

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

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.683/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Piaggion Vehicles Private Limited,
'SKY ONE' 9th Floor, S.No.210,
Final Plot No.72,
Town Planning Scheme, Yerwada No.1,
Kalyani Nagar, Pune-411006.

PAN : AABCP1225G

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-4,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 20.03.2019

घोषणा की तारीख / Date of Pronouncement : 25.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of the TPO/AO/DRP for the assessment year 2012-13.

2. Before us, ld. Counsel for the assessee brought our attention to the grounds and submitted that the ground no.1 is general and ground nos.2 to 4 revolve around the issue relating to "inappropriate rejection of the Transactional Net Margin Method (TNMM)". Mentioning that this issue is consistently being agitated over the years by the assessee before the Tribunal, ld. Counsel submitted that the issue now stands covered by the order of the Tribunal for the earlier assessment years starting from 2006-07 to 2010-11. Further, bringing our attention to the order of the

Tribunal in assessee's own case vide ITA No.573/PUN/2015 order dated 24.11.2017, ld. Counsel for the assessee submitted that the Tribunal, following the earlier decisions of the Tribunal, which are decided in favour of the assessee and against the Revenue. The ld. Counsel further submitted that it is settled issue for all the assessment years i.e. A.Ys. 2006-07 to 2010-11. Therefore, the matter should be remanded to the file of the Assessing Officer for fresh adjudication. For the sake of completeness, the relevant paras 8 to 10 of the order of the Tribunal (supra) are extracted hereunder :-

"8. We find that the issue arising in the present appeal has been decided by the Tribunal in assessment year 2006-07, wherein the plea of assessee was that three categories of transactions were carried out in the activity of sale of spares and components, wherein category 'A' represented sale of spares by the assessee to third party distributors as well as to associated enterprises, which was required for the purpose of servicing the vehicles sold by the assessee company; category 'B' represented sourcing of components required by overseas associated enterprises for the manufacture of two and three wheelers; and category 'C' represented sourcing of components required by overseas associated enterprises for manufacture of four wheelers. As per the assessee, export to third party i.e. non-associated enterprises was comprised of only in category 'A' transactions; whereas export to its associated enterprises comprised of transactions of all three categories i.e. 'A', 'B' & 'C' and hence, the same were un-comparable. The Tribunal in ITA No.1480/PN/2010, relating to assessment year 2006-07, vide order dated 23.07.2012 accepting the plea of assessee held that there was distinction between the transactions of category 'B' and 'C' on the one hand and transactions of category 'A' on the other hand. The relevant findings of the Tribunal vide paras 10 and 11 are as under:-

"10. In our considered opinion, the net profit margin in any particular kind of activity is indeed effected by various factors which are industry-specific and can also be unit-specific having regard to the degree of business experience enjoyed by an entity. The factors which can be industry-specific, for example can be in the field of competitiveness, new entrants, product differentiation and other Government regulations, etc. It is therefore quite imperative that while undertaking transfer pricing analysis one must examine the transactions undertaken with regard to the relevant factors effecting such transactions vis- à-vis transactions sought to be compared. In this context, we may now appreciate the distinction being set-up by the assessee in relation to transactions of category 'B' and 'C' on one hand and the transactions of category 'A' on the other. With regard to the transactions of category 'B' and 'C', which is in the realm of sourcing of components, quite clearly the same is in the nature of industrial supplies, which are in-turn, used by the buyer in manufacturing of vehicles and the services being rendered by assessee is merely logistic service equivalent. On the other hand, the nature of transactions in category 'A'

effectuated by the assessee to its AE abroad as well as third party distributors involve supply of servicing spares and are purely in the realm of after-sale distribution. The assessee which manufactures vehicles and sells the same, also undertakes supply of spares and components required for servicing of such vehicles sold by it. Quite clearly, the supplies so undertaken are from already firmed-up sources, inasmuch as the assessee is the manufacturer of vehicles in which such components are used, and at the time of procurement for manufacturing the assessee has mandated the dies, design, quality, warranties, etc. Thus, supply of spare-parts and components as purely after-sales distribution results in higher margins. In contrast, the sourcing of products for overseas AE entailing category 'B' and 'C' transactions, the assessee has very limited role to play, which is akin to logistics support service provider.

11. In this background, we therefore deem it proper to conclude that even according to the internal TNMM mechanism sought to be applied, the comparison of margin of transactions of category 'B' and 'C' undertaken with the AEs is incomparable with the transactions undertaken with the third parties (i.e. non-AEs) which are purely in the nature of category 'A'. Ostensibly, the transactions of Category 'B' and 'C' are not undertaken with third parties (i.e. Non-AEs)."

9. The Tribunal thus, held that **internal TNMM method is not to be applied while comparing the margins of transactions of categories 'B' and 'C' undertaken with the associated enterprises being** un-comparable with transactions undertaken with third parties i.e. non-associated enterprises which were purely in the category of 'A'. It was further held by the Tribunal that as far as the transactions of category 'A' are concerned, the transactions were undertaken with third party distributors i.e. non-associated enterprises were comparable to the transactions with associated enterprises, since the margins were within range, no transfer pricing adjustment was made. The relevant findings of the Tribunal are vide para 12. In respect of transactions of categories 'B' and 'C', the Tribunal held that for benchmarking the same, there was no internal comparable transactions. The Tribunal accepted the stand of assessee that the comparison had to be made with operating margins earned by third party support services provided in India. However, the issue was remitted back to the file of Assessing Officer to carry out the requisite verification exercise and after being satisfied, to pass an appropriate order in accordance with the law on this aspect. The findings of the Tribunal are at para 13. In other words, the Tribunal for category 'A' applied internal TNMM method and in respect of transactions in category 'B' and 'C' applied TNMM method with independent third parties. In view of the issue being settled by the Tribunal in assessee's own case, we direct the Assessing Officer to apply the said ratio laid down by the Tribunal in assessment years 2006-07 to 2009-10 and verify the margins of external comparables. **The issue is remitted back to the file of Assessing Officer for this limited purpose and after being satisfied, to pass an order in accordance with law on this account.** Accordingly, the grounds of appeal raised by the Revenue are dismissed.

10. The learned Authorized Representative for the assessee pointed out that there was an error in ground of appeal No.2, wherein the Revenue has alleged that the DRP directed to apply CUP method for category 'A', whereas the directions of the Tribunal in earlier years as applied by the DRP was internal TNMM method. Accordingly, we hold so. The DRP has

followed earlier orders of the Tribunal, wherein internal TNMM method was applied and hence, the ground of appeal stands decided accordingly.”

3. On considering the similarity of facts as well as the commonness of the issue raised by the assessee in all the assessment years i.e. A.Ys. 2006-07 to 2010-11, which are identical to this assessment year, we are of the opinion the issue is remanded to the file of the Assessing Officer for fresh adjudication. The Assessing Officer is directed to grant reasonable opportunity of being heard to the assessee in accordance with the set principle of natural justice. Thus, the ground nos.2 to 4 are allowed for statistical purposes.

4. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 25th day of April, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th April, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The DRP-3 (WZ), Mumbai.
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.