* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 04.03.2025
Judgment delivered on: 18.03.2025

\+ ITA 53/2025 & CM APPL. 12854/2025

PR. COMMISSIONER OF INCOME TAX-1, DELHI.....Appellant

versus

D LIGHT ENERGY P. LTD. .....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sanjay Kumar, Ms. Monica Benjamin and Ms. Esha Kadian, Advocates.

For the Respondent : Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been filed by the appellant/Revenue (hereafter referred to as '*Revenue*') under Section 260A of the Income Tax Act, 1961 (hereafter referred to as *'the Act'*) assailing the order dated 10.06.2024 passed by learned Income Tax Appellate Tribunal (hereafter referred to as *'the ITAT'*) in ITA No.516/Del/2022 which was allowed in favour of the respondent/assessee (hereinafter referred to as *'assessee'*).

2. In brief, the facts germane to the issues in this appeal are as under:-

(i) The assessee company is stated to be a part of D Light Group which is

engaged in manufacturing, marketing and trading of solar lights and power products and sells the same to various customers in different countries. The assessee had filed its return of income on 30.11.2017 declaring a total income of Rs.NIL. The assessee had claimed a loss of Rs.9,45,78,855/-. The case was selected for scrutiny and a notice dated 10.08.2018 under Section 143(2) of the Act was issued to the assessee through Income Tax Business Application (ITBA).

(ii) During the assessment proceedings, the appellant claims to have noticed from Form No.3CEB that the assessee had entered into various transactions with Associate Enterprises (hereafter referred to as '*AE*') and the aggregate value of international transactions amounted to Rs.13,85,442,925/-. The following international transactions were reported in the said Form:-

Sl. No.	*Nature of Transaction*	*Method Applied*	*Amount (in INR)*
1	*Purchase of lights and other accessories*	*RPM*	*1,36,63,99,221*
2	*Reimbursement of expenses*	*Other Method*	*25,53,734*
3	*Warranty cost claim*	*Other Method*	*1,64,89,970*
	Total		*1,38,54,42,925*

In view of the aforesaid transactions with AE, the case was referred to the Transfer Pricing Officer (hereafter referred to as '*TPO*') for determination of arm's length price (hereafter referred to as '*ALP'*).

(iii) The TPO, after observing that the purchase of lights/other accessories and the warranty cost claim are closely linked transactions, was of the opinion that they needed to be aggregated for the purpose of benchmarking the same, in view of the judgement of this Court in ***Pr. Commissioner of Income Tax-1 vs. Avery Dennison (India) Pvt. Ltd.***, ITA 386/2016 & connected matters decided

on 28.07.2016, wherein the determination by aggregating/clubbing transactions under Transactional Net Margin Method (hereafter referred to as '*TNMM*') was upheld after observing that the assessee therein was predominantly a manufacturer and the services received by it from its AE were intrinsically linked to the core business operation. Resultantly, *vide* order passed under Section 92CA(3) of the Act, the appellant proposed an adjustment of Rs.10,61,91,407/- to the price shown by the assessee in the books of accounts. Needless to state that this was the cumulative adjustment in respect of purchase of lights and other accessories, warranty cost claim and interest on receivables.

(iv) The AO passed the draft assessment order dated 27.03.2021, determining the assessable income at Rs.1,16,12,550/-. The assessee was granted 30 days period under Section 144C(2) of the Act to either accept the variations or to file its objections with the Dispute Resolution Panel (hereafter referred to as '*DRP*').

(v) The assessee filed its objections before the DRP on 30.04.2021. However, the DRP *vide* its order dated 29.12.2021 agreed with the view held by TPO on selecting the TNMM over the Resale Price Method (hereafter referred to as '*RPM'*) as the most appropriate method, observing that the transactions in question are closely linked and therefore, the aggregation. Pursuant thereto, the DRP issued directions under Section 144C(5) of the Act directing the AO to complete the assessment. A direction for inclusion/exclusion of some comparables was also passed. Following such directions, the earlier transfer pricing adjustment of Rs.10,61,91,407/- was reduced to Rs.6,94,53,297/-. The AO passed the final assessment order dated 31.01.2022 under Section 143(3) of the Act determining the total income of Rs.2,51,25,559/-.

(vi) Being aggrieved, the assessee filed an appeal before the learned ITAT against the final assessment order dated 31.01.2022.

(vii) The learned ITAT, while partly allowing the appeal, agreed with the submissions of the assessee and held that the most appropriate method adopted by the assessee of RPM to benchmark the transaction of solar goods was correct. It was observed that the international transaction of purchase of solar products was to the tune of Rs.136.63 crores whereas, the total cost of reimbursement of expenses and warranty cost claims put together, is only Rs.1.9 crores. The learned ITAT was of the opinion that the reimbursement expenses and warranty claims put together were miniscule part of the total transaction, roughly a little over 1.5% of the purchase cost of solar products from the AE. Accordingly, the findings of TPO and DRP on selection of TNMM as the most appropriate method were overturned. While reaching such conclusions, the learned ITAT also relied upon the judgements rendered by this Court in ***PCIT-6 vs. Matrix Cellular International Services (P) Ltd.; 90 taxmann.com 54 (Del)*** and ***PCIT-3 vs. Fujitsu India Private Ltd., 156 taxmann.com 310 (DEL)***.

(viii) Aggrieved thereof, the present appeal has been preferred by the Revenue.

3. On the aforesaid background facts, the Revenue proposed the following substantial question of law:-

> *"A. Whether the Ld. ITAT was justified in law and on facts by not upholding the Transaction Pricing Officer's determination which was also sustained by the Ld. Dispute Resolution Panel, which adopted the Transactional Net Margin Method (TNMM) as the appropriate method for benchmarking the international transactions in question, thereby rejecting the Rescale Price Method (RPM) adopted by the assessee?"*

CONTENTIONS OF THE REVENUE:-

4. Mr. Sanjay Kumar, learned Senior Standing Counsel for the Revenue submitted that the learned ITAT has fallen in error in considering RPM adopted by the assessee as the most appropriate method for benchmarking the international transactions. According to him, the warranty cost claim and the reimbursement of expenses is inextricably linked and intertwined with the purchase of solar goods, i.e., solar lights and lanterns. He stated that though the functions referred to by the assessee in the Transfer Pricing Analysis Report assumes it has not made any value addition, yet the entire responsibility for developing market strategy including advertising, marketing etc., is that of the assessee. Pointedly, learned counsel asserts that it is the assessee's own submission that the replacement services are not backed by corresponding warranty by AE. In fact, the AE only takes care of manufacturing defects, whereas, the product liability and warranty risks are borne by the assessee. It is claimed that this fact has been admitted by the assessee in the risk profile. In other words, learned counsel for the Revenue submits that the "rendering of services" after sales is "value addition" made by the assessee. On this score, he forcefully submits that since there is value addition, the view taken by the TPO and DRP are in consonance with the fact situation obtaining in the present case in contradistinction to the view taken by the learned ITAT. In the same breath, he also vociferously contends that the reliance on the judgements of this Court in ***Matrix Cellular*** *(supra)* and ***Fujitsu India*** *(supra)* is wholly misplaced. In order to buttress the aforesaid submissions, learned counsel referred to relevant paragraphs of the impugned judgement of the learned ITAT as also the examination conducted by the TPO and the DRP.

5. On the rule position, learned counsel referred to the provisions of

Section 93CA(3) of the Act relating to the manner of determination of ALP by the TPO read with Rule 10(1)(f) of the Income Tax Rules (hereafter referred to as *'the Rules'*). He also referred to Rule 10B of the Rules which refers to various methods for determining the ALP under Section 92C of the Act. He also points out to clause (f) of sub-rule (1) of Rule 10B which refers to *"any other method as provided in Rule 10AB"*. Following this, learned counsel also refers to Rule 10AB which refers to *"other method of determination of ALP"*. In order to support the submission that the value of the solar products purchased from the AE, the warranty cost claimed and the reimbursement expenses are *"transactions"* which are closely linked, he relies upon the definition of *"associate enterprise"* and *"transaction"* as provided in sub Rule (a) and (d) respectively of Rule 10A of the Rules.

6. Predicated on the above rule position, learned counsel forcefully contended that sub-section (3) of Section 92CA of the Act mandates an obligation upon the TPO to consider the evidence brought before him on a particular specified point and after taking into account all the relevant materials, the TPO, by an order in writing, is required to determine the ALP in relation to the international transactions in question. The thrust being that the Act provides and mandates only the TPO to take into account all the relevant material before him and determine the ALP in accordance with the satisfaction of the TPO of the most appropriate method to be employed for such determination. In other words, he contended that the ITAT ought not to have interfered with the method adopted by the TPO which was subsequently concurred with by the DRP, by overturning the findings that TNMM was the most appropriate method.

7. Learned counsel also vehemently contended that the methodology

adopted by the learned ITAT in concluding that RPM was the most appropriate method based on erroneous finding of fact on comparing the miniscule amount of transactions in respect of warranty cost claim and reimbursement of expenses with the purchase of solar products, was premised on a misreading of the aforesaid rules. He stated that the quantum of such transactions are not the determinative factor to reach the finding as to what would be the most appropriate method to be applied on a particular international transaction.

CONTENTIONS OF THE ASSESSEE:-

8. Mr. Ved Jain, learned counsel appearing for the Assessee, at the outset, drew out attention to the arguments of the assessee as reproduced in the TPO's order. The said arguments are extracted hereunder for clarity:-

> *"Assessee's arguments against the arm's length methodology proposed by your goodself*
>
> *In the show cause notice, your goodself have arbitrarily rejected the RPM method (the most appropriate method as applied by the Assessee) adopted by Assessee without providing any cogent reasons/ evidence. Accordingly, your goodself have proceeded to reject the functional analysis carried out by the Assessee without appropriately comprehending the same. Thereafter, your goodself has proposed to select TNMM as the most appropriate method to benchmark the international transaction pertaining to purchase of traded goods from AEs.*
>
> *Further, your goodself has stated that in the present case, purchase of lights/ other accessories and warranty cost claim are closely linked transaction and the same needs to aggregated for the purpose of benchmarking applying TNMM as the MAM by relying on Delhi High Court Judgement in the case of Avery Dennison (India) Pvt. Ltd. The relevant extract of the Show Cause Notice is reproduced hereunder:*
>
> *UNQUOTE*
>
> > *In the present case, Purchase of lights/other accessories and Warranty cost claim are closely linked transaction and needs to be aggregated for the purpose of benchmarking the same. In a case Avery Dennison (India) Pvt. Ltd. [TS-527-HC-2016 (Del)], the honorable Delhi High Court upheld the order of ITAT which has rejected the approach of the TPO and accepted the ALP determined by aggregating/ clubbing transactions under TNMM, observing that the assessee was predominantly a manufacturer, and that services received by it from its AE were intrinsically linked to the core business operation. Similarly, in another case a bench of ITAT (Pune)*

concluded that import/ export of spare parts, IT support services, access to customized part catalogue and amount received for warranty consideration were inter-related transactions, which were sourcing activities of assessee company and, therefore, same had to be aggregated in order to benchmark international transaction [Cummins India Ltd. (2015) 53 taxmann.Com 53 (Pune Tribunal)]

5. Given the above, the approach adopted by you for benchmarking these transactions is hereby not acceptable. A more appropriate way to benchmark these transactions is using the TNMM at entity level as the MAM with PLI of OP/OR. Therefore, in order to benchmark the transactions, entity wide TNMM should be applied in your case. As such you are being showcause as to why not entity wide TNMM be used as MAM in your case.

In this respect, the Assessee would like to highlight that the aforementioned judgement referred by your goodself is applicable only in the case of manufacturing entities (as highlighted above), however, in the present case, the Assessee purely acts a distributor engaged in buy-sell of solar products. Therefore, observations made by your goodself does not impair the applicability of RPM in light of the facts and methodology adopted by the Assessee.

Further, with respect to warranty claim, it is important to note that the Assessee had incurred expense on account of warranty cost claim during the year amounting to INR 16,489,970, which were subsequently reimbursed by the AE. Accordingly, Other method was considered as the most appropriate method for the purpose of testing the above transaction.

Such reimbursement received by the Assessee is in line with the terms of the agreement dated April 01, 2016, entered between the Assessee and its AE (enclosed as Annexure 2) wherein it is provided that during the warranty period, in case the product/ any part of the same are found to be in the nature of manufacturing defect, the Assessee would make necessary arrangements for rectification of the defects by way of replacement/ refurbishment/ repairment of the products/ part of the same.

The cost of the rectification of the manufacturing defects of the products during the warranty period shall be recovered by the Assessee from the AE. The relevant extract from the inter-company agreement is provided below for your reference and records:

Further, during the warranty period, in case the products/any part of the same are found to be in the nature of manufacturing defect, d.light India shall make necessary arrangements for rectification of the defects by way of replacement/refurbishment/repairment of the products/part of the same. The cost of rectification of the manufacturing defects of the products during the warranty period shall be recovered by d.light India from d.light Cayman.

It is pertinent to note that above amounts recovered from AEs does not comprise of any service element, as the AEs would have borne these expenses directly had Assessee not incurred the same. Hence, in such cases it was appropriate to recover

these amounts without a mark-up, given such expenses have been incurred out of administrative convenience, with no service element involved.

Therefore, your goodself would appreciate that purchase of lights and warranty claim are two unrelated transactions. Hence, the said transactions cannot be clubbed, nor they are so inextricably linked that one cannot survive without other.

A. *RPM is the most appropriate method for benchmarking*

The Assessee selected RPM as the most appropriate method for benchmarking its international transaction to determine the arm's length price of distribution activity. RPM evaluates the arm's length nature of a controlled transaction by reference to the gross profit margin realized in a comparable uncontrolled transaction. RPM measures the value of functions performed and is appropriate in cases involving the purchase and resale of tangible goods/services in which the buyer/reseller does not add value to the goods by physically altering them.

The RPM begins with the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. This price (the resale price) is then reduced by an appropriate gross margin (the 'resale price margin') representing the amount out of which the reseller would seek to cover its selling and other operating expenses and, in the light of functions performed (taking into account assets used risk assumed), make an appropriate profit…"

9. Learned counsel stoutly contended that the assessee is only a distributor of the products manufactured by the AE and does not involve in any activity which would amount to "value addition" on such products. He contended that the opinion of the TPO, agreed to and concurred with by the DRP is erroneous, both on facts as on law too. He contended that the aforesaid submission is no more *res integra* with the authoritative view taken by this Court in ***Matrix Cellular*** *(supra)* and ***Fujitsu India*** *(supra)* which was correctly followed by the learned ITAT in the impugned judgement. According to learned counsel, the judgement of this Court in ***Avery Dennison*** *(supra)* is squarely applicable only to the manufacturing entities and not a distributor. He also referred to the warranty cost claim incurred by the assessee which was subsequently reimbursed by the AE. Therefore, according to learned counsel, on both the

aforesaid counts, i.e., the assessee being only a distributor coupled with the warranty cost claim having actually been reimbursed by the AE including the other relatable expenses, would not impair the applicability of RPM as the most appropriate method, as rightly adopted by the assessee.

10. Additionally, learned counsel also referred and relied upon the terms of agreement dated 01.04.2016 entered into between the assessee and its AE. It provided that during the warranty period, in case the product/any part of the same are found to be in the nature of a manufacturing defect, the assessee would make necessary arrangements for rectification of defects by way of replacement/refurbishment/repairment of the products/part of the same, the cost/expenses of which were to be recovered by the assessee from the AE. Thus, he contended that both the issues are squarely in favour of the assessee which was not appreciated correctly either by the TPO or the DRP. Apart from the judgements of this Court in ***Matrix Cellular*** *(supra)* and ***Fujitsu India*** *(supra),* learned counsel relied upon the judgement of this Court in ***Pr. CIT-2, Delhi vs. M/s Burberry India Pvt. Ltd., ITA 471/2019*** decided on 24.10.2024 reiterating the aforesaid principles laid down in ***Matrix Cellular*** *(supra)* and ***Fujitsu India*** *(supra)*. On the aforesaid basis, he prays that the present appeal be dismissed.

ANALYSIS AND CONCLUSION:-

11. We have heard learned counsel for the parties, perused the impugned judgement of the learned ITAT and examined the judgements relied upon and are of the opinion that the issue required to be considered by this Court is whether in the given facts, the learned ITAT's conclusion that RPM is the most appropriate method, is erroneous.

12. Undoubtedly, the edifice of the entire issue would have to be premised

on the fact that the assessee is a distributor and not a manufacturer. Undeniably, the assessee is engaged in importing of various solar products manufactured by the AE and resale of the said products. The fact that the assessee makes necessary arrangements for rectification of the defects, which are necessarily in the nature of manufacturing defect, by way of replacement/refurbishment/repair of the products/parts of the same, is also not disputed. The Revenue has also neither disputed nor brought any contrary material on record doubting the existence of the agreement dated 01.04.2016 executed between the assessee and its AE covering the aforesaid warranty. Having regard thereto, it would be apposite to extract the relevant portion of the said inter-company agreement dated 01.04.2016 hereunder:-

> *"...Further, during the warranty period, in case the products/any part of the same are found to be in the nature of manufacturing defect, d.light India shall make necessary arrangements for rectification of the defects by way of replacement/refurbishment/repairment of the products/part of the same. The cost of rectification of the manufacturing defects of the products during the warranty period shall be recovered by d.light India from d.light Cayman..."*

The said term expressly provides that in respect of a defect in the manufacturing itself of the product, the assessee would make arrangement for rectification as specified in the said term. It is also stipulated therein that the cost of rectification of the manufacturing defect, during the warranty period, shall be recovered by the assessee from the AE. In other words, the said warranty cost claim shall be reimbursed by the AE apart from reimbursement of expenses. Pertinently, the amounts so recovered/reimbursed do not comprise any service element as the AE would have borne these expenses directly, had the assessee not incurred the same. Thus, there is no service element involved. Ergo, the purchase of solar products/lights on the one hand and warranty cost claim on the other, are unrelated transactions and can neither be

aggregated/clubbed nor are they so inextricably linked as to not survive without the other, so far as the present facts are concerned.

13. So far as the issue of determining the ALP on the basis of most appropriate method, we find that the assessee had adopted the RPM as a method for benchmarking the international transactions relating to the import of finish goods. Apart from the procedure prescribed regarding comparable entities, the assessee also relied on the OECD guidelines in support of its contention regarding use of RPM as the most appropriate method for benchmarking international transactions in question, the same being in respect of the activities for purchase of the goods from related parties and resale to the unrelated parties. It was the main contention of the assessee that the RPM would be the most appropriate method in cases where the distributor/reseller does not add any value to the products purchased and sold.

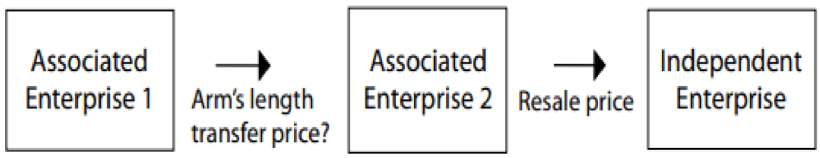
14. In the present case, the TPO and the DRP concluded that RPM, in the facts of the case, was not the most appropriate method, essentially based on the assumption that the warranty cost claim and the reimbursement of expenses are inextricably inter-linked with the transaction of purchase of the solar products and cannot survive without the other. This assumption is erroneous. It was equally erroneous to conclude that these three transactions were required to be aggregated or clubbed together for benchmarking or determination of the ALP. This is for the reason that there is no value addition done by the assessee on the products purchased and subsequently sold by it. The construction and interpretation sought to be proposed by the learned counsel for the Revenue is fundamentally flawed on that ground. The reliance on sub-section (3) of Section 92CA of the Act is misplaced. Undoubtedly, under that sub-section, the TPO is mandated to determine the ALP consequent upon taking into account

all relevant materials gathered, yet would have to necessarily or essentially examine as to whether (i) the assessee is a manufacturer or a distributor and; (ii) any value addition has been made to such imported products by the distributor prior to putting such products for sale. In case such examination has not been conducted by the TPO, the determination of ALP may become questionable, depending on the facts of each case. For the same reason, the directions of the DRP concurring with the determination of ALP, adopting TNMM as the most appropriate method too, is erroneous and unmerited.

15. We also note that the learned ITAT had recorded a finding of fact inasmuch as it has observed that except for suspicion, the Revenue had failed to place on record any documentary evidence to substantiate that the assessee has undertaken any other activity resulting in the value addition to the solar goods in question. Learned counsel for the Revenue had argued that contrary to the claim of the assessee that no value addition was done, yet the entire responsibility for developing market strategy including marketing and advertising etc., is of the assessee. It was also stoutly urged that the product liability and warranty risks are borne by the assessee which would tantamount to rendering "service after sales" which would be in the nature of "value addition". The said submission does not commend to us and is unpersuasive. The warranty cost claim stands reimbursed by the AE to the assessee as per the term of the inter-company agreement which would not tantamount to value addition made by the assessee at its end.

16. So far as the argument regarding value addition in the nature of advertising and marketing strategy is concerned, the same is no more *res integra* with the view taken by this Court in the case of ***Burberry India*** *(supra)*. It would be worthwhile to reproduce hereunder the relevant paragraph

nos.27 to 31 of the said judgement:-

> *"27. At the outset, it is material to note that there is no cavil as to the functional profile of the assessee. Admittedly, the assessee is engaged in importing of goods bearing brand name 'Burberry' from its Associate Enterprise (AE) and retailing the same through its stores. The assessee does not add any value to the said goods; the same are sold in the same condition as imported. It is in these given facts that the learned Tribunal had concluded that RPM method would be the most appropriate method.*
>
> *28. The United Nations Practical Manual on Transfer Pricing for Developing Countries (2021) briefly describes the RPM as under:-*
>
> > *"4.3 Traditional Transaction Methods: Resale Price Method (RPM)*
> >
> > *4.3.1 Introduction to RPM*
> >
> > *4.3.1.1 The Resale Price Method (RPM) is one of the traditional transaction methods that can be used to determine whether a transaction reflects the arm's length principle. The Resale Price Method focuses on the related sales company which performs marketing and selling functions as the tested party in the transfer pricing analysis. This is depicted in Figure 4.D.2 below.*
> >
> > *4.3.1.2 The Resale Price Method analyzes the price of a product that a related sales company (i.e. Associated Enterprise 2 in Figure 4.D.2) charges to an unrelated customer (i.e. the resale price) to determine an arm's length gross margin, which the sales company retains to cover its sales, general and administrative (SG&A) expenses, and still make an appropriate profit. The appropriate profit level is based on the functions it performs, the assets it uses and the risks it assumes. The remainder of the product's price is regarded as the arm's length price for the intragroup transactions between the sales company (i.e. Associated Enterprise 2) and a related company (i.e. Associated Enterprise 1). As the method is based on arm's length gross profits rather than directly determining arm's length prices (as with the CUP Method) the Resale Price Method requires less direct transactional (product) comparability than the CUP Method.*
> >
> > *Figure 4.D.2*
> > *Resale Price Method*
> >
> > 
> >
> >
> > *Resale price = US$100*
> > *Resale price margin (25%) = US$ 25*

Arm's length transfer price = US$ 75

4.3.1.3 Consequently, under the RPM the starting point of the analysis for using the method is the sales company. Under this method the transfer price for the sale of products between the sales company (i.e. Associated Enterprise 2) and a related company (i.e. Associated Enterprise 1) can be described in the following formula:
TP = RSP x (1-GPM), where:

- *TP = the Transfer Price of a product sold between a sales company and a related company;*
- *RSP = the Resale Price at which a product is sold by a sales company to unrelated customers; and*
- *GPM = the Gross Profit Margin that a specific sales company should earn, defined as the ratio of gross profit to net sales. Gross profit is defined as Net Sales minus Cost of Goods Sold."*

29. It is also relevant to refer to the following passage from the said text relating to the issue of the required comparability in RPM:-

"4.3.4 Comparability in Applying the Resale Price Method
4.3.4.1 An uncontrolled transaction is considered comparable to a controlled transaction if:

- *There are no differences between the transactions being compared that materially affect the gross margin (for example, contractual terms, freight terms etc.); or*
- *Reasonably accurate adjustments can be performed to eliminate the effect of such differences.*

4.3.4.2 As noted above, the Resale Price Method is more typically applied on a functional than on a transactional basis so that functional comparability is typically more important than product comparability. Product differences will probably be less critical for the Resale Price Method applied on a functional basis than for the CUP Method, because it is less probable that product differences will have a material effect on profit margins than on price. One would expect a similar level of compensation for performing similar functions across different activities.
4.3.4.3 While product differences may be more acceptable in applying the Resale Price Method as compared to the CUP Method, the property transferred should still be broadly similar in the controlled and uncontrolled transactions. Significant differences between the nature of the products sold in the controlled and uncontrolled transactions may reflect differences in functions performed, assets used or risks assumed. Such differences might suggest differences in arm's length gross margins.

4.3.4.4 The compensation for a distribution company should generally be the same whether it sells washing machines or dryers, because the functions performed (including risks assumed and assets used) are similar for the two activities. It should also be noted, however, that distributors engaged in the sale of markedly different products cannot be compared. The price of a washing machine will, of course, differ from the price of a dryer, as the two products are not substitutes for each other. Although product comparability is less important under the Resale Price Method, greater product similarity is likely to provide more reliable transfer pricing results. It is not always necessary to conduct a resale price analysis for each individual product line distributed by the sales company. Instead, the Resale Price Method can be applied more broadly, for example based on the gross margin a sales company should earn over its full range of broadly similar products.

4.3.4.5 As the gross profit margin remunerates a sales company for performing marketing and selling functions; the Resale Price Method especially depends on comparability regarding functions performed, risks assumed and assets used. The Resale Price Method thus focuses on functional comparability. A similar level of compensation is expected for performing similar functions (using similar assets and assuming similar risks) across different activities. If there are material differences that affect the gross margins earned in the controlled and the uncontrolled transactions, adjustments should be made to account for such differences. In general, comparability adjustments should be performed on the gross profit margins of the uncontrolled transactions. The operating expenses in connection with the functions performed, assets used and risks assumed should be taken into account in this respect, as these differences are frequently reflected in different operating expenses."

30. In the present case, the assessee had used the RPM as a corroborative method for benchmarking the international transactions relating to the import of the finished goods. The assessee had compared gross profit margin from the sale of such imported luxury products with the gross profit margin of comparable entities in respect of the similar transaction (namely sale of the imported products in domestic markets). The assessee also relied upon the OECD Guidelines as well as the Guidance Note issued by the ICAI in support of its contention regarding use of RPM as the most appropriate method for benchmarking the international transactions in question. The same being in respect of the activities for purchase of the goods from related parties and resale to the unrelated parties. The assessee had highlighted that RPM would be the most appropriate in cases where the reseller does not add any value to the products purchased and sold.

31. In the present case, the DRP had accepted the TPO's conclusion that RPM was not the most appropriate method, essentially, for the reason that the assessee had incurred about ₹5.44 Crores towards AMP expenses, which the DRP considered as substantial. Accordingly, the DRP had also concluded that the assessee is not a simple distributor."

Even otherwise, apart from a bald argument, no documentary evidence has been placed on record to substantiate the aforesaid contention. Thus, even on that count, the said submission is untenable.

17. The judgement in the case of ***Burberry India*** *(supra)* also reiterated the principles settled in ***Matrix Cellular*** *(supra)* and ***Fujitsu India*** *(supra)* with regard to adoption of RPM as the most appropriate method in the case of a distributor without value addition to the imported products before sale. The relevant paragraphs of ***Burberry India*** *(supra)* in this regard, are reproduced hereunder:-

"35. The question whether RPM is the most appropriate method in cases of the distributor that purchases the products from its AE and resells the same to unrelated parties without any further processes is covered by the several decisions.

36. In ***Commissioner of Income tax v. L'Oreal India (P) Limited : (2015) 53 taxman.com 432(Bombay)*** *the Division Bench of Bombay High Court had considered the Revenue's challenge to an order passed by the learned Tribunal in a similar case holding that the RPM was the assessee had imported the finished goods and resold the same in the same condition. In the aforesaid context, the Bombay High Court had observed as under:-*

> *"7. After having perused the relevant part of the order passed by the Commissioner and the Tribunal on this question, we are in agreement with Mr. Pardiwalla that the Tribunal did not commit any error of law apparent on the face of the record nor can the findings can be said to be perverse. The Tribunal has found that the TPO has passed an order earlier accepting this method. The Tribunal has noted in para 19 of the order under challenge that this method is one of the standard method and the OECD (Organization of Economic Commercial Development) guidelines also state in case of distribution or marketing activities when the goods are purchased from associated entities and there are sales effected to unrelated parties without any*

further processing, then, this method can be adopted. The findings of fact are based on the materials which have been produced before the Commissioner as also the Tribunal. Further, it was highlighted before the Commissioner as also the Tribunal that the RPM has been accepted by the TPO in the preceding as well as succeeding assessment years. That is in respect of distribution, segment activity of the Assessee. In such circumstances, and when no distinguishing features were noted by the Tribunal, it did not commit any error in allowing the Assessee's Appeal. Such findings do not raise any substantial question of law. The Appeal is devoid of merits and is, therefore, dismissed. There would be no orders as to costs."

37. In ***Principal Commissioner of Incometax-6 v. Matrix Cellular International Services (P) Ltd : (2018) 90 taxman.com 54 (Delhi)*** *this Court considered the question whether the Tribunal had erred in adopting RPM for determining the ALP in relation to the assessee's business of reselling and distributing the sim cards imported from AEs. The relevant extract of the said decision is set out below:-*

"7. The dispute before the Court is whether the ITAT erred in adopting the RPM in order to determine the arms' length price in relation to the assessee's business. In the relevant assessment year, the assessee had four AEs. Three of them were wholly owned subsidiaries, whereas in the fourth, the assessee held 49% shareholding. The ITAT found that the AEs were engaged in the business of identifying, negotiating and buying SIM cards from the networks of different countries and selling them to the assessee. This arrangement, according to the assessee, foreign networks were reluctant to deal with foreign companies. The ITAT, relying on the TPO's order, found that the business of the assessee only involved re-selling or distributing the SIM cards imported from the AEs, without making any value addition. The ITAT also found that there was no distinction between airtime and SIM cards, as no value could be added to the airtime resold by the assessee. Since the SIM cards are resold without making any value addition, the ITAT concluded that the assessee carried out purely trading business, and hence the RPM was the Most Appropriate Method for calculating arms' length price.

8. This Court finds that once the ITAT, on considering the relevant facts as well as the order of the TPO, had concluded that the business of the assessee was merely that of a pure trader, and there was no value addition made before re-selling the particular products (i.e. the SIM cards), its consequent finding that RPM is the Most Appropriate Method, is irreproachable. In Nokia India (P) Ltd. v. Dy.

CIT, (2014) 52 taxmann.com 492/153 ITD 508 (Delhi), the Delhi bench of the ITAT held:

> *"A close scrutiny of the above two sub-clauses along with the remaining sub-clauses of r. 10B(1)(b) makes it clear beyond doubt that RPM is best suited for determining ALP of an international transaction in the nature of purchase of goods from an AE which are resold as such to unrelated parties. Ordinarily, this method presupposes no or insignificant value addition to the goods purchased from foreign AE. In a case the goods so purchased are used either as raw material for manufacturing finished products or are further subjected to processing before resale, then RPM cannot be characterized as a proper method for benchmarking the international transaction of purchase of goods by the Indian enterprise from the foreign AE."*

9. Similarly, in Swarovski India (P.) Ltd. v. Asstt. CIT (2017) 78 taxmann.com 325 (Delhi – Trib.), the ITAT held:

> *"Adverting to the facts of the instant case, we find that the assessee purchased Crystal goods and Crystal components from its AE. No value addition was made to such imports. The goods were sold as such. In the given circumstances, the RPM is the most appropriate method for determining the ALP of the international transaction of' Import of Crystal goods and Crystal components."*

10. A similar view has been adopted by the Mumbai bench of the ITAT in Mattel Toys India (P.) Ltd. v. Dy. CIT (2013) 34 taxmann.com 203/144 ITD 76:

> *"Thus, the RPM method identifies the price at which the product purchased from the A.E. is resold to a unrelated party. Such price is reduced by normal gross profit margin i.e., the gross profit margin accruing in a comparable controlled transaction on resale of same or similar property or services. The RPM is mostly applied in a situation in which the reseller purchases tangible property or obtain services from an A.E. and reseller does not physically alter the tangible goods and services or use any intangible assets to add substantial value to the property or services i.e., resale is made without any value addition having been made."*

> *11. This view has also been affirmed by the Bombay High Court in its judgment dated 07.11.2014 in CIT v. L'Oreal India (P.) Ltd. (2015) 53 taxmann.com 432/228 Taxman 360, where the Court found that there was no error in law committed by the ITAT when it held that RPM was the Most Appropriate Method in case of distribution or marketing activities especially when goods are purchased from associated entities and there are sales effected to unrelated parties without any further processing. In fact, a Division Bench of this Court in its decision in Bausch & Lomb Eyecare (India) Pvt. Ltd. v. Addl. CIT (2016) 381 ITR 227/237 Taxman 24/65 taxmann.com 141 (Delhi), while considering the decision of this Court in Sony Ericsson Mobile Communications India Pvt. Ltd. v. CIT (2015) 374 ITR 118/231 Taxman 113/55 taxmann.com 240 (Delhi), noted that:*
>
> > *"The RP Method loses its accuracy and reliability where the reseller adds substantially to the value of the product or the goods are further processed or incorporated into a more sophisticated product or when the product/service is transformed."*
>
> *38. The aforesaid decision was also followed by this Court in* ***The Pr. Commissioner of Income Tax-3 v. Fujitsu India Private Limited: Neutral Citation: 2023: DHC:7952-DB.****"*

18. Learned counsel for the Revenue relied upon the judgement of ***Commissioner of Income-Tax (LTU) vs. ESPN Software India Ltd., [2017] 399 ITR 554 (Del)*** in support of his contentions. We have perused the judgement and find the ratio actually applicable to the facts of the case, however, against the Revenue. The ratio laid down was to the effect that aggregation/clubbing of the transactions is entirely a fact dependent exercise, which cannot, *ipso facto*, be treated as a question of law. In the present case too, the Revenue seeks aggregation of the purchase value with that of the warranty cost claim and reimbursement of expenses, which would, in our opinion, be wholly a foundational fact.

19. In view of the above, we find the Revenue's appeal unmerited and do not find any question of law, much less a substantial question of law in the present

appeal.

20. Accordingly, the appeal is dismissed, alongwith all the pending application. However, without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MARCH 18, 2025
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