IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.445 OF 2017

The Pr. Commissioner of Income Tax-9 … Appellant
V/s.
M/s Bunge India Pvt. Ltd. … Respondent

Mr.Tejveer Singh Mastan Singh for the Appellant.
Mr.Sanjiv M. Shah for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 03, 2019.

P.C.:-

1. This appeal is filed by the revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). Following questions were argued before us :-

> "(i) Whether on the facts and circumstances of the case and in law, the ITAT was correct in setting aside the adjustment made by the TPO in respect of import of raw material to the file of the TPO, for pro-rata adjustment considering only the AE transactions, when this was not a ground raised either by Revenue or by the assessee and segmental accounts (in respect of AE and non-AE transactions were not available in the case?
> (ii) Whether on the facts and circumstances of the case and in law, the ITAT was correct in facts

> and circumstances of case and in law, in terms of Rule 10B(1)(e), under the Transaction Net Margin Method (TNMM), it is permissible to apply the net profit margin realized by the assessee from the entity as a whole in place of the net profit margin realized by the assessee from the international transaction entered into with the AE?"

2. The issues arise out of the Tribunal's judgment concerning the correct method to be applied for determining arm's length price of the international transaction between the assessee and the associated enterprise. The Transfer Pricing Officer ("TPO" for short) had made the adjustment to the entire segment of the manufacturing activity instead of making the adjustment for only international transaction. The Tribunal held that the TPO was not justified in making adjustment to the entire segment of manufacturing activity without restricting the same to the manufacturing transaction. The Tribunal in the process relied upon and referred to the decision of the Division Bench of this Court in case of **Commissioner of Income-Tax Vs. Tara Jewels Exports P. Limited**[1]. The principles laid down in the said decision have been followed consistently in later decisions such as in cases of **Commissioner of Income Tax Vs. Thyssen**

1 (2016) 381 ITR 404 (Bom)

Krupp Industries India P. Ltd.[1] **and Commissioner of Income Tax Vs. Alstom Projects India Ltd.**[2]. In the result, do not find any error in view of the Tribunal. The appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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1 (2016) 381 ITR 413 (Bom)
2 (2017) 394 ITR 141 (Bom)