

**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.2245/Del/2022

(ASSESSMENT YEAR 2017-18)

ITA No.2246/Del/2022

(ASSESSMENT YEAR 2018-19)

Kadimi Special Steels Private Limited (Amalgamated with Kadimi Tool Manufacturing Company Private Limited), 1024, 10 th Floor, DLF Towers-A, Jasola, New Delhi-110025. PAN-AAACK1016F	Vs	Asst. Commissioner of Income Tax, Circle-13(1), Delhi.
(Appellant)		(Respondent)
Appellant by	Shri R.K. Kapoor, CA, Ms. Monika Bhardwaj, CA & Ms. Aarti Jindal, CA	
Respondent by	Shri S.K. Jadhav, CIT-DR	
Date of Hearing	15.12.2025	
Date of Pronouncement	23.01.2026	

ORDER

PER YOGESH KUMAR U.S., JM:

The captioned appeals are filed by the Assessee against the Final Assessment Orders dated 22/07/2022 passed u/s 143(3) r.w. Section 144C(3) r.w. Section 144B of the Income Tax Act, 1961 ('Act' for short) pertaining to Assessment Year 2017-18 and 2018-19 respectively.

1. That the final order passed by the Ld Assessing Officer ('AO'), Assessment Unit, National Faceless Assessment Centre ('NaFAC') giving effect to the order of the Transfer Pricing Officer (TPO) and the

directions of the Dispute Resolution Panel ("DRP") is bad in law and erroneous on the facts & circumstances of the appellant, as the order has been passed on a non-existent entity, which is infructuous, void ab-initio & bad in law and is prayed to be quashed.

2. That the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts and circumstances of the appellant's case in proposing a Transfer Pricing adjustment to the returned loss of the appellant amounting to INR 1,98,46,230/- in relation to the International Transaction of purchase of Steels Wire Rods from its associated enterprise (AE). The adjustment proposed is wholly illegal, erroneous and untenable in law and on the facts of the case of the appellant and is prayed to be deleted.

3. That the order of Assessment including the order of the Ld. TPO and the Ld. DRP Directions are bad in law and erroneous on the facts of the appellant.

4. That the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts and circumstances of the appellant's case by rejecting the appellant's search process and quantitative turnover filter applied by it without giving any cogent reasons.

5. That the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts and circumstances of the appellant's case by carrying out a fresh search process by not providing the appellant details of such search process (including outcome of each filter applied, accept-reject matrix and operating margin computation) and including FAR analysis of final comparables selected, which is against the principles of natural justice and which tantamount to cherry picking of comparables, which is bad in law.

6. That the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts of the appellant's case in selecting the following new comparables which have dissimilar functional, product, industry profiles and FAR analysis as compared to the appellant (being a CHQ alloy or non-alloy steel wire rods/ wires manufacturer) and do not meet the comparability criteria as prescribed

under Rule 10B(2) of the Income Tax Rules, 1962 ('the Rules') and their selection is therefore bad in law and on the appellant's facts

- a) Thane Steels Ltd.*
- b) Maithan Steel & Power Ltd.*
- c) DP Wires Ltd.*
- d) R K Wire Products Ltd.*
- e) Cords Cable Inds. Ltd.*
- f) Vishal Cables Pvt. Ltd.*
- g) Khandelwal Cables Ltd.*
- h) Patnaik Steels & Alloys Ltd.*
- i) Capacity Utilization Adjustment for Depreciation*

7. That without prejudice to Grounds No. 3 to 5, the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts of the appellant's case in not granting the capacity utilization adjustment carried out by the appellant for differences in the depreciation levels of the tested party and the comparable companies which is in contravention to the provisions of Rule 10B(3) of the Rules, since the appellant was in its second full year of operations

Application of CUP Method based on Customs price database

8. That without prejudice to Ground No. 3 to 6, the Ld. AO of NaFAC & the Ld. TPO and consequently the Ld. DRP have grossly erred in law and on facts and circumstances of the appellant's case while benchmarking the international transaction of Purchase of Steel Wire Rods/Wires:

a in disregarding the Comparable Uncontrolled Price ('CUP') Method, being a price-based and direct method, alternatively applied by the appellant, as the most appropriate method based on Customs price database instead of TNMM, applied by the Ld. TPO and by the appellant in its TP Study, without providing cogent reasons.

b. by not following the Portfolio Approach/Aggregation approach, while applying the CUP Method, considering both higher and lower uncontrolled prices vis-à-vis controlled transaction price for determination of arm's length price, without providing cogent reasons.

9. That the Ld. TPO and consequently the Ld. AO of NaFAC have grossly erred in law and in the circumstances of the appellant by initiation of penalty proceedings u/s 270A of the Act for underreporting of income in consequence of misreporting of income, which is bad in law and void-ab-initio.

10. That each ground is independent and without prejudice to other grounds raised herein.

3. The Ld. Counsel for the Assessee arguing on Ground No. 1 submitted that the order impugned has been passed on non-existing entity and relying on the ratio laid down in the case of Maruti Suzuki Ltd. reported in TS-429-Hon'ble Supreme Court-2019-TP] Civil Appeal No. 5409 of 2019 (arising out of SLC (C) No. 4298 of 2019), sought for quashing the Final Assessment Order. Further, the Assessee has also filed affidavit of the Director of the Assessee contending that the fact of Amalgamation has been duly informed to the Lower Authorities, however, the final order came to be passed against the non-existing entity.

4. Per contra, the Ld. Departmental Representative disputed the fact of 'amalgamation' to the authorities below. Further relying on the orders of the Lower Authorities, sought for dismissal of Ground No. 1.

5. We have heard both the parties and perused the material available on record. The erstwhile Assessee Kadimi Special Steels Pvt. Ltd. got amalgamated with Kadimi Tool Manufacturing Company Pvt. Ltd. from an appointed date i.e. 1st April 2020 vide order of the order of the National Company Law Tribunal, Delhi Benches dated 24/08/2021.

6. It was the specific case of the Assessee that the intimation of the said merger/Amalgamation along with the copy of the NCLT Order providing the scheme of arrangement, copy of the amalgamation NOC issued by the DCIT and the scheme of amalgamation were furnished to DCIT, Circle 13(1), C. R. Building, New Delhi to the Jurisdictional Assessing Officer of Kadimi Special Steels Pvt. Ltd. on dated 11/10/2021 itself.

Further, it is submitted that the fact of merger was also intimated to DRP vide Letter dated 30/12/2021 at the time of filing submission in response to the hearing notice issued by the DRP. The above is corroborated from the documents produced in the Paper Book Page No. 153 to 154 and 210 to 212. The DRP was also duly intimated time and again in respect of the said through various documents filed before the DRP which are reproduced at 368 to 394 and 410 to 413. (The Assessee has also filed an affidavit before us by confirming the above facts). However, in the DRP direction dated 26/05/2022, TPO order giving effect to DRP direction dated 21/06/2022 as well as in the Final Assessment order dated 22/07/2022, the authorities below passed respective orders in the name of Kadimi Special Steels Pvt. Ltd./amalgamating Company, which was ceased to exist as on the date.

7. The Hon'ble Supreme Court in the case of Maruti Suzuki (supra) held as under:-

"33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainments on 2 November 2017. The decision in Spice Entertainments has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainments.

34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

35. For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs."

8. In view of the above, as the Assessing Officer despite informing the fact of merger, passed the Final Assessment order in the name of erstwhile amalgamating company which was ceased to exist as a result of order of the NCLT, the impugned final Assessment Order passed in the name of the non-est entity cannot be sustained. Accordingly impugned assessment order is hereby quashed and the Ground No. 1 of the Assessee is allowed.

9. In the result, Appeals of the Assessee are allowed.

Order pronounced in open Court on 23rd January, 2026.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Dated:23 .01.2026

Pk/R.N, Sr.PS.

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

