

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2084/Bang/2017
Assessment Year : 2009-10

M/s. Sartorius Stedim India Pvt. Ltd., No. 69/2 & 69/3, Jakkasandra, Kunigal Road, NH-48, Nelamangala Taluk, Bangalore – 562 123. PAN: AABCS7591Q	Vs.	The Deputy Commissioner of Income Tax, Circle – 12 (3), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Narendra Kumar J Jain, Advocate
Revenue by	:	Smt. Sri Nandini Das, Addl. CIT (DR)
Date of hearing	:	09.10.2018
Date of Pronouncement	:	12.10.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-6, Bangalore dated 21.07.2017 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

“General Grounds:

1. *The Order passed by the Honorable Commissioner of Income Tax (Appeals)-6 [hereinafter referred to as Honorable CIT(A)] to the extent prejudice to the Appellant is bad in law.*

Transfer Pricing General Grounds

2. *The learned AO erred in making a reference to TPO for determining arm's length price without demonstrating as to why it was necessary and expedient to do so. The CIT(A) has erred in confirming the action of the TPO;*

3. *The CIT(A) / AO / TPO in passing the order without demonstrating that the Appellant had motive of tax evasion;*

4. *The CIT(A) has erred in confirming the action of the AO/TPO in not appreciating that there is no amendment to the definition of "income" and the charging or computation provision relating to income under the head "Profits & Gains of Business or Profession" do not refer to or include the amounts computed under Chapter X and therefore addition made under Chapter X is bad in law; and*

5. *The CIT(A) has erred in confirming the action of the AO/TPO in making transfer pricing adjustment of Rs. 3,32,42,344/-.*

Grounds relating to TP adjustment in Manufacturing Segment

6. *The CIT(A) has erred in confirming the action of the AO/TPO in rejecting comparables*

selected and the TP analysis undertaken by the Appellant on unjustifiable grounds. The lower income tax authorities have erred in rejecting following companies selected by the Appellant as comparables:

- a. Gansons Ltd;*
- b. Mojj Engineering Systems Ltd; and*
- c. Rieco Industries Ltd*

7. The CIT(A) has erred in confirming the action of the AO/TPO in:

(i) Considering operating revenue and operating cost of both AE and Non-AE transactions while computing operating margin of the Appellant;

(ii) Inappropriately computing the operating profit margin in the case of the Appellant and the comparables; and

(iii) Not restricting the TP adjustment to the value of international transaction undertaken with the AE.

8. Assuming without admitting that entity level figures are to be adopted, the CIT(A)/TPO/AO have erred in considering reversal of provision with respect to warranty and installation & commission charges as well as packing and forwarding charges received as non-operating in nature while computing operating margin of the Appellant.

9. The lower authorities have erred in:

(i) Not making proper adjustment for enterprise level and transactional level differences between the Appellant and the comparable companies;

(ii) Not granting working capital adjustment; and

(iii) Not recognizing that the Appellant was insulated from risks, as against comparables, which assume these risks and therefore have to be credited with a risk premium on this account.

10. The learned CIT(A) has erred in passing short and cryptic order without considering the submissions of the Appellant and merely relying on Remand Report of the TPO, without appreciating the submissions made by the Appellant.

11. Assuming without admitting that the adjustment is to be made, the lower income tax authorities have erred in not allowing the benefit of the +/-5% range prescribed in the proviso to section 92C(2)."

3. It was submitted by Id. AR of assessee that as per ground no. 8 raised before CIT(A), this was the grievance of the assessee that the TPO has erred in not restricting the TP adjustment to AE transactions only and thereby, making an adjustment in respect of transaction with non-AE also. But decision on this issue is not coming out from the order of CIT(A). In this regard, our attention was drawn to paras 9 and 10 on page no. 11 of the order of CIT(A) and it was pointed out that although, it is noted by CIT(A) in these paras that the assessee is having two different manufacturing units in two different buildings out of which the first unit is in respect of material imported from AE and finished products exported to AE and the second building houses manufacturing unit that manufactures tools and vessels for non-AEs but still, Id. CIT(A) has not decided this aspect of the matter as to whether the TP adjustment made by the

TPO is proper or not because he has considered both segments for making TP adjustment. At this juncture, this was the observation of the bench that under these facts, when it is seen that the order of CIT (A) is very cryptic, it is better to restore back the matter to the file of CIT (A) for a fresh decision by way of a speaking and reasoned order. In reply, both sides agreed to this proposition put forward by the bench but this was the submission of Id. AR of assessee that in that case, all the aspects of the matter should be left open for fresh decision by CIT (A).

4. After considering the rival submissions and after going through the order of CIT (A), we find that the order of CIT (A) is very cryptic. But for the sake of ready reference, we reproduce paras 9 and 10 from the order of CIT (A). The same are as under.

“9. In respect of adjustment made by TPO, it may be noted that since two different units are maintained for manufacturing different products, two different manufacturing segments are possible. The two different manufacturing units were run from different buildings. The first building pertains to manufacturing of filters. Raw materials are received from AEs and manufactured products are sold to AEs. The second building houses manufacturing unit that manufactures tools and vessels for non-AEs. However, genuineness of the two segments is still questionable. Although the Profit & Loss a/c & Balance sheet of the company have been audited by a chartered accountant, segmental details have not been audited. It may also be noted that the appellant has not given segmental audit report although it was supposed to submit the same as per AS-17.

10. In view of the facts narrated above, and based on the Remand Report of TPO dated 5/7/2017, it is held that no infirmity occurred in adjustment made by TPO, and the same is upheld and confirmed.”

5. From the above paras reproduced from the order of CIT (A), we find that the order of CIT (A) is very cryptic particularly when this is a ground of the assessee before CIT (A) that the TPO has erred in not appreciating that when the AE segment under the manufacturing activities is concerned, its transactions are at arm's length even if the comparables adopted by the TPO are considered. This issue is raised by assessee as per ground no. 8 raised before CIT(A). But there is no finding of Id. CIT(A) on this aspect of the matter. Hence we feel it proper to restore back the entire matter to the file of CIT (A) for

fresh decision with the direction that he should decide all the aspects of the matter afresh by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. In view of this decision, no further adjudication is called for in respect of individual grounds raised before us.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 12th October, 2018.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.