IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI J BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Sandeep S Karhail (Judicial Member)]

ITA No.: 1353/Mum/2021
Assessment year: 2016-17

Shapoorji Pallonji Bumi Armada Pvt Ltd ……Appellant
602, Trade Centre, BKC, Opp MTNL Office
Bandra (East), Mumbai 400 051 [PAN: AABCF6263G]

Vs.

Assistant Commissioner of Income Tax
Circle 1(3)(1), Mumbai ……...……Respondent

Appearances by:
Mukesh Butani, *alongwith* **Karishma Phatarphkar, Pratik Poddar and Rohan Vasuna** *for the appellant*
Vatsala Jha *for the respondent*

Date of concluding the hearing : 31/05/2022
Date of pronouncing the order : 27/06/2022

O R D E R

Per Pramod Kumar VP

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 2nd June 2021 passed by the learned Assistant Commissioner of Income Tax, under section 154 read with sections 143(3) and 144C(13) of the Income Tax Act, 1961, for the assessment year 2016-17. As this order is passed pursuant to, and to give effect to, the directions dated 22nd April 2021 of the Dispute Resolution Panel, this appeal is directly filed before us.

2. The core issues requiring our adjudication in this case, as learned representatives agree, are (i) whether the Dispute Resolution Panel was justified in passing the impugned order dated 22nd April 2021, (ii) whether the Transfer Pricing Officer was justified in given effect, vide his order dated 31st May 2021, to the directions contained in the said order, and, (iii) whether, based on this rectification order passed by the Dispute Resolution Panel and based on the TPO's resultant order giving effect thereto, and, whether the Assessing Officer was justified in, based

on these order, passing the impugned order dated 2nd June 2021 making an addition of Rs 6,68,10,000 as an arm's length price adjustment.

3. To adjudicate on these grievances, only a few material facts need to be taken note of. The assessee before us is a domestic company incorporated on 29th October 2010 as a joint venture between Forbes & Co Ltd, India, and Bui Armada Berhad, Malaysia. The assessee was awarded a contract by the Oil And Natural Gas Ltd (ONGC India) for the supply of floating, production, storage and offloading (FPSO) vessels, and, for providing, *inter alia*, operations and maintenance (O&M) services to ONGC for a period of seven years. It was in this backdrop that the assessee had entered into a 'bareboat charter party' with its associated enterprise, Armada D1 Pte Ltd, Singapore. During the relevant previous year, the assessee made a payment of Rs 439,20,62,681to its AE for the bareboat charter party hire, and when the matter came up for ascertainment of the arm's length price, before the Transfer Pricing Officer, an ALP adjustment of Rs 131,40,70,214 was recommended. Accordingly, the Assessing Officer proposed to make an ALP adjustment of Rs 131,40,70,214 in the draft assessment order. Aggrieved, the assessee carried the matter in appeal before the Dispute Resolution Panel. The Dispute Resolution Panel, with detailed analysis in a very elaborate order, concluded that the DRP is of "the considered view that, after examining the transaction in payment of hire/lease charges to the AE by the assessee on the parameters narrated in the foregoing paragraphs, the transaction is at arm's length and does not require any upward adjustment". In the resultant assessment order dated 30th March 2021, passed as a result of these DRP directions, no ALP adjustment was made by the Assessing Officer.

4. The matter, however, did not end there.

5. On 16th February 2021, the Transfer Pricing Officer moved a petition, titled "Miscellaneous application on the order of the learned DRP-2 Mumbai in the case of Shapoorji Pallonji Bumi Armada Offshore Pvt Ltd for AY 2016-17-reg" with the object, as he himself put it in the first paragraph of the said petition, "*(t)*his MA is being filed for rectifying various mistakes apparent on record in the order of the learned DRP which are being delineated in the following paragraphs". In this 26 page miscellaneous petition, the mistakes pointed out by the Transfer Pricing Officer were, broadly speaking, in the following categories (i) incomparability of the transaction held as comparable by the learned DRP; (ii) significant differences between

FPSO Armada Sterling and FPSO Karpan Armada Sterling III offered as comparable; (iii) ratio of annual lease charges pertaining to FPSO vessel to Charter Rate in the case of two incomparable vessels cannot be used to benchmark the transactions; (iv) in considering, in the case of Husky transaction, operating day rate pertaining to FPSO vessel as hire/lease day rate paid for the FPSO vessel; (v) erroneous assumption behind the present value (PV); (vi) no internal comparability involved as claimed by the DRP; (vii) documents filed by the assessee on 27.8.2020 treated by the learned DRP to be not in the nature of evidence, and yet relied upon to delete TP adjustment made by the TPO; (viii) no opportunity given by the TPO to offer comments on documents submitted by the assessee on 27.08.2020; (ix) no restriction on benchmarking ALP without comparable(s) under the Other Method, as claimed by the DRP; (x) restricting application of second criterion of Other Method to when comparables are not available; (xi) obverse interpretation of Rule 10B(2)(b); and (xii) other miscellaneous points. A copy of this petition was forwarded, on 19th February 2021, to the assessee. The assessee, vide letter dated 24th February 2021, made detailed submissions on the point of Dispute Resolution Panel's limited jurisdiction to rectify only such mistakes as are 'mistakes apparent on record', even if those actually be mistakes, in the proposed rectification proceedings, and also on the point that, as a matter of fact, and in law, what are perceived as mistakes are not mistakes at all. It was pointed out that what is being sought by the Transfer Pricing Officer is not the rectification of mistakes apparent on record but a review of its directions. It was also submitted that, in the garb of seeking rectification of mistakes apparent on the record, the TPO is questioning "the statutory powers of the DRP under the Act and the Rules, and attempting to question findings of fact and law drawn by the DRP". It was also pointed out that the directions of the DRP were made non-appealable specifically "in line with the decision of the Government to minimize litigation", and that, by filing the present petition, which seeks a review of the DRP directions, "the learned TPO is not only acting against the provisions of the law in force but also against the entire spirit in which DRP mechanism was formed". Coming to the specific points raised by the Transfer Pricing Officer, it was, inter alia, submitted that (i) it is not the case of the assessee or the findings of the DRP that the HCML transaction and the assessee's transactions are comparable, and the reference to the HCML transaction was for the limited purposes of split between the bare boat charter fees and the AE; (ii) the 'significant differences FPSO Armada Sterling and FPSO Karpan Armada Sterling III offered as comparable', as pointed by the learned TPO, are not material enough, and, in any case, these differences, even if that be so, would not significantly alter the ratio between the bareboat charter fees and the remuneration for O&M

activities; (iii) the deficiencies pointed out by the TPO in the approach of the DRP, i.e. ratio of annual lease charges pertaining to FPSO vessel to Charter Rate in the case of two incomparable vessels cannot be used to benchmark the transactions, are incorrect, and, by no stretch of logic, such deficiencies can be mistakes apparent on record; (iv) that the DRP did not commit any error in considering, in the case of Husky transaction, operating day rate pertaining to FPSO vessel as hire/lease day rate paid for the FPSO vessel as terms of the arrangements of the assessee vis-à-vis the comparable were similar, and specific detailed reasons, meeting all the points raised under this heading, were met by the assessee one by one; (v) as regards alleged erroneous assumption behind the present value adopted, it was pointed out that SBI PLR, which was adopted by the assessee, represents indicative rate for discounting on the facts of this case, and, even if LIBOR plus 3 percent or LIBOR plus 4 percent were to be adopted, the conclusion would not have been any difference, and that estimated life of 7 years for the FPSO vessel, with insignificant residual value, was a correct assumption on the peculiar facts of this case; (vi) as regards the point of internal comparability, it was pointed out that, firstly, wrong nomenclature, even if that be so, would not vitiate the conclusions, and, secondly, this transaction was between a group company and an independent party which was a valid comparable; (vii) as regards the point that documents filed by the assessee on 27.8.2020 treated by the learned DRP to be not in the nature of evidence, and yet relied upon to delete TP adjustment made by the TPO, it was pointed out that what has been relied upon by the DRP was the certificate and the documents referred to were in support of that certificate, and, therefore, the grievance of the TPO is incorrect; (viii) as regards the lack of opportunity to the TPO to offer comments on the documents submitted on 27.8.2020, an effort was made to demonstrate as to how the scheme of the law does not visualize each new evidence to the confronted to the TPO, and, that, in any event, the TPO was given enough opportunity yo present his case; (ix) and (x) as regards the claim that "no restriction on benchmarking ALP without comparable(s) under the Other Method, as claimed by the DRP" and "restricting application of second criterion of Other Method to when comparables are not available", it was explained as to judicial precedents relied upon in support of these proposition are not applicable to the facts of this case and that has also been discussed at length in the DRP order; (xi) as regards the allegation of 'obverse interpretation of rule 10B(2)(b)', it was explained that the correctness of an interpretation can not be challenged in a rectification proceedings and going into that domain will amount to review of the order; and finally (xii) as regarding other small points tabulated in the rectification petition, the assessee, in a tabular form, attempted to meet each of those points. The submissions so made by the

assessee were forwarded to the Transfer Pricing Officer, who, vide letter dated 2nd March 2021, submitted a remand report, broadly speaking, reiterating his points. It was in this backdrop that the Dispute Resolution Panel, vide communication dated 22nd April 2021, proceeded to dispose of the rectification petition by stating as follows:

> **1. The DRP directions in this case were issued on 03.11.2020. The TPO filed miscellaneous application (MA) before the DRP on 16.02.2021through e-mail. A copy of the MA filed by the TPO was forwarded to the assessee through e-mail dated 19.02.2021 for its comments in writing. The assessee filed written submission on the MA through e-mail on 24.02.2021. The TPO responded to the submission of assessee by rejoinder dated 02.03.2021.**
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> **2. At the outset, we would like to state that the TPO's MA dated 16.02.2021 is not maintainable because there is no provision under the Act or no rule under the DRP Rules, 2009 wherein a MA can be filed before the DRP. Therefore, the MA is rejected/ not accepted because of its being ultra vires in character.**
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> **3. We would like to state that the DRP has only power to 'rectify, mistakes/ errors apparent in direction' u/r 13 of the DRP Rules. Therefore, we decide to take the MA as application for rectification of apparent mistake/ error in the direction u/r 13 of the DRP Rules. Consequently, the assessee was given opportunity to present its say in this regard. The assessee filed its written submission on 24.02.2021. The TPO filed his written rejoinder dated 02.03.2021.Two virtual hearings were held on 25.02.2021 and 03.03.2021. In the virtual hearings the Addl. CIT (TP) 4(1). Mumbai, the TPO and the assessee presented their say with regard to the MA filed by the TPO. The matters/ issues were discussed in detail. The assessee vehemently pleaded for rejection of each point of the MA.**
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> **4. After careful perusal of the MA, the assessee's submission and the rejoinder of the TPO, we find that the MA is based on incorrect facts and circumstances as well as incorrect appreciation of the provisions of law and procedure, such as:**
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> > **(i) The name of M/s. Husky-CNOOC Madura Ltd. (HCML) was not 'redacted' in the agreement. It was specifically mentioned in para 9 of the affidavit dated 26.08.2020 furnished by the assessee with the redacted copy of the agreement. This fact is also mentioned in para 9 and 10 of the direction. Besides, it is also mentioned on pages 12, 17 and 18 of the redacted FPSO lease contract. (Refer para 3.1 of the MA)**
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> > **(ii) The agreement has two parts, one, 'FPSO lease contract for BD field development' and two, 'FPSO lease contract'. The second part provides for supply of 'operation of the FPSO/ agreed services.' The second part is the comparable transaction with the concerned instant transaction and not the first part. (Refer para 3.1 of the MA)**
> >
> > **(iii) The comparable FPSO was contracted for exploration/ exploitation of oil and gas in the Madura stait which is evident from the redacted copy of the agreement. The TPO has also acknowledged the same in para 3.1 and 3. 2. The information that the comparable FPSO has 'molten sulphur and H2S' exploration facility was quoted from the website, which is not relevant in view of the actual agreement.**

(iv) The difference in mooring types of the two FPSOs is related to different ocean climatic conditions. Internal turret mooring is offshore FPSO technology used to handle extremely rough sea conditions in the Indian Ocean during monsoon.

(v) The annual report of Bumi Armada Berhad (BAB) and different legal jurisdictions were mentioned without giving any specific causal connection to the comparability of the concerned transactions.

(vi) As in the case of hire charges of the comparable FPSO, the hire charges of the instant FPSO are also inclusive of insurance inspections/survey fees/ over-head/ profits as provided in the clauses 23, 4.2, 12.4 and appendix of the hire agreement. Besides, it is also common knowledge that profits are part of hire/ lease day rate charges. (Refer para 3.4.2 (i) and 3.5 of the MA)

(vii) The tenets of fair comparison demand use of same bank rate (SBI PLR) for PV calculations for both FPSO. FPSOs are specially customized vessels for specific projects and do not as such command a terminal value at the end of the contract. (Refer para 3.5 of the MA)

(viii) The TPO used contractual terms/ conditions relating to the hire charges to arbitrarily determine the revenue split ratio @ 46.80: 53.20. We benchmarked the revenue split ratio using the same contractual terms/ conditions comparing it to the revenue split ratio in a similar business based on their contractual terms/ conditions relating to hire charges. Taking average day rate was essential because the day rates were different in each of the seven-year duration in the assessee/ AE agreement as against the uniform day rate in each year in the comparable agreement. Resorting to comparison of the contractually agreed payments/ charges was a legitimate exercise to benchmark the revenue split ratio. (Refer to para 3.4.2(ii)/ 3.4.3 of the MA)

(ix) The TPO has himself worked out a new ratio 18.57:81.43 for revenue split between the assessee and the AE in AY 2017-18, instead of 46.80:53.20 in the instant AY 2016-17 after referring our directions. (Refer para 4 of the MA)

(x) 'Jurisprudence' is 'science of law'. Any kind of 'arbitrariness' is anathema to 'jurisprudence'. The decisions/orders based on arbitrary exercise of a discretion would never help in development of 'TP jurisprudence'. (Refer to para 3.9.2 to 3.9.7)

(xi) The TPO ignored the second additional evidence furnished which, was the clause C.3 of the bid evaluation, criteria in the bid tender, document issued by the ONGC at the time of initiating the tender for the project, offering price preferences of 10% to domestic bidders.

(xii) In the second virtual hearing the Addl. CIT (TP)/ TPO accepted that there were no case of apparent mistake/ error in the directions except on two points, namely, consideration of actuals in benchmarking the actual transaction of the instant assessment year, two, consideration of element of service tax in the payment by the ONGC. (Refer para 3.4.2/ 3.4.3 of the MA and para 3 of the rejoinder)

(xiii) The other points in the MA and the rejoinder do not require counter discussions or justifications in this order because these were already considered, discussed and disposed off in a speaking manner in the directions.

5. We need not go into what is 'apparent' or 'not apparent', because the law in this regard is settled. We can infer with certainty from the detailed MA, the detailed response by the assessee, the detailed rejoinder by the TO and para 4 of this order (supra), that no 'mistakes/errors apparent are made out as such in the DRP's direction dated 03.11.2020 for AY 2016-17.

6. The MA dated 16.02.2021 followed by the reply submission dated 24.02.2021 and the TPO's rejoinder dated 02.03.2021 are disposed of as follows (to be read in continuation of the directions dated 03.11.2020 and in terms of rule 13 of the DR Rules, 2009):

(i) The TPO is directed to take the actual payments in the instant case and compare the same with the actual payments in the case of the comparable transaction to check TP adjustment, if any, in the instant AY 2016-17.

(ii) In so far as consideration of exclusion of element of service tax is concerned, the TPO is directed to consider the same subject to verification of 'net taxes paid' in the 'cash flow statement enclosed with the audited balance sheet and clause 29.3 of the agreement between the assessee and the AE.

(iii) In so far as the claimed inclusion of insurance/ statutory inspection charges/ survey fees/ overheads/ profits in the hire/ lease day rate paid to the AE is concerned, the assessee shall submit the relevant actual before the TPO for verification.

(iv) In so far as the benefit of +/- 3 % variation is concerned, the TPO may decide the issue, as per law, after carrying out the above directions.

(v) The TO is directed to afford to the assessee a proper opportunity of being heard and present its case and relevant documents with regard to the above directions, before passing the consequential order.

7. The assessing officer shall give effect to the above directions as per provisions of section 144C (13) of the Act read with rule 13 of the DRP Rules, 2009.

6. The assessee is aggrieved and is in appeal before us.

7. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

8. We find that under section 144C(14) of the Act, the Central Board of Direct Taxes "**may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee**". In exercise of these powers, and vide notification no. 84/2009 [F.NO. 142/22/2009-TPL]/S.O. 2958(E) dated 20-11-2009, the Central Board of Direct Taxes has notified the **Income-tax (Dispute Resolution Panel) Rules, 2009** *(hereinafter referred to as the DRP Rules)***.** We further find that rule 13 of the DRP Rules prescribes that **"After the issue of**

directions under rule 10, if any mistake or error is apparent in such direction, the panel may, suo motu, or on an application from the eligible assessee or the Assessing Officer, rectify such mistake or error, and also direct the Assessing Officer to modify the assessment order accordingly". As a plain and careful reading of rule 13 makes it unambiguous, the rectification powers, under rule 13, by the Dispute Resolution Panel can be exercised only in one of the three circumstances – namely, (a) *suo motu*, i.e. on its own by the DRP; (b) on an application made by the eligible assessee, or (c) on an application made by the Assessing Officer. The scheme of rule 13 does not visualize any rectification of mistake, by the Dispute Resolution Panel, on an application by the Transfer Pricing Officer. The application filed by the Transfer Pricing Officer before the Dispute Resolution Panel, irrespective of its nomenclature, was liable to be dismissed for this short reason itself. As for the observations of the Dispute Resolution Panel on the nomenclature of the application filed by the Transfer Pricing Officer, whatever be the nomenclature, it was unambiguously a petition seeking rectification of mistake as evident from his opening words in the first paragraph to the effect "***(t)*his MA is being filed for rectifying various mistakes apparent on record in the order of the learned DRP which are being delineated in the following paragraphs**". When the object and purpose of the application is unambiguous, nothing really turns on the terminology used to describe the said application. It is an established practice in the Income Tax Appellate Tribunal to classify the application seeking rectification of mistakes as 'miscellaneous applications', and list them for hearing as such, even without there being any specific provision to treat the rectification applications as the miscellaneous applications. In this view of the matter, while we do not approve the hyper pedantic approach in a rectification application filed before the Dispute Resolution Panel being dismissed as not maintainable in the absence of a specific provision for the filing of 'miscellaneous applications', we nevertheless approve the dismissal of the said application on the short ground, as discussed in the foregoing paragraph, that the scheme of rule 13 does not visualize, or permit, a rectification application being entertained from a person other the assessee or the Assessing Officer. In any event, the rectification of mistakes, as permitted under rule 13, is only with respect to "**mistake or error is apparent in such direction** *(issued by the DRP)***".** That is precisely what Section 154 of the Act also covers inasmuch as it covers "mistake apparent from the record", the connotations of a mistake 'apparent in such direction' cannot be any broader than the connotations of a mistake 'apparent from the record'. As to what does the scope of a mistake 'apparent from the record' covers, we can do no better than to reproduce the words of the landmark judgment of the Hon'ble Supreme Court, in the case of

ITO Vs Volkart Brothers [(1971) 82ITR 50 (SC)], to the effect that "**…..A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. …… this court while spelling out the scope of the power of a High Court under article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record….".** While on this issue, one may also usefully take note of Hon'ble jurisdictional High Court's judgment in the case of **CIT Vs Ramesh Electric & Trading Co [(1993) 203 ITR 497 (Bom)]** wherein Their Lordships have, inter alia, observed that the power of rectification of mistake apparent from the record **"can be exercised only when the mistake which is sought to be rectified is an obvious and patent mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions, as has been shown in the present case. Failure by the Tribunal to consider an argument advanced by either party for arriving at a conclusion is not an error apparent on the record, although it may be an error of judgment".** The errors of judgment were thus held to be outside the scope of mistakes apparent from records. In the present case, however, all that has been pointed out by the Transfer Pricing Officer, even if it could have been considered on merits, are the mistakes in the reasoning process resulting in an error of judgment by the Dispute Resolution Panel. Such mistakes, even if that be so, are clearly outside the inherently limited scope of the mistakes apparent on the record which at best can be rectified under rule 13**.** In a rather recent judgment, in the case of **CIT Vs Reliance Telecom Limited [(2021) 133 taxmann.com 41 (SC)],** Hon'ble Supreme Court has observed that the powers for rectification of "mistakes apparent on record" **"are only to correct and/or rectify the mistake apparent from the record and not beyond that".** Quite clearly, therefore, the scope of mistakes apparent from the record is inherently limited, and, in the garb of rectification of error or mistake apparent in such directions issued by the DRP, the DRP can neither embark upon a review of its own order nor tinker with the areas beyond the mistake apparent on the record which is "an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions". Similarly, an error "to consider an argument advanced by either party for arriving at a conclusion is not an error apparent on the record, although it may be an

error of judgment", in the light of the guidance of Hon'ble jurisdictional High Court, is not something which can be treated as mistake apparent from record and rectified as such. In the light of this legal position, and when we take into account categorical and uncontroverted findings of the learned DRP to the effect "**We can infer with certainty from the detailed MA, the detailed response by the assessee, the detailed rejoinder by the TO and para 4 of this order (supra), that no 'mistakes/errors apparent' are made out as such in the DRP's direction dated 03.11.2020 for AY 2016-17** *(Emphasis, by underlining, supplied by us; paragraph 5 of the DRP's order extracted earlier)*, it is beyond any dispute or controversy that there was no occasion for the Dispute Resolution Panel to pass the directions dated 22nd April 2021- not only because the rectification proceedings in question were on the basis of an application made by an authority which was not permitted to file such an application, but also because it was a common position that there was no mistake apparent in the directions issued by the Dispute Resolution Panel. We have noted that the Dispute Resolution Panel, having rejected the rectification application filed by the Transfer Pricing Officer and having held that there is no mistake apparent in the direction dated 3rd November 2020, have proceeded to rectify these DRP directions nevertheless. Undoubtedly, if the DRP was of the opinion that there are mistakes apparent in the directions issued by the DRP, they could have taken a *suo motu* cognizance of the same and initiated the proceedings by the issuance of show-cause notice, setting out clearly the reasons as to why such proceedings not be initiated, but that exercise has not been carried out. Whatever rectification has been carried out is on the basis of an application made by the Transfer Pricing Officer- an application which was not maintainable at all, and even after holding that there was no apparent mistake in the DRP directions, whereas a finding of the mistake being a mistake apparent in the DRP directions was a *sine qua non* for invoking the jurisdiction under rule 13.

9. In view of these discussions, as also bearing in mind the entirety of the case, we are of the considered view that the directions dated 22nd April 2021 passed by the Dispute Resolution Panel are unsustainable in law, and we must quash the same. Once the directions passed by the DRP stand quashed, the order passed by the Transfer Pricing Officer to give effect to these directions and the impugned rectification order passed by the Assessing Officer to give effect to the TPO's order, must also stand quashed. Ordered, accordingly. All other related grievances with respect to the ALP adjustment as raised in this appeal, in view of the above findings, are rendered infructuous and academic, and do not call for any specific adjudication. We may,

however, add that this order is without prejudice to any such order as the DRP may, within the permissible framework of the law- including on the limitation aspect, pass under rule 13 on its own or on an application by such parties as are permitted to file such an application. We may further add that there may also be many other facets to the scope of law with respect to the rectification proceedings under rule 13 of the DRP Rules, but, given our findings above, it is not really necessary to deal with those nuances of law at this stage.

10. As we part with the matter, we may add that apart from the grievance against the impugned the arm's length price adjustment of Rs 6,68,10,000- including, of course, against the issuance of directions dated 22nd April 2021 by the Dispute Resolution Panel, the assessee has also raised a grievance against the depreciation allowance on Gas Turbine Generators (GTGs) of Rs 25,29,89,877 at 15% instead of 80%, but as this addition was made in the original assessment order dated 30th March 2021, and the order impugned in the present appeal is the rectification order dated 2nd June 2021, we are not in a position to deal with the said grievance of the assessee. It is for the assessee to pursue the grievances against any additions or disallowances made in the original assessment proceedings in appeals against the original assessment order, and in the case, for whatever reasons, the said appeal has been inadvertently missed out, it is for the assessee to file the appeal at least now, along with the condonation petition, and the bench dealing with such an appeal and the condonation petition, if any, will take a call on whether or not such a delay can be condoned, and, if necessary, on the merits of the grievance of the assessee.

11. In the result, the appeal is partly allowed in the terms indicated above. Pronounced in the open court today on the 27th day of June, 2022.

Sd/- Sd/-
Sandeep S Karhail **Pramod Kumar**
(Judicial Member) (Vice President)
Mumbai, dated the 27th day of June, 2022

Copies to: *(1) The appellant (2) The respondent*
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai