

IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. INTURI RAMA RAO, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL, JUDICIAL MEMBER

1-3. I.T(TP).A Nos.1578 to 1580/Bang/2014  
(Assessment Years : 2007-08, 2008-09 & 2009-10)

M/s. Sanyo BPL P. Ltd,  
Jubilee Building, II floor, No.45,  
Museum Road, Bengaluru 560 025  
PAN : AAJCS0332B

.. Appellant

v.

Deputy Commissioner of Income-tax,  
Circle -12(3), Bengaluru

.. Respondent

4-6. I.T(TP).A Nos.1625 to 1627/Bang/2014  
(Assessment Years : 2007-08, 2008-09 & 2009-10)  
(By the Revenue)

Assessee by : None  
Revenue by : Shri. G. R. Reddy, CIT-DR-I

Heard on : 02.05.2017  
Pronounced on : 09.06.2017

ORDER

PER BENCH:

These are in all six connected appeals, out of which three appeals are filed by the assessee and the other three appeals are filed by the Revenue,

against the common order of the CIT (A) –IV, Bengaluru, for the assessment years 2007-08, 2008-09 and 2009-10 respectively.

02. The assessee company had filed returns of income as under :

Asst. year	Income declared Rs.
2007-08	(-)91,05,56,724
2008-09	(-)81,76,98,741
2009-10	Nil

The assessee's cases for all the three assessment years namely 2007-08 to 2009-10 were selected for scrutiny. As international transactions were involved, therefore the matters were referred to the TPO. The TPO after issue of notices to the assessee and after following due process of law, had passed draft assessment orders. Being aggrieved with the draft assessment orders, assessee preferred to file appeals before the CIT (A) for all the three years.

03. The CIT (A) had passed a consolidated order in respect of assessment years 2007-08 to 2009-10, whereby he partly allowed the appeals of the assessee. Being aggrieved by the order of the CIT (A), the Revenue has filed the appeals, as mentioned herein above. The assessee has also filed appeals through the official liquidator. The official liquidator

was appointed in pursuance of order passed by the Hon'ble Delhi High Court.

04. At the time of hearing none was present on behalf of the official liquidator or the assessee. Therefore the matter was heard in the absence of the representative of the company.

**Revenue's appeals :**

**IT(TP)A.1625/Bang/2014- A. Y. 2007-08 :**

05. The effective grounds taken up by the Revenue for A. Y. 2007-08 are as under :

2. *The CIT (A) erred in deleting the addition of Rs 14,06,345/- on the ground that the Valuation Report from District Valuation Officer (DVO) was not obtained and provisions of Section 50C were not invoked without appreciating that the AO has adopted the guidance value mentioned in the sale deed and the CIT(A) having power co-terminus with the AO should himself have invoked the provisions of Section 50C.*
3. *The CIT (A) erred in deleting the addition of Rs 14,06,345/- on the ground that the Valuation Report from District Valuation Officer (DVO) was not obtained by the AO without appreciating that the reference to DVO is not mandatory requirement.*
4. *The CIT (A) erred in law as well as on facts in directing the TPO to grant working capital adjustment as per prevailing norms based on decision of the Mumbai Bench of ITAT in the case of Exxon Mobil Company India Pvt. Ltd without appreciating that the directions issued are beyond the mandate of the provisions of*

*Section 251(1 )(a) of the I.T. Act which does not empower the CIT(A) to set aside the issue.*

- 5. The CIT (A) erred in holding that foreign exchange loss / gain is operating in nature without ascertaining the nexus of the forex gain / loss with the business activity of the taxpayer and without appreciating that such loss / gain though attributable to the operating activity is not derived from the operating activity and.*
- 6. The CIT (A) erred in concluding that forex gain / loss are to be treated as operating in nature without appreciating that though they may be incidental to the operating activity, they cannot be deemed as operating in nature since, they are not critical to operational activities of the business conducted by the taxpayer.*
- 7. The CIT (A) erred in law as well as facts by directing the TPO to decide the case of the assessee, by applying the principles emerging from the orders of the Delhi Bench of the Hon'ble Tribunal in Haworth (India) Pvt. Ltd. v Deputy Commissioner of Income-tax 11 ITR (Trib) 757 and the Bangalore Bench of the Hon'ble Tribunal in Trilogy E-Business Software Deputy Commissioner of Income-tax 23 ITR(Trib) 464 without appreciating that in transfer pricing every case is unique and requires to be decided independently and that the directions issued are beyond the mandate of the provisions of Section 251(1)(a) of the I.T. Act which does not empower the CIT(A) to set aside the issue.*

06. The AO had computed the capital gains on the sale of land by taking the circle rate of the immovable property sold by the assessee during the year under consideration. The AO in page-4 held as under :

Recomputation of Short-term Capital gain on sale of asset :

During the year the assessee has admitted short-term capital gain of Rs.1,50,71,645 on sale of asset as detailed below :

Short term Capital Gain on sale of asset :	
Cost of acquisition	Rs.1,10,88,500
Sale value	Rs. 2,68,40,145
Expenses incurred on sale	Rs. 5,80,000
Net sales value	Rs.2,61,60,145
Net short term capital gain on sale	Rs.1,50,71,645

As per the sale deed dated 11.12.2006 the value of land (Guideline Value) is shown at 4000/sq.m. Adopting this value for the land and the cost of acquisition of property adopted by the assessee. Short Term Capital gain is worked out as under:

Sale value of land	4000sq.m x Rs.4000	= 16000000
Less: Cost of acquisition of property adopted by the assessee		= 11038500
Sale value of factory area		
as per sale deed	464684sq.m x 5000	= 2323420
Sale consideration received		= 31250000
Less: Value of building		= 2323420
Sale value of land as per SRO		= 28926580
Less: Sale value adopted by the assessee		= 26840145
Balance		<u>2086435</u>
Less Expenses incurred		680000
Difference between the value adopted by SRO and the assessee		1406345

Thus short term capital gain is increased by the above difference (Addition 1406345)

With the above remarks assessment is completed.

Returned loss	Rs.(-) 91,05,56,724
Add:	
Disallowance of expenditure under the Head advertisement and Publicity	9,28,79,458
2. Arms Length Price adjustment	.. 55,78,73,780
3. Addition to STCG	.. <u>14,06,435</u>
Total loss	.. Rs.(-)25,83,07,051
	i.e., Rs.(-)25,83,97,050

07. The Ld. DR has submitted that the order passed by the AO whereby he had adopted the circle rate for the purposes of determining the FMV was in accordance with law.

08. We have perused the record and the order passed by the CIT (A). In our view, the CIT (A) has applied the correct law for the purposes of arriving at the FMV. The CIT(A) in his order in para 6 & 7.1, has held as under :

6. The next ground relates to the action of the AO in recomputing short term capital gains. Relevant facts of the case are that the appellant has sold a plot consisting of land and constructed building for a composite value of Rs.3.12 crores. This sale consideration was bifurcated by the appellant which was rejected by the AO. After adopting guide line value as shown in the sale deed dated 11.12.2006, he adopted a value of land @ Rs.4,000/- per sq.mts. Thereafter, he adopted the rate of Rs.5,000/- per sq. mts. For the building at circle rates. The assessee computed capital gains as under

Full value of Sale consideration (Land & Building)( @ Rs.16,200/- per sq.mtr.)	Rs. 31,250,000
Less : Sale Consideration of Building (64.684 sq.mtr x Rs. 9,490/- per sq. mtr. - Market value)	Rs. 4,409,855
Sale consideration of land (4,000 sq.mtr. x Rs. 6,710/- per sq.mtr)-A	Rs. 26,840,145
Less : Cost of acquisition	Rs. 11,088,500
Less : Expenditure incurred on sale	Rs. 680,000
<b>Short Term Capital Gain</b>	<b>Rs. 15,071,645</b>

6.1. And which was disturbed by the AO as under :

Sale value of land	4000sq.mX Rs. 4000	=	Rs. 1,60,00,000
Less : Cost of acquisition of property adopted by the assessee		=	Rs. 1,10,88,500
Sale value of factory area as per sale deed	464684sq.mX5000	=	Rs. 23,23,420
Sale consideration received		=	Rs. 3,12,50,000
Less : Value of building - Circle rate		=	<u>Rs. 23,23,420</u>
Sale value of land as per SRO		=	Rs. 2,89,26,580
Less : Sale value adopted by the assessee		=	<u>Rs. 2,68,40,145</u>
<b>Balance</b>		=	<b>Rs. 20,86,435</b>
Less : Expenses incurred		=	<u>Rs. 6,80,000</u>
Difference between the value adopted by SRO & the assessee		=	<u>Rs. 14,06,345</u>

It was held that the circle rate cannot be equated with the FMV. In the opinion of the CIT (A), the AO is duty bound to exercise his power u/s.50C (2) of the Act, by referring the case to the District Valuation Officer for the purpose of determining the full value of consideration or for the purpose of FMV of the asset. As the needful was not been done by the AO, therefore, the value determined by the assessee at the time of assessment, was upheld by the CIT (A). In our view there is no error in the order passed by the CIT (A). Therefore, appellate ground nos.2 and 3 are rejected.

09. **Ground.4** is with respect to working capital adjustment. In regard to working capital adjustment, the Ld. Sr. DR had submitted that the CIT (A) has wrongly issued direction to the TPO to grant working capital adjustment as per the prevailing norms. Our attention was drawn to Section 251(1)(a) of the Act, to say that the CIT (A) has no power to issue the direction, as the powers of the TPO (AO) / DCIT are coterminous.

10. We have gone through the record as well as the direction issued by the CIT (A). In our view, the CIT (A) has not directed the TPO in the way it has been portrayed by the Ld. DR. In fact, the direction issued by the CIT (A) was only to the effect to calculate the working capital adjustment and grant it to the assessee. Even otherwise in our view, working capital

adjustment is required to be granted on the basis of the actual working of the financials of the finally company remained as comparable and WCA is required to be given by the TPO on actual basis. Therefore in the light of the above, this ground of the Revenue is also devoid of fact and therefore dismissed.

11. Grounds 5, 6 and 7 are with respect of forex gains / loss. It was contended by the Ld.Sr. DR that the forex gain / loss are not operating in nature unless they have a direct nexus with the activity of the assessee. The TPO in the draft assessment order under PLI, had mentioned that the foreign exchange gain is to be excluded from the operating revenue, being non-operative in nature. Similarly, foreign exchange loss was also excluded from the operating expenses, being non-operative in nature.

12. The issue whether the foreign exchange gain is a part of the operating revenue and foreign exchange loss is a part of the operating expenses is no more res integra. The Bangalore bench of the Tribunal in the matter of SAP LABS India P. Ltd v. ACIT [(2011) 44 SOT 156], has held that the foreign exchange fluctuations incurred cannot be excluded from the computation of operating margin of the assessee company. In view of the above, the issues are squarely covered against the Revenue and

in view thereof, the objections raised by the Revenue are rejected. Further, we do not find any error in the order passed by the CIT (A), whereby direction was issued to exclude the claim of the assessee with respect to forex gain / loss. In the entire TP order, we do not find any observation by the TPO that the foreign exchange gain / loss are not arising out of the activities of the assessee and further the TPO has not disputed the quantum of the foreign exchange gain / loss. Therefore, the CIT (A) was correct in issuing direction to accept the claim of the assessee. Grounds 5 to 7 of the Revenue are dismissed.

In the result the appeal of the revenue is dismissed.

**IT(TP)A No.1626 & 1627/Bang/2014 - Revenue's appeals for A. Ys. 2008-09 and 2009-10 :**

13. The effective Grounds raised by the Revenue for A. Ys. 2008-09 and 2009-10 are common. They are as under :

2. *The CIT (A) erred in law as well as on facts in directing the TPO to grant working capital adjustment as per prevailing norms based oil decision of the Mumbai Bench of ITAT in the case of Exxon Mobil Company India Pvt. Ltd without appreciating that the directions issued are beyond the mandate of the provisions of Section 251(1 )(a) of the I.T. Act which does not empower the CIT(A) to set aside the issue.*
3. *The CIT (A) erred in holding that foreign exchange loss / gain is operating in nature without ascertaining the nexus of the forex gain / loss with the business activity of the taxpayer and without*

*appreciating that such loss / gain though attributable to the operating activity is not derived from the operatin<sup>s</sup> activity and.*

- 4. The CIT (A) erred in concluding that forex gain / loss are to be treated as operating in nature without appreciating that though they may be incidental to the operating activity, they cannot be deemed as operating in nature since, they are not critical to operational activities of the business conducted by the taxpayer.*
- 5. The CIT (A) erred in law as well as facts by directing the TPO to decide the case of the assessee, by applying the principles emerging from the orders of the Delhi Bench of the Hon'ble Tribunal in Haworth (India) Pvt. Ltd. v Deputy Commissioner of Income-tax 11 ITR (Trib) 757 and the Bangalore Bench of the Hon'ble Tribunal in Trilogy E-Business Software Deputy Commissioner of Income-tax 23 ITR(Trib) 464 without appreciating that in transfer pricing every case is unique and requires to be decided independently and that the directions issued are beyond the mandate of the provisions of Section 251(1 )(a) of the I.T. Act which does not empower the CIT(A) to set aside the issue.*

14. Ground no.2 is with regard to working capital adjustment. Identical issue has been deliberated upon by us at paragraphs 9 and 10 above, for the AY. 2008-09, wherein we have dismissed this ground of the Revenue. Following the same, we dismiss this ground for the assessment years 2008-09 and 2009-10.

15. Ground nos.3 to 5 are with respect to foreign exchange gain / loss. Identical issue has been deliberated upon by us at paragraphs 11 and 12 above, for the A. Y 2007-08, wherein we have upheld the order of the CIT

(A). Following the same, we dismiss the grounds 3 to 5, for the present assessment years 2008-09 and 2009-10.

In the result the appeal of the revenue is dismissed.

**IT(TP)A Nos.1578 to 1580/Bang/2014 - Assessee's appeals for A. Ys. 2007-08, 2008-09 and 2009-10 :**

16. In respect of these appeals of the assessee, none was present on behalf of the assessee at the time of hearing to assist us in respect of the grounds raised in all the three appeals.

17. We have perused the record and gone through the order passed by the CIT (A) for all the three years. We do not find any error in the orders passed by the CIT (A). In view thereof, all the three appeals of the assessee are dismissed.

18. To summarise the result, the three appeals filed by the Revenue are dismissed and the three cross appeals filed by the assessee are also dismissed.

Order pronounced in the open court on the 9th day of June, 2017.

Sd/-

Sd/-

(INTURI RAMA RAO)  
ACCOUNTANT MEMBER  
MCN\*

(LALIT KUMAR)  
JUDICIAL MEMBER

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar