**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH 'I':NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**
**AND**
**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.489//Del./2022**
**(ASSESSMENT YEAR : 2017-18**

| | | |
|---|---|---|
| Elofic Industries Limited,<br>14/4, Mathura Road,<br>Faridabad – 122 003 (Haryana) | vs. | ACIT, Circle 7 (1),<br>Delhi. |
| **(PAN : AAACE0425C)** | | |
| (APPELLANT) | | (RESPONDENT) |

ASSESSEE BY : Shri Pradeep Dinodia, CA
Shri R.K. Kapoor, CA
Shri Prince Chugh, CA
REVENUE BY : Shri Nikhil Kumar Govila, CIT DR

Date of Hearing : 07.05.2026
Date of Order : 20.05.2026

**O R D E R**

**PER S. RIFAUR RAHMAN, AM :**

1. This appeal is filed by the assessee against the final order of assessment dated 22.01.2022 under section 143(3) r.w.s. 144C(13)/144B of the Income Tax Act, 1961 (for short 'the Act') pursuant to the directions of the Ld. Dispute Resolution Panel (DRP)/TPO u/s 144C of the Act for Assessment Year 2017-18.

2. Briefly stated the facts of the case are, that the assessee is a company,

engaged in the business of manufacturing of automotive filters such as oil filters, fuel filter, air filters and hydraulic filters which are mainly used in the automotive industry. It also trades in/manufactures some lubricants/coolants. The revenue from lubricants constitute only about 2% and 98% of the revenue is from the manufacturing of filters. The assessee filed its Return of Income declaring total income of Rs.11,62,32,997/- as per the provisions of the Income Tax Act. The case of the assessee was taken up for scrutiny and a reference u/s 92CA of the Act was made to the Transfer Pricing Officer for determination of Arms Length Price in respect of international transactions and also for the Specified Domestic Transactions (SDT)as were identified in the Transfer Pricing Report submitted by the assessee along with the Income Tax Return. It is noted that certain transfer pricing adjustments were made both on account of international transactions. Similarly on account of the specified domestic transactions, the profits of the eligible units were re-determined by the TPO thereby resulting in reducing the claim made by the assessee u/s 80-IC of the Act from Rs.1,43,21,253/- by an amount of Rs.67,05,732/- and allowing only Rs.76,15,521/- in the final order. All such transfer pricing adjustments as were made in the draft assessment order based on an order of TPO u/s 92CA(3) was agitated before the learned DRP. Ld.DRP upheld most of these adjustments except to the extent that some relief was allowed on account of interest receivables from the AE on account of amounts recoverable towards the sales made to such

AE.

3. Aggrieved against the above order, assessee is in appeal before us raising following Grounds of Appeal:

*1.* **General Ground**- That the Ld. Assessing Officer ('AO') of National Faceless Assessment Centre ('NFAC') / Ld. Transfer Pricing Officer ('TPO') and consequently the Hon'ble Dispute Resolution Panel ('DRP') have grossly erred in law and on facts and circumstances of the appellant's case in confirming:

1.1. the Transfer Pricing adjustment to the income of the appellant amounting to Rs.2,84,55,867/- in relation to the International Transactions of Sale of Goods and an addition of Rs.23,33,892/- on overdue interest on outstanding receivables from associated enterprises (AEs).

1.2. a reduction in the deduction under section 80-IC of the Income Tax Act ('Act') of the appellant by Rs.67,05,732/- on account of arm's length adjustment u/s 92CA amounting to Rs.2,23,52,439/- due to an alleged excess profit earned in the unit eligible for profit linked deduction under section 80-IC of the Act.

The adjustments / additions proposed are wholly illegal, erroneous and untenable in law and on the facts of the case of the appellant.

*2.* That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law by not appreciating that:

2.1 Elofic, USA LLC (AE) is a branch of the assessee which as per the USA law is only a pass through entity whose profits are that of the assesse (as its member);

2.2 any adjustments in the transfer pricing has no effect on the taxable profits of the assesse in India being a contra adjustment;

2.3 any difference in the profit of the assesse will be a consequential reduction in the profits of LLC, which are also added to the profits of the assesse in India.

2.4 there is no profit shifting to its AE;

Hence, no ALP adjustment is warranted on the same, the adjustments / additions proposed are wholly illegal, erroneous and untenable in law and on the facts of the case of the appellant.

*3.* That the order of Assessment passed by the Ld. AO (NFAC) is bad in law and erroneous on the facts and under the circumstances of the appellant's case on account of additions / disallowances on account of Arm's Length Price u/s 92CA and Sec 80-IC of the Act.

*4.* **Transfer Pricing Adjustment - International transactions of Sale of Goods (Rs. 2,84,55,867)**

<u>Rejection of CUP Method</u>

That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law and on facts by ignoring the CUP details furnished by the assessee on the basis of homogeneous goods sold to the independent domestic customers in India during the assessment proceedings, without giving any cogent reasons which is bad in law.

*5.* External TNMM & Entity level aggregation

That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law and on facts by determining the Arm Length Price of the International transaction of sale of goods by disregarding the AE Segment for the TNMM analysis, without giving any reasons which is bad in law.

*6.* That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law and on facts in aggregating the AE and Non-AE segments of the assessee to benchmark the transactions of sale of finished goods to AE on an entity level basis, which is bad in law.

*7.* Selection of Comparables

That the Ld. AO (NFAC) / Ld. TPO and consequently the DRP have grossly erred in law and on facts and circumstances of the appellant's case by carrying out a fresh search process without cogent reasons and by applying inappropriate quantitative filters for selection of comparable companies, and not giving the appellant details of such search process (including outcome of each filter applied, accept-reject matrix and operating margin computation) and including FAR analysis of final comparables selected, which is against the principles of natural justice and which tantanmounts to cherry picking of comparables, which is bad in law.

*8.* That the Ld. AO (NFAC) / Ld. TPO and consequently the DRP have grossly erred in law and on facts and circumstances of the appellant's case in not appreciating that there is no minimum number of comparables required for the application of the Transaction Net margin Method u/s Rule 10B(1)(e ) of Income Tax Rules, 1962 ('the Rules'), making the action of the Ld. TPO to cherry pick 9 new comparables in addition to the 2 comparables of the assessee accepted by him, bad in law and on the facts of the case of the assesse.

*9.* That the Ld. AO (NFAC) / Ld. TPO and consequently the DRP have grossly erred in law and on facts and circumstances of the appellant's case in selecting & accepting 5 new comparables which have dissimilar functional, product and industry profiles as compared to the appellant (auto-components filter manufacturer) and do not meet the comparability criteria as prescribed under Rule 10B(2) of the Rules and their selection is therefore bad in law and on the appellant's facts.

(a) Tide Water Oil Company (India) Ltd.
(b) Gulf Oil Lubricant India Ltd.
(c) Valvoline Cummins Ltd.
(d) Avi-Oil India Pvt. Ltd.
(e) Castrol Oil Ltd.

*10.* Reduction in Profit of AE

That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law in not allowing the benefit of the reduction in the profit of the Elofic, USA LLC (AE), since any upward TP adjustment in the Sale of Goods to AE will cause a downward adjustment in the Goods Purchased by Elofic, USA LLC (AE) thereby correspondingly reducing the profit being taxed in the hands of the assesse in India.

*11.* Addition cannot exceed profit of AE

That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law in confirming a TP adjustment in excess of profit earned by the Elofic, USA LLC (AE) which is bad in law and prayed not to be upheld.

*12.* Erroneous calculation of proportionate adjustment

That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law and on facts and circumstances of the appellant's case in wrongly including the transaction of rendering of invoicing services as an international transaction while computing the proportionate adjustment u/s 92CA, when the TP adjustment was confirmed only for the international transaction of Sale of Goods.

*13.* **TP Adjustment – International Transaction of Interest on overdue trade receivables (Rs.23,33,892)**

That the Ld. AO (NFAC) has grossly erred in not following the directions of the DRP which are binding on him as per section 144C(10) of the Act, which have the effect of reducing the TP adjustment to **Rs.11,00,055/-** as per the Ld. TPO's effect order, on overdue interest on outstanding receivables from Rs.23,33,892/- computed in the Draft AO's order.

*14.* That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred on facts in not reducing the adjustment by an actual amount of interest of Rs.14,465/- received by the assessee as overdue trade receivable from the AE.

*15.* That the Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law and facts in not appreciating that the assessee has actually charged the interest on overdue trade receivables after the credit period of 90 days following the Hon'ble DRP direction in AY 2012-13, which has been consistently accepted by the tax department.

*16.* That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in making the adjustment in respect of receivables ignoring that the said transaction is intrinsically connected and subsumed in transaction of Sale of Goods itself which has already been benchmarked and examined under TNMM and thus no separate adjustment on account of interest on receivable is warranted under the law based on the Judgement of Hon'ble Delhi HC in the case of **Kusum Health Care Pvt. Ltd [TS-412-HC-2017(DEL)-TP].**

*17.* **Adjustment u/s 80-IC unit - Specified Domestic Transaction with the Eligible Unit of the assessee (Rs. 2,23,52,439/-**

That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law in reducing the deduction u/s 80IC claimed by the assessee from

Rs.1,43,21,253/- to Rs.76,15,521/-, thus increasing total income of the assessee by INR 67,05,732/- .

*18.* That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have erred in law in reducing the operating profit of eligible unit by INR2,23,52,439, thereby leading to reduction in deduction claimed u/s 80IC being profit based deduction which is wholly illegal, erroneous and untenable in law and on the facts of the case of the appellant.

*19.* Rejection of Internal CUP/Other Method

That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have erred in law in rejecting the CUP and Other Method applied by the assessee for determining the arm length price of specified domestic transactions of Transfer and Acquisition of goods and Allocation of expenses, by alleging that assessee has not furnished complete data which is erroneous on the facts of the case of the assesse.

*20.* That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law in failed to appreciate the documents furnished for price based benchmarking for controlled as well as uncontrolled transactions.

*21.* That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have grossly erred in law in not following the accepted TP assessment history of the assesse in which the CUP/Other method applied by the assesse on same basis as A.Y. 2017-18 was accepted.

*22.* TNMM applied by the Ld. TPO

That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have erred in law in applying TNMM method in benchmarking the specified domestic transactions of the eligible unit of the assesse as the Most Appropriate Method u/r 10C, which is bad in law and on the facts of the assessee.

*23.* Selection of Comparables

That Ld. AO (NFAC)/Ld. TPO and consequently the Hon'ble DRP have erred in law in applying TNMM method by cherry picking only those comparables which have a low PLI to benchmark the SDTs whereas for the international transactions of Sale of Goods on the same nature of product the Ld. TPO has used 11 comparables which have a much higher PLI. Thus, this approach of the Ld TPO in selecting comparables under the same method, for the same nature of product, for the same assesse, is inconsistent, contradictory, bad in law and on the facts of the case.

*24.* That the Ld. AO (NFAC) / Ld. TPO and consequently the DRP have grossly erred in law and on facts and circumstances of the appellant's case by applying a search process for determining arm's length profit of eligible units of the assesse without cogent reasons and by applying inappropriate quantitative filters for selection of comparable companies, and not giving the appellant details of such search process (including outcome of each filter applied, accept-reject matrix and operating margin computation) and including FAR analysis of final comparables selected, which is against the principles of natural justice and which tantanmounts to cherry picking of

comparables, which is bad in law.

*25.* That the Ld. AO (NFAC) / Ld. TPO and consequently the DRP have grossly erred in law and on facts and circumstances of the appellant's case in selecting the trading comparable namely Mag Filters and Equipments Pvt Ltd., although passes the manufacturing filter 'manufacturing income to total income at least 95%' applied by the Ld. TPO, thereby the search process applied by the LP TPO is bad in law.

*26.* Without prejudice to the above grounds, the Ld. AO (NFAC) has erred in law in making adjustment u/s 80IC in final order without proposing any adjustment for the same in draft assessment order which is bad in law and prayed not to be upheld.

*27.* **Others**

That the Ld. AO (NFAC) has erred in law and on facts and circumstances of the appellant's case in charging interest under 234A, 234B, 234C and 234D of the Act, which is wholly illegal, erroneous and prayed not to be upheld.

*28.* That the Ld. TPO and consequently the Ld. AO (NFAC) have erred in law and in the circumstances of the appellant by initiation of penalty proceedings u/s 270A of the Act for underreporting of income.

*29.* That the appellant craves leave to add, amend, alter, change vary or substitute any of the aforesaid grounds or raise an additional ground if it becomes necessary to do so in the interest of justice.

*30.* That each ground of appeal is independent and without prejudice to other grounds of appeal raised herein.

4. Grounds No. 1, 1.1, 1.2, 3, 17, 18, 29 & 30 are general in nature and does not require any specific adjudication.

5. Apart from these grounds, the assessee had also raised an additional Ground of Appeal on the DIN issue. The same has been withdrawn by the assessee vide a separate application along with necessary affidavit. The ground on DIN is allowed to be withdrawn and other grounds raised by the assessee are being adjudicated.

**Grounds of TP Adjustments pertaining to AE Transactions – Ground No. 2, 10 & 11**

6. These grounds have been raised by the assessee vide which agitates transfer

pricing adjustment on account of international transactions amounting to Rs.2,84,55,867/-. At the time of hearing, ld. AR of the assessee submitted that the said AE transactions had taken place with Elofic, USA, LLC which entity has been treated by the assessee as AE as a matter of abundant caution although it is merely a depot of the assessee which as per the USA law is only a pass through entry. The profits earned of such entity are duly accounted for and offered to tax in India. It has been submitted that no transfer pricing adjustment in respect of the transactions undertaken with the said entity should be made because such LLC is merely an extension of assessee's own affairs in the USA and all the profits or the losses that may be earned by such LLC are accounted for and reported by the assessee in India. The assessee specifically pointed out that this fact is duly reported even in the transfer pricing study report submitted by the assessee during the transfer pricing assessment with the TPO and also with the DRP. The assessee specifically referred to Page-40 of the Paper Book, which is a part of the transfer pricing study addressing this specific issue as under:

> **"Taxation of the AE**
>
> Elofic USA is a Limited Liability Company incorporated under the United States Limited Liability Companies Act. A limited Liability company in the law of the vast majority of United States jurisdiction is a legal firm of business company that provide limited liability to its owners. It is a hybrid business entity having certain characteristics of both a corporation and a partnership or sole proprietorship (depending on how many owners there are).
>
> An inherent feature of the LLC under the domestic provision of United States is that it shares have the advantage of pass through income taxation i.e. taxability in

> the hand of members as in case of partnership. All the income and deduction of LLC go on the owner's regular tax return.
>
> Therefore, entire income is taxable as per domestic taxation of the USA in the hand of EIL in India.
>
> Further, EIL is a resident in India and therefore, it is liable to pay tax in India on its global income by virtue of Section 5(1) of the Act, including the income of Elofic, LLC.
>
> However, as per Para 2(a) of Articles 25 of Indo-US DTAA read with section 90 of the Act, if an income has suffered tax in the jurisdiction of one country i.e. USA and is also taxable in the jurisdiction of the other country i.e. India, the tax already paid in the former shall be reduced from the tax liability in latter i.e. India.
>
> During the financial year 2016-17, EIL has offered to tax profit of Elofic USA amounting to Rs.1,09,98,287/- in its Return of Income in India and paid all due taxes after taking credit of taxes paid in the US amounting to Rs.32,12,364/-/
>
> Therefore, the income earned by Elofic USA is taxable both in the USA and in India. It is entirely taxed in the hands of EIL subject to credit of taxes paid by EIL on the income taxable in the USA.

7. The assessee further submitted that as per the settled legal principles no one can trade with itself or earn from one own self. Reference has been made and Ld. AR relied on the judgement of Hon'ble Supreme Court for this legal proposition in the case of CIT vs. Hind Construction Ltd. (1972) 83 ITR 211. The learned AR further relied upon a judgement of Hon'ble Delhi IAT, Delhi Benches in the case of Aithent Technologies Pvt. Ltd. vs. DCIT ITA No. 6446/Del/2012 for Assessment Year 2008-09 in which determination of ALP in respect of transactions of that assessee with its branch office (Canada) discussed. Following observations/ findings in the said judgement have been relied upon:

> "5. It is simple and plain that **no person can transact with self in common parlance.** As such, one can neither earn any profit nor suffer loss from self. The same is true in the context of business as well. Neither any person can earn

income nor suffer loss from dealings with self. It is called the principle of mutuality. When expanded commercially, the proposition which follows is that there can be no profit from trade with self. This has been fairly settled through a catena of judgments from the **Hon'ble Apex Court including Sir Kikabhai Prem Chand VS CIT (1953) 24 ITR 506 (SC) and also the Hon'ble High Courts. In Betts Hartley Huett& Co. Ltd. (1979) VS. CIT 116 ITR 425 (Cal), it has been held that there cannot be a valid transaction of sale between branch office and head office and hence profit on such sales is not includible in assessee's computation of total income.**

The final accounts of foreign branch office, including all the items of income, expenses, assets and liabilities are merged with the accounts of head office and the accumulated income so determined is liable to tax in India. When the sale made by the Indian Head office is considered as purchase of the foreign branch office and the figures of head office and branch office are consolidated, any under or over invoicing becomes tax neutral. Even if for a moment, we accept the contention of the Revenue as correct that the head office earned profit from its branch office, then such profit earned would constitute additional cost of the Branch office. On aggregation of the accounts of the Head office and branch office, such income of the HO would be set off with the equal amount of expense of the BO, leaving thereby no separately identifiable income on account of this transaction. **This can be understood with the help of a simple example.** Suppose the Indian head office purchases goods worth Rs.95 and transfers the same to foreign branch office at Rs.100, which are in turn sold by the branch office for a sum of Rs.120. The profit of the head office will be Rs.5 (Rs.100 minus Rs.95) and the profit of the branch office will be Rs.20 (Rs.120 minus Rs.100). The Indian general enterprise will be chargeable to tax in India on its world income of Rs.25 (Rs.5 plus Rs.20). If for a moment, it is presumed that the ALP of the goods transferred to the branch office is Rs.110 and not Rs.100 and the figure is accordingly altered, the profit of the head office will become Rs.15 (Rs.110 minus Rs.95) and that of the branch office at Rs.10 (Rs.120 minus Rs.110). Again the Indian general enterprise will be chargeable to tax in India on its world income of Rs.25 (Rs.15 plus Rs.10). There can never be any reason for an Indian enterprise to over or under invoice the goods or services to its foreign branch office because by virtue of section 5(1), it is its world income which is going to be charged to tax in India, which in all circumstances will remain same at Rs.25 in the above example."

8. The AR of the assessee also submitted that the transfer pricing provisions of determination of arms length price is applicable when there is diversion of profits out of India or where there is erosion of tax revenue in intra group transactions. It has been submitted that on the given facts no case can be

made out for any diversion of profit out of India because in any case, apart from the normal profits which have been earned on these transactions and duly accounted for in the sales revenue of the assessee, the profits amounting to Rs.1,09,98,287/- earned by the foreign LLC has been duly reported and accounted for in India and even the tax paid overseas on such income earned in USA has been claimed in the ITR filed by the assessee u/s 90/91 as can be verified from the **Page-31**of the Paper Book which contains the Computation of Income of the assessee for the year under consideration. It has been submitted that the learned TPO/AO were not justified in advising any ALP adjustments on account of the said transactions undertaken by the assessee with LLC whose only beneficial shareholder is the assessee itself.

9. The learned CIT/DR on the other hand relied upon by the orders of authorities below and contended that TPO and DRP were justified in upholding this adjustment on account of ALP for the detailed reasons given in the TPO's order u/s 92CA(3) of the Income Tax Act.

10. Considered the rival submissions and perused the material placed on record. There is no dispute that the transactions that have taken place with Elofic, USA, LLC. There is also no dispute that the assessee is the sole proprietor/shareholder of the said LLC and all the income earned by the LLC is offered to tax in India and duly reported in the tax returns filed in India by the assessee.

11. We further observe that as per the settled legal proposition, no one can trade

with self and no one can earn from oneself. The reliance of the learned AR on the judgement of Hon'ble Supreme Court in the case of CIT vs. Hind Construction Ltd. (Supra) is appropriate in this legal proposition. Also the coordinate Bench in the case of Aithent Technologies Pvt. Ltd. (Supra) has dealt with an identical situation wherein by relying upon other time tested principles of Hon'ble Supreme Court, it has been held that there cannot be transaction of sale between branch office and the head office. The assessee has at the threshold clarified the transactions have been reported as AE transactions as a matter of abundant caution and may be because assessee had reported the transactions as AE transactions does not prevent the revenue authorities to examine these transactions from a true legal perspective. The assessee had given appropriate disclosures at each stage i.e. at the time of filing the return wherein the profits of foreign entity included in the taxable income and at the time of filing the TP study report and also to the learned DRP. We observe that all these submissions have not been properly appreciated by the authorities below while upholding the adjustment made in this regard. We, therefore, hold that AO/TPO were not justified in making this adjustment and accordingly direct to delete the adjustments made on this account amounting to Rs.2,84,55,867/-.

12. All other grounds raised on the comparables, rejection of CUP i.e. Ground No. 4, 5, 6, 7, 8, 9 & 12 etc. are not required to be adjudicated in view of deletion of the addition on this account as above.

**Adjustment on account of overdue trade receivables on the transaction between the assessee and Elofic LLC USA – Ground No. 13 to 16**

13. An addition of an amount of Rs.23,83,892/- has been made on account of interest on delay in making recoveries from the said LLC. It has been submitted that the assessee has itself made adjustment on this account by taking the credit period of 90 days for making recoveries against the goods transferred to USA entity. However, TPO restricted the credit period to 30 days but however the learned DRP granted the credit period to be allowed till 60 days. It has been submitted that although based on such directions of the learned DRP the addition should have been restricted to Rs.11,00,055/- as has been worked out by TPO in the order passed pursuant to the DRP direction. However, the learned AO still made the addition of Rs.23,33,892/- as was advised by TPO in draft assessment order. It has been submitted that 90 days credit is very normal in the international transactions. Lot of judgements have been relied upon wherein the courts have held that 180 days credit can be allowed in the export related recoverables.

14. It has also been submitted that this transaction also has the same colour and nature as is the sales transaction with the USA LLC and by the same analogy no adjustment could have been made because there can be no recovery from the self and any realization from the LLC does not have any different character than the recoverable from the self. It is the assessee's own money lying in LLC, USA as assessee is the sole owner of such money.

15. Learned CIT/DR relied upon the orders of the authorities below and submitted that the addition has been rightly made.

16. Considered the rival submissions and material placed on record. We find that the issue is intrinsically linked with the transaction of transfer of goods to USA LLC and the same cannot be independently examined. Since we have already deleted the AE adjustment on account of ALP on the transactions of sales made to the said AE, there is no justification left to retain any adjustment on account of the interest on recoverable from the said entity. We accordingly direct the AO/TPO to delete this adjustment also amounting to Rs.23,33,892/-.

**ALP adjustment on account of Specified Domestic Transactions (SDT) and consequential reduction in the claim u/s 80-IC – Ground Nos. 19 to 21**

17. The relevant facts are that the assessee is having an eligible unit situated at Nalagarh from where the goods are transferred to non-eligible unit of the assessee. The assessee has bench marked the transactions pertaining to transfer of these goods by applying the other method vide which the assessee in the transfer pricing study has demonstrated that transactions of either for sale of goods from eligible unit to non-eligible unit or procurement of some raw material from non-eligible unit to eligible unit, the prices charged are comparable when such transaction of transfer of goods undertaken with the independent parties. It has been submitted that the assessee has always

applied such method for bench marking its transactions between the eligible unit and non-eligible unit by applying the same method year after year and no adjustment has ever been made for reducing the claim of the assessee u/s 80-IC of the Income Tax Act. The learned TPO did not accept such method and proceeded to examine these transactions by applying TNMM method. In response to the show-cause notice issued by the learned TPO, the assessee objected to the proposed adjustment by the TPO and submitted that the learned TPO's approach of examining the SDT transactions by applying the TNMM method is faulty. The comparables which the TPO had himself picked up by applying the same method for AE transactions should also be accepted as comparables while determining the SDT transactions.

18. The ld. AR during the course of arguments highlighted that the learned TPO was not justified in changing the filters while selecting the comparables for AE transactions and for SDT transactions. At this stage the learned AR was required to file a detailed separate note on this issue by the end of the day which has been filed and which for the sake of ready reference is reproduced hereunder :

> "Through these grounds, the assessee has challenged the order of the Learned AO/DRP in reducing the claim made by the assessee u/s 80IC of the Income Tax Act from Rs.1,43,21,253/- to Rs.76,15,521/-.
>
> It is submitted that the assessee has an eligible unit for the purpose of section 80IC situated at Nalagarh, Himachal Pradesh from where the goods are transferred/acquired to/from non-eligible units. The assessee had applied other method for determining the ALP of such transactions **(Refer 70-76 & 170-176 of PB).** However, the TPO had not accepted the

assessee's method without pointing out any deficiency and applied the TNMM as the most appropriate method. The TPO had determined the profit of the eligible unit at Rs.2,39,61,857/- as against Rs.4,63,14,296/- declared by the assessee (**Refer Pg. No. 27 of TPO order**) . On the difference of this amount, the deduction u/s 80IC has been reduced from Rs.1,43,21,253/- to Rs.76,15,521/-. (**Refer Pg. No. 3 of AO's Final order**)

It is submitted that even for determining the international transaction with its AE, the TPO had applied the same method i.e. TNMM. However, while applying the same method for the determination of ALP of SDT, the TPO had reduced the number of comparables from 11 to 3. It is further submitted that the 11 comparables which the learned TPO has selected for determining the ALP of international transaction are as under as can be seen from **Pages 5 to 6 of learned TPO's order:**

| S.No. | Company Name | OP/OR |
|---|---|---|
| 1. | Mag Filters And Equipments Pvt. Ltd. | 2.8% |
| 2. | Naveen Filters Private Limited | 3.3% |
| 3. | MahleAnand Filter Systems Pvt. Ltd. | 4.5% |
| 4. | Ucal Fuel Systems Ltd. | 10.8% |
| 5. | Tide Water Oil Company (India) Ltd. | 14.1% |
| 6. | Fine Filters Pvt. Ltd. | 16.1% |
| 7. | Gulf Oil Lubricants India Ltd. | 17.2% |
| 8. | Fleetguard Filters Pvt. Ltd. | 21.6% |
| 9. | Valvoline Cummins Ltd. | 21.6% |
| 10. | Avi-Oil India Pvt. Ltd. | 24.7% |
| 11. | Castrol India Ltd. | 39.0% |

It is further submitted that the range of these 11 comparables as also worked out by the learned TPO is **10.80% to 21.60%, (Refer Pg. No. 6 of TPO order)** as against this, the comparable's which the learned TPO has retained for SDT transactions out of these very comparables are as under, whose average profit has been worked out at **5.63%.**

| S.No. | Company Name | OP/OR |
|---|---|---|
| 1. | Mag Filters And Equipments Pvt. Ltd. | 2.8% |
| 2. | Naveen Filters Private Limited | 3.3% |
| 3. | Ucal Fuel Systems Ltd. | 10.8% |
| | Average | 5.63% |

It has been submitted that there is no valid justification for the learned TPO to work out different comparables for the purpose of applying the same method for the same assessee while determining the ALP of international transactions and SDT transactions. It is submitted that the reasons assigned by the learned TPO in his order are that while selecting the comparables for

the international transaction, the TPO has selected those companies where the ratio of manufacturing income to total income is at least 50% of manufacturing. However, while applying this filter to the SDT transaction, this filter has been taken as those companies where the income from the manufacturing income to total income is at least 95%.

It is further submitted that the learned TPO has applied another filter while determining the comparables of the SDT transaction i.e. select companies where advertisement spending less than 2% of sales.

Accordingly, it is resubmitted that there is no rationale for changing the filters while applying TNMM, whether for international transactions or specified domestic transactions. Similarly, it is submitted that there is no rationale to apply 2% advertisement cost filter especially when admittedly the transactions are taking place between an eligible unit to non-eligible unit of the assessee.

It is submitted that if the same comparables, as applied for international transactions, are retained for the SDT transaction, the margin of the eligible unit of the assessee works out to be 10.88% (Rs. 4,63,14,296/4,25,610,252*100 – **Refer Pg. No. 27 of TPO order**) based on the operating profit declared by the assessee at Rs.4,63,14,296/- (**Refer Pg. No. 27 of TPO order**) which falls within the range determined by the TPO at Page-6 of the order which is **10.8% to 21.6%.**

It is submitted that there is no justification for making any adjustment on the ALP of SDT transaction and consequently the reduction in the claim u/s 80IC of the Income Tax Act. Accordingly, it is humbly prayed that no adjustment in respect of the Specified Domestic Transaction is warranted and AO may please be directed to delete this adjustment."

19. The learned CIT/DR on the other hand has relied upon orders of authority below and contended that the profit determination of the eligible unit wherein the profit of the eligible unit has been worked out by the TPO at Rs.2,39,61,857/- as against the profit declared by the assessee from such eligible unit at Rs.4,63,14,296/- has been correctly worked out and consequential reduction in the claim u/s 80-IC should be upheld based on the orders of learned TPO/DRP.

20. Considered the rival submissions and material placed on record. We find that the learned TPO, has out of the 11 comparables which were selected by him for determining the PLI of AE transactions, picked up only 3 comparables while determining the PLI for the purpose of SDT transactions. While doing so, he has changed the filter of manufacturing income to total income from 50% to 95% for AE and SDT transactions respectively. We find no valid justification is available while changing the filter for determining the PLI under the TNMM method. The learned TPO has treated the eligible unit to be only a contract manufacturer while determining the SDT transactions whereas while determining the AE transactions, there is no such observation by the TPO. Similarly applying a filter of 2% of advertisement cost having been incurred by the comparable, to our mind does not sound reasonable. Once these changed filters are rejected, the profit margin range as determined by the TPO himself for the AE transaction works out to be 10.80% to 21.60%. Since assessee's margin from the eligible unit are 10.88% i.e. profit declared by the assessee at Rs.4,63,14,296/- against the cost of Rs.42,56,10,252/-(Page-9 of the order of TPO), same falls within the range determined by the TPO himself and therefore no adjustment is warranted. Accordingly we hold that the TPO was not justified in reworking out of the profit of eligible unit than what has been declared by the assessee. The addition made on this account including consequential reduction in the claim of the assessee u/s 80-IC are not

justified and the addition made on this account is directed to be deleted.

21. Ground Nos. 22 to 26 are general or consequential in nature and does not require any specific adjudication.

22. **Ground No. 27** is regarding charging of interest u//s 234A, 234B, 234C which is consequential in nature and does not require any specific adjudication.

23. Similarly Ground No. 28 is regarding the initiation of penalty u/s 270A of the Act. This ground is premature as penalty proceedings are separate and no grievance lies with the assessee on mere initiation of penalty proceedings. The same is accordingly dismissed.

24. In result, the appeal of the assessee is treated as partly allowed as indicated above.

**Order pronounced in the open court on this 20th day of May, 2026.**

| Sd/- | sd/- |
|---|---|
| **(YOGESH KUMAR U.S.)** | **(S. RIFAUR RAHMAN)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

**Dated : .05.2026**
**TS**

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI