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**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई**
**IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI**
**श्री मनु कुमार गिरि ,न्यायिक सदस्य एवं श्री एस .आर.रघुनाथा, लेखासदस्य के समक्ष**
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**
**AND SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकरअपीलसं./**IT(TP)A.No.62/Chny/2024 & S.A. No. 82/Chny/2024**
**(In IT(TP)A No.62/Chny/2024)**
(निर्धारण वर्ष / Assessment Year: 2020-21)

| | | |
|---|---|---|
| **M/s. Trimex Industries Private Limited,**<br>1, No.1, Subbaraya Avenue,<br>C.P. Ramaswamy Road, Alwarpet,<br>Chennai-600 018. | Vs | **The Deputy Commissioner of Income Tax,**<br>Central Circle-1(3),<br>Chennai. |
| PAN : AABCT-0212-F | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

| | | |
|---|---|---|
| अपीलार्थीकीओरसे/ Appellant by | : | Mr. Darpan Kirpalani &<br>Mr.Ajit Tolani, Advocates &<br>Ms.Aswini Nalhe, Advocate<br>(virutual) |
| प्रत्यर्थीकीओरसे/ Respondent by | : | Mr. A.Sasikumar, CIT |

| | | |
|---|---|---|
| सुनवाईकीतारीख/Date of hearing | : | 05.03.2025 |
| घोषणाकीतारीख /Date of Pronouncement | : | 19.05.2025 |

**आदेश / O R D E R**

**PER MANU KUMAR GIRI, JM:**

The captioned appeal by the assessee, M/s. Trimex Industries Private Limited ('TIPL' in short) for Assessment Year (AY' in short) 2020-21 arising out of final assessment order dated 30.07.2024 passed by Assessing Officer, u/s.143(3) r.w.s. 144C(13) r.w.s.144C (13) of the Act pursuant to the directions of Ld. Dispute Resolution Panel-2, Bengaluru ('DRP' in short) u/s.144C(5) of the Act dated 28.06.2024.

2. Since the Assessee carried out certain international transactions with its Associated Enterprises ('AEs' in short), the same have been referred to Transfer Pricing Officer ('TPO' in short) DC/ACIT(TP)-3(2), Chennai for determination of Arm's Length Price ('ALP' in short). The TPO passed an order u/s.92CA(3) on 28.07.2023 proposing certain Transfer Pricing (TP)

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adjustment. Incorporating the same, Draft assessment order was passed on 29.09.2023 which was subjected to Assessee's objections before DRP. Pursuant to the directions of DRP, final assessment order has been passed.

3. Aggrieved by the order of the AO the Assessee is in appeal before us.

4. Subsequently, the assessee filed a rectification petition before the TPO and the same was adjudicated by the TPO vide rectification order dated 20.12.2024. The AO has given effect to the same vide order dated 31.01.2025.

5. The grounds of appeal in ITA No.IT(TP) No.62/Chny/2024 for AY 2020-21 are given below :

> The grounds of appeal listed below are independent and without prejudice to each other.
> 1. **General grounds of appeal:**
> 1.1.1. The learned Transfer Pricing Officer ("Ld. TPO") and the learned Assessing Officer ("Ld. AO") have grossly erred, in law and in facts of the case, by passing orders with unwarranted adjustments to the reported income of the Appellant by misapplying the provisions of the Income tax Act, 9161, ("the Act") by adopting faulty assessment procedure to finalize the adjustment, such as, but not limited to, rejection of transfer pricing study, analysis of the functions carried out by the Appellant and those of the comparable companies and erroneous computation of profit margins of the comparable companies.
> 1.1.2. The Ld. TPO has grossly erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962,("the Rules") and undertaking a fresh economic analysis for the determination of the arm's length price in connection with the impugned international transactions and thereby, holding that the Appellant's impugned transactions are not at arm's length.
> 1.1.3. The impugned order passed by the Ld. AO under section 143(3) r.w. section 144C(13) of the Act is contrary to the law, facts, and circumstances of the case.
> **2. Transfer pricing adjustments:**

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**2.1. Grounds of areal in relation to adjustment made on international transaction involving export of barite (Rs. 11,27,10,186):**

2.1.1. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, by unreasonably rejecting two companies from the final set of com parables. namely, Ashok Alco-Chem Ltd., and Ashwa Minerals Pvt. Ltd. by erroneously applying additional filters to the comparable set which has already been subject to a defined set of qualitative and quantitative filters, thereby resulting in cherry picking of comparables and excluding low margin companies solely for the purpose of making TP adjustment to the impugned transaction.

2.1.2. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, by erroneously applying loss making filter on a two out of three-year basis to reject the comparable companies chosen by the Appellant in its transfer pricing study, as against the settled position of applying loss criterion on all three consecutive years.

2.1.3. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, by erroneously computing the operating margins of the comparable companies chosen for benchmarking the impugned international transaction.

2.1.4. The Ld. TPO and Ld. AO have grossly erred in law and in facts, by erroneously considering miscellaneous expenses as non-operating in nature while computing operating margins of the comparable companies chosen for benchmarking the impugned international transaction without appreciating the fact that the same has been treated as operating in nature while computing the operating margins of the Appellant.

**2.2. Grounds of appeal in relation to adjustment on international transaction involving import of coking coal (Rs. 20,79,00,972):**

2.2.1. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, in not appreciating the background, transaction flow, functional and risk profile in relation to the transactions (viz., import of coking coal, sale of coking coal and purchase of coke) undertaken by the Appellant in the coking coal segment.

2.2.2. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, in adopting comparable uncontrolled price ("CUP") method as the most appropriate method for benchmarking the impugned international transaction by completely ignoring the inherent differences in transaction terms as well as functions and risks associated with the impugned international transaction vis-a-vis third-party transaction undertaken by the Appellant.

2.2.3. The Ld. TPO and Ld. AO have grossly erred, in law and in facts, in not appreciating the benchmarking analysis (viz., value chain analysis)

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carried out by the Appellant to evaluate the arm's length nature of the impugned international transaction from an Indian transfer pricing perspective.

2.2.4. Without prejudice to any of the above grounds, the Ld. TPO and Ld. AO ought to have considered the profitability of associated enterprise in relation to the subject international transaction by adopting a foreign tested party benchmarking approach under transactional net margin method.

2.2.5. Without prejudice to any other grounds, should the existing profit-sharing ratio of 90:10 (i.e., 90% for the associated enterprise and 10% for the Appellant) does not hold good for any reason, the Ld. TPO/ Ld. AO be given suitable directions to re-allocate the profits on a reasonable basis by upholding the value chain analysis as the most appropriate benchmarking approach considering the fact that the Ld. TPO has rejected the said analysis only for the reason that the profits allocated to the Assessee (i.e., 10%) is not commensurate to the amount of work/ value addition made by it in the impugned international transaction.

2.2.6 Without prejudice to any other grounds, the Ld. TPO and Ld. AO have grossly erred, in law and in facts, by not restricting the value of transfer pricing adjustment to the overall global profits earned by the Appellant group out of the entire supply chain in relation to the impugned international transaction. Consequently, the TP adjustment made in the hands of the Appellant is beyond the global profits earned together by the Appellant and its associated enterprise from the end customers in the entire supply chain.

**3. Corporate tax adjustments:**

**3.1. Grounds of appeal in relation to disallowance under section 14A of the Act(INR 1,31,97.159):**

**3.1.1** The Ld. AO has grossly erred, in law and in facts, by making the disallowance under section 14A of the Act read with Rule 8D of the Rules to the tune of Rs. 1,31,97,159.

**3.1.2.** The Ld. AO has grossly erred, in law and in facts, by not appreciating the settled position of law that there can be no disallowance under section 14A of the Act in absence of any exempt income.

**3.1**.3 The Ld. AO has grossly erred, in law and in facts, in making a disallowance under section 14A of the Act read with Rule 8D of the Rules in a case where no expenditure has been incurred in respect of earning the potential exempt income.

3.1.4. The Ld. AO has grossly erred, in law and in facts, by considering the entire investments disclosed in the financial statements for the purpose of computing disallowance under section 14A of the Act without appreciating the fact that investments in overseas subsidiaries do not fall under the ambit of section 14A of the Act as the income from such investments are taxable and not exempt.

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3.1.5. The Ld. AO has failed to appreciate the fact that the Appellant by itself has dutifully disallowed the expenditure in relation to the exempt income in accordance with the provisions of the Act.
3.1.6. The Ld. AO has grossly erred, in law and in facts, in considering the amendment made to section 14A of the Act vide Finance Act. 2022 as retrospective and clarificatory, while it is clear that it is only prospective.

**3.2. Grounds of appeal in relation to disallowance of bad debts advance (Rs.1,89,10,796);**
3.2.1. The Ld. AO has grossly erred, in law and in facts, in disallowing the write-off of trade advance to the tune of Rs. 1,89,10,796.
3.2.2. The Ld. AO has grossly erred, in law and in facts, in not appreciating the fact that the deduction is claimed only under section 37 of the Act and not as bad debts deduction under section 36(1)(vii) of the Act.
3.2.3. The Ld. AO has failed to distinguish between write-off of trade advances given to suppliers and write off of trade receivables from the customers and has classified the former under the ambit of the latter for the sole purpose of making erroneous disallowance under section 36(1)(vii) of the Act.
3.2.4. The Ld. AO has grossly erred, in law and in facts, by not appreciating that this is a revenue/ trade loss incurred in the course of business and hence is allowable under section 37 of the Act.
**3.3. Grounds of appeal in relation to disallowance under section 40(a)(ia) of the Act (Rs.61.750);**
**3.3.1** The Ld. AO has grossly erred, in law and in facts, in making a disallowance under section 40(a)(ia) of the Act without considering that the Appellant has appropriately deducted and paid TDS in accordance with the provisions of the Act.
**4. Other grounds of appeal:**
**4.1.1.** The Ld. AO and Ld. TPO have grossly erred, in law and facts, by not appreciating the legal principle that the outer time limit prescribed in case of reference to the Ld. TPO under Section 153 of the Act, would not refer to passing of the draft assessment order, but to the final assessment order and hence, the entire assessment proceedings would need to be quashed as time barred, invalid and void as held by the Hon'ble Madras High Court in the case of CIT vs M/s. Roca Bathroom Products Private Limited and M/s. Freight Systems (India) Private Limited in Writ Appeal Nos. 1517, 1519, 1609, 1610 and 1854 of 2021.

4.**1.**2 The Ld. AO has erred in law by computing interest under section 234A of the Act without considering the fact that the Appellant has filed its return of income within the extended timelines prescribed under section 139(1) of the Act.

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4.1.3 The Ld. AO has erred in law and facts, in computing the assessable income, without factoring the above grounds and consequentially levied interest under sections 234B of the Act."

6. The brief facts of the case are that the assessee was incorporated on10.12.1984 under the Companies Act, 1956 and is engaged in the business of trading and processing of industrial minerals. The assessee caters to the oil-well drilling companies, steel plants, pigment industry and alumina industry.

**7. Issues relating to transfer pricing adjustment:**

1) Export of Barite: (Rs.11,96,78,804/-) [Ground no. 2.1]

During the course of the TP assessment proceedings, with respect to the Barite segment, the TPO accepted the economic analysis under TNMM carried out by the assessee in the TP study report. However, the TPO rejected two comparable companies by erroneously applying certain quantitative filters as tabulated below:

| Sl. No. | Name of the comparable company | Whether accepted by TPO | Reasons for rejection, if any |
|---|---|---|---|
| 1. | Ashok Alco-Chem Limited (segmental) | No | • Failed in PBIT filter (persistent loss making companies) |
| 2. | Ashwa Minerals Private Limited | No | • Failed in PBIT filter (persistent loss making companies).<br>• Failed in sales filter (Sales less than INR 1 crore |
| 3. | Oswal Minerals Limited | Yes | |
| 4. | Varshini Exim Private Limited | Yes | |
| 5. | Manmohan Minerals & Chemicals Private Limited | | |

**Position adopted by the TPO**

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The final list of comparables chosen by the TPO along with the margins as per the rectified TP order is as under:

| | | | | | |
|---|---|---|---|---|---|
| 1. | Oswal Minerals | 0.42 | 1.78 | 1.38 | 1.15 |
| 2. | Varshini Exim Private | 3.85 | 7.71 | 7.42 | 5.67 |
| 3. | Manmohan Minersals and Chemjicalps P Ltd | 9.32 | 9.48 | 9.66 | 9.49 |
| | Arthmetic Mean | | | | 5.44 |

**Position adopted by the DRP:**

The DRP upheld the filters applied and the comparable chosen by the TPO. The relevant extracts from the DRP order have been provided below: (*refer page nos. 5, 6 and7 of the DRP directions or 39, 40 and 41 of the appeal set)*

8. It is noted that the TPO has applied the persistent loss filter & lower turnover filter Rs. 1 crore has excluded companies. The low turnover filter applied by the TPO is appropriate since the margins earned by these small companies fluctuate to extremes because of narrow base and they lack competitive strength, operational efficiencies and human resources. They often escape the eyes of regulators too. Hence, appropriate, lower turnover filter is applied by the TPO to select comparable companies. As M/s.Ashok Alco-Chem Ltd and M/s.Ashwa Minerals Pvt Ltd failed the said turnover filter, it is held to be rightly excluded by the TPO. **Ground rejected.**

9. With regard to Assessee's contention that persistent loss filter criterion should be consecutive losses in all three years, we note that in

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the case of M/s.Ahlers India Pvt Ltd.Vs. DCIT in ITA No.1071/Mds/2016, comparable namely M/s.Gordon Woodroffee Logistics Ltd. was rejected by the TPO for the reason that this company was having losses in two out of three years and the Hon'ble ITAT Chennai held that sincethe Gordon Woodroffe Logistics is incurred loss in the assessment year under consideration and also in the earlier year, in our opinion it cannot be considered as comparable to the assessee company. Accordingly, the rejection of the TPO is justified. "Hence, the panel is of the view that if the company incurs losses in two out of three years the same is considered as not fit for comparability on the ground of persistent loss.

**Ground rejected**

10. The ld.AR submitted the following before us:

Erroneous exclusion of comparable companies: [Ground nos. 2.1.1 & 2.1.2]

**a) <u>Ashok Alco-Chem Limited:</u>**

The Ld. TPO has erroneously applied PBIT filter (persistent loss making filter) and rejected Ashok Alco-Chem Limited by stating that the Company has incurred losses in2 out of 3 years. The profitability details of this company have been tabulated below for reference (refer page no. 21 of the DRP application set):

| Particulars | FY 2019-20 | FY 2018-19 | FY 2017-18 |
|---|---|---|---|
| Net profit (as per financial statements) | -7,60,89,000 (page no.460 of paper book) | -2,81,10,000 (page no. 500 of paper book) | 5,29,44,000 (page no.544 of paper book) |

From the above table, it is clear that the company has earned profits in 1 year out of the 3years. The ld.AR prayed that a persistent loss-making

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filter can be applied only when the company has not earned profits in the current year and the immediately preceding 2 years. Therefore, this comparable company passes the PBIT filter. The ld.AR placed reliance in the case of **Genesys Telecom Labs India Pvt. Ltd**., where it was held by **co-ordinate Chennai ITAT "D" Bench** that the PBIT filter cannot be applied if the comparable earns profits in 1 year out of 3 years (refer page no. 613 of the paper book). The relevant extract of the order is given below:

> *"7.6 From the above order of ITAT, Chennai in the very next year, we find that it had accepted the same comparable i.e., Gordon Woodroffee Logistics Ltd.,in the final list of comparables wherein it has incurred losses in two years (AYs2010-11 and 2011-12) and it made a profit in one year (AY 2012-23).*
>
> *7.7 Moreover the Bangalore Bench of ITAT in the case of Inteva Products India Automotive Pvt. Ltd., in IT(TP)A No. 2843/ Bang/ 2017 (order dated3.12.2020) and KBACETechnologies Pvt. Ltd., in ITA No.3189/ Bang/ 2018 (order dated 29.01.2020) had held that* ***persistent loss filter can be applied only if there is successive losses in three years*** *and if there is a* ***profit in any one financial year out of three successive financial years, then that company cannot be excluded*** *from the list of comparable on the basis of persistent loss making filter.*
>
> *7.8 In light of the aforesaid reasoning and judicial pronouncements cited surpa, we direct the TPO to include Rheal Software Pvt. Ltd., in the list of comparable companies. It is ordered accordingly. Therefore, the Ground Nos. 6 & 6.1 is allowed."*

The Assessee thus prays that **Alco-Chem Limited**, not being a persistent loss-making Company may be accepted in the final list of comparables.

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b) Ashwa Minerals Private Limited.

11. The TPO had rejected this company on the grounds that the Company is a persistent loss-making company and earned revenue less than Rs.1.00 Crore. The profitability and sales details of this company has been tabulated below for reference (refer page nos. 21 and 22 of the DRP application set).

| Particulars | FY 2018-19 | FY 2017-18 |
|---|---|---|
| Net Profit(as per financial statements) | 5,45,930/- (page no.591 of paper book | -64,83,556/- (page no.597 of the paper book). |
| Turnover(as per financial statements) | 1,12,94,552/- (page no.591 of paper book) | 1,43,16,107/- (page no.597 of the paper book) |

From the above table, it is clear that the company has earned profits in 1 year out of the 3 years. As prayed above, PBIT filter can be applied only when the company has not earned profits in the current year in question and the immediately preceding 2 years. Therefore, this comparable company passes the said filter.

Further, the Company has earned revenue exceeding Rs.1.00 Crore in each of the years as enumerated in the above table and therefore, passes the sales filter as well.

Considering the above, the ld.AR submitted that the following companies shall also be included in the final set of comparable for determination of arm's length price:

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- Ashok Alco-Chem Limited
- Ashwa Minerals Private Límited

Erroneous treatment of miscellaneous expenses as non-operating in nature while computing operating margins of comparable companies: [Ground nos. 2.1.3 & 2.1.4]

The ld.AR submitted that the TPO has erroneously considered miscellaneous expenses as non-operating in nature while computing operating margins of the comparable companies chosen for benchmarking the impugned international transaction without appreciating the fact that the same has been treated as operating in nature while computing the operating margins of the assessee. Only those expenses which are not attributable to the normal business operations could be treated as non-operating in nature. However, the TPO has merely stated that the companies incur certain expenditure and classify them as miscellaneous expenditure and therefore are treated as non-operating. The disclosure of such expenses under the head 'miscellaneous expenses' in the financial statements does not alter the business nature of the expenditure.

In this regard, the ld.AR placed reliance on the following judicial precedents:

**E Value Serve.Com, Delhi ITAT bench: [ITA 393/DELI2010]**

> *"47...As regards misc. expenses, ld. CIT(A) has observed that the same included a multitude of expenses that were too small in value. But since **they pertained to the operations of the company, they were treated as operating expenses** for both the tested party as well as the Comparable companies. The TP analysis, as we have earlier observed, is not an exact science and we have to arrive at reasonable conclusions which would not materially affect the profit*

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*margins. Therefore, we do not find any reason to interfere with the finding of ld. CIT(A) on this count..″*

**First Rain Software Centre Pvt. Ltd., Delhi ITAT bench: [ITA 4006/DELI2010]**

*"6.....The only dispute now remains how much miscellaneous expenses are to be excluded from the operating cost. There is no dispute that* ***expenses which are not relatable to earning of operating income are to be excluded for working out the profit margin.*** *The learned counsel for the assessee demonstrated that all the expenses debited under the head "miscellaneous expenses" cannot be said that they have no nexus with operating income. There are certain expenses which are necessary for maintaining the status of the company.* ***We find that exact details of expenses could not be ascertained in respect of comparables.***

*...In the alternative column, Assessee has accepted almost all the objections of the Learned DR except the adjustment of miscellaneous expenses which is also not a very substantial item. Considering these details, the analysis made by the Learned CIT(Appeals) and the procedure provided to compute, ALP, we are of the view that some element of guess work, estimation is always involved for determining the ALP of international transactions. Due to this very reason at the relevant time of this Accounting year mechanism of tolerance band is provided..... Therefore, Learned CIT(Appeals) has rightly held that no adjustment is required in this case. We do not find any merit in the appeal of the revenue.* ***It is dismissed****…″*

Considering the above, the ld.AR prayed that miscellaneous expenses shall be treated as operating in nature while computing the operating margins of the comparable companies.

2) Import of coking coal (INR 20,79, 00,972): [Ground no. 2.3]

During the course of TP assessment proceedings, the assessee submitted that there is a tripartite arrangement between three parties, viz., the assessee, its AE i.e., Rescom Dubai and Sathvahana

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Ispat Limited (a third party). In this connection, the assessee has entered into two separate agreements with Rescom Dubai and SIL, in relation to the subject international transactions. (refer page nos., 261 to 296 of the paper book for the copies of the agreements)

The roles and responsibilities of **Rescom Dubai** (defined as Seller in the agreement) are extracted below: (refer page no.284 of the paper book)

**Seller's Roles:** The Seller shall
(i) Finalise the Coal specification and undertake all its obligations under the CSPA;
(ii) Negotiate and finalise the Coal price per shipment with the Buyer and Vendor;
(iii) Procure the Coal in accordance with the specifications of the Buyer;
(iv) Finalise the shipment schedule for the Term; and

Arrange all logistics including shipping from the Coal supplier to the Local Seller.

The roles and responsibilities of TIPL (defined as "Local Seller" in the agreement) are extracted below: (refer page no. 284 of the paper book)

**Local Seller's Role:** The Local Seller shall
(i) Appoint stevedore and discharge port agent for birthing and clearing the Coal;
(ii) Appoint Independent Surveyor for quality and quantity verification:
(iii) Deliver the Coal to the Buyer's plant and arrange road transport and logistics for delivery
(iv)Inventory management directly or by appointment of an agent;
(v) Undertake sale of Coal in the manner as agreed with Buyer's delivery schedule.
(vi) Issue invoices to the Buyer pursuant to each delivery;

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(vii) Collect payments from the Buyer and ensure timely remittance to the Seller;
(viii) Comply with all applicable law including regulatory and statutory filings.

As part of the TP report, the subject transaction was benchmarked under other method prescribed under Rule 10AB of the Rules using Value chain analysis ("VCA")

> "A value chain is the whole series of a MNEs activities that create and build value at every stage of doing business. When these stages are spread to different parties in an MNE group, a VCA aides in determining which party creates what value and how this value is to be remunerated."

The contribution of each of the party to the entire value chain in relation to the subject international transactions has been ascertained. Based on the functions and contribution of each of the parties (viz., the Appellant and Rescom Dubai) that add value to the entire value chain, the resultant profits arising out of the assessee's business segment relating to coking coal is shared between Rescom Dubai (90% share of profits) and Appellant(10% share of profits) in the ratio of 90:10 respectively. Therefore, the international transactions involving import of coking coal between the Appellant and Rescom Dubai was concluded to be at arm's length from an Indian transfer pricing perspective.

**Position adopted by the TPO**

The TPO on page 12 of his order categorically states that the assessee only handles shipping and inventory related functions. The TPO still held that the assessee did not receive commensurate profit share as per the functions being performed by it.

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The TPO had rejected the Other Method (VCA approach) adopted by the assessee to benchmark the transaction without providing any valid/ cogent reasons and stated that CUP method as the most appropriate method. The relevant extracts have been provided below: (refer page 13 of the TP order or page 20 of the appeal set)

Based on the above discussion, the other method adopted by the Assessee is rejected and CUP method is selected as the most appropriate method to benchmark the transaction. When a similar product sales transaction undertaken by the assessee, the most reliable method to be used to benchmark the transaction is by CUP method only. Here since the purchase price of coking coal from AE and third party is available, it is proposed to benchmark the transaction of Import of Coking coal from its AE at the rate of Rs.10,674.63 per metric tonne which is the average purchase cost from third party.

**Position adopted by the Ld. DRP**:

The DRP concurred with the stand taken by the TPO rejected the Appellant's ground on the adjustment of coking coal. The relevant extracts from the DRP order are provided below: (refer page 13 of the DRP directions or 47 of the appeal set)

> *7.3 Furthermore, the assessee had made an import purchase of coking coal from AE of 81,211 tonnes at an average price of Rs.13,172.31 per metric tonne and 52.284 tonnes from third party at an average price of Rs.10,674.63 per metric tonne. The Assessee sold this coking coal to SIL at Rs.13,938.06 per metric tonne. Thus, assessee is charging onlyRs.755.75per metric tonne from the sale of coking coal out of the import made from the AE for all the logistics and support work done by TIPL. It is highly*

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*unlikely the assessee would make a profit out of it. But from the sales made out of domestic purchase, TIPL is making an average profit of Rs.3,353.43 per metric tonne even without doing other logistics works. Thus, in the above factual matrix of the case. The TPO held that the agreement was a corporate veil to inflate the purchase price thereby reducing the profit of the assessee and shifting the profits out of the country, and accordingly rejected the 'other method' adopted by the Assessee and selected CUP method as the most appropriate method to benchmark the transaction. The Panel concurs with the stand taken by the TPO and accordingly, the ground of the assessee is hereby rejected.*

The ld.AR submitted the following:

Non-applicability of CUP method: [Ground no, 2.2.2.]

CUP method can be applied only where is a strict comparison between the controlled and uncontrolled transaction. In the instant case, it is submitted that the **CUP method is not the most appropriate method** for the following reasons:

The data used by the TPO, are not suitable for benchmarking under CUP method. The below extract captures two data points wherein the base price increases as the quantity increases which is against the general rules of demand and supply. This clearly depicts that there is a difference in the quality of coking coal that was being imported(refer page 13 of the TP order or page 20 of the appeal set).

| S. No. | Sales quantity | Base price in (USD) | Rescom Margin (in USD) | Finance Cost (in USD) | CIF (in USD | Exchange Rate | CIT(in INR) | Total Purchase Cost |
|---|---|---|---|---|---|---|---|---|
| A | E | F | G | I=E+F+G | J | K=I*J | L=K*E | |
| 1. | 7,000 | 154.75 | 9.00 | 5.34 | 169.09 | 70.45 | 11,912.54 | 8,33,87,780 |
| 2. | 24,650 | 230.00 | 9.00 | 7.94 | 246.94 | 70.45 | 17,396.90 | 42,88,33,585 |

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Also, the following extract from the TP order clearly explains that the price considered for AE purchases includes import duty, handling charges, transportation charges and social welfare surcharge which are not included in the non-AE purchase price. Therefore, the price distortion clearly depicts the non-applicability of CUP method in the instant fact pattern. (refer page 13of the TP order or page 20 of the appeal set)

The assessee had furnished the details of import of Coking coal made during the year from the AE- Rescom, Dubai. The purchase price was arrived after adding Handling charges, Import duty, Transportation cost and social welfare surcharge. So, to arrive at a comparable price, the CIF purchase price of imported Coking coal is taken compare with the price of Domestic purchase.

Further, the ld.AR prayed that the following other differences also clearly establish that CUP is not the most appropriate method for the subject transaction.

Product dissimilarity: There are various types of coking coal sold to AEs and non-AEs asmentioned here:

- Hard coking coal
- Medium coking coal
- Semi-soft coking coal
- Weak coking coal
- Non-coking coal

Functional differences: The following functions are undertaken by the Appellant only inrelation to their non-AE business:

- o Arrangement of shipment credit
- o Working capital management
- o Negotiating price with the end customers

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Risk differences: The following risk are undertaken by the Appellant only in relation to theirnon-AE business:

oBusiness/ market risk
o Scheduling risk
o Quality risk
o Credit/ collection risk

Geographical differences: The entire purchases from AEs are imported from outside India. On the other hand, the entire purchases from non-AE are sourced locally.

The TPO in his show cause notice had proposed to use CUP method for both the barite segment and the coking coal segment. The identical arguments as stated above (product dissimilarity, functional difference, risk differences) were given to reject CUP in the barite segment. The same was accepted by the TPO, However, in the coking coal segment the TPO did not accept the same reasoning, clearing contradicting his own stand in the barite segment.

Further, the TPO has not made any effort to evaluate the above types of coking coal and its impact on the pricing. The TPO has disregarded that coking coal is a commodity and the pricing of every commodity keeps changing continuously. With such a wide variety of types and qualities of coking coal it would be impossible to compare two batches imported from AE and non-AE to each other. Instead, the TPO has blatantly adopted the purchase price of the assessee with non-AEs and compared the same with import price paid by the assessee to its AE and while doing so, the TPO has failed to appreciate the concept and application of CUP method which requires a strict comparison of prices paid in an uncontrolled transaction for the same/ identical goods.

Value chain analysis adopted by the Appellant is appropriate: [Ground nos, 2,2.1, 2,2.3 & 2.2.5]

**The steps involved in determining the contributions/ value additions made by each of the entities** within an MNE Group have been summarised below. The analysis carried out in the case of

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the assessee has also been provided as under: [refer pages 121 to 126of the DRP application set for the basis of arriving at 90:10 ratio of profit split by following the below steps]

| S.No. | Steps involved |
|---|---|
| 1. | Mapping out an MNE's value chain |
| 2. | Distinguishing between an MNE's main functions and its support functions |
| 3. | Identifying and understanding which main function are critical to the success ofthe organization (critical success factors |
| 4. | Identifying and understanding which activities performed, add how much value tothe goods and services it produces (value adding activities) |
| 5. | Understanding and confirming how the various functions across the value chain split by the MNE between the various legal entities in the group (determiningthe contributions and value added of each group company) |

Based on the functions and contribution of each of the parties (viz., the assessee and Rescom Dubai) that add value to the entire value chain, the resultant profits arising out of the assessee's business segment relating to coking coal is shared between Rescom Dubai (90% share of profits) and the Appellant (10% share of profits) in the ratio of 90:10 respectively. The 10% profits attributable to the assessee is towards the shipping, logistics and other limited functions carried out by the assessee in India. The same shall be accepted.

Considering the above, the ld.AR prayed that the CUP method adopted by the TPO in re-determining the ALP in relation to the impugned import transaction of coking coal shall be disregarded. Instead, the benchmarking approach adopted by the assessee in its

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TP study viz., other method, shall be upheld and the corresponding transfer pricing adjustment shall be deleted.

3) Disallowance under section 14A of the Act (INR 1,31,97,159): [Ground no. 3.1]

The assessee had held investments in subsidiaries (Foreign as well as Indian) & others to the extent of Rs.119,55,94,390/- for the year under consideration. The investments were made in earlier years and the Appellant does not incur any expenditure on an ongoing basis in connection with the said investments. The assessee had suo-moto disallowed a sum of Rs.2,51,853 under section 14A of the Act being 1% of the average value of investments held in SBI Liquid Funds.

**Position adopted by the AO:**

The AO has stated that all the investments made by the assessee are to be considered for the purposes of computation of disallowance u/s.14A of the Act even when there is no exempt income earned by the assessee. The AO has contended that huge investments cannot be made without inherent expenditure being incurred and hence 1% of the average investments ought to be disallowed for the purposes of section 14A of the Act. The AO has contended that the amendment made to section 14A of the Act vide Finance Act, 2022 is retrospective and clarificatory in nature and hence expenditure can be disallowed even in absence of exempt income. Thereafter, the AO had disallowed a sum of Rs.1,31,97,159/- u/s.14A of the Act, the relevant extract of which has been reproduced below: (refer page 6 of the final assessment order or page 69 of the appeal set)

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*"2.1.7 From the submissions made by the assessee, it is seen that the opening balance of Investments as on 31.03.2019 is Rs.131,97,15,986/- and closing balance as on 31.03.2020 is also Rs.131,97,15,986/-. In such circumstances discussed above in detail and invoking Rule 8D of the Income Tax Act, 1961, 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment made ,i.e. Rs.1,31,97,159/- (1% of Rs.131,97,15,986) is added back to the income of the assessee."*

**Position adopted by the Ld. DRP:**

The Ld. DRP, concurred with the adjustment made by the AO, the relevant extract of which has been reproduced below: (page 20 of the DRP directions or page 54 of the appeal set)

*"8.8However, the assessing officer has disallowed by computing the indirect expenditure being administrative and other in-direct expenses after invoking Rule 8D(2)(ii)of Income Tax Rules, 1962. In view of the above, we do not find any infirmity in the proposed disallowance by the Assessing Officer."*

**Submissions of the assessee:**

No disallowance u/s.14A of the Act in absence of exempt income [Ground no. 3.1.2] - The disallowance u/s.14A of the Act cannot be made when no exempt income has been earned by the Company.

It is well settled principles of law that disallowances u/s.14A of the Act cannot exceed amount of exempt income. The Hon'ble Supreme Court in the case of **Pr. CIT Vs State Bank of Patiala**(99 taxmann.com 286), while dismissing SLP filed by the Revenue against order of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala, held that disallowance u/s.14A could be restricted to amount of exempt income only. TheHon'ble Jurisdictional High Court of Madras in the case of **Marg Ltd Vs. CIT** (2020) 120Taxmann.com 84, has taken a

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similar view and held that disallowances under Rule 8D r.w.s 14A can never exceed exempt income earned by the assessee during particular assessment year.

Investment in foreign subsidiary not to form part of Rule 8D computation [Ground no. 3.1.4] - Investments made in Zeus investments and Mining Pte Limited, Singapore is an overseas investment and the income from such overseas investments are taxable in India both under the provisions of the Act as well as DTAA between India – Singapore. Since, the same is not exempted under the provisions of the Act, the disallowance under section 14A is not invocable for the investments made in Zeus Investments and Mining Pte Limited, Singapore.

Disallowance under section 14A of the Act should be made only if expenditure is incurred to earn exempt income [Ground no. 3.1.3] - The provisions of section 14A(1)of the Act are not applicable to the assessee as no expenditure has been incurred by it to earn exempt income and the assessee had relied on the decision of the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs CIT [2012] 347 ITR 272 wherein it was held that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act.

Ground no. 3.1.6 - Amendment made in Finance Act, 2022 is prospective and not retrospective

Ground no. 3.1.5 - Onus on the AO to establish the factual incurrence of expenditure incurred to earn exempt income before disallowance u/s.14A of the Act is made.

Considering the above, the ld.AR prayed that the disallowance under section 14A of the Act may kindly be deleted.

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**4) Disallowance of bad debts advance (Rs.1,89,10,796/-): [Ground no. 3.2]**

The assessee had advanced a sum of Rs.1,89,10,796/- for buying iron ore from one of its Suppliers viz., HR Gaviappa and the said supplier did not make supplies after that. This is a trade advance given by the assessee for purchase of raw materials i.e., iron ores, and the assessee was not anticipating any supply after the expiry of 10 years from the date of advance.

Subsequently, the management of the assessee took a business decision to write off the said trade advance of Rs.1,89,10,796/- and claimed the same as deduction u/s.37 of the Act. However, the AO has disallowed the same by wrongly invoking the provisions of section 36(1)(vii) of the Act which is clearly not applicable and not relevant to the instant facts.

**Findings of the AO**:

The AO has brought this trade advance into the ambit of section 36(1)(vii) of the Act and has stated that the conditions associated with section 36(1)(vii) of the Act are not satisfied.

The AO has relied on the **Hon'ble Supreme Court ruling** in the case of Principal Commissioner of income-tax v Khyati Relators Private Limited wherein the Apex Court has not allowed the deduction of advance made towards reserving the commercial premises.

The relevant from the AO order has been reproduced below: (refer page 9 of the final assessment order or page 72 of the appeal set)

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*"2.2.10 The above decision of the Apex Court is squarely applicable to the assessee's case. Further, with respect to non-deduction of TDS amounting to Rs.1,10,939/- the assessee has not provided appropriate details to prove that the said amount has become bad and irrecoverable and the same is also being disallowed. In view of the detailed discussion above the amount of Rs.1,89,10,796/- is hereby disallowed u/s.37 and brought to tax."*

**Proceedings before the Ld. DRP:**

The Ld.DRP, concurred with the adjustment made by the AO, the relevant extract of which has been reproduced below: (refer page 23 of the DRP directions or page 57 of the appeal set)

*"9.2 The disallowance done by the AO has two parts. One is related to Rs.1,87,99,857/- which is part of the provisions to bad and doubtful debts to the tune of Rs.7,03,84,840/- as on March, 2020, and assessee has failed to prove that the amount of debt written off satisfies the ingredients of section 36(1)(vi) and 36(2). It is farther observed that the ledger, furnished by the assessee show the outstanding balance ofRs.1,87,99,857/- from the end of financial year 2010-11 and the same outstanding balance has been carried over through all these years to the current assessment year. So here when the assessee has neither justified that the said amount was given as a trade advance in earlier years and during the ordinary course of business, nor it has been able to prove and substantiate that the said advance has become irrecoverable during the year hence written off as expense in the P&L account. Accordingly, it is rightly proposed to be disallowed under section 37(1) of the Act."*

**Submissions of the assessee:**

Revenue loss allowable u/s.37 of the Act (Ground no. 3.1.2]:

The trade advance written off is a revenue loss and is claimed as deduction u/s.37 of the Act and not as bad debts u/s.36(1)(vii) of the Act as alleged by the AO.

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Ground nos.3.1.1, 3.1.3 & 3.1.4: As per the provisions of section 36(1)(vii)and section 36(2) of the Act, amounts should have formed part of income in the earlier years and consequently would have been offered to tax in the earlier years in order to claim such amounts as bad debts in the year on which the amounts were written-off in the books of accounts. However, in the case of assessee it is a trade advance that has been paid by the appellant to one of its Suppliers in relation to purchase of raw materials and the same could have never been offered to tax in the earlier years.

As per the provisions of the Act, an expenditure is allowed as deduction u/s.37 of the Act, if the same is not expressively covered u/s.30 to 36 of the Act, as also not a capital expenditure and not a personal expenditure of the assessee.

The reliance is placed on the decision of the jurisdictional Madras High Court in the case of Commissioner of Income-tax v Crescent Films Private Limited, Tax Case Number 1487 of 1985, where the assessee who was distributor of films had made advances to producer of films under certain agreements for salvaging his capital and when these advances became irrecoverable it was held that amount represented trading loss.

The decision of the Hon'ble Supreme Court ruling in the case of Principal Commissioner of income-tax vs.Khyati Relators Private Limited (relied upon by the AO) is not applicable to the assessee’s case for the following reasons:

a) In the case of the assessee, the advance is given towards purchase of iron ore and hence clearly is in the ordinary course of business, whereas in the Hon’ble Supreme Court's judgement, the assessee couldn't establish that the same was paid towards the ordinary Course of business.

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b) In the case of the assessee, advances written off cannot be construed as capital expenditure, as it is a trade/ business advance given towards purchase of iron ore whereas in the Hon'ble Supreme Court's judgement, the advance was given by the assessee to acquire immovable property, which is capital in nature.

Considering the above, the ld.AR prayed that the disallowance of bad debts advance shall be deleted. Without prejudice, the assessee may be granted an opportunity to provide requisite evidences/information to the AO.

12. Per contra, the ld.DR reiterated the findings of the orders of the authorities and prayed for upholding the same.

13. We have heard the rival contentions perused the materials available on record and gone through the orders of the authorities along with the paper book and case laws relied on by both the parties.

Firstly, we will take up the issue of rejection of 2 comparable in TP adjustment by TPO, which was confirmed by the DRP.

The TPO accepted the economic analysis and TNMM but rejected the two comparable companies by applying certain quantitative filters as tabulated below:

| Sl.No. | Name of the comparable company | Whether accepted by TPO | Reasons for rejection, if any |
|---|---|---|---|
| 1. | Ashok Alco-Chem Limited (segmental) | No | • Failed in PBIT filter (persistent loss making companies) |
| 2 | Ashwa Minerals Private Limited | No | • Failed in PBIT filter (persistent loss making companies).<br>• Failed in sales filter (Sales less than INR 1 crore |

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Further, we find that the DRP upheld the filters applied and the comparable chosen by the TPO.

In respect of the rejected comparable of M/s.Ashok Alco-Chem Limited and M/s.Ashwa Minerals Private Limited, we find from the following table that the comparable companies have earned profit in 1 year out of 3 years prior to the impugned assessment year 2020-21.

**M/s.Ashok Alco-Chem Limited**

| Particulars | FY 2019-20 | FY 2018-19 | FY 2017-18 |
|---|---|---|---|
| Net profit (as per financial statements) | -7,60,89,000 (page no.460 of paper book) | -2,81,10,000 (page no. 500 of paper book) | 5,29,44,000 (page no.544 of paper book) |

**M/s.Ashwa Minerals Private Limited**

| Particulars | FY 2018-19 | FY 2017-18 |
|---|---|---|
| Net Profit (as per financial statements) | 5,45,930/- (page no.591 of paper book | -64,83,556/- (page no.597 of the paper book). |
| Turnover (as per financial statements) | 1,12,94,552/- (page no.591 of paper book) | 1,43,16,107/- (page no.597 of the paper book) |

As held in the case of Genesys Telecom Labs India Pvt. Ltd., by the co-ordinate Chennai ITAT "D" Bench the PBIT filter cannot be applied if the comparable earns profits in 1 year out of 3 years. Therefore, considering the above view, we are of the opinion that the TPO and that of ld.DRP have erred in rejecting the said comparable. The relevant extract of the tribunal order is given below:

> *"7.6 From the above order of ITAT, Chennai in the very next year, we find that it had accepted the same comparable i.e., Gordon Woodroffee Logistics Ltd., in the final list of comparables wherein it has incurred losses in two years (AYs*

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*2010-11 and 2011-12) and it made a profit in one year (AY 2012-23).*

*7.7 Moreover the Bangalore Bench of ITAT in the case of Inteva Products India Automotive Pvt. Ltd., in IT(TP)A No. 2843/ Bang/ 2017 (order dated3.12.2020) and KBACE Technologies Pvt. Ltd., in ITA No.3189/ Bang/ 2018 (order dated 29.01.2020) had held that persistent loss filter can be applied only if there is successive losses in three years and if there is a profit in any one financial year out of three successive financial years, then that company cannot be excluded from the list of comparable on the basis of persistent loss making filter.*

*7.8 In light of the aforesaid reasoning and judicial pronouncements cited surpa, we direct the TPO to include Rheal Software Pvt. Ltd., in the list of comparable companies. It is ordered accordingly. Therefore, the Ground Nos. 6 & 6.1 is allowed."*

14. In the present facts and circumstances and respectfully following the decision of the tribunal *supra,* we are of the considered view that the rejection of above comparable chosen by the assessee is erroneous and hence, AO is directed to consider the comparable as claimed by the assessee and recompute the ALP accordingly.

15. The next issue before us with regard to treatment of miscellaneous expenses while computing operating margins of comparable companies: [Ground nos. 2.1.3 & 2.1.4]

16. Since the comparable companies as rejected by the TPO have been adjudicated and accepted by us as above, hence this consequential issue becomes infructuous.

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17. The next issue before us is downward TP adjustment on account of Import of coking coal Rs.20,79, 00,972/-: [Ground no. 2.3]

Admittedly the assessee entered into a tripartite arrangement with its AE i.e., Rescom Dubai and Sathvahana Ispat Limited (a third party). In this connection, the assessee also entered into two separate agreements with Rescom Dubai and SIL, in relation to the subject international transactions. (refer page nos., 261 to 296 of the paper book for the copies of the agreements)

The roles and responsibilities of **Rescom Dubai** (defined as Seller in the agreement) are extracted below: (refer page no.284 of the paper book)

**Seller's Roles:** The Seller shall
(v) Finalise the Coal specification and undertake all its obligations under the CSPA;
(vi) Negotiate and finalise the Coal price per shipment with the Buyer and Vendor;
(vii) Procure the Coal in accordance with the specifications of the Buyer;
(viii) Finalise the shipment schedule for the Term; and

Arrange all logistics including shipping from the Coal supplier to the Local Seller.

The roles and responsibilities of TIPL (defined as "Local Seller" in the agreement) are extracted below: (refer page no. 284 of the paper book)

**Local Seller's Role:** The Local Seller shall
(i) Appoint stevedore and discharge port agent for birthing and clearing the Coal;
(ii) Appoint Independent Surveyor for quality and quantity verification:

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(iii) Deliver the Coal to the Buyer's plant and arrange road transport and logistics for delivery
(iv) Inventory management directly or by appointment of an agent;
(ix) Undertake sale of Coal in the manner as agreed with Buyer's delivery schedule.
(x) Issue invoices to the Buyer pursuant to each delivery;
(xi) Collect payments from the Buyer and ensure timely remittance to the Seller;
(xii) Comply with all applicable law including regulatory and statutory filings.

As part of the TP report, the subject transaction was benchmarked under other method prescribed under Rule 10AB of the Rules using Value chain analysis ("VCA")

> "A value chain is the whole series of a MNEs activities that create and build value at every stage of doing business. When these stages are spread to different parties in an MNE group, a VCA aides in determining which party creates what value and how this value is to be remunerated."

As submitted by the ld.AR that the contribution of each of the party to the entire value chain in relation to the subject international transactions has been ascertained. Based on the functions and contribution of each of the parties (viz., the assessee and Rescom Dubai) that add value to the entire value chain, the resultant profits arising out of the assessee's business segment relating to coking coal is shared between Rescom Dubai (90% share of profits) and Appellant (10% share of profits) in the ratio of 90:10 respectively. Therefore, the international transactions involving import of coking coal between the assessee and Rescom Dubai was concluded to be at arm’s length from an Indian transfer pricing perspective.

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18. We find that the TPO in his order states that the assessee only handles shipping and inventory related functions. The TPO still held that the assessee did not receive commensurate profit share as per the functions being performed by it. Further, we note that the TPO had rejected the Other Method (VCA approach) adopted by the assessee to benchmark the transaction without providing any valid/ cogent reasons and stated that CUP method as the most appropriate method.

We find that when a similar product sales transaction carried out by the assessee, the most reliable method to be used to benchmark the transaction is by CUP method only. Since the purchase price of coking coal from AE and third party is available in the case on hand, the benchmark of the transaction of Import of Coking coal from its AE at the rate of Rs.10,674.63 per metric tonne which is the average purchase cost from third party. Further, we find that the DRP concurred with the stand taken by theTPO rejected the assessee's ground on the adjustment of coking coal. As argued by the ld.AR, we concur with the assessee’s claim that the CUP method can be applied only where is a strict comparison between the controlled and uncontrolled transaction. We find that the CUP method is not the most appropriate method for the following reasons:

The data used by the TPO, are not suitable for benchmarking under CUP method. The below extract captures two data points wherein the base price increases as the quantity increases which is against the general rules of demand and supply. This clearly depicts that there is a difference in the quality of coking coal that was being imported(refer page 13 of the TP order or page 20 of the appeal set).

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| S. No. | Sales quantity | Base price in (USD) | Rescom Margin (in USD) | Finance Cost (in USD) | CIF (in USD | Exchange Rate | CIT(in INR) | Total Purchase Cost |
|---|---|---|---|---|---|---|---|---|
| A | E | F | G | I=E+F +G | J | K=I*J | L=K*E | |
| 1. | 7,000 | 154.75 | 9.00 | 5.34 | 169.09 | 70.45 | 11,912.54 | 8,33,87,780 |
| 2. | 24,650 | 230.00 | 9.00 | 7.94 | 246.94 | 70.45 | 17,396.90 | 42,88,33,585 |

Also, the following extract from the TP order clearly explains that the price considered for AE purchases includes import duty, handling charges, transportation charges and social welfare surcharge which are not included in the non-AE purchase price. Therefore, the price distortion clearly depicts the non-applicability of CUP method in the instant fact pattern. (refer page 13 of the TP order or page 20 of the appeal set)

Further, we find that in market parlance, there are different kinds of coking coal are traded in the market with product quality apart from the functional differences and other related risk factors and geographical advantages.

We note that the two different stands taken by the TPO in accepting the other method for the coking coal segment and has not accepted the same reasoning, clearing contradicting his own stand in the barite segment. Further, the TPO has not made any effort to evaluate the above types of coking coal and its impact on the pricing. The TPO has disregarded that coking coal is a commodity and the pricing of every commodity keeps changing continuously. With such a wide variety of types and qualities of coking coal it would be impossible to compare two batches imported from AE and non-AE to each other. Instead, the TPO has arbitrarily adopted the purchase price of the assessee with non-AEs and compared the same with import price paid by the assessee to its AE

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and while doing so, the TPO has failed to appreciate the concept and application of CUP method which requires a strict comparison of prices paid in an uncontrolled transaction for the same/ identical goods.

We also find that the steps involved in determining the contributions/ value additions made by each of the entities within an MNE Group have been summarised below.

| S.No. | Steps involved |
|---|---|
| 1 | Mapping out an MNE's value chain |
| 2 | Distinguishing between an MNE's main functions and its support functions |
| 3 | Identifying and understanding which main function are critical to the success ofthe organization (critical success factors |
| 4 | Identifying and understanding which activities performed, add how much value to the goods and services it produces (value adding activities) |
| 5 | Understanding and confirming how the various functions across the value chain split by the MNE between the various legal entities in the group (determining the contributions and value added of each group company) |

Based on the functions and contribution of each of the parties (viz., the assessee and Rescom Dubai) that add value to the entire value chain, the resultant profits arising out of the assessee's business segment relating to coking coal is shared between RescomDubai (90% share of profits) and the assessee (10% share of profits) in the ratio of 90:10 respectively. The 10% profits attributable to the assessee is towards the shipping, logistics and other limited functions carried out by the assessee in India. Hence, there is no reason to reject the same and same needs to be accepted.

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19. In view of the above, the CUP method adopted by the TPO in re-determining the ALP in relation to the impugned import transaction of coking coal cannot be countenanced. Therefore, the benchmarking approach adopted by the assessee in its TP study viz., other method, is reasonable and cannot be faulted with and hence, AO is directed to adopt transfer pricing adjustment made by the assessee.

20. The next ground of appeal raised by the assessee before us is in regard to disallowance under section 14A of the Act Rs.1,31,97,159/- :[Ground no.3.1]

21. The assessee had held investments in subsidiaries (Foreign as well as Indian) & others to the extent of Rs.119,55,94,390/- for the year under consideration. The investments were made in earlier years' and the assessee does not incur any expenditure on an ongoing basis in connection with the said investments. The assessee had suo-moto disallowed a sum of Rs.2,51,853/- under section 14A of the Act being 1% of the average value of investments held in SBI Liquid Funds.

The AO has stated that all the investments made by the assessee are to be considered for the purposes of computation of disallowance u/s.14A of the Act even when there is no exempt income earned by the assessee. The AO noted that huge investments cannot be made without inherent expenditure being incurred and hence 1% of the average investments ought to be disallowed for the purposes of section 14A of the Act. The AO further noted that the amendment made to section 14A of the Act vide Finance Act, 2022 is retrospective and clarificatory in nature and hence expenditure can be disallowed even in absence of exempt income.

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Thereafter, the AO had disallowed a sum of Rs.1,31,97,159/- u/s.14A of the Act. The Ld. DRP, concurred with the adjustment made by the AO.

22. Before us, the ld.AR submitted that no disallowance u/s.14A of the Act in absence of exempt income. The disallowance u/s.14A of the Act cannot be made when no exempt income has been earned by the Company. It is well settled principles of law that disallowances u/s.14A of the Act cannot exceed amount of exempt income. The Hon'ble Supreme Court in the case of **Pr. CIT Vs State Bank of Patiala** (99 taxmann.com 286), while dismissing SLP filed by the Revenue against order of the Hon'ble Punjab & Haryana High Court in the case of Pr.CIT Vs State Bank of Patiala, held that disallowance u/s.14A could be restricted to amount of exempt income only. The Hon'ble Jurisdictional High Court of Madras in the case of **Marg Ltd Vs. CIT** (2020) 120 Taxmann.com 84, has taken a similar view and held that disallowances under Rule 8D r.w.s 14A can never exceed exempt income earned by the assessee during particular assessment year.

23. We also find that investment in foreign subsidiary not to form part of Rule 8D computation. Investments made in Zeus investments and Mining Pte Limited, Singapore is an overseas investment and the income from such overseas investments are taxable in India both under the provisions of the Act as well as DTAA between India – Singapore. Since, the same is not exempted under the provisions of the Act, the disallowance under section 14A is not invocable for the investments made in Zeus Investments and Mining Pte Limited, Singapore.

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It is also settled that disallowance under section 14A of the Act should be made only if expenditure is incurred to earn exempt income. The provisions of section 14A(1)of the Act are not applicable to the assessee as no expenditure has been incurred by it to earn exempt income. The Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs CIT [2012] 347 ITR 272 held that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the said Act.

24. We also find that amendment made in Finance Act, 2022 is prospective and not retrospective. The effect of Explanation inserted in section 14A by Finance Act 2022:

The Notes on clauses explaining the intention behind insertion of Explanation to Section 14A states as under:

It is also proposed to insert an Explanation to the said section to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of the said section shall apply and shall be deemed to have been always applied in a case where the income, not forming part of the total income, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not form part of the total income. This amendment will take effect from 1st April, 2022. Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 reproduced herein below provide following guidelines:

> *"In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous*

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> *year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income. This amendment will take effect from 1st April, 2022.*
> *It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.*

This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years." Thus, Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years.

25. The Hon'ble Delhi High Court in Pr. CIT v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289/288 Taxman 384where it was held, following the judgment of Hon'ble Supreme Court in Sedco Forex International Drill Inc. v. CIT[2005] 149 Taxman 352/12 SCC 717 (SC), that the amendment of Section 14A, which is "for removal of doubts" cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. Therefore, the Explanation is held prospective.

26. In the light of above discussion, we are inclined to set aside the order of the AO in making the addition u/s.14A of the Act and direct the AO to delete the same.

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27. The next ground of appeal of the assessee before us is disallowance of bad debts advance (Rs.1,89,10,796/-): [Ground no. 3.2]

It is admitted fact that the assessee had advanced a sum of Rs.1,89,10,796/- for buying iron ore from one of its Suppliers viz., HR Gaviappaas shown in the audited financials of the assessee. As stated by the assessee the said supplier did not make supplies against the advance paid till the date of impugned year. Further, the assessee submitted that the trade advance given by the assessee for purchase of raw materials i.e., iron ores, and the assessee was not anticipating any supply after the expiry of 10 years from the date of advance. Hence, the assessee took a business decision to write off the said trade advance of Rs.1,89,10,796/- and claimed the same as deduction u/s.37 of the Act. The AO has disallowed the same by invoking the provisions of section 36(1)(vii) of the Act stated that the conditions associated with said section are not satisfied.

28. We note that the AO has relied on the Hon'ble Supreme Court ruling in the case of Principal Commissioner of Income-tax v Khyati Relators Private Limited, wherein the Apex Court has not allowed the deduction of advance made towards reserving the commercial premises.

The relevant from the AO order has been reproduced below: (refer page 9 of the final assessment order or page 72 of the appeal set)

> *"2.2.10 The above decision of the Apex Court is squarely applicable to the assessee's case. Further, with respect to non-deduction of TDS amounting to Rs.1,10,939/- the assessee has not provided appropriate details to prove that the said amount has become bad and irrecoverable and the same is also being*

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*disallowed. In view of the detailed discussion above the amount of Rs.1,89,10,796/- is hereby disallowed u/s.37 and brought to tax."*

The Ld.DRP, concurred with the adjustment made by the AO.

29. On perusal of the facts of the case, we find that the trade advance written off is a revenue loss and is claimed by the assessee as deduction u/s.37 of the Act and not as bad debts u/s.36(1)(vii) of the Act as alleged by the AO. We note that the AO and that of the DRP has misunderstood the transaction of expense claimed by the assessee as bad debt, without appreciating the fact that the same is an advance paid to the vendor for supply of raw materials in earlier financial year, which was written off during the impugned assessment year on account of breach of contract by the supplier. Therefore, it is not a case where the assessee had supplied goods but not received the consideration to claim it as bad debts u/s.36(1)(vii)and section 36(2) of the Act. We note that as per the provisions of the Act, an expenditure is allowed as deduction u/s.37 of the Act, if the same is not expressively covered u/s.30 to 36 of the Act, as also not a capital expenditure and not a personal expenditure of the assessee.

30. The reliance placed by the assessee on the decision of the jurisdictional Madras High Court in the case of Commissioner of Income-tax vs. Crescent Films Private Limited, Tax Case Number 1487 of 1985, where the assessee who was distributor of films had made advances to producer of films under certain agreements for salvaging his capital and when these advances became irrecoverable it was held that amount represented trading loss. We also find that the decision of the Hon'ble Supreme Court ruling in the case of Principal Commissioner of income-tax

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vs. Khyati Relators Private Limited relied upon by the AO is not applicable to the assessee's case for the following reasons:

a) In the case of the assessee, the advance is given towards purchase of iron ore and hence clearly is in the ordinary course of business, whereas in the Hon'ble Supreme Court's judgement, the assessee couldn't establish that the same was paid towards the ordinary Course of business.

b) In the case of the assessee, advances written off cannot be construed as capital expenditure, as it is a trade/ business advance given towards purchase of iron ore whereas in the Hon'ble Supreme Court's judgement, the advance was given by the assessee to acquire immovable property, which is capital in nature.

31. Therefore, the advance written off claimed by the assessee u/s.37 of the Act is an allowable expenditure and hence directed the AO to delete the disallowance made u/s.36(1)(vii)r.w.s.36(2) of the Act by allowing the related grounds of appeal raised by the assessee.

32. In the result, appeal filed by the assessee is partly allowed for statistical purposes and the stay application filed by the assessee is dismissed as infructuous, since the appeal itself is taken up and disposed off by this Tribunal.

Order pronounced in the open court on 19th May, 2025

| | |
|---|---|
| Sd/- | Sd/- |
| (एस .आर.रघुनाथा) | ( मनु कुमार गिरि ) |
| ( S.R.Raghunatha ) | ( Manu Kumar Giri) |
| **लेखा सदस्य** / Accountant Member | **न्यायिक सदस्य**/ Judicial Member |

चेन्नई/Chennai,

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दिनांक/Date:19.05.2025
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आदेश की प्रतिलिपि अग्रेषित/Copy to:
1.Appellant
2.Respondent
3. आयकर आयुक्त/CIT Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

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