

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “A” BENCH: HYDERABAD

BEFORE SHRI MANJUNATHA G, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA.No.1315/Hyd./2024
Assessment Year 2021-2022

Vermeiren India Rehab Private Limited, TIRUPATI PIN – 517 646. State of Andhra Pradesh. PAN AADCV9010H	vs.	The DCIT, Circle-1(1), TIRUPATI.
(Appellant)		(Respondent)

For Assessee :	Sri Sandeep Bagmar R, Advocate
For Revenue :	MS. U. Mini Chandran, CIT-DR

Date of Hearing :	02.09.2025
Date of Pronouncement :	19.11.2025

ORDER

PER MANJUNATHA G. :

The above appeal has been filed by the assessee against the Final Assessment Order of the Assessing Officer dated 17.10.2024 passed u/sec.143(3) r.w.s.144C(13) r.w.s.144B of the Income Tax Act, 1961 [in short “the Act”], pursuant to the Directions dated 18.09.2024 of the Disputes Resolution Panel-1, [in short “DRP”], Bengaluru,

passed u/sec.144C(5) of the Income Tax Act, 1961, relating to the assessment year 2021-2022.

2. The grounds raised by the assessee read as under :

“Ground No. 1: General Ground

1.1 *The assessment order passed by the Learned Assessing Officer ("AD") is not in accordance with provisions of Income-tax Act, 1961, contrary to the facts and circumstances of the case and is in violation of principle of natural justice.*

1.2 *In the facts and circumstances of the case, the Ld. Dispute Resolution Panel ("DRP") and Ld. AO/ the Learned Transfer Pricing Officer ("Ld. TPO) have erred in making the transfer pricing adjustment of INR 1,95,55,466 to the international transactions relating to manufacture and sale of Wheelchairs to Associated Enterprises ("AE").*

1.3. *In the facts and circumstances of the case, the Ld. DRP and Ld. AO have erred in disallowance of depreciation of INR 3,57,97,208.*

Ground No. 2: Corporate Tax: Denial of Depreciation

2.1. *In law and facts and circumstances of the case, the Ld. AO/DRP have erred in denying the depreciation claimed by the Assessee on the following grounds:*

2.1.1. *That the Ld. AO/DRP erred in not granting depreciation on building under section 32 of the Act which has been put to use in the subject financial year/assessment year and all other conditions for such grant were satisfied.*

2.1.2. *That the Ld. AO/DRP erred in relying on extraneous material and came to conclusion on conjectures and surmises that the building was not put to use, when the fact remains that the building was put to use by the Appellant/Assessee for its use as a factory and disregarded the extra-ordinary circumstances (due to Covid-19) and the evidence produced by the Appellant supporting the aforementioned claim.*

Ground No.3: Transfer Pricing: Rejection of Transfer Pricing Documentation

3.1 *In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in rejecting the Transfer Pricing documentation maintained by the Appellant, disregarding the economic analysis carried out and in not appreciating the fact that the TP documentation*

maintained by the Appellant cannot be rejected merely on account of difference of opinion.

3.2 In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in conducting a fresh search for identifying comparable companies following an arbitrary approach towards selection/rejection of the companies.

Ground No.4: Transfer Pricing: Erroneous Quantitative filters

4.1. In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in conducting the fresh search process on the following grounds.

4.1.1. Have erred in applying the filter Income from manufacturing activity greater than 75 percent to sales.

4.1.2. Have erred in computation of RPT filter by taking only RPT Income/Total Income or RPT Expenditure/Total Expenditure instead of taking the total value of RPT transactions (RPT income + RPT Expenditure) in the numerator and sales in the denominator.

4.1.3. Have erred in selecting the companies only if the data pertaining to FY 2020-21 is available in the public databases.

4.1.4. Have erred in rejecting companies having different FY ending or whose data does not fall within the 12-month period of 1 April 2020 to 31 March 2021, leading to having a limited set of comparable companies and would have bearing on the comparability analysis.

4.1.5. Have erred in rejecting companies having losses for two out of three years.

4.2. In law and the facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in rejecting the filters applied by the Appellant on the following grounds.

4.2.1. Have erred in not applying the upper limit for the sales turnover filter, considering the underlying factor that the companies having high turnover has the benefit of economies of scale.

4.2.2. Have erred in not applying the forex filter while the business of the Appellant is majorly on account of export.

Ground No.5: Transfer Pricing: Inappropriate PLI Computation

5.1. In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in treatment of certain items in the computation of PLI of the Appellant on the following grounds.

5.1.1 Have erred in considering forex loss as operating in nature.

5.1.2 Have erred in considering discount provided as negative income and did not add the same to the cost base while computing the PLI of the Appellant.

Ground No.6: Transfer Pricing: Erroneous Qualitative Analysis

6.1. In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in selecting the functionally different comparable companies as mentioned below:

6.1.1. Anitha Texcot (India) Private Limited, the company is engaged in the business of manufacture of n-95 masks, head and face protection which is functionally different from manufacture of wheelchairs and rehabilitation equipment.

6.1.2. Biorad Medisys Private Limited, which is engaged in the extensive research and development activity for innovation of new technologies for medical devices.

6.1.3. Dental Cermists India Private Limited which is engaged in the activity of manufacturing of Dentures and medical lab equipment which is functionally different from manufacture of Wheelchairs.

6.1.4. Roots Industries Limited that is into manufacturing of horns for automobiles.

6.1.5. B L Lifesciences Private Limited which is engaged in manufacture of blood bags and component manufacturing for OEM.

6.1.6. Sahajanand Medical Technologies Limited, which is engaged in significant Research and Development activities and engaged in manufacture of heart stent and valves.

6.1.7. Paramount Surgimed Limited, which is engaged in the manufacture of medical disposable products.

6.1.8. Bhat Biotech India Private Limited which is engaged in significant research and development activities.

Ground No.7: Transfer Pricing: Trade Receivables treated as Advance

7.1. In law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in considering receivables outstanding from AE as an international transaction and have erred in not accepting the contention of the Appellant that it does not fall within the purview of capital financing as stated under Section 928 of Income-tax Act, 1961 (the Act').

7.2. *in law and facts and circumstances of the case, the Ld. DRP and Ld. TPO/AO have erred in making a transfer pricing adjustment with respect to certain receivables by the Appellant, not considering the fact that the Assessee has received advance for most of the sales undertaken during the year and have erred in not considering weighted average outstanding receivables for determining period of receivables outstanding.*

7.3. *The Ld. DRP and Ld. TPO/AO have erred in considering receivables outstanding from AE as "debt receivable (loan)" advanced to the AEs for the period of delay, and thereby erred in imputing an interest on the same during the year.*

7.4. *The Ld. DRP and Ld. TPO/AO have erred in computation of interest based on SBI Short Term Deposit Rate and not appreciating Appellant's contention that, since the invoices are raised in foreign currency, LIBOR based rate should be considered for computing interest on receivable.*

8. *The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.*

9. *In law and facts and circumstances of the case, the Appellant in the interest of justice, may be allowed to adduce additional evidence as may be necessary in support of the grounds raised hereinabove after following due procedures laid down in the Income-tax (Appellate Tribunals) Rules, 1963.*

10. *The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal."*

3. Brief facts of the case are that, the assessee company was incorporated on 21.12.2011 under the Indian Companies Act, 1956 and is engaged in manufacturing comprising of assembling of the wheelchairs. The assessee company is wholly owned subsidiary of Vermeiren Group NV. Vermeiren India which had established a unit in Special Economic Zone [in short "SEZ"] at Sri City, Andhra Pradesh

vide SEZ approval dated 19.09.2014 from the Ministry of Commerce & Industry. The assessee company had filed its return of income on 15.03.2022 for the impugned assessment year 2021-2022 declaring returned gross loss of Rs.4,22,627/-. The case of the assessee company was selected for complete scrutiny on account of international transactions in respect of lending or borrowing of money [T.P. Risk Parameter] and notice u/sec.143(2) of the Act was issued and served on the assessee on 28.06.2022 through ITBA Portal as well as registered email. During the course of assessment proceedings, the Assessing Officer has issued various notices u/sec.143(2), 142(1) of Act on 7 occasions in total and a final show cause notice dated 05.12.2023 was also issued calling upon the assessee to comply with the said notice by 12.12.2023. Further, the Assessing Officer referred the matter to Transfer Pricing Officer [in short "TPO"] for determination of Arm's Length Price [in short "ALP"] in respect of international transactions u/sec. 92CA(1) of the Income Tax Act, 1961. The TPO had issued u/sec.92CA of the Act dated 07.11.2022 calling the

assessee for documentation maintained as prescribed u/sec.92D(3) of the Act. In response, the assessee company had submitted the relevant documents as called for by the TPO from time to time. The TPO after considering the submissions of the assessee company, computed the TP adjustment on international transactions of the assessee company at Rs.1,95,55,466/- u/sec.92CA of the Act by making adjustments on account of purchase of raw material and assembling parts and sale of goods amounting to Rs.1,94,89,259/- and also addition on account of interest on trade receivables amounting to Rs.66,207/- vide order dated 22.11.2022 passed u/sec.92CA(3) of the Income Tax Act, 1961. Thereafter, the Assessing Officer passed Draft Assessment Order by determining the total income of the assessee at Rs.5,49,30,047/- by making addition of TP adjustment computed by the TPO amounting to Rs.1,95,55,466/- and disallowance on account of depreciation amounting to Rs.3,57,97,208/- as against the returned income of the assessee at Rs.4,22,627/- vide Order

dated 27.12.2023 passed u/sec.144C(1) of the Income Tax Act, 1961.

4. Aggrieved by the Draft Assessment Order, the assessee company filed its objections before the DRP. The learned DRP after considering the objections of the assessee company, draft assessment order as well as the Order of the TPO upheld the order of the TPO towards TP adjustment computed and also sustained the addition made by the Assessing Officer in the draft assessment order towards depreciation claimed by the assessee on assets. Thus, the learned DRP upheld the Draft Assessment Order passed by the Assessing Officer vide order dated 18.09.2024.

5. In pursuance to the Directions dated 18.09.2024, the Assessing Officer has passed the Final Assessment Order by determining the total income of the assessee company at Rs.5,49,30,047/- vide Order dated 17.10.2024 passed u/sec.143(3) r.w.s.144C(13) r.w.s.144B of the Income Tax Act, 1961.

6. Aggrieved by the Final Assessment Order, the assessee is now, in appeal before the Tribunal.

7. Sri Sandeep Bagmar R, Advocate-Learned Counsel for the Assessee submitted that, the Assessing Officer was erred in not allowing the depreciation on assets on the ground that, the building was completed in F.Y. 2023-24 relevant to the assessment year 2024-25, but not for A.Y. 2021-22 by solely relying on the 'Occupancy Certificate'. Learned Counsel for the Assessee submitted that, depreciation should be allowed since as per the conditions u/sec.32 of the Act, ownership and business use are fully satisfied. The construction of the building was completed on October 1, 2020, and the same was actively used for manufacturing and storage purposes, evidenced by the Engineer's Completion Certificate, the Andhra Pradesh Pollution Control Board's consent, and the Factory Inspector's approval. The Counsel for the Assessee further submitted that, even if an Occupancy Certificate is assumed to be required, judicial precedents confirm that "ready to use" assets are eligible for depreciation under Section 32 of the Act. The Assessee also relies on rulings under Section 54 which support a harmonious construction approach,

stating that, an occupancy certificate delay does not disallow depreciation. The Ld. Assessing Officer's order does not provide any detailed justification against the judicial precedents cited. In support of his submissions, the Learned Counsel for the Assessee relied upon the following decisions :

1. M/s. Liquidators of Pursa Limited vs. CIT [1954] 25 ITR 265 (SC)
2. Multican Builders Ltd. v. CIT [2005] 278 ITR 142 (Calcutta) (HC)
3. Capital Bus Service (P.) Ltd. v. CIT [1980] 123 ITR 404 (Del.) (HC)
4. Estate of Late Dr. S. Zakaulla Masood v. ITO [2020] 186 ITD 326 ((ITAT-Bangalore).
5. CIT v. Chennai Petroleum Corpn. Ltd [2013] 358 ITR 314 (Mad.) (HC)
6. CIT v. Girish L. Ragma [2016] 289 CTR 213 (Bombay) (HC).
8. The Learned Counsel for the Assessee with regard to TPO's rejection on comparability analysis conducted by

the assessee in its TP documentation stating that, the information or data used in computation of the ALP is not reliable or correct and proceeded to conduct a benchmarking analysis in the show cause notice to determine an arm's length margin, submitted that, the rejection of its TP documentation was not in accordance with Section 92C(3)(a)-(d) of the Act, as all conditions for a valid benchmarking study were met. Learned Counsel for the Assessee submitted that, the ALP was computed using prescribed methods under Section 92C(1) and (2) and all required documents were maintained and furnished. Further, the data used [from Prowess] was reliable and publicly available; and detailed reasoning for comparable selection was also provided. The Learned Counsel for the Assessee citing OECD Guidelines [para 3.46] and CBDT Circular No.12/2001 submitted that, the selection process, though subjective, was transparent and verifiable. In support of this contention, the Learned Counsel for the Assessee relied upon the decisions of Philips Software Centre Private Limited [2008] 26 SOT 226; Order of ITAT,

Mumbai in the case of Indo American Jewellery Ltd., vide ITA.No.6194/Mum./2008; Mentor Graphics (Noida) Private Limited 109 ITD 101 and Sony India Private Limited [2007] 288 ITR 52.

8.1. With respect to the wrong application of 75% manufacturing income filter noted by the TPO, the Learned Counsel for the Assessee submitted that, not all companies disclose manufacturing income, making the filter's application unreliable. The Learned Counsel for the Assessee drew the attention of the Bench pointing-out certain errors where, non-"Anitha Texcot (India) Pvt. Ltd." was accepted, despite earning 77.88% revenue from distribution and further, absence of manufacturing income data for two comparables was overlooked.

8.2. The Learned Counsel for the Assessee on incorrect computation of RPT filter by not aggregating income and expenditure by the TPO submitted that, an RPT filter is essential under TNMM to exclude companies, whose profitability is influenced by related-party transactions. The Learned Counsel for the Assessee demonstrated that, the

TPO's approach could allow inclusion of companies with significant RPTs. In support of these submissions, the Learned Counsel for the Assessee relied upon the decisions of ITAT, Bangalore in the cases of (i) Philips Software Pvt. Ltd. vs. ACIT (ITA.No.216/Bang/2008); (ii) M/s.Toyota Kirloskar Motors Private Limited (ITA.No.2016/Bang/2018 for Asst. Year 2013-2014) and (iii) M/s. AMD India Private Limited (ITA No. 775/Bangalore/ for Assessment Year 2018-19.

8.3. Learned Counsel for the Assessee further submitted that, the TPO has restricted the selection only to companies with financial year 2020-2021 data. In this regard, he submitted that, mere non-availability of current year data cannot justify exclusion, if the company engaged in comparable transactions in the prior year. He submitted that, Rule-10B(5)(ii) permits use of preceding year data for comparability. Thus, the TPO was erred in restricting the selection of companies only with financial year 2020-2021. The Learned Counsel for the Assessee also pointed out the observation of the TPO that, the TPO has rejected the

companies with non-March financial year ends and reduced the comparables unfairly. Learned Counsel for the Assessee argued that, the companies with non-March year-ends should not be automatically rejected. As per Rule-10B(4) of the Act, which requires contemporaneous data and not strict financial year end matching and, therefore, data overlapping the financial year, should be considered. Further, he submitted that, the TPO has wrongly rejected the companies with two out of three years of losses. In support of his contentions, Learned Counsel for the Assessee submitted that, persistent loss should mean consistent losses over 3+ years, but, not a single-year loss. In support of his contentions, he relied upon the decisions of (i) KBACE Technologies Pvt. Ltd., vs The Deputy Commissioner of Income Tax, Circle-4(1)(1) ITA.No. 3189/Bang/2018; (ii) Sumitomo Chemical India Private Limited vs The DCIT Range-3(3), ITA.No.3077/Mum/2012 and ITA.No. 7461/Mum/2013 (iii) Nihilent Technologies Private Limited vs., Income Tax Officer-Ward 3(2), ITA.No.2428/Pun/2012; (iv) M/s. Bobst India Private Limited vs Deputy

Commissioner of Income Tax, Circle-1(1), ITA.No. 1380/PN/2010 and (v) M/s. Sabic Innovative Plastics India Private Limited vs DCIT-2(1)(1) in ITA.No.2730/Ahd/2017.

8.4. Learned Counsel for the Assessee drew the attention of the Bench that, the TPO was erred in rejecting the filters applied by the appellant on the ground that, they are not appropriate filter and eliminated the companies with sales smaller than Rs.1 crore by observing that, sales smaller than Rs.1 crore are the correct filters. Learned Counsel for the Assessee argued that, no upper sales turnover limit applied, ignoring economics of scale. He further submitted that, a zero lower limit was chosen to broaden the search and ensure a larger comparable pool for qualitative analysis and hence, it should not be seen as inappropriate. The Learned Counsel for the Assessee further argued that, size impacts profitability-larger companies benefit from economies of scale, while smaller ones face inefficiencies. Therefore, an upper turnover cap ensures meaningful comparability. Learned Counsel for the Assessee drew the attention of the Bench on Reference made to Para

5.33 of ICAJ TP Guidelines emphasizing that, transactions of vastly different-sized enterprises are not comparable. In support of these submissions, the Learned Counsel for the Assessee relied upon the following decisions (i) Deputy Commissioner of Income Tax, Circle-11(1), Bangalore vs., ABB Global Industries & Services (P.) Ltd, Bangalore Tribunal (IT (T.P) A.No.620/BANG/2013 and (ii) Frost & Sullivan (India) Private Limited ITA.No.2073/Mum/2010 dated 24.02.2012.

8.5. With respect to the issue of Forex filter not applied despite major export business, he submitted that, the TPO has observed that, this is not an appropriate filter. Learned Counsel for the Assessee on this issue highlighted that, the assessee earns -95% revenue from exports, and companies catering mainly to the domestic market have materially different functional profiles and business models. Thus, companies with a predominantly domestic focus are not comparable.

8.6. Learned Counsel for the Assessee on the issues of wrong treatment of certain items in PLI computation, forex loss incorrectly treated as operating expense by the TPO submitted that, the learned TPO has considered the forex loss as operating in nature and has rejected the contention of the Assessee that, the negative discount should be included in the cost base by stating that, the similar treatment should be done for comparable companies as well. Learned Counsel for the Assessee argued that, the assessee referred to Safe Harbour Rules and Rule 10TA(j), which exclude forex loss from operating expenses. In support of this contention, the Learned Counsel for the Assessee relied on the decision of Radisys India Ltd [2023] 154 taxmann.com 459 (Bangalore-Trib).

8.7. The Learned Counsel for the Assessee further pointed out on the issue of wrongly treating the discount as negative income without adjusting cost base by the TPO, pointed out that, discounts were disclosed under "Other Income" in the financials, but, were treated as negative income by the TPO. The assessee pleaded that, these

discounts be classified as operating expenses instead, and be included in the cost base while computing the PLI.

8.8. Learned Counsel for the Assessee further submitted that, the TPO was erred in selection of functionally incomparable companies viz., Anitha Texcot (India) Pvt. Ltd., which is engaged in the different line business of i.e., masks and head protection by rejecting the contention of the taxpayer's contention with respect to functionally dissimilarity of the company is not acceptable as from the financial statement of the company it is seen that the principal business activity i.e., 77.88% to total turnover of the company is Wholesale of pharmaceutical and medical good. The Learned Counsel for the Assessee submitted that, the TPO acknowledged Anitha Texcot (India) Pvt. Ltd., which earns 77.88% of revenue from trading, but, not manufacturing. Yet, the learned TPO applied a smaller than 75% manufacturing revenue filter, making the selection and fresh benchmarking is arbitrary and non-transparent. Therefore, the Learned Counsel for the

Assessee pleaded for rejection of not just the company, but, the entire benchmarking study.

8.9. Further, in respect of selection of comparable companies, the learned TPO relied on Biorad Medisys Pvt. Ltd., which R & D activities are intensive, continuously launching new products via innovation and lab collaboration, unlike the assessee which performs no R & D. Learned Counsel for the Assessee, therefore, submitted that, this functional disparity makes Biorad Medisys Pvt. Ltd., unsuitable as a comparable and submitted that, the same may be deleted from the list of comparables. Similarly, the Learned Counsel for the Assessee submitted that, the TPO has taken Dental Cermists India Pvt. Ltd., as a comparable company which is engaged in the business of denture and lab equipment maker, whereas, the assessee company is engaged in manufacturing comprising assembling of wheelchairs, which is entire distinct functions and end-uses too. He, therefore, submitted that, Dental Cermists India Pvt. Ltd., cannot be compared with that of the assessee company and, therefore, submitted that, the said company

be deleted from the list of comparables. Further, the TPO has taken Roots Industries Ltd., which is engaged in automobile horn manufacture is also selected by the TPO as one of the comparable with the assessee company. Learned Counsel for the Assessee submitted that, since the line of business is totally distinct, Roots Industries Ltd., be deleted from the list of comparables. Further, on similar lines, the TPO has selected comparables viz., B L Lifesciences Pvt Ltd., engaged in the business of blood bags and OEM components, Sahajanand Medical Technologies Ltd., engaged in R & D intensive heart devices; Paramount Surgimed Ltd., engaged in manufacturing business of disposable medical products and Bhat Biotech India Pvt. Ltd., engaged in significant R & D Operations. He submitted that, all the above 4 companies are engaged in different and distinct line of business when compared to the manufacturing/assembling of assessee company and, therefore, he submitted that, the TPO was erred in selecting these 4 companies as comparable companies with that of

assessee company. He submitted that, all the above 4 companies also be deleted from the list of comparables.

8.10. The Learned Counsel for the Assessee on the issue of trade receivables submitted that, the TPO has treated the receivables as international transactions [capital financing]. Learned Counsel for the Assessee submitted that, the TPO has incorrectly ignored the weighted average collection period, which showed that, the Assessee realized payments from AEs faster than from non-AEs [Weighted Average : AEs-5 days, non-AEs = 57 at days]. He submitted that, during the year, only 3 out of 236 invoices were realized after due dates, yet the learned TPO cherry-picked these instances to propose an adjustment. He submitted that, the credit terms granted to AEs were shorter than to non-AEs and no interest was charged even for delayed payments from non-AEs. Therefore, the Learned Counsel for the Assessee submitted that, the Assessee was operating at Arm's Length. Learned Counsel for the Assessee further submitted that, outstanding receivables are not an international transaction under Section 92B of the Act and

no separate adjustment is warranted even for delayed payments from non-AEs. Hence, the Assessee was operating at arm's length. Without prejudice to the above contentions, the Learned Counsel for the Assessee submitted that, the outstanding receivables are not an international transaction under Section 92B of the Act, and no separate adjustment is warranted once the primary transaction is tested. Further, continuing debit balances cannot be treated as international transactions and based on the concept of real income, no notional interest should be imputed. He, therefore, submitted that, the observations of the TPO on outstanding trade receivables are devoid of merits and cannot be accepted. In support of these contentions, the counsel relied upon the following decisions :

1. Kusum Healthcare Pvt. Ltd. [TS-412-HC-2017(DEL)-TP);
2. Sunquest Information Systems (India) Pvt. Ltd (IT(TPIA No.552/Bang/2015]
3. Pegasystems Worldwide India Pvt. Ltd. (ITA No. 1758 & 1936/Hyd/2014).

4. Bombay Steam Navigation Co (1953) P Ltd v CIT 56 ITR 52 (SC) Assistant Commissioner of Income Tax vs. Millipore India Limited [IT (TP) A No. 327/Bang/2015]
5. Mastek Ltd. vs. ACIT [ITA No. 3120/Ahd/2010] M/s
6. Avnet India Pvt. Ltd vs Deputy Commissioner of Income-tax (IT(TP)A No.757(Bang.)/2011)
7. GSS Infotech Ltd. Vis ACIT (ITA No 497 (HYD) of 2015)
8. Ingersoll Rand (India) Ltd Vis DCIT (I.T. (TP) A No. 228/Bano/2015)

8.11. Learned Counsel for the Assessee on the issue of wrong application of SBI rate instead of LIBOR for interest computation submitted that, the TPO initially suggested applying the SBI Short Term Deposit Rate and the DRP updated this recommendation to use the SBI PLR (State Bank of India Prime Lending Rate) instead. Further, the DRP reasoned that, the SBI PLR is more appropriate for imputing interest on delayed receivables between Indian taxpayers and their AEs, as it reflects the true opportunity cost of funds in India. The DRP emphasized that, interest rates in India are generally higher than international rates,

such as LIBOR, and using LIBOR would not align with the economic realities of the Indian market. As a result, the DRP directed that, the interest on outstanding receivables be recomputed using SBI PLR. The Learned Counsel for the Assessee submitted that, the authorities below are erred in applying SBI rate instead of LIBOR which is settled law. He, therefore, submitted that, the interest computation shall be made by applying LIBOR instead of SBI PLR. In support of this contention, he relied upon the following decisions.

1. Mastek Lid, vs. ACT ITA.No.3120/Ahd/2010.
2. M/s Avnet India Pvt. Ltd vs Deputy Commissioner of Income-tax (IT(TP)A No.757(Bang)/2011).
3. GSS Infotech Ltd. vs., ACIT (ITA No 497/Hyd./2015)
4. Ingersoll Rand (India) Ltd vs., DCIT (IT.(TP).A No.228/Bang/2015).
5. CIT vs., Bokaro Steel Ltd. 236 ITR 315.
6. Nimbus Communications Ltd. (ITA No. 6579/Mum/09).
9. Ms. U. Mini Chandran, learned CIT-DR for the Revenue, on the other hand, supporting the Final

Assessment Order of the Assessing Officer passed in pursuance to the Directions of the DRP submitted that, the A.O. has rightly disallowed depreciation claimed on the building on the ground that, the building was not completed and ready for use for the assessment year under consideration, on the basis of the Occupancy Certificate submitted by the assessee, where the authorities have stated that, the building was completed on 15.05.2022. She further submitted that, although the assessee claims to have referred an incorrect date of completion of building in the application filed before the authorities for issuance of Occupancy Certificate and claimed that, the actual date of completion of the building was 01.10.2020, but as admitted by the assessee itself, the date of completion of building was 15.05.2022, without supporting any evidences, the arguments of the assessee that by an inadvertent error, the date of completion was wrongly mentioned as 15.05.2022, cannot be accepted. The Ld. CIT-DR further referring to the NOC received from the Fire Service Department dt.05.08.2022, submitted that, the assessee claims to have

paid fee to the Government of Andhra Pradesh for obtaining NOC from the Fire Service Department on 02.02.2021 and the Fire Service Department has issued NOC on 05.05.2022. From the above, it is very clear that, unless NOC is received from the Fire Service Department, it cannot be said that, the building construction was completed and the authorities have issued the Occupancy Certificate. Since the assessee could not file relevant evidences and proved completion of the building for the financial year relevant to the assessment year under consideration, the A.O. has rightly disallowed the depreciation claimed by the assessee. The Ld. CIT(A), after considering the relevant facts, has rightly upheld the additions made by the A.O. Therefore, she submitted that the additions made by the A.O. towards disallowance of depreciation should be upheld.

10. The Ld. CIT-DR, on the issue of Transfer Pricing adjustment, submitted that, the learned counsel for the assessee seeks restoration of the issue to the file of the TPO on the ground that, incorrect computation of margins (PLI) of comparable companies with reference to the TP order

passed by the TPO for the assessment year under consideration and the TP order passed by the Ld. TPO for A.Y. 2020–21. From the tabulation submitted by the assessee, it appears that, there are certain inconsistencies in margins computed by the TPO for both the assessment years. Therefore, she submitted that, in all fairness, the matter may be remanded to the file of the A.O./TPO to reconsider the issue in accordance with law.

11. We have heard both the parties and perused the material available on record and had gone through the orders of the authorities below. The assessee has claimed depreciation on building on the ground that, the construction of building was completed on 01.10.2020 and it was ready for use for the Financial Year relevant to the assessment year under consideration and also the assessee has installed necessary plant and machinery on which the A.O. has allowed depreciation. The A.O. disallowed depreciation on building on the ground that, as per the Occupancy Certificate submitted by the assessee dated 12.08.2022, the authorities specified the date of completion

of construction of building was 01.08.2023 which falls under the assessment year 2024-25 and thus, the assessee cannot claim depreciation for the assessment year under consideration. The A.O. had discussed the issue at length in light of Occupancy Certificate dated 12.08.2023 issued by the Municipal Authorities, application filed by the assessee before the authorities for issuance of Occupancy Certificate dated 01.08.2023 and also NOC received from Fire Service Department, Government of Andhra Pradesh and observed that, the evidence filed by the assessee itself proved that, the building was completed in F.Y. 2023-24 relevant to the assessment year 2024-25, but not for A.Y. 2021-22. It was the argument of the learned counsel for the assessee that, although there was an inadvertent mistake in date of completion of building as per the application filed by the assessee before the authorities for issuance of Occupancy Certificate, but in fact, the building construction was completed on 01.10.2020 itself, which is supported by the letter of completion issued by the Engineering Consultants who overseen the construction of the building. The learned

counsel for the assessee also took us to the other evidences like installation of Plant and Machinery in the new building, increase in consumption of power when compared to earlier period and current period to support his argument that, the building was completed for the Financial Year under consideration and the assessee has to put to use the said building for its business which is eligible for claiming depreciation under Section 32 of the Income Tax Act, 1961.

12. We have given our thoughtful consideration to the relevant reasons given by the A.O. to disallow depreciation on building in light of various arguments of the learned counsel for the assessee and we find that, as per the application filed by the assessee before the authorities for issuance of Occupancy Certificate, the assessee itself has claimed that, the building construction was completed on 28.03.2022. On the basis of the said application, the competent authority Commissioner/Executive Officer, Andhra Pradesh Industrial Infrastructure Corporation has issued an Occupancy Certificate dated 12.08.2023. The assessee claims that, the date mentioned in the application

filed before the authorities for issuance of Occupancy Certificate with reference to completion of construction of building was by an inadvertent error, but in fact, the actual consideration was completed on 01.10.2020 for which the assessee refers to letter of completion issued by Suresh and Associates, Architects, Planners and Engineering Consultancy where they claimed that, the building construction was completed and has been handed over to the assessee officially on 01.10.2020. The assessee also took support from the license issued by the Inspector of Factories, Chittoor, for commencement of production in respect of the observations dt.01.10.2020 and claimed that, the assessee has obtained license from the Inspector of Factories, in respect of new facilities for commencement of production. The assessee has also referred to payment to Government of Andhra Pradesh for obtaining NOC from Fire Service Department dated 02.02.2021 and claimed that, unless the building construction was completed the assessee cannot apply for obtaining NOC from the Fire Service Department and from the above, it is very clear that,

the building construction was completed in the F.Y. 2020-21 relevant to assessment year 2021-22. The assessee has also furnished relevant electricity bills for the financial year under consideration and earlier financial years and claimed that, the electricity consumption has been substantially increased which goes to prove that, the assessee has added new facilities for manufacturing of goods which is nothing but the installation of plant and machinery in the new building which has been completed on 01.10.2020.

13. Admittedly, if we go by Occupancy Certificate issued by the authorities which is the official document for completion of construction of any building it refers to the date of completion of building to 28.03.2022. However, fact remains that the other evidence filed by the assessee including the certificate issued by Engineering Consultants, who oversaw the construction of the building and other supporting evidence like payment of fee to Government of Andhra Pradesh for obtaining NOC and the increasing electricity consumption goes to prove that, there is commenced manufacturing capacity for the year under

consideration when compared to earlier financial year. Further, unless the assessee completes construction of building and installed necessary equipment for fire fighting system but cannot file an application before the fire service department for issuance of NOC. In fact, once the building is completed in all respects, including installation of necessary equipment for fire fighting system, then the assessee can file an application before the Fire Service Department for obtaining NOC. The Department after filing the application by the assessee inspects the building and issue NOC if it satisfies the requirement of Fire Service Department. In the present case, the assessee has paid fee for Fire Service Department on 20.02.2021 and the Fire Service Department has issued NOC on 05.05.2022. From the above, it is very clear that, the building was completed in F.Y. 2020-21 itself. The one more aspect needs to be considered in light of the arguments of the assessee along with relevant evidence, including, electricity bills for the current Financial Year where the assessee has proved substantial increase in electricity consumption for the year

under consideration when compared earlier financial year and claimed that, due to installation of new plant and machinery in the new building the electricity consumption has increased. Although, the arguments of the learned counsel for the assessee is accepted in principle, but it is not clear whether the new plant and machinery has been installed in the new building or in the existing building. There is no facts or findings from the A.O. on this aspect and also from the assessee. Insofar as the arguments of the assessee with regard to allowing of depreciation on building by the AO on the ground that, the AO has allowed depreciation on new plant and machinery installed in the new premises, but mere allowance of depreciation on new plant and machinery cannot prove the completion of building in the financial year because there is no evidence with the assessee to prove that the said plant and machinery has been installed in the new building itself. In case the assessee has purchased and installed new plant and machinery in the existing building, the AO can very well allow the depreciation. Since there are no clear facts with

regard to the installation of plant and machinery in the new building. The argument taken by the assessee on this ground cannot be accepted. Since there is a contradictory fact in respect of completion of construction of building, including on the basis of evidence submitted by the assessee itself, the matter needs to be re-looked at the end of the A.O. to ascertain the correct date of completion of building. Thus, we set aside the order of the Ld. DRP on this issue and restore the issue back to the file of the AO for reconsideration of the issue afresh after considering relevant evidence submitted by the assessee to justify its case. The AO is directed to consider the issue in light of various evidences filed by the assessee including the certificate issued by the Engineering Consultants, payment of fee to Fire Service Department for obtaining NOC, which categorically proves the completion of construction in the Financial Year 2020-21 itself and decide the issue in accordance with the law.

14. Coming back to the TP adjustment made by the TPO towards purchase of raw materials, assembling parts and

sale of goods amounting to Rs.1,94,89,259/- and also an addition on account of interest on trade receivables amounting to Rs.62,07,000/-. Although the learned counsel for the assessee has raised various grounds on the issue of wrongful rejection of TP documentation and economic analysis without proper basis, arbitrary fresh search for comparables with flawed selection/rejection of approach, errors in fresh search process, application of incorrect filters, and also errors in computation of PLI, but restricted its arguments only on the issue of inconsistencies in the margins computed by the TPO himself in the order passed under section 92CA(3) of the Act, for the assessment years 2021-22 and 2022-23 in respect of comparables selected by the TPO and claimed that, there are inconsistencies in the margins computed by the A.O. which need re-examination by the A.O. and thus, the matter may be remanded to the file of the A.O. for re-examination.

15. The Ld. CIT-DR for the Revenue fairly agreed that, as per the tabulation submitted by the Counsel for the assessee, it appears certain inconsistencies in the margins

computed by the Ld. TPO in respect of the very same comparables for A.Y. 2021-22 and 2022-23, which need to be re-looked from the end of the TPO. Therefore, as claimed by the Ld. CIT-DR, the matter may be remanded to the file of the TPO.

16. We find that, from the Charts submitted by the learned counsel for the assessee, there are certain inconsistencies in respect of margins computed by the TPO in the order passed under Section 92CA of the Act, for A.Ys. 2021-22 and for A.Y. 2022-23 in respect of 11 comparables for A.Ys. 2020-21 and 2021-22, which is clearly evident from the differences identified by the learned counsel for the assessee. From the above, it is clear that the TPO has erroneously computed the margins of comparables for two assessment years by considering different parameters, which need to be verified by the TPO in light of evidences that may be filed by the assessee. Since there are clear mistakes in computation of margins of comparables for both the assessment years, even though some comparables are same for both the assessment years, in our considered view,

the issue needs to be set aside to the file of AO/TPO in total to relook the issue of TP adjustment in respect of purchase of raw materials, assembling parts and sale of goods, etc. Since, we are remanding the issue 'de novo' with a direction to reconsider the TP analysis afresh, in our considered view, the other issue raised by the assessee in respect of interest on trade receivables also needs to be set aside to the file of A.O./TPO. Thus, we set aside the final assessment order passed by the A.O. on this issue and remanded the issue of TP adjustment of purchase of raw materials, assembling parts and sale of goods, and interest on trade receivables to the file of TPO/AO for reconsideration. The AO/TPO is directed to reconsider the issue of TP analysis in light of TP documentation submitted by the assessee and also any other evidences that may be filed by the assessee to substantiate its case.

17. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19.11.2025.

Sd/-
[RAVISH SOOD]
JUDICIAL MEMBER

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 19th November, 2025

TYNM, Sr.PS

Copy to

1.	Vermeiren India Rehab Private Limited, #400, Red Sanders Boulevard, Sri City, Mallavaraipalem, TIRUPATI PIN – 517 646. State of Andhra Pradesh.
2.	The DCIT, Circle-1(1), TIRUPATI.
3.	The Disputes Resolution Panel-1, 4 th Floor, Kendriya Sadan, C-Wing, BENGALURU – 560 034. Karnataka.
4.	The Assistant Commissioner of Income Tax, Transfer Pricing Officer-3, Hyderabad.
5.	Pr. CIT, Tirupati.
6.	The DR ITAT “A” Bench, Hyderabad.
7.	Guard File.

//By Order//