

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

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

IT(TP)A No.2611/Bang/2017

Assessment year : 2013-08

Suprajit Engineering Ltd., No.100, Bommasandra Industrial Area, Bengaluru-560 099. PAN – AADCS 1638 L	Vs.	The Dy. Commissioner of Income-tax, Large Taxpayers Unit, Circle-1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sudheendra B.R, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	05.09.2019
Date of Pronouncement	:	25.09.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the asst. order passed by AO u/s 143(3) r.w.s 144C of the Act in pursuance of directions given by Id DRP.

2. The grounds urged by the assessee relate to the following three issues:-

- a) Transfer pricing adjustment in respect of specified domestic transactions.
- b) Transfer pricing in respect of corporate guarantee.
- c) Disallowance u/s 14A of the Act

3. The assessee is engaged in the business of manufacture of auto components consisting mainly of control cables, Speedo cables and other components for automobiles.

4. The first issue relates to transfer pricing adjustment made in respect of specified domestic transaction. The assessee is having several production units. Two of units numbered as Unit 7 and Unit 10 are eligible for deduction u/s 80IA of the Act. For the sake of convenience, both the above units are referred as “exempt units”. All other units are referred as “non-exempt units”. In the transfer pricing study, the assessee has adopted “other method” to benchmark its ‘specified domestic transactions’, i.e the assessee has compared the selling price of units sold to exempt unit and non exempt units. The assessee had effected sales at the same rate to both exempt units and non exempt units. Accordingly, it was submitted that the specified domestic transactions are at arms length.

5. The TPO noticed that both the ‘exempt units’ and ‘non-exempt units’ are owned and controlled by the assessee itself. Accordingly he held that the comparison of selling price between two units controlled by the assessee would fall under the category of controlled transaction. He further noticed that there was only inter unit stock transfers and there were no sales between the units. Accordingly he rejected the Transfer pricing study conducted by the assessee. The TPO noticed that the exempted units have purchased stock (i.e., by way of stock Transfer) mainly from unit No.12.

Accordingly, for the purpose of transfer pricing study, the TPO took "unit No.12" as tested party. The TPO adopted TNMM method for bench marking the transactions. He adopted the PLI as Operating Profit/Operating Cost (OP/OC). He also took Unit 2 as comparable company, since the Unit 2 did not have inter unit transactions. The TPO compared the PLI of Unit 12 & 1 with the PLI of Unit 2. Accordingly the TPO made adjustment of 86.20 lakhs in respect of transactions of stock transfer from unit 12 to exempt units of the assessee. The Id DRP also confirmed the same.

6. We heard the parties on this issue. We noticed that both the assessee as well as the TPO has bench marked the transactions by comparing the selling rate/PLI of two different units owned by the assessee. There should not be any dispute that the ALP of transactions could be established by comparing the transactions with unrelated parties only. In the instant case, both the assessee as well as TPO has not compared the transactions with the transactions of unrelated parties. Hence the transfer pricing study done by both the assessee as well as TPO, in our view, is against the provisions of the Act. Accordingly we are of the view that this issue requires fresh examination at the end of AO/TPO. Accordingly we set aside the order passed by the AO on this issue and restore the same to the file of AO/TPO for examining it afresh.

7. The next issue relates to transfer pricing adjustment made in respect of Corporate guarantee given by the assessee. At the time of hearing, the Id AR fairly admitted that the adjustment in respect of corporate guarantee was made in the earlier years also and the

same has been accepted by the assessee. Accordingly we modify the order passed by the AO on this issue and direct him to make transfer pricing adjustment in respect of Corporate guarantee by following same methodology as followed in the earlier year.

8. The next issue relates to disallowance made u/s 14A of the Act. The ld AR submitted that the assessee is having own funds in far excess of the investment made by it and hence no disallowance under Rule 8D(2)(ii) of the Income-tax Rules. He further submitted that, for the purpose of calculating disallowance under Rule 8D(2)(iii) of the Income-tax Rules, investment which did not yield dividend should not be taken in to consideration for computing average value of investments. Accordingly he prayed that the disallowance made u/s 14A may be modified.

9. The ld DR on the contrary supported the order of AO. We noticed that the plea of the assessee with regard to interest disallowance is supported by the decision of Hon'ble Karnataka High Court rendered in the case of JCIT vs. Chaitanya Properties P Ltd (ITA No.569/2015 & ITA No.229/2016 dated 15.06.2018 and plea in respect of disallowance to be made under Rule 8D(2)(iii) is supported by the decision rendered by Special Bench of Tribunal in the case of ACIT vs. Vireet Investment (P) Ltd (2017)(82 taxmann.com 415)(165 ITD 27). Accordingly we set aside the order passed by the AO on this issue and restore the same to his file with the direction to modify the disallowance made u/s 14A of the Act by following the above said two decisions.

10. In the result, appeal of the assessee is treated as allowed.

Order pronounced in the Open Court on **25th September, 2019.**

Sd/-
(N.V Vasudevan)
Vice President

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 25th September, 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.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.