

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'T': NEW DELHI**

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER

AND

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

**ITA No.4400/Del/2025
Assessment Year 2020-21**

Sumitomo Corporation India Pvt. Ltd. 501 & 502, 5th Floor West Wing, World Mark 1, Asset No.11, Hospitality District Aerocity, New Delhi-110037 PAN No.AABCS1887M	Vs.	DCIT Circle -22 (2)
Appellant		Respondent

**IT(TP) Appeal No.14/Del/2025
Assessment Year 2021-22**

Sumitomo Corporation India Pvt. Ltd. 501 & 502, 5th Floor West Wing, World Mark 1, Asset No.11, Hospitality District Aerocity, New Delhi-110037 PAN No.AABCS1887M	Vs.	DCIT Circle -22 (2) Delhi
Appellant		Respondent

S. A. No. 597/Del/2025
(In IT(TP) A No.14/Del/2025
Assessment Year 2021-22

Sumitomo Corporation India Pvt. Ltd. 501 & 502, 5th Floor West Wing, World Mark 1, Asset No.11, Hospitality District Aerocity, New Delhi-110037 PAN No.AABCS1887M	Vs.	DCIT Circle -22 (2) Delhi
Appellant		Respondent

Appellant	Sh. Himanshu S. Sinha, Advocate Sh. Jainender Kataria, Advocate Sh. Prashant Meharchandani, Advocate (Virtual)
Respondent	Ms. Shaveta Datta, Ld. (PCIT)

Date of Hearing	23.02.2026
Date of Pronouncement	10.04.2026

ORDER

PER C.N. PRASAD, JM,

These two appeals are filed by the assessee against final assessment order passed by the AO u.s.143(3) r.w.s 144C(13) pursuant to the directions of DRP for the A.Ys 2020-21 and 2021-22.

2. First we take up assessee appeal for the A.Y.2020-21 wherein the assessee has raised following grounds of appeal :

1. That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the final

assessment order dated 20 June 2025 without passing the draft assessment order, which is mandatorily required under Section 144C(1) of the Act.

2. That the Ld. AO has grossly erred both on facts and in law, in determining the income of the Appellant at INR 31,71,47,593/- (erroneously computed at INR 31,90,02,800/- in notice of demand and the computation sheet thereto) in assessment order dated 20 June 2025 issued under section 143(3) read with section 144C(13) read with section 144B of the Act as against the income of INR 30,28,03,460/- per the return of income filed by the Appellant. In doing so, the Ld. AO has erred in making an adjustment of INR 1,43,44,133/- which comprises of the Transactional Net Margin Method (TNMM) based adjustment amounting to INR 1,40,25,260/- and adjustment of INR 3,18,873/- on account of interest on overdue receivable.

3. That the Ld. AO has inadvertently considered the Appellant's total income at INR 31,90,02,800/- (in the notice of demand and the computation sheet thereto) vis-à-vis INR 31,71,47,593/- on account of inadvertency of non-consideration of the deduction claimed under section 80G of the Act, thereby resulting in an additional tax demand of INR 7,89,569/-. The Appellant has also filed a rectification application dated 25 June 2025 before the Ld. AO to pass the rectified order under section 154 of the Act.

4. That in making the aforesaid adjustment, the Ld. AO has erred in making a reference under section 92CA(1) of the Act to the Ld. Transfer Pricing Officer ('TPO') without recording any reasons in the assessment order, based on which the Ld. AO concluded that it was 'expedient and necessary' to refer the matter to the Ld. TPO for computation of Arm's Length Price ('ALP') and without providing any opportunity of being heard at any stage of proceedings.

Transactional Net Margin Method based adjustment:

5. That the Ld. AG/TPO has grossly erred both on facts and in law in ignoring the fact that the Bilateral Advance Pricing Agreement ("BAPA") has been entered by the Appellant for similar transactions with Sumitomo Corporation Japan, Sumitomo Corporation Global Metals Co. Ltd. and Sumisho Metalex

Corporation (referred as Covered Associated Enterprises ('AEs')) and not taking cognizance of the outcome of the said BAPA vis-à-vis Other AEs segment

6. The Ld. AO/TPO erred in not demonstrating the basis for concluding that the comparability analysis conducted in the Transfer Pricing Documentation (TP Documentation) of the Appellant is inappropriate and inadequate

7. The Ed. AO/TPO erred in adopting a new search criterion and erroneously applying certain additional quantitative filters.

8. The Ld. AO/TPO erred in selecting the comparable companies which are otherwise not functionally comparable or are failing the quantitative filters.

9. The Ld. AO/TPO erred in rejecting the comparable companies selected in the TP documentation of the Appellant which are passing all the qualitative and quantitative filters.

10. The Ld. AO/TPO erred in rejecting the comparable companies selected by the Appellant, which are functionally similar to the comparable companies selected by the Ld. AO/TPO, thereby applying inconsistent criteria to the comparability analysis and rendering the ALP determination arbitrary and unsustainable.

11. The Ld. AO/TPO erred in rejecting/accepting certain comparable companies which had been accepted by the Ld. DRP/AO/TPO in the Appellant's own case in the past assessment years.

12. That Ld. AO/TPO erred in not granting the benefit of working capital adjustment to the Appellant, to account for the difference in the Appellant's working capital position vis-a-vis that of the independent comparable companies. The Hon'ble DRP in Appellant's own case for AY 2015-16, AY 2016-17 and AY 2017-18 has granted the benefit of working capital adjustment to the Appellant.

Adjustment on account of interest on overdue receivables:

13. *The Ld. AO/TPO erred in imputing interest of INR 3,18,873/- on delayed receipt of outstanding receivables.*

14. *The Ld. AO/TPO erred in appreciating that in the facts of the Appellant, the outstanding receivables is not an international transaction, and needs to be examined with the commercial transaction as a result of which the debit balance has come into existence.*

15. *On the facts and circumstances of the case and in law, the Ld. AO/TPO erred in making an adjustment on account of notional interest on receivables, despite the Appellant being a debt-free company with no interest bearing borrowings, where no presumption can arise of extending a benefit to the associated enterprise.*

16. *The Ld. AO/TPO erred in ignoring the fact that the trade receivables ought to be netted-off with the payables towards the AEs.*

17. *The Ld. AO/TPO erred in ignoring the fact that LIBOR rate without markup should be considered for the purpose of imputing notional interest on receivables outstanding from the AEs in foreign currency, if any.*

18. *The Ld. AO/TPO erred in ignoring that once the working capital adjustment is granted to the Appellant as was granted in the earlier years, that working capital adjustment will subsume the impact of outstanding receivables on profitability and therefore, no further imputation of interest would be warranted.*

19. *Without prejudice to the above grounds of appeal, the Appellant respectfully submits that the Ld. AO/TPO erred in ignoring the fact that the Appellant has already received interest amounting to INR 3,12,734 as trading interest.*

20. *That on the facts and circumstances of the case and in law, the AO have erred in levying/charging interest under sections 234A, 234B and 234C of the Act.*

21. That on the facts and circumstances of the case and in law, the AO erred in initiating penalty proceedings under section 270A of the Act.

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, alter, amend, or vary any of the above grounds either before or at the time of hearing as we may be advised. The arguments taken herein above are without prejudice to each other.

3. The Ld. Counsel for the assessee referring to ground No.1 of grounds of appeal submitted that the Final Assessment order passed by the AO dated 20.06.2025 is without passing draft assessment order, which is mandatorily required under section 144C(1) of the Act. The Ld. Counsel for the assessee submitted that the DRP vide order dated 28.05.2024 rejected objections filed by the assessee gave the following directions. The matter has been considered. It is pertinent to mention that where roll back provisions of BAPA apply on earlier years, there may be three situations-

(i) First could be the case where already assessment/reassessment has been finalized under provisions of Income-tax Act. In such cases, to avoid duplication of proceeding, section 92CD(4) of the Act clearly prescribes that fresh assessment/reassessment in consequence of BAPA would explicitly apply only upon international transactions that are the subject matter of BAPA. Hence, other issues would continue to be determined as per the assessment/reassessment already completed before the date of entering into BAPA.

(ii) The Second would be the category where ROI has only been processed or not processed and no assessment/reassessment has taken place. In these cases, the AO/TPO is required to consider BAPA as well as non-BAPA issues while scrutinizing the ROI as per provision of section 92CD of the Act.

(iii) The Third would be those instances where there was a pendency of assessment/reassessment proceeding such as 144C(11) of the Act on the date of entering into BAPA. This case is covered in this category as proceeding before the DRP is only an extension of the assessment proceeding and case has reached only till the draft assessment order stage. Hence, assessment was still pending on the date of entering into BAPA. in consequence of BAPA, with assessee filing a revised return of income under section 139(1) of the Act, AO/TPO gets a further extension of 12 months to pass the assessment order. Drawing analogy from section 92CD(4) of the Act which places embargo upon reconsideration of Non-BAPA issues where assessment/reassessment has already concluded, an obvious conclusion has to be drawn that in cases of pending assessment/reassessment with that proceeding having not abated, the AO/TPO should also consider non BAPA issues again.

In submission dated 03d May, 2024, assessee has prayed that directions may be issued to the AO/TPO to bear the fact that profit margin determined in BAPA is between 22% to 29%. This request of assessee cannot be accepted as assessee at benchmark all its international transactions in an aggregated manner. Hence, the covered BAPA transactions would have to be excluded from the aggregated transactions and decisions taken a fresh in consequence of return filed under BAPA. This Panel in light of this facto-legal position, with the present case falling in the third category, it emerges that the pending proceeding before this Panel has become infructuous. Accordingly, this Objection is treated as Dismissed.

4. The Ld. Counsel for the assessee further submitted that on the basis of directions of the DRP the AO passed final assessment order dated 20.06.2025 with an oral adjustment of Rs.1,43,44,133/-. Therefore, the Ld. Counsel for the assessee submitted that Final assessment order dated 20.06.2025 passed u/s.143(3) r.w.s. 144C(13) r.w.s. 144B of the Act is void ab initio, having been passed without issuance of draft assessment order as mandated u/s.144C (1) of the Act.

5. The Ld. Counsel for the assessee submits that section 144C(1) of the Act prescribes that the AO should pass draft assessment order to the eligible assessee before passing the final assessment order. Failure to comply with the provisions contained u/s.144C(1) of the Act renders the final assessment order void- ab-initio.

6. The ld. Counsel for the assessee further submitted that the omission to issue draft assessment order violation of principle of natural justice. This deprives the assessee of an opportunity to respond to the proposed adjustments and approach the DRP u/s.144C(2) of the Act. Reliance was placed on the decision of the Hon'ble Delhi High Court in assessee's own case for the A.Y.2003-04 which is reported as PCIT Vs. Sumitomo Corporation of India P. Ltd. (2024) 166 taxmann.com 55 Delhi. Referring to the said decision the Ld. Counsel submitted that the Hon'ble High Court has held that passing of draft assessment order is mandatorily, final assessment order passed without passing draft assessment order is null and void."

7. The Ld. Counsel for the assessee further filed the following synopsis for the A.Y.2020-21 :-

Background Functional profile of the Appellant refer ne page 130-31 of the paperbook for summary of functional profile of the Appellant)

1. Sumitomo Corporation India Pvt. Lid. C'Appellant) was incorporated on 15 January 1997 under the Companies Act, 1956 and is a wholly owned subsidiary of Sumitomo Corporation, Japan (SCI) The Appellant is engaged in providing trade support and advisory services mainly to its Associated Enterprises (Als') which are sogu shosha companies in Japan, (refer to Internal page 1 of TP order/page 103 of the appeal set)

2 These are very low-end services and are more akin to facilitation services with minimum risks as agnimi the Als who have the decision making authority for buying and selling goods and thereby exposed to various risks, viz., foreign exchange risk, debtors risk, quality risk etc.

3. The Appellant earns service fee/ commission for the support services it provides to as Als for smooth completion of export/import business in India. It earns service fee by way of commission, which is computed based on either percentage of value of goods traded or volume of goods keeping in mind the low function it performs. Further, the commission rate also depends upon the business segments and the market conditions and functions performed. The Appellant's main function is to contact the suppliers to coordinate timely delivery of merchandise to the customers, in the quantity and grade desired (for exports), maintaining contacts in India to understand their needs (for Imports), gathering information on demand and supply conditions of these commodities in India etc.

Transactions of Appellant's business may be broadly classified as indent transactions and principal transactions.

Indent transactions

5. Under Indent transactions, the Appellant acts as a mere facilitator for transactions for which it earns service fee /commission. Therefore, such transactions involve relatively very low functional activity with minimal risk between suppliers and buyers. The predominant part of business facilitated by the Appellant falls under this category. The income arising from indent transactions is in the nature of service/commission income and is shown in the books under this classification.

Principal transactional

6. A very small portion of the activities of the Appellant's business is structured as principal trading transactions In these principal transactions, the title to the goods from/to AEs is transferred to/from the Appellant. In the process of this transfer, the Appellant bears 'flash title' of the goods wherein inventory is held momentarily/for a short period or is merely a pass-through cost for AE principal transaction. In few trading transactions, the Appellant holds inventory and incurs incidental cost like warehousing cost and insurance cost. The income earned on principal transactions is shown in the books as trading profit. This profit is usually higher than the usual range of service fee/commission income on account of

differences in terms and conditions like volume factors, business segments, legal ownership contractual risk, foreign exchange risk etc.

7. The Appellant filed its return of income for the impugned AY on 27 January 2021 declaring a total income of INR 30,28,03,460/-, This return of income was duly supported by audited financial statements and tax audit report for the Financial Year ('FY') 2019-20.

8. The Appellant applied Transactional Net Margin Method (TNMM) as the most appropriate method for benchmarking its international transactions (reported international transactions are at page 27 of paperbook). Return on Operating Expenses i.e. Operating Profits/Operating Expenses ('OP/ OPEX') was selected as the profit level Indicator ('PLI'). In order to arrive at the arm's length price (ALP) in relation to the international transactions, the Appellant carried a benchmarking analysis wherein 14 comparable companies were identified The arm's length unadjusted OP/OPEX of these comparable companies was 1.70% (35% percentile) to 4.66% (65 percentile) with 3.12% as the median using multiple-year data, i.e. data for FY 2017-18, 2018-19 and 2019-20 (to the extent available at the time of preparation of TP Documentation). The Appellant computed own OP/OPEX at 24.65% (aggregated for both indent and principal business segment) for the FY 2019-20 a OP/OPEX of 24.16% (for Other AEs segment). Basis the same, the international transactions were considered to be at arm's length (Refer page 57-58 of the paper book for economic analysis).

9. The Appellant entered into Bilateral Advance Pricing Agreement (BAPA at pages 166-193 of the paper-book) with the Central Board of Direct Taxes (CBDT) on 2 August 2016 in relation to international transactions entered into with SCJ. The nature of covered international transactions were (i) Commission income : 1) Purchase/Sale of traded goods; (iii) (Service fee income. The BAPA covers 3 years from FY 2013-14 to FY 2017-18 and HFY 2010-11 to FY 2012-13,

10. The Appellant entered into BAPA Renewal 1 (Copy of BAPA Renewal 1 dated 21 December, 2023 is at pages 194-215 of the paperbook with the CBDT on 21

December 2023 for a period of 5 years from TY 20 The Appellant entered into BAPA Renewal I (copy of BAPA Renewal I dated 21 December 2023 is of pages IY 2022-23 in relation to international transactions entered into with SCJ, Sumitomo Corporation Global Metals Co. Lal. ('SCGM') and Sumisho Metalex Corporation (SMC) (collectively referred to Covered AEs). The nature of covered international transactions were (i) Commission income, (ii) P goods, and (iii) Service fee income Purchase/ Sale of traded goods; and (iv) Service fee income.

11. Accordingly, the relevant year under consideration, ie, AY 2020-21 is covered under the BAPA Renewal in respect of the transactions with the Covered AEs. Further, in pursuance to the signed HAPA Renewal se Appellant filed the modified Income tax return on 18 March 2024 vide acknowledgment masher 146013331181324 declaring a total income of INR 30,28,03,460 (refer in internal page 9 of final assessment order page 15 of the appeal set)

12. This position has not been disturbed by the Ld. Transfer Pricing Officer (TPO) or the Lid. Dispute Resolution Panel ("DRP"). The dispute is restricted to transactions with Other AEs (i.e. AE's other than SCJ) wherein Appellant has earned the OP/OPEX margin of 24.16%. The margin in the Other AE segment has also been wherein the accepted by the Ld. TPO (refer internal page 15 of Lat. TPO's order),

Ld. TPO's order dated 30 July 2023

13. The case of the Appellant was picked up for scrutiny and reference was made to the Ld. TPO The Ld. TPO passed her order dated 30 July 2023 with the following adjustments:

TNMM based adjustment amounting to INR 1,40,25,260/- in the "Other AF segment

The Ld. TPO rejected 13 companies out of the set of 14 companies as selected by the Appellant in its TP Documentation and identified 6 additional companies to arrive at the arm's length of 31.37% (35 percentile) to 34.77% (65 percentile) with a median of 33.67% (vis-à-vis arm's length range of 1.70% (35 percentile) to 4.66% (65 percentile) with a median of 3.12%, as documented in the IP Documentation) (refer internal

page 14-16 of L.d. TPO's order/page 116-118 of the appeal set

Adjustment on account of interest on overdue receivables amounting to INR 3,18,873 114 TPO imputed interest at the rate of 6.256% (6 months LIBOR plus 425 basis points) on outstanding receivables of the Appellant (over 60 days) from its AEs and made a transfer pricing adjustment of INR 3,18,873/- on account of the same (refer internal page 17-26 of Ld. TPO's order/page 119-128 of the appeal set),

Draft assessment order dated 27 September 2023

14. The Ld. Assessing Officer ("AO") passed the draft assessment order dated 27 September 2023 incorporating the adjustments made by the Ld. TPO. Aggrieved by the draft assessment order passed by the Ld. AO, the Appellant filed its objections before the Hon'ble DRP on 25 October 2023.

DRP directions dated 28 May 2024

15. The Ld. DRP vide its directions dated 28 May 2024 dismissed the objections filed by the Appellant and gave the following directions to the Ld. AO/TPO (refer para 5.3, 5.4 and para 6 on internal page 5-7 of Lal DRP directions/internal page 22-24 of the appeal set)

i) The Ld. DRP, dismissed the objections as infructuous and directed the L.d. TPO to reconsider the Non -BAPA issues afresh in light of the signed BAPA Renewal 1 dated 21 December 2023.

ii) The L.d. DRP, considering the provisions contained in section 92CD(4) of the Act, noted that the 14. TPO/AO will get further extension of 12 months to pass the assessment order.

16. Basis the directions of the Lid DRP, the LAO paved the final assessment order date 20 June 2005, with an overall of INR 1,43,44,133/- (refer internal page 9 of final assessment order/ page 15 of the appeal set.)

17. The Ed. ATP regarding the detailed submissions made before the 1 d. 113, pressed in the fact that the Hon'ble DRP has not granted any relief on the grounds of objections raised in respect of the

transfer pricing matters. The Lid. AC/TPO, in the order, also mentioned that a detailed analysis on the comparables for non-BAPA transactions, was already made in the TP order dated 30 July 2023. refer para 5 on internal page 8 of final assessment order page 14 of the appeal set).

18. *Aggrieved by the final assessment order, the Appellant is now in appeal before this Hon'ble Tribunal.*

Submissions on grounds of appeal

Ground No. 1: Without prejudice to the other grounds, the Ld. AO erred in passing the final assessment order dated 20 June 2025 without passing the draft assessment order, which is mandatorily required under Section 144C(1) of the Act

19. *It is submitted on a without prejudice basis that the final assessment order dated 20 June 2025 passed under section 143(3) read with section 144C(13) read with section 144C(1) of the Act is void ab initio, having been passed without issuance of a draft assessment order, as mandated under section 144C(1) of the Act.*

20. *Section 144C(1) of the Act prescribes that the AO should forward a draft assessment order to the eligible Assessee before passing the final assessment order. The failure to comply with the aforementioned provisions contained in section 144C(1) of the Act renders the final assessment order void ab initio. Further, the omission to issue a draft order violates the principle of natural justice. It deprives the Assessee of the opportunity to respond to the proposed adjustments and approach the DRP under section 144C(2) of the Act.*

21. *Reliance is placed on the decision of Hon'ble High Court of Delhi in Appellant's own case for AV 2003-04 wherein the Hon'ble High Court has held that passing of draft assessment order is mandatory. Reliance is further placed on following decisions wherein it has been held that final assessment order passed without passing a draft assessment order is null and void:*

PCIT v. Sumitomo Corporation India (P) Ltd. (2024) 166 taxmann.com 35 (Delhi)

Pr. CIT Andrew Telecommunications (P) Ltd. 2018 SCC Online Bom 21360 PCIT v. Headstrong Services India (P.) Ltd.. (2021) 125 taomont.com 262 (Delhi)

Zuari Cement Ltd. v. ACIT (TS-271-HC-2013(AP)-TP), affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) (CC No. 16694/2013] on 27th September 2013

Control Risk India (P) Ltd. DCIT. [2019] 107 laxmann.com 82 (Dell) (HC), affirmed by the Supreme Court by the dismissal of the Revenue's SLP in [2019] 107 laxmannen 8J (SC) Vijay television. (2014) 369 ITR 113 (Madras)

22. In light of the above, it is prayed that the impugned assessment order dated 20 June 2025 should be quashed and the assessment proceedings should be declared null and void.

Ground No. 2: General in nature

Ground No. 3: Erroneous computation of income by the Ld. AO on account of non-consideration of deduction of INR 7,89,569/- claimed under Section 80G of the Act

23. In the modified Income tax return filed by the Appellant on 18 March 2024 vide acknowledgment number 146013331180324, the Appellant had claimed deduction under section 80G of the Act amounting to INR 18,55,205/- (i.e., 100% of INR 3,00,000 and 50% of INR 31,10,409) (refer page 131-132 of paperbook part 2 for Schedule 80G)

SC)

24. On perusal of the computation annexed to the order passed by the AO, it is observed that deduction under section 80G of the Act amounting to INR 18,55,205/- has not been allowed to the Appellant (computation sheet at page 58-62 of paperbook part 2). After this deduction is allowed, the tax demand will be revised to INR 70,71,020 from INR 78,60,590/- after accounting for the revised interest.

Ground no. 4-7: Nut pressed

Ground No. 8-11: Grounds on inclusion/exclusion of comparables (withunt prejudice to Ground No. 12 claim of working capital adjustment)

Arguments for inclusion of i) Gordon Woodroffengal North Eastern Carrying Corporation Ltd. (North Eastern'), Hi) Patel Integrated Logistics Ltd. ('Pate Integrated Carriers Ltd. (Globe Carriers)

25. It is prayed that i) Gordon Woodroffe Logistics integrated Caring Corporation Ltd. North Eastern), ii) Patel Integrated Logistics Ltd. (Patel Integrated'), iv) Globe International Carriers Lil 'Globe Cartiers) should be included as valid comparables. The arguments for inclusion are given in the subsequent paragraphs.

26. The Ld. TPO rejected these four companies on the ground that they are functionally dissimilar (refer to Internal page 8-9 of Lid. TPO's order/page 110-111 of the appeal set)

27. It is submitted that Ld. DRP in Appellant's own case for AY 2017-18 has directed for the inclusion of these four companies on the basis of functional similarity (refer to page 285 of the paperbook). Therefore, the Ld. TPO's basis for rejection of this company does not survive. Since there has been no change in the functional profile of these companies, it is submitted that these four companies should be included a valid comparables on the basis of principle of consistency,

28. It is submitted that all of these companies provide similar services as those provided by the Appellant and passes all the quantitative filters applied by the Ld. TPO. The functional profile of these companies supported by the referencing from their annual reports is given below:

i) Gordon Woodroffe: engaged in provision of freight transport agency services and other freight transport services. It also operates as a custom broker and freight forwarder (refer to page 146,173 of AR compilation).

ii) North Eastern: engaged in provision of transportation and logistics services (refer page 205/271 of the AR compilation).

iii) Patel Integrated: engaged in provision of logistic services and surface cargo transportation of goods (refer page 353 of AR compilation).

iv) Globe Carriers: engaged in the provision of freight, logistic and other services (refer page 415 of AR compilation).

29. Arguments for exclusion of Educational Consultants India Ltd. ("EdCIL" It is further submitted that EdCIL (India) Ltd. should be excluded from the list of comparables. The reasons for exclusion are tabulated below:

Functionally dissimilar

30. EDCIL is a multi-disciplinary organization offering education and human resource development services, both within India and overseas. EDICIL offers online testing and assessment services and earns major revenue on account of these (refer page 39/ 109 of AR compilation for the functional profile of EDCIL). These services are not at all comparable to the low-value added support services provided by the Appellant.

Government owned company

31. EDCIL is a government owned company (refer page 59 of AR compilation) and should not accepted as the comparable because government companies often work on considerations other than pure profit.

Judicial precedents

32. Reliance is placed on the following decisions of the Hon'ble High Court and ITAT wherein EdCIL, has been rejected as a comparable on account of being a Government company it has been held that government companies cannot be considered as valid comparables:

- PCIT v. International SoS Services India (P) Ltd. (2017) 82 taxmann.com 500 (Delhi)*
- International SOS Services India (P) Ltd. (IT Appeal No. 1631/Delhi/2014 (AY 2009-10):*
- M/s Bechtel India Pvt. Ltd. 11TA No. 6779/Del/2015):*
- M/s ThyssenKrupp Industries India Private Limited (ITA No. 6-460/Mum/2012);
-CIT TAPE 2014*

Ground No. 12: The Lat. TPO erred in not granting working capital adjustment

33. *It is submitted that the entire addition of INIK 1,4025260/- will be deleted upon grant of working capital adjustment. The Appellant has margin of 24.16% in Other ALs segment (accepted by Lid 110s The L 165th percentile) with median of 33.67%*

34. *Upon grant of working capital adjustment, the range will be revised to 20.91% to 39.01% with median of 31.18% and the entire adjustment will be deleted. The detailed calcutta of working capital adjustment is given at pages 145-148 of the paperbook.*

The Ld. DRP in Appellant's own case for AV 2015-16 to AY 2017-18 has granted working capital adjustment and therefore, it should be given in the subject AY on ground of principle of consistency

- i) DRP finding in AY 2015-16 refer para 6.4.2.4. to 6.4.2.5. on page 229-230 of the paper book.*
- ii) DRP findings in AY 2016-17 refer para 6.4.2.4 to 6.4.2.5 un page 245-246 of paperbook*
- (iii) DRP's finding in AY 2017-18: refer para 5.2 on page 168 of the paperbook part 2*

36. *It is submitted that the facts of the Instant year are identical to the earlier years and therefore, following principle of consistency, working capital adjustment should be allowed to the Appellant in the instant year. Reliance is*

placed on the following decisions for the principle of consistency:

Commissioner of Income-tax v. Excel Industries Ltd (2013) 38 naman.com 100 (SC) - para 28 of the

Radhasoami Satsang v. CIT [1992] 60 man 248 (SC) - para 13-14 of the judgement

Ground No. 13: General in nature

Ground No. 14: Not pressed

Ground No. 15: The Ld. AO/TPO erred in making an adjustment on account of notional interest on receivables, despite the Appellant being a debt-free company with no interest-bearing borrowings, where no presumption can arise of extending a benefit to the AE.

37. The Appellant is a debt-free company and no interest is payable by the Appellant to its AE or third parties on account of anything.

(for details of long-term/current liabilities of the Appellant, refer to page 105 of the paperhook: for details of expenses, refer to page 111 of the paperbook)

38. Therefore, it would not be justifiable to presume that the borrowed funds have been utilized to pass on the facilities to its AEs and the Ld. TPO also had not brought on record that the Appellant had been found paying interest to its creditors or suppliers on its payables. Thus, the question of receiving any interest on receivable does not arise and the adjustment is completely unsustainable.

39. This issue is squarely covered in principle by decision of Hon'ble High Court of Delhi in PCIT v. Inductis India (P.) Ltd. [2023] 157 taxmann.com 87 (Delhi) The relevant paragraphs are extracted below for reference

"6.2 The fact that the respondent/assessee is debt free is not contested. Given this position, the question is as to whether adjustment on account of notional interest on receivables could have been made.

6.3 This issue stands clearly covered by the decision of a coordinate bench of this court in the case of Pr. CIT v. Boeing India (P) Ltd. [2023] 146 taxmann.com 131/45 ITR 84 (Delhi), in which after traversing through various judicial precedents, the court held that the assessee company being debt free company the question

of receiving any interest on receivables did not arise so the adjustment made by the Assessing Officer on account of interest on outstanding receivables w liable to be deleted.

6.4 Earlier, in similar circumstances, the issue came up before the Income Tax Appellate Tribunal the case of Bechtel India (P) Ltd. v. Dy CIT (2016) 66 taxmann.com6 (Delhi-Trib.) and the Tribunal held that the assessee being a debt free company, it would not be justifiable to presume that the borrowed finds have been utilized to pass on the facilities to its AEs and the revenue also had not brought on record that the assessee had been found paying interest to its creditors or suppliers on delay payments. This view of the Income Tax Appellate Tribunal applied titled Pr. CIT v. Bechtel India (P) Ltd. [IT Appeal No.379 of 2016, dated 21-7-2016] observing that no substantial question of law arose as the Tribunal had returned a finding of fact to the effect that the assessee was a debt free company and a question of receiving any interest on receivable did not arise. Against the said judgment Pr. CIT v. Bachtel India (P.) Ltd. CC No.(s) 4956 of 2017 preferred by eh revenue was dismissed vide order dated 21.07.2017.

6.6. That being so in our view the questions 2.3 and 2.4 proposed by the Applicant / revenue cannot be treated as substantial question of law for present purposes

Ground No. 16: The Ld. AO/TPO erred in ignoring the fact that the trade receivables ought to be netted-off with the payables towards the AEs.

40 This ground will become academic after adjudication of Ground No. 15 or Ground No. 18.

41

Ground No. 17: The Ld. AO/TPO erred in ignoring the fact that LIBOR rate without markup should be considered for the purpose of imputing notional interest on receivables outstanding from the AEs in foreign currency, if any.

This ground will become academic after adjudication of Ground No. 15 or Ground No. 18.

Ground No. 18: Upon grant of working capital adjustment, which is an issue covered in favour of the Appellant, the entire addition on account of interest on overdue receivables will be deleted

42. Grant of working capital adjustment has been a legacy issue for the Appellant and the Hon'ble DRP itself in earlier years has granted this adjustment to the Appellant. Upon grant of working capital adjustment, the TNMM based transfer pricing adjustment will be reduced to NIL. The adjustment will factor in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis the comparables. A further adjustment solely on account of overdue receivables would result in double adjustment and impermissible in law. This position has been upheld by Hon'ble High Court of Delhi in Principal Commissioner of Income-tax v. Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431 (Delhi)-refer para 8-12. Therefore, once the working capital adjustment is granted, any adjustment on account of overdue receivables will stand deleted.

Ground No. 19: The Ld. TPO erred in ignoring the fact that the Appellant has already received interest amounting to INR 3,12,734 as trading interest

43. This ground will become academic after adjudication of Ground No. 15 or Ground No. 18.

Ground No. 20-21: Consequential in nature

7. On the other hand the Ld. DR supported the order of the authorities below.

8. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. On perusal of the DRP directions dated 28.05.2024 suggest that the DRP had

directed the AO/ TPO to consider non-BAPA issues again afresh excluding the covered BAPA transactions from the aggregate transactions, pursuant to a fresh return filed by the assessee under BAPA. Accordingly, the DRP passed an order directing the AO to pass afresh order and treated the pending proceeding before the panel as infructuous. Thereafter, the AO without passing the draft assessment order passed final assessment order on 20.06.2026.

9. The Hon'ble Delhi High Court in assessee's own case reported as PCIT Vs. Sumitomo Corporation of India P. Ltd. (supra) held that a final assessment order passed without passing draft assessment order u/s.144C is not tenable. It is observed that the Hon'ble High Court held that in the remand proceedings it is mandatory for the AO to pass draft assessment order u/s.144C and therefore, a final assessment order passed without passing a draft assessment order as mandated u/s.144C is bad in law.

10. Respectfully following the said decision we hold that the Final assessment order dated 20.06.2025 passed u/s.14(3) r.w.s. 144C(13) of the Act without passing draft assessment order is bad in law and void ab initio and accordingly the same is hereby quashed.

11. As we have quashed the final assessment order on legal issue all other grounds on merits need not be adjudicated at this stage as they become academic in nature and therefore, they are left open.

12. Now we take up the appeal for the A.Y. 2021-22 wherein the assessee has raised following grounds :-

1. That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the final assessment order dated 31 October 2025 without passing the draft assessment order, which is mandatorily required under Section 144C(1) of the Act.

2. That the Ld. AO has grossly erred both on facts and in law, in determining the income of the Appellant at INR 27,48,71,418/- in assessment order dated 31 October 2025 issued under section 143(3) read with section 144C(13) read with section 144B of the Act as against the income of INR 25,27,45,360/- per the modified return of income filed by the Appellant. In doing so, the Ld. AO has erred in making an adjustment of INR 2,21,26,058/- which comprises of the Transactional Net Margin Method ('TNMM') based adjustment amounting to INR 2,20,08,592/- and adjustment of INR 1,17,466/- on account of interest on overdue receivable.

3. That the Ld. AO has erred, both in facts and in law, in computing the total tax demand at INR 1,81,76,454/- (as per the notice of demand and computation sheet accompanying the assessment order) vis-à-vis the corrected tax demand of INR 94,30,007/-, on account of:

(i) Erroneous application of tax rate at 25% vis-à-vis tax rate of 22% (as provided under section 115BAA of the Act) on the total assessed income of INR 27,48,71,418/-;

(ii) Erroneous application of tax rate at 25% vis-à-vis tax rate of 20% (as provided under section 112 of the Act) on long-term capital gains amounting to INR 5,64,90,133/-;

(iii) Failure to grant tax credit of INR 62,68,561/- on account of Tax Deducted at Source ('TDS'), Tax

Collected at Source ('TCS') and Double Taxation Avoidance Agreement ('DTAA') credit

(iv) Erroneous application of surcharge at 12% vis-à-vis surcharge rate of 10% (as provided under section 115BAA of the Act); and

(v) Non-computation of interest charged under sections 234A, 234B and 234C of the Act.

The Appellant has also filed a rectification application dated 20 November 2025 before the Ld. A.O. pass the rectified order under section 154 of the Act

4. That in making the aforesaid adjustment, the Ld. AO has erred in making a reference under section 92CA(1) of the Act to the L.d. Transfer Pricing Officer (TPO) without recording any reasons in the assessment order, based on which the Ld. AO concluded that it was 'expedient and necessary to refer the matter to the Ld. TPO for computation of Arm's Length Price ('ALP') and without providing any opportunity of being heard at any stage of proceedings.

Transactional Net Margin Method based adjustment:

5. The Ld. AO/TPO erred in not demonstrating the basis for concluding that the comparability analysis conducted in the Transfer Pricing Documentation (TP Documentation) of the Appellant is inappropriate and inadequate without returning a finding about existence of any of the circumstances specified in clauses (a) to (d) of sub-section (3) of section 92C of the Act.

6. The Ld. AO/TPO erred in adopting a new search criterion and erroneously applying certain additional quantitative filters.

7. The Ld. AO/TPO erred in additionally including the companies in the final comparable set which are otherwise not functionally comparable or are failing the quantitative filters.

8. The Ld. AO/TPO erred in rejecting the comparable companies selected in the TP documentation of the Appellant which are passing all the qualitative and quantitative filters, and are functionally comparable to the Appellant.

9. *The Ld. AO/TPO erred in rejecting the comparable companies selected by the Appellant, which are functionally similar to the comparable companies selected by the Ld. AO/TPO, thereby applying inconsistent criteria in the comparability analysis and rendering the ALP determination arbitrary and unsustainable.*

10. *The Ld. AO/TPO erred in rejecting/accepting the following comparable companies which had been accepted by the Ld. DRP/AO/TPO in the Appellant's own case in the past assessment years:*

- *Globe International Carriers Ltd.*
- *North Eastern Carrying Corporation Ltd.*
- *Patel Integrated Logistics Ltd.*
- *Gordon Woodroffe Logistics Ltd.*

11. *That Ld. AO/TPO erred in not granting the benefit of working capital adjustment to the Appellant, to account for the difference in the Appellant's working capital position vis-a-vis that of the independent comparable companies. The Ld. DRP in Appellant's own case for AY 2015-16, AY 2016-17 and AY 2017-18 has granted the benefit of working capital adjustment to the Appellant.*

12. *The Ld. AO/TPO erred in imputing interest of INR 1,17,466/- on delayed receipt of outstanding receivables from AFs.*

13. *The Ld. AO/TPO, ignoring the plethora of judicial precedents, erred in appreciating that in the facts of the Appellant, the outstanding receivables is not an international transaction, and needs to be examined qua the primary commercial transaction as a result of which the debit balance has come into existence.*

14. *On the facts and circumstances of the case and in law, the Ld. AO/TPO erred in making an adjustment on account of notional interest on receivables, despite the Appellant being a debt-free company with no interest-bearing borrowings, where no presumption can arise of extending a benefit to the associated enterprise.*

15. *The Ld. AO/TPO erred in ignoring the fact that the trade receivables ought to be netted-off with the payables towards the AEs.*

16. *With prejudice to the above grounds of appeal, the Ld. AO/TPO erred in ignoring the fact that LIBOR rate without markup should be considered for the purpose of imputing notional interest on receivables outstanding from the AEs in foreign currency, if any.*

17. *The Ld. AO/TPO erred in ignoring that once the working capital adjustment is granted to the Appellant as was granted in the earlier years, that working capital adjustment will subsume the impact of outstanding receivables on profitability and therefore, no further imputation of interest would be warranted.*

18. *Without prejudice to the above grounds of appeal, the Appellant respectfully submits that the Ld. AO/TPO erred in ignoring the fact that the Appellant has already received interest amounting to INR 37,469 as trading interest.*

19. *That on the facts and circumstances of the case and in law, the AO erred in initiating penalty proceedings under section 270A of the Act.*

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, alter, amend, or vary any of the above grounds either before or at time of hearing as we may be advised. The arguments taken herein above are without prejudice to each other.

13. Referring to ground No.1 of grounds of appeal the Ld. Counsel for the assessee submits that for the A.Y. 2021-22 the facts are identical to the A.Y. 2020-21 as a final assessment order dated 31.10.2025 was passed without passing the draft assessment order which is mandatorily required u/s.144C(1) of the Act.

14. The Ld. Counsel for the assessee filed the following synopsis and submitted that the facts are identical to the facts for the A.Y.2020-21 :-

Background / Functional profile of the Appellant (refer to page 32-36 of the paperbook for summary of functional profile of the Appellant)

1. Sumitomo Corporation India Private Limited ('Appellant') was incorporated on 15 January 1997 under the Companies Act, 1956 and is a wholly owned subsidiary of Sumitomo Cooperation, Japan (SCJ). The Appellant is engaged in providing trade support and advisory services mainly to its Associated Enterprises (AEs) which are sogo shosha companies in Japan. (refer to internal page 1 of TP order/page 113 of the appeal set).

2. These are very low-end services and are more akin to facilitation services with minimum risks as against the AEs who have the decision-making authority for buying and selling goods and thereby exposed to various risks, viz., foreign exchange risk, debtor risk risk, quality risk etc.

3. The Appellant earns service fee / commission for the support services it provides to its AEs for smooth completion of export/Import business in India. The Appellant's main function is to contact the suppliers to coordinate timely delivery of merchandise to the customers, in the quantity and grade desired (for exports), maintaining contacts in India to understand their needs (for imports), gathering information on demand and supply conditions of these commodities in India etc.

4. The transactions of Appellant's business may be broadly classified as indent transactions and principal transactions. (refer to page 22-23 of the paperbook for details of functions performed by the Appellant in relation to its indent and principal transactions)

• *Indent transactions:*

Under indent transactions, the Appellant acts as a mere facilitator for transactions for which it earns service fee / commission. Therefore, such transactions involve relatively very low functional activity with minimal risk between suppliers and buyers. The pre-dominant part of business facilitated by the Appellant falls under this category. The

income arising from indent transactions is in the nature of service/commission income and is shown in the books under this classification.

- *Principal/trading transactions:*

A very small portion of the activities of the Appellant's business is structured as 'principal trading transactions'. In these principal transactions, the title to the goods from/to AEs is transferred to/from the Appellant. In the process of this transfer, the Appellant bears 'flash title' of the goods wherein inventory is held momentarily / for a short period or is merely a pass-through cost for AE principal transaction. In few trading transactions, the Appellant holds inventory and incurs incidental cost like warehousing cost and insurance cost. The income earned on principal transactions is shown in the books as trading profit. This profit is usually higher than the usual range of service fee / commission Income on account of differences in terms and conditions like volume factors, business segments, legal ownership contractual risk, foreign exchange risk etc.

5. The Appellant filed its return of income for the impugned AY on 02 March 2022 declaring a total income of INR 21,61,74,082/-. This return of income was duly supported by audited financial statements and tax audit report for the Financial Year (FY) 2020-21.

6. The Appellant applied Transactional Net Margin Method ('TNMM') as the most appropriate method for benchmarking its international transactions (reported international transactions are at page 19 of paperbook). Return on Operating Expenses i.e. Operating Profits/Operating Expenses ('OP/ OPEX was selected as the profit level indicator ('PLI'). In order to arrive at the arm's length price ('ALP') relation to the international transactions, the Appellant carried a benchmarking analysis wherein comparable companies were identified. The arm's length unadjusted OP/OPEX of these comparable companies was 1.51% (35th percentile) to 4.10% (65th percentile) with 1.79% as the median using multiple-year data, i.e., data for FY 2018-19, 2019-20 and 2020-21 (to the extent available at the TP Documentation). The Appellant computed its own OP/OPEX (aggregated for both indent and principal business segment) for the FY 2020-21 and OP/O International transactions were considered 13.70% (for Other Als segment). Basis the same, the intern be at arm's length (Refer page37-47 of the paperbook for economic analysis),

und No. 1 Evishata

Agreement ('BAPA) (copy of BAPA dated 02 August 2016 entered into Bilateral Advance Pricing Agreement August 2016 is at page 493-520 of the paper-book) with the Central Board of Direct Taxes ('CBOT) on 2 August 2016 in relation to International transactions entered into with SCO, The nature of covered international transactions were (1) Commission income; (1) Purchase / Sale of traded goods; and (ii) Service fee income. The BAPA was applicable for a period of 5 years from FY 2013-14 to FY 2017-18 along with 3 years of roll back from FY 2010-11 to FY 2012-13.

8. The Appellant entered into BAPA Renewal 1 (copy of BAPA Renewal I dated 21 December 2023 from FY 2018-19 to FY 2022-23 in relation to international transactions entered into with SCI, is at page 521-542 of the paperbook) with the CBDT on 21 December 2023 for a period of 5 years Sumitome Corporation Global Metals Co. Ltd. (SCGM) and Sumisho Metalex Corporation (SMC) (collectively referred to Covered AEs) The nature of covered international transactions were (i) Commission income; (ii) Purchase/ Sale of traded goods; and (ii) Service fee income.

9. Accordingly, the relevant year under consideration, i.e. AY 2021-22 is covered under the BAPA Renewal I in respect of the transactions with the Covered AEs. Further, in pursuance to the signed BAPA Renewal 1, the Appellant filed the modified Income tax return on 14 March 2024 vide acknowledgment number 141688811140324 declaring a total income of INR 25,27,45,356/-, (refer to internal page 4 of final assessment order/ page 12 of the appeal set),

10. This position has not been disturbed by the Ld. Transfer Pricing Officer (TPO) or the Ld. Dispute Resolution Panel ('DRP'). The dispute is restricted to transactions with Other AEs (i.e. AEs other than SCJ) wherein the Appellant has earned the OP/OPEX margin of 13.70%. Appellant's margin of the Other AE' segment has also been accepted by the Ld. TPO (refer internal sal page 18 of Ld. TPO's order/ page 142-143 of stay application).

Ld. TPO's order dated 31 October 2023

11. The case of the Appellant was picked up for scrutiny and reference was made to the Ld. TPO. The Ld. TPO passed order dated 31 October 2023 with the following adjustments

i) **TNMM based adjustment amounting to INR 2,20,08,592/-** in the 'Other AE' segment: The Ld. TPO rejected 10 companies out of the set of 11 companies as selected by the Appellant In its TP Documentation and identified 11 additional companies to arrive at the arm's length of 22.72% (35th percentile) to 28.43% (65th percentile) with a median of 27.26% (vis-à-vis arm's length range of 1.51% (35th percentile) to 4.10% (65th percentile) with a median of 1.79%, as documented in the TP Documentation) (refer internal page 17-19 of Ld. TPO's order/page 129-131 of the appeal set).

ii) Adjustment on account of interest on overdue receivables amounting to INR 1,17,466/-: The Ld, TPO imputed interest at the rate of 4.621% (6 months LIBOR plus 425 basis points) on outstanding receivables of the Appellant (over 60 days) from its AEs and made a transfer pricing adjustment of INR 1,17,466/-/- on account of the same (refer internal page 19-26 of Ld. TPO's order/page 131-138 of the appeal set).

Draft assessment order dated 25 December 2023

12. The Ld. Assessing Officer ('AO') passed the draft assessment order dated 25 December 2023 incorporating the adjustments made by the Ld. TPO. Aggrieved by the draft assessment order passed by the Ld. AO, the Appellant filed its objections before the Hon'ble DRP on 23 January 2024.

DRP directions dated 25 September 2024

13. Since Appellant had filed modified return pursuant to BAPA Renewal I during the pendency of the objections before the Ld. DRP, Ld. DRP vide its directions dated 25 September 2024 dismissed the objections filed by the Appellant as infructuous and gave the following directions to the Ld. AO/TPO (refer para 5.3, 5.4 and para 7 on internal page 5-11 of Ld. DRP's directions/internal page 20-26 of the appeal set)

1) Since the proceedings are pending before DRP, I assessment as on the date of filing the modified return, the AO/TIPO gets a further extension of 12 months to pass the of seng the modified returng analogy from the Section 92CD(4) this case falls under the category of pending which places an embargo spent order Didering analogy Non-BAPA Issues where assessment/reassessment has already

concluded, an obvious conclusion has to be drawn that in cases of pending assessment/reassessment with that proceeding having not abated, the AO/TPO should also consider non BAPA issues again.

ii) The Ld. DRP, dismissed the objections as infructuous and directed the Ld. TPO to reconsider the BAPA and Non-BAPA issues afresh in light of the signed BAPA Renewal | dated 21 December 2023.

14. However, pursuant to such clear directions of the Ld. DRP dismissing the objections as infructuous asking the AO/TPO to consider the modified return, instead of passing a draft assessment order, Ld AO passed the final assessment order dated 31 October 2025, with an ov 2,21,26,058/- (refer internal page 6 of final assessment order/page 12 of 5. with an overall adjustment of INR 12 of the appeal set)

15. The Ld. AO/TPO, disregarding the detailed submissions made before the Ld. TPO, pressed on the fact that the Hon'ble DRP has not granted any relief on the grounds of objections raised in respect of the transfer pricing matters. The Ld. AD/TPO, in the order, also mentioned that a detailed analysis on the comparables for non-BAPA transactions, was already made in the TP order dated 31 October 2023, (refer para 3 on internal page 5 of final assessment order/page 11 of the appeal set).

16. Aggrieved by the final assessment order, the Appellant is now in appeal before this Hon'ble Tribunal,

Submissions on grounds of appeal

Ground No. 1: That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the final assessment order dated 31 October 2025 without passing the draft assessment order, which is mandatorily required under Section 144C(1) of the Act.

17. It is submitted on a without prejudice basis that the final assessment order dated 31 October 2025 passed under section 143(3) read with section 144C(13) read with section 1448 of the Act is void ab Initio, having been passed without issuance of a draft assessment order, as mandated under section 144C(1) of the Act.

18. Section 144C(1) of the Act prescribes that the AD should forward a draft assessment order to the eligible Assessee

before passing the final assessment order. The failure to comply with the aforementioned provisions contained in section 144C(1) of the Act renders the final assessment order void ab initio. Further, the omission to issue a draft order violates the principle of natural justice. It deprives the Assessee of the opportunity to respond to the proposed adjustments and approach the DRP under section 144C(2) of the Act.

19. Reliance is placed on the decision of Hon'ble High Court of Delhi in Appellant's own case for AY 2003-04 wherein the Hon'ble High Court has held that passing of draft assessment order is mandatory. Reliance is further placed on following decisions wherein it has been held that final assessment order passed without passing a draft assessment order is null and void:

- *PCIT v. Sumitomo Corporation India (P.) Ltd. [2024] 166 taxmann.com 55 (Delhi)*
- *Pr. CIT v. Andrew Telecommunications (P.) Ltd. 2018 SCC Online Bom 21360 (para 18-1)*
- *PCIT v. Headstrong Services India (P.) Ltd., [2021] 125 taxmann.com 262 (Delhi) (Para*
- *Zuari Cement Ltd. v. ACIT, [TS-271-HC-2013(AP)-TP], affirmed by the Supreme Court the dismissal of the Revenue's SLP (C) (CC No. 16694/2013] on 27th September 2013.*

Control Rise India (P) Ltd. v. DCIT, (2019) 107 taxmann.com 82 (Delhi) (HC), affirmed by upreme Court by the dismissal of the Revenue's SLP in (2019) 107 taxmann.com 83 the Supreme (SC) (Para 12)-Vijay television, (2014) 369 ITR 113 (Madras) (Para 18)

31 October 2025 should 20. In light of the above, it is prayed that the impugned assessment order dated 31 be quashed and the assessment proceedings should be declared null and void.

Ground No. 21 General in nature

Ground No. 3: That the Ld. AO has erred, both in facts and in law, in computing the total tax demand at INR 1,81,76,454/- (as (as per the notice of demand and computation sheet accompanying the assessment

order) vis-à-vis the corrected tax demand of INR 94,30,007/-, on account of: This ground has become infructuous in light of the rectification order dated 11 February 2026 passed by the Ld. AO wherein the demand has been revised to INR 94,30,007/- after carrying out the rectification of certain mistakes apparent from record.

Ground No. -6: Not pressed

Ground No. 7: The Ld. AO/TPO erred in additionally including the companies in the final comparable set which are otherwise not functionally comparable or are falling the quantitative filters.

Ground No. 8: The Ld. AO/TPO erred in rejecting the comparable compar companies selected in the TP documentation of the Appellant which are passing all the qualitative and quantitative filters; and are functionally comparable to the Appellant.

Ground No. 9: The Ld. AO/TPO erred in rejecting the comparable companies selected by the Appellant, which are functionally similar to the comparable companies selected by the Ld. AO/TPO, thereby applying inconsistent criteria in the comparability analysis and rendering the ALP determination arbitrary and unsustainable.

Ground No. 10: The Ld. AO/TPO erred in rejecting/accepting the following comparable companies which had been accepted by the Ld. DRP/AO/TPO in the Appellant's own case in the past assessment years:

21. Ground No. 710: Grounds on inclusion/exclusion of comparables

Arguments for inclusion of i) Gordon Woodroffe Logistics Ltd.. ii) North Eastern Carrying Corporation Ltd. ('North Eastern'), iii) Patel Integrated Logistics Ltd. ('Patel Integrated'). iv) Globe International Carriers Ltd. ('Globe Carriers')

22. It is prayed that i) Gordon Woodroffe Logistics Ltd., ii) North Eastern Carrying Corporation Ltd. ('North Eastern'), III) Patel Integrated Logistics Ltd. ('Patel Integrated'), Iv) Globe International Carriers Ltd. ('Globe Carriers') should be included as valid

comparables. The arguments for inclusion are given in the subsequent paragraphs.

23. The Ld. TPO rejected these four companies on the ground that they are functionally dissimilar (refer to internal page 8-10 of Ld. TPO's order/page 120-122 of the appeal set)

24. It is submitted that Ld. DRP in Appellant's own case for AY 2017-18 has directed for the inclusion of these four companies on the basis of functional similarity (refer to page 625 of the paperbook) Therefore, the Ld. TPO's basis for rejection of this company does not survive. Since there has been a change in the functional profile of these companies, it is submitted that these four companies should be included as valid comparables on the basis of principle of consistency.

25. It is submitted that all of these companies provide similar services as those provided by the Appellate and passes all the quantitative filters applied by the Ld. TPO. The functional profile of these companies supported by the referencing from their annual reports is given below:

- I. Gordon Woodroffe: engaged in provision of freight transport agency services and freight transport services. It also operates as a custom broker and freight forwarder (to page 2934 and 2963 of AR compilation).*
- II. North Eastern: engaged in provision of transportation and logistics services (refer page 2730 of the AR compilation).*
- III. Patel Integrated: engaged in provision of logistic services and surface cargo transportation of goods (refer page 2849 and 2902 of AR compilation).*
- IV. Globe Carriers: engaged in the provision of freight, logistic and other services (refer page 2665 of AR compilation).*

Ground 11: That Ld. AO/TPO erred in not granting the benefit of working capital adjustment to the Appellant, to account for the difference in the Appellant's working capital position vis-a-vis that of the independent comparable companies. The Ld. DRP

in Appellant's own case for AY 2015-16, AY 2016-17 and AY 2017-18 has granted the benefit of working capital adjustment to the Appellant.

26. On merits and without prejudice to the fact that the action of the TPO is incorrect, it is respectfully submitted that if the adjustment for difference in working capital position of the Appellant vis-à-vis the companies selected by the Ld. TPO along with including only the four comparable companies (Globe International Carriers Ltd., North Eastern Carrying Corporation Ltd., Patel Integrated Logistics Ltd., Gordon Woodroffe Logistics Ltd.) on which DRP has already granted acceptance in AY 2017-18. is allowed to the Appellant, the Appellant's margin would fall within the arm's length range and the entire TP adjustment will be deleted.

27. The aforementioned four comparables were accepted by the Ld. DRP in the Appellant's own case for AY 2017-18, wherein the Ld. DRP, after examining functional similarity, specifically directed their Inclusion. The Appellant earned an operating margin of 13.70% (OP/OPEX) in the Other AEs segment, which has been accepted by the Ld. TPO. However, the Ld. TPO finalised a set of 12 comparables with an arm's length range of 22.72% (35th percentile) to 28.43% (65th percentile) and a median of 27.26%.

28. Upon grant of working capital adjustment, the range will be revised to 12.10% to 31.12% with median of 22.70% and the entire adjustment will be deleted, The detailed calculation of working capital adjustment is given at pages 161-170 of the paperbook.

29. The Ld. DRP in Appellant's own case for AY 2015-16 to AY 2017-18 has granted working capita adjustment and therefore, it should be given in the subject AY on ground of principle of consistency

1) DRP's finding in AY 2015-16: refer para 6.4.2.4 to 6.4.2.5 on page 556 and 557 the paperbook

ii) DRP's finding in AY 2016-17: refer para 6.4.2.4 to 6.4.2.5 on page 596 and 597

paperbook

iii) DRP's finding in AY 2017-18: refer para 5.2 on page 257 of the stay application

30. It is submitted that the facts of the instant year are identical to the earlier years and therefore, following principle of consistency, working capital adjustment should be allowed to the Appellate the instant year. Reliance is placed on the following decisions for the principle of consistency:

- *Commissioner of Income-tax v. Excel Industries Ltd.* [2013] 38 taxmann.com 100 (SC) 28 of the judgement

- *Radhasoami Satsang v. CIT* [1992] 60 taxman 248 (SC) para 13-14 of the judgement

Ground No. 12: The Ld. AO/TPO erred in imputing interest of INR 1,17,466/- on receipt of outstanding receivables from AEs.

Ground No. 13: The Ld. AO/TPO, ignoring the plethora of judicial precedents, appreciating that in the facts of the Appellant, the outstanding receivables is international transaction, and needs to be examined qua the primary com transaction as a result of which the debit balance has come into existence.

31. Ground 12 and 13 General in nature

Ground No.14: on the facts and circumstances of the case and in law, the Ld. AO/TPO erred in making an adjustment on account of notional interest on receivables, despite the Appellant being a debt-free company with no interest-bearing borrowings, where no presumption can arise of extending a benefit to eh associated enterprises.

32. The Appellant is a debt-free company and no interest is payable by the Appellant to its Alpe third parties on account of anything. (for details of long-term/ current liabilities of the Appellant, refer to page 95 of the paperbook, for details of expenses, refer to page 102 of the

33. Therefore, it would not be justifiable to presume that the borrowed funds have been utilized to pass on the facilities to its AEs and the L. TPO also had not brought on record that the Appellant had been found paying interest to its creditors or suppliers on its payables. Thus, the question of receiving any interest on receivable does not arise and the adjustment is completely unsustainable.

34. This issue is squarely covered in principle by decision of Hon'ble High Court of Delhi in *PCIT v. Inductis India (P.) Ltd.* [2023] 157 taxmann.com 87 (Delhi). The relevant paragraphs are extracted below for reference:

"6.2 The fact that the respondent/assessee is debt free is not contested. Given this position, the question is as to whether adjustment on account of notional interest on receivables could have been made.

6.3 This issue stands clearly covered by the decision of a coordinate bench of this court in the case of Pr. CIT v. Boeing India (P.) (P.) Ltd. [2023] 146 taxmann.com 131/457 ITR 84 (Delhi), in which after traversing through various judicial precedents, the court held that the assessee company being a debt free company the question of receiving any interest on receivables did not arise so the adjustment made by the Assessing Officer on account of interest on outstanding receivables was liable to be deleted.

6.4 Earlier, in similar circumstances, the issue came up before the Income Tax Appellate Tribunal in the case of Bechtel India (P.) Ltd. v. Dy. CIT [2016] 66 taxmann.com 6 (Delhi-Trib.) and the Tribunal held that the assessee being a debt free company, it would not be justifiable to presume that the borrowed funds have been utilized to pass on the facilities to its AEs and the revenue also had not brought on record that the assessee had been found paying interest to its creditors or suppliers on delayed payments. This view of the Income Tax Appellate Tribunal was upheld by a coordinate bench of this court in appeal titled Pr. CIT v. Bechtel India (P.) Ltd. [IT Appeal No. 379 of 2016, dated 217-2016], observing that no substantial question of law arose as the Tribunal had returned a finding of fact to the effect that the assessee was a debt free company and a question of receiving any interest on receivable did not arise. Against the said judgment, Pr. CIT v. Bachtel India (P.) Ltd. CC No.(s) 4956 of 2017 preferred by

the revenue was dismissed vide order dated 21-7-2017.

6.5. In the case of Pr. CIT v. Kusum Healthcare (P.) Ltd. [2018] 99 taxmann.com 431/[2017] 398 ITR 66 (Delhi), a coordinate bench of this court also dealt with the amendment brought in Section 928 of the Act by way of insertion of an explanation and held thus:

6.6 That being so, in our view the questions 2.3 and 2.4 proposed by the Applicant/revenue cannot be treated as substantial question of law for present purposes.

Ground No. 15: The Ld. AO/TPO erred in ignoring the fact that the trade receivables ought to be netted-off with the payables towards the AEs.

35. This ground will become academic if Ground No. 14 or Ground No. 17 is allowed.

Ground No. 16 With prejudice to the above grounds of appeal, the Ld. AO/TPO erred in Imputing notional interest on receivables outstanding from the AEs in foreign currency, if ignoring the fact that LIBOR rate without markup should be considered for the purpose of any

This ground will become academic if Ground No. 14 or Ground No. 17 is allowed.

Ground No. 17: The Ld. AO/TPO erred in ignoring that once the working capital adjustment is granted to the Appellant as was granted in the earlier years, that working capital adjustment will subsume the impact of outstanding receivables on profitability and therefore, no further imputation of interest would be warranted.

37. It is submitted that grant of working capital adjustment has been a legacy issue for the Appellant and the Hon'ble DRP itself in earlier years has granted this adjustment to the Appellant. Upon grant of working capital adjustment, the TNMM based transfer pricing adjustment will be reduced to NIL. The adjustment will factor in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis the comparables. Any further adjustment solely on account of overdue receivables would

result in double adjustment and is impermissible in law. This position has been upheld by Hon'ble High Court of Delhi in Principal Commissioner of Income-tax v. Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431 (Delhi)-refer para 8-12. Therefore, once the working capital adjustment is granted, any adjustment on account of overdue receivables will stand deleted.

Ground No. 18: Without prejudice to the above grounds of appeal, the Appellant respectfully submits that the Ld. AO/TPO erred in ignoring the fact that the Appellant has already received interest amounting to INR 37,469 as trading interest.

38. This ground will become academic if Ground No. 14 or Ground No. 17 is allowed.

Ground No. 19: That on the facts and circumstances of the case and in law, the AD erred in initiating penalty proceedings under section 270A of the Act.

39. Consequential in nature

15. Heard rival contentions and perused the orders of the authorities below. On perusal of the directions of the DRP dated 20.05.2024 we observed that the DRP had given similar directions as that of the directions given for the A.Y.2020-21 in respect of the non-BAPA and BAPA issues. The AO appears to have passed final assessment order dated 31.10.2025 without passing draft assessment order. We observed that the facts for the A.Y.2021-22 are identical to the facts for A.Y.2020-21. For the A.Y.2020-21 following the decision of the Hon'ble Delhi High Court in the case of the assessee we have quashed the final assessment order since it was passed without passing draft assessment order and therefore, as the facts being identical the decision taken therein for the A.Y.2020-21 shall apply mutatis mutandis for the A.Y.2021-22. We order accordingly. The final

assessment order dated 31.10.2025 passed u/s.143(3) r.w.s.144C(13) of the Act for the A.Y.2021-22 is hereby quashed.

16. Since we have quashed the final assessment order on legal issue all other grounds on merits need not be adjudicated at this stage as they become academic in nature and therefore, they are left open.

17. Since the appeal for A.Y. 2021-22 in ITT(PA) No. 14/Del/2025 is disposed of, the stay application filed by the Assessee in S.A. No. 597/Del/2025 in ITT(PA) No. 14/Del/2025 is dismissed as infructuous.

18. In the result, the appeals of the assessee are partly allowed as indicated above and the stay application is dismissed as infructuous.

Order pronounced in the open court on 10.04.2026.

Sd/-
[M. BALAGANESH]
ACCOUNTANT MEMBER

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Dated: 10.04.2026

*Neha, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent

3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi