IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. Nos.2629/Ahd/2017 & 2503/Ahd/2018
(Assessment Years: 2009-10 & 2010-11)

Weatherford Drilling & Production Services (India) Private Limited, Block No. 74, Mukutnagar, Sokhada Road, Manjusar, TA. Savli, Vadodara-391775	Vs.	Assistant Commissioner of Income Tax, Circle-2(1)(2), Vadodara
[PAN No.AAACW4068M]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Dhanesh Bafna & Shri Pratik Shah, A.Rs.
Respondent by:	Dr. Darsi Suman Ratnam, CIT D.R.

Date of Hearing	17.07.2023
Date of Pronouncement	04.08.2023

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

Both these appeals have been filed by the assessee against the order passed by the Ld. Dispute Resolution Panel-2, (in short "Ld. DRP"), Mumbai vide orders dated 21.08.2017 & 27.06.2018 passed for Assessment Years 2009-10 & 2010-11.

2. Since common issues are involved for both the years under consideration, the appeals are disposed of by way of a common order.

3. The assessee has taken the following grounds of appeal:-

Assessment Year 2009-10:-

"1. On the facts and in the circumstances of the case and in law, the Learned Assistant Commissioner of Income-tax, Circle-2(1)(2), Vadodara ('the Ld. AO') under the directions of Honourable Dispute Resolution Panel ('Hon'ble DRP'), erred in making an adjustment of Rs. 4,17,26,088/- in relation to the international transaction of sale of goods to Associated Enterprises ('AE').

It is prayed that the additions made by the Ld. AO in relation to the international transaction of sale of goods to AEs be deleted.

2. On the facts and circumstances of the case and in law, the Ld. AO under the directions of Hon'ble DRP erred in not allowing the benefit of ± 5% range as per Section 92C(2) of the Income-tax Act, 1961 ('the Act') in relation to the international transaction of sale of goods to AEs.

It is prayed that the Ld. AO be directed to grant range benefit in accordance with law.

The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal."

We shall first take up assessee's appeal for A.Y. 2009-10

4. The brief facts of the case are that return of income for A.Y. 2009-10 was filed on 30.09.2009 declaring total income of Rs. 4,61,39,040/-. The Transfer Pricing Officer (in short "TPO") in the order under Section 92CA(3) of the Act proposed an adjustment of Rs. 3,02,66,356/-. In the

draft assessment order, apart from confirming the additions made by the TPO, the Ld. Assessing Officer made disallowance under Section 40(a)(ia) amounting to Rs. 45,99,634/-. Aggrieved by the aforesaid draft assessment order the assessee filed objections before the Dispute Resolution Panel (in short "DRP"), Ahmedabad, wherein the DRP upheld the order passed by the Assessing Officer and enhanced the Transfer Pricing adjustment to Rs. 4,17,26,088/-. The assessee approached the ITAT against the aforesaid finding made by DRP, wherein ITAT restored the matter back to the TPO for conducting fresh benchmarking exercise to identify comparable companies engaged in manufacturing of industrial valves. In the set-aside proceedings, the TPO proposed an adjustment of Rs. 4,27,26,088/-. The assessee again approached the DRP and objected to adoption of export filter of > 50% of export sales and also objected to inclusion of GTN Ltd. as a comparable entity. Further, on a without prejudice basis, the assessee submitted that if the export filter is relaxed to 25% then both GTN and Tyco Sanmar Ltd. may be excluded as comparable entities. Further, the benefit of +/- 5% range may also be provided to the assessee in accordance with law.

5. In proceedings before DRP the assessee submitted that while completely the comparability analysis, the Assessing Officer adopted the export filter of > 50% as a result of which the only one company i.e. GTN Engineering Ltd. was taken as a comparable. The assessee placed reliance on several judicial precedents to support it's contention that only one comparable cannot represent the entire industry and therefore, the same needs to be rejected. According to the assessee, if sufficient

comparables are not available then the threshold limit should be relaxed so as to have a fair analysis of the matter. Further, the assessee also objected to inclusion of GTN Ltd. while making the comparability analysis on the ground that GTN Ltd. is a contract manufacturer whereas the assessee is a licensed manufacturer and is exposed to higher risk as compared to a contract manufacturer. Further, GTN serves to only one customer i.e. FMC, whereas the assessee serves multiple customers. Further, the assessee submitted that GTN is able to pass on the cost escalation in material inputs with increasing off take of valves and other products whereas the assessee is not able to pass such cost escalation. In view of the above, the assessee submitted that GTN may be excluded from the set of comparables. Further, in the alternative, the assessee also requested for exclusion of Tyco Sanmar Ltd. on a GTN, both from set off comparables in case export filter at > 25% is adopted. Further, after excluding GTN and Tyco Sanmar Ltd., the assessee gave a final set of four comparables. However, DRP rejected both the arguments of the assessee. The DRP noted that while the assessee is a 100% export oriented unit, the assessee did not choose to apply any "percentage of export" as a filter, which itself vitiates the benchmarking study of the assessee. Further, even in the hearing before the DRP, the assessee failed to explain why export sales were not used as a filter when the assessee is a 100% export oriented unit. Further, the DRP was of the opinion that the export revenue filter should not be further reduced below 50% only with the sole purpose of finding more comparables as it would amount to compromising on the quality of comparability and vitiate the process of

benchmarking. Further, the DRP held that, as to the contention of the assessee that GTN is a contract manufacturer and is able to transfer cost escalation to its Associated Enterprises (in short "AE") is a mere apprehension of the assessee based on conjectures and surmises. The assessee did not furnish any details or data to support this apprehension and hence, the objection of the assessee with respect of selection of GTN for benchmarking has been rejected by the TPO. Further, DRP relied on several judicial precedents to support the findings that Arm's Length Price (in short "ALP") cannot be determined by adopting only one company as a comparable. The DRP was of the view that it is not advisable to choose more comparables at the cost of quality of comparability. With regard to the alternate proposition of the assessee that the TPO had taken the export filter as > 25%, the DRP held that it did not approve of such exercise to have alternative proposition in respect of comparables since TP exercise is under taken to find out the most suitable comparable / comparables for benchmarking and once the exercise has been concluded by the TPO, there is no requirement to conduct another exercise by changing filters with the sole purpose of bringing in more comparables even at the cost of comparability. Without prejudice to the above observations, the DRP also rejected the assessee's contention that even if the export filter is taken at > 25%, GTN and Tyco Sanmar Ltd. are still liable to be included. DRP was of the view that the contention of the assessee that are RPT to sale ratio of Tyco is higher than 25% is found to be factually incorrect. The assessee has itself admitted that such transactions have not been reported as related party

transactions in the Annual Report of Tyco. Accordingly, the DRP held that both GTN and Tyco cannot be excluded from the set of comparables even if the alternative exercise done by the TPO by applying the export sales filter at > 25% were to be adopted.

6. The assessee is in appeal before us against the order passed by Hon'ble DRP, holding that in the instant facts, Ld. TPO was justified in taking export filter of > 50% and thereby including only one comparable i.e. GTN India to determine the Arm's Length Price of the assessee and holding that in the instant facts, only the GTN represents the industry standards. The Counsel for the assessee submitted that the Hon'ble ITAT had given a specific direction to exclude GTN from the set of comparable and to conduct a fresh comparability analysis. However, in the set-aside proceedings, again the same exercise was repeated by the Ld. TPO and later upheld by DRP and the benchmarking analysis was completed by taking into consideration only one entity i.e. GTN, which was also the case in the first / initial set of proceedings. Accordingly, it was submitted that the directions of Hon'ble ITAT have been not followed by the Revenue authorities wherein the ITAT had given a specific direction to conduct a fresh study by comparing the same or similar products so that a fair picture of the profit could be arrived in order to asserting whether the TP Adjustment is required to be made or not. Before us, the Counsel for the assessee submitted that adopting an export filter of above 50% would serve no fruitful purpose considering assessee's line of business, since there would not be many companies with whom a comparison could be made. It was keeping in view the

aforesaid fact that the Ld. TPO relaxed the export filter to > 25% so that additional companies could come within the fold of comparability analysis. However, the TPO / DRP did not take into consideration the directions of Hon'ble ITAT and effectively only repeated the same exercise again. Accordingly, the Counsel for the assessee submitted that GTN India may be excluded from set of comparables since it is a direct manufacturer and hence comparability analysis on the basis of GTN alone would not give acceptable results and further Hon'ble ITAT in the first round of appeal also give a specific direction to carry out a fresh benchmarking analysis after excluding GTN from the set of comparables. Further, the assessee submitted a draft comparability analysis and submitted that if GTN were to be excluded from the list of comparables then the Arm's Length Price computed by the Ld. TPO in alternative proposition (averaging 21.92%) falls within the +/- 5% tolerance range of assessee's margins (19.31%).

7. In response, the Ld. D.R. submitted that GTN Ltd. cannot be excluded as a comparable for the reason that the assessee is a 100% export oriented unit and if the comparability analysis is taken as above 50% only then GTN would be required to be included in the set of comparables.

8. We have heard the rival contention and perused the material on record. It would be useful to reproduce the relevant extractions of the observations made by ITAT while passing the order in assessee's own

case for A.Y. 2009-10 in ITA No. 828/Ahd/2014 vide order dated 30.08.2015 in which the ITAT observed as under:-

> *"5.2. We have given our thoughtful consideration to the rival contentions, facts of the present case and material available on record. The undisputed facts remain that the Transfer Pricing Officer as well as a DRP have rejected the transfer pricing study conducted by the assessee and comparables adopted for computing the arm's length price.* ***The TPO carried out his own study restricting the study to a single financial year as per the Rule of 10B(4) of the Income Tax Rules, 1962 (hereinafter referred to as "the Rules). The TPO also rejected the comparables on the basis that the pumps and valves cannot be compared. However, while conducting the transfer pricing study, the AO compared the assessee with industries which were engaged in the manufacturing of valves****. During the course of hearing, it was pointed out by the ld.counsel for the assessee that the valves that are sought to be compared by the TPO are functionally different, entirely a different product, although it is named as valve. Although, it is true that the method adopted is TNMM, under this method the product is broadly compared.* ***However, in the present case, the TPO has sought to compare the valves which is a consumer product with the industrial product of the tested party, which in our view, would not give a true picture of the profit. Under these facts, it would subserve the interest of justice if a TPO conduct a fresh study comparing the same or similar product, so that a fair picture of the profit could be arrived in order to ascertain whether the TP adjustment is required to be made or not.*** *Therefore, we hereby set aside the order of the*

authorities below and restore these issues before the TPO for conducting a ***fresh transfer price study for the purpose of finding out the nature of product, its market, geographical location, etc. as given under OECD guidelines regarding the comparability of the comparables.*** *While doing so, the TPO would afford opportunity to the assessee for submitting fresh T.P. study comparables. However, it is made clear that the TPO would restrict his study to the financial year under consideration unless he feels that there are grounds for adopting the data of other two years as prescribed under the Rules. Hence, ground Nos.1 & 2 of assessee's appeal are partly allowed for statistical purposes."*

8.1 On going through the contents of the aforesaid order passed by Hon'ble ITAT, we observe that proper comparability analysis has not been done by the Ld. TPO taking into consideration the directions of ITAT in the aforesaid order. We observe that the ITAT has specifically observed that the TPO has sought to compare the valves which is a consumer product with the industrial product of the tested party, which would not give a true picture of the profit. However, despite the aforesaid directions of ITAT vide order dated 30.06.2015, the directions of ITAT ostensibly have not been followed and the same comparable was again used for conducting the comparability analysis, which was directed to be excluded. In view of the above, the matter is being again restored to the file of the Ld. TPO for carrying out a fresh benchmarking analysis in light of the observations made by Hon'ble ITAT vide its order dated

30.06.2015. In the result, the matter is being restored to the file of Ld. TPO with the above directions.

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

ITA No. 2503/Ahd/2018 (Assessment Year 2010-11):-

10. The assessee has taken the following grounds of appeal:-

*"**Ground No.1 – Transfer Pricing adjustment – INR 6,64,11,722/-***

1. On the facts and in the circumstances of the case and in law, the Learned Assistant Commissioner of Income-tax, Circle-2(1)(2), Baroda ('the Ld. AO') under the directions of Honourable Dispute Resolution Panel ('Hon'ble DRP'), erred in making an adjustment of INR 6,64,11,722/- in relation to the international transaction of sale of goods to Associated Enterprises ('AE').

It is prayed that the additions made by the Ld. AO in relation to the international transaction of sale of goods to AEs be deleted.

2. On the facts and circumstances of the case and in law, the Ld. AO under the directions of Hon'ble DRP erred in not allowing the benefit of ± 5% range as per Section 92C(2) of the Income-tax Act, 1961 ('the Act') in relation to the international transaction of sale of goods to AE.

It is prayed that the Ld. AO be directed to grant range benefit in accordance with law.

Ground No. 2 – Interest under section 220(2) of the Act – Tax effect INR 41,48,051/-

"3. On the facts and in the circumstances of the case, the Department has erred in charging interest under section 220(2) of the Act on the demand raised pursuant to original assessment order dated 23 January 2015 passed under section 143(3) read with sections 92CA and 144C of the Act, even though the said order was set aside for fresh adjudication by this Hon'ble Tribunal vide its order dated 07 September 2016.

Without prejudice to above, on the facts and circumstances of the case, the interest under section 220(2) of the Act is charged without providing any notice of demand or opportunity of being heard to the Appellant and hence, the same is against the principle of natural justice and is void ab initio.

It is prayed that the interest charged under section 220(2) of the act may be deleted.

All of the above Grounds of Appeal are independent of and without prejudice to one another. Furthermore, the Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."

11. Since similar facts and issues for A.Y. 2010-11 are involved, wherein the assessee has objected to inclusion of GTN Engineering for the purpose of comparability analysis, the matter is being restored to the

file of Ld. TPO for carrying out a fresh benchmarking analysis in light of directions given by Hon'ble ITAT vide order dated 30.06.2015.

12. In the combined result, the appeals of the assessee are allowed for statistical purposes for both Assessment Years 2009-10 and 2010-11.

This Order pronounced in Open Court on	**04/08/2023**

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 04/08/2023
TANMAY, Sr. PS ***TRUE COPY***

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad