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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2430/Del/2022
(ASSESSMENT YEAR 2016-17)

ACIT, Circle-19(1), New Delhi.	Vs.	M/s POSCO International India Pvt. Ltd., 703, 7th Floor, Tower B Park Centra, Sector-30, Gurgaon-122001. ***PAN-AADCD6191M***
(Appellant)		**(Respondent)**

Department by	Shri Mahesh Kumar, CIT-DR
Assessee by	Shri Amol Sinha, Adv. and Shri Ankit Kumar, Adv.
Date of Hearing	03/06/2026
Date of Pronouncement	19/08/2026

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals) - 44, Delhi ['CIT(A)' in short] in Appeal No. CIT(A), Delhi-7/11258/2019-20 dated 09.06.2022 passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) arising out of the assessment order dated 03.02.2020 passed u/s 143(3) r.w.s 144C(3) of the Act for Assessment Year 2016-17.

2. The appeal filed by the Revenue is delayed by 27 days for which an application dated 29.07.2025 was filed stating that the delay is occurred due to time barring sensitive matter and large pendency of other work in the charge

during the period concerned and further submitted that there was no malafide intention and since there was bonafide reasons thus, the delay be condoned.

3. On the other hand, Ld. AR of the assesse has not objected to the condonation of delay.

4. After considering the request of the Revenue and the facts stated in the condonation application, we find that the AO has reasonable and sufficient cause for delay, accordingly, delay in filing the appeal is hereby condoned and appeal is admitted for hearing on merits.

5. Briefly stated the facts are that the company was incorporated in Financial Year 2010-11, and is a wholly owned subsidiary of Posco Daewoo Corporation (PDC), Seoul, Korea. The assessee engaged in the business of export of Business Support services to the PDC, Trading of Industrial materials on commission basis for overseas companies and also undertakes trading of industrial material on principal-to-principal basis by procuring from PDC for resale on merchant trading basis and exploring opportunity for trading by procuring the various products from domestic market. The return of income was filed on 23.11.2016 declaring total income of Rs.4,23,94,360/- which was revised on 29.11.2016 at same income. The case was taken up for scrutiny and since the assessee was having international transaction with its Associate Enterprises (AEs), therefore, a reference was made to Transfer Pricing Officer (TPO) for determination of Arm’s Length Price (ALP) of international transactions. The assessee has carried out following international transactions with its AE’s:

International transaction	**Total value of transaction (INR)**	**Method Used by Appellant to determine ALP**	**Adjustment proposed by Ld. TPO (INR)**
Trading of industrial material on commission basis	3,21,93,132/-	TNMM using OP/OC as a PLI	Nil
Export of business support services	13,81,22,989/-		Nil
Purchase of finished goods a) Steel slabs b) HRCF coils	66,26,28,762/- 119,74,59,469/-	Resale Price Method	13,42,61,738
Corporate guarantee fees	24,15,666/-		Nil
Purchase of finished goods:	2,24,007/-	CUP Method	Nil
Reimbursement of expenses to associated enterprises ("ACs")	2,34,524/-	Other method under Rule 10AB	Nil

6.1. The TPO vide its order dated 31.10.2019 passed u/s 92CA(3) of the Act has made adjustment of Rs.13,42,61,738/- on the transaction relating to purchase of steel slabs and HRCF coils. Thereafter the AO passed the draft assessment order proposing the addition on account of adjustments made by the TPO towards the international transaction related to trading of industrial material on commission basis and accordingly total income was proposed to be assessed at Rs.17,66,56,098/-. The assesse has not filed any objections against the draft assessment order dated 19.12.2019, therefore, the AO passed the final assessment order on 03.02.2020 wherein the addition proposed in the draft assessment order were made in the hands of the assessee.

7. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) who in terms of the impugned order dated 09.06.2022 has allowed the appeal of the assessee and deleted the ALP adjustment made in the international transaction of trading of material.

8. Aggrieved by the said order, the Revenue is in appeal before the Tribunal by taking following grounds of appeal:

"1. Whether on the facts and circumstances of the case the Ld. CIT(A) was right in law in rejecting the TPO's approach wherein the gross margin calculation done by the assessee is based solely on assessee's own margin with AE and therefore not being the correct application of the Resale Price Method as prescribed in the LT. Rules 1961, (Rule 10B).

2. Whether on the facts and circumstances of the case the CIT (A) was right in law in disregarding the comparables chosen by the TPO without considering the detailed functional analysis as done by the TPO wherein the assessee has itself characterised itself as a trader and bears substantial risks as stated in the TP report.

3. Whether on the facts and circumstances of the case the CIT (A) was right in law in not taking into account the time gap in calculation of margins of HRCF coils wherein it is a well-known fact that the more time that elapses between the original purchase and resale the more likely it is that other factors v.i.z changes in the market, rates of exchange, in costs, technological obsolescence etc will have to be taken into account for correct applicability of the Resale Price Method.

4. Whether on the facts and circumstances of the case the CIT (A) was right in law in accepting the assessee's working of the Resale Price method which was based on only one invoice with foreign AE as tested party and not substantiated by appropriate functional or comparability analysis.

5. Whether on the facts and circumstances of the case the Hon'ble ITAT was right in law in rejecting TPO's approach for suggesting the invoice wise rate for conversion of currency from USD to INR as the average rate keeps on fluctuating and hence not a reliable measure of conversion in comparison to the invoice rate based on that particular date of resale or purchase.

6. The appellant craves leave to add, alter, amend or withdrawn any ground(s) of the appeal raised above at the time of hearing"

9. The facts leading to the issue in hand are that assesse has benchmarked the transactions to be at arm's length except purchases of industrial material (steel slabs and HRCF Coils) which was done on principle-to-principle basis from POSCO, Korea for resale on merchant trading basis. The assessee had benchmarked the transactions by taking resale price method (RPM) as Most Appropriate Method (MAM) by taking its AE as the tested party being least

complex and, *suo motto* made the adjustments for the transactions of trading of steel tube of Rs.1054076/- was made and in respect of HCRF coils, an adjustment of Rs.13,529/- was made in Transfer pricing study report (TPSR) and offered the same for tax. The TPO had accepted the RPM method as MAM however, rejected the AE of the assessee as tested party and had selected 14 comparables and workout the median margin of 11.30% as against the GP ratios of 4.40% declared by assessee on such transactions and made the adjustment of Rs.13,42,61,738/-.

10. Before us, the Ld. CIT-DR vehemently supported the order of the TPO and submits that the assessee has wrongly taken its AE as the tested party and there was no basis for taking the margin of 0.30% in case of Steel Slabs and 0.34% in case of HRCF Coils in its TPSR. The assesse has taken the margin on steel slab and HRFC Coils which was earned by the AE on the trading of the same goods on merchant trade basis with unrelated parties. As per the TPO, this approach is not correct and, accordingly he has selected 14 companies for benchmarking the transactions. Further Ld. CIT DR observed that the assessee is wrongly taken the US$ conversion by taking average rate of US$ to INR which is not correct. He therefore, prayed that the action of the TPO of substituting the comparables as against the AE as tested party deserves to be accepted and the adjustment made by the TPO/AO be restored.

11. On the other hand, the Ld. AR for the assessee vehemently supported the order of the Ld. CIT(A) and submits that the assessee has rightly taken the AE as the tested party as assessee is working under least complex environment where the assessee does assume risk such as market risk, inventory risk, correction risk, quality risk etc. and since goods have been sold on High sea basis, it does not required to maintained any inventory or place for storage of goods. The Ld. AR

further submits that the sales has been booked under letter of credits (LC) and all the purchase and sales were made US$, therefore, there is no credit risk involved in the transactions and neither any working capital was required for making such transaction. Accordingly, taking the AE as the tested party is correct. He, therefore, submits that the Ld. CIT(A) after considering these facts has deleted the addition which deserves to be accepted.

12. Heard both the parties and perused the materials available on record. In the instant case, out of the various international transactions carried out by the assessee with its AEs, only transactions related to trading of industrial material i.e. steel slabs and HRCF Coils have been altered by the TPO where the TPO has made adjustment of Rs.13,42,61,738/- by taking the median margin of Rs.11.30% of 14 comparables as against the 4.40 % declared by the assessee. The claim of the assessee was that its AE should be taken as the tested party as the assessee worked under least complex environment. Whereas the case of the revenue is that the assessee has taken only one invoice as the basis for bench marking the transaction and, therefore, the TPO has selected 14 comparables for benchmarking the transactions. It is observed that the transactions carried by the assessee with its AE of trading of steel HRCF coil are similar to the transactions carried by its AE with the unrelated parties. It is further observed that TPO has doubted the adoption of flat rate of US$ by holding that it keeps on fluctuating however, it does not have any impact since, the purchase and sales transactions are back-to-back transactions which both are carried in US$, therefore, it has no impact on the conversion rate. The assessee traded the goods on high sea sale basis where the assessee does not require to maintain any inventory, thus eliminate the risk of collection risk, market risk etc. It is further observed that all the goods were sold on LC basis thus work

capital requirement is very insignificant. Looking to this facts, the selection of the AE as the tested party is found to be correct. The Ld. CIT(A) appreciated these facts and deleted the addition by making following observations in para 7.4 to 7.20 of its order.

7.4 It is observed that the appellant mainly undertakes export of Business Support services to the AE, POSCO Korea, Trading of Industrial materials on commission basis for overseas companies and also undertakes trading of industrial material on principal-to-principal basis by procuring from POSCO, Korea for resale on merchant trading basis and exploring opportunity for trading by procuring the various products from domestic market.

7.5 It is observed that in the order u/s 92CA(3), the TPO has accepted all the transactions to be at arm's length except purchase of industrial material on principal-to-principal basis from POSCO, Korea for resale on merchant trading basis.

7.6 The appellant benchmarked the transaction of purchase of finished goods (steel slabs & HRCF coils) from POSCO Korea (AE) by selecting resale Price Method ('RPM')as the most appropriate method with AE as the tested party. The comparable margin earned by AE from sale of similar goods to third parties was identified. The margin earned by AE from third party sale was 0.30% for sale of steel slabs and 0.34% for sale of HRCF coils. Basis this margin, the appellant made suo moto adjustment to the transfer prices of Rs. 10,54,076/- in respect of steel slabs and Rs.13,529- on account of HRCF coils.

7.7 The TPO accepted RPM to be the most appropriate method but rejected the use of AE as the tested party by stating that no comparables were used by appellant and comparison has been made with own margins. The TPO rejected the use of Average rate for conversion of currency from USD to INR reasoning that the same keeps on fluctuating. The TPO objected to the use of a single invoice for comparison. Thus, the TPO rejected appellant's methodology and conducted a search for external comparable companies to determine the ALP with GP/Sales margin as the profit level indicator. The TPO selected 14 companies as comparable to appellant. The median margin of the comparable companies of 11.30% was compared with the Gross Profit/Sales ratio of 4.40% earned by appellant which led to the TP adjustment of Rs.13,42,61,738/-.

7.8 It is observed that the TPO has not objected to the selection of RPM as the most appropriate method and foreign AE as the tested party. It is observed that regarding use of foreign AE as tested party, the internationally recognized standard i.e. OECD and UN manuals and also judicial decisions lay down that the tested party should be that party to the transaction which is the least complex entity i.e. one that has the less complex functional analysis. Further, the tested party should be the party in respect of which the most reliable data for comparability is available. In the present case, the appellant has shown that the

AE is the least complex entity for which reliable data for comparability is available and also submitted during assessment and appeal. Thus, as seen from the TP report, the AE performs the less complex functions vis-à-vis appellant. Therefore, the choice of tested party i.e. AE is found to be justified. In any case, the AO/ TPO has not disputed selection of tested party.

7.9 *The TPO has noted that there is no basis of margin of 0.3% in case of Steel Slab &margin of 0.34% in case of HRCF Coils. It has been explained that the appellant used the gross margin earned by POSCO, Korea (AE) from transaction of trading of similar products with unrelated and arm's length parties. The margin of 0.3% & 0.34% on steel slabs and HRF coil respectively are the margin earned by AE for trading of similar product with unrelated parties. The comparative working was provided during the TP proceedings. The detailed working of 0.30% &0.34% margin together with supporting evidence which were submitted during TP proceedings have been submitted during appeal. The same are summarized in the written submission reproduced above. A perusal of the same shows that the appellant was justified in considering 0.30% & 0.34% as the arm's length margin.*

7.10 *It is observed that the appellant carried out trading of steel slabs and HRCF coil in the capacity of merchant trader ie. trading on High Sea sales basis. The Function, Assets and Risk(FAR) analysis of these transactions of trading of steel slabs and HRCF coil has been made in detail to the TP report. The appellant has shown that it does not assume any significant risk such as market risk, inventory risk, collection risk, quality risk, foreign exchange risk etc. as it is not required to maintain any inventory, no credit risk since sales are backed by letter of credit (LC) and both purchases and sales are made in USD as is evident from details of purchase sales, supported contract and purchase and sales invoice. Further, there is no requirement to involve any working capital in these transactions in view of the fact that there was no requirement on the part of the appellant to maintain inventory in view of sales backed by LC in case of HRCF coil and payment to be made to AE after receipt of payment from customer in case of steel slab.*

7.11 *Further, it is observed from the FAR analysis of impugned transaction and the FAR analysis of trading transaction on commission basis carried out by the appellant shows that the transaction of trading of steel slabs and HRCF coil are akin to trading of similar material carried out by appellant on commission basis with AE. The appellant earned commission amount on trading of steel material which are similar to the margins earned from the impugned trading transaction. As the commission transactions have been accepted by the TPO and the FAR analysis of impugned transaction and the FAR analysis of commission transactions have not been disputed by the TPO, the TPO was not justified in drawing a different inference in respect of trading transactions as materially these transactions were akin to the trading*

7.12 *In rejecting the appellant's approach, the TPO has observed that no comparable were used by appellant and comparison has been made with own margins. It is observed that the appellant used the gross margin earned by POSCO, Korea from transaction of trading of similar products with unrelated parties. The same is* *detailed in the TP study as well as summarized in the written submission reproduced above. It is observed that both the parties from whom purchases have been made and subsequent sale have been made are independent unrelated parties and hence gross profit earned by AE from these transactions when used for benchmarking transaction with appellant can be treated as a valid comparable. The gross profit margin earned by AE from these transactions are the margin earned from dealing the similar products with unrelated parties at arm's length price. Hence, gross profit margin earned by the AE from transaction of trading of similar products with unrelated parties can be used as comparable uncontrolled transaction in accordance with Rule 10B(1)(b) of the Income Tax Rules, 1962 to be used as benchmarking under Resale Price Method.*

7.13 The TPO has also observed that adopting the average rate of USD was not correct as it keeps on fluctuating. In the TP study, the appellant has given complete working of arriving at the average rate. Further, it is also observed that there will be no impact of conversion from USD to INR since both the purchase and sale transactions are back-to-back transactions which are carried out in USD. Thus, the rate of USD would not impact the transfer price as both the transactions are carried out in USD at the same time. Without prejudice to this, it is observed that the USD - INR exchange rate day wise prevailing during FY 2015-16 shows that the maximum rate of USD during the entire year was Rs. 66.4383 on 15.09.2015. Even if this rate is applied, though which will not be correct, the same will alter the adjustment made by the appellant total by only about Rs. 15,000/. Thus, this issue raised by the AO is not material and the observations of TPO in this regard are not based on proper appreciation of facts.

7.14 The TPO has observed only one invoice is taken for working out ALP. It is observed that as per sub-clause (i) of Rule 10B(1)(b), either "a comparable uncontrolled transaction", or "a number of such transactions" can be used for the application of RPM. Therefore, the TPO's objection is legally not justified. Further, it is observed that the comparable uncontrolled transaction is a material transaction in comparison to the impugned transaction i.e. 138% of actual transaction in case steel slab and 33% of actual transaction in case of HRCF coil. Therefore, the objections of TPO in this regard, are not justified, on facts and in law.

7.15 The TPO has observed that for purchase of HRCF coils, there is a time gap of approximately two months between the date of sale and date of purchase. It has been shown that there is no time gap between the date of sale and date of purchase in the impugned transaction. As per facts on record arising from sales and purchase contracts and invoices, the appellant had first secured the sales contract dated 15.08.2015 and subsequently placed order for purchases with AE vide contract dated 26.08.2015. Therefore, there can be no material functional, asset or risk changes between the date of impugned international transaction and the benchmarked transaction on account of alleged time gap of approximately two months between the date of sale and date of purchase. Hence, this objection is also not justified.

7.16 Further, the appellant has filed copy of segmental information available in audited Balance Sheet of AE which shows that the AE has incurred loss in trading segment during the calendar year 2015 and 2016 as per details below:

(Amount in Korean won in Millions)

Year	Sales	Loss Before Tax
2015	1,61,67,171	1,05,495
2016	1,48,49,191	86,652

Therefore, it is clear that AE has not earned margins better than declared by the appellant despite the fact that AE is taking material risk of credit and inventory. This also shows that no further adjustment was warranted in this case.

7.17 The above discussion shows that the approach of the appellant in the TP study in benchmarking the transaction was correct and the TPO was not justified in rejecting the same for various reasons.

7.18 Now, the approach of the TPO is also analyzed. The TPO has selected TMM as the most appropriate method to determine arm's length margin. It is observed that it is internationally settled and judicially recognized position that in case of trading of goods where purchases have been made for resale. Resale price method is most suitable method and preferred over TNMM method. In following decisions, it was held that in case of Trading of Goods on high sea sale basis, Resale Price Method is most appropriate method for determining arm's length price of international transactions:

- *Fujitsu India (P.) Ltd. 132 taxmann.com 279 (Delhi - Trib.) (2021)*
- *Brother International (India) (P.) Ltd. 114 taxmann.com 695 (Mumbai - Trib.)(2020)*
- *Renfro India Pvt. Ltd. 128 taxmann.com 303 (Mumbai - Trib.) (2019)*
- *Michelin India Tyre (P.) Ltd. 107 taxmann.com 185 (Delhi - Trib.) (2019)*
- *Ecolab Food Safety & Hygiene (P.) Ltd. 108 taxmann.com 381 (Mumbai - Trib.)(2019).*

7.19 It is further observed that the most of the comparables selected by the TPO are engaged in manufacturing activity of steel product, whereas neither the appellant nor AE has carried out any manufacturing activity in the impugned international transaction. The impugned international transaction is purely merchant trading transaction where both leg of transactions i.e. purchase and sales are in pursuance of merchant trade as against manufacturing and subsequent sales. None of the comparable selected by TPO are engaged in trading Steel Slab and HRCF Coils on merchant trading basis where risks are minimal and functions and assets build up/ involved are distinct. As such these comparable adopted by TPO are functionally different and are also not comparable in view of differential risks and assets involved. Therefore, the comparables chosen by the TPO were not valid comparables.

> *7.20 In view of the overall discussion made above, it is concluded that the AO was not justified in making any adjustment over and above, the same already suo-moto made by the appellant. The addition / adjustment is unjustified and is therefore, deleted. These grounds are allowed.*

13. Before us, the Revenue has failed to controvert the aforesaid findings given by Ld. CIT(A) where the Ld. CIT(A) has examined all the facts and, hold that the comparables selected by the TPO are functionally different and are not comparable looking to different risks involved. Ld. CIT(A) further observed that the comparables selected are engaged in the manufacturing activity of the steel products whereas neither assessee nor its AE carrying out manufacturing activity and the international transactions were purely the merchant trading transactions. Ld. CIT(A) further observed that the assessee worked under least complex, environment and therefore, taking its AE as tested party could not be held as incorrect approach. In view of the above, we find no error in the order of Ld. CIT(A) deleting the additions made which order is hereby upheld. Accordingly, all the grounds of appeal of Revenue are dismissed.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.08.2026.

Sd/-	***Sd/-***
(SATBEER SINGH GODARA)	**(MANISH AGARWAL)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:19.08.2026
PK, Sr. P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI