

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"K" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**  
**ITA No. 4353/MUM/2025 (AY: 2009-10)**  
**ITA No. 4352/MUM/2025 (AY: 2012-13)**  
*(Physical hearing)*

ACIT-6 (1) (1), Mumbai, Room No.504, 5 <sup>th</sup> Floor, Aayakar Bhawan, Mumbai	Vs	M/s Essar Power Gujarat Limited, 11 <sup>th</sup> Floor Essar House, 11 K.K. Marg, Mahalaxmi,  Mumbai-400034 [PAN:AABCE7510K]
Appellant / Assessee		Respondent / Revenue

**C.O. No.246/Mum/2025 in ITA No. 4353/MUM/2025 (AY: 2009-10)**  
**C.O. No.247/Mum/2025 in ITA No. 4352/MUM/2025 (AY: 2012-13)**

M/s Essar Power Gujarat Limited, 11 <sup>th</sup> Floor Essar House, 11 K.K. Marg, Mahalaxmi, Mumbai-400034 [PAN:AABCE7510K]	Vs	ACIT-6 (1) (1), Mumbai, Room No.504, 5 <sup>th</sup> Floor, Aayakar Bhawan, Mumbai
Appellant / Assessee		Respondent / Revenue

Assessee by	ShriVijay Mehta CA /AR
Revenue by	Ms. Neena Jeph, CIT-DR Shri Bhagirath Ramawat Sr. DR
Date of Institution	01.07.2025
Date of hearing	15.12.2025
Date of pronouncement	19.01.2026

**Order under section 254 (1) of Income Tax Act**

**PER BENCH;**

1. These two appeals by Revenue and cross-objection therein by assessee are directed against the order of Id. CIT (A) dated 14.04.2025 for assessment year 2009-10 and 2012-13. In both the appeals the revenue has raised similar grounds of appeals, the assessee has also raised similar grounds in its C.O., thus with the consent of both the parties both the appeals and C.O.s are clubbed,

heard together and are decided by this common order to avoid the conflicting decisions. For appreciation of facts, the appeal for AY 2009-10 is treated as lead case. The Revenue in its appeal for AY 2009-10 in ITA No.4353/M/2025 has raised following grounds of appeal:-

*"On the facts and in the circumstances of the case and in law, the Id. CIT (A) erred in deleting the TP adjustment made by the TPO after computing the ALP of the transaction done by the assessee with its AE without appreciating the fact that the DRI authorities are not competent to compute ALP to prevent base erosion and profit shifting."*

2. On receipt of memorandum of appeal the assessee has filed its CO by raising following grounds of appeal:-

*"1. The CIT(A) ought to have held that the reopening of assessment u/s. 147 of the Act is illegal and bad in law.*

*2. The CIT(A) ought to have held that the specific objections raised by the assessee was not disposed of by the Assessing Officer thereby, rendering the entire assessment proceeding illegal and bad in law.*

*3. The CIT(A) ought to have held that the prior approval for issue of notice u/s, 148 of the Act was not obtained by the Assessing Officer.*

*4. The CIT(A) ought to have appreciated that the Assessing Officer has made addition in respect of transfer pricing adjustment which was not the issue in reasons for reopening. Since the Assessing Officer has not made any addition in respect of issue in reasons for reopening, addition made by the Assessing Officer is bad in law.*

3. Perusal of record shows that there is delay of 29 days in filing of Cross Objections (C.O.) by assessee. The assessee in Form 36A has mentioned the date of receipt of notice of appeal as of 22.07.2025, however, cross-objections were filed only on 19.02.2025, thus, there is delay of 29 days in filing the CO. The assessee has filed application for condonation of delay in filing CO. The application for condonation of delay is supported by affidavit of Sumeet Agrawal, Joint General Manager (Taxation). The learned authorised

representative (Ld. AR) of the assessee submits that on receipt of Form No.36 and grounds of appeal filed by Revenue, the matter was assigned to in-house Chartered Accountant Sumeet Agrawal. In the month of August 2025, Sumeet Agrawal had to visit his native place in Indore, on account of festival of Raksha Bandhan. Though he returned back to Mumbai on 10.08.2025 but due to medical emergency of his father he has to rush back to Indore. His father suffered heart-attack and has undergone angiography. Thereafter, his father was again hospitalised for dialysis procedure and Sumeet Agrawal returned back to Mumbai in September and ultimately the C.O. was filed on 19.02.2025. The delay in filing C.O. is not intentional or deliberate but due to bona fide reasons of medical emergency in the family of person, who was looking after the tax matter. The Ld. AR of the assessee submits that relevant medical prescription and medical diagnosis and discharge slip are filed on record. The Ld AR of the assessee prayed for condonation of delay in filing his CO.

4. On the other hand, the learned Commissioner of Income Tax- Departmental representative (Ld. CIT-DR) for the Revenue after going through the contents of application and various medical prescriptions of father of Sumeet Aggarwal, not seriously opposed the plea of Ld. AR of the assessee in seeking condonation of delay in filing CO.
5. We have considered the rival submissions of both the parties and have gone through the contents of application for condonation of delay. Considering the fact that delay in filing in C.O. by assessee is not intentional or deliberate. And it was due to medical condition of father of Sumeet Agrawal, who was looking after tax matter of assessee. Thus, we find that delay in filing CO was not

intentional and deliberate. Hence, delay in filing appeal is condoned. Now advertent to merits of the case.

6. Brief facts of the case are that the assessee-company is engaged in the business of generation of electricity, filed its return of income for Assessment Year 2009-10 on 27.09.2010 declaring income of Rs.1.44 Crore. Initially, the return was processed under Section 143(1). Subsequently, case was reopened under Section 147. Case was reopened on the basis of information received from Directorate of Revenue Intelligence, Mumbai with regard to over-invoicing of goods purchased by Assessee-Group (Essar Group) of Companies through Global Supplies FZE UAE from various equipment manufacturer located in different countries. The Assessing Officer in the reasons recorded noted that Directorate of Revenue Intelligence (DRI) investigated the matter and back-to-back invoices of goods purchased by SR Group Companies from suppliers were matched with invoices raised on Global Suppliers FZE by the original equipment manufacturer the matching was done to extent back-to-back invoices with DRI, which reveals over-valuation of goods supplied by Global Suppliers to Essar Group. The extent of over-valuation was not in consonance with value addition made by Global Supplies FZE UAE. The investigation carried out by DRI in Assessee-Group reveal that there is over-invoicing to the extent of 30-40% in the Group concern in respect of import of goods made through Global Supplies FZE UAE. During the relevant final year Global supplies FZE UAE supplied equipment of Rs.273.13 Crore to the assessee. On the basis of such information the Assessing Officer formed his opinion that he has reason to believe that assessee inflated its expenditure in import of goods and such

inflated expenses resulted in escapement of income on account of failure of the assessee to disclose fully and truly all the material facts relevant for assessment of correct income. The Assessing Officer was of the view that inflated expenditure/excess expenses is Rs.109.25 Crore being 40% of total value of equipment supplied to assessee. The Assessing Officer issued notice under Section 148 on 31.03.2016. In response to notice under Section 148 the assessee filed its reply dated 09.05.2016 and submitted that return filed on 23.09.2009 be treated as return in response to such notice. The Assessing Officer proceeded for re-assessment. During assessment, the Assessing Officer also recorded that objections were filed on 30.09.2016 which was disposed of by speaking order dated 02.11.2016. During re-assessment proceeding the Assessing Officer recorded that the assessee reported international transaction with its Associated Enterprises accordingly, with the approval of competent authority he made reference for computation of Arm's Length Price (ALP) to Transfer Pricing Officer (TPO). The TPO passed order and suggested upward adjustment @ 27% of Rs.273.13Crore, thereby suggested addition/adjustment of Rs.73.74 Crore. The TPO held that ALP of purchases from Global Supplies FZE is of Rs. 199.39 Crore. On the basis of report of TPO, the Assessing Officer passed draft assessment order on 30.11.2017 under Section 143(3) r.w.s 144(C). The assessee vide it's letter dated 08<sup>th</sup> June 2019 stated that they will file appeal before CIT (A) instead of filing objection before Dispute Resolution Panel (DRP). Accordingly, the Assessing Officer (AO)while passing assessment orderdated 05.02.2019 under Section 143(3) r.w.s 144(C)(3) reduced Capital Work in Progress (CWIP) by and amount of Rs.73.74 Crore.

7. Aggrieved by the additions in the assessment order the assessee filed before Id.CIT (A). Before Id.CIT (A) the assessee challenged the validity of re-opening under Section 147 and issuance of notice under Section 148 as well as addition on merit. The assessee also challenged the action of AO in treating Global Supplies FZE as Associated Enterprises (AE) of assessee. The assessee filed detailed written submission of both the issues. The validity of reassessment was challenged on the basis of CBDT instruction No.3/2016. Treatment of Global Supplies FZE as AE of assessee on the ground that there is no direct nexus between shareholding of Global Supplies FZE and assessee. Both have independent management. The impugned transaction of import of capital equipment was on account of capital transaction. The AO/TPO failed to provide any justification and nexus between Global Supplies FZE and Essar Power Gujarat Ltd. On the addition on account of reduction capital working progress by 27% the assessee stated that due diligence was taken before granting work order to Global Supply FZE. The assessee considered a number of other criteria before placing order to Global supplies FZE. The assessee obtained report to establish the reasonableness of project cost from independent expert engineering consultant like Tata Consulting Engineers Pvt. Ltd. and Laymer who have confirmed that price charged/prescribed in Global Supplies FZE contract were fair and reasonable as compared with equipment required for similar project set up by the company. The prime lender banker of assessee i.e. ICICI Bank has also obtained report from expert which has revived the capital cost estimate and confirm that cost of installation of power project is reasonable. Thus, transaction with Global Supplies FZE is at arm's length. The

Project import contract is as per the guidelines and customers regulation and same is registered with Ministry of Power which is sponsoring authority, which verifies reasonableness of contract and thereafter certified the contract. Importing parties are also registers such contract with Customs Department assessee also obtained fair valuation report certificate by Vardhan Project Ltd. Chartered Engineers which certified reasonableness of contract cost.

8. The Ld. CIT (A) on considering the submission of assessee recorded that TPO made adjustment on the proposal of show cause notice dated 11.03.2015 issued by Directorate of Revenue Intelligence (DRI) adjudicating officer. However, the show cause notice was found to be not maintainable by Directorate of Revenue Intelligence (DRI), copy of relevant part of DRI authorities was extracted in his order. On the basis of such view the Ld. CIT (A) directed the AO/TPO to delete the addition/ adjustment. Aggrieved by the order of Ld CIT (A) the Revenue has filed present appeal before the Tribunal.
9. We have heard the submission of Ld. CIT- DR for Revenue and the Ld. AR of the assessee. The Ld. CIT-DR for the Revenue supported the order of AO/TPO. The Ld. CIT-DR submits that TPO made/suggested addition by making necessary inquiries. The Ld. CIT (A) deleted the addition simply on the basis of order of adjudicating authority of DRI. The TPO while suggesting the upward adjustment gave a categorical finding in his order. During TPO proceedings the assessee simply relied upon valuation reports instead of furnishing any kind of evidence to prove that there was no over invoicing. No back to back invoices were furnished by assessee. The Ld. CIT (A) has not given his finding on merit. The Ld. CIT (A) erred in deleting the TP adjustment made by the TPO after

- computing the ALP of the transaction done by the assessee with its AE without appreciating the fact that the DRI authorities are not competent to compute ALP to prevent base erosion and profit shifting. The Ld. CIT-DR submits that order of CIT (A) may be reversed and order of AO/TPO may be confirmed.
10. On the other hand, the Ld. AR of the assessee supported the order of CIT (A). The Ld. AR of the assessee submits that case of AO as well as TPO is based on show cause notice of DRI which was set aside by Directorate of Revenue Intelligence (DRI) authorities themselves. Thus, addition suggested by TPO and made by AO has no leg to stand. The Ld. AR also furnished copy of order of Principle Commissioner of Custom (Adjudication) Mumbai in case of assessee as well as order of Custom Excise and Service Tax Appellate Tribunal dated 03.04.2025. The Ld AR of the assessee fully supported the order of CIT(A). to support his submissions, the Ld AR of the assessee relied on the decision of Punjab & Haryana High Court in CIT Vs Sachdeva and Sons (2025) 478 ITR 494 (P& H).
11. In support of his grounds raised in C.O., the Ld AR of the assessee submits that the CIT(A) ought to have appreciated that the AO has made addition in respect of transfer pricing adjustment which was not the issue in reasons for reopening. Since the AO has not made any addition in respect of issue in reasons for reopening, addition made by the AO is bad in law. To support of his submission, the Ld AR of the assessee relied on the decision of Hon'ble Bombay High Court in CIT Vs Jet Airway(I) Ltd (2011) 331 ITR 236 (Bom).
12. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on

order passed by adjudicating authorities that is by Pc CIT Customs dated 18.05.2023 and the order of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 03.04.2025. It is an admitted fact that the case of assessee was reopened on the basis of information received from DRI authorities that Global Supplies GZE UAE supplied goods to the assessee by over invoicing. Such information was based on initial investigation carried out by DRI. We find that ultimately the Pr CIT Customs who is adjudicating authorities exonerated the assessee and other entities which were under scanner of DRI about charges of alleged over invoicing of imported goods form Global Supplies GZE UAE, vide his order dated 18.05.2023. We further find that on appeal by Commissioner Customs (Imports-1), before CESTAT, the order of adjudicating authorities that is Pr CIT Customs were upheld. Copy of order of CESTAT dated 03.04.2025 is available on record. Thus, we find that once the show cause notice which was the basis of triggering the reopening and basis of addition for reduction of WIP has been set aside, the addition will not survive. Moreover, the information shared by DRI authorities were based on preliminary investigation and there was no conclusive evidence about over invoicing of the imported goods, which was ultimately dis not survived. We find that Hon'ble Punjab and Haryana High Court in recent decision in CIT Vs Sachdeva and Sons (supra) also held that when sole ground for making addition on the basis of information of Enforcement Directorate (ED) alleging misdeclaration of value of Export and ED has dropped the proceedings against the assessee and the matter stood settled between the assessee and ED. The foundation of the proceedings wiped out and thus there was no ground for making addition in

the return of income of the assessee. Hence, applying the similar ratio, we affirm the order of Id CIT(A), with our additional observation. In the result, the ground of appeal raise by revenue is dismissed.

13. In the result, the appeal filed by the revenue is dismissed.

14. Considering the facts that we have dismissed the appeal of revenue on merit; hence, specific adjudication of grounds raised in C.O. have become academic. In the result, the grounds raised in the C.O. is also dismissed being infructuous.

15. We further find that in appeal for AY 2012-13 the revenue has raised similar grounds of appeal as raised in appeal for AY 2009-10, similarly, the assessee has also raised similar grounds in its C.O. thus, considering the facts that the appeal of revenue in AY 2009-10 is dismissed and C.O. has been treated as infructuous, therefore, our finding in earlier year will apply mutatis mutandis.

16. In the result, appeal of revenue for both the years are dismissed and CO. filed by the assessee are treated as infructuous and dismissed as such.

Order pronounced in open court on 19/01/2026

Sd/-

**GIRISH AGRAWAL**  
**ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, Dated:19/01/2026  
Ashwani Rao  
Sr. Private Secretary  
Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By order

Assistant Registrar  
ITAT, Mumbai