

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

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2743/Del/2022
Assessment Year: 2017-18

M/s. Balaji Powertronics, H-56, Udyog Nagar, Main Rohtak Road, Delhi – 1100 41	Vs.	DCIT, Circle-43(1), New Delhi
PAN :AAGFB0501M		
(Appellant)		(Respondent)

Assessee by	S/Shri SS Nagar & Basant Maheshwari, CAs.
Department by	Shri Chetan P.S. Rao, CIT DR

Date of hearing	03.09.2025
Date of pronouncement	02.12.2025

ORDER

PER VIMAL KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is against order dated 02.03.2022 of Learned Assessing Officer/National Faceless Assessment Centre (NFAC), Delhi (hereinafter referred to as “Ld. AO”) under Section 143(3) read with section 144C(13) read with section 144B of the Income Tax Act, 1961 (hereinafter referred as “the Act”) for assessment year 2017-18.

2. Learned Authorized Representative for the appellant/assessee submitted that the appeal was filed on 29.04.2022 along with challan dated 29.04.2022. Hard copy was submitted later on. So, there is no delay in filing the appeal. In view of above facts, the appeal is within limitation.

3. Brief facts of the case are that the assessee filed its return of income on 27-11-2017 declaring total income was declared at Rs.26,09,71,590/-. The case was taken under complete scrutiny. Notices under Section 143(2) dated 17-08-2018 and 27-09-2018 were issued. Notices under Section 142(1) of the Act with questionnaire were issued. Assessee submitted replies which were verified. The assessee is a manufacturer of Invertors and UPS which are sold to two AEs as also to other dealers in the open market. The selling price charged from AE is comparable or less than the price charged from dealers in open market. Regarding international transactions, Ld. TPO passed order dated 24.01.2021 under Section 92CA(3) of the Act and directed the adjustment of Rs.21,09,91,682 u/s 92CA(3)/80-1A(10)/80-IC of Act. The Ld. TPO advised the ld. AO to consider initiation of penalty under Section 270A of the Act against the assessee. After receipt of the TPO order, the Ld. AO issued the draft order dated 24.03.2021 under Section 144C of the Act.

4. Against draft assessment order dated 24.03.2021, the appellant/assessee preferred objections before Ld. Dispute Resolution Panel-I, New Delhi which were decided on 02.11.2021.

5. As per directions of Ld. DRP, Ld. AO passed order dated 02.03.2022.
6. Being aggrieved, appellant/assessee preferred present appeal with following grounds of appeal:

“1. Ld. DRP erred in ignoring the submission that manufacturing profits on account of benefits related to backward area by way of waiver of 12.50% for excise duty and 2% for CST being backward area specific ought to be reduced to determine OP/OC of assessee, when such adjustments were allowed by DRP, New Delhi in Universal Power Products A.Y. 2016-17 where DRP passed order u/s 144C(5) Dated 26/02/2021 and by ITAT in M/s Sheela Foams Ltd., ITA No.8155/Del/2018-[2019] 107 taxmann.com 25 (Delhi - Trib.), Hyundal Construction Equipment India (P.) Ltd [2022] 134 taxmann.com 143 (Pune-Trib.)

2 That the order u/s 144C (5) dated 02/12/2021 by DRP-1 passed without quoting the computer-generated Din In the body of the order as well as not narrating the reasons for not mentioning the DIN Is contravention of CBDT circular No. 19 of 2019 and therefore Invalid as held by ITAT 'G' Bench-Mumbal in Gerah Enterprises P. Ltd. Vs PCIT In ITA No. 740/Mum/2021- Date of pronouncement: 30.03.2022.

3. That the order u/s 144C (5) dated 02/12/2021 by DRP-1 passed not through ITBA and without digital signatures is in contravention of E-Proceeding scheme-INSTRUCTION NO 01/2018, Dated: February 12, 2018 and therefore Invalid.

4. Ld. DRP/TPO erred fundamentally in arbitrarily presuming, that appellant manufactures 'Electronic including hardware" (TPO para 2.1) or 'computers, its parts, UPS, Inverters..... all kinds of electric and electronics goods' (DRP para 3) when as shown in TP study filed by appellant-under heading FUNCTIONS-that it is engaged in manufacturing of UPS, Inverters, Stabilizers, wire and/or their parts and details were furnished in Annexure (i) to (vi) to show that approximately 82% turnover is of UPS, Inverters and Stabilizers.

4. Ld. DRP/TPO ignored the specific provision regarding Specified Domestic Transaction whereby only limited domestic transactions are to be considered which are covered by sections 80-1A (8) or 80-1A (10).

5. Ld. DRP erred in applying TP provisions to trading segment of assessee on the sole ground that appellant has described trading In 3CEB report when section 928A applies only to Industrial transaction falling under purview of sections 80-1A (8) or 80-IA (10) as held in ASHISH SUBODHCHANDRA SHAH (HUF) 2020-TII-210-ITAT-AHM-TP

6. Ld. DRP/TPO erred in presuming that undertaking is covered by Section 80-IA(8) merely on the ground of filing of 3CEB report without any finding that the consideration at which transfers were made of goods and services of the eligible business as recorded in its accounts "does not correspond to the market values of such goods "as held by Delhi High Court In PCIT Vs Harpreet Kaur [2017] 88 taxmann.com 641 (Delhi).

7. Ld. DRP/TPO erred in presuming that undertaking is covered by Section 80-IA (10) merely on the ground of filing of 3CEB report without showing any 'arrangement as held in ACIT vs M PACT TECHNOLOGY SERVICES PVT LTD [TS-720-HC-2018(KAR)-TP] ITA No.228/2013 dated 11.07.2018, ACIT vs. Faurecia Interior Systems India Pvt. Ltd 2018-TII-303-ITAT-PUNE-TP, Honeywell Automation India Limited Vs. DCIT 2015-TII-62-ITAT-PUNE-TP.

8. Ld. DRP/TPO erred in selecting comparable randomly when products manufactured by the these so called comparables were not similar to the products of the assessee. The Ld. DRP approved the action of the TPO without even knowing as what products were being manufactured by the so called comparables. Further, neither the financials nor segmental accounts of the so called comparables are available when onus was on TPO to establish comparability as held in Yum Restaurants (India) Pvt. Ltd- ITAT Delhi- ITA No. 1097/Del/2014-on 12 December, 2014, ALCATEL LUCENT INDIA LTD 2019-TII-596-ITAT-DEL-TP. In any case, direction of DRP vide para 4.9.4 is in total contravention of section 144C (8).

9. DRP/TPO erred in not benchmarking separate activities such as manufacturing and trading Independently and erred in considering as one consolidated operation contrary to the decision in case of M/s STAUFF INDIA PVT LTD 2021-TIOL-796-ITAT-PUNE.

10. Ld. DRP/TPO erred in making TP adjustment at entity level when adjustments can only be made in respect of transactions falling under sections 80-1A (8) or 80-IA (10) as held in M/s DOOSAN POWER SYSTEMS INDIA PVT LTD-2021-TII-159-ITAT-MAD-TP

11. Ld. DRP/AO have erred in law in holding that the amendment to the provisions of section 438 and 36(1)(va) of the Act by the Finance Act, 2021 are clarificatory and retrospective in operation when amendments have been held as prospective applicable for the period after 01.04.2021 in Raj Kumar Vs ITO [2022] 136 taxmann.com 244 (Delhi Trib.) [28-02-2022] holding that no disallowance is called for belated payment of the employee's contribution to the respective ESI and EPF fund in the case of assessee who have deposited the same before the due date of filing of Income Tax Return. Reference may also be made to the decision in case of Devarayapatana Thimmappa Paramesha [2022] 137 taxmann.com 62 (Bangalore - Trib.) and many more.

12. The Impugned assessment order by NFAC is bad in law as mandatory Intimation prescribed u/s 1448 (1)(iii) was not issued.”

7. Through application dated 22.11.2022, appellant/assessee preferred following additional grounds:

“Claim of Excise Duty Exemption as capital receipt under normal provisions and under AMT provision u/s 115JC of the Act.

2.1 The appellant had commenced commercial production at its undertaking located at Himachal Pradesh. The said undertaking of the appellant company was entitled to Excise Duty Incentive under the Central Excise Notification No. 49-50/2003-CE dated 10.06.2003 since the same is situated in the specified backward area. In terms of the said notification, the above undertakings were entitled to 100% Excise Duty Exemption for a period of 10 years from the date of commencement of commercial production. In terms of the above notification, the company has availed Excise Duty Incentive amounting to Rs. 30,35,92,206/- during the relevant year under consideration.

2.2 The purpose behind the introduction of the notification no. 49-50/2003 was to intensify and accelerate the growth of industries in the specified backward areas in the State of Himachal Pradesh/Uttaranchal. The Excise Duty exemption/incentive had been granted to the company for setting up of manufacturing unit which fell in the specified backward area. Since the incentive had been granted for setting up of manufacturing unit in backward area, the same should be treated as capital receipt. In terms of

notification No. 49-50/2003 dated 10.06.2003, goods manufactured in the aforesaid backward area in the State of Himachal Pradesh/Uttaranchal was exempt from the whole of the duty of Excise or additional duty of Excise, as the case might be, leviable thereon for a period of 10 years from the date of commencement of commercial production. In this regard it was to be noted that said incentive was given to the above units located in the backward area of Himachal Pradesh/Uttaranchal in terms of the observation of the then Hon'ble C Prime Minister for generation of employment and utilization of local resources. The said fact is evident from Office Memorandum dated 07.01.2003 of the Ministry of Commerce & Industry. On perusal of the above, it could be seen that incentive in the form of Excise Duty exemption had been given with an objective to achieve industrialization in the backward areas of Himachal Pradesh/Uttaranchal and to generate employment opportunities.

2.3 Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of the CIT Vs. Ponni Sugars and Chemicals Ltd. (306 ITR 392) wherein it was held that purpose test' i.e. the purpose for which subsidy was given should be applied to determine the receipt and the modality or the source of funds through or from which subsidy was given should not be decisive factor determining whether the subsidy was revenue or capital in nature. The principle for deciding the nature of subsidy had also been spelt out by the Hon'ble Apex Court in the case of Sahney Steel and Press Works Vs. CII (228 ITR 253) wherein it had been held that the character of the subsidy in the hands of recipient whether revenue or capital would have to be determined by having regard to the purpose for which the subsidy was given.

2.4 Reference in this regard is also invited to the decision in the case of Shree Balaji Alloys & Ors. Vs. CIT & Ors. (51 DTR 217) wherein the Hon'ble Jammu and Kashmir High Court by applying the principle of purposive test as laid down in the case of Sahney Steel (supra) and Ponni Sugars (supra) held that Excise Duty refund, interest subsidy and insurance subsidy received with the object of creating avenues for perpetual employment, to eradicate the social problem of unemployment in the State by accelerated industrial development were capital receipts.

2.5 In view of above facts, the appellant most humbly requests your good-self to kindly allow claim of excise duty exemption of Rs.30,35,92,206/- as capital receipt and allow deduction of same of in computing total income under normal provisions as well as AMT provisions of the Act.”

8. Learned Authorized Representative for the appellant/assessee submitted that the appellant/assessee filed its return of income for the relevant AY on 27-11-2017 declaring Total Income at Rs.26,09,71,590/- after claiming deduction u/s 80IC of Rs.8,52,91,614/-. The financials along with acknowledgement of return of income are Annexure-1. (Pg. No. 1-21 of the PB), The assessee has also duly filed Form 10CCB for claiming such deduction which is attached as Annexure-3 (Refer Pg. No. 47-52 of the PB). The case of the assessee was selected for scrutiny assessment and was referred to the Ld. TPO to determine the arm length price of the transactions. The Ld. TPO passed its order dated 24-01-2021, Annexure-5 (Pg. No. 89-111 of the PB). Ld. TPO considered 6.09% as arm length profit ratio and made an addition of Rs. 21,08,91,682/-. Later the said order was rectified u/s 154 of the Act dated 20-01-2022 wherein arm length profit ratio margin was considered as 6.04% and accordingly enhancing the addition to Rs.21,89,92,804/-. Rectification order is attached as Annexure-7 (Pg. No. 121-128 of the PB). Later appellant filed objections before the DRP in Form 35A, same is attached as Annexure-6. However, the DRP without considering the submissions of the appellant passed the order dated 02-12-2021, keeping the additions at Rs.21,89,92,804/-. In the present case, even considering the fact the TPO has held that the TNMM method is the most appropriate method and not the CUP method, following adjustment are necessary to make the comparative figures of OP/OR with the comparable:

- (a) Adjustment for excise duty; &
- (b) Adjustment for CST

8.1 It may be noted that the adjustments are warranted as the manufacturing unit of appellant is located in back ward area of Himachal Pradesh. One would go to backward area only when profit margin is higher in comparison to developed area. Main incentives granted are waiver of 12.50% Excise Duty under notification 50/2003 -CE dated 10.06.200 and waiver of 2% CST in Himachal Pradesh vide notification no EXN-F(5)-5/2006 dated 29th July 2006. The adjusted operating profit (OP)/ operating revenue (OR) of the appellant is less than the OP/OR of comparable companies, the appellant is not showing any excess profit.

8.2 In the group company, i.e. M/s. Universal Power Products, the same submissions have been considered by the DRP in its order attached as Annexure-8(Page No. 129 to 156 of PB). Also, the department has accepted the order of DRP and has not challenged the same before ITAT:

“Similar view has also been held by Pune ITAT in case of M/s Hyundai Construction Equipment India Pvt. Ltd. Vs. ACIT (ITA No.1766/PUN/2018) attached as Annexure-9(Kindly Refer Page No. 157 to 170 of PB).”

8.3 Reliance is also placed on the judgement of Delhi ITAT in the case of M/s. Sheela Foams Ltd. Vs. ACIT (ITA No.8155/Del/2018) wherein it has been held as under:

“On the issue of impact of exemption of taxes on the profitability of kalaAmb unit, the learned DLP directed the AO/TPO to compute the operating profit margin without considering the excise duty, sales tax and income-tax.”

9. Regarding Additional Ground of Appeal No. 2, Learned Authorized Representative for the appellant/assessee submitted that the appellant is also claiming deduction u/s 80-IC of the Act on the said undertaking and the same has been allowed by the department for a period of 10 years. Copy of the form 10CCB filed is attached as Annexure-3 (Page No. 47 to 52 of PB). During the year under consideration, being 10th year, the appellant has availed excise duty exemption of Rs.30,35,92,206/-. Working of the said exemption is attached as Annexure-11. (Page No. 172 of PB). The excise quarterly return filed by the appellant has also been attached as Annexure-14. (Kindly Refer Pg. No. 180 to 191 of the PB). The said incentive was given to the said undertaking in terms of the observations of the then Hon'ble Prime Minister for generation of employment and utilization of local resources. The said fact is evident from Office Memorandum dated 07-01-2003. Copy of the office memorandum and scheme is attached as Annexure-13. (Page No. 177 to 179 of PB). Hon'ble High Court of J&K in the case of M/s. Shree Balaji Alloys vs. CIT (333 ITR 335) held that Excise Duty subsidy, Interest Subsidy received with the object of creating avenues for perpetual employment, to eradicate the social problem of unemployment in the state by accelerated industrial development is capital

receipt. Copy of the order of Hon'ble High Court is attached. (Page No. 192 to 200 of PB). The same view has been upheld by Hon'ble Supreme Court vide order in Civil Appeal No. 10061 of 2011 dated 19.04.2016 in CTT vs. Shree Balaji Alloy & others, Copy of the order of Hon'ble Supreme Court is attached. (Page No. 201 to 202 of PB).

9.1 Even after amendment u/s 2(24)(xviii) of the Act the excise duty refund cannot be taxed as revenue receipt as 'exemption' is not specified in the definition given in section 2(24) (xviii) of the Act. Exemption cannot in any way be equated with waiver & concession and thus exemption from excise duty will not fall within the ambit of section 2(24) (xviii) of the Act and cannot be treated as an income. On identical issue the matter has been allowed by the Hon'ble Jurisdictional ITAT in the case of DCTT vs. P.C. Jewelers Limited (ITA No. 3084/Del/2024) attached as Annexure-C to case law paper book (Refer Pg No. 22 to 81). Order of Hon'ble Amritsar ITAT in the case of ACIT vs. Gravita Metal Inc. (ITA No. 594/Asr/2019 attached as Annexure-B to case law paper book (Page Nos. 5 to 21). The said view has been confirmed by Hon'ble J&K High Court in PCTT vs. Gravita Metal Inc. (168 Taxmann. Com 379). attached as Annexure-A to case law paper book (Refer Page Nos. 1 to 4). The schemes/notification under which the aforesaid exemption has been granted have all been announced and implemented much before the introduction of Section 2(24)(xviii) by the Finance Act, 2015. Thus the taxability of an

incentive received for earlier Government schemes should not be impacted by the subsequent amendment in the Act. The character of the receipt under a pre-existing scheme does not change as a result of a subsequent legislative amendment.

9.2 The excise duty incentive is a capital receipt and does not constitute income. Further capital receipts which do not have any element of income or profit embedded therein are neither chargeable to tax under the Income Tax Act nor can be included in the income computed under AMT provisions of the Act. Since the appellant is praying that the aforesaid excise duty incentive be held to be a capital receipt it prays for exclusion of the same in the computation of income under Section 115JC of the Act also. Reliance in this regard is placed on the Hon'ble Gauhati High Court in the case of PCTT vs. Greenply Industries Ltd. (172 taxmann.com 294) held that Excise duty exemption being capital in nature not chargeable to tax under normal provisions of the Act cannot be included as part of Book profits for computing minimum alternate tax u/s 115IB of the Act.

9.3 On identical issue the matter has been allowed by the Hon'ble Jurisdictional ITAT in the case of DCTT vs. PC jewelers Limited (ITA No. 3084/Del/2024) already attached as Annexure-C to case law paper book (Page No. 22 to 81).

10. Learned Authorized Representative for the appellant/assessee submitted that ground of appeal nos. 2, 3, 11 & 12 are not pressed.

11. Learned Authorized Representative for the appellant/assessee qua ground of appeal no.4 submitted that Ld. DRP erred fundamentally in arbitrarily presuming, that the appellant manufactures 'Electronic including hardware" or 'computers, its parts, UPS, Inverters and all kinds of electric and electronics goods' however as shown in TP study report filed by appellant attached as Annexure-4 (Page No. 53 to 88 of PB)- under heading functions and it was clearly stated that it is engaged in manufacturing of UPS, Inverters, Stabilizers, wire and/or their parts and details were furnished in Annexure (i) to (vi) of the TP Study report to show that approximately 82% turnover is of UPS, Inverters and Stabilizers.

12. Learned Authorized Representative for the appellant/assessed regarding grounds of appeal nso. 5, 9 and 10 submitted that Ld. DRP/TPO has erred in not benchmarking separate activities such as manufacturing and trading independently and erred in considering as one consolidated operation. However, same is clearly mentioned in the financials attached as Annexure-1 (Kindly Refer Page No. 12 of PB). Pune ITAT in the case of M/s. Stauff India Pvt. Ltd. Vs. DCIT (ITA No.1357/PUN/2017) wherein it was held as under:

“That following the rule of consistency and after considering the fact that both the parties have agreed that the facts and circumstances and issues for this year also is absolutely identical and therefore, for assessment year 2012-13 also on this issue, we set aside the order of the Ld. CIT(Appeals)

and restore the matter to the file of the Assessing Officer with the directions that two activities of the assessee i.e. trading and manufacturing has to be benchmarked separately and independently after providing reasonable opportunity of hearing to the assessee.”

12.1 Also, it may be noted that the Ld. DRP erred in applying TP provisions to trading segment of assessee on the sole ground that appellant has described trading in 3CEB report wherein section 92BA applies only to industrial transaction falling under purview of sections 80-1A (8) or 80-IA (10). Reliance in this regard has been placed on the judgement of Ahmedabad ITAT in the case of Ashish Subodhchandra Shah (HUF) vs. PCIT (IT.A. No.881/Ahd/2019). Therefore, it was brought to our notice that the Ld. DRP has erred in making adjustment at entity level wherein the same could only be made in respect to transactions falling u/s 80-1A(8) or 80-1A(10). Reliance in this regard has been placed on the decision of Chennai ITAT in the case of M/s. Doosan Power Systems India Pvt. Ltd. Vs. ACIT (IT(TP)A No.83/Chny/2018).

13. Learned Authorized Representative for the appellant/assessee qua ground nos. 6 & 7 submitted that it may be noted that the Ld. DRP/TPO erred in presuming that undertaking is covered by Section 80-IA (8) merely on the ground of filing of 3CEB report without any finding that the consideration at which transfers were made of goods and services of the eligible business as recorded in its accounts "does not correspond to the market values of such goods. Reliance in this regard has been placed on the decision of Delhi High

Court in the case of PCIT VS Harpreet Kaur [2017] 88 taxmann.com 641 (Delhi) wherein it was held as under:

“The above approach of the AO was rightly found by the CIT(A) to be not justified. Without pointing out the error, if any, in the accounts or disturbing the figures of sales or purchases, to compare the trading results of business of two units and simply reject was clearly not a "reasonable basis", as contemplated by the proviso to Section 80-1A (8) of the Act.”

13.1 It is humbly submitted that the Ld. DRP/TPO erred in presuming that undertaking is covered by Section 80-1A (10) merely on the ground of filing of 3CEB report without showing any 'arrangement. It has been held by Karnataka High Court in the case of ACIT vs M Pact Technology Services Pvt. Ltd. [TS-720-hc-2018(Kar)-TP). Similar view has been taken by Pune ITAT in the case of ACIT vs. Faurecia Interior Systems India Pvt. Ltd 2018-TII-303-ITAT-PUNE-TP.

14. Learned Authorized Representative for the appellant/assessee qua ground of appeal no.8 submitted that the Ld. DRP/TPO erred in selecting comparable randomly when products manufactured by these so called comparable companies were not similar to the products of the assessee. The Ld. DRP approved the action of the TPO without even knowing as what products were being manufactured by the so called comparable companies. Further, neither the financials nor segmental accounts of the so called comparable are available when onus was on TPO to establish comparability. Reliance in this regard has been placed on the decision of Delhi ITAT in the case of Yum Restaurants

(India) Pvt. Ltd-ITAT Delhi- ITA No. 1097/Del/2014. Similar view has also been taken by Delhi ITAT in the case of Alcatel Lucent India Ltd vs. ACIT 2019-TII-596-Income Tax Appellate Tribunal-DEL-TP.

15. Learned Authorized Representative for the Revenue submitted that additional ground of appeal no.2 was not before the Departmental Authorities. No objection is to the TP issue was being sent to the Ld. AO for de novo order.

16. From examination of record in light of aforesaid rival contentions, it is crystal clear that appellant/assessee had submitted manufacturing profit on account of benefit related to backward areas by way of waiver of 12% for exercise and 2% for CST being backward area specific order to be reduced to Departmental Authorities of the assessee. Financial along with acknowledgement of return of income is Annexure-1 at pages 1 to 21 of paper books, Form 10 CCB for claiming deduction is at pages 47 to 50 of paper books and objections before Learned DRP without considering submissions of assessee passed order dated 02.11.2021. Undisputedly, assessee claimed adjustment as manufacturing unit located at backward area of Himachal Pradesh. Main incentive granted are waiver of 12.50% excise duty and waiver of 2% CST in Himachal Pradesh. A Co-ordinate Bench in ITA No.8155/Del/2018 titled as “M/s. Sheela Foams Ltd. Vs.. ACIT (ITA No.8155/Del/2018)” had directed Ld. AO/Ld. TPO to compute the operating profit margin without considering excise duty, sales tax and income-tax. Therefore, the ground of appeal no.1 is allowed.

17. Claim of excise duty, exemption as capital receipt while computing total income of normal provisions of the Act has been claimed by availing excise duty exemption during the year after 10th year. The claim of excise duty exemption as capital receipts while computing the total income of normal provisions of the Act has been claimed. The assessee has claimed availing of excise duty exemption during the year being 10th year. Working of said exemption is at page 172 of the paper books. Hon'ble High Court of Jammu & Kashmir in the case of M/s. Shree Balaji Alloys vs. CIT (333 ITR 335) has held that Excise Duty subsidy, interest subsidy received with the object of creating avenues for perpetual employment, to eradicate the social problem of unemployment in the state by accelerating industrial development is capital receipts. A Co-ordinate Bench of Income Tax Appellate Tribunal, Delhi in the case of CIT vs. P.C. Jeweller Ltd. (ITA No.3084/Del/2024) has held similar view. Accordingly, additional ground of appeal no.2 is allowed.

18. Since, grounds of appeal nos. 2, 3, 11 and 12 are not pressed, the same are dismissed as not pressed.

19. Regarding ground of appeal nos. 4 to 10, Learned Authorized Representative for the claims that infirmity in impugned order and has requested for de novo adjudication. Ld. Dispute Resolution Panel erred fundamentally in not appreciating the manufacturing and their trading activities of the assessee. TP Study report shows approximately 82% of turnover as manufacturing. Ld.

Dispute Resolution Panel/Ld. TPO erred in selecting comparable randomly not similar to the products of the assessee. Without reference of financials and segments occasions of the comparables. So, ground of appeal nos. 4 to 10 deserve to be decided de novo by the Ld. Assessing Officer keeping in view the financials on the ground of filing of 3CEB report without showing any 'arrangements'. The Revenue has no objection to the same. Accordingly, matter raised in ground of appeal nos. 4 to 10 are restored to the file of the Ld. AO for fresh decision in accordance with law after affording fair and reasonable opportunity of hearing to the assessee.

20. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 2nd December, 2025.

Sd/-

**(M BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 2nd December, 2025.
Mohan Lal

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi