

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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.378/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Rehau Polymers Pvt. Ltd.,
Holewadi,
Khed Pabal Road,
Rajgurunagar, Khed,
Pune – 410505
PAN: AAACR7521E

.... अपीलार्थी/Appellant

Vs.

The Asst. Commissioner of Income Tax,
Circle – 10, Pune

.... प्रत्यर्थी / Respondent

Assessee by : S/Shri Nikhil Pathak and Tejas Dharwadkar
Revenue by : Shri S.B. Prasad, CIT

सुनवाई की तारीख / Date of Hearing : 27.03.2019	घोषणा की तारीख / Date of Pronouncement: 07.06.2019
--	--

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against the order of ACIT, Circle-10, Pune, dated 14.12.2016 relating to assessment year 2012-13 passed under section 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

The following grounds are taken without prejudice to each other -

On facts and in law,

Ground 1:

The learned A.O. / DRP erred in making an addition of INR 3,28,81,268/- u/s 92C on the basis of the order of the TPO u/s 92CA(3) dated January 28, 2016 in the case of the appellant company.

Sub ground 1.1:

The learned A.O. / DRP erred in determining the Arm's Length Price (ALP) of the international transactions pertaining to payments made to Associated Enterprises (AE) for intra group services (marketing and administrative services) at INR Nil and thereby erred in making an addition of INR 3,28,81,268/-.

Sub ground 1.2:

The learned A.O. / DRP erred in rejecting Transactional Net Margin Method (TNMM) adopted by the assessee company and applied Comparable Uncontrolled Price (CUP) Method for determining the ALP in respect of the payments made by the assessee company to its AE for the Intra Group Services rendered by the AE.

Sub ground 1.3:

The learned A.O. / DRP erred in holding that the assessee company was not required to make payment to its Associated Enterprises (AEs) in respect of marketing and administrative services and accordingly, the reimbursement of the expenditure by the assessee company was not justified and hence, the ALP of the said transaction was NIL.

Sub ground 1.4:

The learned A.O. / DRP erred in holding that the assessee had failed to demonstrate any significant service received from its AE in respect of marketing and administrative services and therefore, the assessee was not required to pay any amount to the AE for such services and the addition was justified.

Sub ground 1.5:

The learned A.O. / DRP erred in holding that no payment would be required to be made to third parties for the marketing and administrative services rendered by the AE to the assessee company and hence, the ALP for such services was to be determined at INR NIL by applying the CUP method.

Sub ground 1.6:

The learned A.O. / DRP failed to appreciate the appellant company had actually received intra group services in the form of marketing and administrative services from its AEs and hence, the payment made by the appellant to the AE was justified and there was no reason to determine the ALP of the said transactions at INR Nil.

Sub ground 1.7:

The learned A.O. / DRP failed to appreciate that the assessee company had aggregated the transaction of Intra Group Services with other International Transactions entered into with the AEs and had determined the ALP by applying the TNMM and hence, there was no reason to separately benchmark the transaction of Intra Group Services and adopt the CUP method to determine the ALP of the said International Transaction.

Sub ground 1.8:

The learned A.O / DRP erred in not appreciating that the appellant company had submitted various evidences to prove the receipt of marketing and administrative services and the economic and commercial benefit derived by the appellant company and therefore, the determination of ALP of the said intra group services at INR Nil was not justified at all and the entire addition made should be deleted.

Sub ground 1.9:

The learned A.O / DRP failed to appreciate that:

- a. The appellant company had submitted independent evidences in form of certificate from Independent Accountant regarding the actual costs incurred by the AEs.*
- b. The allocation of the costs by the AE on the basis of the revenue earned by the group units was correct.*
- c. On the basis of the various evidences submitted by the appellant of receipt of the services, the ALP determined at INR Nil was not justified at all and the addition made should be deleted.*

3. The learned Authorized Representative for the assessee at the outset pointed out that the issue involved in the present appeal is with regard to payments made for Intra group services. He further stated that the said payments were made to AE for providing services in three fields i.e. Technical & Drawing Design Services (TAD), Marketing Services and Admin Services (HR, IT support services). The learned Authorized Representative for the assessee further stated that total payments in this regard were ₹ 4.63 crores and the TPO had determined arm's length price of said international transactions at nil. Before the Dispute Resolution Panel (DRP), entire evidences of provision of services were filed and the DRP has deleted the adjustment of payments for TAD services. However, in respect of Marketing Services and Admin Services Division, entire payment of ₹ 3.28 crores had been disallowed. The learned Authorized Representative for the assessee pointed out that in assessment year 2009-10, similar issue had arisen, wherein the TPO had determined cost of Intra group services at nil. He referred to the order of Tribunal in assessment year 2009-10 in ITA No.519/PUN/2014, vide order dated 05.03.2018, the Tribunal held that TPO had erred in determining

cost of Intra group services at nil and making adjustment in respect of said international transactions pertaining to Intra group services provided by AE's to assessee. It was further pointed out by the learned Authorized Representative for the assessee that in assessment years 2010-11 and 2011-12 on the technical issue, the order passed by Assessing Officer/TPO was held to be invalid. Coming to the year under consideration, it was pointed out that the assessee had applied TNMM method and had aggregated the transactions along with other international transactions of purchase of raw material and the margins of assessee on aggregate basis were better than earlier years.

4. The learned Departmental Representative for the Revenue on the other hand, has placed reliance on the order of DRP.

5. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against adjustment made of ₹ 3.28 crores in the case of assessee in determining arm's length price of international transactions pertaining to payments made to AE's for providing Intra group services i.e. Marketing & Administrative Services at nil and thereby making an upward adjustment of ₹ 3.28 crores. The assessee had applied TNMM method and had aggregated all the transactions including transaction of purchase of raw material along with payment for Intra group services and had held that the arm's length price of international transactions were at nil. However, the TPO had applied CUP method for determining arm's length price in respect of payments made by assessee to AE's for Intra group services rendered by AE's. The assessee had made the aforesaid payments for Intra group services in three fields of Technical & Drawing Design Services (TAD), Marketing Services and Admin Services (HR, IT support services). The TPO applied CUP method to arrive at arm's length price of said Intra group service transactions and

determined the cost of Intra group services at nil and hence, made an upward adjustment of ₹ 4.63 crores in the hands of assessee. The DRP on appraisal of evidences filed had reversed the order of TPO in respect of TAD services. However, in respect of Marketing and Administrative Services, DRP had determined cost of such services at nil and consequently, made an upward adjustment of ₹ 3.28 crores in the hands of assessee.

6. We find that similar issue of determination of arm's length price of cost of Intra group services arose before the Tribunal in assessee's own case in assessment year 2009-10. The Tribunal has deliberated upon the issue after hearing both the learned Authorized Representatives from para 9 onwards and has held that the payments were made by assessee to its parent company for providing various services in terms of agreement entered into and further in view of voluminous data to substantiate the services rendered by parent company which was furnished, there was no merit in the action of Assessing Officer/TPO in stepping into the shoes of assessee to ascertain the need and requirement of services. The Tribunal held that where the authorities below had not raised any doubt over the genuineness of payments made by assessee to its parent company, then no adjustment could be made by applying the benefit test. Where the assessee had made payments to AE's for Intra group services at cost, then the authorities below had erred in determining the cost of Intra group services at nil and make the aforesaid adjustment. The Tribunal has decided the aforesaid issue in paras 7 to 16 of the said order and for the sake of brevity, the same is not being reproduced.

7. Now, coming to the facts of present case, which are similar to the facts before the Tribunal in assessee's own case relating to assessment year 2009-10 (supra) and applying the same parity of reasoning, we reverse the orders of

authorities below in applying CUP method to arrive at the arm's length price of transactions of Intra group services at nil. There is no merit in the upward adjustment made in the hands of assessee on account of two segments i.e. Marketing Services and Administrative Services. Reversing the same, we direct the Assessing Officer/TPO to apply TNMM method to determine and benchmark the transactions on aggregate basis along with other transactions. Consequently, no adjustment to be made in the hands of assessee on account of said segment of payment for Intra group services. The grounds of appeal raised by assessee are thus, allowed.

8. In the result, the appeal of assessee is allowed.

Order pronounced on this 7th day of June, 2019.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 7th June, 2019.
GCVSR

आदेश की प्रतिलिपि अद्योषित/Copy of the Order is forwarded to :

1. The Appellant;
2. The Respondent;
3. The DRP-3, Mumbai;
4. The CIT(TP&IT), Pune;
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलिय अधिकरण ,पुणे / ITAT, Pune