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

INCOME TAX APPEAL NO. 500 OF 2018

The Principal Commissioner of Income Tax – 5 ….Appellant

V/s.

Mahle Behr India Limited
Formerly Known as Behr India Limited …Respondent

Mr. Suresh Kumar for Appellant.
Mr. Sanjiv M. Shah a/w Ms. Rutuja N. Pawar for Respondent.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 12th JULY 2023

P.C. :

1. The following four substantial questions of law are proposed in the appeal.

QUESTION OF LAW

a. Whether on the facts and circumstances of the case and in law, the Tribunal was correct in holding that the TP adjustment should be proportionately to the value of international transaction is contrary to the prescription of Rule 10B (i)(e). Further, the Indian Transfer Pricing Regulations does not allow it as it presupposes that if the net margins of AE and Non-AE are not same, then ITTPL does not permit further adjustment to the adjustment. Because the presumption underlying arm's length principle is that uncontrolled transactions are at arm's length and therefore, if the overall margins are less than arm's length margins, the short fall must be on account of AE transactions only and not on pro rata basis?

b. Whether on the facts and circumstances of the case and in law, the Tribunal was correct in allowing the proportionate adjustment claim even though the SLP on the similar issue filed by the Revenue has been admitted by the Hon'ble Supreme Court in the case of Fire Stone International Pvt. Ltd. vide its order dated 16/08/2016?

c. Whether on the facts and circumstances of the case and in law, the Tribunal is not justified in granting adjustment for Risk Differences without considering the provisions of Rule 10B(e)(iii) of the Income Tax Rules?

> *d. Whether on the facts and circumstances of the case and in law, the Tribunal is right in allowing the entire disallowance of Rs.31.37 Lakhs on account of warranty provision holding that the decision of the Hon'ble Supreme Court in the case of Rotork Controls Ltd. (314 ITR 62) is applicable in this case when scientific basis of the provision of warranty is not conclusively established?*

2. As regards Question Nos. (a), (b) and (d) Mr. Suresh Kumar states that they are already covered. Question Nos. (a) and (b) are covered by the recent order of this court passed on 28th June 2023 in Income Tax Appeal No. 414 of 2018. Question No. (d) is covered by judgment of the Hon'ble Apex Court in ***Rotork Controls India (P). Ltd. vs. Commissioner of Income Tax, Chennai***[1]. That would leave Question No. (c). Mr. Suresh Kumar submitted that the tribunal remitting the matter to the Assessing Officer (A.O.) to allow the risk adjustment margin and recompute the comparable raises a substantial question of law because Rule 10B(e)(iii) of the Income Tax Rules, 1962 (the Rules) do not provide for any adjustment for risk difference. Relying upon the judgment of the Hon'ble Apex Court in ***SAP Labs India Private Limited vs. Income Tax Officer, Circle 6, Bangalore***[2], Mr. Suresh Kumar submitted that any determination of the arm's length price under Chapter X *de hors* the relevant provisions of the guidelines can be considered as perverse and may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law.

1 (2009) 180 Taxman 422 (SC)
2 2023 SCC Online SC 449

3. In the order passed by the ITAT impugned in this appeal there is nothing to indicate that this was even an argument raised by the Revenue. There is nothing to indicate that the Revenue argued that granting adjustment for risk difference is not permissible under Rule 10B(e)(iii) of the Rules.

In ***Commissioner of Income Tax vs. Tata Chemicals Ltd.***[3], a division bench of this court held that the High Court can decide only that question which was raised before Tribunal and not a question which is raised straightaway before the High Court.

Therefore, in our view, that cannot be raised today and the court be asked to frame a substantial question of law in that regard. This cannot be a subject matter of scrutiny by the High Court in an appeal under Section 260A of the Act.

4. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J.) **(K.R. SHRIRAM, J.)**

3 (2002) 122 Taxman 643 (Bombay)