

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1723/Bang/2024
Assessment year: 2020-21

Andante Foods LLP, 9 th Floor, The Residency, No.2, Residency Road, Bangalore – 560 025. PAN: ABMFA 8167F	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Harsha M., CA
Respondent by	:	Dr. Divya K J, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.07.2025
Date of Pronouncement	:	15.09.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Andante Foods LLP (the assessee/appellant) for the assessment year 2020-21 against the appellate order passed by the Assessment Unit u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income-tax Act, 1961 [the Act] [ld. AO] dated 19.7.2024 wherein the total income of the assessee is assessed at Rs.3,55,41,310 pursuant to the draft assessment order passed u/s. 144C(1) of the Act dated

21.9.2023 and TP order u/s. 92CA(3) dated 27.6.2023 and directions of the Dispute Resolution Panel-1, Bengaluru [ld. DRP] dated 6.6.2024.

2. The assessment order contains the upward revision of the arm's length price [ALP] of the international transaction of food processing and trading segment amounting to Rs.17,23,81,163/- and Rs. 4,53,00,367/- on account of interest on overdue receivable.
3. The brief facts of the case show that Andante India is a limited liability partnership firm engaged in the business of processing and selling of fruits & vegetables, food processing and nutraceuticals. The facility of the assessee provides farmers with latest technology and methods guaranteeing them yearly yields. Constant supply of fruits & vegetables to its production line allows it to service to its customers for a variety of packaging. In fact it manufactures pickles and other products. Assessee has one subsidiary in Belgium which acts as sales agent of the company for sale of its products in Europe, America, Canada & South Africa. The Belgium agent enters contract with customers on behalf of assessee, but it cannot enter contract with customers independently without assessee's authorization. Each purchase order obtained from the customers is forwarded to the assessee and assessee will have a right to refuse the contract. If the assessee agrees to manufacture, it will supply the goods, and the Belgium entity is paid a remuneration in the form of sales commission @ 9% on Free on Board value of sales to customers of assessee. It Appears that assessee also sales goods to this entity.

4. The assessee filed its return of income on 13.1.2021 at Rs.Nil. Return was selected for scrutiny by issuing necessary notice u/s. 143(2) on 29.6.2021.
5. Assessee has entered in to international transaction with Adante Belgium , its Associated entity at Belgium of (i) Sale of Processed food pickled vegetables of Rs 117814292/-, (ii) Purchase of packing materials Rs 907688/-, (iii) Sales commission paid Rs. 48800421/-, (iv)Compensation for goods damaged Rs. 9728293/- (v) Rent for machinery paid Rs 1309242/- and some other transactions of purchase of fixed assets and loan. Assessee combined transactions of sale of processed foods , purchase of packing materials., sales commission , compensations and rent for machinery etc. Assessee selected Belgium entity as tested party saying it to be least complex .The assessee adopted TNMM as the most appropriate method using the refinitive fundamentals and worldwide profit company database for comparable companies engaged in distribution of processed food products in Belgium. The assessee selected 13 comparable with median margin of 2.27%, but AE earned a margin of (-) 7.41% from sales commission. Therefore, it was stated that as the operating profit margin of the AE is lower than the operating profit margin earned by the independent companies in Belgium, the international transaction relating to sales commission are deemed to be at arm's length. [para No 10.6 of TPSR]

6. As the assessee has entered into international transaction, reference was made for determining ALP of the same.
7. As per the TP Study Report and the financials, the assessee determined its loss before tax of Rs.2,44,283, whereas the financial profitability of the assessee was computed by the TPO at operating loss of Rs.16,16,63,124.
8. The Id. TPO issued show cause notice against the selection of AE as the tested party. The assessee submitted that operations performed by the AE are less complex, however, same was not substantiated by any documentary evidences. The TPO noted that the transaction carried out by the assessee are also not complex. Assessee has only transaction with its AE which is in Belgium. Assessee is not transacting with the customers in other countries, but is through Belgium entity. The TPO noted that the risk exposure of Indian entity is relatively less and therefore selection of the AE as tested party was rejected, therefore the whole TP Study Report was rejected. The TPO carried out fresh search adopting several filters by putting the keywords of food processing and trading in Prowess Database on 26.5.2023 and reached at a set of 7 comparables whose 3 years 35th percentile margin ranging from 3.39% to 65th percentile margin of 45.3%, having median margin of 6.04%. The TPO computed the PLI of Operating Profit/ Operating Revenue [OP/OR] of the assessee of (-) 91.103%, the ALP was considered at Rs.16,67,32,942 against the cost incurred of Rs.33,91,14,105 resulting into adjustment of Rs.17,23,81,163.

9. It was further found that the assessee has received the consideration from its AE late beyond 120 days as per agreement and therefore the TPO was of the view that the assessee should charge interest as it is a separate international transaction. As the invoices are prepared in euro, he computed the interest at the LIBOR rate of 6.818% and worked out the interest chargeable at Rs.4,53,367.
10. After the above adjustment, draft order was passed against which the assessee filed objections wherein the main objection was incorrect rejection of TP Study Report. The assessee was aggrieved that the taxpayer has identified the AE as tested party claiming their operations are less complex, but still the TPO rejected the same. The Id. DRP held that assessee has failed to substantiate with any documentary evidence that AE is the least complex entity. Further when the foreign entity is taken as a tested party, sufficient information is not available. The DRP further relied on UN Practice Manual on Transfer Pricing that if a taxpayer wishes to select a foreign enterprise as a tested party, it must ensure that the necessary relevant information about the AE and sufficient data on comparable are available. In the instant case, as no data was furnished, the TPO was held to be correct in rejecting the TP Study Report.
11. With respect to the interest on receivable, the objections of the assessee were rejected, holding it to be a separate international transaction requiring separate benchmarking and as the bills are prepared in Euro, Libor rates are correctly taken. The DRP rejected the computation of

the assessee that assessee company is a debt free company. The DRP held that as the outstanding dues beyond a specified period of 120 days is a separate international transaction with an independent entity, the assessee should have charged interest and whether the assessee is a debt free company or not is of no consequence. Accordingly, the order of the TPO was upheld. Final assessment order was passed determining the total income of assessee incorporating the above adjustment.

12. The assessee is aggrieved and is in appeal before us raising the following two grounds: -

1	Incorrect rejection of TP Study by the Transfer Pricing Officer
1.1	The TPO erred on facts and in law in rejecting the Transfer Pricing documentation (TP Study) maintained by the Appellant by incorrectly rejecting the tested party selected in the TP Study. •
1.2	The TPO erred on facts and in law in considering the Appellant as the tested party in the Transfer Pricing (TP) Order despite the fact that the Appellant is a complex entity bearing entrepreneurial risks being holding company of its Associated Enterprise (AE).
1.3	The TPO erred by not recognising the fact that the Appellant owns significant non-routine intangible assets.
1.4	The TPO erred on facts and in law in carrying out a fresh benchmarking analysis with the Appellant as the tested party wherein Appellant is a complex and unique entity owning intangible assets.
2	Interest on delayed trade receivables
2.1	The TPO erred in law and in facts in considering outstanding receivables of the Appellant from its AE as separate international transaction and re-characterising the receivables as loan to the AE
2.2	The learned TPO has grossly erred in facts by charging notional interest on delayed receipt from associated enterprise

13. The Id. AR submitted a paperbook containing 124 pages. The Id. AR referred to the document submitted before the DRP. It was the claim of assessee that assessee manufactures processed pickles at its manufacturing plant, It has a subsidiary in Belgium and operation of the AE are funded by the Indian entity, assessee. The Belgium entity assumes normal risk as all significant business and entrepreneur risk are borne by the Indian entity. The Belgium entity is compensated by appropriate sales commission. The assessee submitted that Belgium agent enters into contract with customers on behalf of assessee and it cannot enter into contract with customers independently without assessee's authorisation. Each purchase order obtained from the customers are forwarded to the assessee and assessee will have a right to refuse the contract. If the assessee agrees to manufacture, it will supply the goods and the Belgium entity is paid a remuneration in the form of sales commission @ 9% on Free on Board value of sales to customer of AE. Based on the above facts, the Belgium entity was considered as tested party. It was further submitted that there is no bar in selection of Foreign AE as a tested party. The Id. AR submitted that based on the above objection, the TP Study Report was rejected and fresh benchmarking analysis was carried out.
14. With respect to the interest on overdue receivable, it was submitted that when the assessee is taken as tested party and TNMM is applied, the Id. TPO should have considered that the interest on overdue receivable is subsumed in the working capital adjustment. It was further stated that

the Id. TPO has not granted working capital adjustment even in his own comparable set.

15. The Id. DR vehemently objected and submitted that the foreign AE cannot be effected as a tested party as the relevant data of the AE as well as comparability is not shown by the assessee. He submitted that though there is no denial that the foreign AE cannot be a tested party, but unless there is relevant data available, same cannot be used for determining the ALP.
16. During the hearing, the Bench asked the Id. AR to show the function, assets & risks of the foreign entity as well as the assessee. Assessee referred to page no 137 of the paper book where in financial information of Belgium entity is mentioned. The assessee could not show us even the audited accounts of the Belgium entity, even when it is a subsidiary of the assessee entity. In view of the above facts, it could not have been possible to determine whether the assessee or the foreign entity is a least complex party.
17. We find that the assessee has shown the international transaction of sales of processed foods of Rs.11,78,14,292 which was stated to be carried out through the Belgium subsidiary to whom commission payment of 9% was made. In the TP Study Report it is stated that the assessee has entered into sales commission agreement wherein the AE is pointed out as the commission agent for promotion and sale of packaged pickle vegetable. The products are consigned to AE in England, Canada, USA, and other jurisdictions. The assessee adopted

TNMM as the most appropriate method using the definitive fundamentals and worldwide profit company database for comparable companies engaged in distribution of processed food products in Belgium. The assessee selected 13 comparable with median margin of 2.27%, but AE earned a margin of (-) 7.41% from sales commission. Therefore, it was stated that as the operating profit margin of the AE is lower than the operating profit margin earned by the independent companies in Belgium, the international transaction relating to sales commission are deemed to be at arm's length. We also failed to appreciate the reason for combining the sales transaction with the commission income transaction as both are governed by separate terms and conditions. We find that assessee is showing that all transaction for sales to and commission payment to Belgium entity is at arm's length whereas the Id. TPO is determining the ALP of sale of processed foods of Rs.11.78 crores. Assessee has shown its search matrix at page no 138 onwards in TPSR where in potential comparable are stated to be 311 resulting into final comparable list of 13 entities. Therefore, if the AE is taken as tested party, the enough comparable data is available as demonstrated in TPSR. But this data would be relevant only when the AE is selected as tested party. The Id. TPO and Id. DRP has rejected the same at threshold without looking into the fact that if the AE is accepted as tested party there is data set available for comparability analysis. But first it needs to be decided whether Foreign AE can be taken as tested party or not. The Id. Lower authorities have rejected the claim of the assessee on theoretical basis without

evaluating the TPSR of Assessee. It is also strange that when the Bench asked the Id. AR to show the financial information of Andante Belgium, the financial information was shown at Annexure-2 of the TP Study Report, which is based on the audited financial statements provide by the assessee, no such audited accounts were found before us. Thus, without showing the financial statement of the Belgium entity how the assessee can reach at the conclusion that Belgium entity is least complex compared to Indian entity. Further on analysis of the financial statements of Belgium entity which is placed at page 163 of the PB of the appeal set, we find that it has a revenue of Rs. 47,04,928 Euros and it has a cost of goods sold of Euros 39,21,834 resulting in an operating loss of 416,904 Euros. Thus, when the foreign entity is entering into purchase and sales of goods, how it is different from the assessee which is merely a manufacturer with respect to the FAR and how AE becomes less complex is not shown.

18. In view of the above facts, we restore the whole issue in ground No.1 of the appeal back to the file of the Id. AO with a direction to the assessee to show from the audited financial statements of Adante Belgium, about function, assets & risks of that entity. The assessee is also directed to produce the function, assets & risks of the assessee and thereby demonstrate what the actual transaction between the AE and the assessee is, and then to benchmark the international transaction of trading of goods and sales commission. It is the duty of the assessee to show that foreign AE is the least complex entity, and sufficient data is available and furnished to the TPO/AO to verify the selection and

application of the Transfer Pricing method. The Id. AO may refer the matter to the Id. TPO to examine the details produced by the assessee and then decide whether the foreign entity can be accepted as a tested party and may result in determination of ALP of the international transaction. Accordingly ground No.1 of the appeal is restored back to the file of the Id. TPO.

19. Ground No.2 is with respect to the interest on delayed receivables which is also dependent on the disposal of ground No.1 and therefore same is also restored back to the file of the TPO to examine that whether the outstanding shown is pertaining to the buyer of the goods or the foreign entity. Accordingly same is also restored to the file of the AO.
20. The Id. AO is directed to refer the matter back to the Id. TPO for determination of the ALP in accordance with law, thereafter he may pass a draft assessment order giving opportunity of hearing to the assessee to file objections before the DRP, if the assessee so wishes.
21. Accordingly, both the grounds of appeal are allowed, and appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 15th day of September, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Bangalore,
Dated, the September 2025.

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.