**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 224/KOL/2016
Assessment Year: 2011-2012**

M/s. Linde India Limited,..........................Appellant
(Formerly BOC India Limited)
'OXYGEN HOUSE',
P-43, Taratala Road,
Kolkata-700088
[PAN: AAACB2528H]
-Vs.-
Joint Commissioner of Income Tax,..........Respondent
Range-12, Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:
Shri J.P. Khaitan, Sr. Counsel and Shri P. Jhunjhunwala, Advocate, appeared on behalf of the assessee

Shri Rakesh Kumar Das, CIT, D.R., appeared on behalf of the Revenue

Date of concluding the hearing : November 28, 2023
Date of pronouncing the order : December 07, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the assessment order dated 27.11.2015 passed under section 144C(5) read with section 143(3) of the Income Tax Act.

2. This appeal was earlier decided by the Tribunal vide its order dated 19.09.2018. Thereafter assessee filed Miscellaneous Applications bearing Nos. 55 & 56/KOL/2011 in ITA Nos. 224/KOL/2016 and 381/KOL/2017 in A.Ys. 2011-12 and 2012-13. These Miscellaneous Applications were allowed by the Tribunal vide its order dated 06.11.2019. The grievance of the assessee in the Miscellaneous Applications was that Tribunal has adjudicated one part of the grievances of the assessee pleaded in certain grounds of appeals, whereas it shifts to adjudicate other issues. The Tribunal vide its order allowed the applications of the assessee and restored the appeals to their original numbers for deciding the issues, which were not adjudicated in the first round of litigation. In this way, these appeals are again listed before us.

3. During the pendency of these appeals, the assessee has filed application for permission to revise the grounds of appeal and also filed application for permission to plead additional evidence.

4. With the assistance of ld. Representatives, we have gone through these interlocutory applications and find that the main issues, which are going to be adjudicated in the present appeal, were already pleaded by the assessee. It only wants to plead certain peripheral arguments in support of the main grievance. In other words, it wants to raise specific pleas under the head of sub-grounds, which only a form of multiple submissions required to be made by the assessee during the hearing of the appeal. On due consideration of the above application, we are of the view

that Rule 8 of ITAT Rules , 1963 does not authorize any appellant in the appeal or respondent in the Cross Objection to plead argument in the grounds of appeal. In other words, grounds are not to be descriptive or argumentative in nature. Therefore, as far as the application relating to permission or revision of grounds is concerned, we do not find any merit, hence it is rejected. Nevertheless we will take all-folds of submissions made in this application while considering the main ground of appeal. As far as the application for permission to raise additional evidences is concerned, one of the issues relates to the determination of Arm's Length Price of a capital asset acquired by the assessee and re-sold. In this connection, the assessee sought to place on record bills of entry pertaining to import of second-hand Nitrogen Plants, relevant extract of the minutes of appellant's Board meeting, screen-shot in respect of purchase and payment for the Nitrogen Plants and SAP screenshot in respect of sale of the said Nitrogen Plants. At this stage, we allow the assessee to place on record these documents. However, their impact on adjudication of the issue will be deliberated upon while taking up the issue itself.

5. Now we take the appeal on merit. At the time of hearing, ld. Counsel for the assessee submitted that his grievance is of two-folds namely –

(a) adjustment of Rs.2,11,49,879/- in respect of international transactions of purchase of raw materials and sale of finished goods;

(b) adjustment of Rs.1,15,70,189/- in respect of international transactions of sale of fixed assets.

We take both these transactions in a seriatim.

6. Brief facts of the case are that the assessee-company is a part of the Linde AG Group (It was earlier part of the BOC Group of UK, which has merged with the Linde AG Group). It is a subsidiary of the BOC Group Plc of UK. It is in a Project Engineering line of business, which executes turnkey contracts relating to industrial gases plants, a process gas solutions line of business etc. It has filed its return of income on 30.11.2011 declaring total income at Rs.67,29,90,296/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed that a report in Form 3CEB was filed by the assessee along with the return of income. A perusal of such report would reveal that certain international transactions were taken up by the assessee and therefore, a reference to the TPO was made for determining Arm's Length Price in respect of international transactions entered by the assessee with its Associate Enterprise. Ld. TPO has passed the transfer pricing adjustment order under section 92CA(3) of the Income Tax Act on 28.01.2015. After receipt of this order, ld. Assessing Officer has passed a draft assessment order on 05.03.2015. The assessee filed objections on the draft assessment order and those objections were decided by the ld. Dispute Resolution Panel vide its order dated 21.10.2015. The ld.

Assessing Officer has passed a final assessment order on the basis of the directions issued by the DRP on 27.11.2015 and against this order, the assessee is in appeal before the Tribunal.

7. A perusal of the grounds of appeal would reveal that the first issue agitated before us is, what should be the Arm's Length Price of international transaction of purchase of raw material and sale of finished goods. In order to resolve this issue, we would refer to the TPO's order. He made discussion on this issue from paragraph no. 22 at page 195 of the impugned order. The ld. TPO has observed that the assessee has adopted Transactional Net Margin Method (TNMM) for determining its Arm's Length Price of international transaction. It adopted Operating Profit on sale as PLI while the purchase and sale of capital asset/fixed asset has been justified by using the PLI of return on capital employed. The ld. TPO took note of the selection of comparables made by the assessee in its TP Study Report as well as how it worked out the PLI for comparing its transaction, vis-à-vis the average margin of the selected comparables. Such details are available in paragraph no. 24 of the TPO's order and it reads as under:-

"The financial result of the comparable accepted by the assessee to benchmark the transaction entered into by the A.E. are as given below:-

Sl. No.	*Name of the Company*	*Year wise working of gross profit margin*			*Weighted average of operating profit margin*
		2010-11	*2009-10*	*2008-09*	
1	*Bhagwati*	*1.87%*	*3.00%*	*(–) 21.23%*	*(-)5.45%*

	Oxygen Limited				
2	*Bombay Oxygen Corpn. Ltd*	*7.87%*	*(–) 1.14%*	*(–) 3.81%*	0.97%
3	*Ellenbarie Industrial Gas Ltd*	*N.A*	*16.67%*	*26.14%*	21.40%
4	*Gujarat Limited Fluorochemicals*	*39.87%*	*(–) 12.95%*	*(-) 10.84%*	5.36%
5	*Mapro Industries Ltd*	*N.A*	*17.28%*	17.32%	17.30%
6	*National oxygen Limited*	*17.89%*	**(-)5.17%**	7.74%	6.82%
7	*Southern Gas Ltd*	*4.14%*	*7.39%*	3.49%	5.01%
		Arithmetic Mean			7.34%

The assesse has calculated the Operating Profit Margin of the company as under -

Particulars	*Amount (Rs 000)*
Income as per Profit & Loss Account (A)	*9,814,822.00*
Contract Work-in-Progress (B)	*124,005.17*
Non-Operating Income	
Liabilities no longer required written Back(Net)	*51,892*
Forex-Gain/Loss	*(29,470.00)*
Interest Income	*53,108.61*
Other Income	*1,68,874.39*
Total Non-Operating Income (C)	*2,43,905.00*
Total Operating Income D=A-B-C	*94,46,971.83*
Expenses as per Profit & Loss Account	*84,66,899.70*
Contract Work-in-Progress- Opening (E)	*42,651.12*
Contract Work-in- Progress Adjustment G=B-E	*81,354.05*
Non-Operating Expenses	
Interest-Others	-
Operating Expenses I=E-II-B	*83,42,894.53*
Operating Profit J=D-I	*11,04,077.30*
Operating profit/ Operating Sales % K=J/D	*11.69%*

8. The ld. TPO was not satisfied with the determination of Arm's Length Price by the assessee in its T.P. Study Report. He

selected further comparables. The assessee has bench-marked its transactions on the basis of seven comparables, whereas ld. TPO has selected total number of comparables as 13 including those selected by assessee. He invited the explanation of the assessee, regarding those comparables, but in the show-cause notice, the ld. TPO has included Hindustan Wires Limited as one of the comparables but while finalization of the comparables, he did not select and excluded it. The final comparables selected by the ld. TPO as well as determination of ALP on this issue reads as under:-

"35.3 In view of the above the plea of the assessee is rejected and the final set to be taken as comparable for comparing operating profit margin of the assessee are given as under:-

Sr.No	Name of the company	Operating Revenues	Operating Cost	Operating Profit	OP/OR	OP/OC
1	Bhagwati Gas Ltd	1033.41	944.43	88.98	8.61%	9.425% ;
2	Bombay Oxygen Corporation Ltd (Seg)	4173.70	3866.04	307.66	7.37%	7.95%
3	Gujarat Fluorochemicals Ltd (Seg)	101503.39	64424.53	37078.85	36.52%	57.5%-
4	Inox Air Products Ltd	71382.62	46986.07	24396.55	34.17%	51.52%
5	Mapro Industries Ltd	338.08	265.10	72.98	21.59%	27.52%
6	National oxygen Ltd (Seg)	1786.56	1504.16	282.39	15.80%	18.77%
7	National Peroxide Ltd	18191.54	9810.49	8381.05	46.07%	85.42%
8	Elienbarie Industrial Gas Ltd (Seg)	4717.13	3712.74	1004.39	21.29%	27.05%
9	Bhuruka Gas Ltd	4769.32	3810.17	959.15	20.11%	25.17%
10	SRF Ltd (Seg)	74667.07	46137.21	28529.86	38.20%	61.8%
11	Paushak Ltd	2997.12	2584.06	413.05	13.78%	15.98%
12	The Southern Gas Ltd	19183.24	16799.15	2384.19	12.42%	14.19%
		Average			22.99%	33.56%

36. It is to be mentioned here that the companies that have been selected as comparable which are broadly functioning in the gas industry. The major condition for Transfer Pricing Analysis is comparability criteria, thus while price *got affected when there are differences in products, gross margins are affected by differences in functions but net margins are comparatively less affected by the differences in products and functions. This does not mean that net margins are applicable to enterprise which carry similar functions in different market or different sectors of the company. The sectoral and market similarity is the must for the applicability of net margin and this gives a leeway for comparison with a wide range of enterprise in the same sector and market. Net profit indicators are less sensitive to the differences in the level of risks and extent and complexity of functions while doing a comparable analysis and hence as per the above criteria the companies selected as comparable are appropriate in the facts and circumstances of the case.*

37. In view of the profit level indicator for calculating the Arm's Length Price of the transaction of purchase of raw materials and consumables is taken as operating profit on cost as it is the cost for which the arm's length is being determined and for sale the PLI taken is operative profit on revenue as it is the revenue for which arm's length is determined.

38. Computation of ALP

The arithmetic mean of the profit level indicators is taken as the arm's length margin. Based on this, the arm's length price of the purchase of raw materials of the taxpayer with its AE(s) is computed as under:_

For purchase of raw material operating profit/operating cost is taken as PLI

Particulars	*Reference*	*Amount*
Tested Party		
Operating Revenue	*A*	*964,38,57,000/-*
Operating Cost	*B*	*8439,943,000/-*
Operative Profit	*C=A-B*	*120,39,14,000/-*
Operating Margin	*D=C/B*	*14.26*
Arithmetic mean of operating margin of comparable companies (operating profit by operating cost	*E*	*33.56%*
Difference in arithmetic mean of operating margins of comparable and the tested party's operating margin	*F=E-D*	*19.3%*
Absolute value of difference in margins	*G=F*B*	*162,89,08,999/-*

Total raw material purchase from AE to total cost base		*3.06%*
25,37,21,525 x 100 *843,99,43,000 =3.06%*		
3.06% of the difference is the adjustment		*4,98,44,615/-*

For sale of finished goods operating profit/operating revenue is taken as PLI

Particulars	*Reference*	*Amount*
Tested Party		
Operating Revenue	*A*	*964,38,57,000/-*
Operating Cost	*B*	*8439,943,000/-*
Operative Profit	*C=A-B*	*120,39,14,000/-*
Operating Margin	*D=C/B*	*12.48*
Arithmetic mean of operating margin of comparable companies (operating profit by operating cost	*E*	*22.99%*
Difference in arithmetic mean of operating margins of comparable and the tested party's operating margin	*F=E-D*	*10.51%*
Absolute value of difference in margins	*G=F*B*	*101,35,69,370/-*
Total sale to AE (sale of finished goods + cylinder rental charges = 1,43,37,902 + 90,28,344 = 2,33,66,246) to total revenue *2,33,66,246 x 100* *9,54,15,06,000*		*0.244%%*
0.244% of the difference is the adjustment		*24,73,109/-*

The total adjustment for purchase of raw material and sale of finished goods of Rs.5,23,17,724/- = (4,98,44,615/- + 24,73,109/-) is treated as Transfer Pricing Adjustment".

The ld. Assessing Officer has accepted the recommendation of ld. TPO and the same is concurred by the District Resolution Panel.

9. While impugning the order of the ld. Assessing Officer, ld. Counsel for the assessee has filed a brief note along with the Annexure. The note submitted by the assessee on this aspect reads as under:-

> *"Ground No. 1*
> *Grounds regarding adjustment of INR 2,11,49,879 in respect of international transactions of purchase of raw materials and sale of finished goods. [Refer revised ground of appeal no. 1 filed on 22 October 2020]*
>
> *The instant appeal for the Assessment Year 2011-12 was filed by the appellant against an order dated November 27, 2015 passed by the Joint Commissioner of Income Tax, Range 12, Kolkata ('Assessing Officer') under section 143(3) read with section 144C(5) of the Income Tax Act, 1961 ('the Act').*
>
> *The appellant states that in its transfer pricing study report all the international transactions including those on account of purchase of raw materials, sale of finished goods and export of capital assets were considered in aggregation for the purpose of benchmarking by following transactional net margin method. The appellant states that the Hon'ble Dispute Resolution Panel agreed with the appellant as regards aggregation of the transactions on account of purchase of raw materials and sale of finished goods. However, the transaction relating to export of capital asset was directed to be treated as an independent transaction to be tested on stand-alone basis.*
>
> *The appellant had selected seven comparable companies in its transfer pricing documentation, one of which was Gujarat Fluorochemicals Ltd. Further, the Learned Transfer Pricing Officer during assessment proceedings selected additional comparables including Inox Air Products Ltd. Both these comparable were retained, by the Hon'ble Dispute Resolution Panel.*
>
> *A.Comparable Analysis*
> *Given the above, the appellant has further reviewed both the comparable companies, to verify its functional comparability against the appellant and has identified and listed the following:*
>
> *Inox Air Products Limited ("Inox")*

Inox is into diversified activities including lease rental, operation maintenance income, service charges, facility charges [Refer page no. 1354 @ 1379, 1392 of Paper Book ("PB")II]

Inox has income from trading of goods [Refer page no. 1380 and 1388 of PB-II] whereas the appellant is not involved in trading of goods.

Inox is also engaged in the business of setting up new facilities on the premises of third-parties and derives, inter alia, lease income from the same. Inox has set up such a facility in the relevant previous year and is in the process of setting up/ completing more such projects [Refer page no. 1361 of PB-II]

Inox has earned rental income from operating lease and finance lease [Refer page 1384, 1393 and 1396 of PB-II]

Segmental details of Inox from the aforesaid activities is not available and as such it is not possible to determine the profitability of Inox from production of gases.

Gujarat Fluorochemicals Limited ("GFL")

GFL is functionally not comparable as it is majorly engaged into manufacturing of chemicals [Refer page no. 296 of PB-I], The segmental result of GFL shows more than 90% revenue from chemicals. [Refer page 1306, 1307 of PB II]

GFL was rejected as functionally non-comparable by Hon'ble Dispute Resolution Panel in Appellant's own case for AY 2012-13, AY 2013-14 and AY 2014-15. [Refer page nos. 257 @ 271-272; page 283 @ 292; page 308 @ 318-319 of compilation set] and no appeal has been filed by the revenue department against the same.

GFL's 50% of the production was consumed captively. Further, out of balance 50%, 88% was exported. [Refer page no. 1260 @ 1265 and 1266 of the PB -II]

GFL is into varied products category [Refer page no. 1303 of PB II] whereas the appellant is engaged in the manufacture of argon, nitrogen, oxygen, etc.

The 'chemicals' segment of GFL involves refrigerant gases, anhydrous hydrochloric acid, caustic- chlorine, chloromethane, PTTE, PT-PTFE and revenue from carbon credits. The appellant on the other hand manufactures only argon, nitrogen, oxygen etc. and as such is not comparable with the Company. Further, without prejudice to the aforesaid, it is not possible to determine the contribution of gases to revenue and profit from the audited financial statements of GFL [Refer page no. 1307 of PB-II]

Computation of Operating Profit Margin ('OPM') of the Appellant

Further, the appellant has computed its own OPM at 12.71% whereas the Transfer Pricing Officer has revised the OPM to 12.20% wherein the Transfer Pricing Officer has not considered following items of revenue as operating income:

Liabilities no longer required written back; and

Insurance claim (including loss of profit).

The appellant states that the liabilities written back and the receipt of insurance claim have been treated as revenue income in the computation of income of the appellant and as such are revenue in nature [Refer page nos. 717-719 & 722 @ 717 to 726 of PB-I], Further, the said receipts have arisen in the course of the business of the appellant and are as such revenue in nature.

It is pertinent to note that for the very subsequent assessment year i.e., AY 2012-13, the Transfer Pricing Officer has considered both the aforementioned items as operating income and has included the same in the calculation of OPM.

Calculation of rectified OPM of the appellant has been annexed herewith and marked "Appendix 1".

C. Computation of OPM of comparable companies

The appellant submits that the Transfer Pricing Officer has not computed the OPM of comparable companies, based on the annual report. Hence, there is a difference in margin as computed by the appellant and the Transfer Pricing Officer.

A summary of the OPM with corrected margin is annexed herewith and marked "Appendix 2". The details of the computation with corrected margin along with annual reports have also been filed as part of paper book with your Honours. [Refer page no. 1134 to 1670 of PB-II]

D. Adjustment for Working Capital

The appellant has requested for adjustment for working capital as there is a difference in the working capital cycle of the Appellant and the comparable companies selected in the final set. The laws on transfer pricing, as laid down in Rule 10B, provides for economic adjustment for the purpose of comparability. [Refer page no. 1134 to 1155 of PB-II]".

10. On the other hand, ld. D.R. relied upon the order of the ld. DRP and submitted that Gujarat Fluorochemicals Limited is also

engaged in the manufacture of 'chemicals and fluoro-chemicals and with respect to production of refrigerant gases and similarly Inox Air is also one of the concerns of the Group-GFL. Thus both these comparables are not required to be excluded.

11. We have duly considered the rival contentions and gone through the record carefully. With regard to inclusion of Gujarat Fluorochemicals Limited (GFL), emphasis of the ld. Counsel for the assessee is that in the assessee's own case, ld. DRP has excluded this concern on account of its functional disparity. He made reference to the orders of the ld. DRP available in A.Ys. 2012-13, 2013-14 and 2014-15, if a comparable selected by the ld. TPO and not excluded by the ld. DRP in one year but in other three years on the basis of its functional dissimilarity excluded, then, how it can be a comparable in the earlier year. We have gone through these details available in the record and satisfied that since ld. DRP itself has excluded this comparable on account of functional non-comparable, therefore, it required to be excluded in this year.

12. The next comparable is Inox Air Products Limited. We have perused the finding of the ld. TPO on page 231, whereby he recorded his reasons for rejecting the objection of the asessee. The reasoning assigned by the ld. TPO reads as under:-

Name of the comparable	*Reasons for rejection be rejected as a comparable*	*Comments*

Inox Air Products Limited	*It would be relevant to mention that Bellary Oxygen Company Private Limited situated in Bellary Andhra Pradesh is a 50:50 joint venture company between Linde India and Inox Air Products Limited and hence Inox Air Products Limtied being a business partner of Linde India cannot be considered as a comparable*	*The objection of the assessee is not tenable. What is important in comparability analysis is whether the transaction of the company is significantly controlled or not and whether the company is doing independently or not. In the present case, there is no significant transaction with its related party. Moreover, the company is having independent existence.*

13. The detailed objection of the assessee has been summarized before us and we have reproduced this submission while taking note of the brief summary of assessee's argument (extracted supra). The main contention of the assessee is that it is not specifically in the lines of manufacturing of gases. It has host of other activities. The ld. TPO has not examined its segmental accounts and not worked out how much component of its revenue generation is from same area of operation as the assessee is engaged. We find that the ld. TPO has summarily rejected the objection of the assessee without analytically comparing with any item. Thus to our mind, this comparable is not required to be included in the list of comparables for determining the PLI. The next objection pointed out by the assessee is that true segmental accounts have not been examined by the ld. TPO while determining the ALP of comparables, vis-à-vis the assessee. It is also the contention of the assessee that ld.

TPO has taken the figures from the internet and not from internal accounts of these companies. He failed to compute true operating profit margins as well as considering the adjustment for working capital before adopting true percentage of margin for compare. We find that ld. TPO has not carried out this exercise though his order is elaborate but it is on the basis of theory of the procedural aspect instead of analysis of specific material. Therefore, we deem it appropriate to remit it back to ld. Assessing Officer for re-examination. Our directions are very specific that out of twelve comparables finalized by the ld. TPO, exclude GFL and Inox. Thereafter ld. TPO would take the PLI of the comparables. He also examined the working capital adjustment in all these comparables, vis-à-vis of the assessee and look into true operating profit margins of these companies. After carrying out its exercise, he will re-determine the adjustment, if any, required to be made or not made in the Arm's Length Price of raw material purchased and finished goods sales. The ld. Assessing Officer may take the help of ld. TPO in carrying out this exercise. Apart from this exercise, no other aspect of this issue will be required to be examined which may prolong the litigation of second round.

14. With regard to the next item, ld. Assessing Officer has made adjustment on sale of capital/fixed assets. His finding on this aspect is available from paragraph no. 41 to 41.5 of the impugned order on pages no. 240 to 244 of the ld. TPO's order.

The case of the assessee is that it has purchased two second-hand nitrogen generating plants from an old customer namely Moser Baer. These plants were manufactured in United Kingdom but installed in China. The assessee purchased them. The cost of each plant was worked out at Rs.6,42,17,605/-, which does not include fluctuation gain of Rs.8,45,511/-. The assessee has to pay customs duty on purchase of this plant. In respect of the purchase of this plant, no adjustment was made for the T.P. purposes. One of the plants was set up and actually installed for Moser Baer and put to use. However, second plant could not be put to use. The assessee has ultimately sold this plant to one of its Associates Enterprises in Indonesia. The company had realized Rs.7,24,04,190/- from sale of the second plant. It paid import duty at that point of time.

15. The ld. TPO made adjustment in the Arm's Length Price of purchase and sale of capital assets. The ld. DRP concurred with the conclusions of the ld. TPO.

16. Before us, ld. Counsel for the assessee submitted that the assessee had paid customs duty of Rs.1,53,06,109/- at the time of import of this plant. On sale it is a loss. Nobody had consider the effect of Customs duty paid by the assessee. Similarly all other factors are not looked into by the ld. TPO, in his order. The assessee has also failed to produce all the details before the ld. TPO. This is the reason an application for permission to lead additional evidence is being made before the Tribunal. As we

observed in the earlier part of this order, the assessee sought to place on record the documents, which are placed in the second paper book, which basically contains earlier impugned orders of this year. Some of the material is available in the appeal-folder i.e. TPO's order, AO's draft order, DRP order, A.O's final order, etc. In the paper book (volume 2) for A.Y. 2011-12, the assessee has placed on record copies of the additional documents.

17. On the other hand, ld. D.R. submitted that the assessee ought to have raised all these things before the ld. TPO and cannot lead an additional evidence. We find that without considering these actual details, ld. TPO has determined the Arm's Length Price only on the basis of returns received on employment of capital by the assessee, vis-à-vis the comparable companies. To our mind, it does not reflect the realistic picture. It is a general study about actual deployment of capital by different comparables, which resulted certain gain. In the present transaction, there is a specific instance of purchase and sale of a plant. It is such an item for which it is quite difficult to find out a comparable whether, it has any utility in international market or not. It is a specific item for whom very limited customer would be there. Therefore, we remit this issue also for reexamination at the level of ld. Assessing Officer. The ld. Assessing Officer will look into the element of customs duty paid and thereafter find out whether this plant could claim higher return or not. With the above direction, this ground of appeal is allowed and set aside to the file of ld. Assessing Officer. No other issue was pressed before

us, hence for the purpose of two issues agitated before us, this appeal is treated as allowed for statistical purposes.

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

Order pronounced in the open Court on 07/12/2023.

Sd/-	Sd/-
(Rajesh Kumar)	**(Rajpal Yadav)**
Accountant Member	**Vice-President (KZ)**

Kolkata, the 7th day of December, 2023

Copies to :(1) M/s. Linde India Limited,
(Formerly BOC India Limited)
'OXYGEN HOUSE',
P-43, Taratala Road, Kolkata-700088

(2) Joint Commissioner of Income Tax,
Range-12, Kolkata,
Aayakar Bhawan, 7th Floor,
P-7, Chowringhee Square, Kolkata-700069
(3) Dispute Resolution Panel-2, New Delhi;
(4) The Departmental Representative
(5) Guard File
TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.