

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘D’**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.956/Ahd/2018
निर्धारण वर्ष/ Asstt.Year: 2008-09**

DCIT, Cir.2(1)(1) Ahmedabad.	Vs.	M/s.Collwell and Salmon Communication (India) Ltd. Now merged with GHCL Ltd. GHCL House, Opp: Punjab Hall Navrangpura Bus Stand Ahmedabad. PAN : AACCC 0322 Q
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(Applicant)	(Responent)
Revenue by :	Shri Dileepkumar, Sr.DR
Assessee by :	Shri S.N. Soparkar, Sr.Adv with Shri Purin Shah

सुनवाई की तारीख/Date of Hearing : 11/03/2020

घोषणा की तारीख /Date of Pronouncement: 11/03/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 10.1.2018 passed for the Asstt.Year 2008-09.

2. Grievance of the Revenue is that the Id.CIT(A) has erred in law as well as on facts in deleting upward adjustment made by the AO on the recommendation of the TPO in the value of international transaction.

3. With the assistance of the Id.representatives, we have gone through the record carefully. A perusal of the record would indicate that the assessee has

declared value of its international transaction with its Associated Enterprise (AE) at Rs.20,14,51,000/-. An order under section 92CA(3) of the Income Tax Act, 1961 was passed by the TPO on 31.10.2011 recommending an upward adjustment in the value of international transaction of Rs.2,00,87,060/-. Thus, the TPO has determined value of the international transaction relating to IT enabled services to the AE at Rs.22,15,38,060/-. Dissatisfied with the assessment, vide which, the AO has made addition on the recommendation of the TPO, assessee went in appeal before the Id.CIT(A). The Id.CIT(A) vide order dated 23.5.2015 found that TPO has committed certain errors while taking profit level indicator of two companies viz. Mold-Tek Technologies Ltd. and Eclrex Services Ltd. It emerges out from the record that the PLI was computed by taking operative profit and total cost i.e $PLI = OP/TC$. As per the assessee, PLI of Mold-Tek Technologies Ltd. should be 15.24% whereas the TPO has adopted at 106.82%. Similarly, in the case of Eclrex Services Ltd. it should be 58.79% in place of 66.25%. The Id.CIT(A), as a matter of fact found computational error in the order of the TPO, and therefore, recommended for rectification of that error under section 154 of the Act. The Id.TPO rejected the contentions of the assessee by recording the following finding:

“4. In response to this, the reply was submitted by the assessee vide his letter dated 10.07.2015. The contention of the assessee cannot be accepted, as the arguments given by the assessee are beyond the scope of frn stake apparent from record. However, as per the direction given by the CIT(A), this office has recomputed the margin (OP/TC) in the cases of Mold Tek Technologies Ltd and Eclerx Services Ltd using "Capitaline" database for both the companies. It is found that the margin in both the cases calculated by the TPO is correct. Computation of PLI is a debatable issue from the assessee's prospective, while this office worked out the PLI with reference to the 'safe harbor rules', which is settled position now. A mistake apparent from the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of

reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record - T.S. Balaram, ITO v. Volkart Bros. [1971] 82 ITR 50(SC).

'A mistake becomes a mistake apparent from the record when it is a glaring, obvious or self-evident mistake. A mistake which has to be discovered by long-drawn process of reasoning or examination of arguments on points where there may conceivably two opinions cannot be said to be mistake or error which is apparent from the record - Arvind N. Mafatlal V. T.A. Balakrishnan, Dy. CED (1968) 67 ITR 449 (Bom.).'

5. In view of the above, as the computation of PLI done by the TPO is not a mistake apparent from record, the objection raised by the assessee in respect of this adjustment is hereby rejected. Copy of working of margin alongwith copies of balance sheet & profit and loss account in the cases of Mold Tek Technologies Ltd. and Eclerx Services Ltd are again enclosed with this order."

4. Dissatisfied with this order, the assessee carried the matter in appeal before the Id.CIT(A), and the Id.CIT(A) has accepted the contentions of the assessee, and deleted the adjustment recommended by the TPO. The finding recorded by the Id.CIT(A) reads as under:

Decision:

3.3. I have carefully considered the facts of the case, order u/s. 154 and submission of the appellant. The TPO / AO has made the upward adjustment of Rs.2,00,87,060/- on the I. T. Enable Services to the AE. Appellant filed appeal before CIT(A) - 1, Noida who vide his order dated 23/03/2015 has noted that the TPO has taken PLI (OP / TO) in the case of two comparables namely; M/s. Mold-Tek Technolgies Ltd. at 106.82% and in the case of Eclrex Service Ltd. at 66.25% as against appellant's computation of PLI of M/s. Mold-Tek Technolgies Ltd. at 15.24% and in the case of Eclrex Service Ltd. at 58.79%. The CIT(A) - 1, Noida in his order has noted that it was a mistake apparent from record, and therefore, directed the TPO to pass an order u/s. 154 taking all relevant facts into consideration. The TPO in his order has stated that the contention of the appellant cannot be

accepted as the arguments given by the appellant are beyond the scope of mistake apparent from record and stated that margin in both the cases calculated by TPO is correct. The appellant in support of its contention has submitted that the CIT(A) in his order has accepted that there was a mistake apparent in the order of TPO, and therefore, the TPO should have rectified the order. The appellant has also relied on the order of ITAT in the case of Technimont ICB Pvt. Ltd. in ITA No.7576/Mum/2012 dated 27/06/2014 for A. Y. 2008-09 in which the Honourable Tribunal has considered the PLI of M/s. Mold-Tek Technolgies Ltd. at 15.24% and submitted that the TPO in the case of Eclrex Service Ltd. has taken PLI at 58.85% in his order u/s. 154 of the I. T. Act, 1961.

3.4. In view of the above, the TPO is directed to recalculate the TPO adjustment as per directions of CIT(A) - 1, Noida and the PLI decided by judicial authorities.”

5. There is no dispute with regard to the proposition that the power of rectification under section 154 of the Income Tax Act can be exercised only when the mistake, which is sought to be rectified, is an obvious patent mistake, which is apparent from the record and not a mistake, which is required to be established by arguments and long drawn process of reasoning on points, on which there may conceivably be two opinions.

6. It is pertinent to note that in the present case, the Id.CIT(A) in its order dated 23.3.2015 was of the view that there are computational errors which require rectification. It was a recommendation at the end of the Id.CIT(A) to the TPO, and the Id.TPO failed to consider this aspect under garb of reasoning that it is a debatable issue. Once a higher appellate authority recorded a finding that there are computational errors, which require rectification, then, this should be addressed. The Id.CIT(A) has looked into from this angle, and thereafter deleted the upward adjustment recommended by the Id.TPO. After

going through well reasoned order of the Id.CIT(A), we do not find any error in this order. Hence, appeal of the Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 11th March, 2020 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**