

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member  
AND  
Shri S.Rifaur Rahman, Accountant Member**

**ITA No.1425/Hyd/2014**  
(Assessment Year: 2006-07)

St. Jude Medical India Pvt. Vs Dy. Commissioner of Income  
Ltd, Hyderabad Tax, Circle 3 (2)  
PAN: AAICS 9821 J Hyderabad  
(Appellant) (Respondent)

For Assessee : Shri S.P. Chidambaram  
For Revenue : Smt. U. Minichandran, DR

Date of Hearing: 11.12.2017  
Date of Pronouncement: 24.01.2018

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2006-07. In this appeal, the assessee is aggrieved by the assessment order dated 30.06.2014 passed u/s 143(3) r.w.s. 144C and 254 of the I.T. Act. The assessee has raised the following grounds of appeal:

*"1. That the Transfer Pricing Officer (TPO)/the Assessing Officer (AO) erred in not accepting the price of international transactions of purchases of medical devices of Rs.27,22,69,532 shown by the Appellant and determining the Arm's Length Price (hereinafter referred to as 'ALP') at Rs. 24,66,71,869 and thereby making a transfer price adjustment of Rs.2,55,97,663 to the Total Income of the Appellant.*

*2. That on the facts and circumstances of the case and in law, the Dispute Resolution Panel (DRP)/the TPO/the AO erred in not following the directions of the Hon'ble Tribunal vide order dated*

*30 June 2011 for determination of Arm's Length Price of the International Transaction in their orders.*

*3. That the DRPI TPO/AO should have appreciated that in the matter remanded by the Hon'ble Tribunal, it was incumbent upon them to follow only the directions of the Hon'ble Tribunal and not to do the assessment afresh or de-novo.*

*4. That the DRP erred in remitting the matter to the TPO for verification and making adjustments disregarding the provisions of section 144C(8) of the Act.*

*5. That the TPO/AO erred in issuing fresh notice to the Appellant post the order of the DRP for additional information and further enquiry which is beyond the powers granted under section 144C (13) of the Act.*

*6. That the TPO/AO has erred in correctly applying the Rule 10B(1)(b) of the for Income Tax Rules 1962, ('Rules') determination of ALP as per Resale Price Method ('RPM').*

*7. That the benefit of adjustment of marketing expenses allowed by the TPO in its original order dated 30 October 2009 which was confirmed by the DRP and Hon'ble Tribunal should not have been ignored while passing the final order.*

*8. That on the facts and circumstances of the case, the DRP/TPO/AO erred in rejecting Central Scientific Suppliers Limited, one of the comparable selected by the Appellant in accordance with the provisions of the Act read with the Rules.*

*9. The Learned AO erred in imposition of interest under section 234B and Section 234D”.*

2. Brief facts of the case are that the assessee, a wholly owned subsidiary of St. Jude Medical Inc. is engaged in trading of

Cardiac Rhythm Management, Cardiac Surgery and Cardiology Devices manufactured by its group companies. The assessee purchases the devices from its AE and markets and sells its products to Hospitals in India. The TPO rejected the T.P study conducted by the assessee and carried out fresh analysis using resale price method as the most appropriate method. He arrived at the margin of the taxpayer at 16.84% and that of the four comparables at 38.45% and proposed an adjustment of Rs.9,09,84,839. He also carried out supplementary analysis using TNMM and arrived at the arithmetic mean margin of the comparables at 15.85% as against that of the taxpayer -2%. Accordingly, draft assessment order was proposed against which, the assessee made a reference to the DRP. The DRP vide its order dated 30.09.2010, upheld the use of the Resale Price Method (RPM) and rejected two of the comparables and the margin was recalculated at 29.51%. Consequently, the adjustment got reduced to Rs.6,50,05,340.

3. The assessee further appealed to the ITAT and the ITAT vide orders dated 30.06.2011 in ITA No.1626/Hyd/2010 in Para 12 held as under:

*“12. We have heard both the parties and perused the materials available on record. We find force in the arguments of the assessee's counsel. There is no dispute herein with regard to the fact that the entire purchases were made from M/s Associate Enterprises at Rs.35.16 crores was not sold. There were unsold goods. The unsold goods cannot be considered in the assessment year under consideration for determining the arm's length price. Only the goods that which was sold has to be considered for determining the ALP. After considering the purchase price from the AE in respect of the goods sold, the addition has to be made towards normal average GP margin on sales and thereafter deduction is to be made towards marketing expenses*

*and other adjustments i.e., towards functional, economic differences and working capital at 3% of the ALP as determined by the DRP. Accordingly, with these directions, we set aside the order of the Assessing Officer and remit back the entire issue to the file of Assessing Officer to re-determine the ALP in accordance with Rule 10B(1)(b) of the IT Rules and thereafter compute the additions if any required to be made u/s 92C(A) with regard to the difference between ALP and purchase price of international transactions after giving adequate opportunity of hearing to the assessee”.*

4. In order to pass the consequential order, the TPO issued a show-cause notice to the assessee to explain as to why the adjustment at Rs.5,27,44,552 should not be made. The assessee vide letter dated 25.04.2013, contended that the ALP needs to be applied also on the unsold stock and provided its own working of the ALP. The TPO however, observed that the ITAT has remitted the entire issue to the TPO for re-determination of the ALP in accordance with Rule 10B (1)(b) of I.T. Rules and therefore, the proposal of the TPO is correct. He therefore, proposed an adjustment of Rs.5,27,44,552. Accordingly, the draft assessment order dated 10.09.2013 was proposed by the AO. Against the said order, the assessee preferred its objections to the DRP. The DRP observed that the computation of the TPO appears to be not in line with the directions of the Hon'ble ITAT who have directed to re-determine the ALP in accordance with Rule 10B (1)(b) of I.T. Rules and as per clause (ii) of Rule 10 B (1)(b), the expenses incurred by the enterprise in connection with the purchase of the property are to be reduced while arriving at the ALP. The DRP directed the AO to verify such expenses and to make adjustment accordingly and to re-compute the adjusted ALP u/s 92CA of the Act. Consequently, the TPO has passed a revised TP order dated 30.06.2014 proposing an adjustment of Rs.2,55,97,663 and in

accordance therewith, a final assessment order is passed against which the present appeal is filed by the assessee before us.

5. The learned Counsel for the assessee submitted that the TPO, in his original order dated 30.10.2009, had added the marketing expenses of Rs.2,71,46,889 incurred by the taxpayer to the purchase price of the goods and reduced the same from resale price to arrive at the margin of the assessee and that the same has not been disturbed by the ITAT. He submitted that the ITAT has only directed that after considering purchase price in respect of the goods sold, the addition has to be made towards normal average GP margin on sale and thereafter, the deduction is to be made towards marketing expenses and other adjustments i.e. towards functional, economic differences and working capital at 3% of the ALP as determined by the DRP. Therefore, according to the learned AR, the DRP has erred in directing the AO to re-verify the expenses and recompute the ALP and that such directions are beyond the scope of the DRP. He submitted that the AO/TPO had to strictly follow the directions of the ITAT and to re-compute the ALP after deducting the marketing and other administrative expenses from the resale price arrived at as per directions of ITAT.

6. The learned DR, on the other hand, supported the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, we find that the issue before the ITAT was the average margin of the comparables and it had been confirmed at 29.51%. The Tribunal has, thereafter, directed only for re-computing the

ALP after allowing the marketing expenses. Therefore, there was no discretion left to the authorities below for re-computing the ALP. The remand was only for the calculation of the ALP and not for verification of the expenses which have already been accepted and quantified by the TPO in the earlier proceedings. Therefore, the AO/TPO are directed to calculate the ALP exactly in the way directed by the ITAT.

8. In the result, assessee's grounds of appeal No. 2 to 7 are allowed.

9. The learned Counsel for the assessee did not advance any arguments on ground of appeal No. 8 and therefore, the same is not adjudicated. Ground of appeal No.9 being consequential in nature on the levy of interest u/s 234B and 234D, the AO is directed to give consequential relief, if any, to the assessee.

10. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 24<sup>th</sup> January, 2018.

**Sd/-**  
**(S.Rifaur Rahman)**  
**Accountant Member**

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 24<sup>th</sup> January 2018.

**Vinodan/sps**

Copy to:

- 1 M/s. St. Jude Medical India (P) Ltd, A&B Brij Tarang, Greenlands, Begumpet, Hyderabad
- 2 DCIT, Circle 3(2), Hyderabad
- 3 DRP, Hyderabad
- 4 Director of Income Tax (I.T. & TP) Hyderabad
- 5 Addl. Director of Income Tax (IT&TP) Hyderabad
- 6 The DR, ITAT Hyderabad
- 7 Guard File

*By Order*