

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.3876/Del/2024
(ASSESSMENT YEAR 2020-21)

Idemitsu Lube India Private Limited, Plot No. 31, Additional Patalganga, M.I.D.C. Industrial Area, Taluka Parnel, Khalapur, Raigad, Maharashtra- 410220 PAN-AABCI5684A	Vs.	DCIT Circle 10(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Katan K. Ved, CA
Respondent by	Sh. S.K. Jadhav, CIT-DR

Date of Hearing	13.11.2025
Date of Pronouncement	09.01.2026

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the Final Assessment Order passed u/s 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (the Act in short) dated 25.06.2024 for Assessment Year 2020-21.

2. The grounds of Appeal are as under:-

“On the facts and circumstances of the case and in law, the Appellant craves to prefer an appeal against an order dated 25 June 2024 (received on 26 June 2024) passed by the Assessment Unit, Income Tax Department (hereinafter referred to as 'Ld. AO') under section 143(3) r.w.s 144C(13) and 144B of the Income-tax Act, 1961 ('the Act') in pursuance to the directions dated 27 May 2024 issued by the Hon'ble Dispute Resolution Panel ('DRP') u/s 144C(5) of the Act, on the grounds set out herein:

1. Ground No.1 - Transfer Pricing ('TP') adjustment amounting to INR 4,53, 19,689 in respect of the international transaction pertaining to purchase of raw material.

1.1 That on the facts and circumstances of the case and in law, the Ld. AO/TPO/DRP have erred in making a TP adjustment of INR 4,53, 19,689 to the international transactions pertaining to purchase of raw material by the Appellant from its AEs.

1.2 That on the facts and circumstances of the case and in law, the Ld. TPO has erred in computing the margins of the comparable companies incorrectly without any basis whatsoever or considering the updated margins provided by the Appellant (available on record) based on specific request of Ld. TPO himself.

1.3 That on the facts and circumstances of the case and in law, the Ld. TPO has erred in not disposing off the rectification application filed by the Appellant under section 154 requesting for adoption of updated margins.

Without prejudice to the above,

1.4 That on the facts and circumstances of the case and in law, the Ld. TPO has erred in making and the Ld. AO/ DRP have erred in upholding the TP adjustment of INR 4,53, 19,689 in respect of the international transaction pertaining to 'purchase of raw material' alleging that the same is not at arm's length.

1.5 That on the facts and circumstances of the case and in law, the Ld. TPO erred in disregarding the economic analysis conducted by the Appellant to determine the arm's length price

in relation to international transaction relating to 'purchase of raw material', thereby making an adjustment of INR 4,53,19,689.

1.6 That on the facts and circumstances of the case and in law, while making the aforesaid TP adjustment, the Ld. TPO erred in adopting the following approach:

1.6.1 Considering 'loss on foreign exchange translation' w.r.t External Commercial Borrowing ('ECB') to the extent of INR 6,79,51,132 (being a capital loss) as operating in nature for the purpose of calculation of operating profit margin relating to 'manufacturing segment'.

1.6.2 Erroneously rejecting the following functionally comparable companies selected by the Appellant in its TP Study: 'Gandhar Oil Refinery India Ltd.', 'GPPetroleums Ltd.' and 'Tashkent Oil Company Pvt. Ltd.'.

1.6.3 Arbitrarily selecting two companies namely, 'Pratap Tex-Chem Pvt. Ltd.' and 'Quaker Chemical India Pvt. Ltd.' as comparables for determination of arm's length price.

1.6.4 Disregarding the below updated margins of comparable companies (calculated from Annual Reports) submitted by the Appellant, for determination of arm's length price.

Sr. No.	Name of the Company	Weighted average OP/OI
1	Advance Petrochemicals Ltd.	4.71%
2	Anand Engineers Pvt Ltd.	5.06%
3	Continental Petroleums Ltd.	4.99%
4	4 G P Petroleums Ltd.	4.99%
5	Gandhar Oil Refinery India Ltd	2.81%
6	Gulf Oil Lubricants India Ltd.	15.34%
7	Nandan Petrochem Ltd.	5.45%
8	Panama Petrochem Ltd	6.31%
9	Tashkent Oil Company Pvt Ltd	6.03%
10	Universal Petrochemicals Ltd -	-2.49%
11	Valvoline Cummins Ltd.	-16.33%
12	Apar Industries Ltd.	5.96%
13	Savita Oil Technologies Ltd.	6.28%
14	Waxpol Industries Ltd.	7.64%
	35 th percentile	4.99%
	65 th percentile	6.28%
	median	5.71%

Other grounds: 2.

Ground No. 2: That on the facts and circumstances of the case and in law, the Ld. AO has erred in not granting appropriate credit under section 115JAA. 3.

Ground No. 3: That on the facts and circumstances of the case and in law, the Ld. AO has erred in levying arbitrary interest in the Computation Sheet at SI. No. 42 'TOTAL INTEREST AND FEE PAYABLE 42=(37+38+39+40+41)' without any basis, disregarding the advance tax paid of INR 11,30,00,000 (being already in excess of tax liability of the Appellant).

4. Ground No. 4: That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 270A of the Act. Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

3. Brief facts of the case are that, the Assessee filed return of income declaring total income of Rs. 47,40,50,620/-. The case of the Assessee was selected for 'Complete Scrutiny' under CASS. Since the Assessee had entered international transactions and specified domestic transactions with Associates Enterprises, the case was referred to Transfer Pricing Officer for computation of Arm's Length Price in relation to International Transactions with Associated Enterprises. The Ld. TPO passed order u/s 92CA(3) of the Act on 30/07/2023 proposing to make an adjustment on account of 'manufacturing segment' of Rs. 6,51,04,770/- and proposed as

TP Adjustment on international transactions for the year under consideration, wherein the Ld. TPO rejected three comparable Companies selected by the Assessee and considered four additional comparable companies for the purpose of Benchmarking the International Transaction and worked out the Assessee's margin at 5.67%.

4. The Assessee filed objections before the Dispute Resolution Panel ('DRP') and the DRP vide direction dated 27/05/2024, directed the TPO to apply margins as per law and also directed to excluding two Companies i.e. Reliance Industries Ltd. and Castrol India Ltd. from the final set of comparables. The order giving effect to the DRP direction dated 18/06/2024 came to be passed wherein TPO determined the Arm's Length Range of weighted average OP/OC of final comparable set from 6.10% (35th percentile) to 8.41% (65th percentile) with a median of 7.28%. The final assessment order came to be passed on 25/06/2024 u/s 143(3) r.w. Section 144C(13)r.w. 144B of the Act by making adjustment of Rs.

4,53,19,689/- to the international transaction of purchase of raw material from AEs. An application for rectification filed by the Assessee on the ground that margins were not tying up with the financial statements of the comparable companies and the detailed workings vis-a-vis the same was not provided. An Order of the rectification also came to be passed by the TPO on 06/12/2024 by determining the Arm's Length Range of weighted average OP/OI of the comparable independent companies from 5.76% to 8.39% with the median of the data set being 7.28%. Challenging the Final Assessment order, the Assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee addressing on Ground No. 1.2, submitted that the TPO has committed error computing the margins of comparable companies without providing any basis. The Assessee has produced a Chart summarizing the margin of comparable companies as per the

TP order, OGE to DRP directions, rectified order and also margin as per the Assessee which is reproduced as under:-

Sr. No.	Name of comparables	Margins as per TP Order dated 30 July 2023	Margins as per Order dated 18 June 2024 giving effect to DRP Directions	Margins as per rectification application filed by the Appellant	Margins as per rectified Order dated 06 December 2024
	Reference in the appeal set / paper book	Page Nos. 191 & 192 of the appeal set	Page Nos. 202 & 203 of the appeal set	Page Nos. 577 and 593 to 605 of the paper book	Page No. 04 and 05 of the rectified Order
1.	Universal Petrochemical Ltd.	-3.15%	-2.53%	-2.49%	-2.53%
2.	Advance Petrochemicals Ltd.	4.72%	4.56%	4.71%	4.56%
3.	Continental Petroleum Ltd.	4.64%	4.86%	4.99%	4.88%
4.	Nandan Petrochem Ltd.	5.56%	6.10%	5.45%	5.71%
5.	Apar Industries Ltd.	6.81%	5.76%	5.96%	5.76%
6.	Panama Petrochem Ltd.	7.63%	6.88%	6.31%	6.88%
7.	The Waxpol Industries Ltd.	8.69%	7.28%	7.64%	7.28%
8.	Anand Engineers Pvt. Ltd.	4.87%	7.64%	5.06%	7.59%
9.	Savita Oil Technologies Ltd.	7.98%	8.41%	6.26%	8.39%
10.	Pratap Tex-Chem Pvt. Ltd.	8.94%	9.71%	9.52%	9.55%
11.	Quaker Chemical India Pvt. Ltd.	11.56%	14.40%	13.72%	14.40%
12.	Gulf Oil Lubricants India Ltd.	15.97%	15.88%	15.34%	15.88%
13.	Valvoline Cummins Ltd.	16.48%	16.53%	16.33%	16.53%
14.	Reliance Industries Ltd. (*)	12.79%	-	-	-
15.	Castrol India Ltd. (*)	25.26%	-	-	-
	35th Percentile	6.81%	6.10%	5.45%	5.76%
	Median	7.98%	7.28%	6.26%	7.28%
	65th Percentile	8.94%	8.41%	7.64%	8.39%
	Appellant's margin (as per TPO)	5.67%	5.67%	5.67%	5.67%

(*) The comparable has been directed to be excluded by the Hon'ble Dispute Resolution Panel ('DRP')

6. The Ld. Assessee's Representative contended that it is merely a calculation error which may be restored to the file of the TPO with a direction to provide detailed margin calculation/working after considering the chart provided by the Assessee.

7. Per contra, the Ld. Departmental Representative relied on the findings and the observation of the Lower Authorities and sought for dismissal of Ground No. 1.2.

8. It is the specific case of the Assessee that it is a mere calculation error of margin of comparable companies, wherein the A.O. has not provided any basis of his working. The Assessee has produced the above working by way of Chart. Considering the above facts and circumstances, we direct the TPO/A.O. to consider the working chart provided by the Assessee and provide the detailed margin calculation/working after providing opportunity of being heard to the Assessee. Accordingly, the Ground No. 1.2 of the Assessee is partly allowed for statistical purpose.

9. Arguing on Ground No. 1.6.1 the Ld. Assessee's Representative submitted that the Ld. TPO erred in considering the loss on foreign exchange transaction with respect to external commercial borrowing to an extent to Rs. 6,79,51,132/- being capital loss as operating in nature for the purpose of calculation of operating profit margin relating to manufacturing segment. The Ld. Counsel further submitted that the TPO/DRP have erred in not appreciating that the very same loan was continued from the earlier years and the same has been accepted as a non-operating in nature by the TPO and the A.O. himself and accepted that the same as arising from capital account transaction and hence it should not have been taxed in the year under consideration. Further submitted that the Financial Year 2016-17 the gain on foreign exchange transaction on the very same ECBs has been considered on non-operating nature. Thus, the Ld. Counsel for the Assessee sought for allowing the Ground No. 1.6.1.

10. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Ground No. 1.6.1.

11. We have heard both the parties and perused the material available on record. During the TP Study, the Assessee has not considered the forex loss of INR 6,79,51,132/- arising on account of translation of ECB as an “operating cost”. However, the Ld. TPO re-computed the operating margin of the Assessee by considering “Net loss on foreign currency transactions and translations’ as operating, which included the loss of INR 6,79,51,132/- on foreign Exchange Translations (ECB Loan).

12. It was the case of the Assessee that the said foreign exchange loss relates to loss arising due to foreign exchange translation w.r.t External Commercial Borrowing (‘ECB’) in the Balance Sheet, being in the nature of capital account loss. Accordingly, the component relating to “Loss on Foreign Exchange translations (ECB Loan)” was considered as non-

operating in nature. It is brought to our notice that the treatment given vis-à-vis the said loss was accepted in the TP assessment proceedings for Assessment Year 2015-16 and the 'Loss on Foreign Exchange Translations ('ECB Loan')' was considered as 'non-operating expense'. Further, the TP assessment proceedings for F.Y 2016-17, the Ld. TPO had considered "Gain on Foreign Exchange translations (ECB Loan)" amounting to INR 3,54,86,512/- as non-operating income. The authorities below have not considered the fact that the very same loan continued from the earlier year which has been accepted as non-operating in nature in the previous years. Considering the fact that the A.O. himself accepted that the very same transaction is arising capital account transaction and also keeping in mind that in the F.Y 2016-17 the gain arising on foreign exchange translation on the very same ECBs have been considered as non-operating in nature, in our considered opinion, the authorities below should have followed the principals of consistency. Thus, in our opinion, the loss on

Foreign exchange translation relating to ECBs deserves to be considered as non-operating for the purpose of calculation of OPM relating to manufacturing for the year under consideration. Accordingly, we allow Ground No. 1.6.1.

13. In the result, Appeal of the Assessee is allowed.

Order pronounced in open Court on 09th January, 2026.

Sd/-

Sd/-

(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 09.01.2026

Pk/R.N Sr.PS.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

