आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE S/SHRI SANJAY GARG, JUDICIAL MEMBER
AND
MAKARAND V.MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.121/Ahd/2018
Asstt.Year : 2013-2014

M/s.TBEA Shenyang Transformer Group Company Limited TBEA Green Energy Park National Highway No.8 Village : Miyagam Karjan Vadodara PAN : AADCT 4557 F	Vs.	DCIT, International Taxation Vadodara.

(Applicant)		(Responent)

Assessee by :	Ms.Amrin Pathan, AR
Revenue by :	Shri Mahesh Shah, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 29/09/2025**
घोषणा की तारीख /**Date of Pronouncement: 07/10/2025**

आदेश/O R D E R

PER MAKARAND V.MAHADEOKAR, AM:

This appeal by the assessee arises from the assessment order dated 07.11.2017 passed by the Deputy Commissioner of Income Tax, International Taxation, Vadodara [hereinafter referred to as "Assessing Officer or AO"], under section 143(3) read with section 144C(13) of the Income tax Act, 1961 for Assessment Year 2013-14 in accordance with the directions of the Dispute Resolution Panel – 2, Mumbai [hereinafter referred to as "DRP"]

2. Facts of the Case

2.1 The basic particulars as recorded by the Assessing Officer show that the assessee, M/s. TBEA Shenyang Transformer Group Co. Ltd., is a foreign company, non-resident for Indian tax purposes. The Assessing Officer has

recorded that the assessee filed its return of income on 26.09.2013 declaring a total loss of Rs.8,900/-. Notice under section 143(2) dated 10.09.2014 was issued and duly served. According to the Assessing Officer, the assessee did not furnish the accountant's report in Form 3CEB and stated that it had not undertaken any international transaction as defined in section 92B. A show cause letter dated 25.02.2016 was then issued. The assessee filed its written objections on 07.03.2016. The Assessing Officer has noted that the objections were disposed of by a speaking order dated 15.03.2016. Thereafter, notices under section 142(1) were issued from time to time and various details were furnished on different dates.

2.2 The case was referred to the Transfer Pricing Officer [hereinafter referred to as "TPO"] for determination of the arm's length price of the international transactions. The TPO, by order under section 92CA(3) dated 25.10.2016, determined an upward adjustment in the arm's length price. In the narration of facts the amount is stated at Rs.9,09,30,135/-. In the computation portion extracted in the assessment order, the upward adjustment figure appears as Rs.9,09,30,132/-. Based on the TPO's order, a draft assessment order dated 29.12.2016 was passed and served on the assessee on 02.01.2017.

2.3 The assessee filed objections before the Dispute Resolution Panel (DRP) under section 144C(2). As recorded by the Assessing Officer, directions of the DRP under section 144C(5) were received in the office on 04.10.2017, wherein the upward addition made by the TPO was upheld. Consequent thereto, the Assessing Officer finalized the assessment under section 143(3) read with section 144C(13).

2.4 While concluding the assessment, the Assessing Officer has recorded satisfaction that the assessee furnished inaccurate particulars of income. Penalty proceedings under section 271(1)(c) were initiated. The order further notes initiation of penalty proceedings for non-reporting of an international transaction said to pertain to provision of on-shore services by the project office for the Head Office, quantified at Rs.17,23,69,935/-, as discussed in

the TPO's order, and for failure to furnish the accountant's report as required under section 92E. The Assessing Officer has also separately recorded initiation of penalty proceedings under sections 271(1)(c), 271AA and 271BA.

2.5 The computation of income in the assessment order reads as under: (i) income or loss as per return at Rs. (-) 8,900/-, (ii) upward adjustment at Rs.9,09,30,132/-, and (iii) assessed total income at Rs.9,09,21,232/-. Credit for prepaid taxes has been allowed after verification. Interest has been charged in accordance with law, and demand notice and challan have been issued.

2.6 Aggrieved, the assessee has preferred the present appeal before us raising following grounds of appeal:

1. *The order passed by the Learned Deputy Commissioner of Income Tax (International Taxation), Vadodara ("the AO") u/s 143(3) r.w.s. 144C(13) is invalid and void-ab-initio. In the facts and circumstances of the case and in law, the AO has erred in invoking provisions of section 92CA(1) without satisfying the conditions prescribed therein including applicability of Chapter X of the Income-tax Act, 1961 ("the Act"). It is submitted that it be so held now and such order may please be quashed or suitably modified.*

2. *The Learned Deputy Commissioner of Income Tax (Transfer Pricing Officer) - 1, Ahmedabad ("the TPO") has erred in determining profits attributable to Permanent Establishment ("PE") of the Appellant while the TPO's authorization u/s 92CA is restricted to determination of arm's length price of the international transactions referred to him by the AO. The sole authority to determine profits attributable to PE, if any, rests with the AO and the TPO exceeded his jurisdiction in carrying out exercise of attribution of profit to Indian PE. Transfer Pricing adjustment of Rs.9,09,30,135 made by the TPO essentially represents additional profit attributable to Indian PE and therefore, the TPO and consequently the AO have clearly erred in making such adjustment. It be so held now.*

3. *The TPO, the Learned Dispute Resolution Panel ("the DRP") and consequently the AO have erred in facts as well as in law by confirming and making addition of Rs. 9,09,30,135 in contravention of the provisions of Section 92CA in respect of the onshore contracts as well as the offshore contracts.*

4. *Without prejudice to the non-applicability of provisions of Chapter X of the Act, the TPO, the DRP and consequently the AO erred in facts and in law in holding that the PE of Appellant in India has not been adequately remunerated for the work performed by it in respect of on-shore services*

provided to M/s PGCIL and thereby making an adjustment of Rs.9,09,30,135 u/s. 92. It is submitted that in the facts and circumstances of the case, no adjustment in respect of value of on-shore services can be made u/s. 92. It be so held now.

5. *Without prejudice to the non-applicability of provisions of Chapter X of the Act, the TPO, the DRP and consequently the AO erred in facts and in law in holding that a portion of the activities in relation to off-shore supply made from China were carried out in India and therefore a portion of off-shore supply contract value is taxable in India. In the facts and circumstances of the case and in law, no income in respect of off-shore contract is taxable in India as it has not accrued or arisen in India or is not deemed to accrue or arise in India and it is also not attributable to Permanent Establishment of the Appellant in India and accordingly adjustment of Rs. 9,09,30,135 deserves to be deleted. It be so held now.*

6. *Without prejudice to the non-applicability of provisions of Chapter X of the Act, the TPO, the DRP and consequently the AO have erred in facts and in law in holding that Comparable Uncontrolled Price ("CUP") method cannot be applied to the facts of the case. In holding so, the TPO, the DRP and consequently the AO have grossly erred in facts in stating that the use of a contract representing a third party transaction [between PGCIL (which is a navratna Public Sector Undertaking) and the Appellant] would be an unreliable comparable transaction. It is humbly submitted that without prejudice to non-applicability of provisions of Chapter X, CUP should be considered as the most appropriate method considering the arrangement between PGCIL and the Appellant. It be so held now.*

7. *The AO erred in fact and in law in charging interest u/s. 234B & 234C of the Act.*

8. *The AO has erred in facts and in law in initiating penalty proceeding u/s 271(1)(c) of the Act.*

9. *The AO has erred in facts and in law in initiating penalty proceeding u/s 271BA of the Act.*

10. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.*

3. At the very outset, the learned Authorised Representative of the assessee submitted that the issues raised in the present appeal for Assessment Year 2013-14 are squarely covered by the decision of the Co-ordinate Division Bench (DB) in assessee's own case for the immediately preceding Assessment Year 2012-13. It was pointed out that the Hon'ble Special Bench, vide its order dated 11th November 2024, and the subsequent order of the Division Bench dated 22nd July 2025, has already adjudicated the grounds identical to those raised in the present appeal. The

learned AR submitted that the grounds raised for AY 2013-14 are *pari materia* with those adjudicated in AY 2012-13.

4. The learned Departmental Representative fairly agreed that the issues in dispute are identical to those decided by the Special Bench and the Division Bench (DB) in the assessee's own case for AY 2012-13. The DR did not advance any independent arguments to distinguish the present year from the earlier year or to take a contrary position.

5. We have carefully considered the rival submissions and perused the record. The issues raised in the present appeal by the assessee for Assessment Year 2013-14 are materially identical to those adjudicated by the Co-ordinate DB in assessee's own case for Assessment Year 2012-13 in ITA No. 581/Ahd/2017, order dated 22.07.2025, read with the Special Bench order dated 11.11.2024. It is, therefore, imperative to consider each ground in the present year with reference to the binding adjudication rendered in the immediately preceding year.

5.1 Grounds 1, 2 & 3: Validity of Assessment, Jurisdiction of AO/TPO, Invocation of Chapter X

5.1.1 The assessee has challenged the validity of the assessment order passed under section 143(3) read with section 144C(13), contending that the AO erred in invoking section 92CA(1) and that the TPO exceeded his jurisdiction by attributing profits to the Permanent Establishment.

5.1.2 The foundation of the assessee's case is that transactions between its Head Office in China and its Indian Project Office are not "international transactions" within the meaning of section 92B, since these are dealings between the same legal entity, and therefore Chapter X is not attracted.

5.1.3 These very grounds were raised and extensively argued before the Special Bench of this Tribunal in assessee's own case for AY 2012-13. The Special Bench framed the specific question:

"whether or not the transactions between a foreign enterprise outside India and its Indian PE can be considered as international transactions for the purpose of section 92B and subjected to ALP adjustment."

5.1.4 After analysing Article 7 of the DTAA and the scheme of Chapter X, the Special Bench held:

10.4 In the context of a PE in India of a foreign enterprise, Article 7(2) provides that profits, which the PE might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities shall be attributed to India. So, PE has to be treated as a distinct and separate enterprise. So even if profit attribution has to be done as per treaty, PE has to be treated as a distinct and separate enterprise from the HO. Therefore, even under the tax treaty, the PE is a separate enterprise.

10.5 Since, PE is a separate enterprise from the HO for the purpose of transfer pricing provisions, the decisions relied by the learned AR to contend that one cannot generate income by dealing with self are not applicable in given context. The transfer pricing provisions are applicable to transactions between two enterprises and not between two persons. Thus, decisions in the case of Sir Kikabhai Premchand v CIT (1993) 24 1TR 506 SC, Betts Huett & Co Ltd v CIT (1979) 116 ITR 425 (Cal) & Sumitomo Mitsui Banking Corporation (2012) 19 taxmann.com 364 (Mum SB) are not applicable in the context of transfer pricing.

5.1.5 The Special Bench further clarified that even where the HO–PE arrangement yields a loss, it falls within the ambit of transfer pricing provisions:

11.4 Further, the word 'transaction' in the context of transfer pricing has to be understood as per the clause (v) of section 92F, which is wider than the normal understanding of word 'transaction'. Clause (v) of section 92F defines 'transaction' as below:

(v) "transaction" includes an arrangement, understanding or action in concert, -

(A) whether or not such arrangement, understanding or action is formal or in writing; or
(B) whether or not such arrangement, understanding or action to intended to be enforceable by legal proceeding.

11.5 Thus, transaction includes arrangement, understanding or action in concert. The arrangement or understanding between two enterprises may also give rise to income or loss and it may be subject matter of transfer pricing. In the instant case, the arrangement between the HO and the PE is giving rise to loss in the hands of PE and thus such an arrangement is subject matter of

transfer pricing. The PE has undertaken obligation of rendering onshore services to which the HO had agreed. The funds of PE are controlled and managed by HO. If the income or loss in the hands of PE was not due to arrangement with HO, then such a case would not be covered. However, that is not the case here.

5.1.6 Finally, the Special Bench concluded:

21. In light of aforesaid reasoning, we are of the view that the transaction between foreign enterprise and its PE in India can be considered as an international transaction and be subject to ALP adjustment. The matter may be placed before the Division Bench to give effect to the direction of this Order. Hence, we answer the reframed question at para 4 of this Order in affirmative and in favour of the Revenue.

5.1.7 Respectfully following the above, we hold that the reference under section 92CA(1) was valid, the TPO acted within his authority, and the order passed under section 143(3) r.w.s. 144C(13) cannot be held void. **Accordingly, Grounds 1, 2, and 3 are dismissed.**

5.2 Ground 4: Adjustment relating to Onshore Contracts

5.2.1 The assessee has assailed the transfer pricing adjustment of Rs.9,09,30,135/- made in respect of onshore services rendered by its Project Office to Power Grid Corporation of India Ltd. (PGCIL). The assessee's plea is that the Indian Project Office was adequately remunerated for the functions it performed and, therefore, no further attribution of profits was warranted.

5.2.2 The Special Bench, while laying down the legal foundation, held that once the PE is regarded as a distinct enterprise under Article 7(2), transactions between HO and PE in relation to delegation of contracts are international transactions under section 92B. Thus, even if the onshore contract is executed entirely by the PE, the arrangement between HO and PE is amenable to ALP determination.

5.2.3 In AY 2012-13, the Division Bench (DB) examined an identical contention. The Division Bench recorded that the Project Office was delegated execution of the onshore contract entered into by the Head Office with PGCIL, with all terms and consideration determined exclusively between those two parties. The Project Office's role was confined to execution. The TPO had noted that the assessee suffered losses on onshore activities; that both major activities, i.e., transportation and installation/commissioning, were further sub-contracted by the Head Office to Indian contractors; and that the Project Office was not adequately compensated for the activities undertaken. The DB also noted several discrepancies in revenue recognition, lack of one-to-one correspondence between revenue and expenses, unexplained losses, and differences in scope and rates between the Head Office contract with PGCIL and the subcontract agreements with Indian contractors. In rejecting the assessee's plea for adoption of CUP, the DB categorically held as under:

> *42. In the light of the same, when considering the original onshore agreement entered into by the head office with PGCIL, it was found that the assessee was not adequately compensated for the activities carried out, there is no question at all for treating that agreement as a comparable for applying CUP method for determining ALP for the transaction. The onshore agreement surely was not at arm's length since no independent entity would agree to carry out work at losses/without being adequately compensated for it. The argument of the Ld. Counsel for the assessee in this regard is, therefore, rejected.*

5.2.4 The DB ultimately upheld the application of TNMM and the resultant adjustment of Rs. 8.81 crores, dismissing Ground No. 4 of the assessee.

5.2.5 In the year under appeal also, the facts and circumstances remain identical. The Project Office continues to be merely an executing arm of the Head Office; the terms and pricing were settled between the Head Office and PGCIL; and the assessee has failed to demonstrate that it was adequately compensated at arm's length. Respectfully following the order of the DB for AY 2012-13, we see no reason to interfere with the adjustment sustained by the lower authorities for the current year.

Accordingly, Ground No. 4 stands dismissed.

5.3 Ground 5: Offshore Supply Contracts

5.3.1 The assessee has objected to the adjustment made by the TPO in respect of offshore supply of equipment under the contract with PGCIL, contending that such supplies were made outside India, title passed outside India, and therefore no portion of the contract value was taxable in India or subject to transfer pricing adjustment.

5.3.2 In AY 2012-13, the DB analysed this issue in depth. It recorded the assessee's Project Office in India was entrusted with various obligations relating to offshore supplies, including ensuring satisfactory performance of equipment, after-sales support, warranty services, and establishment of a repair and maintenance facility in India. It concluded that these activities gave rise to a taxable nexus in India and justified attribution of income under section 9 of the Act and Article 7 of the India–China DTAA. In this context, the DB recorded the following factual findings of the TPO (para 10.4 of TPO's order):

> *The Offshore supply contract agreement between TBEA China and PGCIL categorically specified that the equipments/materials supplied under the said contract should give satisfactory performance in accordance with the provisions of offshore supply contract when installed and commissioned under the onshore service agreement. Thus, the responsibility was cast upon the Project Office in India for ensuring satisfactory performance of such equipments when installed. In addition, various guarantees in the form of defect liability, functional guarantee and equipment performance guarantee were also required to be extended by the TBEA to PGCIL as per the original bid document. Such guarantee related functions were to be performed by the Project Office in India. The TBEA China was also asked to establish a repair and maintenance facility in India, against which an MoU was signed by M/s TBEA with M/s Vijay Electricals Ltd (VEL), Hyderabad for setting up repair and maintenance facilities. The minutes of post bid discussion dated 03.02.10 provided for training of staff from VEL in China as well as in India. The minutes also provided for manufacturing of all major components like winding etc at TBEA China with minor jobs to be attended at VEL under TBEA supervision to take care of damages that may occur during transportation. The release of payment towards offshore supply contract was also made contingent upon the satisfactory performance of the equipment supplied and establishment of repair and maintenance facility. To that extent, the activities of the PE/Project Office fell in the domain of After Sales support and Provision of Warranty Services for the Goods sold under 'Off-shore supply' agreement.*

Such portion of income from Offshore supply contract which is attributable to 'After Sales support and Provision of Warranty Services' carried out by PE in India thus accrues or arise in India and hence is taxable in India within the meaning of Section 9 of IT Act and Article 7 of the India-China DTAA." (para 62, DB order AY 2012-13)

Consequently, the ground was dismissed and the ALP adjustment sustained.

5.3.3 In the absence of any change in facts or law in the present year, **Ground 5 is decided against the assessee and dismissed.**

5.4 Ground 6: Rejection of CUP Method

5.4.1 The assessee has further challenged the rejection of CUP as the Most Appropriate Method (MAM) for benchmarking the transactions, particularly with respect to both onshore and offshore activities.

5.4.2 This very plea was examined in AY 2012-13. The DB held (para 42 as reproduced hereinabove) that CUP requires strict comparability and that even minor differences can materially affect the price. It observed that the conditions of the PGCIL contract and the controlled transaction were not comparable in material terms. On this basis, CUP was rejected as the most appropriate method and the ground was dismissed.

Following the same reasoning, **Ground 6 of the present appeal is dismissed.**

5.5 Ground 7: Levy of Interest u/s 234B & 234C

5.5.1 The assessee has challenged the levy of interest under sections 234B and 234C.

5.5.2 In AY 2012-13, the DB held that the levy of interest is consequential in nature and does not call for separate adjudication once the substantive additions are sustained. The same reasoning applies mutatis mutandis to the present year.

Accordingly, **Ground 7 is dismissed as consequential.**

5.6 Grounds 8 & 9: Penalty Proceedings (u/s 271(1)(c) and 271BA)

5.6.1 The assessee has challenged the initiation of penalty proceedings under section 271(1)(c) and 271BA.

5.6.2 In AY 2012-13, the DB held that grounds relating to initiation of penalty are premature at the stage of assessment appeal and dismissed them.

Following the same principle, **Grounds 8 and 9 in the present appeal are dismissed.**

6. In view of the foregoing discussion and respectfully following the decision of the Special Bench and the Division Bench, the appeal of the assessee is **dismissed in its entirety.**

Order pronounced in the Court on 7th October, 2025 at Ahmedabad.

Sd/-	Sd/-
(SANJAY GARG)	**(MAKARAND V. MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 07/10/2025

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