

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1292/MUM/2017
Assessment Year: 2011-12**

M/s Eleglance Jewellery Pvt.
Ltd.,513, Gold Crest Business
Centre L.T. Road, Borivali (W),
Mumbai-400092.

Income Tax Officer, Ward-
Vs. 9(1)(3), Aayakar Bhavan,
Mumbai-400020.

PAN No. AABCE9844J
Appellant

Respondent

Assessee by : Mr. Sameer G. Dalal, AR
Revenue by : Mr. Ashish Heliwal, DR

Date of Hearing : 06/01/2020
Date of pronouncement : 13/01/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1- On the facts and circumstances in the case as well as in law the CIT (A) has erred in upholding addition of Rs.13,26,323/- on account of difference in arm's length profit under the provision of transfer pricing - u/s. 92C of the Act.

2- On the facts and circumstances in the case as well as in the CIT (A) has erred in upholding action of the AO in selecting comparables which are functionally and otherwise are different and rejecting all the comparable, which are selected by the Appellant following systematic and scientific method and applying important key strings for finding comparables.

3- On the facts and circumstances in the case as well as in law the CIT (A) has erred in upholding the A.O.'s action in applying arm's length operating under TNMM method at entity level instead of applying the same on international transaction with Associated Enterprises (AE).

3. Briefly stated, the facts of the case are that the appellant is engaged in export of rough, cut & polished diamonds, precious & semi-precious stones, studded gold jewelley. It has local as well as export sales of studded jewellery and is also a trader of cut & polished diamonds. It imported rough and polished diamonds from M/s Flora Gems B. V. B. A. Belgium during the year under consideration and the details are as under :

Sl No.	Item	Quantity - Carat	Amount - Rs.
1.	Rough Diamond	11369.16	58,68,881/-
2.	Cut & Polished Diamonds	182.36	30,74,515/-

During the course of assessment proceedings, the appellant furnished before the Assessing Officer (AO) a report u/s 92E of the Act. The method adopted by the appellant for determining the arm's length price (ALP) was Transactional Net Margin Method (TNMM). The appellant *vide* its submission dated 18.12.2013 filed a Transfer Pricing Study Report (TPSR) for benchmarking its transactions. Based on the said report, the AO issued a show cause notice to the appellant which is extracted at para 4 of the assessment order dated 21.03.2014. The appellant filed a reply dated 15.01.2014

However, the AO was not convinced with the said reply and took into account the following companies as comparables for computing the ALP:

Name of Company	Operating profit
Classic Diamond	13.16%
Gitanjali Gems	4.28%
Sanghavi Exports	5.85%
C Mahendra Exports Ltd	6.06%
Goenka Diamonds & Jewels Ltd.	8.50%
Arithmetic Mean	7.57%

Observing that the appellant has not furnished its AE and non-AE wise profitability statement, the AO computed the ALP on the basis of the above arithmetic mean @ 7.57% and thus computed the addition as under :

Particulars	Amount (Rs.)
Sale	19,191,618
Total cost	19,074,036
Profit Before Tax	1,17,582
Arm's Length profit @ 7.57% (Cost * Arm length profit margin)	1,443,905
Difference between actual profit and arm's length profit	1,326,323
Addition u/s 92C	1,326,323

Thus the AO made a transfer pricing adjustment of Rs.13,26,323/- u/s 92C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 02.12.2016 the Ld. CIT(A) observed that the transfer pricing mechanisms adopted by the appellant is not found to be in order as regards comparability analysis *vis-à-vis* the comparables. On the other hand, he found that the comparables adopted by the AO are of very similar nature to that of the assessee and cannot be found fault with. Therefore, he upheld the addition of Rs.13,26,323/- made by the AO.

5. Before us, the Ld. counsel for the assessee files a copy of the Paper Book (P/B) containing *inter alia* letter dated 28.06.2013, 26.08.201, 21.10.2013, 13.12.2013, 15.01.2014, 10.02.2014 filed before the AO. It is thereby submitted by him that transfer pricing study report, statement of comparable for ALP, working gross profit, details of purchases from AE and non-AE and benchmarking analysis were filed before the AO. Further, it is stated that *vide* letter dated 01.03.2014, the appellant had filed description of goods purchased from AE, diamonds purchased from non-AE, documents to support selected comparable, explanation for using turnover filter, comparative analysis on the basis of TNMM of the comparable selected by it and proposed by the AO. Thus it is stated by him that the appellant had submitted all the documents/details/explanations as called for by the AO.

Finally, the Ld. counsel submits that in spite of specific request made by the appellant *vide* letter dated 10.02.2014 (submitted on 18.02.2014) for furnishing operating profit percentage in respect of comparable companies proposed by the AO (as operating profit as per audited account was differing) *vide* his letter dated 04.02.2014, the AO failed to furnish the percentage of operating margin, he has adopted in his letter/show cause notice dated 04.02.2014. Thus it is stated by him that the addition of Rs.13,26,323/- made by the AO be deleted.

On the other hand, the Ld. Departmental Representative (DR) relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. We find from an examination of the documents that the appellant

had filed before the AO the computation, audit report, tax audit report, inventory details, transfer pricing report, statement of comparable for ALP, details of purchases from AE and non-AE, benchmarking analysis, explanation for using turnover filter, comparative analysis on the basis of TNMM of the comparable selected by it and proposed by the AO.

The facts remains that transfer price accepts that the price shown by the assessee in books of accounts and documents in respect of related party transactions as the actual price at which dealing has been done and then proceeds to benchmark that against arm's length price (ALP). The ALP is "what would have been the price if the transactions between two unrelated parties, similarly placed as the related parties in so far as nature of product, conditions and terms and conditions of the transactions are concerned?" Finally, the onus is on the assessee to show that the transfer prices are close to or approximate what would have been the prices under arm's length conditions.

In the instant case, though the appellant had filed the details called for by the AO, we find that in spite of specific request made by the appellant *vide* letter dated 10.02.2014 (submitted on 18.02.2014) for furnishing operating profit percentage in respect of comparable companies proposed by the AO (as operating profit as per audited account was differing) *vide* his letter dated 04.02.2014, the AO failed to furnish the percentage of operating margin he has adopted in his letter/show cause notice dated 04.02.2014.

In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order after giving

reasonable opportunity of being heard to the assessee. We direct the appellant to file the relevant documents/evidence before the AO.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 13/01/2020.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/01/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai