

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD**

**श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1931/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Hanning Motors India Pvt.Ltd. Plot No.80, 81 & 82/1 & 2,, GIDC Alindra, Savli Vadodara - 391 775	<u>बनाम/</u> <u>v/s.</u>	The Dy.CIT Circle-1(1)(1) Vadodara - 390 007
स्थायी लेखा सं./PAN: AABCH 9935 K		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Naman Desai, AR	
Revenue by :	Shri Prathvi Raj Meena, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 12 /03/2025
घोषणा की तारीख /Date of Pronouncement: 13 /03/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order dated 13.08.2024 passed by the Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)-NFAC”] for the Assessment Year (AY) 2017-18, against the final assessment order, passed under Section 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] by the Assessing Officer [hereinafter referred to as “AO”], incorporating the Transfer Pricing (TP) adjustments determined by

the Transfer Pricing Officer [hereinafter referred to as "TPO"] under Section 92CA of the Act.

Facts of the Case:

2. The assessee is engaged in the manufacture and sale of synchronous drain pumps used in washing machines and dishwashers. The assessee filed its return of income on 28.11.2017, declaring a business loss of Rs.21,48,541/-. The case was selected for Complete Scrutiny under CASS, and notices were issued under Sections 143(2) and 142(1) of the Act. Since the assessee had international transactions with Associated Enterprises (AEs), a reference was made to the TPO under Section 92CA of the Act. The TPO proposed a TP adjustment of Rs.6,92,75,149/-, which was incorporated into the final assessment order passed by the AO u/s.143(3) r.w.s. 144C(3) of the Act.

3. The assessee filed an appeal before the CIT(A)-NFAC, challenging the TP adjustments and other disallowances. However, the CIT(A)-NFAC, instead of adjudicating the grounds on merits, summarily dismissed the appeal without giving any findings on the various issues raised.

4. Aggrieved by the order of CIT(A)-NFAC, the assessee is in appeal before us raising following grounds of appeal:

GENERAL GROUND

1. *The Assessing Officer, National e-Assessment Centre - Delhi (hereinafter referred as "AO" for brevity) and Deputy Commissioner of Income Tax, Transfer Pricing, TP-1, Ahmedabad (hereinafter referred as "TPO" for brevity) ("AO"*

and "TPO" collectively referred as "lower authorities") have erred in passing the Orders:

- a. Without considering all the submissions and/or without appreciating properly the facts and circumstances of the case and the law applicable; and*
- b. At the fag end of the limitation period.*

GROUND RELATING TO TP ANALYSIS

Combined Transaction Approach

- 2. *The TPO has erred in adopting separate transaction approach for commission paid and fixed assets purchased without appreciating that the all the international transactions are closely linked, interrelated and integral to the business operations of the Appellant and the same needs to be benchmarked using combined transactions approach.*

Sales Commission

- 3. *The TPO has erred in;*
 - i) Not appreciating that the Sales commission is closely linked to the other international transactions and should not be benchmarked separately;*
 - ii) Not appreciating that once the entity level margin is tested on the touchstone of ALP, it pre-supposes that the various components of income and expenditure such as sales commission considered in the process of arriving at the margin is also at ALP;*
 - iii) Not substantiating how the sales commission was singled out of the many transactions to be benchmarked separately;*
 - iv) Not appreciating that the methodology adopted to compute ALP of commission paid is not as per the methodology prescribed in the Indian TP regulations and is not in accordance with section 92C read with Rule 10B.*
 - v) Adopting companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, turnover, despite having unusual business circumstances or high margins, substantial RPT, etc.*
 - vi) By selecting the companies as comparables and computing their margins based on the data pertaining to calendar year 2018 without appreciating that the international transactions have been entered in FY 2016-17.*

- vii) *Comparing the net margins of the comparables with the rate of sales commission paid to AE's for the purpose of benchmarking without appreciating that net margins should be compared with net margins;*
- viii) *Not computing the operating margins of comparables as per Rule 10CA;*
- ix) *After making adjustment for commission paid, the TPO erred in again including entire commission as part of operating cost, thereby making double adjustment for commission paid.*

Purchase and Sale of Goods

4. *The lower authorities have erred in:*

- a. *Adopting following companies as comparables even though they are not comparable in respect of functions performed, risks assumed, assets utilized, size, turnover, despite having unusual business circumstances or high margins, substantial RPT, etc.;*
 - *B V G India Ltd*
 - *Ruttonsha International Rectifier Ltd*
 - *W PIL Ltd*
- b. *Treating Forex gain/Loss as non-operating in nature while computing the operating margin.*
- c. *Treating Depreciation as part of cost and rejecting Cash PLI without appreciating that the Appellant is a new manufacturing company with high capital expenditure and depreciation allowance, when compared to the comparables;*
- d. *Without prejudice, if CASH PLI is not adopted, depreciation adjustment should be granted for excess depreciation of the Appellant.*
- e. *Incorrectly computing the margins of the comparables and the Appellant;*

5. *The lower authorities have erred in:*

- a. *Not making proper adjustment for enterprise level and transactional level differences between the Appellant and the comparable companies;*
- b. *Not recognizing that the Appellant was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account; and*

- c. *Not providing working capital adjustment while computing the Arm's length. price.*
6. *The TPO has erred in not restricting the TP adjustment to the AE transactions and has erred in making TP adjustment at the entity level.*

Purchase of Fixed Assets

7. *The lower authorities have erred in:*
 - a. *Not appreciating that TP Provisions are not applicable to the transaction of purchase of fixed asset as it is a Capital item;*
 - b. *Not appreciating that once the operating margins are at arm's length then it presupposes that purchase of capital asset from AE's is also at arm's length as depreciation on such assets is considered while computing the operating profit margins;*
 - c. *Not appreciating that separate benchmarking of Capital Assets from AE's has lead to double taxation as depreciation on such assets has already been considered for the purpose of computing operating margins;*
 - d. *Considering the ALP of the Fixed Assets as Nil without appreciating that the Appellant has actually purchased the assets and no third party would provide the assets for free;*
 - e. *Not appreciating that the methodology adopted to compute ALP of fixed assets purchased is not as per the methodology prescribed in the Indian TP regulations and is not in accordance with section 92C read with Rule 10B.*

GROUND RELATING TO CORPORATE TAX

8. *The learned AO has erred in computing the total income without granting set off of brought forward business losses and unabsorbed depreciation.*
9. *The learned AO has erred in computing the tax liability without providing setoff of MAT credit available as per provisions of section 115JAA of the Act.*
10. *The learned AO has erred in levying interest under section 234B of the Act of Rs.1,10,58,900/-. On the facts and in the circumstances of the case, interest under section 234B is not leviable, being consequential in nature. The Appellant denies its liability to pay interest under section 234B. Even otherwise the interest computed is excessive.*

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

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

The Appellant prays accordingly.

5. The appeal was filed with a delay of 11 days beyond the statutory time limit. The assessee has submitted an affidavit dated 25.11.2024, explaining the reasons for the delay. The affidavit states that –

- The order of the CIT(A)-NFAC dated 13.08.2024 was not served physically to the assessee.
- The assessee became aware of the order only upon logging into the Income Tax website, after the expiry of the statutory time limit for filing the appeal before the Tribunal.
- Immediately upon learning of the order, the assessee engaged a new tax consultant and filed the present appeal without any further delay.

5.1. A petition for condonation of delay was filed before us, citing genuine reasons beyond the assessee's control. During the hearing, the Departmental Representative (DR) did not raise any objections to the condonation of the delay. Considering the reasons cited in the affidavit and the fact that the delay was minor and caused due to reasonable circumstances beyond the assessee's control, we find merit in the request for condonation. In the interest of justice, the delay of 11 days in filing the appeal is hereby condoned, and the appeal is admitted for adjudication on merits.

6. During the course of hearing before us, the Authorized Representative (AR) for the assessee submitted that the CIT(A)-NFAC has not adjudicated

upon any of the grounds of appeal and has merely dismissed the appeal without deciding the issues on merits.

7. The Departmental Representative (DR), on the other hand, fairly conceded that the appeal should have been heard by CIT(A)-TP, given that the primary issue involved is Transfer Pricing adjustments. The DR submitted that the matter may be restored to CIT(A)-TP for proper adjudication.

8. We have heard the rival submissions and perused the material available on record. It is evident that the CIT(A)-NFAC has dismissed the appeal without rendering any findings on the merits of the case, which is against the principles of natural justice.

8.1. Since the core issue in the appeal pertains to Transfer Pricing adjustments, the appeal ought to have been adjudicated by CIT(A)-TP as submitted by the DR. The failure of CIT(A)-NFAC to decide the issues on merits has resulted in an improper disposal of the appeal, necessitating a remand.

8.2. In view of the above, and considering the fair concession made by the DR, we are of the opinion that the matter should be restored to the file of the CIT(A)-TP or CIT(A) of any other appropriate charge for fresh adjudication. The concerned CIT(A) is directed to examine all the grounds of appeal raised by the assessee and adjudicate the issues on merits after granting a reasonable opportunity of being heard to the assessee.

8.3. Therefore, the order of CIT(A)-NFAC is set aside, and the matter is restored to the file of CIT(A)-TP for fresh adjudication on merits.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 13th March, 2025 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 13/03/2025

टी.सी. नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad