आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.Nos.881 to 884 & 995/Chny/2018**
(निर्धारणवर्ष / Assessment Years: 2008-09 to 2011-12 & 2012-13)

M/s. Kamivisa Products, C-7, Industrial Estate, Thattanchavady, Puducherry-605 009.	Vs	Deputy Commissioner of Income Tax, Puducherry Circle, Puducherry.
PAN: AAEFK 3686J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. N.Arjunraj, C.A for Mr.S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.S.Chandrasekaran, JCIT

सुनवाईकीतारीख/Date of hearing	:	06.09.2022
घोषणाकीतारीख /Date of Pronouncement	:	21.09.2022

आदेश / O R D E R

PER G. MANJUNATHA, AM:

This bunch of five appeals filed by the assessee are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals), Puducherry, all dated 19.02.2018 for the relevant assessment years 2008-09 to 2012-13. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2008-09 are reproduced as under:-

"1. The common order of The Commissioner of Income Tax (Appeals), Pondicherry dated 19.02.2018 in I. T.A.Nos.201 to 204/CIT(A)-PDY/2016- 17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the addition pertaining to the presumed cost difference of the goods transferred to the branch at Gauhati in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the transfer pricing analysis was correctly made and ought to have appreciated that the transfer price of the goods under consideration from Pondicherry unit to Gauhati unit was wrongly substituted under facts and in the circumstances of the case on misconstruction of the facts and law, thereby vitiating the related findings.

4. The CIT (Appeals) failed to appreciate that the comparable analysis carried out to determine the ALP was wholly unjustified and ought to have appreciated that the product distinction while making the comparable analysis was completely missed thereby vitiating the addition made in the computation of taxable total income.

5. The CIT (Appeals) failed to appreciate that the presumption of transfer price at lower rate was not correct and ought to have

appreciated that the detailed transfer pricing analysis furnishing at various stages were rejected without reasons.

6. The CIT (Appeals) failed to appreciate that the entire reworking of the branch transfer as reflected in para 5.8 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.

7. The CIT (Appeals) failed to appreciate that the submissions filed at various stages even though reproduced was not considered in proper perspective, thereby vitiating the findings from para 5.11 to para 5.14 of the ***impugned order.***

8. The CIT (Appeals) failed to appreciate that the presumption of tax evasion was wholly unjustified and ought to have appreciated that having not questioned the transaction of branch transfer and having not analyzed the facts to determine the difference in the product transacted by the Appellant and by the comparable entity, the presumption of tax evasion in ***such circumstances was bad in law.***

9. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law."

3. Brief facts of the case are that the assessee firm is engaged in the business of manufacturing and sale of absorbent wicks, filters etc. filed its return of income for the impugned assessment years u/s.139(1) of the Income Tax Act,

1961. The assessee is having two units, one at Puducherry and another at Guwahati. The assessee manufactures ordinary and special wicks for M/s.Godrej Saralee Ltd. The Puducherry unit had claimed deduction u/s.80IB of the Income Tax Act, 1961 and Guwahati unit had claimed deduction u/s.80IC of the Income Tax Act, 1961, During the course of assessment proceedings, it was noticed that Guwahati unit purchased wicks at lower cost price from Puducherry, whereas from very same products has been purchased from M/s. Aeroaroma Home Care Products, Puducherry at higher price. The Guwahati unit purchased absorbent wicks @ 0.43 per unit from its Puducherry unit, whereas it has purchased very same absorbent wicks at Rs.0.78% per unit from M/s.Aeroaroma Home Care Products, Puducherry. During the course of assessment proceedings, the Assessing Officer called upon the assessee to explain as to why under-invoicing of products to Guwahati unit cannot be reworked for the purpose of deduction u/s.80IB of the Income Tax Act, 1961. In response, the assessee submitted that although, it has purchased very same product from two different suppliers, one from its own unit at Puducherry at lesser rate, when compared to purchase

from third party by paying higher price, but fact remains that products supplied by the assessee's own unit at Puducherry are at semi-finished stage, whereas products supplied by third party supplier are fully finished goods which are ready for next level of production. The assessee further contended that Guwahati unit has spent further amount towards making products purchased from Puducherry ready for use at next level. If you consider said cost, then purchase price paid by the assessee to its Puducherry unit and purchase price paid to third party is almost equal and thus, question of making additions towards under-invoicing does not arise.

4. The Assessing Officer was not convinced with the explanation furnished by the assessee and according to A.O., the assessee has shifted profit from Puducherry unit to Guwahati unit to claim higher tax benefit by way of deduction u/s.80IC of the Income Tax Act, 1961 @ 100% profit which is evident from fact that Puducherry unit is claiming deduction u/s.80IB of the Act @ 25%, whereas Guwahati unit is claiming 100% deduction towards profit derived from the business. Therefore, the Assessing Officer opined that the assessee has

shifted profit to get tax benefit and hence, compared price paid by the assessee to its Puducherry unit with price paid to third party supplier M/s.Aeroaroma Home Care Products and made additions to total income.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee reiterated its arguments taken before the Assessing Officer and submitted that the Assessing Officer has erred in making additions towards under-invoicing of supplies to Guwahati unit by comparing price charged by third party suppliers without appreciating fact that price pattern of each supplier is different and it depends upon various factors, including risk employed and assets involved in production process and thus, unless the Assessing Officer proves that the assessee made deliberate attempt to under-invoice its products, no addition can be made on the basis of rate charged by third party suppliers. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts, including rate charged by M/s. Aeroaroma Home Care Products, Puducherry observed that the assessee has

deliberately designed a system to reduce it overall tax liability by claiming extra benefit, which is not due and thus, opined that there is no logic or commercial expediency or valid reasons due to logistics, expertise, technical competency to restrict work at the level of Kamivisa Products, Puducherry unit. Therefore, the learned CIT(A) opined that arguments of the assessee that Central Excise department has accepted value declared for its product without any disturbance cannot be helped to the assessee, because there is clear difference between rate charged by the assessee and rate charged by third party supplier and thus, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards under-invoicing of products to Guwahati unit. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

6. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating fact that products sold by Puducherry unit are at semi-finished stage, when compared to products purchased from third party supplier M/s.Aeroaroma Home Care Products and thus, rate charged by third party

supplier cannot be compared to rate charged by the assessee. The learned A.R further referring to flow chart process involved in manufacturing of absorbent wicks submitted that Puducherry unit is supplying wicks at semi-finished level. The Guwahati unit is spending further amount towards making products ready for next level of production. If you consider price charged by Puducherry unit and additional cost incurred at Guwahati unit to make the product ready for next level, then there would be no difference between price charged by the assessee and price charged by third party supplier M/s. Aeroaroma Home Care Products. The learned A.R further submitted that the Assessing Officer except stating that there is difference in price charged by the assessee when compared to third party supplier, could not bring on record any other evidence to justify his findings that the assessee has under-invoiced its products to Guwahati unit to claim higher benefit tax incentives allowed in terms of section 80IC of the Income Tax Act, 1961, because the assessee is subjected to Central Excise Valuation Rules, and as per Rule 8 of Central Excise Valuation Rules, if an assessee undervalue its goods, then the department may make assessment by fixing correct value of the goods.

However, the Central Excise department has accepted value declared for the purpose of central excise duty and thus, there is no basis for the income-tax department to adopt different rate only on the basis of third party suppliers rate charged on the products. In this regard, the learned AR relied upon decisions of the Hon'ble High Court of Madras in the case of CIT Vs Anandha Metal Corporation (2005) 273 ITR 262 (Mad) and in the case of CIT Vs Smt. Sakuntala Devi Khetan (2013) 352 ITR 484 (Mad).

7. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that there is clear difference between rate charged by Kamivisa Products, Puducherry unit and third party supplier M/s. Aeroaroma Home Care Products for very same product of absorbent wicks to be supplied to M/s.Godrej Saralee Ltd. Although, the assessee claims that products supplied from its Puducherry unit are at semi-finished stage, but said claim was unsubstantiated. The assessee could not file any evidence to justify its argument that products supplied by Puducherry unit are further processed at Guwahati unit to make it ready for next level of production. The learned

DR further referring to chart prepared for comparing price charged by the assessee, additional cost incurred at Guwahati unit and cost of value addition per piece from advanced stage of finished products to cost incurred on product supplied by third party supplier submitted that even assuming for a moment, but not conceding, products supplied by Puducherry unit are semi-finished products, but still after considering all additional cost incurred by the assessee, there is difference when compared to cost incurred for products purchased from third party supplier. Therefore, the learned DR submitted that there is huge variation in price charged by the assessee unit at Puducherry and price charged by third party supplier and said variation is mainly due to higher tax benefit claiming 100% deduction u/s.80IC of the Income Tax Act, 1961, for Guwahati unit. The Assessing Officer as well as learned CIT(A), after considering relevant facts has rightly worked out under-invoicing from Puducherry unit and made additions to total income and their orders should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities

below. The appeals for the assessment years 2008-09 to 2011-12 are coming up for second round of litigation, because in first round of litigation, the Tribunal had set aside the issue to file of the Assessing Officer, with a direction to consider cost sheet furnished by the assessee to explain price difference between its own unit and price charged by third party supplier and to reconsider the issue. The appeal for the assessment year 2012-13 is first round of litigation, however, issue involved is identical to the issue involved in the assessment years 2008-09 to 2011-12. The sole dispute for all these appeals pertains to valuation of goods purchased by Guwahati unit. The assessee is having two units for manufacturing of absorbent wicks, i.e one at Puducherry and another at Guwahati. The Puducherry unit is claiming deduction u/s.80IB of the Income Tax Act, 1961, @ 25% profit, whereas Guwahati unit is claiming deduction @ 100% u/s.80IC of the Income Tax Act, 1961. In the above context, the Assessing Officer was of the opinion that the assessee has shifted profit from Puducherry unit to Guwahati unit to get higher tax benefit u/s.80IC of the Income Tax Act, 1961. It was claim of the assessee that although, there is price difference between products purchased from assessee's own

unit from Puducherry and third party supplier of Puducherry, but products supplied by the assessee's own unit are semi-finished products, which are underwent further processing at Guwahati unit. The assessee further claimed that sole basis for the Assessing Officer to presume tax evasion only on the basis of deduction claimed by the assessee for two units u/s.80IB and 80IC of the Act. But, fact remains that sole reason for shifting operations to Guwahati unit is under compelling commercial reasons, as shifting of operations by M/s.Gordrej Saralle Ltd., / Godrej Consumer Products Ltd. to Guwahati and thus, the assessee was forced to shift their operations, as the manufacturing activity is done exclusively for the said company.

9. We have given our thoughtful consideration to the reasons given by the Assessing Officer to estimate suppression of income at Puducherry unit and we ourselves do not subscribe to reasons given by the Assessing Officer for simple reason that although, there is difference between price charged by the assessee for own unit at Puducherry and price charged by M/s Aeroaroma Home Care Products, Puducherry, but that alone itself is not a ground to come to a conclusion that the

assessee has under-invoiced its products to get higher tax benefit for Guwahati unit. There may be various reasons for pricing products by different manufacturers / suppliers and it depends upon functions performed, asset employed and cost incurred for manufacturing products. Some manufacturers may meticulously plan their affairs and reduce cost of manufacturing goods and it depends upon location of unit, type of machinery they employed and amount of capital employed. Therefore, based on location alone price charged by two suppliers cannot be compared to come to the conclusion that there is under-invoicing of products to get tax benefits. In this case, it was argument of the assessee that Puducherry unit has transferred semi-finished wicks to Guwahati unit at Rs.0.43 per unit, as against purchase price of Rs.0.78 per unit from M/s. Aeroaroma Home Care Products. The assessee has filed chart explaining price difference between its own products supplied by Puducherry unit and products supplied from third party supplier and according to the assessee, products manufactured at Puducherry unit are at semi-finished stage and undergone further processing at Guwahati unit. If you consider additional cost incurred by the assessee at Guwahati

unit, with basic price charged by Puducherry unit, total cost per unit works out to Rs.0.89 per unit. The assessee has paid Rs.0.77 per unit to product purchased from M/s.Aeroaroma Home Care Products, Puducherry and has carried out secondary operations at Guwahati unit. If you consider additional cost incurred by the assessee for product purchased from third party supplier at Guwahati unit, total cost per unit works out to Rs.0.91 per unit. If you compare both prices, there is minor difference of Rs.0.02 per unit, as against difference worked out by the Assessing Officer, which is on very high. The assessee has explained reasons for small difference in price of similar products purchased from third party supplier and manufactured at its own unit. In our considered view, explanation furnished by the assessee appears to be reasonable and bonafide. Further, as we have already noted in earlier paragraph of this order, pricing of any products cannot be compared on the basis of location alone, because it depends upon various factors, including functions performed, asset employed and risk involved. Since, there is minor difference of Rs.0.02 per unit, which is negligible may happen in any case. Therefore, we are of the considered view that there is no

reason for the Assessing Officer to work out under-invoicing of products only on the basis of comparison of price charged by third party to the price charged by the assessee.

10. Coming back to another aspect of the issue. The assessee is covered under Central Excise Act. The assessee is regularly assessed to central excise duty and has filed return by declaring assessable value for goods manufactured at Puducherry unit. The assessee claimed that rate at which branch transfer has been approved by the excise department has been done in accordance with Rule 8 of the Central Excise Valuation Rules. The assessee further claimed that central excise authorities have accepted valuation determined by the assessee without making any addition or alteration. Therefore, once an authority of another department has accepted value of product without there being any modification, then there is no reason for the Assessing Officer to dispute value of product only on the basis of price charged by third party supplier. In our considered view, the Assessing Officer is bound to apply value of goods declared for central excise purpose, because central excise authorities are competent to determine value of product

for the purpose of levy of duty. In this case, central excise authorities have accepted valuation determined by the assessee for products manufactured at Puducherry unit and thus, in our considered view, said facts strengthen case of the assessee that there is no under-invoicing of products supplied by Puducherry unit to Guwahati unit. In this context, it is relevant to refer to the decision of the Hon'ble High Court of Madras in the case of Ananda Metal Corporation (supra), where the High Court in the context of valuation of closing stock for the purpose of Sales Tax Act held that once there is no dispute from sales tax authorities for valuation of stock declared for the purpose of levy of sales tax, then the Assessing Officer does not have any jurisdiction to go beyond value of closing stock declared by the assessee and accepted by commercial tax department. The Hon’ble Madras High Court in another case of Mrs.Sakundala Devi Khetan (supra) has reiterated very similar position of law and held that unless and until competent authority under Sales Tax Act differs or varies with closing stock of the assessee, return accepted by said authority is binding on the Assessing Officer and in such case, the

Assessing Officer has no power to scrutinize return submitted by the assessee.

11. In this case, the assessee has demonstrated with all possible evidences to prove that there is no difference between price charged by Puducherry unit, when compared to price charged by third party supplier on products purchased by Guwahati unit. Further, the assessee has also demonstrated with evidence that Guwahati unit has incurred further cost towards processing of semi-finished goods purchased from Puducherry unit. As we have already sated in earlier part of this order, If you consider total cost incurred for product supplied from Puducherry unit to total cost incurred for products purchased from third party supplier, there is minor difference of Rs.0.02 per unit and said difference may arise for various reasons and thus, in our considered view, the Assessing Officer has completely erred in making additions towards suppression of income. The learned CIT(A), without considering above facts has simply sustained additions made by the Assessing Officer. Hence, we reverse findings of the learned CIT(A) and direct the Assessing Officer to delete additions

made towards suppression of income on account of under valuation of stock supplied to Guwahati unit for the assessment years 2008-09 to 2012-13.

12. In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 21st September, 2022

Sd/-	**Sd/-**
(वी. दुर्गा राव)	**(जी. मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 21st September,2022
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.