

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "सी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.15/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2006-07**

Carraro India Pvt. Ltd.,
B-2/2, MIDC, Ranjangaon,
Pune-412210.

PAN : AAACC5292M

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-1(1),
Pune.

.... प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Amol Kamal

सुनवाई की तारीख / Date of Hearing : 19.06.2019	घोषणा की तारीख / Date of Pronouncement: 17.07.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of the Assessing Officer/TPO/DRP for the assessment year 2006-07.

2. The assessee raised 16 grounds in its appeal. Grounds no.2 to 11 relate to the TP Adjustments. Grounds no.1 and 12 to 16 relate to other Non-TP/general/consequential issues.

3. Referring to various TP related grounds in this appeal, ld. Counsel for the assessee submitted that the apparent typographical mistakes in the PLI-related calculations are corrected and the benefits of +/-5% available u/s 92C(2) of the Act are granted, the assessee is at home and no addition

on TP account is warranted. Said mistake relates to assessee's PLI of **6.01%** and the TPO/Assessing Officer erroneously considered the PLI of **3.87%**. On these facts, the AR for the assessee submitted for adjudication of the **ground no.4** of the assessee's appeal first is appropriate. If the same is allowed in favour of the assessee, the adjudication of other TP grounds becomes an academic exercise only. Accordingly, we proceed to adjudicate the ground no.4 first and the same reads as under :-

*“4. Not granting the benefit of permissible range of +/-5% Erred in computing transfer pricing adjustment by not granting the benefit of the permissible range of +/-5% available to the Appellant under proviso to section 92C(2) of the Act and thereby **erroneously concluding that the international transaction of the Appellant is not at arm's length.**”*

4. Briefly stated the relevant facts include that this is the second round of proceedings before the Tribunal. The assessee filed the return of income declaring total income of Rs.Nil. The assessee reported certain international transactions with its AEs to the extent of Rs.66,54,65,950/- in Form No.3CEB. The Assessing Officer made reference to TPO for determination of arm's length price. The TPO proposed adjustment of Rs.4,73,14,991/- in respect of the said international transactions. On receipt of the order of the Transfer Pricing Officer, the Assessing Officer made a draft assessment order u/s. 143(3) r.w.s. 144C(1) of the Income-tax Act, 1961 dated 30/11/2009 by incorporating the said adjustments. In the draft assessment order, the Assessing Officer proposed addition of Rs.4,73,14,991/-. In the said order, other Non-TP additions on account of (i) Prior period expenditure amounting to Rs.5,63,234/- and (ii) Excess

depreciation on Computer amounting to Rs.23,445/-, were also proposed. The assessee raised objections before the DRP against the said adjustments/additions in the said draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act. Accordingly, the DRP held that the objections raised by the assessee have no merit and vide the directions u/s. 144C(5) of the Act dated 30/08/2010, DRP confirmed the above proposed addition of Rs.4,79,01,670/- (Rs.4,73,14,991 + Rs.5,63,234 + Rs.23,445). In conformity with the directions of the DRP, the Assessing Officer made a final assessment order u/s.143(3) r.w.s. 144C(13) of the Act dated 20.09.2010. In the said assessment order, the total income of the assessee was determined at Rs.13,91,00,800/- which included the TP adjustment of Rs.4,73,14,991/- and other additions.

5. Aggrieved with the orders of the Assessing Officer/TPO/DRP, the assessee filed an appeal before the Tribunal in the first round.

6. In the **first round** of proceedings before the Tribunal, vide ITA No.1328/PN/2010 dated 27.06.2014, the Tribunal restored the issue back to the file of the DRP and thus, allowed the appeal of the assessee for statistical purposes. Thus, the issue travelled to the file of the DRP for second time for want of a speaking order/direction on the issues.

7. During the remand proceedings before the DRP in the **second round**, the assessee questioned the TP adjustments and the other additions made by the TPO/Assessing Officer. The DRP referred the TP issue to the TPO for the second time. The TPO furnished its report dated 16.10.2017 to the

DRP. Eventually, considering the report of the TPO and objections of the assessee, the DRP issued the directions and disposed of the objections.

8. Giving effect to the said direction of the DRP, in the second round, the Assessing Officer passed the final assessment order. While giving effect to the said direction of the DRP, the Assessing Officer quantified the adjustments of Rs.4,94,95,000/- as per the contents of para 5 of the final assessment order. In this para 5 of the final assessment order relevant to the TP issue, there is discussion and reference to the determination of the PLI of the assessee at **3.87%** in some places and **6.01%** at other places in the order. Which is the correct PLI of the assessee is the dispute. The ground no.4 of the appeal relates to this dispute. In the light of these developments, the assessee raised the ground no.4 (extracted above) relating to erroneous PLI-related calculations and granting of benefits of the provisions of section 92C(2) of the Act.

Further, the Assessing Officer made an addition on account of non-TP issues of prior period expenses, amounting to Rs.5,63,234/-.

9. **TP issue – Ground No.4:** Brief facts, that are specific to the said ground no.4 include that the PLI of the assessee as determined by the TPO is 6.01% against the PLI of 8.90% of the comparables. The benefits of the provisions of section 92C(2) of the Act i.e. (+/-5%) is available to the assessee. If the same are considered, the TPO should not have made TP adjustment if any as the difference of PLIs falls in the range of +/-5%.

Contrary to the same, the addition of Rs.4,94,95,000/- came up in view of the fact that the TPO/Assessing Officer erroneously considered the assessee's PLI at 3.87%, which is patently erroneously and the same is not based on the facts. In this regard, ld. Counsel brought our attention to the contents of para 4.9 of the directions of the DRP where the assessee's PLI is recorded as 6.01% only and not the 3.87%. In this regard, the contents of para 4.9 of the DRP's order are extracted hereunder :-

"4.9

Enhancement/Modification: During the discussion it was noted that the TPO in the order has determined ALP as under :-

<i>Value of international transaction</i>		<i>665,471,050</i>
<i>Arm's length OP/Sales</i>		<i>13.12%</i>
<i>Arm's length Margin</i>	<i>A</i>	<i>87,309,801</i>
<i>Margin shown by the assessee</i>	<i>6.01% B</i>	<i>39,994,810</i>
<i>Difference</i>	<i>A-B</i>	<i>47,314,991</i>
<i>% of difference with the value at which the international transaction has taken place</i>		<i>7.11%</i>

*the value of international transaction as considered by the A.O. above is the total international transactions which included purchase, sale, royalty, reimbursements etc. The PLI considered by the assessee and the A.O. is OP/Sales which is determined by the A.O. at 13.12% for comparables vis-à-vis **6.01% for the assessee** at entity level and not segmental level."*

10. On the said patent error in figures of PLI of the assessee, the Revenue has nothing to say except relying on the order of the Assessing Officer/TPO.

11. From the above, on the facts relating to the PLI of the assessee, the TPO/Assessing Officer erroneously considered the PLI figure of 3.87% instead of 6.01%. This errors gave rise to the TP adjustment of Rs.4,94,95,000/-. If the figure of 3.87% is considered, there shall be no TP adjustment warranted in view of the benefits of +/-5%. In this regard, ld. AR for the assessee submitted that this fact can be verified at the level of

the Assessing Officer/TPO. Considering the said factual position and subject to the verification of these claims of the assessee by the Assessing Officer, the figure of 6.01% should be taken as PLI of the assessee at the entity level. In that case, no adjustments are required in view of the facts that the average of PLI of the comparables *qua* the assessee's profits margin, fall within the range of +/-5% of the ALP. The TPO/Assessing Officer is directed to verify the above figures of PLI of the assessee after giving opportunity to the assessee as per the settled principles of natural justice. Accordingly, the arguments raised by the assessee in the relevant ground no.4 are allowed as above.

12. Considering the relief granted in the ground no.4, we are of the opinion the adjudication of other grounds (i.e. grounds no.2 & 3 and 5 to 11) becomes an academic exercise and premature. Thus, the said other grounds are dismissed as academic.

13. Grounds no.1 & 12 to 16 relate to Non-TP and other issues. The other solitary issue for adjudication raised in ground no.13 relates to the 'prior period expenses' of Rs.5,63,234/-. The said ground no.13 reads as under :-

"13. Erroneously disallowed rebate prior period item. Erred in treating the rebate allowed of INR 5,63,234 to a customer as prior period expense and thereby disallowing the same."

14. The relevant facts in relation to the said issue are discussed in para 6 of the DRP's order and the same reads as under :-

“6. As regards ground No.5 of original objection before DRP (Ground No.6 of appeal before Hon'ble ITAT), the submission appears in para 4.3. The facts are that as per Audit Report [para 22(b)], the assessee has debited Rs.5,63,234/- in the P&L Account. As noted in the assessment order, it was stated by the appellant that the sales were made to M/s. Escort Ltd. in A.Y. 2005-06. However, the prices were finalized in the current year and, therefore, the reduction in price has been claimed as expenditure in this year. The A.O. has relied on various judgements and noted that the Auditors have themselves categorized the expenditure as prior period expenditure. It is noted that the sales pertained to the earlier year, i.e. A.Y. 2005-06 and the assessee claims that rebate has been given on the sales amount of the earlier year in the current year. However, no evidence regarding applicability of such rebate on the sales amount have been furnished. It is submitted that the rebate was passed on due to decrease in price. However, once the sale is executed in a particular year, i.e. A.Y. 2005-06, it is not understood as to how the subsequent decrease in prices can be accommodated as rebate later on, despite the sales already executed. Therefore, considering the overall facts of the case, this objection is dismissed.”

15. From the above, it is evident that the relevant sales took place and duly accounted in the books in the assessment year 2005-06 and the assessee made an adjustment by way of rebate to the same in the current assessment year 2006-07. The income-tax authorities disallowed the claim of rebate in sales for want of the evidences leading to the grant of such rebate in sales and booking the same in the year under consideration. The assessee could not improve his case even before us. Considering the same, we are of the opinion, the order of the DRP and the Assessing Officer is fair and reasonable on this issue and it does not call for any interference. Accordingly, the relevant ground no.13 relates to the **corporate addition** is dismissed.

Referring to other grounds i.e. Grounds no.1, 12 & 14 to 16, these are either not pressed or should be dismissed as general, consequential or premature. Accordingly, they are dismissed as such.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 17th day of July, 2019.

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

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / **ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 17th July, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The DRP-3, Mumbai;
4. The CIT(DRP-3), Mumbai;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "सी" / DR 'C', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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