

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'H' NEW DELHI)
BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 3006/DEL/2024 (A.Y. 2016-17)**

Assistant Commissioner of Income Tax, Room No. 332, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Tvarur and Fats Pvt. Ltd. Unit No. 101, 102A, First Floor, Plot No. 9, Realtech Copia, Corporate Suits, Jasola District Centre, New Delhi PAN: AAECT7561Q
Appellant		Respondent

C.O. No. 83/Del/2024 (in ITA No. 3006/DEL/2024)

Tvarur and Fats Pvt. Ltd. Unit No. 101, 102A, First Floor, Plot No. 9, RealtechCopia, Corporate Suits, Jasola District Centre, New Delhi PAN: AAECT7561Q	Vs.	Assistant Commissioner of Income Tax, Room No. 332, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi
Appellant		Respondent

Assessee by	Sh. Ashwani Kumar, CA & Sh. Aditya Kumar, CA	
Revenue by	Sh. S. K. Jadhav, CIT(DR)	
Date of Hearing	05/08/2025	
Date of Pronouncement	24/10/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Revenue and cross objection filed by the Assessee against the Commissioner of Income Tax (Appeals), - 44('Ld. CIT(A)' for short)- Delhi dated 29/03/2024 for Assessment Year 2016-17.

2. The grounds of Appeal of the Revenue are as under:-

“1. The Ld. CIT(A) has erred in deleting the addition of Rs.2,18,32,196/- made by the AO on account of TPO adjustment u/s 92CA (3) of the Act.

2. The Ld. CIT(A) has erred on facts by not giving any clear finding as to how the price quoted by the website Sunwin is materially similar to the transactions undertaken by the assessee.

3. The Ld. CIT(A) has erred in accepting the CUP method as the rate quoted in Sunwin, claimed to be the price quoted of KLC, does not fit the stringent comparability criteria as is required in the CUP analysis.

4. The Ld. CIT(A) has erred in upholding the CUP method adopted by the assessee for the justification of the ALP of the transactions entered into by the appellant with its AEs when the comparable transaction has not actually occurred.

5. The Ld. CIT(A) has erred in ignoring Rule 10B(1)(a) of the Income-tax Rules, 1962, which denotes that the CUP has to be a transaction which has actually occurred.

6. The Ld. CIT(A) has erred in upholding the CUP method adopted by the assessee for the justification of the ALP of the transactions entered into by the appellant with its AEs when the report of the private publisher is not reliable as it does not state whether the rate given is of edible grade oil or not and does not specify the terms and conditions of the contracts.

7. The Ld. CIT(A) has erred in accepting in dependent Third party quotation for CUP analysis without anything to demonstrate its contemporaneous nature and sufficient parity with actual transaction?

8. The appellant craves leave to add, alter, amend or withdraw any or all grounds of appeal at any time before and during the course of hearing.”

3. The Grounds of Cross Objection filed by the Assessee are as under:-

“1. Ld. CIT(A) has erred in deleting the addition of Rs.2,18,32,196/- made by the AO on account of TPO adjustment u/s 92CA (3) of the Act.

2. Ld. CIT(A) has erred on facts by not giving any clear finding as to how the price quoted by the website Sunwin is materially similar to the transactions undertaken by the assessee.

3. Ld. CIT(A) has erred in accepting the CUP method as the rate quoted in Sunwin, claimed to be the price quoted of KLC, does not fit the stringent comparability criteria as is required in the CUP analysis.

4. Ld. CIT(A) has erred in upholding the CUP method adopted by the assessee for the justification of the ALP of the transactions entered into by the appellant with its AEs when the comparable transaction has not actually occurred.

5. Ld. CIT(A) has erred in ignoring Rule 10B(1)(a) of the Income-tax Rules, 1962, which denotes that the CUP has to be a transaction which has actually occurred.

6. Ld. CIT(A) has erred in upholding the CUP method adopted by the assessee for the justification of the ALP of the transactions entered into by the appellant with its AEs when the report of the private publisher is not reliable as it does not state whether the rate given is of edible grade oil or not and does not specify the terms and conditions of the contracts.

7. Ld. CIT(A) has erred in accepting in dependent Third party quotation for CUP analysis without anything to demonstrate its contemporaneous nature and sufficient parity with actual transaction?

8 7. Ld. CIT(A) has erred in accepting in dependent Third party quotation for CUP analysis without anything to demonstrate its contemporaneous nature and sufficient parity with actual transaction?”

4. Brief facts of the case are that, the Assessee being an Indian Company engaged in the business of trading in Palm Oil. The Assessee e-filed return of income declaring total loss of Rs. 4,19,91,331/- . The case of the Assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Income Tax Act, 1961 ('Act' for short) was issued on 17.07.2017 from the Office of ACIT, Circle 25(2), Delhi. During the year under consideration, the assessee had imported Palm Oil and RBD Palmolien in aggregate amounting to Rs. 1,18,11,89,731/- from its AE, namely, M/s Inter-Continental Oils and Fats Pte. Ltd, Singapore, within the meaning of the Transfer Pricing Provisions enshrined in the IT Act. The AO, in accordance with the provisions of Section 92CA of the Act, referred the matter to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP). The DCIT, TPO-3(2)(1), New Delhi passed an order u/s 92CA(3) of the IT Act, on 31.10.2019 rejecting the CUP Method used by the Assessee to benchmark the international transaction and concluded at ALP Method, proposing the average GP/Sales of the comparables to be taken at 4.29% (GP/Sales, Median) as against margin of the assessee at 1.67% (GP/Sales). The AO after considering the facts, vide assessment order dated 19/02/2020, applied the Arm's Length Price taken by TPO and enhanced the income of the Assessee by Rs.

2,18,32,196 and recomputed the income of the Assessee company at a total loss of Rs. 2,01,59,135/- (4,19,91,331-2,18,32,196).

5. Aggrieved by the Assessment order dated 19/02/2020, Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 29/03/2024, allowed the Appeal of the Assessee. As against the order of the Ld. CIT(A), the Revenue preferred the present Appeal on the grounds mentioned above.

6. The Department's Representative vehemently submitted that the Ld. CIT(A) committed error in deleting the addition of Rs. 2,18,32,196/- made by the A.O. on account of TPO adjustment u/s 92CA of the Act. The Ld. Department's Representative further submitted that the Ld. CIT(A) erred in upholding the CUP method adopted by the assessee for the justification of the Arm's Length Price of the transactions entered into by the Assessee with its AEs when the report of the private publisher is not reliable as it does not state whether the rate given is of edible grade oil or not and does not specify the terms and conditions of the contracts. The Ld. Department's Representative relying on the order of the A.O., sought for allowing the Appeal of the Revenue.

7. Per contra, the Ld. Assessee's Representative relying on the order of the Ld. CIT(A), sought for dismissal of the Appeal of the Revenue.

8. We have heard both the parties and perused the material available on record. The Ld. CIT(A) while deleting the addition made by the A.O. held as under:-

“9. Ground Nos. 3(a) & (b) challenge the Addition of Rs. 2,18,32,196/- on account of Transfer pricing adjustment u/s 92CA(3) by rejecting the Comparable Uncontrolled Price method, adopted by the appellant, for determining the Arm's Length Price.

9.1 The Appellant vide Ground No. 3(a) & (b), challenged the rejection of "Comparable Uncontrolled Price" ("CUP") method applied by it for determining the Arm's Length Price. The AR has emphasized that as per the provisions of section 92C read with Rule 10B, CUP method is universally recognized as the simplest, direct and most appropriate method to arrive at the Arm's Length Price.

*9.2 In view of the submission of the appellant and the provisions of Rule 10B(1)(a), a Comparable Uncontrolled Price (CUP) method determines the price of a comparable transaction under uncontrolled circumstances, i.e., the price of a similar product or service between two unrelated entities. It has been held in the court rulings that where CUP method can be reasonably applied, it should be preferred over the other methods as this gives a more reasonable and accurate comparison of the prices of two transactions. This has been duly held by the Mumbai Tribunal in the case of *Serdia Pharmaceuticals (India) (P) Ltd v. ACIT* [9 taxmann.com 13 (2011)] Page 31 of 42 and in other rulings of Delhi ITAT in *Clear Plus India (P) Ltd. v. DCIT* [10 taxmann.com 249] and *Hughes Systique India (P.) Ltd vs. ACIT* [36 taxmann.com 41 (2013)].*

9.3 In this regard, on perusal of the order of the TPO passed u/s 92CA(3) it is noticed that the TPO at Page No. 4 to 8 of his order has discussed in detail about the non-applicability and rejection of the CUP method and made reference to Para 2.9 of the OECD Guidelines, however, the TPO did not highlight the discrepancy in the comparison performed by the appellant under the CUP method adopted by it for justification of the ALP.

9.4 It is noticed that the Appellant's selection of the CUP method and determination of the arm's length price is based on the rates prevalent on the Kuala Lumpur Commodity Exchange (KLCE) on or in close proximity to the dates at which transactions have taken place. For the rates prevalent on the KLCE, the appellant used the price quotes obtained by it from a publication agency/ broker named "SUNVIN". And, as demonstrated by the appellant, it, suitably, adjusted the prices for Freight, Insurance etc. by taking FOB value for the transactions. In this regard, it is observed on careful reading of the TPO's order that although he has rejected the CUP method adopted by the appellant but he has not commented as to why he has not accepted the contentions of the appellant. Actually, the TPO is

silent on the reasons as to why the CUP method has not been considered by him as the Most Appropriate Method.

9.5 Before this office, in support of its contention for use of rates listed on KLCE as CUP, the appellant submitted that the provisions of Rule 10D(3) of the Income Tax Rules, 1962 accepts the prices quoted on a stock exchange or commodity market as a justifiable rate for determination of ALP under CUP method. Clause (c) of Rule 10D(3) has specifically considered the price publications as authentic source to support the determination of arm's length price. Rule 10D provides as under:

Rule 10D: Information and documents to be kept and maintained under section 92D:

"(1) Every person who has entered into an international transaction [or a specified domestic transaction] shall keep and maintain the following information and documents, namely:-

(g) a record of uncontrolled transactions taken into account for analysing their comparability with the international transactions [or the specified Page 32 of 42 domestic transactions] entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions [or specified domestic transactions, as the case may be];

(h) a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction [or specified domestic transaction];

(i) a description of the methods considered for determining the arm's length price in relation to each international transaction [or specified domestic transaction] or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case;

(j) a record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction [or the specified domestic transaction] and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;

(k) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;

(l) details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes;

(m) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

(2) Nothing contained in sub-rule (1), in so far as it relates to an international transaction, shall apply in a case where the aggregate value, as recorded in the books of account, of international transactions entered into by the assessee does not exceed one crore rupees:

Provided that the assessee shall be required to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with section 92.

(3) The information specified in [sub-rules (1) and (2A)] shall be supported by authentic documents, which may include the following:

(a) official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;

(b) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

(c) price publications including stock exchange and commodity market quotations;

(d) published accounts and financial statements relating to the business affairs of the associated enterprises;

(e) agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions [or the specified domestic transactions, as the case may be];

(f) letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;

(g) documents normally issued in connection with various transactions under the accounting practices followed.

(4) The information and documents specified under sub-rules (1), (2) and (2A), should, as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (iv) of section 92F:

Provided that where an international transaction or a specified domestic transaction continues to have effect over more than one previous year, fresh documentation need not be maintained separately in respect of each previous year, unless there is any significant change in the nature or terms of the international transaction [or the specified domestic transaction, as the case may be, in the assumptions made, or in any other factor which could influence the transfer price, and in the case of such significant

change, fresh documentation as may be necessary under sub-rules (1), (2) and (2A) shall be maintained bringing out the impact of the change on the pricing of the international transaction or the specified domestic transaction.

9.6 It is noticed by this office that the provisions of Rule 10D as reproduced above Page 34 of 42 have duly specified the information and documents to be kept in support of the transactions undertaken by any entity and it also specifies at clause (g) under subrule (1) that documents and information shall bring out the proper comparability of the price of the transaction with the uncontrolled transaction and it also specifically mentions at Clause (h) to record the analysis performed to evaluate the comparability. And Sub-Rule (3) has accepted at Clause (c) the price publications including prices quoted on stock exchanges as suitable comparable price. Under the circumstances if the specific conditions as prescribed under the Income Tax Rules, 1962 have been complied by the appellant in the compilation of the TP Documentation maintained u/s 92D r.w.r. 10D, then, it is the duty of the TPO/AO to bring out on record, by way of a speaking order, as to why the analysis so performed by the appellant should not be considered as suitable to bring out the comparability of the transaction analysed.

9.7 Further, also, it is noted by this office that the prices on Market Exchange in India like NSE, BSE for shares; MCX, NCDEX, etc. for commodities are the authenticated source for comparing the prices of those items which are listed there on such exchange. And the provisions of Clause (c) of Rule 10D(3) have strengthened this position about the use of exchange quoted price as comparable uncontrolled price for justification of ALP.

9.8 It is also significant to understand that on any exchange the prices are determined on the basis of interplay of market forces prevalent on demand side as well as on supply side, being acting independently, but governed by various economic, sentimental, political, etc. factors and also accounting for the demand supply equation at the relevant point of time.

9.9 The appellant also submitted that such market prices of a particular commodity as on the relevant date is representative of the market price at which two unrelated parties acting in uncontrolled conditions would enter into a transaction.

9.10 As noticed by this office, KLCE is now known as Bursa Malaysia Derivatives ("BMD"). As submitted by the appellant, and on going through the website of this exchange, it is noticed that various products like crude palm kernel oil, tin, rubber, and cocoa are listed and traded on this exchange. Crude Palm Oil is also one of the traded commodity on this exchange. Further, this exchange is considered as of repute and of similar stature as enjoyed by the other similar exchanges of the world like NASDAQ, NYSE, London Stock Exchange, etc. and exchanges of India like NSE, BSE, MCX, etc. Such exchanges being regulated by Government Agencies of respective countries, hence, there is no doubt about the

transactions being undertaken thereon and prices quoted on the exchanges. Similar is the case with Page 35 of 42. KLCE, now known as Bursa Malaysia Derivatives.

9.11 Considering Rule 10D and provisions contained therein, in justifying the ALP of the AE transactions, the prices as quoted on commodity exchanges can be suitably considered for identifying the comparable uncontrolled price and the same have been used by the appellant for justification of the ALP.

9.12 Further, as per the submissions filed by the Appellant, it obtained the prices quoted on KLCE from "SUNVIN OILS" Mumbai, which is a broker/consultant in Oils, oilseeds, oilcakes, de-oiled cakes, etc. and provides information on daily prices based on the commodity exchange prices prevalent on KLCE. The appellant has also submitted a certificate of "SUNVIN OILS" asserting the fact that the price quotes of "SUNVIN OILS" are based on the prices prevalent on KLCE, now known as Bursa Malaysia Derivatives ("BMD").

9.13 In support of its contention to use the price quotes of "SUNVIN OILS", the appellant relied on the decision of the jurisdictional Hon'ble Delhi High Court in the case of CIT vs. Cargill Food India Ltd. [(2017) 88 taxmann.com 470], whereby the appeal of the tax Department against the ruling of the Hon'ble Pune ITAT in the case of Cargill Food India Ltd. vs. DCIT (2015) 57 taxmann.com 330] was dismissed. The appellant has pointed out that vide the judgment of the Hon'ble Pune ITAT, the broker quotes of consultants/ data publishing agencies like SUNVIN have been duly accepted as comparable prices under CUP. Since the judgement of the Pune ITAT has been upheld by the Delhi High Court, therefore, the action of the appellant of using the price published by SUNVIN for CUP analysis as External CUP data gets strength.

9.14 Further, the appellant also referred to the Para 2.18 of the guidelines of 2017 issued by the Organization for Economic Cooperation and Development ("OECD Guidelines 2017), whereby as informed by the appellant and as noted by this office it is specifically stated that for commodities, the quoted prices of the exchanges may be relied as prices in uncontrolled transactions which further provided for the quoted prices to include the prices provided by transparent price reporting or statistical agencies. Also as submitted by the appellant, the OECD, further, under its Base Erosion & Profit Shifting ("BEPS") Action Plan 10 has specified that the reliance on the quoted prices of the commodity exchanges may be duly considered as price in uncontrolled transaction.

9.15 In continuation of the aforementioned submission of the appellant, the appellant further stated that the rejection of CUP method by the TPO in the year under consideration is not consistent with the view adopted by the tax authorities in Page 36 of 42 the preceding years. As per the appellant, the transactions of the appellant had been accepted by the TPO in the preceding years on the basis of the similar CUP data. The appellant, further, pointed out the observations and references of the TPO made in

the Transfer Pricing Order dated 25.10.2019 were irrelevant to the facts of the case. The appellant pointed out that the TPO has misconceived the facts of the appellant and considered the application of the CUP method w.r.t. the IT/ITeS industry and also referred to the transactions related to the IT/ITeS industry. Further, the appellant raised his contention against the observations of the TPO made in context to the IT/ITeS industry and also reference made to a transaction of some tax payer with an entity namely, Texas Inc. which has no relevance to the case of the appellant.

9.16 On perusal of the order of the TPO passed u/s 92CA(3) it is noticed that the TPO at Page No. 4 to 8 of his order has discussed in detail about the nonapplicability and rejection of the CUP method. In his discussion on rejection of CUP method, he discussed in detail about the non-applicability of the comparison of hourly rates under CUP in the IT/ITeS industry, however, the TPO did not point out any infirmity with respect to the adoption of the prices as quoted on the KLCE or the rate quotes of SUNVIN as used by the appellant for the comparability under external CUP. In fact, the TPO is completely silent on these methodology as adopted by the appellant.

9.17 In his discussion on rejection of CUP method adopted by the appellant, the TPO also referred to Para 2.9 of the OECD Guidelines highlighting that relative reliability of the CUP method is affected by the degree of accuracy with which adjustments can be made to achieve comparability. The TPO, also discussed about the requirement for strict comparability under the CUP method. However, he failed to prove that how in the light of the OECD Guidelines, the comparability adopted by the appellant for its purchase transactions under the CUP method by using the broker quotes of SUNVIN is a flawed process or inaccurate.

9.18 The appellant has critically raised his contention to the observation of the TPO regarding the average billing rate in the transaction with related parties. It is clear that these observations of the TPO were made considering that the appellant is rendering offshore software service in the IT/ITeS industry. The TPO also somehow made the observation that the services of the appellant are such for which publicly available information for independent transactions is not available.

9.19 It is without doubt that the appellant is nowhere involved in the business of offshore software service to its AE, however, the facts of the case are that, the appellant has entered into the transaction of purchase of crude palm oil from its AE Page 37 of 42 and is engaged in the business of refining of crude palm oil and its manufacturing into edible form for human consumption. Hence, the TPO has misinterpreted the rules of the CUP methodology in context to the IT/ITeS industry when the appellant is nowhere linked to such software industry. Further, the TPO has rejected the CUP methodology by applying the logic keeping the software industry in mind which is an altogether different industry and where hourly man hour rates cannot be identified publicly or from any stock exchange. Since, the transactions of the appellant are in the nature of purchase of goods and where the goods are such which are listed and also traded on stock/

commodity exchanges, the rejection of a method adopted by the appellant considering the applicability or non-applicability of a method to some other industry can never lead to correct appreciation of the basis of rejection.

9.20 Hence, in my considerate view, in the case of the appellant, the TPO did not provide any specific finding to reject the CUP method and has also failed to appreciate the facts of the appellant and tried to co-relate the man month rate under the CUP method in offshore software service which is not relevant to the appellant who has undertaken the transactions of purchase. This clearly brings out that the TPO failed in appreciation of the facts or has resorted to incorrect or misconceived facts about the appellant.

9.21 In view of the contentions of the appellant and the observations from the order of the TPO, I am of the view that TPO has summarily rejected the CUP method on the basis that the hourly man rates are not publicly available, which is without appreciating the facts of the appellant. The TPO has not discussed the facts of the appellant and has rejected CUP on the basis of the facts of offshore software service in the IT/ITeS industry.

9.22 In support of the contention of the appellant regarding the price quotations of "SUNVIN" used by it to justify its transactions with AEs, the appellant placed on record the details of the transactions, invoices of the AEs, copies of the agreement entered into by the appellant with its AE w.r.t. each transaction, quotations of SUNVIN. This office verified the price quotations as forming part of the comparability data, as provided by the appellant, to this office and found that the prices are comparable. Also, it was submitted that there are rulings of the Hon'ble Courts w.r.t. the price quotes of the stock exchanges or more specifically the commodity exchanges in the case of the goods traded between the AEs, which have been accepted as the comparable uncontrolled price under the CUP method as has been provided under Rule 10D(3)(c) of the Income Tax Rules, 1962.

9.23 This office on going through the ruling of the Hon'ble Pune ITAT in the case of Cargill Foods India Ltd. vs. DCIT [(2015) 57 taxmann.com 330] has found out that the Page 38 of 42 judiciary has affirmed the price quotes obtained from such reputed brokers/ consultants including "SUNVIN OILS" as a valid CUP as the prices are exchange quoted prices. The Hon'ble Pune ITAT in Cargill Food has specifically observed as under:

"20. In so far as the price quotes of MMSPL are concerned, assessee pointed out before the lower authorities that it is a brokerage firm dealing primarily in edible vegetable oils. It was pointed out that MMSPL has a team of expert professional brokers with experience of more than 50 years in the oil industry and its clients include Fortune 500 companies, banks as well as local and internationally listed companies. It was also asserted that the prices provided by MMSPL are used as benchmark to determine commodity prices by major suppliers in the industry. One of the fundamental points raised by the assessee was that the price Notes issued by MMSPL were based on the prices prevalent in the commodity exchanges, including, Chicago Board of Trade (CBOT), which is an internationally recognized and accepted commodity exchange based in

Chicago, USA. At the time of hearing, the learned representative for assessee had also referred to a confirmation letter issued by MMSPL, a copy of which is placed at 358 of the Paper Book. On the basis of this confirmation letter, which is stated to be on the records of the lower authorities, it is contended that MMSPL has confirmed that the prices quoted were derived/based on CBOT and Bursa Malaysia Derivative Exchange (BMD). All the aforesaid assertions of the assessee have not been controverted by the TPO or the DRP in any manner. Therefore, there is no material to doubt the authenticity and reliability of the data sought to be relied upon by the assessee in order to benchmark its transaction of import of oils from associated enterprises. Apart therefrom, in the course of the transfer pricing proceedings, assessee, inter-alia, referred to and produced the price publications of Oil World and sample quotations from Sunvin group to justify its claim that the prices mentioned in the price notes of MMSPL are reliable and was a valid CUP data. Sunvin group is a commodity broker and assessee obtained sample quotes from it during the course of proceedings before the TPO. Another set of evidence produced was the price publications from Oil World, which is an independent agency providing reliable information on market prices. Pertinently, the same publication was a subject matter of challenge before the Hon'ble High Court of Gujarat in the case of AdaniWilmar Ltd. (supra). The reliability and authenticity of the price publication of Oil World was upheld and found to be a relevant material while testing the international transactions of the assessee in the course of application of CUP method. In the face of the aforesaid, we are unable to acquiesce ourselves to Page 39 of 42 the objections of the TPO in rejecting the external CUP data sought to be used by the assessee in order to benchmark its transaction of import of oils from its associated enterprises. We hold so. 23. Although, assessee has also raised other grounds, the same are rendered academic in view of our aforesaid discussion. 24. In the result, the appeal of the assessee is allowed, as above."

9.24 The aforementioned finding of the Hon'ble ITAT has been affirmed by the order of the Hon'ble Delhi High Court in the case of CIT vs. Cargill Food India Ltd. [(2017) 88 taxmann.com 470], where the appeal of the revenue is dismissed by observing that:

"3. As noticed by the ITAT in the impugned order, the ground on which the AO rejected the CUP method adopted by the Assessee was that "the price charged or paid" was on the basis of a broker quote, though based on the prices prevailing in the market, and was not a price charged or paid because it did not reflect the price of an actual transaction.

4. However, as noted by the ITAT, Rule 10D(3)(c) of the Income Tax Rules, 1962 envisages that the TPO should take into consideration price publications including stock exchange and commodity market quotations. Therefore, such published data available from stock or commodity exchanges could form the basis of the prices in both uncontrolled and controlled transactions.

5. *Having heard learned counsel for the parties, the Court is not persuaded to hold that the above reasoning by the ITAT is perverse and suffers from any legal infirmity. No substantial question of law arises for determination.*

6. *The appeal is dismissed."*

9.25 *Further, the Hon'ble Gujarat High Court in the case of CIT vs. AdaniWilmar Ltd. [(2014) 45 taxmann.com 365], has held that without pointing out the defects in the price quotes of the publishing agencies it may not be appropriate to question its authenticity and reject the same. The Hon'ble Court observed as under:*

"7. In terms of clause (c) of sub-section (3) of Rule 10D of the Rules, these price publications as long as the same were authentic and reliable, would be relevant materials. In this background, mere base of the organisation would be of no consequence. Further, though the price quotations of the MPOB would Page 40 of 42 be entitled to its due and full weightage and respect, would not necessarily mean that the other quotations would lose their significance, unless, of course, it is pointed out that such quotations lack basis."

9.26 *In view of the above finding of the Hon'ble Courts and considering position under the rules prescribed, the authenticity of the prices published by "SUNVIN" in case of the appellant is satisfactorily proved.*

9.27 *It was also pointed out by the appellant that OECD Guidelines 2017 have accepted at Para 2.18 and OECD in BEPS Action Plan 10 has suggested that the price quotes of commodity exchanges are acceptable CUP. To support this contention, the appellant relied on the decision of the Hon'ble Delhi ITAT in DCIT vs. Noble Resources & Trading India (P.) Ltd. [(2016) 70 taxmann.com 300], wherein the ruling of Hon'ble Gujarat High Court in the case of AdaniWilmar (supra) was also referred.*

9.28 *In view of the aforementioned findings of the Hon'ble Delhi High Court and Hon'ble ITAT in the case of Cargill Food (supra), Hon'ble Gujarat High Court in the case of AdaniWilmar (supra), Noble Resources (supra), I hereby hold that the broker quotes of publishing agencies/ brokers like "SUNVIN", can be reliably used as comparable under the CUP method for justification of the ALP of the import purchases as has been used by the appellant.*

9.29 *Based on the aforementioned discussion and in view of the Hon'ble Delhi High Court ruling in the case of Cargil Food (supra), Hon'ble Gujarat High Court in AdaniWilmar (supra) and OECD Guidelines it can be safely inferred that the CUP methop adopted by the appellant is a suitable method for the justification of the ALP of the transactions entered into by the appellant with its AEs. Hence, the transactions of the appellant are found to be at ALP under the CUP method and therefore, the action of the TPO rejecting the CUP as adopted by the appellant is devoid of merit. Hence, the TP Adjustment u/s 92CA(3) of the IT Act made by the TPO*

amounting to Rs. 2,18,32,196/- and the consequent addition made on that account by the ACIT, Circle 25(2) is hereby deleted.

9.30 Hence, Ground No. 3(a) and 3(b) raised by the appellant are hereby allowed.”

9. As could be seen from the order of the Ld. CIT(A), the Ld. CIT(A) being the first appellate authority, found that the TPO did not provide any specific finding to reject the CUP method and has also failed to appreciate the facts of the Assessee and tried to co-relate the man month rate under the CUP method in off-shore software service which is not relevant to the Assessee who has undertaken the transactions of purchase. This clearly brings out that the TPO failed in appreciation of the facts or has resorted to incorrect or misconceived facts about the Assessee. The Revenue failed to rebut or to bring contrary material before us to the said findings of facts recorded by the Ld. CIT(A).

10. Further, the Ld. CIT(A) has relied on plethora of judicial precedents in so far as authenticity of prices published by ‘SUNVIN’ and also relied on the OECD guidelines 2017, wherein at para 2.18 the price quotes of commodity exchanges are accepted in CUP method. The Ld. CIT(A) has also relied on the Judgment of the Gujrat High Court and also order of the Tribunal in the case of DCIT Vs. Noble Resources & Trading India (P.) Ltd. [(2016) 70 taxmann.com 300]. In view of the above, we find no reason to interfere with the findings and the conclusion of the Ld. CIT(A)

in deleting the addition made by the A.O. Finding no merits in the Grounds of Appeal of the Revenue, the Grounds of Appeal No. 1 to 8 are dismissed.

11. In the result, Appeal of the Revenue in ITA No. 3006/Del/2024 is dismissed.

12. Since we have dismissed the Revenue's Appeal in ITA No. 3006/Del/2024, Assessee's C.O No. 83/Del/2024 becomes in-fructuous, accordingly Cross Objection filed by the Assessee is dismissed.

Order pronounced in the open court on 24th October, 2025

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Date:- 24 .10.2025
R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

