

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1093/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Western Thomson (India)  
Private Ltd.,  
C/o P.B. Vijayaraghavan & Co.,  
Chartered Accountants,  
14, Cathedral Garden Road,  
Nungambakkam,  
Chennai - 600 034.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle 3(2),  
Chennai - 600 034.

PAN : AAACW 0319 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Ravichandran, CA &  
Shri P.B. Srinivasan, CA

प्रत्यर्थी की ओर से/Respondent by : Shri N. Madhavan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 20.09.2017

घोषणा की तारीख/Date of Pronouncement : 27.10.2017

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -13, Chennai, dated 28.02.2017 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is transfer pricing adjustment made by the Assessing Officer to the extent of ₹54 lakhs.

3. Shri V. Ravichandran, the Ld. representative for the assessee, submitted that the Assessing Officer issued a show cause notice on 24.03.2015 calling upon the assessee why arm's length price should not be determined at ₹7.43 Crores in respect of transaction with Associated Enterprise. The Ld. representative further submitted that the assessee is manufacturing water thermostats for automobiles. The company is engaged in the business for more than 45 years. The turnover of the company, according to the Ld. representative, is ₹48 Crores during the year under consideration. According to the Ld. representative, the Assessing Officer in the guise of making transfer pricing adjustment, found that the assessee-company is a part of Western Thomson group. The Assessing Officer found that 12 companies, including one selected by the assessee, were comparables and the comparable companies arithmetic mean was determined at 13.68%.

4. The Ld. representative for the assessee further submitted that the Assessing Officer also found that the ratio of depreciation and operating income of comparable companies is 4.72% as against that of the assessee which is 0.95%. According to the Ld. representative, the assessee-company was established 45 years ago and it was using old machineries, the efficiency of which cannot be compared with other comparable companies which are established recently. Therefore, according to the Ld. representative, there should be some adjustment of depreciation. In other words, the depreciation of the machineries of the comparable companies and that of the assessee-company should be taken into consideration while making adjustment. According to the Ld. representative, the Assessing Officer, however, rejected the claim of the assessee and reduced the depreciation both in the case of the assessee and comparable companies.

5. Referring to the assessment order, more particularly para 5.6, the Ld. representative for the assessee submitted that the Profit Level Indicator calculation of 12 companies along with employee cost and depreciation was considered by the Assessing Officer. Referring to the operating income, the Ld. representative submitted

that the operating income was 2882.4 in respect of comparable companies. The Ld. representative further submitted that the assessee selected RPM method as most appropriate method. However, the same was rejected by the Assessing Officer and the Assessing Officer adopted TNMM method as most appropriate method. The Ld. representative very fairly submitted that the method, namely, Transaction Net Margin Method selected by the Assessing Officer is not challenged by the assessee. According to the Ld. representative, the assessee is a small company having a turnover of ₹48 Crores during the year under consideration. The comparable companies are having very higher turnover, therefore, by adopting turnover filter, the comparable companies selected by the Assessing Officer cannot be compared with the assessee-company. According to the Ld. representative, the PLI computed by the assessee comes to 6.46%. However, the arithmetic mean of comparable companies comes to 12.76%. The arm's length price of transaction was determined at ₹7.51 Crores. After taking into consideration all  $\pm 5\%$  range as provided in the rules, according to the Ld. representative, it comes to ₹8.75 Crores to ₹7.65 Crores. The Assessing Officer found that the ALP transaction of the

assessee comes to ₹7.51 Crores and by taking into consideration  $\pm 5\%$ , the ALP comes to ₹7.65 Crores. Therefore, according to the Ld. representative, the Assessing Officer found that there was variation of 0.14% on the higher side. The variation of 0.14% comes to nearly 0.54 Crores.

6. The Ld. representative for the assessee fairly submitted that the calculation made by the Assessing Officer is correct. However, the old machineries cannot be compared with new machineries, therefore, according to the Ld. representative, the depreciation has to be considered while considering the operating cost. The Assessing Officer has reduced the depreciation both in the hands of the assessee-company as well as the comparable companies which resulted in difference of 0.14%. Therefore, according to the Ld. representative, the Assessing Officer is not justified in reducing the depreciation.

7. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative submitted that the assessee is an industry manufacturing valves to automobiles. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the Assessing Officer also

adopted filters such as functional performance, asset utilised, risk carried by the assessee as well as Associated Enterprise. According to the Ld. D.R., by taking 13 comparables, which include four comparables selected by the assessee, the Assessing Officer found that M/s Brakes Auto (India) Limited is engaged in the business of trading in shirting and suiting, therefore, it cannot be taken as comparable. Similarly, the Assessing Officer found that M/s Lamina Suspension Products Limited also cannot be taken as comparable in the absence of related party details. In the case of M/s ZF Hero Chassis Systems Pvt. Ltd. also the related party details are not disclosed by the assessee. Hence, according to the Ld. D.R., the Assessing Officer has rightly rejected the above three companies. According to the Ld. D.R., the Assessing Officer has also rejected M/s Delphi TVS Diesel Systems Ltd. on the ground that RPT is more than 25%. Similarly, M/s Shriram Pistons & Rings Limited was also taken as non-comparable since the turnover was more than 23 times of the assessee's turnover. In the case of M/s Motherson Sumi Systems Limited, the turnover was more than 66 times of the assessee's turnover. Therefore, according to the Ld. D.R., the Assessing Officer has rightly rejected the said comparables.

8. Referring to the depreciation adjustment, the Ld. Departmental Representative submitted that the assessee has not furnished the details of pricing study of each finished products. Therefore, in order to nullify the difference in the case of comparables, according to the Ld. D.R., depreciation was removed both in the case of comparable companies and in the case of assessee.

9. Referring to ALP calculation, the Ld. Departmental Representative submitted that the margin of the assessee's cash profit was 6.46%. Arithmetic mean of margin comparable comes to nearly 12.76%. The ALP transaction is ₹7.51 Crores. According to the Ld. D.R., after making adjustment of  $\pm 5\%$  range, it comes to ₹8.45 Crores to ₹7.65 Crores. There was a difference of 0.14%. Therefore, according to the Ld. D.R., the Assessing Officer made adjustment of ₹0.54 Crores towards the international transaction. Since the arm's length price of transaction was 5.14%, the Assessing Officer has taken 0.14% towards upward adjustment while determining the transfer pricing adjustment. Therefore,

according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition of ₹0.54 Crores.

10. We have considered the rival submissions on either side and perused the relevant material available on record. There is no much of dispute with regard to comparable companies selected by the assessee or by the Assessing Officer. The dispute now raised by the assessee before this Tribunal is that the machineries utilised for manufacturing the products are very old one, therefore, it was claiming only 0.95% as depreciation. It is not in dispute that the assessee-company was established in 1967 and it is engaged in the business of manufacturing thermostat which is used in automobile industries. The comparable companies' depreciation ratio comes to 4.72% while the assessee's depreciation comes to 0.95%. Therefore, the Assessing Officer found that the depreciation ratio has to be removed both from comparable companies as well as from the assessee-company.

11. The depreciation ratio of the assessee-company at 0.95% and depreciation ratio of the comparable companies at 4.72% is not in dispute. Therefore, it is obvious that the machineries utilised by

comparable companies are latest ones, whereas, the machineries used by the assessee-company are older ones. It is also not in dispute that the machineries of the assessee-company are more than 40 years old, whereas, the machineries of the comparable companies are latest one. The comparable companies are claiming higher rate of depreciation and the assessee is claiming only 0.95%. The question arises for consideration is when the ratio of depreciation does not remain the same between the assessee-company and that of comparable companies, whether the depreciation has to be reduced from the operating cost? The Assessing Officer found that depreciation ratio has to be removed in both the cases i.e. in the case of assessee as well as in the case of comparable companies. Whereas, the assessee claims that depreciation has to be taken into consideration in the hands of the assessee-company as well as comparable companies. The fact remains that the difference of 0.14% in arm's length price comes, because the depreciation was reduced both in the hands of the assessee-company as well as comparable companies. In case depreciation ratio was not reduced in the case of assessee-company as well as comparable companies, the price adopted by the assessee would be well within the  $\pm 5\%$  ratio. The difference of

0.14% arises because of reducing depreciation both in the hands of the assessee-company as well as comparable companies. The question now arises is when there is a price difference of 0.14% over and above  $\pm 5\%$  of permissible limit, whether there can be any addition while determining arm's length price? The undisputed fact in this case is that the assessee-company was established in 1967 and machineries used are older than the machineries used by other comparable companies taken by the Assessing Officer. When the assessee-company was using the old machineries, efficiency of such old machineries would much less when compared to new machineries used by comparable companies. In such a situation, this Tribunal is of the considered opinion that ignoring the difference of 0.14% over and above  $\pm 5\%$  of permissible limit would meet the ends of justice. Accordingly, the Assessing Officer is directed to ignore 0.14% of difference over and above  $\pm 5\%$  of the permissible limit.

12. In view of the above, this Tribunal is unable to uphold the orders of authorities below. Therefore, orders of both authorities below are set aside and the addition of ₹54,00,000/- is deleted.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 27<sup>th</sup> October, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai-34
4. Principal CIT- 3, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.