

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1722 /PUN/2015

निर्धारण वर्ष / Assessment Year : 2008-09

The Assistant Commissioner of Income Tax,
Circle-9,
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Faurecia Interior Systems India Pvt. Ltd.
T-187, Pimpri Industrial Area,
(B.G.Block), Bhosari,
Pune-411 026.
PAN : AACCT0275F

.....प्रत्यर्थी / Respondent

Appellant by : Shri Ajay Modi.

Respondent by : Shri Jaydeep S. Kulkarni

सुनवाई की तारीख / Date of Hearing : 17.05.2018	घोषणा की तारीख / Date of Pronouncement : 24.05.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the Revenue is against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 21.10.2015 relating to assessment year 2008-09 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act')

2. The Revenue has raised following grounds of appeal:-

“1. Whether on the facts and in the circumstances of the case & in law, the Ld. CIT(A) was justified in holding that the AO was not justified in invoking provisions of section 10A(7) of the I.T. Act, 1961.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in directing the AO to delete the addition made u/s. 10A(7) of the I.T. Act, 1961 of Rs.2,88,69,742/-

3. The appellant craves leave to add, amend or alter any of the above grounds of appeal.”

3. The Revenue is in appeal against the order of CIT(A) in holding that the Assessing Officer was not justified in invoking provisions of section 10A(7) of the Act and to delete the addition of Rs.2,88,69,742/-.

4. Briefly in the facts of the case, the assessee was a joint venture Company between Tata Comp Systems Ltd. India (TACO) and Faurecia Automotive Holidays, France with equal share holding, had unit registered in the Software Technology Park (STP) and was engaged in the business of design engineering services. The assessee company filed its return of income for A.Y.2008-09 on 29.09.2009, declaring total income of Rs.2,81,340/- as per normal provisions of the I.T Act, 1961 and Rs. 5,04,28,913/- as per section 115JB of the I.T. Act, 1961. In the return filed the assessee company had claimed deduction under section 10A of the I.T. Act, 1961 and Rs. 5,07,09,119/-. The Transfer Pricing Officer (TPO) has passed order under section 92CA(3) of the I.T. Act, 1961 dated 18.10.2011. The TPO in his order, had requested the AO to verify the feasibility of disallowance under section 10A of the Act in view of sec.10A(7) r.w.s.80IA (10) of the Act, as the operating profit margin was higher than that of the comparables selected by the assessee. The Assessing Officer issued show cause notice to the assessee asking the assessee to explain its claim of deduction under section 10A of the Act. The assessee explained that there was no arrangement between the assessee and comparables selected by

the assessee. Hence, the provisions of section 10A(7) r.w.s.80IA(10) are not attracted. The Assessing Officer, however, rejected the submissions of assessee holding that ordinary profit as per transfer pricing report was 12.55% as against 29.14% shown by the assessee. Accordingly, excess profit worked out at Rs.2,88,69,742/- was added back to the total income of the assessee; in turn, disallowing the excess claim of deduction under section 10A of the Act, the Assessing Officer passed order under section 143(3) r.w.s 144C(13) of the Act.

5. Before CIT(A), the assessee pleaded that the course of business between assessee and group company/AEs was not so arranged as covered under section 10A(7) r.w.s. 80IA(10) of the Act. It was further pointed out that assessee had not earned more than ordinary profits and the margin shown by comparables could not be bench-marked for ordinary profits as per section 10A(7) of the Act. It was further pointed out by the assessee that provisions of section 10A(7) r.w.s. 80IA(10) of the Act were not applicable to the international transactions. The CIT(A) held that operating margins of the assessee had been fluctuating over the years, depending upon performance of the company. The operating margins of the assessee had been fluctuating from 18.42% to 38.73% which shows that operating margins was based upon the performance of the assessee for the particular assessment year. Further, CIT(A) had placed reliance on the decision of Pune Bench of Tribunal in the case of M/s. Honey well Automation India Ltd. Vs. DCIT, ITA No.18/PN/2011 relating to assessment year 2006-07 order dated 25.02.2015. The CIT(A) relying on the decision of Pune Bench of Tribunal in the case of M/s. Honey well Automation India Ltd. Vs. DCIT (supra.) held that the issue in the present appeal is identical and held that the Assessing Officer was not justified in invoking the provisions of section 10A(7) r.w.s. 80IA (10) of the Act and accordingly, directed the Assessing Officer to delete the addition.

6. Now, the Revenue is in appeal against the order of CIT(A).

7. On slated date of hearing, the assessee moved an application for adjournment. Since the issue raised in the present appeal is squarely covered by the decision of Pune Bench of Tribunal in the case of M/s. Honey well Automation India Ltd. Vs. DCIT (supra.), adjournment application was refused and matter was heard.

8. On perusal of the record, we find the issue raised in the present appeal is against invoking provision of section 10A(7) r.w.s 80IA(10) of the Act. The assessee had entered into various international transactions with its related concerns/AEs. The transfer pricing issue was referred by the Assessing Officer to TPO who accepted the margins shown by assessee @ 29.14% to be at arm's length. The Assessing Officer held that ordinary profits as per transfer pricing report was @ 12.55% as against 29.14% shown by the assessee. No adjustment on account of arm's length price was proposed by the TPO. However, the TPO requested the Assessing Officer to verify the feasibility of disallowance under section 10A (7) r.w.s 80IA(10) of the Act on the surmise that the assessee had earned higher margins than the mean margins earned by comparables selected by assessee. Accordingly, deduction claimed under section 10A of the Act was reworked at Rs. 2,88,69,742/- and added back the total income of the assessee. The case of the assessee before Authorities below was that in the absence of any arrangement between the assessee and its group companies/AEs, margins earned by assessee could not be held to be more than ordinary profits. It was also stressed by the assessee that it had not earned more than ordinary profits. We find the issue raised in present appeal stands covered by a series of decisions of Pune Bench of Tribunal and on this count, we rely on the decision of Pune Bench in the case of M/s. Honey well

Automation India Ltd. Vs. DCIT (supra). The relevant portions of the Tribunal's order is reproduced by CIT(A) at page 12 to 17 of the appellate order. Only reference is being made to the findings of the Tribunal in the said decision but same is not being reproduced for the sake of brevity. The issue arising in the present appeal is squarely covered by the order of the Tribunal on this count in favour of the assessee. Accordingly, we find no merit in the grounds raised in appeal by Revenue and hence, are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced on this 24th day of May, 2018.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th May, 2018

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Pune.
4. The Pr.CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.