquired the business on a slump sale basis, wherein consideration was paid in excess of net assets value for acquiring the business concern which was recorded as goodwill. For the sixth proviso to section 32(1) referred by the authorities below, we note that it cannot be extended to negate the claim of depreciation on goodwill in the hands of the assessee as there did not appear any goodwill in the books of Indo Asian Fusegear Ltd., from whom the assessee acquired the switchgear division under the business transfer agreement by way of slump sale on a going concern basis. For this we refer to the decision of Coordinate Bench of ITAT, Mumbai in the case of Thermo Fisher Scientific India (P) Ltd. [2023] 155 taxmann.com 346, wherein it was held as under:

“5.24 On plain reading of the above proviso, it is clear that same is in relation to allocation of the depreciation on the asset between predecessor and successor entities, whereas in the instant case goodwill was not in existence as intangible asset in the case of predecessor companies from whom the assessee has acquired corresponding units under slump sale Therefore, the said provision is also not applicable of the facts of the instant case

5.25 The ratio is in the case of United Breweries Ltd. (supra) is also not applicable over the facts of case as in the said case there was amalgamation of the three wholly owned subsidiaries whereas in the instant case there is a acquisition of units of third parties by way of slump sale.”

7.2. For the reference made by the authorities below to explanation 7 to section 43(1) and explanation 2 to section 43(6)(c), we note that they apply for determining actual cost/written down value in cases relating to amalgamation. They do not apply in the case of slump sale transaction. Explanation 7 to section 43(1) requires that cost of the asset transferred by the amalgamating company to the amalgamated company shall be the same as it would have been in the hands of the amalgamating company. This explanation will not have any application where the asset is not transferred by the amalgamating company and the where the amalgamated entity incurred a cost for acquiring the asset. In the present case before us, assessee has paid consideration for acquiring the assets of the switchgear division which is more than the fair market value of the assets. Similarly, in respect of explanation 2 to section 43(6)(c), it relates to acquisition of a subsidiary company by its holding company or vice versa and for the transaction of amalgamation. It does not deal with transaction of slump sale. Thus, the provisions referred by the authorities below are misplaced for the impugned transaction of slump sale undertaken by the assessee which gave rise to the goodwill on which depreciation is claimed.

7.3. Considering the factual matrix on record and judicial precedents referred above as well as applicable provisions of the Act, we hold that assessee is eligible to claim depreciation on the goodwill which is arising

out of acquiring switchgear division under the business transfer agreement by way of slump sale. Accordingly, ground no.2 raised by the assessee is allowed.

8. We now take up grounds in respect of transfer pricing adjustments made by the ld. TPO and incorporated by the ld. Assessing Officer while passing the final assessment order, details of which are tabulated below:

Nature of international transactions	Amount in INR	Method used for benchmarking
Import of raw material, samples and spare parts	52,72,65,801	TNMM
Import of finished goods	50,86,81,316	TNMM
Export of finished goods	24,46,46,665	TNMM
Import of capital assets	2,21,24,526	CUP
Reimbursement of expenses	1,15,10,288	CUP
Provision of support services	1,86,71,723	TNMM
Payment of interest on CCD	44,00,00,000	CUP

8.1. Assessee has raised as many as 19 grounds in respect of transfer pricing adjustments along with four additional grounds. Out of these several grounds, we first take up the common issue arising in ground no.3(i), (j), (k), (l), (m) and ground no.6 as well as ground no.1, 2 and 3 of the appeal by the Revenue, whereby depreciation on goodwill and amortisation of non-compete fees is under contest for its treatment whether as operating in nature or non-operating, for the purpose of ALP bench marking. We take up this issue first since as we already noted in the above paragraphs on the finding of ld. CIT(A) who directed the ld. TPO to exclude the depreciation on goodwill while computing the operating margins of the assessee as disallowance of depreciation on

good will was upheld. Ld. CIT(A) had specifically directed the ld. TPO that in case depreciation of goodwill is held as allowable in subsequent appellant proceedings then, in that case depreciation on goodwill is to be treated as operating expense while computing the margin. While adjudicating on ground no.2 in the above paragraphs, depreciation on goodwill has been allowed. Accordingly, this direction of ld. CIT(A)

becomes relevant for the purpose of dealing with grounds raised in respect of transfer pricing adjustments. Also, Revenue is in appeal on this issue which are also taken up together.

9. We note that for the purpose of computing operating cost, assessee considered depreciation on goodwill, amortisation of non-compete fees and foreign exchange loss as non-operating in nature to arrive at its PLI at 10.65% (OP/OR). The working of the same is tabulated below:

Particulars	Amt. (INR in Lakhs)
Sales/Operating Income (OR)	102,832
Less: Operating Expenses	91,885
Operating Profit (OP)	10,947
OP/OR (Percentage)	10.65%

9.1. Contrary to this, ld. TPO treated depreciation on goodwill and amortisation of non-compete fees as operating in nature by holding that acquisition of business was carried out in Assessment Year 2011-12 and therefore, goodwill cannot be considered to be extraordinary item in the year under consideration. He also observed that assessee had only excluded the depreciation on account of intangible while computing PLI, though it had acquired both tangible and intangible assets under the business transfer agreement for the purpose of executing the slump sale transaction. He also noted that any adjustment for the purpose of benchmarking is possible only in the

hands of comparable and not the assessee under the Income-tax Rules. For the treatment of foreign exchange loss as operating expenses, ld. TPO noted that this is purely linked with the business of purchase and sale of the assessee. He further noted that foreign exchange loss is applicable to the entire economy and is not specific to the assessee and thus, treated it as operating in nature. Ld. TPO, based on these observations re-computed the operating margin of the assessee in relation to the manufacturing unit to arrive at 1.44% (OP/OR) for which the details are tabulated below:

Particulars	Amt. (INR in Lakhs)
Sales/Operating Income (OR)	102,832
Less: Operating Expenses	91,885
Add: Depreciation on Intangibles	9,447
Add: Foreign Exchange loss	22
Operating Profit (OP)	1,480
OP/OR (Percentage)	1.44%

9.2. Based on the above working, ld. TPO computed the PLI margin of the assessee and the comparables to arrive at an upward adjustment for an amount of Rs.11,10,85,819/-. This adjustment is in respect of import of raw materials, samples, spare parts and finished goods.

9.3. Assessee had applied the following filters for the purpose of carrying out benchmarking exercise:-

- a. Export sales filter
 - i. Comparable companies – export sales less than 50%
 - ii. Comparable segment data – no export sales filter applied
- b. Turnover filter – average sales greater than or equal to Rs.1 Crore
- c. Related party transaction (RPT) filter – 10%
- d. Multiple year margins

9.4. Based on the above filters, assessee arrived at 10 comparable companies with single year margin to arrive at a mean of 7.38%. The details of the same is tabulated below:

Sr. No	Name	Average NPI
1	Circuit Systems (India) Ltd	2.89%
2	Easun Reyrolle Ltd	6.63%
3	Integra India Group co. Ltd (merged)	1.47%
4	Titan Timeproducts Ltd	3.22%
5	Toyama Electric Ltd	4.75%
6	Reed relays & Electronics India Ltd	13.39%
7	Eon Electric Ltd (switchgear)	10.05%
8	Havells India Ltd	27.69%
9	Kaycee Industries Ltd	7.24%
10	Precision Electronics Ltd	-3.56%
	Mean	7.38%

9.5. In the course of transfer pricing assessment proceedings, additional eight comparable were furnished, bringing the total number of comparable to 18. Details of these eight comparable is tabulated below:

Sr. No.	Name	Average NPI
1	Akasaka Electronics Ltd.	3.20%
2	Standard Electrical Ltd.	NA
3	Larsen & Toubro Ltd.	10.16%
4	Centum Electronics Ltd.	6.30%
5	Electro Teknica Switchgears Pvt. Ltd.	-3.90%
6	O/E/N India Ltd.	16.29%
7	Spaceage Switchgears Ltd.	NA
8	S P E L Semiconductor Ltd.	2.90%

9.6. Contrary to the above, ld. TPO applied the filters with certain modifications. There was no change to the export sales filter. For the turnover filter, ld. TPO took average sales greater than or equal to Rs.50 Crores. For the RPT filter, he took 25% as against 10% by the assessee and ld. Assessing Officer took single year margins instead of multiple year margins by the assessee. Based on these modified filters, the final set of comparable companies which were left for the purpose of bench

marking were only three which gave the mean operating margin of 14.83%. Details of the same is tabulated below:

Sr. No.	Name	Average NPI
1.	Easun Reyrolle Ltd	6.63%
2.	Havells India Ltd	27.69%
3.	L & T Ltd (seg)	10.16%
	Mean	14.83%

9.7. Based on this comparability exercise, ALP adjustment was calculated as tabulated below:

ALP of the Import/Purchase transactions	Amount (in INR)
Import Cost from AE (purchase of components & payment for IT & support service) (A)	81,76,71,274
Operating Profit/Revenue Ratio of the Appellant	1.44%
Operating Revenue of the Appellant on AE import	82,96,17,769
Operating Profit/Revenue Ratio of the comparables	14.83%
ALP of the Import cost to AE (B)	70,65,85,454
Difference ALP & Import cost from AE (A-B)	11,10,85,819
(+5%) of Import cost from AE (A*5%)	4,08,83,564

10. On the treatment of depreciation on goodwill and amortisation of non-compete fees, contention of the assessee is that these are extraordinary items arising out of restructuring undertaken by the assessee and is therefore, not related to the business transactions undertaken with AEs. Reference was made to Rule 10D(3) of the Rules to submit that differences which are material enough to affect the pricing or profitability, then reasonable accurate adjustments should be

made to eliminate the effect of such material differences. According to the assessee, these extraordinary items materially affect the benchmarking exercise and therefore, to be treated as non-operating in nature. Reference was also made to safe harbour rules which allow for exclusion of extraordinary items while computing the operating expenses. According to the assessee, the same is also provided in the OECD TP Guidelines, 2010, whereby in clause 2.80, it is stated that *“Non operating items such as interest income and expenses and income taxes should be excluded from the determination of the net profit indicator. Exceptional and extraordinary items of a non-recurring nature should generally also be excluded.”* According to the assessee, this issue is squarely covered by the decision of Coordinate Bench of ITAT of Hyderabad in the case of Delicatessen Engineering Services Pvt. Ltd. in ITA No.535/HYD/2024, dated 26.02.2025. Similarity in the facts of the present case with that of the decision aforesaid can be found from para-28 of the said decision which is reproduced as under:

“28. The next issue that came up for our consideration in Ground No.9 of assessee's appeal is considering Amortization of Good Will amounting to Rs.1,42,69,565/ as part of operating cost. The learned Counsel for the assessee submitted that the appellant had acquired global engineering services division as a going concern from M+W Hightech Projects by way of BTA in financial year 2019-20. This acquisition resulted in a goodwill of Rs.8,56,17,387/- which had been recognized in the final statement and in this year, a sum of Rs.1,42,69,565/ has been amortized and debited to P&L Account. The assessee submitted before the DRP that amortization of goodwill was an extraordinary item and was not pertaining to the regular operation of the assessee and the same has to be considered as non-operating in nature. The DRP without considering the relevant aspect held that the appellant cannot claim depreciation of goodwill arising out of amalgamation even though they challenged before the DRP whether it is operating or non-operating. Since the amortization of goodwill, one time expenditure, the same should be excluded for the purpose of operating cost.”

10.1. Findings of the Coordinate Bench on this issue are dealt in para-30, whereby it is held that ld. TPO erred in including amortisation of goodwill as part of operating cost. It directed the ld. TPO to exclude

amortisation of goodwill from operating cost. The said para is reproduced as under:

“30. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee has treated amortization of goodwill as part of its operating cost in financial statements. In fact, the assessee has not raised any objection before the TPO for exclusion of amortization of goodwill from operating cost. However, the assessee has taken this ground for the first time before the DRP and argued that amortization of goodwill is not operating in nature. We find that the term operating expenditure means, the cost incurred in the previous year by the assessee in relation to the international transaction during the course of its normal operations, but it does not include extra ordinary items or loss on transfer of assets or investment other than assets on which the depreciation is included in the operating expenses. From the definition of operating cost, it is undisputedly clear that the depreciation on any asset is part of operating cost because the assets are used in the course of business of the assessee. Whether goodwill is an asset and the same has been used in the business of the assessee to be eligible for depreciation and part of operating cost has to be seen in relevant facts of the case. In the present case, goodwill is not self-generated one to be considered it as asset employed in the business. Further, the goodwill arises out of acquisition of global engineering design from another company. The excess of liabilities over assets has been treated as goodwill. Since it is one time extra ordinary expenses arise on account of acquisition of global design services division from another company and a difference between the asset and liabilities of the transferor company, in our considered view, said asset being goodwill cannot be included as asset employed in the business of the assessee to be considered as operating in nature. Further, the learned DRP has itself given a finding that goodwill acquired on account of amalgamation or business transfer agreement is not eligible for depreciation. Once the assessee is not eligible for depreciation on goodwill, then the same cannot be considered as operating in nature for the purpose of computing margin. Therefore, we are of the considered view that the TPO is erred in including amortization of goodwill as part of operating cost. Thus, we direct the TPO to exclude amortization of goodwill from operating cost.”

10.2. Further, assessee tabulated the data of comparable companies which do not exhibit goodwill or amortisation expenses in their financials for the purpose of comparability.

Sr. No.	Name of the Company	Technology Know-how	Non-compete fees	Product development	Software	Goodwill	Trademark	Remarks	Page No.
1.	Easun Reyrolle Limited	INR 5.50 crores Amortisation period- As per IT Act (25%)	INR 1 crores Amortisation 20% under SLM	INR 7 19 crores Amortisation period -Basis Lease period	NR 0.11 crores Amortisation period -16. 21% under SLM				2142-2143
2.	Havells India Limited	INR 0.51 crores Amortisation period 6 Years		Product under development Amortisation period- 5 years	NR 9 03 crores Amortisation period 6 Years				2144-2145

3.	Larsen & Toubro Limited	INR 16 2 crores Amortisation period- 6 years for foreign technology and 3 for Indigenous			INR 163 crores Amortisation period - 6 years				2146-2147
4.	SPEL Semiconductor Limited				INR 0 57 crores Amortisation basis SLM				2148-2149
5.	Reed Relays & Electronics India Limited				INR 0.11 Crores Amortisation basis WDV				2150-2151
6.	Akasaka Electronics Limited							No Intangible assets	2152-2154
7.	Circuit Systems India Limited							No amortisation on intangible assets	2155-2156
8.	Electro teknica Switchgears Pvt Ltd							ntangible assets under development	2157-2158
9.	Kaycee Industries Limited							No Intangible assets	2159-2160
10.	Toyoma Electric Limited				INR 0 07 Crores Cost of acquisition less accumulated depreciation				2161-2162
11.	Novateur Electrical and Digital Systems Private Limited		INR 70 crores Amortisation period - 5 years		INR 4.41 crores Amortisation period - 3/5 years	INR 402 crores Amortisation period - 5 years	INR 43 crores Amortisation period - 5 years		2163-2164

10.3. According to the assessee, there are no intangible assets recorded in the books of accounts of comparable companies which form part of the final set of comparable except for Easun Reyrolle Ltd., wherein component of non-compete fees amortised at the rate of 20% is included. Thus, assessee submitted that depreciation on goodwill and amortisation of non-compete fees are extraordinary and non-operating in nature and therefore, to be excluded while computing the operating margin.

11. We have heard both the parties and perused the material on record. We have given our thoughtful consideration on the submissions made. In the present case, as we have already noted goodwill represents the payment made by the assessee while acquiring the business of switchgear division which is in excess of net assets acquired by it. This excess payment is in anticipation of future economic benefits. The goodwill so arisen is claimed as a depreciation year on year basis and not an operating expense in the regular course of business but is the cost of acquisition and an extraordinary item which cannot be considered as operating in nature for computing the margin on cost. It is a one-time extraordinary expense, not an asset actively employed in the business operations. Further, profit level indicator is a function of different items of income and expenditure which are accounted for in the financial statements, both for the tested party and the comparable. From the factual data tabulated above for the comparable, we note that for a like to like comparison between the assessee and the comparable companies, the amortisation of intangibles asset was not considered while computing the operating margin. Calculation of PLI enables comparability with other similar companies on the basis of margin earned. Objective of calculating PLI is to get the best comparability possible. Non inclusion of depreciation on goodwill and non-compete fees in operating expense is nothing but an adjustment to increase the comparability between the two comparable.

11.1 Considering the facts on record and elaborate discussion made above, we find that goodwill accounted for by the assessee is arising out of the acquisition of switchgear division under a slump sale transaction which is not a self generated one. This is a one time extraordinary

expense which cannot be said to be an asset actively employed in the business operations of the assessee. Even though the depreciation on this goodwill has been held to be allowed for the purpose of computation of net profit as reported by the assessee in its profit and loss account, however, for the purpose of benchmarking the transactions with the AEs, the same cannot be considered as an operating cost to compute the PLI for comparability. Accordingly, we hold that depreciation on goodwill and amortisation of non-compete fees is to be excluded by treating it as non-operating cost, being an extraordinary item for the purpose of margin computation and determination of ALP. Accordingly, corresponding grounds raised by the assessee are allowed and those raised by the Revenue are dismissed.

12. Assessee has contested on the turnover filter, whereby certain comparable were rejected vide Ground no.3(q), for which ld. AO took the turnover for comparables with less than 50 crores, as against turnover of Rs.1 crore taken by the assessee. As already noted, assessee had adopted TNMM as the most appropriate method to benchmark international transaction for import of raw materials. By taking the turnover of Rs.1 crore as turnover filter amongst other filters, 10 comparable companies were selected for benchmarking. In the course of proceedings, assessee furnished additional 8 comparables at the instance of learned TPO, bringing the total number of comparables to 18. However, ld TPO applied a lower turnover filter of Rs.50 crores and rejected the total number of comparables to arrive at three comparable companies. While doing so, ld. AO did not take note of any upper limit of turnover for selection/rejection of comparable companies. In the course of proceedings, ld. AO did not take note of any upper limit of turnover for selection of comparable companies.

12.1. Application of filters for selection of comparable companies is for the purpose of ensuring that sufficient number of potential comparable companies are selected for comparison. The objective is to identify comparables that are sufficiently similar to the tested party in terms of functionality, risk, financial parameters, business operations, etc. The filters need to be applied so as to ensure comparability based on facts of each case. Adoption of appropriate filters should lead to widening the pool of potential comparables, so as to reflect economic realities of the tested party. This leads to reliable transfer pricing analysis for the purpose of arriving at arms' length pricing and would be more robust and consistent. There are standard turnover filters which evolved over a period of time, such as 1/10 - 10 times. However, there is no such specific rule to provide any guidance on such filters which can be applied.

12.2. In the present case, assessee has adopted turnover filter of Rs.1 crore against which ld. TPO took it at Rs.50 crores without any upper limit. Based on the approach of assessee, a list of 18 comparables were identified. Based on the approach of ld. TPO, only three comparables remained for the purpose of benchmarking. We find that a more balanced approach needs to be adopted for taking turnover filter, so as to arrive at a wider pool of potential comparables for a more reliable transfer pricing analysis so as to be in accordance with arm's length principle. Accordingly, in the given set of facts, we find it appropriate to remit this specific issue back to the file of ld. TPO/AO for undertaking the exercise once again with a relaxed quantitative filter having lower and upper range of turnover and comparable with the case of the assessee. Accordingly, ground no.3(q) is allowed for statistical purposes.

13. In ground no.3(p), assessee sought inclusion of two comparable companies, namely Titan Time Products Ltd. and AKASAKA Electronics Ltd. For the comparable Titan Time product Ltd., assessee did not press for its inclusion in the course of hearing. Both these comparables were rejected by ld. TPO from the final set of comparables since financial statements for the year under consideration were not available. However, they are now made available and therefore, assessee seeks inclusion of the comparable AKASAKA Electronics Ltd., since the other one fails on its FAR analysis, more particularly on the RPT filter and hence has not pressed for inclusion.

13.1. In respect of AKASAKA Electronics Ltd., according to the assessee, it passes all the prescribed filters and has a margin of 0.55%. The filters for comparability test are as follows:

Filters considered by learned TPO	Whether Akasaka passes the filter
Related party sales less than 25%	Yes
Consistent loss making	No
Annual report available	Yes
Extraordinary event occurred	No

13.2. Considering the above factual position and having perused the financial statements placed in the paper book, we direct to include the said comparable for the purpose of benchmarking. Accordingly, now that the annual report of this comparable company is placed on record, the issue raised in this ground is remitted back to the file of ld. TPO/Assessing Officer for appropriate verification and considerations, in terms of the aforesaid observations. This ground is thus allowed for statistical purposes.

14. Ground No.3(r) and ground No.3(s) are rendered academic in nature and therefore are not adjudicated upon. Also for ground No.3(n), assessee had submitted as not pressed and therefore is dismissed as not pressed. Further, ground No.3(j) is also rendered academic in nature and therefore needs no separate adjudication. Ground nos. 3(a) and 3(b) are general in nature and therefore, need no separate adjudication.

15. In respect of ground No.3(o) which deals with rejection of a loss making company, Reed Relays & Electronics India Ltd. from the set of comparable companies, it was pointed out by the Id. Counsel that no finding has been given by Id. CIT(A) in the impugned order though all the details were furnished and are placed on record. This comparable was rejected on account of it being consistent loss making. Contrary to this observation, it was submitted that this company incurred a loss only for AY 2012-13 but recorded profits during the preceding two years, i.e., AY 2011-12 and 2010-11. In this respect the details were furnished, reproduced as under:

Particulars	AY 2012-13	AY 2011-12	AY 2010-11
Operating Revenue	3,76,71,332	4,84,07,076	4,40,26,254
Operating Cost	7,15,85,458	4,25,94,712	4,25,60,017
Operating Profit	3,39,14,126	58,12,364	14,66,237
OP/OR%	-90.03%	12.01%	3.33%

15.1. Assessee thus, asserted that this company cannot be tainted as a loss making company, as it is not incurring operating losses on a continuous basis. Reliance was placed on the decision of Hon'ble High

Court of Bombay in the case of CIT vs. Goldman Sachs India Securities Pvt. Ltd. in ITA No.2222 of 2013. Assessee contended that merely because an otherwise functionally comparable company has incurred a loss in one of the years, it cannot be a ground to reject it for comparability. Loss making companies are part of market and an entity's ability to make profits and losses is contingent upon market conditions. Assessee thus, prayed for its inclusion in the final list of comparable companies.

15.2. In the given facts and circumstances of the case, we note that ld. CIT(A) has not given any finding to this effect and therefore, we find it appropriate to remit the specific issue back to the file of ld. CIT(A) for its meritorious *denovo* adjudication, by taking into account the submissions made by the assessee. Further, assessee be given reasonable opportunity of being heard to make any further submission, if so required. Accordingly, ground No.3(o) is allowed for statistical purposes.

16. We now take up ground No.3(c) to 3(h) in respect of transaction of export of certain finished goods for which transfer pricing adjustment was made. On this set of transactions, assessee applied TNMM as the most appropriate method. However, ld. TPO selectively applied CUP for benchmarking transactions of certain finished goods. According to the assessee, ALP for only certain finished goods sold to third parties and products sold to AEs are comparable and the selection of CUP by ld. TPO is not correct since application of CUP requires a high degree of product comparability. According to the assessee, while arriving at TNMM as its most appropriate method, it has maintained the prescribed documentation and has undertaken scientific comparability analysis

from the electronic database and has thus discharged its primary onus. While doing so, it has undertaken the Function, Assets and Risks (FAR) analysis, applying filters on a scientific basis and thus arrived at its benchmarking. Further, according to the assessee, suitable adjustments on account of difference in products could not be made and therefore, the CUP method adopted by Id. TPO failed on account of stringent requirement of comparability for such a method, chosen by rejecting the TNMM method taken by the assessee. Assessee had compared the operating margin with comparable Indian companies who are engaged in similar business activities. Ld. TPO accepted TNMM for benchmarking the international transaction of export of finished goods. However, for certain finished goods, he considered CUP method as the most appropriate method and arrived at an adjustment of Rs.18,26,250/-. Thus, he selected two different methods to benchmark the transaction of export of finished goods being cable tray, shutter socket and switches.

16.1. Before us, assessee has demonstrated differences in the products sold by it to the third parties and to the AEs for their non comparability to apply CUP method. Ld. TPO has applied CUP only on the basis of product similarity without appreciating various other differences pointed out by the assessee, which includes cash discount, excise, freight expenses, administration and finance expenses, warehousing expenses, etc. Accordingly, in the given set of facts, the approach of Id. TPO of adopting two different methods for the transaction of export of finished goods is not justifiable. He has not found any defect with the method adopted by assessee for a certain part of the said transaction, i.e., TNMM. Accordingly, we allow ground No.3(c) to (h) so as to accept

the TNMM method arrived at by assessee as its most appropriate method.

17. Ground No.4 seeks inclusion of one comparable SPEL Semiconductor Ltd., which the ld. TPO has rejected from the list of comparable companies. Claim of the assessee is that this comparable company satisfies all the filters applied by the ld. TPO to the other comparable companies. Details of filters considered by the ld. TPO and this comparable company meeting these criteria are tabulated below:

Filters considered by Learned TPO	Whether SPEL passes the filter
Turnover more than 50 crore (refer page 793 of paperbook)	Yes
Related party sales less than 25% (refer page 809 of paperbook)	Yes
Consistent loss making (refer page 1374 of paperbook)	No
Annual report available (Refer page no. 764 to 841 of paperbook)	Yes
Extraordinary event occurred	No

17.1. It is important to note that this comparable formed part of the 18 comparables which were before the ld. TPO. SPEL is engaged in business of offering electronic circuits and mainly operates in integrated circuits assembly which according to assessee is similar to its business and fulfils all the filters applied by ld. TPO. Its margin (OP/sales) in the year under consideration was 2.90%. Considering the submissions made by the assessee on the factual position as stated above and there being no cogent reason given by ld. TPO for not considering this comparable, we find it appropriate to direct the ld. TPO for its inclusion, for which the matter is remitted back to the file of ld. TPO/Assessing

Officer for due consideration. Accordingly, ground No.4 is allowed for statistical purposes.

18. Through ground No.5, assessee is contesting exclusion of the comparable of Havells India Ltd. since it is not comparable due to extraordinary event of amalgamation which took place in its case during the relevant year. Based on the facts stated, Standard Electrical Ltd. got merged with its parent company, i.e., Havells India Ltd., under the scheme of amalgamation for which the appointed date of the scheme was 01.04.2011. Assessee referred to the notes to accounts of the annual report of Havells India Ltd., whereby it reported that on segmental basis, its switchgear divisions has shown a growth of 22% due to amalgamation of Standard Electrical Ltd. with its. It is also reported by it that without the amalgamation, the growth of Havells India Ltd. would have been 9%. Thus, this comparable having undergone extraordinary event of amalgamation and merger during the year cannot be considered as a comparable company. Assessee also highlighted that on its own, it had rejected two comparables of Integra India Group Company Ltd., and Eon Electric Ltd on account of extraordinary event due to amalgamation which ld. TPO did not dispute in the course of assessment proceedings. Also, assessee submitted that this comparable company is engaged extensively into R & D activities as discernible from its financial statements. Thus, it claimed for its exclusion. We have considered the factual position as narrated above. On these set of facts, we find it appropriate to remit this specific issue back to the file of ld. TPO for its examination and verification and allow the claim of the assessee for its exclusion for the purpose of benchmarking. Accordingly, ground No.5 is allowed for statistical purposes.

19. In ground No.7, assessee seeks for correction of margins considered by the ld. TPO for the two comparable companies. According to the assessee, ld. TPO has inadvertently considered incorrect margins for Easun Reyrolle Ltd. and Larsen and Toubro Ltd. Assessee has referred to their relevant annual reports to point out correct operating margins which ought to have been considered by the ld. TPO. Considering the submissions made by the assessee, we find it appropriate to remit this issue back to the file of ld. TPO/Assessing Officer for considering the correct margins based on material placed on record. Accordingly, ground no.7 is allowed.

20. In the result, appeal of the assessee is partly allowed and that by the Revenue is dismissed.

Order is pronounced in the open court on 25 August, 2025

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 25 August, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai