

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

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

IT(TP)A No.3329/Bang/2018
Assessment year : 2014-15

M/s Reitzel India Pvt. Ltd., Plot No.98-99, KIADB Industrial Area, Kunigal, Tumkur.  PAN – AACRP 4566 P	Vs.	The Dy. Commissioner of Income-tax, Circle-5(1)(1), Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Mahaveer C Jain, C.A
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	05.11.2019
Date of Pronouncement	:	08.11.2019

**ORDER**

*Per B.R. Baskaran, Accountant Member*

The assessee has filed this appeal challenging the assessment order dated 15-10-2018 passed by the Assessing Officer (AO) for assessment year 2014-15 u/s 143(3) r.w.s. 144C(13) of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. All the issues urged by the assessee relate to the Transfer pricing adjustment made by the AO.

3. The assessee is engaged in the business of growing, processing and exporting a vegetable called Gherkins to its Associated Enterprises (AE). During the year under consideration, the assessee has made exported Gherkins for a sum of Rs.91.62 crores to its AE and also paid fee for technical services of Rs.1.80 crores. The Ld A.R submitted that the assessee adopted TNMM method to bench mark its international transactions. The Profit Level Indicator (PLI) was adopted as Operating Profit/Operating Cost. The assessee selected a single company named M/s Global Green Company Ltd as comparable company. The TPO noticed that the above said comparable company was making persistent losses and further noticed that the assessee has not applied any qualitative filter for selection of the comparable companies. Accordingly the TPO rejected the T P Study conducted by the assessee. The TPO selected seven comparable companies by applying various filters, whose average margin worked out to 10.17%. Accordingly he made Transfer Pricing adjustment of Rs.5,98,07,371/-. The same was confirmed by Ld DRP.

4. The Ld A.R submitted that comparable companies selected by the Ld TPO are engaged in food processing, which is totally different from Gherkins (Vegetable) processed & exported by the assessee. He further submitted that the TPO should have selected companies engaged in processing and export of Gherkins for the purpose of bench marking the international transactions of the assessee company. He submitted that the assessee is a member of M/s Indian Gherkin Exporters Association and following companies,

who are members of the above said association, are carrying on identical business activities:-

- A) VRD Best Foods Ltd.
- B) Bnazrum Agro Exports Pvt. Ltd.
- C) Garden City Agro Exports Pvt. Ltd.
- D) Good Greens India Pvt. Ltd.
- E) IFG Innovative Foods Pvt. Ltd.
- F) Exotic Agro Pvt. Ltd.
- G) Green Agro Pack Pvt. Ltd.
- H) Green Pickles Pvt. Ltd.
- I) Ken Agritech Ltd.
- J) Koeleman India Pvt. Ltd.
- K) Neo Foods Pvt. Ltd.
- L) Unicorn Pickles Pvt. Ltd.

5. The Ld A.R submitted that the assessee has gathered annual reports of the above said companies. Accordingly, he submitted that the TPO may be directed to bench mark the international transactions by considering the above said companies as comparable companies.

6. The Ld A.R further submitted that the TPO did not consider Export incentives as part of operating income, while computing margins. He submitted that the export incentives are part of operating income as per the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Welspun Zucchi Textiles Ltd (391 ITR 211). Accordingly he prayed that the AO/TPO may be directed

to work out PLI by taking export incentives as part of operating income.

7. The Ld A.R further submitted that the TPO has considered outstanding receivables due from AE as an “International Transaction”. He submitted that the same cannot be considered as International Transaction.

8. We heard Ld D.R and perused the record. We find merit in the prayer of the assessee to consider the companies, which are engaged in the similar line of business in the very same product, as comparable companies. It is the submission of the assessee that the comparables selected by TPO are engaged in different activities, though they are engaged in food processing only. The Ld A.R submitted that the assessee has already gathered annual reports of companies dealing in the very same product, i.e., gherkins dealt with by the assessee. Accordingly we are of the view that the issue relating to bench marking of international transactions requires fresh examination at the end of the AO/TPO by considering the fresh comparable companies also cited above.

9. The issue relating to export incentives, i.e., whether they are part of operating income or not has since been settled by Hon’ble Bombay High Court in the case of Welspun Zucchi Textiles Ltd (supra). Accordingly, we direct the AO/TPO to consider export incentives as part of operating income.

10. The next issue contested by the assessee is whether the outstanding receivables due from AE is an international transaction or not. Since we are restoring main issue to the file of AO/TPO, we restore this issue also to the file of AO/TPO for examining it afresh.

11. In view of the foregoing discussions, we set aside the order passed by the AO on the above said issues and restore them to the file of AO/TPO.

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

Order pronounced in the Open Court on **8<sup>th</sup> November, 2019.**

**Sd/-**  
**(Pavan Kumar Gadale)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 8th November, 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.