

आयकर अपीलीय अधिकरण , 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI**

श्री एन.एस.आर.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./I.T.A. No. 795/Mds/2017

निर्धारण वर्ष/Assessment Year : 2012-13

Ahlers India Pvt. Ltd.,
The Trapezium, 2nd Floor,
No. 39, Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.

Deputy Commissioner of Income Tax,
Vs. Corporate Circle -1(1),
Chennai.

[PAN: AAECA 5688H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. R. Sandeep Bagmar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Mrs. Ruby George, CIT

सुनवाईकीतारीख/Date of Hearing

: 02.11.2017

घोषणाकीतारीख/Date of Pronouncement

: 31.01.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Deputy Commissioner , Corporate Circle 1(1), Chennai passed in pursuance of the directions of the DRP dt 30.01.2017 for assessment year 2012-13.

2. Ahlers India, the assessee, is a subsidiary of Ahlers NV, commenced its Indian Operation in the year 2004 and has its offices in 12 cities. From its start , Ahlers India has been dealing with complex logistics solutions focused on to the customer needs. Ahlers India's Air Cargo business began from June 2008. Ahlers India has handled about 5500 shipments in India during 2011-12 generating gross revenue of Rs. 77.73 crores. The TPO rejected the following comparables chosen by the assessee

Connect Cargo Private Limited ('CCPL')

Gordon Woodroffee logistics ltd ('GWL')

Tiger logistics India Private Limited ('TLIPL') and included the following comparables

NR International Limited, Speedy Multimodes Limited and

Sical Logistics Limited in spite of the assessee's objections. Aggrieved, the assessee filed its objections before the DRP .The DRP issued its directions rejecting the assessee's objections. The Deputy Commissioner, Corporate Circle 1(1), Chennai gave effect to it. Aggrieved , the assessee filed this appeal. Let us examine them as under :

3. The comparable Connect Cargo Private Limited ('CCPL') :

The TPO rejected this comparable for the reason that substantial portion of its income is from non-freight sources, the details is not ascertainable and hence the company cannot be considered as a comparable. On assessee's objections, the DRP upheld the assertion of the TPO as the income other than freight is 6.9 crores vis-a-vis the freight income of 11.1 crores. Before us, the assessee pleads that the

rejection is made without considering the fact that during this year, the company has earned significant revenue from freight and other related operations and is thus functionally comparable to the assessee. In this regard, the assessee submitted that

it is evident from the financial statements that substantial portion of the income is from freight & other incomes which is INR 11.10 crores vis-a-vis the income other than freight which is INR 6.90 crores. (as per Note 14 in Page 2 of Paperbook - 2). The sales comprised of freight income and all related charges including handling, local transportation, duties and expenses payable by the client. (Revenue Recognition - note 20(iv) in page 3 of Paperbook - 2) .CCPL is a well renowned company with hands on experience in Logistics Management and has established a global presence in the transportation and logistics industry. (Extract from website of CCPL- Page 4 of Paperbook -2).Considering the above, the assessee pleads that CCPL should be considered as comparable company and sought our attention to Page 161 of paperbook- 1, which contained complete set of financial statements. Per contra, the DR supported the orders of the TPO and the DRP.

3.1 We heard the rival submissions and gone through the relevant materials. We find merit in the submissions of the assessee and hence direct the TPO/AO to take Connect Cargo Pvt. Ltd. as a comparable and re-work the ALP accordingly. The corresponding grounds of appeal is allowed.

4. On rejection of Tiger logistics India Private Limited ('TLIPL') :

The TPO rejected this comparable for the reason that this company is engaged in other verticals such as trading in food commodities which is also reflected as sale of

goods in its P and L. On assessee's objections, the DRP held that in addition to TPO's comments it is seen that this comparable is also in the warehousing among other things and therefore it is not a comparable. Before us, the assessee pleads that the rejection is made without considering the fact that during the year, the company has earned significant revenue from freight and other related activities (more than 90 percent of the total revenue) vis-a-vis the revenue from sale of goods (only 6 percent of the total revenue) and thus it is functionally comparable to the assessee. It is submitted that the revenue from freight, transportation, documentation charges etc. is 92.36% as against 6.56% of sale of goods. (note 18 - Page 5 of Paperbook -2). This Tribunal in its own case for a y 2011-12 in ITA No. 1071/Mds/2016 had directed that TLIPL should be considered as comparable to the assessee and the TPO while giving effect to the directions of the Tribunal for ay 2011-12 had selected TLIPL as a comparable company. Per contra, the DR supported the order of the TPO and the directions of the DRP.

4.1 We heard the rival submissions and gone through the relevant materials. We find merit in the submissions of the assessee. Since, TPO has treated the TILIP as a comparable to the assessee in the assessment year 2011-12, the TPO/AO is directed to treat this company as a comparable for this ay and re-work the ALP accordingly. The corresponding grounds of appeal is allowed.

5. On rejection of Gordon Woodroffee logistics ltd ('GWL') :

The TPO , on perusal of the financials held that its margin is estimated as under:

OI – 39.05 cr

OC – 39.25 cr

Loss – 02. Cr

Since this company is making a persistent loss he held that the company cannot be accepted as comparable. On assessee's objection, the DRP held that since the assessee has not furnished annual reports of earlier years to show that it is not persistent loss making, there is no reason to interfere with the decision of the TPO. Before us, the assessee pleads that the lower authorities erroneously concluding that the company is persistently making losses. It is submitted that the TPO has erred in computing the margins of the company for FY 2011- 12. The OP/OI of GWL for the FY 2011-12 is (+) 4.15 % and hence the company is a profit making company and is comparable to the assessee. This Tribunal although in its case for ay 2011-12 in ITA No. 1071/Mds/2016 had held that GWL incurred loss in that ay, also in earlier year and hence it cannot be considered as comparable to the assessee, considering the fact that the GWL is earning profits for this ay, it can be held as a comparable. Per contra, the DR supported the order of the TPO and the directions of the DRP.

5.1 We heard the rival submissions and gone through the relevant materials. We find merit in the submissions of the assessee. However, the TPO shall examine the workings given by the assessee stating that the company is making a profit, after giving adequate opportunity to the assessee. If the assessee's claim is found correct then the Gordon Woodroffee Logistics Ltd has to be treated as a comparable and re-work the ALP accordingly. The corresponding grounds of appeal is treated as allowed for statistical purposes..

6. On the selection of NR International Limited, Speedy Multimodes Limited and Sical Logistics Limited as comparables, the TPO held as under :

NR International : The comparable has only 0.44 crore value of vehicle for all the segments put together. The asset/sales ratio of the comparable is only 0.31% for all the segments put together. Hence, the comparable is not asset based logistics provider

Speedy Multimodes : The company has 23.46 crore value of assets for all the segments put together. The asset/sales ratio is only 30% for all the segments but together. Hence the comparable is not asset based logistics provider.

Sical Logistics Ltd: The asset/sales ratio is only 1.6%. Hence the comparable is not asset based logistics provider.

6.1 On the assessee's objections, the DRP held that the asset based logic is not backed by any data. No correlation between comparables owing asset and those not owning any asset has been provided by the assessee. The asset base of the said companies is very small as stated by the TPO. Regarding argument of the assessee for bulk and containerized cargo it is seen that the TPO has taken segmental data of transportation segment only. Regarding Sical Logistics, the TPO is directed to take transportation segment's data.

6.2 On these issues , the assessee submitted that these comparables were included without considering the significant differences in the business model, function undertaken, assets employed and risks borne of the said companies vis-a-vis the assessee. It pleaded that the entity Level margins should be considered . NR

International is engaged in diversified business primarily handling and transportation of Coal and Coke. (Extract from website - Page 9 of Paperbook 2) . Further, it is also evident from the financial statements that the revenue from 'Handling and Transportation' segment is 99.95% of the total revenue. However, the segment level margin of Handling and Transportation segment is 22% as against the entity level margin of 14% which indicates that the segmental data is unreliable. Therefore, the assessee submitted that entity level margins of NR International should be considered while determining the ALP. On Speedy Multimodes Ltd., the assessee submitted that it is engaged in diversified activities such as container freight station operations (CFS), warehousing and courier services which is not comparable to the assessee. Further, the company has a 110,000 sq.ft of bonded warehouse of its own to store the goods imported. (Extract from website - page 11 of Paperbook 2) The TPO in the case of V Trans (India) Ltd which was selected as comparable in the show cause notice issued, later rejected it on the basis that the company has an established warehouse. (page 276 of the Paperbook 1). Based on the same analogy, Speedy Multimodes is not comparable to the assessee. Per contra, the DR supported the order of the TPO and the directions of the DRP.

6.3 We heard the rival submissions and gone through the relevant material. The TPO has found that the above comparables are having very low assets/sales ratio and hence they could be treated as comparables. The assessee could not furnish any correlation between comparable owning asset and those not owning any asset. Though these companies are engaged in various other businesses, since the TPO

has taken the segmental data of transportation, we do not find any infirmity in considering them as comparables. The corresponding grounds are dismissed.

7. On incorrect computation of segmental margins of Sical Logistics Limited :

While computing segmental margins of Sical Logistics Limited, the TPO held that in the absence of segmental information, the segmental results with respect to transportation segment is arrived based on the turnover in each segment. Since the freight expenses of INR 102.42 crores is allocated to transport segment, the entire handling and transportation expenses of INR 308.42 crores is allocated to port services. (page 323 and 324 of the paperbook and rectification order issued by the Id. TPO). Before us, the assessee submits that the TPO had apportioned the expenses based on the turnover in each segment. It is evident from the term 'Handling and Transportation' itself that the said expenditure has been incurred for the transportation segment. (Extract from Annual Report - Note 21, Page 12 of Paperbook 2) . However, the TPO without providing any cogent reasons and only on the basis that since freight expenses was allocated to transport segment has erroneously allocated the entire handling and transportation expenses to port segment. In this regard the assessee relied on the decisiosn of the Hon'ble Supreme Court in the case of Consolidated Coffee Ltd. Vs. State of Karnataka [2001] 248 ITR 432 (SC) , the Hon'ble High Court in the case of Fosroc Chemicals India (P) Ltd.[2016]69 taxmann.com 43(Karnataka) and the Hon'ble Mumbai Tribunal in the case of Godrej Household Products Ltd. V. ACIT [2014]41 taxmann 386 (Mumbai - Trib.) & the Hon'ble Mumbai Tribunal in the case of Godrej Sara lee ltd. V. ACIT

[2015] 58 taxmann 109 (Mumbai - Trib.). Per contra, the DR supported the order of the TPO.

7.1 We heard the rival submissions. We remit this issue back to the TPO for a fresh examination and for passing for appropriate order after affording adequate opportunity to the assessee. The corresponding grounds are treated as allowed for statistical purposes.

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

Order pronounced on Wednesday, the 31st day of January, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस.जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF