



आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE

BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2469/PUN/2024

निर्धारण वर्ष / Assessment Year: 2021-22

B & R Industrial Automation Pvt. Ltd., 8 Tara Height, Mumbai Pune Road, Wakadewadi, Pune – 411003.	V s	Additional / Joint/ Deputy / Assistant Commissioner of Income Tax /Income Tax Officer, National Faceless Assessment Centre, New Delhi/The Deputy Commissioner of Income Tax, Circle-1(1), Pune.
PAN: AAACB6954B		
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Kishor B Phadke & Mehul Shaha
Revenue by	Shri Prakash L Pathade – CIT(DR)
Date of hearing	17/07/2025
Date of pronouncement	09/10/2025

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee against the order of Assessing Officer(Assessment Unit) passed under section 143(3) r.w.s 144C(13) r.w.s 144B of the Act, dated 26.09.2024 emanating from Dispute Resolution Panel's order under section 144C of the Act,



ITA No.2469/PUN/2024 [A]

dated 06.09.2024 emanating from Draft Assessment Order dated 22.12.2023. The Grounds of appeal raised by the Assessee are as under :

“That on the facts and circumstances of the case and in law.

1 The impugned order of the learned AO pursuant to the directions of the Honorable DRP, erred in assessing the total income at INR 194,660,775 as against the returned income of INR 98,697,530 reported by the Appellant,

Grounds relating to transfer pricing matter

2. The learned TPO/AO erred, in law and in facts, by accepting the following company as comparable although this is functionally not comparable to the Appellant and without following due process for selection of comparable company thereby resulting in cherry picking of the below comparable company.

a. Maxim SMT Technologies Private Limited

3. The Honorable DRP erred, in law and in facts by reducing the trading turnover filter adopted by learned TPO to 50% without giving reasonable opportunity of being heard to the Appellant.

4. The learned TPO/AO erred, in law and in facts, by rejecting the following company as comparable although these pass the reduced trading filter as directed by Honorable DRP,

a. Goldstar Power Limited

b. Khaitan (India) Limited

5. The learned AO/ TPO have erred, in law and in facts by wrongly computing the margin of the Appellant by considering as below,

a Miscellaneous income and foreign exchange gain as non-operating in nature which shall be considered as operating item

b. Write back of bad and doubtful debts and bad and doubtful debts written off as non-operating in nature which shall be considered as operating item



ITA No.2469/PUN/2024 [A]

c. Corporate social responsibility expenses as operating in nature which shall be considered as non-operating item

6. The learned AO/ TPO have erred, in law and in facts by wrongly computing the margins of the below companies identified as comparable

a. Hanuman Power Transmission Equipments Private Limited

b. Balaji Switchgears Private Limited

c. Debak enterprise Private Limited

d. WR Talwalker Brothers Private Limited

Common grounds of appeal

7 The learned AO erred, in law and in facts, by passing the assessment order without the learned TPO's order giving effect order to the Honourable DRP's direction.

8 The learned TPO/ AO have erred, in law and on facts and circumstances of the case, by not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 (the Rules'), and modifying the same for determination of ALP of the subject transaction and holding that the same are not at arm's length.

9 The learned TPO/AO have erred, in law and facts, by not making suitable adjustments to account for differences in the risk profile of the Appellant vis-à-vis the comparables.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Honorable Tribunal to decide on the appeal in accordance with the law”

Submission of Id.AR :

2. Ld.Authorised Representative(ld.AR) for the Assessee submitted that the Transfer Pricing Officer(TPO) has erred in

*ITA No.2469/PUN/2024 [A]*

selecting the comparable Maxim SMT Technologies Private Limited. Ld.AR submitted that said comparable is in the business of manufacturing. The TPO in the Transfer Pricing Study Report had applied filter of 75%. The Maxim SMT Technologies Private Limited had failed the said filter. Ld.AR submitted that this fact is recorded by DRP. Ld.AR read out the relevant paragraph of the DRP's Order. Ld.AR submitted that DRP while upholding the comparable Maxim SMT Technologies Private Limited, accepted that it has failed the filter of 75%, but then DRP in its order directed TPO to reduce the filter to 50% without understanding the basic fact that once the filter is reduced, there will be many more comparables which may be selected. Ld.AR submitted that DRP has erred in reducing the filter only for a particular comparable which is not permissible. As per ROC, Maxim SMT Technologies Private Limited is into the manufacturing and it does not have any trading of goods. Ld.AR invited our attention to page no.1418, 1438 and 1440 of the paper book to explain that Maxim SMT Technologies Private Limited is in the business of manufacturing. Ld.AR submitted that there are no segmental. Therefore, ld.AR pleaded that Maxim SMT Technologies Private Limited is not comparable with Assessee.



ITA No.2469/PUN/2024 [A]

2.1 Ld.AR submitted that the margin of comparable Debak Enterprises Private Limited is actually 2.92%, but TPO erroneously considered it as 15.8%. Ld.AR filed working of the margin. Ld.AR also submitted that there has been no Transfer Pricing Adjustments for the earlier Assessment Year which was selected for scrutiny. Ld.AR also submitted that he will not argue on the other grounds, and submitted that other grounds may be kept open.

Submission of ld.DR :

3. Ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the DRP and TPO. However, ld.DR accepted that the margin of Debak Enterprises Private Limited has been incorrectly calculated by TPO and it should be 2.92%.

Findings & Analysis :

4. We have heard both the parties and perused the records.

4.1 As per the Draft Assessment Order u/s.144C and the Final Assessment Order, Assessee is engaged in the business of trading of programmable logic controller. Assessee imports 100% of its trading goods from its holding company.



ITA No.2469/PUN/2024 [A]

4.2 During the Assessment Proceedings, the Assessing Officer made a reference to Transfer Pricing Officer for determination of Arm's Length Price as per section 92CA of the Act. The TPO noted that Assessee had applied Transactional Net Margin Method(TNMM) to determine Arm's Length Price of its international transaction. The Assessee has selected Profit Level Indicator as Operating Profit upon Operating Revenue(OP/OR). The TPO passed an order u/s.92CA(3) of the Act, dated 29.10.2023 suggesting an adjustment of Rs.9,57,37,375/-. The relevant paragraph 7.4 of the TPO's order is reproduced here as under :

Quote "7.4 Comments of the TPO on the non-comparability of the following companies as contended by the assessee:

The TPO has selected five comparable companies i.e., W R Talwalker Brothers Private Limited, Hanuman Power Transmission Equipments Private Limited, Balaji Switchgears Private Limited, Debak Enterprise Private Limited and Maxim SMT Technologies Pvt. Ltd. in final set of comparable for trading activity segment. Out of which, the assessee has raised objection to only one comparable company i.e., M/s Maxim S M T Technologies Pvt. Ltd. Further, in this regard TPO's comments along with the assessee's submission as under:

(a) M/s Maxim S MT Technologies:

Assessee's submission:

The assessee has stated that the said comparable company should be excluded from the final set of comparable for the following reasons:



ITA No.2469/PUN/2024 [A]

As it is tis functionally different to assessee company since it is engaged in only in manufacturing activity segment and revenue from trading activity is NIL.

TPO's comments:

The contention of the assessee has been verified and found unacceptable. In this regard, it is pertinent to mention here that it is clearly seen from the annual report, that the said comparable company is also engaged in the trading activity.”Unquote.

4.3 The TPO rejected the comparable selected by Assessee and selected following comparables :

<i>S.No.</i>	<i>Company Name</i>	<i>WCA Weighted OP/OR%</i>
	<i>W R Talwalker Brothers Private Limited</i>	<i>-1.09</i>
	<i>Hanuman Power Transmission Equipment's Private Limited</i>	<i>2.04</i>
	<i>Balaji Switchgears Private Limited</i>	<i>8.87</i>
	<i>Debak Enterprise Private Limited</i>	<i>15.80</i>
	<i>Maxim S M T Technologies Pvt. Ltd.</i>	<i>15.98</i>
	<i>Average:</i>	<i>9.60</i>

4.4 The TPO noted that Profit Level Indicator(PLI) of the Assessee was 1.46% whereas Average PLI of the Comparables selected by the TPO was 9.60%. Accordingly, TPO suggested the adjustment.

5. Aggrieved by the order of the TPO and Draft Assessment Order, Assessee filed objections before Dispute Resolution



ITA No.2469/PUN/2024 [A]

Panel(DRP). DRP rejected the Assessee's contention vide order dated 06.09.2024. then, Assessing Officer passed a final assessment order under section 143(3) r.w.s 144C(13) of the Act, on 26.09.2024. Aggrieved by it, Assessee filed appeal before this Tribunal.

6. As pleaded by the Id.AR, we are considering the Ground No.2 raised by assessee in the beginning.

7. It is the contention of the Assessee that Maxim SMT Technologies Private Limited is not comparable with assessee. Maxim SMT Technologies Private Limited is into manufacturing, whereas Assessee is into trading. It is noted that the Transfer Pricing Officer while selecting the comparables had applied various filters which are mentioned in para 6 of the order. One of the filters was trading upon total sales more than 75%. Thus, this filter was applied by TPO himself.

7.1 Regarding Maxim SMT Technologies Private Limited, the Dispute Resolution Panel has mentioned as under on page 16 of the order :

“Trading Turnover” filter :



ITA No.2469/PUN/2024 [A]

As per the applicant, the trading proportions are 63.99% 59.51% and 57.73% respectively, and the comparable fails the filter of 75% trading turnover.

Panel notes that as regards to the “Trading Turnover” filter, there is minor difference between the thresholds and the Transfer Pricing Officer is directed to reduce the Trading turnover threshold to 50% and re-evaluate this comparable for admissibility.

The 50% “Trading Turnover” filter will do justice.”

7.2 Thus, during the proceedings before Dispute Resolution Panel, Assessee submitted that for three years, Maxim SMT Technologies Private Limited fails the trading turnover filter of 75%. This fact has been accepted by the DRP. The DRP however, asked TPO to reduce the turnover filter to 50%, only to accommodate Maxim SMT Technologies Private Limited. This approach of the DRP is not as per the provisions of the Act.

7.3 Once DRP has accepted that Maxim SMT Technologies Private Limited fails the trading turnover filter of 75% applied by TPO, it was mandatory for DRP to remove the said comparable.

7.4 We have also perused the Annual Return filed by Maxim SMT Technologies Private Limited before the Registrar of Companies



ITA No.2469/PUN/2024 [A]

which is at page no.1417 to 1430 of the paper book. The relevant page is scanned and reproduced as under :

1418

(vii) *Financial year From date (DD/MM/YYYY) To date (DD/MM/YYYY)

(viii) *Whether Annual general meeting (AGM) held Yes No

(a) If yes, date of AGM

(b) Due date of AGM

(c) Whether any extension for AGM granted Yes No

II. PRINCIPAL BUSINESS ACTIVITIES OF THE COMPANY

*Number of business activities

S.No	Main Activity group code	Description of Main Activity group	Business Activity Code	Description of Business Activity	% of turnover of the company
1	C	Manufacturing	C9	Computer, electronic, Communication and scientific measuring & control equipment	100

7.5 Thus, Maxim SMT Technologies Private Limited has admitted before ROC that it is into manufacturing only.

7.6 As per Assessing Officer, Assessee is into manufacturing and trading. The filter applied by TPO of trading turnover was 75% and Maxim SMT Technologies Private Limited does not qualify the said filter. In these facts and circumstances of the case, we are of the considered opinion that Maxim SMT Technologies Private Limited is not comparable to the Assessee. Accordingly, we direct the Assessing Officer/TPO to delete Maxim SMT Technologies Private Limited from the list of selected comparables. Accordingly, Ground No.2 raised by the Assessee is allowed.



ITA No.2469/PUN/2024 [A]

8. Ld.AR for the Assessee and ld.DR for the Revenue has accepted the fact that the margin of Debak Enterprises Private Limited is 2.92%. In these facts and circumstances of the case, ld.AO/TPO is directed to rework the Average by considering the Debak Enterprises Private Limited's margin at 2.92%.

9. Ld.AR has submitted that he does not intend to argue on other grounds, accordingly, all other grounds are dismissed as unadjudicated.

10. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 09 October, 2025.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09 Oct, 2025/ SGR

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.