

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'K', MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 6477/MUM/2024 (A.Y-2021-22)

(Physical hearing)

KBS Creations, Plot no. 98, KBS House, Road no. 16, Andheri East, Mumbai-400093 PAN: AAHFK5898B	Vs.	Deputy Commissioner of Income- tax, Circle-24(1), Mumbai, Piramal Chamber, Lal Baug, Parel Mumbai-400012
APPELLANT		RESPONDEDNT

Assessee represented by	Ms. Aarti Vissanji, Advocate
Department represented by	Shri. Abhishek Tharwal, Sr.DR.
Date of hearing	05/05/2025
Date of pronouncement	16/06/2025

Order under Section 254(1) of the Income-Tax Act, 1961

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the additions in assessment order dated 25/10/2024 passed under section 143(3) r.w.s. 144C(13) and 144(B), passed in pursuance of direction of Dispute Resolution Panel (DRP) dated 24/09/2024 for Assessment Year (AY) 2021-22. The Assessee has raised following concise grounds of appeal;

1. The learned NeAC officer has erred in ignoring directions given by the Hon'ble DRP in para 11.3.3 (part of para 11.3- page 45/46 of the Order of Hon'ble DRP) wherein the Hon'ble DRP has allowed the objection of the appellant in respect of the deduction allowable u/s 10AA and thus further erred making variation (addition) of INR 10,98,72,843/- to compute the total income at INR 61,96,19,943/- instead of INR 56,80,38,778 for which the correct working of revised taxable income is given as "Annexure-A".

2) The learned NeAC officer erred in computing INR 10,98,72,843/- as "more than the ordinary profit" on Specific Domestic Transition (SDT) for the unit of the assessee entitled to deduction u/s 10AA and while doing so:

a) The learned JAO erred in making reference to the learned TPO u/s 92CA(1) by invoking provisions of section 80IA (10) without determining and establishing the existence of an arrangement between the concerned parties which results in more than ordinary profits and therefore the whole proceedings initiated under Transfer Pricing provisions is bad in Law and the

Learned NeAC officer, Learned TPO and also Hon'ble DRP further erred in not considering the objection of the appellant in this regard and thus erred in confirming the action of the Learned JAO.

b) The Learned TP Officer and Learned NeAC Officer (Based on order of Hon'ble DRP) erred in rejecting the arm's length operating profit (OP) computed by the appellant and re-computing arm's length operating profit (OP) as under:

<i>Operating Profit computed by the learned TP Officer</i>	<i>Operating Profit computed by the learned NeAC Officer</i>	<i>Operating Profit computed by Appellant</i>
<i>2.13%</i>	<i>2.56%</i>	<i>10.02%</i>

c) Erred in rejecting the claim of the appellant that, in respect of unit of the appellant claiming deduction u/s 10AA, its own higher margin for the subsequent years in which the appellant has not claimed deduction u/s 10AA, be considered to compute arm's length operating profit to establish "normal level of ordinary profit" for the year under consideration, as such internal comparison is the best available comparable.

<i>Assessment Year</i>	<i>OP of the unit under consideration located at SEEPZ-SEZ</i>	<i>Remark</i>
<i>AY 2021-2022</i>	<i>10.02%</i>	<i>Deduction u/s 10AA claimed</i>
<i>AY 2022-2023</i>	<i>11.95%</i>	<i>Deduction u/s 10AA not claimed</i>
<i>AY 2023-2024</i>	<i>10.58%</i>	<i>Deduction u/s 10AA not claimed</i>

Comparing the margins of the same business unit of the appellant, over a range of period having almost identical business parameters, provides more realistic guidance about its ordinary profit (return) than comparing profit margin of independent third party, who operates in altogether different business qualitative, risks and geographical parameters.

d) Erred in considering inappropriate comparables and rejecting the suggested comparables of the Appellant, based on the filters considered by Officer as the appropriate filters and thereafter applying the Turnover and Other Filters in a mechanical manner leading to determination of an abnormally low level of Operating Profit level @ 2.13%/2.56% which is commercially unviable. The learned TPO and Hon'ble DRP erred in not making adjustment for qualitative aspects of the business as well as working capital adjustments, while determining ALP.

3) The Learned TPO and Hon'ble DRP erred in computing arm's length operating profit (OP) @ 2.13%/2.56% respectively as:

a) A low level of Operating Profit (OP) computed @ 2.13%, for a fully integrated export-oriented unit manufacturing Diamond Studded Jewellery

will result into arriving at non-economic profit at net level from the angle of a prudent businessman and also revenue authorities for tax purpose.

b) To arrive at the Net Profit and also Taxable Profit, the interest cost needs to be factored while making comparison with other entities as the same will have bearing because of:

i) High Working Capital requirement for this business and,

ii) Expectation of reasonable Return on Capital Employed.

c) The Learned TPO and Hon'ble DRP erred in considering practical example given by the appellant to prove that arm's length OP @ 2.13% / 2.56% will result into abnormally low net profit/taxable profit (working given as "Annexure B-Taxable Profit" and thus further erred in:

i) Not considering the fact that OP of 2.13% is not viable economically, the learned TPO failed in his basic duty of considering alternative to determine a fair normal profit for the units established in SEEPZ-SEZ and thereafter consider the efficiencies of the assessee to determine the Normal Profit.

4) Not considering the request of the appellant that the preliminary enquiry he made in the various TP Commissionerate in Mumbai to gather data of similar cases engaged in the same business and environment which are under consideration for assessment during this year and past 2 years and such data be also used to calculate average profit because such data will be easily available to the officers in TP section. The Ld. NeAC has erred in computing the tax on income of INR 70,34,68,810/- instead of assessed income of INR 56,80,38,778/-.

The appellant craves leave to add, alter, vary, omit, substitute or amend the above ground of appeal at any time before or at the time of hearing of the appeal, so as to enable the learned Commissioner (Appeals) to decide the appeals according to law.

The appellant craves leave to add, amend or alter the grounds of appeal at or before the time of hearing."

2. The Assessee vide application dated 05.05.2025 has raised following concise grounds of appeal:

"1. The NeAC officer has erred in making variation (addition) of INR 10,98,72,843/-by invoking the provisions of sec.80IA (10) and thereby reducing the deduction of INR 8,38,48,870 claimed by the Appellant and reworking the assessed Income at INR 61,96,19,943.

2. The NeAC Officer erred in not following the directions of the DRP for working out the deduction under sec.10AA."

3. Brief facts of the case are that the assessee is a firm, engaged in business of Gems and Jewellery, primarily manufacturing and export of diamond studded Jewellery. The assessee is having one of its units located in Santacruz Electronics Export Processing Zone-Special Economic Zone(SEEPZ-SEZ) Andheri (East), Mumbai. The assessee has another unit located outside of SEZ, which mainly supplied diamonds to manufacturing unit in SEZ. The assessee filed its return of income for assessment year (AY) 2021-22 on 07/02/2022 declaring income of Rs.50.97 crores. The case was selected for scrutiny. For selection of the scrutiny, one of the reasons was reporting of Specified Domestic Transaction (SDT). Since, the assessee reported certain Specified Domestic Transaction (SDT) with its related party/associated enterprises, therefore, the assessing officer (AO) made reference under section 92CA (1) was made to Transfer Pricing Officer (TPO) for computation of Arm Length Price. The Transfer Pricing Officer (TPO) passed his order under section 92CA(3) dated 21/10/2023 suggested addition/made downward adjustment of Rs.11.62 crore on account transaction of sale of jewelry. On receipt of order of TPO, the AO made addition /adjustment of Rs.11.62 crores in draft assessment order. The copy draft assessment order dated 12.12.2023, passed under section 144C(1) was served on the assessee. The assessee exercised its option for filing objection before Dispute Resolution Panel (DRP).
4. Before the DRP the assessee filed detailed written submission. The assessee before DRP submitted that AO has erred in making reference to TPO by invoking provisions of section 80IA(10) without determining and establishing

existence of an arrangement between the concerned parties which results in more than ordinary profit and therefore, whole proceedings initiated under transfer pricing provisions is bad in law. The assessee is also stated that AO referred the matter to TPO in respect of SDT without demonstrating that business affairs of the assessee with the closely connected entity has been so arranged having risen to more than the ordinary profit of the assessee. The assessee by referring sub-section (10) of section 80IA submitted that such section casts responsibilities upon the AO to demonstrate that business affairs of the assessee with the closely connected entity have been so arranged even raised to more than ordinary profit to the assessee, which is missing in the assessment and TP proceedings, and determine what is normal profit. The AO has not discharged his duty by demonstrating the existence of such arrangement. The proviso to section 80I(10) states that in case the aforesaid transaction involves SDT, the amount of profit from such transactions shall be determined having regard to the arm's length price, as defined in section 92F(ii).

5. The DRP after considering the submission of assessee recorded that one of the objections of assessee is that proceedings were *void ab initio* as pre-requisite in section 80IA(10) of having made more than ordinary profit because of close connection between the assessee and its AE has not been established by the AO. The DRP held that proviso to said section is clear that if aforesaid arrangement involves a SDT, as referred in section 92BA, the amount of profit therefrom shall be determined in accordance with section 92F(ii). The assessee has reported SDT in its report under Form No. 3CEB.

The DRP by referring the Circular No.3 of 2016 of Central Board of Direct Tax (CBDT) held that AO was right in referring the matter to TPO as one of the reasons is a TP risk parameter and rejected such objection of assessee.

6. On the other objection of assessee that TPO erred in adjusting Rs.11.62 crores to sales transaction, thereby reducing profit of undertaking to that extent for the purpose of computation of deduction under section 10AA. The Id. DRP recorded that the assessee in its written submission stated that objective of section 80IA(10) is to ensure that owing to tax holiday, the taxpayer does not claim extra benefits by showing profit which is more than the ordinary profits. Data for subsequent years as given makes it very clear that assessee's own case comparison of profit before the tax holiday and after tax holiday period are both. The assessee explained that in AY 2021-22 operating profit of unit under consideration situated in SEEPZ-SEZ wherein deduction under section 10AA was claimed, was 10.02%, in AY 2022-23 when no deduction under section 10AA claimed it was 11.95%, in AY 2023-24, in no deduction under section 10AA was claimed operating profit of assessee was 10.58%. It was further submitted that, in any business except due to extra ordinary circumstances, profit/loss of the taxpayer is consistent over a period of time. Therefore, comparing margin of business unit over a range of profit provides more realistic guidance above its ordinary profit than comparing for applying profit margin of other parties, who operates in altogether different business. The assessee by referring the CBDT Circular No. 2 of 2008 submitted that net profit in the diamond trade is at 6.00% is acceptable to the department without detailed scrutiny. On the basis of

aforesaid submissions, the assessee submitted that profit of assessee is consistent with the period of tax holiday as well as non-tax holiday.

The DRP after considering the submission of assessee held that TPO has dealt this issue and address that being controlled transaction; this cannot be taken as bench mark. Transfer pricing analysis is done with the help of uncontrolled transaction. The DRP agreed with the stand of TPO that business contention vary from year to year and margins of comparable of current year or the weighted average of three years should be taken rather than figures of later years. The transactions of assessee are with the related parties cannot be considered as uncontrolled transactions. On the reliance on CBDT Circular No.2 of 2008, the DRP held that such Circular is applicable for assessment made during FY 2008-09 and not applicable for AY 2021-22.

7. On the objection against downward adjustment of Rs.11.62 crore. The assessee stated that TPO erred in considering inappropriate comparables and rejecting/ suggested comparables based on filters and thereby applying filters in a mechanical manner, leading to determination of abnormally low level of operating profit level at 2.13% which is commercially unviable and that TPO erred in not making adjustment for qualitative aspects. The assessee also objected for not utilizing data available in respect of unit being listed, unlisted companies and firm located in SEEPZ-SEZ having TP jurisdiction in the TP circle for Mumbai to determine ALP. To support such submission, the assessee stated that such low level of operating profit computed at 2.13% for a fully integrated export oriented unit manufacturing

diamond, studded Jewellery will result arriving at non-economic profit at net level from the angle of a prudent businessman and also revenue authorities. The taxable profit will be in the range of 0.50% to 2.00% based on the borrowing cost incurred, if any, and many times, will be a cost which is demonstrated hereinunder as can be seen wherein specifically in cases of comparables selected by TPO. To arrive at net profit, interest or cost needs to be factored for the reasons that high working capital requirement of the business income and expectation of reasonable return of capital employed. The assessee by giving examples of various entities (seven comparables as recorded in table on page 15 & 16 of DRP order) that their profit has been accepted by department which is much below 6.00%. The assessee also objected that various comparable were rejected by TPO due to application of Related Party Transaction (RPT) filter even though these parties have broadly same feature as that of assessee. The TPO rejected Uni-design Jewellery Pvt Limited and Uni-design Elite Jewellery Pvt. Limited. Reasons for rejection of RPT in case of these two parties relates to expenses. In case of assessee TP study relates to expenses by way of purchase diamond, which has been considered by TPO as at ALP and since two parties having close connection. Thus, removal of such comparable is not correct the assessee also objected on other filters. The assessee also objected that equating RPT transaction with unrelated parties and party with close connection is also incorrect. The assessee also stated that they have declared operating profit around 2.50%, which is near to proposed operating profit of 2.13%. It was submitted that operating profit of 8.00 to 11.00% as well as

net profit from SEZ unit every year including in the years, when no deduction of section 10AA is availed. If the assessee has declared operating profit of 2.00 to 2.50%, in subsequent years, resulting into net profit of 1.00 to 1.50% such result will not pass test of assessment scrutiny. The assessee also objected to the inclusion of inappropriate comparables and rejecting of appropriate comparables. Objection of assessee to inclusion of inappropriate comparables and rejecting of appropriate comparable are recorded at page no. 18 to 24 of order of DRP. The assessee also objected that comparables mentioned in show cause notice and finally considered for benchmarking are inappropriate when compare to business of assessee as limited data is available. Such objections of assessee are recorded at page no. 25 to 28 of order of DRP.

The DRP on considering the aforesaid objection recorded that assessee has benchmarked its transaction of sale of Jewellery to its AE by using TNMM method and arrived at net margin of 10.02%. The TPO applied various filters like turnover filter, export filter and RPT filter, removed/ excluded following seven comparable.

- i) Uni Design Jewellery Pvt. Ltd.
 - ii) Jewelex India Pvt. Ltd.
 - iii) Uni Design Elite Pvt. Ltd.
 - iv) Goldiam International Ltd.
 - v) Flawless Jewellery Pvt. Ltd.
 - vi) Global Jewellery Pvt. Ltd.
 - vii) Stellarly Jewellery (S. Narendra)
8. The TPO added/ included four following new comparable,
- i) Sidds Jewellels Pvt. Ltd.

- ii) Neysa Jewellery Ltd.
- iii) Kannai Industries Ltd.
- iv) Shantivijay Jewels Ltd.

9. It was the observation of DRP that the TPO on the basis of seven following final set of following comparable arrived at net margin at 2.13%.

- (i) Neysa Jewellery Ltd,
- (ii) Golkunda Dimamonds & Jewellery Ltd.
- (iii) Kanani Industries Ltd.,
- (iv) Shantivijay Jewels Pvt Ltd,
- (v) Sidds Jewellels Pvt. Ltd.
- (vi) Shangold India Ltd,
- (vii) Fine Jewelry Mfg Ltd

10. The DRP by recording of objection of assessee that a very low net margin arrived at by TPO which is uneconomical and unattractive for the industry, which is having high working capital and expectation of reasonable return on capital employed. If finance cost is factored into working of the profit will be further reduced, thus, concept of making more than ordinary profit as pre-requisite is not met in the case. The DRP was of the view that net margin arrived by assessee is apparently low and will be further lowered if cost of finance is factored in, the provisions of section 80IA(10) as well as other various transfer pricing provisions prescribed procedure for arriving at arm's length price in a systematic manner in the Act. The TPO has rigorously applied various filters as applicable. There cannot be exceptions on application of filters as to industry class or to any specific assessee. The DRP justified turn over filter, export turnover filter, RPT filter by referring various case laws. However, the DRP directed to remove Neysa Jewellery Limited from the list of final comparables by holding that Neysa Jewellery

Limited is a loss making company. This comparable has shown consistent loss in FY 2018-19 and 2020-21.

11. On the other objection of assessee that jurisdictional assessing officer (JAO) erred in proposing of variation of Rs. 11.62 crore to the total income on the report of TPO as additional income, instead of considering TP adjustment as amount to be reduced from profits of undertaking enjoying deduction under section 10AA and thereafter compute revised amount of deduction under section 10AA. The assessee explained that they have returned income of Rs. 50.97 crore, variation in respect of issue on account of TP adjustment is Rs. 11.62 crore, thus, total income determined Rs. 62.59 crore. This is high handed approach of AO in making addition of Rs. 11.62 crore to the taxable income instead of reduction of Rs. 11.62 crore from profit of unit for recomputing deduction under section 10AA. The assessee explained that they have given working to the JAO that total return income of assessee is of Rs. 50.97 crore, the assessee claimed deduction of Rs. 8.38 crore, thus, revised return before deduction under section 10AA is Rs. 59.35 crore and income entitled for deduction under section 10AA as per ITR is Rs. 16.77 crore, and if the proposed variations as suggested by TPO of Rs 11.62 crore is reduced, revised income eligible for deduction under section 10AA is Rs. 5.15 crore. Export turnover of unit is Rs 171.78 crore, total turnover of the unit is Rs. 173.20 crore, revised profit eligible for deduction under section 10AA is Rs. 5.11 crore, thus, deduction under section 10AA being 50% of Rs. 5.11 crore, would be 2.55 crore. As return of income of assessee before claiming deduction under section 10AA is Rs. 59.35 crore and revised deduction (Rs.

2.55 crore) thus revised taxable income is Rs. 56.80 crore. The assessee also furnished basis of aforesaid working. The working of assessee is recorded on page no. 43 & 44 of order of DRP, is extracted below;

Particulars	Amount in Rs.
Returned income	50,97,47,100/-
Add: Deduction under section 10AA	8,83,48,870/-
Revised return of income before deduction u/s 10AA	59,35,95,970/-
Income entitled for deduction u/s 10AA as per ITR	16,77,41,466/-
Less: Proposed variation as per order of TPO	(11,62,05,996/-)
Revised income entitled for deduction u/s 10AA	5,15,35,470/-
Export turnover of the Unit	1,71,78,74,476/-
Total turnover of the Unit	1,73,20,26,557/-
Revised profit entitled for deduction	5,11,14,383/-
Deduction u/s 10AA (50% of 5,11,14,383)	2,55,57,192/-
Returned income before deduction claimed u/s 10AA	59,35,95,970/-
Less: Revised deduction u/s 10AA	(2,55,57,192)
Revised taxable income	56,80,38,778/-

12. The assessee also furnished basis of the above working as recorded in para 8.4 on page No. 44 & 45 of order of DRP.

13. The DRP on considering the submissions of assessee directed "*the panel directs assessing officer to work out on above lines the revised adjustment as communicated by TPO after giving effect on the panels direction to TP grounds herein above.*"

14. On receipt of direction of DRP, the assessing officer passed final assessment order under section 143(3) r.w.s 144C (13) read with section 144B on 25.02.2024. The assessing officer by referring the final set of six comparables computed the final adjustment on account of sale transaction to its AE at Rs. 10.98 crore and straightway added the same to the income of assessee in the following manner:

S No	Description	Amount (in Rs.)
1	Income as per return of income filed	50,97,47,100/-
2	Income as computed u/s 143(1)(a)	50,97,47,100/-

3	Variation in respect of issue of (if any) TP adjustment as above	10,98,72,843/-
4	Total income determined	61,96,19,943/-

15. Aggrieved by the additions in the assessment order the assessee has filed present appeal before Tribunal.

16. We have heard the submissions of learned authorized representative (Id AR) of the assessee and the learned Senior departmental representative (Sr DR) for the revenue and have gone through the orders of lower authorities carefully. The Id AR of the assessee submits that manufacturing unit of assessee is situated in SEZ. The unit in SEZ purchased cut and polished diamond mainly from another unit located outside SEZ. On reporting SDT on account of sale of Jewellery to its AE, the Jurisdictional Assessing Officer (JAE) made reference to TPO on reporting such transaction in Form 3CEB explaining the fact that profit earned from sales to such parties are not more than ordinary profits. Report in Form 3CEB is filed out of abandoned caution so as to avoid provisions related to non-filing / non-disclosure of transactions under transfer pricing provisions. The assessing officer failed to establish close connection and arrangement of business transaction to produce more than ordinary profit before making reference to TPO. The AO without demonstrating that business affair of assessee with the closely connected entity has been so arranged giving rise to more than ordinary profit to the assessee. The Id. AR of the assessee by referring provisions of section 80IA(10) submits that plain reading of this section prescribed that first the AO has to establish, close connection between the assessee and the other person and having established close connection he has reason to believe that

business transaction is so arranged with the other person so as to produce more than ordinary profit to the assessee. Before making reference to TPO vide reference letter dated 24.10.2024, the JAO did not discharge his duty of demonstrating the existence the such arrangement. The objective of section 80IA(10) is to ensure that owing to tax holiday, the assessee does not claim more benefit by showing profit which is more than ordinary profits. The assessee is consistently showing operating profit of the unit located in SEZ at more than 10% during the currency of benefit available under section 10AA or in subsequent year when deduction under section 10AA is not claimed. In AY 2021-22, the year under consideration, the assessee has shown operating profit at 10.02% and claim deduction under section 10AA. In AY 2022-23, the assessee has shown operating profit at 11.95% and no deduction under section 10AA is claimed, similarly in AY 2023-24, the assessee has shown operating profit at 10.58%. Thus, the operating profit remains more or less consistent during the tax holiday period or thereafter. The quantum of deduction under section 10AA for preceding year has been accepted by TPO, in assessee's own case as well as its AE in earlier years, which proves that there is no arrangement. To support her submissions, the Id. AR of the assessee relied on the decision of Delhi Tribunal in Mankind Pharma Limited Vs. DCIT in ITA No. 2313/Del/2022 dated 01.05.2024, A.T. Kearney India Pvt. Ltd. Vs. ACIT in ITA No. 348/Del/2013 dated 26.08.2014 and DCIT Vs. Halliburton Technology Industries Pvt. Ltd. in ITA No. 277/Pun/2021 dated 10.06.2022.

17. In without prejudice and in alternative submissions the Id. AR of the assessee submits that operating profit of the assessee at 10.02% should be accepted as the various comparable selected by TPO and approved by DRP are not comparable with the assessee. The detailed objections were filed before DRP, which may be considered as part of her submissions.
18. In other without prejudice and in alternative submissions the Id. AR of the assessee submits that JAO has not passed final assessment order as per direction of DRP. The DRP in its direction direct the assessing officer to revise the adjustment figure. The Id. AR of the assessee submits that assessee has given working of revised taxable income and after exclusion of Neysa Jewellery Ltd. variation in respect of issue on account of TP adjustment is Rs. 10.98 crore, thus, total income determined. The AO made addition of Rs. 10.98 crore to the taxable income instead of reduction of Rs. 10.98 crore from profit of unit for recomputing deduction under section 10AA. The assessee explained that they have given working to the JAO that total return income of assessee. And if the proposed variations as direction of DRP Rs 10.98 crore is reduced, revised income eligible for deduction under section 10AA would be reduced. The assessment order is not passed as per the direction of DRP, therefore, same is also liable to be quashed / set aside.
19. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the order of lower authorities. He submits that as per proviso to section 80IA(10) if the assessee made a specific domestic transaction as referred to in section 92BA, the amount of profit from such transaction shall be determined having regard to arm's length

price as defined in 92F(ii). The DRP in para 6.3.2 as specifically held that Circular No. 3 of 2016 prescribed the procedure for reference to transfer pricing adjustment. The TPO carried out transfer pricing adjustment on the basis of method prescribed under section 92C. The TPO applied various filters for testing the comparability of various comparables selected by assessee. The comparable which were not comparable with the assessee were excluded and TPO introduced his own comparable on the basis of various parameters and suggested the adjustment. However, the Id. DRP on considering the submission of assessee directed the AO/TPO to exclude Neysa Jewellery Limited from the set of final comparable. The assessing officer accordingly passed a final assessment order by making adjustment of Rs. 10.98 crore.

20. 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 various case laws relied by Id. AR of the assessee. Firstly, we are considering the contention of Id. AR of the assessee about the applicability of provisions of section 80IA(10) for existence / non-existence of arrangement between the eligible unit of assessee and its AE, which according to her is a condition precedent to invoke the provisions of section 80IA(10). For better appreciation of issue under consideration, the definition of Specified Domestic Transaction (SDT) prescribed under section 92BA and section 80IA(10) is read as under;

Section 92BA.*For the purposes of this section and sections [92](#), [92C](#), [92D](#) and [92E](#), specified domestic transaction in case of an assessee means any of the*

*following **transactions, not being an international transaction**, namely:*

- (i) *any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A; **(has been omitted Fin Act,2017)***
- (ii) *any transaction referred to in section 80A;*
- (iii) *any transfer of goods or services referred to in sub-section (8) of section 80-IA;*
- (iv) *(any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;*
- (v) *any transaction, referred to in any other section under Chapter VI-A or section [10AA](#), to which provisions of sub-section (8) or sub-section (10) of section [80-IA](#) are applicable; or*
- (vi) *any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of Rs. 20 crore."*

Section 80IA (deduction in respect of profit and gains from industrial undertakings after a certain dates etc)

(1) xxxx

(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this [section](#) applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this [section](#), take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in [section 92BA](#), the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of [section 92F](#).

21. A careful reading of definition of SDT prescribed in section 92BA makes it clear that there must be a transaction, it is not an International Transaction within meaning of 'International Transaction' defines in section 92B, and it should be covered under one of the six transactions mentioned in the sub-section and aggregate value of transactions in the previous year exceed a

sum Rs. 20 Crore. By taking care of the above position, we shall consider the facts of the present appeal. Before us, it was the plea of Id. AR of the assessee that in absence of any arrangement, the business transaction between eligible units and its AE do not get covered within the ambit of SDTs defined in section 92BA and eventual transfer pricing analysis and that transfer pricing analysis were made for abundant caution. It was also argued that AO has not proved existence of any arrangement before making reference to TPO for computation of arm's length price. And in absence of such arrangement, the adjustment made by TPO would not survive. We find that the assessee has taken such a stand right from the beginning by filing their objection / reply in response to show cause notices issued by TPO in reply dated 12.10.2023 as well as on 07.11.2023, copies of such replies are available on record. We find that despite taking such objection, the TPO disregarded such factual objection. The TPO straightway benchmarked the transaction by following Transactional Net Margin Method (TNMM). The TPO excluded seven comparable of assessee and included four new comparable. Unit-II of the assessee was considered as tested party. On the basis of his analysis, the TPO suggested downward adjustment of Rs. 11.62 Crore on transaction of sales to AE. The DRP in its directions directed AO/TPO to exclude on the comparable which was loss making entity. On exclusion of one such comparable the downward adjustment becomes Rs. 10.98 Crore.

22. We find that Hon'ble Jurisdictional High Court in CIT Vs. Schmetz India Private Limited (2012) 26 taxmann.com 336 (Bom) held that where the AO has not been able to prove any arrangement between parties which resulted

extraordinary profit, denial of deduction under section 10A is not possible. Similar view was taken by Rajasthan High Court PCIT Vs. Vedansh Jewels Private Limited (2018) 97 taxmann.com 521 (Raj). Karnataka High Court in CIT Vs. H.P. Global Soft Ltd. 342 ITR 263 (Kar) also held that there should be material to indicate that assessee had indulged in arrangements with other person so as to give more profit to the assessee than what the assessee might have been ordinarily expected to earn from such business. Pune Tribunal in DCIT Vs. Halliburton Technology Industries Pvt. Ltd. (supra) by relying upon the decision of Bombay High Court in Schmetz India Pvt. Ltd. (supra) held that when AO was not able to prove that there was an arrangement between the assessee and its parent company resulting into extra ordinary profit, and the assessee had concentrated on export to its parent company, only which had resulted in higher profit. The AO has not demonstrated any proof of arrangement for disallowance under the provisions of section 10B(7) r.w.s. 80IA(10) for which judicial pronouncement made it mandatory. Further coordinate bench of Delhi Tribunal in Mankind Pharma Vs DCIT (supra) on relying the decision of Delhi High Court in CIT Vs. Schmetz India Private Limited (supra) also held that existence of an 'arrangement' is a condition precedent to trigger provisions of section 80IA(10) and in its absence, business transacted between eligible units and its AE do not get covered within ambit of Specified Domestic Transactions (SDTs) defined under section 92BA and eventual TP analysis.

23. On considering the aforesaid decision we find merit in the submission of Id. AR of the assessee which is supported by the aforesaid case laws that

existence of arrangement between the deduction seeking unit and other AE is a pre-condition for invoking rigor of section 80IA(10). Higher profit per se cannot lead to the conclusion that there is arrangement between the parties. The concept of PLI cannot per se be applied to hold that assessee has earned higher profit. We find that the TPO has no occasion to make any comparative data analysis unless condition of pre-arrangement is satisfied. Thus, the assessee succeeded on primary submission of Id. AR of the assessee.

24. So far as submissions of Id Sr DR for the revenue that proviso to section 80IA(10) is applicable on the facts of the case, in our view once, the precondition of existence of an arrangement has not been fulfilled, the effect of proviso will not come in to play. Considering the fact that assessee has succeeded on primary submission of Id. AR of assessee, therefore, adjudication on other grounds of appeal have become academic. In the result, the concise ground of appeal of the assessee is allowed. Further, considering the facts that we have allowed appeal of the assessee on first legal plea of Id AR of the assessee, therefore, considering the other alternative pleas have become academic.

25. In the result, the appeal of the assessee is allowed.

Order pronounced on 16/06/2025 in open court.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 16/06/2025
Divya R. Nandgaonkar

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

ITA NO. 6477/Mum/2024

KBS Creations(AY: 2021-22)

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By Order

Assistant Registrar,
ITAT Mumbai