

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1016/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Doowon Automotive  
Systems India Pvt. Ltd.,  
Plot No.B-19 & 20, SIPCOT  
Industrial Park, Oragadam,  
Sriperumbudur Taluk,  
Kancheepuram District-602 105.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 1(1),  
Chennai - 600 034.

PAN : AACCD 4172 F  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. S.P. Chidambaram, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Smt. Vijayalakshmi, CIT

सुनवाई की तारीख/Date of Hearing : 10.05.2016

घोषणा की तारीख/Date of Pronouncement : 17.06.2016

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Assessing Officer, consequent to the directions of Dispute Resolution Panel dated 10.12.2014 and pertains to assessment year 2010-11.

2. Sh. SP. Chidambaram, the Ld.counsel for the assessee, submitted that the assessee-company is a wholly owned subsidiary of Doowon Corporation Korea. According to the Ld. counsel, the assessee-company is engaged in the business of manufacturing automotive air conditioning systems and its parts. The manufacturing plant is situated near Chennai. According to the Ld. counsel, in the course of its manufacturing activity, the assessee has purchased raw material from its Associate Enterprise outside India. The assessee has also paid fee for technical services. The Ld.counsel further submitted that capital assets were also purchased from Associate Enterprise. In respect of the transaction entered with Associate Enterprise for purchasing raw material and its components, capital assets and payment of fee for technical services, the assessee maintained transfer pricing documentation by adopting Transaction Net Margin Method. The Ld.counsel further submitted that the assessee has also made adjustment towards Customs duty payment and working capital. The Transfer Pricing Officer and the Dispute Resolution Panel have made adjustments resorting to statistical method to benchmark the international transaction. According to the Ld. counsel, Transaction

Net Margin Method is the most appropriate method, therefore, the Customs duty paid by the assessee for importing the raw material and capital employed has to be taken into consideration while making transfer pricing adjustment.

3. The Ld.counsel for the assessee further submitted that this is the third year of business operation, therefore, the assessee had to import huge volume of components and raw material by paying Customs duty. According to the Ld. counsel, the comparable companies selected by the TPO and the DRP have purchased the raw material and components in the domestic market, therefore, they have not paid any Customs duty. Since the assessee has imported 85% of raw material from outside the country, the assessee had to incur an additional liability towards Customs duty, therefore, according to the Ld. counsel, the payment of Customs duty has to be necessarily eliminated while making comparison by adopting Transaction Net Margin Method. However, the Dispute Resolution Panel, after considering its own directions in the assessee's own case for assessment year 2009-10, confirmed the order of the Transfer Pricing Officer by holding that the Customs duty payment need not be allowed.

4. Referring to the order of the DRP, the Ld.counsel for the assessee submitted that the Transfer Pricing Officer adopted Net Profit Margin at 14.6% as benchmark as against 1.86% actually shown by the assessee. Considering the difference of 12.74% on the assessee's operating turnover, the Transfer Pricing Officer determined the downward adjustment at ₹30,29,38,756/-. According to the Ld. counsel, the assessee could not localize the purchases, therefore, the assessee was forced to incur an additional liability towards Customs duty. Due to high cost of import, the assessee had to incur a payment of ₹14,27,43,259/- towards basic Customs duty. The comparable companies taken by the Transfer Pricing Officer and the DRP are established companies and they have purchased the components to the extent of 84% in India. Since the assessee-company is at inception stage, they could not pass the Customs duty to its customers. Therefore, according to the Ld. counsel, the assessee's Profit Level Indicator needs to be adjusted in order to neutralize the comparison with the comparable companies which are in the business for more than a decade.

5. Referring to Rule 10B of Income-tax Rules, 1962, the Ld.counsel for the assessee submitted that the net profit margin between the international transaction of the assessee and the comparable uncontrolled transaction has to be adjusted after taking into consideration the difference, which could materially affect the net profit margin in the open market. Placing reliance on the decision of Pune Bench of this Tribunal in Skoda Auto India (P.) Ltd. v. ACIT (2009) 30 SOT 319, the Ld.counsel submitted that the business model of the assessee has to be taken into consideration while comparing the comparable companies. The Pune Bench did not agree with the Transfer Pricing Officer that every time the assessee pays higher import duty, it must be passed on the customers or it must be adjusted for in negotiating the purchase price. The Ld.counsel has also placed reliance on the decision of Panaji Bench of this Tribunal in Putzmeister Concrete Machines Pvt. Ltd. v. DCIT in I.T.A. No.107/PNJ/2012 and submitted that the cost of raw material varied due to import, it will have impact for deciding the arm's length price. In fact, the Panaji Bench placed its reliance on the Pune Bench in Skoda Auto India (P.) Ltd. (supra). In view of the above, according to the Ld. counsel, the statistical method adopted by the Transfer Pricing Officer and the Dispute

Resolution Panel is not one of the methods prescribed under the scheme of Income-tax Act for making adjustment of arm's length price. Therefore, the statistical method adopted by the DRP is not justified. According to the Ld. counsel, Transaction Net Margin Method is the most appropriate method.

6. Referring to one of the comparable companies, namely, WABCO India Ltd., the Ld.counsel for the assessee submitted that this company is functionally different from the assessee-company, therefore, it should be removed from the list of comparable companies.

7. On the contrary, Smt. Vijayalakshmi, the Ld. Departmental Representative, submitted that the assessee-company is a manufacturer of automotive air conditioner and cooling systems, automotive ancillaries, components and other automotive parts. During the assessment year under consideration, the assessee has purchased raw material from its Associate Enterprise outside the country to the extent of ₹1,39,92,81,610/-. The Profit Level Indicator returned by the assessee was 6.53% after adjusting the payments of Customs duty to the extent of ₹11,11,04,381/-. If this adjustment was not made, the unadjusted net profit margin would be 1.86%.

The assessee compared with three comparable companies after taking three years' average of net profit margin at 6.95%. The Transfer Pricing Officer, during the course of proceeding, selected 11 comparable companies where arithmetic means of gross profit margin is 35.28%. Therefore, the gross profit margin of the assessee-company was 25.34% from the market benchmark of the average profit indicator, i.e. gross profit margin of comparable of 35.28%. After considering the comparable companies, the Transfer Pricing Officer determined the net profit margin at 14.6%. The Ld. D.R. further submitted that for the purpose of comparison, the current year data of comparable companies alone has to be considered. The assessee, however, has taken the 3-year weighted average of the comparable companies' data. According to the Ld. D.R., the economic scenario may be changing year after year, therefore, taking average of 3-years data of comparable companies would not reflect the correct net profit margin. The current period of comparable companies alone would project the real net profit margin of the comparable companies. The Ld. D.R. further submitted that the gross profit margin and net profit margin are two methods to compare the data of the comparable companies. Therefore, the Dispute Resolution Panel found that

comparison of gross profit margin is also one of the methods to be adopted in comparing the comparable companies.

8. Referring to Customs duty adjustment, the Ld. D.R. submitted that an identical order of the Transfer Pricing Officer was confirmed by the Dispute Resolution Panel for the assessment year 2009-10 in the assessee's own case. By following that order, the DRP confirmed the TPO's order by holding that Customs duty payment need not be adjusted while making *prima facie* adjustment. Referring to the other contention of the assessee, namely, the working capital employed, the Ld. D.R. submitted that the DRP has rightly found that since the comparison was made at the gross profit margin level, working capital employed by the assessee need not be taken into consideration.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that Transaction Net Margin Method is the most appropriate method. For the purpose of transfer pricing adjustment, Section 92C of the Income-tax Act, 1961 (in short 'the Act') provides for the method to be adopted. Therefore, the Transfer Pricing Officer and Dispute Resolution Panel have to determine the transfer pricing

adjustment by following any one of the methods prescribed under Section 92C of the Act, which would be appropriate to the international transaction made by the assessee. In the case before us, the Dispute Resolution Panel and the Transfer Pricing Officer have not adopted any of the methods prescribed under Section 92C of the Act. As rightly contended by the Ld.counsel for the assessee, the DRP resorted to statistical method to benchmark the international transaction. This Tribunal is of the considered opinion that the DRP is expected to find out most appropriate method among the methods prescribed under Section 92C of the Act. The Dispute Resolution Panel is not expected to travel beyond the method prescribed under Section 92C of the Act.

10. In respect of the Customs duty adjustment and working capital employed, the Dispute Resolution Panel has simply placed its reliance on its own order in the assessee's own case for assessment year 2009-10. This Tribunal examined the directions of the Dispute Resolution Panel in the assessee's own case for assessment year 2009-10 in I.T.A.No. 852/Mds/2014 dated 19.05.2016. For the assessment year 2009-10, the Dispute Resolution Panel directed the Transfer Pricing Officer to determine

the transfer pricing adjustment afresh. This Tribunal found that such a direction cannot be given by the Dispute Resolution Panel. The Dispute Resolution Panel can at the best call for a remand report from the Transfer Pricing Officer and determine the issue by directing the Assessing Officer to make adjustment as determined in the directions of the Dispute Resolution Panel and accordingly, this Tribunal remanded the matter back to the file of the Assessing Officer. In the case before us, the issue is identical to that of assessment year 2009-10 and the Dispute Resolution Panel has simply followed their earlier order. This Tribunal is of the considered opinion that the matter needs to be reconsidered as directed by this Tribunal in the earlier order in I.T.A. No.852/Mds/2014 dated 19.05.2016. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of Assessing Officer. The Assessing Officer shall refer the matter to the Transfer Pricing Officer once again as directed in the assessee's own case for assessment year 2009-10 and thereafter decide the issue afresh, in accordance with law, after giving reasonable opportunity to the assessee.

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

Order pronounced on 17<sup>th</sup> June, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 17<sup>th</sup> June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. ITO (HQ), International Taxation, Chennai
4. Addl. CIT (TPO-I), Chennai
5. CIT, Chennai-I, Chennai.
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.