

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'D', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।  
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.459/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Interpump Hydraulics Pvt. Ltd.,  
#6A, Sipcot Industrial Complex,  
Phase-1, Elasagiri Road,  
Hosur – 635 126,  
Tamil Nadu.

[PAN: AABCI 5465R]

(अपीलार्थी /Appellant)

अपीलार्थी की ओर से / Appellant by

प्रत्यर्थी की ओर से/Respondent by

सुनवाई की तारीख/ Date of hearing

घोषणा की तारीख /Date of Pronouncement

Asst. Commissioner of Income  
Tax, Circle-1,  
Hosur.  
Tamil Nadu.

(प्रत्यर्थी/Respondent)

Shri R.E.Balasubramanyan, CA

Shri Pathlavath Peerya, CIT

19.06.2017

30.06.2017

**आदेश /ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Disputes Resolution Panel-2, Bangalore ('DRP' for short) dated 16.11.2016, contesting its assessment u/s. 143(3) r/w s.144C(1) of the Income Tax Act, 1961 ('the Act' hereinafter) for assessment year (AY) 2012-13 vide order dated 29.12.2016.

2. The Transfer Pricing (TP) adjustment under dispute in the present case is in respect of purchase of plant and machinery by the assessee company from its Associate Enterprise (AEs), IPH Italy and H.S. Penta, Italy. IPH Italy is a part

of the larger Interpump group of companies, consisting of many other companies, spread over many countries, with the final holding and control vesting with a company by the name Interpump Group S.p.A. Interpump Hydraulics S.p.A., Italy, is a manufacturer of hydraulic pumps, power packs and power take offs, used in trucks and other heavy duty earth moving equipment and commercial vehicles. Till the year 2006, the company was marketing its products in India through a distributor, i.e., before it decided to carry out manufacture of its products in India too. Interpump Hydraulics India Pvt. Ltd (hereafter referred to as **IPH India** or the assessee, as the context requires) was incorporated in July, 2006 as a wholly owned subsidiary of IPH International S.p.A., which in turn is a subsidiary of IPH Italy. The company is manufacturing hydraulic valves at its manufacturing plant at Hosur, Tamil Nadu, since. During the year 2009, the parent group acquired a controlling interest in an entity called H.S. Penta which was engaged in the manufacture of automotive cylinders in Italy. Post acquisition, the management of the group felt that some of the activities of H.S. Penta were in direct competition with the business of some of the other group companies in Italy. Therefore, the business of H.S. Penta *in its entirety* was planned to be shifted to the Rudrapur unit in two or more phases to take advantage of the lower costs and a bigger market in India. In accordance with this scheme, the first phase of machines, tools, fixtures, drawings, database and programmes embedded in the machinery of H.S. Penta were shifted to the Rudrapur plant in the f.y. 2009-10. Necessary reconditioning and spares were also shipped. The acquisition during the current year represents the second phase of the transfer of plant and machinery of H.S. Penta. It is the transfer price of these machineries, an international transaction/s, which is subject to downward adjustment by the Revenue, which is being disputed by the assessee. While the assessee relies on the stated consideration, which is stated as backed by a valuation report by a Chartered Engineer, the Revenue does on the Written Down Value (WDV) thereof, adopting the extant

rate of depreciation on the plant and machinery under the Act (i.e., 15%), rejecting the assessee's valuation report as self serving and, besides, with a view to facilitate its approval by the custom authorities in-as-much as the custom duty is levied *ad volerm* on the import cost.

3. *The respective cases:*

The assessee, who has not included this international transaction/s as a part of its TP study on the ground that its impact shall be factored in the overall operating results, contends for the matter being examined holistically. It is an *en block* transfer of 'plant and machinery', a production centre, so that it must be regarded as such, i.e., as that of a production facility. The production was able to commenced almost immediately, i.e., within three months of the completion of the transfer in the first phase, yielding profit as well as savings on the set-up costs, again, translating into profits, which any businessman would look at / take into account. The value of the transferred asset/s, which is to a large extent on account of software imbedded therein, is thus divorced from or independent of the age and, thus, its depreciated value; the depreciation rates being standard rate/s with a view to allow the capital cost over a presumed life of the assets, categorized broadly. Though some of the machines are more than 20 years old, having been purchased (by the transferor) in 1970s/1980s/1990s, the same have a balance life of not less than 10 years, on which basis the same were imported.

The Revenue, on the other hand, while not questioning the business decision or wisdom in acquiring the plant and machinery, questions the transfer price thereof, even as the same is admittedly without any stated basis, with most of the machines being in fact very old. Comparable Uncontrolled Price (CUP) is the only appropriate method in the circumstances, even as approved by the Tribunal in the assessee's case for AY 2010-11 (in ITA No. 839/Mds/2015/copy on record at PB pgs. 115-118), which in the present case has been taken as the WDV.

4. We have heard the parties, and perused the material on record.

We find little merit in the values adopted by either side. Depreciation rates as per the Act are designed to allow the capital cost over a reasonable period, so that the depreciated value (WDV) has nothing to do with the utility or the perceived value of the capital assets, which in the present case form part of one, integrated production centre/facility (assuming that the units purchased from IPH Italy are also for the Rudrapur Unit), which must therefore be regarded as a composite unit, and valued in terms of its production capacity. As clarified by the tribunal for AY 2010-11, the WDV cannot furnish an adequate value or serve as a valid basis for price, which must represent the fair market value of the machine/s as between two informed persons, i.e., the buyer and the seller. And for which reason it states the value of the machinery transferred is to be compared with uncontrolled market (refer para 5 of its order), and which the ld. DR refers to as CUP. Again, that being the case, how we wonder could the assessee's operating results, based on Transactional Net Margin Method (TNMM), validate the acquisition cost of its production facility - a capital cost? Why, the machines were in running condition, in operation for the past several years and, in fact, represent the second phase of transfer on the successful completion of the first phase thereof, so that its product/s is well established in the market. It is in fact this that has prompted it to proceed with the second phase (of the transfer). Capital cost therefore cannot be imputed with reference to the profits, or the latter justified in terms of the former. Why, as we infer, depreciation is only a fractional part of the assessee's operating cost, even as the Revenue alleges, in view of the low WDV, an inflated transfer price. Again, the company only seeking to relocate the production facility, nothing much turns on the shorter set-up time. In fact, relocation involving time and cost, the same only entails loss of production and, resultantly, of profits, so that it's endeavor would be to minimize/optimize the same, containing costs. The assessee's method of

valuation, which is unstated, fails for the same reason, i.e., as not representative of a comparable uncontrolled price.

The moot question in the present case is as to what is the fair market value, which could therefore be regarded as the arm's length price (ALP) between the parties, the assessee and its AEs, for the plant and machinery exported by its AEs to it. In this regard, the Id. Authorized Representative (AR) was during hearing asked about the purchase cost of the plant and machinery of H.S. Penta by the Interpump Group, to which he stated as being not determinable in-as-much as the same was 'acquired' by way of purchase of shares. True, but then the cost of the shares would only be arrived at by placing some value on the assets of HS Penta. It is the plant and machinery, which constitutes its production capacity, which has thus been in effect acquired by the Interpump Group. The said transfer represents an independent, uncontrolled transaction between two parties, which can form the basis for the transfer consideration of the plant and machinery subsequently transferred to India, i.e., to the assessee-company, and which has been in two installments; the present (second) following the successful implementation of the first one. Without doubt, the entire assets of H.S. Penta, along with liabilities, shall have to be valued in-as-much as a 'share' therein represents a fractional interest in its' net worth. This is particularly so as the transfer of the plant and machinery commences soon after the acquisition of H.S. Penta in 2009, with the first phase of transfer completed in f.y. 2009-10 itself. That is, there is hardly any time lag between the acquisition of capacity of H.S. Penta and its transfer to India, for the consideration of variation in price on account thereof to come into play. The same satisfies the test of CUP and, in any case, would qualify with reference to r. 10AB, effective from the current year.

The matter, accordingly, is restored back to the file of the AO for fresh determination along these lines. The burden to prove its return, and the claims preferred thereby, is only on the assessee (*CIT v. Calcutta Agency Ltd.* [1951])

19 ITR 191 (SC); *CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)), so that the onus to state and present its case in the set aside proceedings shall be on the assessee. The Revenue (TPO) shall, at the same time, though at liberty to verify the materials furnished and relied upon by the assessee in these proceedings, as well as to raise questions in their respect, so as to satisfy himself, act in consistency with the broad parameters set forth herein, which is of valuation of plant and machinery (productive capacity) on a comparable, uncontrolled basis, which we understand the issue under reference as.

We may though clarify two things. One, that the entire capacity is to be, irrespective of the time of its subsequent transfer (relocation) to India, at one value, so that the valuation of the plant and machinery comprising the first tranche is to be consistent with the second, and the two cannot be valued either differently or independent of each other. That is, even if the same stands valued separately, being the subject matter of the proceedings for a different year, *qua* which we exercise no jurisdiction, for the purpose of the valuation for the current year, the entire plant and machinery of H.S. Penta is to be taken into account. In fact, if the DRP, for AY 2010-11, required an independent valuation (by the Revenue), as appears to be the case, whose action has been upheld by the tribunal, our order is broadly in sync with that for that year. Yes, there could be some variations from machine to machine depending upon its production quality, capacity and age, i.e., the remaining useful life, all of which may impact its utility and, thus, has a bearing on its price for the assessee. These variations, which may translate in some difference in the prices of individual machines, shall be nevertheless within the broad framework of the price determined on the basis of the acquisition cost of shares (of H.S. Penta).

Two, the software; the machines being programmed/programmable, is not to be valued independently as it is an integral part of the machine/s in-as-much as the same, program driven, is a single, identifiable unit representing a part of the production capacity (which could be *qua* different production processes).

Why, the entire intellectual property in the form of designs, process drawings, machining parameters, codes, data embedded in the machines, etc. is to be transferred along with, which is in fact implied in the context of the transfer or relocation of production capacity. Further, the same, i.e., the transfer price of the machinery purchased from H.S. Penta can also provide a valid basis for the purchase of machinery from IPH Italy in-as-much as, as explained, it is also for the same plant, comparable and compatible in all respects, forming part of the same production capacity, as otherwise there is no basis for its transfer, which, as explained, represents the transfer of the production capacity within the group.

Finally, we may clarify that the transfer price, in aggregate, cannot, in any case, exceed that adopted by the assessee itself, so that in case of a higher ALP on the basis of acquisition cost of shares, the same shall have to be restricted to the value transacted, requiring no adjustment.

We decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced on June 30, 2017 at Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)  
(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

न्नई/Chennai,

दिनांक/Dated, June 30, 2017

EDN

Sd/-

(संजय अरोड़ा)  
(Sanjay Arora)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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