

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एल' मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "L" BENCH,  
MUMBAI**

सर्वश्री पी.एम.जगताप, ले.स. एवं श्री अमित शुक्ला, न्या.स. के समक्ष ।

**BEFORE SHRI P.M.JAGTAP, AM & SHRI AMIT SHUKLA, JM**

आयकर अपील सं./ ITA No.2056/Mum/2006.

(निर्धारण वर्ष / Assessment Year: 2002-2003)

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|---|-----|---|
| DCIT CIR-4(2), Mumbai                           | Vs. | Firmenich Aromatics (I) P. Ltd.,<br>74/II, C-Cross Road, MIDC,<br>Andheri (E), Mumbai-93. |
| स्थायी लेखा सं./जीआइआर सं./PAN No. AAACF 1621 M |     |   |
| (अपीलार्थी /Appellant)                          | :   | (प्रत्यर्थी / Respondent)   |

अपीलार्थी-राजस्व की ओर से / Mr. Ajit Kumar Jain

Appellant/Revenue by :

प्रत्यर्थी-निर्धारिती की ओर से/ Mr. P.J.Pardiwalla

Respondent-Assessee by :

सुनवाई की तारीख / Date of Hearing : 7<sup>th</sup> May 2012

घोषणा की तारीख /Date of Pronouncement : 6<sup>th</sup> July, 2012

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M.) :**

This appeal has been filed by the department against order dated 23-1-2006, passed by the CIT(A)-IV, Mumbai for the quantum of assessment passed under Section 143(3) read with section 92CA(3) for the assessment year 2002-2003 on the following grounds of appeal:-

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of ₹.5,13,99,552/- made on account of computation of arms' length price in terms of provisions of Section 92C of the IT Act, 1961..

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the SH Kelkar & Co. be eliminated fro the list of comparables and to consider the final comparables considered by the assessee in its Transfer Pricing Study Report as the correct comparables.*
3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not confirming the findings in the Transfer Pricing Officer as contained in the Order u/s.92CA(3) of the IT Act, 1961.*
4. *Further, placed in the above factual and legal scenario, the impugned order of the Ld. CIT(A) is, the appellant prays, patently perverse and contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored.*
- . *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

2. The solitary issue involved in this case relates to addition of ₹.5,13,99,552/- made on account of computation of 'arms length price' (ALP) in terms of section 92C. The brief background of the case are that, the assessee is a joint venture company, which was founded by virtue of joint venture agreement dated 21-8-1987. It is engaged in business of manufacturing of industrial fragrance, flavours and chemical specialities. These are used for manufacturing of soaps, detergents, cosmetics, toiletries, foods, pharmaceuticals etc. The major customers of the company are Hindustan Lever, Coca Cola India Pvt. Ltd., Dabar India Ltd., Ranbaxi Laboratories Ltd., Cadbury India Ltd. and Parle International P. Ltd.. During the year, gross sales of the company was disclosed at ₹.86.61 crores, profit before tax was shown at ₹.4.80 crores and its return of income was filed at ₹.98,35,360/- on 31-10-2002. During the year, the assessee had

international transactions with its associated enterprises (AEs). The details of which have been provided in form No.3CEB filed along with the return of income. During the course of the assessment proceedings, it was observed that the assessee had imported raw materials of ₹.13,02,03,827/- from AEs and has also exported finished goods of ₹.1,64,48,490/-. Besides this, the assessee had also received agency commission of ₹.1,01,57,334/- from AEs and also paid commission of ₹.8,57,728/-. In respect of these international transactions, the Assessing Officer made a reference to TPO for determination of arms' length price. The TPO in response, vide order dated 25-6-2004 held that operating profit of the assessee should be further adjusted by an amount of ₹.5,22,88,125/-, the break up of which are as under :-

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|---|--------------|
| On account of commission paid to<br>Firmenich Asia, Singapore   | ₹.857,728    |
| In respect of international transactions of<br>Export of Finished Goods to AE in South Africa   | ₹.30,875     |
| In respect of international transaction of import<br>of raw materials and export of finished goods to<br>AEs in Switzerland and Singapore | ₹.51,399,522 |

Accordingly, the additions were made by the Assessing Officer in the assessment order.

**3.** So far as addition on account of arms' length price on account of commission paid to AEs and in respect of international transaction on export of finished goods to AE, this issue has been settled at the stage

of CIT(A) and is not before us. The only issue for adjudication in this case is with regard to addition of ₹.5,13,99,522/- in respect of international transaction of import of raw materials and exports of finished goods to AEs.

4. The brief facts apropos this addition are that, the assessee had filed Transfer Pricing Study Report (TPR), wherein it has benchmarked various international transactions relating to manufacturing activities for determining its international transactions. The most appropriate method adopted in the TPR was 'Transaction Net Margin Method' ('TNMM'). For identifying the comparable companies, the assessee carried out extensive search process and identified the companies engaged in business of manufacturing of fragrances. Benchmarking process was based on data of the comparable companies for the immediate previous financial year i.e. March 2000 and March 2001. In the search process, initially the assessee identified list of thirty-five companies and after filtering down, following five companies were finally identified as the comparables :-

- “i) AVT Natural Products Ltd.**
- ii) Fem Care Pharma Ltd.**
- iii) Goldfield Fragrances Ltd.**
- iv) J K Helene Curtis Ltd.**
- v) Synthite Industrial Chemicals Ltd.”**

4.1 The arithmetic mean of the operating profit of these comparable companies were audited at 10.19%, as against of 9/94% of the assessee.

5. The TPO, however, rejected most of the comparable companies identified by the assessee, except for 'Goldfield Fragrances Ltd. which was taken as a comparable entity. He further included 'SH Kelkar & Co. Ltd.' as a comparable company and worked out the arithmetic mean of the operating margin of two comparable companies at ₹.16.085% as compared to operating margin of 9.94% of the assessee and accordingly suggested the adjustment to the income of the assessee at ₹.5,13,99,522/-, on the assessee's entire turn over. The sum and substance of TPO's rejection of comparable entities identified by the assessee company and inclusion of S H Kelker & Co. Ltd. as comparable case are as under :-

- i) Regarding 'AVT Natural Products Ltd.,' the TPO observed that the product line of the tested party and the comparable entity was totally different, hence, same cannot be included in the list of comparables.
- ii) In the case of Fem Care Pharma Ltd., the TPO observed that this company is engaged in the manufacturing of creams and ointments, liquids, tablets and chemicals. This company has pharma division and a chemical division and considering the product line of this company,

it is entirely different from the products as well as line of business of the assessee.

- iii) In the case of 'J K Helen Curtis Ltd.', the TPO observed that this company is engaged in cosmetics and toiletries preparations and is dealing with a premium brand like Park Avenue which is a totally a different product from the assessee, hence, it cannot be taken as comparable case for determining arms' length transaction.
- iv) So far as Goldfield Fragrances Ltd. is concerned, the same was accepted by the TPO, so there is no dispute as far as this company being included as comparable entity.
- v) Regarding inclusion of comparable case of 'SH Kelkar Co. Ltd.', the TPO rejected all the objections of the assessee, which has been discussed at length not only in the TPO's order, but also in the appellate order from pages 13 to 18. The TPO's main contention are that it is not only in the similar product line but also nature and function are quite similar. Therefore, all the contentions raised by the assessee are baseless and not supported by any evidence.

**6.** Before the CIT(A), the assessee submitted that it is manufacturing industrial fragrances and flavours and catering to customers like Hindustan Lever Ltd., Henkel India Ltd., Coca Cola India Pvt. Ltd. and Colgate Palmolive India Ltd., all of them are FMCG

and MNC clients . It prepares compounds industrial fragrances and flavours from the raw materials supplied by various third parties i.e. locally and also importing it from its affiliates. These fragrances and flavours are compounded, using the proprietary formula developed by the Firmenich Group. Each product is unique and tailed made to the requirements of the clients and is used for manufacturing specific soaps, detergents, cosmetics, toiletries, foods beverages, drugs, tobaccos, pharmaceuticals, etc. It was after intensive research of similar type of companies, the assessee has identified 35 comparable companies and after filtering it down and taking into consideration various parameters, only five companies were ultimately identified as comparable companies for evaluating its arms' length price for the international transactions. The operating margin of the five comparable companies was worked out at 10.19% whereas the company has earned a profit margin on 9.97% on the sales. Therefore, its arms length price of its international transactions was fully acceptable. The reasoning given by the TPO that comparable companies do not deal in same products was wholly erroneous as the product similarity is not the sole criteria for inclusion or exclusion of comparable case. There are other parameters which are to be taken into consideration. Regarding inclusion of 'SH Kelker Company Ltd.', the assessee submitted that the same is not comparable at all for the purpose of computing arms length price for the following reason :-

- (a) There was age and formation difference, as the 'SH Kelker & Group' was founded in 1922 and it is India's largest fragrance and flavour creator and bulk manufacturers. It is multi located, vertically integrated organisation and has huge experience in the Indian perfumery market as compared to the assessee which was incorporated in January 1997 and started its commercial activities in April, 1997 and is not multi-located.
- (b) That the basic functional difference between two is that 'SH Kelkar', undertakes research and development activities with continued backward integration and use of state of art technology. Further it is not only dealing in fragrances but also manufactures aromatics chemicals for captive consumption as well as sales to outside parties, whereas the assessee is engaged only in compounding products and does not undertake any research and development activities.
- (c) There is an operational difference between the assessee and 'S H Kelkar Co. Ltd.' as it manufactures, right from the raw materials to industrial final product with an added advantage of backward integration, whereas the assessee is engaged in compounding of various raw materials purchased from various third parties under the product



formulations supplied by one of the JV partner JB Firmenich.

- (d) There is know-how and technology facility difference. The 'S H Kelkar & Co.' has in-house research laboratory and for optimum use of natural resources, it has developed high yielding varieties of aromatic plants, whereas the assessee does not have any research laboratory and does not own any such farm.
- (e) Marketing and customers base difference :- The 'SH Kelkar & Co.' caters mainly to small and medium size enterprises which makes it easy for big manufacturing company like it, to command better prices from customers being smaller in size, whereas the assessee supplies to big MNCs in bigger volumes. Therefore, the profitability of SH Kelkar is far more than the assessee. Further the SH Kelkar Company has huge dealer network all over India and its representative are placed in various cities, whereas the assessee is only catering to few multinational companies.
- (f) There is also product segment difference as almost half of the sales of the Kelkar company is from sales of Aromatics chemicals (raw materials) which are essential to manufacture industrial fragrances. The Kelkar company has installed capacity for manufacturing aromatics

chemicals of more than 700 MT and for manufacturing fragrances around 90 MT, as compared to the assessee which does not manufacture aromatics chemicals and does not have any advantage on that account.

- (g) There is financial and other differences like Kelkar has net worth of ₹.1068 millions with loan funds of ₹.129 millions and further it has invested ₹.356 millions in assets and its turn over is ₹.1241 millions out of which material cost is 759 millions and in terms of percentage it is 61%. As compared to this the assessee has net worth of ₹.118 millions, with loan funds of ₹.204 millions and has invested ₹.97 millions in assets. The turn over of the assessee is 749 millions, which is almost half of the Kelkar Company.
- (h) Lastly, there is book share value difference between the two.

Various other factors were also highlighted which have been incorporated in detail in the appellate order.

7. Learned CIT(A) after considering the submissions of the assessee, held that four comparable companies, which have been rejected by the TPO should be included in the comparability analysis for determining arms length price and also agreed to the contention of the assessee to exclude 'M/s S H Kelkar & Company' for the reasons given by the assessee. Accordingly, he directed the Assessing Officer

to eliminate M/s S H Kelkar & Company from the list of comparable and also directed to consider all the final comparables shortlisted by the assessee in its TP study report. This finding of the CIT(A) has resulted into deletion of entire addition as have been made by the Assessing Officer.

**8.** Learned CIT DR, submitted before us that even though products similarity is not required in TNMM, however, it cannot be absolutely dissimilar in considering the comparability analysis. He submitted a print out of the product profile of all the companies and submitted that four comparable case which has been rejected by the TPO, have been dealing with entirely different product line for example 'Fem Care Pharma Ltd.' is dealing in manufacturing of creams and ointments, liquids, tablets and chemicals and high value intermediates which is entirely different from the assessee. Even the manufacturing process and R&D involved by the said company, is not comparable to the assessee. Likewise 'JK Helen Curtis Ltd,' is involved in manufacturing of perfume sprays, body deodorants, room freshners, cologne and owns the brand name of 'Park Avenue' which has a very huge premium in the market. Such a company cannot be in any manner be considered as comparable case vis-à-vis the assessee company. Regarding other two companies, he submitted that, they also by and large in a different product line and functional analysis is also different.

**8.1** Regarding inclusion of 'SH Kelkar & Company', he submitted that the reasoning given by the assessee that age and formation of a company is an important factor, cannot be accepted as the age cannot be the criteria for inclusion or exclusion for comparability analysis. If this is the criteria then most of the companies identified by the assessee are also very old, for example JK Helen Curtis Ltd, is more than 40 years old and other companies are also have substantial years of experience. Thus, the age cannot be the relevant factor. Regarding basic functional difference relating to R&D activities, he submitted that in assessee's case R&D is taken by the parent company which is supplying raw materials and the purchase price includes R & D also and, therefore, it is included in the cost of purchase price. Similarly, the operational, know how and technical differences, he submitted that the same is also embodied in the cost price of the material supplied by the parent company. For the other difference like product segment difference, the marketing and customers buyers difference, he submitted that nothing is borne out from the records in support of the assessee's contention. Lastly, regarding book share value of the company, it was submitted that how book value of shares can be applied for comparability analysis and such a contention of the assessee is wholly absurd and not at all relevant in transfer pricing. He, thus, submitted that the reasoning given by the TPO is absolute correct.

9. On the other hand, learned Senior counsel on behalf of the assessee submitted that the assessee's operating margin of 9.94% is fully comparable with the ALP of assessee's international transactions and transfer pricing for the various years. In support of this, a chart was furnished showing the operating margin from the assessment years 2002-2003 to 2010-2011. From the said statement, it was submitted that operating margin of the assessee for the assessment year 2002-2003 is wholly comparable with the other years. So there was no need to determine the ALP by the TPO under Section 92CA (3). He also submitted the copy of the TPO's order under Section 92CA(3) for the assessment years 2003-2004 to 2007-2008, wherein the assessee's profit margin was found to be at arms length price for the international transactions. He, thus, submitted that in view of these facts, the operating profit margin of 9.94% shown by the assessee is liable to be accepted. He further submitted that the major flaw in TPO's adjustment is that it is not restricted to adjustment in international transactions but to whole of transactions i.e. for the entire turn over which is absolutely erroneous as the adjustment has to be made only with transactions with AEs. Regarding four comparable companies included by the assessee, he submitted that in case of 'Synthite Industrial Chemicals Ltd.', 'AVT Natural Products Ltd.', the products of the assessee as well as these companies by and large are on the same line. He also referred to the product profile of these companies and submitted that these companies were also engaged in

manufacturing of various types of flavours, fragrances used for different products. He further submitted that product similarity should not be the criteria. Overall functionality, business profile and operations should be taken into account, under TNMM. Regarding inclusion of 'SH Kelkar & Company', he reiterated the same submissions as was given before the TPO as well as CIT(A), wherein detailed discussions have been made. He further submitted that the comparable price charged by the AEs to unrelated parties is for more and this aspect of the matter which was submitted before the TPO vide letter dated 2-3-2004, (copy of which has been filed along with the paper book from pages 63 to 65) has not been considered at all. Thus, there was no occasion to determine the arms length price for the international transaction in the case of the assessee.

**10.** We have carefully considered the rival submissions of the parties and also gone through the finding of the CIT(A) as well as the TPO and the materials as have been relied upon by the parties at the time of hearing. There is no dispute that here in this case, most appropriate method for determining 'arms length price' is 'Transactional Net Margin Method' (TNMM), wherein the 'arms length price' is determined by comparing the operating profit relative to an appropriate base i.e. cost, sales, assets of the tested parties with the operating profit of an uncontrolled party engaged in comparable transactions. The assessee in his TP report has finally identified five

comparable companies after filtering down various parameters. Out of such five companies, four has been rejected by the TPO and one company i.e. SH Kelkar and company has been included which has been objected to by the assessee. Once the assessee in its TP report has accepted the TNMM as most appropriate method and after carrying out intensive search of comparable companies, have short listed five companies for comparability analysis, then we do not find any merits in the contention of the learned Senior Counsel that the operating profit shown by the assessee should be accepted solely on the ground that in subsequent years the TPO has accepted the operating margin shown by the assessee or there is no need for making any adjustment in arms length price on the ground that the transactions with unrelated parties are also similar. In this case, we have to examine whether the comparable companies finally filtered and shortlisted by the assessee can be considered for comparability analysis or not and whether one comparable case which has been included by the TPO, is to be included in the list of comparable cases. Before the TPO as well as CIT(A), extensive arguments have been made with regard to inclusion of comparable parties selected by the assessee and exclusion of one company included by the TPO. We, therefore, proceed to examine such companies included for comparability analysis.

**10.1 AVT Natural Products Ltd. :-** This company has been included by the assessee in its TP report, as it was dealing in products like marigold extracts used for various products of food, spice, oil and spice oleoresins, food colours, vegetables flavours and flavours for tea. Though there is a significant product diversity, however, this can be broadly categorised into manufacturing of flavours which is also one of the flavours manufactured by the assessee. The TPO has not brought out anything for rejecting the said company as comparable case except for the fact that there is a product dissimilarity. There is also no comment by him about the functional attributes, process attributes and other business functionality. In absence of any such finding, the reasoning given by the CIT(A) for accepting this company for comparability analysis seems to be based on sound footing and, therefore, we do not feel incline to interfere with such a finding and accordingly we uphold the inclusion of 'AVT Natural Products Ltd' for comparability analysis.

**10.2 Fem Care Pharma Ltd. :-** This company is wholly into manufacturing of bulk and high value intermediates in pharmaceuticals. The functions of this company is entirely different to that of the assessee. The TPO has brought out on record that the company is engaged in the manufacturing of creams, ointments, liquids, tablets and chemicals. It is also involved in pharmaceuticals and chemicals, which is entirely different not only in function and



nature of business but also in the products manufactured by the assessee company which is mostly fragrances and flavours. The profile of the comparable company as made available at the time of hearing shows that there is a vast difference in the functions, the nature of business and other attributes carried out by this company, vis-à-vis the assessee. On these facts, we do not find any reason to include this company into comparable case for comparability analysis. Hence, we uphold the finding of the TPO in rejecting this company from list of comparables.

**10.3 Goldfield Fragrances Ltd.** :- There is no dispute regarding inclusion of this company as a comparable case. Hence, the same is accepted in the list of comparable case.

**10.4 'J.K.Helen Curtis Ltd.'** :- This company is basically engaged in manufacturing of perfumes, sprays, body deodorants, room freshners, cologne, etc. All these products are marketed under the brand name of 'Park Avenue'. All these brands have a high premium value and has a very niche market. Thus, not only the products are different but also the functions performed and the nature of business are also different as compared to the assessee which is manufacturing products like fragrances, flavours and other compounds only to certain multinationals companies. The profile of this company, as placed before us, reflects that functional attributes are entirely different from the assessee, therefore, we do not find any reason to include this

company for comparability analysis. Hence, the same is excluded from the list of comparable cases.

**10.5 Synthite Industrial Chemicals Ltd.**:- This company is engaged in manufacturing of oleoresins, essential oils, spices, natural colours, natural fragrance, nutraceuticals, antioxidants, beverage flavourings etc. which is not only broadly similar to the products manufactured by the assessee but also falling the same category of business which is functionally similar. The reasoning given by the CIT(A) for including the said company in the list of comparable cases seems to be correct and, therefore, we uphold the inclusion of this company as a comparable case.

**11.** Now, coming to whether the comparable case of '**SH Kelkar & Company**' included by the TPO is correct or not, it is seen that the assessee has objected to the inclusion of the said company on various grounds viz., :-i) age and formation difference; ii) basic functional difference; iii) operational difference; iv) know-how and technology facility difference; v)Marketing and customers base difference, vi) product segment difference; vii) financial and other differences and viii) book share value difference. So far as the first difference of age and formation, we do not find any merit in the contention of the assessee as the age and formation of the company cannot be the criteria for rejecting the company for comparability analysis. If that is the criteria,

then as pointed out by the learned CIT DR, most of the companies which have been included by the assessee are also substantially old companies for example 'J.K. Helene Curtis Limited,' is more than 40 years old company and 'Synthite' is also around 30 years of old. Similarly, the other companies are also between 15 to 20 years old. The age and formation of the company cannot be the criteria or a relevant factor for excluding or rejecting the case for comparability analysis. This reason based on age and formation is not accepted. The second difference is of basic function. It has been stated that the 'M/s S H Kelkar & Company' undertakes research development activities and has continued backward integration and it uses state of art and technology. However, there is no dispute that the assessee and 'SH Kelkar' are engaged by and large in similar products and the functions performed are also quite similar. The only reason given by the assessee is that it has a huge R& D back up with continued backward integration. In the case of assessee, R&D is taken by the parent company, which is supplying raw materials. Thus, the purchase price of raw materials procured from parent company does have the element of R & D which is embodied in it. However, the assessee's contention that there is a substantial cost advantage on account of backward integration and to some extent of research and development has some merits. We, accordingly, direct that some reasonable adjustment for backward integration and element of research and development on the cost should be made. Therefore, we direct the

TPO to make suitable and reasonable adjustment on account of R&D and backward integration. The next difference which has been pointed out is operational difference as the SH Kelkar & Company Ltd, is involved in manufacturing of flavours, fragrances and aromatics chemicals, whereas in the case of assessee most of the materials are supplied by the third parties. This contention of the assessee also seems to have some merit and, therefore, we direct the TPO to make a suitable and reasonable adjustment for the raw materials also. The other difference which has been identified by the assessee is know-how and technology facility difference. This difference does not make any significant difference as nothing has been brought on the record about the know-how and technology facilities of the assessee and how it is different from 'SH Kelkar & Company'. We have already given direction to the TPO for making suitable adjustment for R&D, backward integration and in cost of raw materials, which will take care of this difference also. The next point is of Marketing and customers base difference. The assessee's contention that the assessee is having larger customers in comparison to that of 'SH Kelkar & Company', who has a smaller customers, we do not find much substance in such an argument as the assessee's supply to the multinationals companies provides some kind of stability in by and large sale price, in comparison to companies who are dealing with various customers wherein there could be huge variation of selling price. This factor cannot be said to be of any advantage in overall

comparability with 'SH Kelkar & Company' and the assessee. In case of SH Kelkar & Company, the risks assumed could be more and this factor cannot be ruled out. The next point is product segment difference. This also does not seem to be of a significant difference as both the assessee and SH Kelkar & Company are involved in industrial fragrances and flavours. Slight variation in products will not make a difference which has been the main reasoning of the CIT(A) while excluding the said company from the comparable case. The next difference is financial and other differences and book share value difference. Such factors cannot be the criteria for comparability, as in the TNMM method, the operating profits has to be seen in relation to cost, sales and assets of the tested party. Such a difference, in our opinion, is of no significance and hence, we reject the same. Thus, in our opinion, the TPO has rightly considered 'M/s SH Kelkar & Company' as a comparable case for performing comparability analysis for determining arms length price and in taking the operating profit. However, while drawing the comparability analysis, suitable and reasonable adjustment on account of backward integration, research and development and cost of raw materials should be made. Accordingly, the TPO is directed to work out the operating profit after making these adjustments.

**12.** In view of the finding given above, we direct the TPO to work out the operating profit and take the "arithmetic mean" of the final four

comparable cases i.e. 'AVT Natural Products Ltd. '; 'Goldfield Fragrances Ltd. '; 'Synthite Industrial Chemicals Ltd.' and 'S H Kelkar & Company Ltd.' with certain adjustments. The TPO is accordingly directed to work out the arithmetic mean of these four companies for determining the arms length price of the assessee company for the international transactions. It is also made very clear that the TPO will restrict the adjustments to the transactions with the AEs only and not to whole of the transactions/turn over. Further, while arriving at the arithmetic mean of the operating profit of the comparable companies, if the difference is less than +/- 5% as given in Section 92C(2), then the benefit of the Section 92C(2) should be given in accordance with the law.

13. Accordingly, department's ground are partly allowed on the direction given above.

14. In the result, appeal of the revenue is partly allowed for statistical purposes.

परिणामतः राजस्व की अपील सांख्यिकीय उद्देश्य के लिए आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 6<sup>th</sup> July, 2012 .

आदेश की धोषणा खुले न्यायालय में दिनांक: 6<sup>th</sup> July, 2012 को की गई ।

Sd/-

Sd/-

( पी.एम.जगताप )

( अमित शुक्ला )

( P.M.JAGTAP )

( AMIT SHUKLA )

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 06 / July /2012

प्र.कु.मि/pkm.नि.स./PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai