

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

IT(TP)A No.432/Bang/2015
Assessment year : 2010-11

M/s Snecma HAL Aerospace Pvt. Ltd., No.140/1, Hoody Whitefield, Bangalore-560 066. PAN – AAJCS 4358 M	Vs.	The Income-tax Officer, Ward-6(1)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vishal Kalra, Advocate
Revenue by	:	Shri C.H Sundar Rao, CIT

Date of hearing	:	21.03.2019
Date of Pronouncement	:	17.05.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order passed by the assessing officer u/s 143(3) r.w.s. 144C(13) of the Act for assessment year 2010-11 in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The revised grounds of appeal filed by the assessee read as under:-

"1. That on the facts and circumstances of the case and in law, the Assessing Officer ("AO") has erred in

completing the assessment of the Appellant at INR 1,00,99,810/- as against Nil income returned by the Appellant.

Grounds of appeal relating to Transfer Pricing adjustments:

2. That on the facts and circumstances of the case and in law, the AD / Dispute Resolution Panel (DRP) / Transfer Pricing Officer ("TPO") have erred in making TP adjustment of INR 1,00,99,809 in relation to the international transaction pertaining to sale of finished goods alleging the same to not to be at arm's length as per the provisions of Chapter-X.

3. That on facts and circumstances of the case and in law, TPO / DRIP / AD have erred in not considering, (i) Talbros Engineering Limited, and (ii) Jotindra Steel & Tubes Limited, as valid comparable companies, without providing any cogent reason for the same.

4. That on facts and circumstances of the case and in law, AO/ DRP / TPO erred in excluding interest on working capital loan from operating expenses, while computing net operating margins of (i) JMT Auto Limited, and (U) Samkrp Pistons & Rings Limited, without providing any cogent reason for the same.

5. That on the facts and circumstances of the case, the AD/ DRP/TPO have erred in disregarding the submissions of the Appellant for considering cash profit upon cost as the profit level indicator ("PLI"), without any cogent reason.

6. That on the facts and circumstances of the case and in law, the AO/DRP/ TPO have erred in not providing any comparability, economic and capacity utilization adjustments, as required under Rule 10B(1)(e)(iii) of the Income Tax Rules 1962 ("Rules").

7. *That on the facts and circumstances of the case and in law, the DRP I AO / TPO have erred in not providing the Appellant the benefit of (+ / -) 5% range as provided by the proviso to section 92C(2) of the Act.*

Other grounds of appeal:

8. *That on the facts and in the circumstances of the case and in law, the AO / DRP have erred in not allowing the deduction under section 1 OB of the Act, in respect of profits of the 100% export oriented unit (EOU).*

9. *That on the facts and in the circumstances of the case and in law, the AO I DRP have erred in setting off brought forward business losses and unabsorbed depreciation which were pertaining to the EOU, against the profit of the EOU, before computing deduction under section 1OB of the Act.*

10. *That on the facts and in the circumstances of the case and in law, the AO / DRP have erred in not allowing set-off of brought forward business losses and unabsorbed depreciation available to the Appellant, against the income assessed, post the adjustments made by TPO / AO.*

11. *That on the facts and circumstances of the case and in law, the AO has erred in charging interest under sections 234B and 234D of the Act.”*

3. The assessee is engaged in the business of manufacture and export of aircraft engine parts, components and sub-assemblies. It is a 50:50 joint venture between Hindustan Aeronautics Limited, India and Snecma S.A. France. It commenced its commercial operations on 1st November, 2006 as an Export Oriented Unit. The assessee has undertaken international transactions with its Associated Enterprises (AE) in the form of Purchase of raw

materials, Export of aircraft engine parts and reimbursement of expenses. The assessee applied Cost plus method to bench mark transactions relating to sale of aircraft engine parts and adopted Operating profit to Operating Cost as Profit Level Indicator (PLI). The TPO made adjustments and the same was confirmed by Ld DRP. The assessee is aggrieved by the same. Besides that, the AO had made certain other additions and they are also challenged by the assessee.

4. The Ground No.1 urged by the assessee is general in nature.

5. The Ground No.2 relates to the Transfer Pricing adjustment made in respect of sale of engine parts by way of addition of stock difference amount. The Ld A.R submitted that the assessee had shown the Stock difference (Closing stock less Opening stock) of Rs.352.72 lakhs in the credit side of Profit and Loss account. The raw material consumed was shown at Rs.1172.18 lakhs in the debit side of Profit and Loss account. However, while computing Operating Margin for the purpose of T.P study, the assessee showed the Cost of goods sold as Rs.819.46 lakhs (Rs.1172.18 (-) Rs.352.72), i.e., the assessee had netted off the stock difference credit against raw material consumed. The TPO, however, took the view that the assessee has brought the stock difference of Rs.352.72 lakhs to the Expenses side of Profit and Loss account in order to artificially reduce the operating cost to the tax payer and comparables. Hence he did not accept the same and accordingly reworked the PLI. The Ld DRP also confirmed the same.

6. We heard the parties on this issue and perused the record. In the financial statements, the Stock difference was shown in the credit side of Profit and Loss account, since the value of closing stock was more than the value of opening stock. Accordingly, the value of raw material consumed was shown at gross figure of Rs.1172.18 lakhs. However, while computing PLI, the assessee has reduced the value of stock difference from the value of raw material consumed, i.e., the credit figure was netted off against the debit figure. Hence, this action of the assessee would not change the net profit. Accordingly, we are of the view that the TPO was not correct in presuming that the assessee has purposefully done this in order to artificially reduce the operating cost. Even if it is assumed for a moment that the TPO was right, then the reduction of operating cost should have increased the profit margin, since any reduction in expenses should increase the profit. We notice that the assessee has adopted different form of depicting the Profit for the purpose of PLI. Since the credit figure has been netted off against the debit figure, it shall not have any effect on the Net Profit. We notice that an identical view has been expressed by the Delhi bench of Tribunal in the case of ITO vs. E Value Serve.Com (2016)(52 ITR(T) 314). Accordingly, we reject the presumption entertained by TPO holding the same as fallacious. Accordingly we direct AO/TPO to re-work the PLI of the assessee.

7. Ground No.3 relates to the plea for inclusion of two comparables named M/s Talbros Engineering Limited and Jotindra Steel & Tubes Limited.

8. We heard the parties on this issue and perused the record. We notice that the assessee has sought for inclusion of both the comparables before the TPO for the first time. It is the contention of the assessee that the TPO did not include them and did not provide any reason for his action and the Ld DRP also did not examine the functional profile of both the companies. In the written submissions, it is stated that M/s Talbros Engineering Limited is engaged in the business of production of motor vehicle parts and M/s Jotindra Steel Tubes Limited is engaged in the business of manufacture of steel pipes & tubes. We have earlier noticed that the assessee is engaged in the business of manufacture and export of aircraft engine parts, components and sub-assemblies. Before us, the assessee could not show as to how the functional profile of both the comparable companies, referred above, is similar to that of assessee. Accordingly we reject this ground of the assessee.

9. Ground No.4 relates to the computation of Net profit margin of comparable companies. According to the assessee, there is difference in the net profit margin computed by the assessee and the TPO in respect of comparable companies. According to the assessee, the TPO has not provided the methodology of computing net profit margin of comparable companies. For example, in the case of JMT Auto Limited, the Net profit margin computed by the assessee was 5.60%, while the net profit margin computed by the TPO was 11.69%. It shows that there is difference in the methodology adopted by the assessee and TPO for computing Net profit margin. It is a matter of reconciliation and hence, in our view, the assessee should be provided with an opportunity to

understand the methodology adopted by TPO or explain the difference, if any in order to reconcile the methodology adopted by it with that of the TPO. Accordingly, this issue requires fresh examination at the end of AO/TPO. Accordingly we restore this issue to the file of AO/TPO.

10. Ground No.5 relates to the computation of PLI by adopting Cash profit. By placing reliance on the decision rendered in the case of BA Continuum India (P) Ltd (2013)(28 ITR(T) 445), the Ld A.R submitted that the cash profit should be considered for computing PLI. The Ld D.R, on the contrary, submitted that the quantum of depreciation would depend upon the value of assets. If any of the companies have replaced its assets with latest one, then the cost of new asset would be high resulting in high amount of depreciation. Accordingly he opposed to the plea of the assessee.

11. With regard to this contention of the assessee that the cash profit (profit before depreciation) should be considered as PLI, we notice that the same finds support from the decision rendered by the co-ordinate bench in the case of DCIT vs. M/s Centum Rakon India P Ltd (IT(TP)A No.472/Bang/2016 dated 20-07-2018), wherein the co-ordinate bench has followed the decisions rendered in the case of Honeywell Technology Solutions Lab vs. DCIT (61 SOT 61)(URO)(Bang.); 24/7 Customer.com (P) Ltd vs. Dy CIT (2013)(140 ITD 344) and BA Continuum India P Ltd vs. ACIT (2013)(28 ITR (Trib.) 445 (Hyd)). We notice that the co-ordinate bench has expressed the view that the profit before depreciation can be taken as PLI, if there is substantial variation in the manner of charging

depreciation by the assessee and comparable companies. Accordingly we direct the AO/TPO to take into consideration the above said contention of the assessee. We also direct the assessee to furnish the details to prove that there is substantial variation in the manner of charging depreciation.

12. Ground No.6 relates to the rejection of claim for capacity utilization adjustment. It is the contention of the assessee that it has achieved capacity utilization of 72.10%, while the average capacity utilization of comparable companies was 127.20%. The details of comparable companies are given as under:-

Company Name	Actual to Installed capacity
JMT Auto Limited	----
Rane Engine Valves Ltd	75.32
Samkrng Pistons & Rings Ltd	88.06
Sundaram Fasteners Limited	218.24
Average %	127.20%

We notice that the average capacity utilization of M/s Rane Engine Valves Limited and M/s Samkrng Pistons & Rings Limited are comparable with the assessee company. We notice that the capacity utilization of Sundaram Fasteners Limited is exceptionally higher at 218.24%. We notice that the assessee itself has computed the % of capacity utilization of M/s Sundaram Fasteners Limited on the basis of installed capacity and actual production. A cursory perusal of the same, in our view, would show that there may be some error in it, since it would be difficult to achieve capacity utilization of 218% in the normal industry standard. We notice that the assessee has not attempted to ascertain the facts in this regard

and offer reasonable explanations. Accordingly we do not find merit in this ground urged by the assessee and accordingly reject the same.

13. Ground No.7 relates to the benefit of +/- 5% range. It is consequential in nature. In view of the above, the issue relating to determination of ALP of international transactions needs to be re-computed in the light of discussions made supra.

14. Ground No.8 & 9 relates to the computation of deduction u/s 10B of the Act. According to Ld A.R, the AO was not justified in deducing the brought forward losses and unabsorbed depreciation while computing deduction u/s 10B of the Act. The Ld A.R submitted that the contention of the assessee is supported by the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd (2017)(391 ITR 274). Accordingly we restore this issue to the file of the AO for examining the claim of the assessee by duly considering the decision of Hon'ble Supreme Court, referred above.

15. Ground No.10 relates to the method of allowing set off of brought forward losses and unabsorbed depreciation. This issue also needs to be restored to the file of the AO, as the decision taken in the earlier grounds shall have impact on this issue. Accordingly we restore this issue to the file of AO.

16. Ground No.11 relating to charging of interest u/s 234A and 234B are consequential in nature.

17. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on **17th May, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 17th May, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.