HC-KAR

NC: 2025:KHC:34395-DB
ITA No. 149 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

INCOME TAX APPEAL NO. 149 OF 2025

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX-2
   KORMANGALA,
   BANGALORE.

2. THE DEPUTY COMMISSIONER
   OF INCOME TAX
   CIRCLE- RESPONDENT
   3(1)(1), BMTC BUILDING
   KORMANGALA
   BANGALORE - 560 095

…APPELLANTS

(BY SRI. SANMATHI E.I., ADVOCATE)

Digitally signed by SRIDEVI S
Location: High Court of Karnataka

AND:

1. TOYOTA TSUSHO INDIA PRIVATE LIMITED
   PLOT NO.33 AND 34
   BIDADI INDUSTRIAL AREA
   RAMANAGARA DISTRICT
   BENGALURU - 562 109
   PAN: AADCS6230 N

…RESPONDENT

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 04.09.2024 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, AS SOUGHT FOR, IN THE RESPONDENT ASSESSEE'S CASE, IN APPEAL PROCEEDINGS IN M.P.NO.63/BANG/2023 IN IT (TP) A NO.2806/BANG/2017 FOR A.Y. 2013-2014 (ANNEXURE-A) AND GRANT SUCH OTHER RELIEF AS DEEMED FIT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU,CHIEF JUSTICE)

1. For the reasons stated in the application - I.A.1/2025, the same is allowed. The delay in filing the appeal is condoned.

2. The Revenue has filed the present appeal under Section 260-A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 04.09.2024 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in MP.No.63/Bang/2023 in IT(TP)A.

No.2806/Bang/2017 in respect of the Assessment Year [AY] 2013-2014.

3. The respondent [**the Assessee**] had filed the aforementioned miscellaneous application seeking rectification/modification of an order dated 02.03.2023 passed by the learned ITAT in IT(TP)A.No.2806/Bang/2017. The said order was passed in an appeal filed by the Assessee against the final assessment order dated 21.07.2022. The principal dispute before the learned ITAT was in respect of transfer pricing adjustments as directed by the transfer pricing officer [**TPO**], which was further reduced by the Dispute Resolution Panel [**DRP**].

4. The Assessee is trading in automobile components, processing of steel products and providing logistic services, primarily catering to the automotive industry. The Assessee had filed his return of income for the assessment year 2013-2014 on 29.11.2013, declaring a loss of ₹10,86,90,508/-. After the verification, it was found that the Assessee had entered into international transactions with Associated Enterprises [**AEs**], the value of which was more than ₹15 Crores. The learned Assessing

Officer [**AO**] made a reference to the TPO for determination of the arms length price [**ALP**] of the international transactions.

5. The Assessee furnished its transfer pricing studies in respect to two segments, namely, the trading segment and the manufacturing segment. The assessee's operating profit/ operating revenue margin (which was selected as the PLI) was 0.94%. The weighted average net profit margin of comparables selected by the Assessee was 3.54%. The learned TPO found that the Assessee's PLI was not within the tolerance range of plus/minus 1% and therefore concluded that the international transactions with AE's were not at ALP. The TPO also rejected the transfer pricing studies and determined the mean PLI of the selected comparables at 4.715%. And, the arms length margin of operating profit/ operating costs at 4.95%. On the aforesaid basis, the learned TPO computed the transfer pricing adjustment at ₹25,23,76,521/- in the trading segment.

6. In so far as manufacturing segment is concerned, the learned TPO determined the arms length PLI at 3.45% and accordingly made in adjustment of ₹6,02,89,351/- for the manufacturing segment.

7. The learned AO passed a draft assessment based on the adjustments made by the learned TPO. The Assessee preferred its objections before the DRP.

8. The learned DRP disposed of the objections raised by the Assessee in terms of the directions issued on 26.09.2017 under Section 144-C(5) of the Act. One of the objections raised by the Assessee related to the adoption of tolerance limit of 1% variation under Section 92-C(2) of the Act instead of 3% in respect to the trading segment. However, the learned DRP rejected the said objection. The learned AO passed the final Assessment Order on the basis of the aforesaid directions on 21.07.2022.

9. The Assessee appealed the said order before the learned ITAT. The learned ITAT considered the appellants' objection regarding the tolerance range in trading activity. Whereas the assessee had claimed that he was a trader and therefore tolerance limit of 3% would apply; the learned TPO and the DRP had fixed the tolerance variation limit at 1% of PLI. There is no dispute that in terms of the notification No.30/2013 issued by the Central Board of Direct Taxes [**CBDT**] on 15.04.2013, the tolerance range for wholesale traders was fixed at 1% and for other cases at 3%. Thus

the question whether tolerance limit was a variation of 1% or 3% was required to be determined on the basis whether the Assessee could be construed as a wholesale trader in respect of its trading activities.

10. The learned ITAT noted that the term 'wholesale trader' was defined in terms of the notification No.86/2015 dated 29.10.2015. It stipulated that the expression 'wholesale trading' would mean international transaction or specified domestic transaction for trading in goods, which fulfilled two conditions. The first being that the purchase cost of finished goods is 80% of the total costs pertaining to such trading activities. And the second condition being that the average monthly closing inventory of goods is 10% or less of the sales pertaining to such trading activities. The Assessee had furnished data to establish that its average monthly closing inventory was more than 10% of the sales pertaining to the trading activities and therefore it did not satisfy the second condition. Thus, it could not be considered as a wholesale trader. The learned ITAT had noted the same, as is evident from the following extract from the Order dated 02.03.2023 passed by the learned ITAT:

"13. The ld.AR of the assessee submitted that the TPO has considered the tolerance range in trading activity ±1%, whereas the assessee's comparables margin is 3.54%. The OP/OR of the assessee is 0.94%. The TPO for trading segment computed OP/OR at 0.22%. The tolerance range of 1% as notified by the CBDT on April 15th, 2013 vide notification No.30/2013 (F.No.500/185/2011-FDT-1 for whole sale traders and 3% for other cases shall be applicable for the financial year 2012-13. However, there was no definition of wholesale traders was given in the said notification. Further the central government issued another notification No.86/2015 dated 29/10/2015. The term whole sale trader was defined in the expression to the notification as under:-

> *3. Further, Central government issued notification. 86/2015) dated. 29.10.2015, the term wholesale traders was defined in the explanation to the notification as under:*
>
> *"Explanation. For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-*
>
> *purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities: and*
>
> *average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities."*

13.1 He further referred to the chart submitted, which is as under:-

4. The definition requires twin conditions for application of term Wholesale Traders"

First Condition: Purchase cost of finished goods is eighty Percent or more of the total cost pertaining to such trading activities;

In the present case, purchase cost of finished goods is Rs.10,06,99,08,117/- and total cost 10,74,34,03,259/- pertaining to trading activities and thus it is 93.73% of the total cost and satisfies the First criteria.

Second condition: Average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities

In the present case, Assessee's total inventory of traded goods as on 31.03.2013 is Rs. 122,99,44,688/- and as on 31.03.2012 is Rs. 110,03,72,957/- and thus average inventory is Rs. 116,51,58,822/ (FIB Pg. 301) which is more than 10% of total sales of trading goods is Rs. 103,68,56,2581-(10% of 1036,85,62,584) (PB Pg. 300).

Since, Average inventory i.e., is higher than 10% of total sales of traded goods the assessee does not lie in the definition of Wholesale traders and thus tolerance band of +/-3% is applicable to the assessee.

5. Therefore, assessee being not a wholesaler trader and accordingly, selected 3% tolerance band as the appropriate tolerance band applicable, in accordance with the activities Carried out by the Assessee."

11. Although the ITAT had noted the above, the Tribunal remanded the matter to the AO/TPO/DRP to determine whether the

Assessee was covered under the definition of wholesale trader under the relevant notification.

12. In the aforesaid context, the assessee filed a miscellaneous application *inter alia* seeking modification of the order dated 02.03.2023 to the extent of directing that the tolerance limit of 3% be adopted instead of remanding the matter to the learned AO. The said application is premised essentially on two grounds. First, that the learned ITAT had in assessee's own case for the year 2014-15, held that the Assessee was not a wholesale trader and therefore the tolerance band of plus/minus 3% was applicable to the trading segment. Second, that the learned TPO had not categorized the assessee as a wholesale trader and therefore there was no requirement of remanding the matter to the learned AO/TPO.

13. The learned ITAT considered the aforesaid contentions as well as the record placed before it and passed the impugned order *inter alia* accepting the Assessee's contention. Paragraph 6 of the impugned order is relevant and is set out below.

> "6. We have perused the submissions advanced by both sides in the light of records placed before us.

On perusal of the transfer pricing order passed by the Ld.TPO, we note that the assessee has not been categorised as a wholesale trader but it has been called a "stripped-down distributer if it takes risks of distributer" as per TPO order 6.4.3. In assessee's own case for subsequent year in ITA NO. 3372/Bang/2018 at para No. 28 Tribunal held that the assessee is trader and fixed the tolerance limit at 3% as per para No. 28 which is quoted by us in our order at para No. 13.4. Therefore, para 13.5 deserves to be amended as under:

> *"13.5. The Ld.DR has relied on Notification No.30/2013 dated 15/04/2013 and has considered assessee to be a wholesale trader which is contrary to the facts of the case. This Tribunal in assessee's own case for A.Y. 2014-15 has upheld the assessee to be a trader even the Ld. TPO in para 2 of the 92CA order has considered assessee to be a trader. There is nothing on record placed by the Ld.AR to establish that the assessee is a wholesale trader for the year under consideration. Under such circumstances, respectfully following the view taken by the Coordinate Bench of this Tribunal in assessee's own case for A.Y. 2014-15, we direct the Ld.AO to apply tolerance limit at 3% as assessee is categorised to be a trader by the authorities for the year under consideration."*

14. The question whether the assessee is required to be considered as a trader other than a wholesale trader, is essentially dependent on whether the two conditions as set out in the CBDT

notification dated 29.10.2015 are satisfied or not. As noted above, the Assessee had furnished data to establish that it did not comply with one of the conditions for being considered as a wholesale trader. In addition, the learned ITAT had also accepted that the Assessee was not a wholesale trader for the assessment year 2014-2015. There is no cavil that the Assessee could not be classified as a wholesale trader, if it did not cumulatively comply with both the conditions as set out in the explanation under the notification dated 29.10.2015. Thus, the controversy, if any, is fact centric and no substantial question of law arises for consideration by this court. The appeal is accordingly dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C M JOSHI)
JUDGE

SD
List No.: 1 Sl No.: 11