

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2922/PUN/2016, 1451/PUN/2017 &
1325/PUN/2018

निर्धारण वर्ष / Assessment Years : 2012-13, 2013-14 & 2014-15

M/s. Bobst India Private Limited,
Plot No.82, 126-132,
Village Kasar Amboli,
Post : Ambadvet, Ghotavade Road,
Tal. Mulshi, Dist. Pune – 412 108
PAN : AAACB7295F

(Appellant)

Vs. DCIT, Circle-1(1),
Pune

(Respondent)

Assessee by

Shri Rajendra Agiwal

Revenue by

Shri T. Vijaya Bhaskar Reddy

Date of hearing

18-11-2019

Date of pronouncement

19-11-2019

आदेश / ORDER

PER BENCH :

These three appeals by the assessee are directed against the separate assessment orders dated 28-11-2016, 26-04-2017 & 25-06-2018 passed by the respective Assessing Officers u/s.143(3) r.w.s.144C(13) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment years 2012-13, 2013-14 & 2014-15.

2. Before us, the assessee has filed a letter dated 22-10-2019, seeking withdrawal of the appeals. The relevant contents of such withdrawal letter, read as under :

'In this regard, Bobst India wishes to bring to your Honours' kind notice that it has entered into a Unilateral Advanced Pricing Agreement ('UAPA') on 04 October 2019 with the Central Board of Direct Taxes ('CBDT') for a period from Financial Year ('FY') 2014-15 to FY 2018-19 (relevant to AY 2015-16 to AY 2019-20) along with rollback years from FY 2011-12 to FY 2013-14 (relevant to AY 2012-13 to AY 2014-15) (i.e. APA years). A signed copy of the said APA Agreement is enclosed for your Honours' ready reference (Refer Page No. 18 to Page No. 62).

Bobst India wishes to draw your Honour's kind attention to Rule 10RA of the Income Tax Rules, 1962 ('the Rules '), wherein it is stated that, "If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year".

Further, Bobst India wishes to draw your Honours' kind attention to Section 92CD (1) of the Act which reads as,

"Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period o(three months from the end o(the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement".

In view of the above, in case of Bobst India, the date of entering into the UAPA is 04 October 2019. Accordingly, as per the provisions of section 92CD(1), the last date for filing of modified return for the years for which the return of income were filed before the date of entering into UAPA (i.e for FY 2011- 12 to FY 2017-18) is 31 January 2020.

As per the provisions of Rule 10RA of the Rules and with regard to the appeals which are pending before your Honours, the issue in the said appeals raised through various grounds is the transfer pricing adjustment made by the learned Transfer Pricing Officer ('TPO') by disturbing the Arm's Length Price ('ALP'). The said adjustment was upheld by the Hon'ble Dispute Resolution Panel ('DRP') and consequently finalized by the learned Assessing Officer ('AO'). The similar issue is dealt with under UAPA wherein the ALP has been determined in advance by taking into consideration the functional analysis and risk profile of Bobst India. Bobst India wishes to state that there is no other issue in the years under consideration which is pending before your Honours and not covered by the UAPA.

It may be noted that the issue covered under the said appeals relates to the international transaction pertaining to receipt of commission from marketing of machines vis-a-vis receipt of commission from marketing of spares. The said issue is covered in the UAPA as 'Accrual/receipt of commission from AEs for marketing machines and spares' in the table 'Covered transaction' (Refer Page No. 27 - Sr No. 13) as well as in the table 'Most Appropriate Transfer Pricing Method and ALP' (Refer Page No. 28 and Page No. 29 - Sr. No. 13).

Further, for the sake of reference and convenience, the Assessee wishes to submit that the Hon'ble Pune ITAT has, in the case of Dar Al Handasah Consultants (Shair & Partners) India Pvt. Ltd., permitted withdrawal of Assessee's appeal in view of Rule 10RA of the Rules. Copy of order of the Hon'ble Pune ITAT is enclosed (Refer Page No. 63 to Page No. 65), for your Honours' convenience and reference. The copy of Rule 10RA is also attached at Page No. 66.

In view of the above discussion, since the appeals filed for AY 2012-13, AY 2013-14 and AY 2014-15, have to be withdrawn before filing the modified return of those years, Bobst India submits before your Honours that the said appeals needs to be withdrawn, and accordingly requests your Honours to pass appropriate order/ direction to give effect to the same."

3. On perusal of the above letter and having no objection from the side of ld. DR, we allow the request of the assessee to withdraw the appeals.

4. In the result, all the appeals of the assessee are dismissed as 'withdrawn'.

Order pronounced in the Open Court on 19th November, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 19th November, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
"सी" / DR 'C', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	18-11-2019	Sr.PS
2.	Draft placed before author	18-11-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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