

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

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

IT(TP)A No.2880/Bang/2017
Assessment year: 2013-14

Kennametal India Ltd., 8/9 th Mile, Tumkur Road, Bangalore – 560 073. PAN: AACCK 4472B	Vs.	The Deputy Commissioner of Income Tax, LTU, Circle 1, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.01.2020
Date of Pronouncement	:	27.04.2020

ORDER

Per B R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 31.10.2017 passed by the assessing officer for assessment year 2013-14 u/s 143(3) r.w.s. 144C of the Act in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The grounds numbered as 1 to 7 are general in nature. The grounds numbered as 8 to 13 are related to Transfer Pricing Adjustment. Ground No.14 relates to the disallowance made u/s 40(a)(ia) of the Act.

3. The assessee herein is a subsidiary of M/s Kennametal Inc., USA. As mentioned in the order of TPO, it is engaged in the business of manufacture of sintered products, dies & wear parts, round tools, carrier bodies, end mills, conforma clad and machine tools. The products manufactured by the assessee are supplied to various industries such as construction, mining, general engineering and machine tools. The assessee is having two segments, viz., Manufacturing Segment and Trading Segment. The TPO has made transfer pricing adjustment only in respect of Manufacturing Segment.

4. The International transactions carried out by the assessee are as given below:-

International transactions as per Form 3CEB

Particulars	Amount (in Rs.)
Purchase of Raw-Materials and components	673567058
Purchases of finished goods	943131007
Sale of finished goods	383533489
Purchases of Fixed Assets	16939618
Payment for Royalty	32069325
IT Allocations charges	135373283
Reimbursement Paid	30317867
Recovery expenses	8936552
Trade receivable	29385302
Advance	115405
Trade Payable	276743907

5. The assessee adopted TNMM method as Most Appropriate Method. The Profit Level Indicator (PLI) was taken as Operating Profit to Operating Revenue (OP/OR). The PLI of the assessee in Manufacturing Segment worked out to 3.16%. However, after making adjustment towards "Under utilization of Capacity", the assessee worked out its PLI to 9.60%. The assessee selected 12 comparable companies, whose arithmetic mean

of PLI worked out to 6.18%. Accordingly, it was submitted that the international transactions carried out by it are at arms length.

6. The TPO rejected the Transfer Pricing Study of the assessee and selected following nine comparable companies. Though the TPO worked out PLI under OP/OC and OP/OR, yet he adopted OP/OC as PLI while working out the Transfer pricing adjustment.

Sl. No.	Company Name	OP/OC	OP/OR
1	Ace Multi Axes Systems Ltd.	21.26%	17.54%
2	Hottco Tools Ltd.	5.19%	4.93%
3	I T L Industries Ltd.	10.65%	9.63%
4	Jainex Aamcol Ltd.	9.80%	8.92%
5	Kulkarni Power Tools Ltd.	6.06%	5.71%
6	Micromatic Manufacturing Systems Pvt. Ltd.	6.57%	6.16%
7	Mitsubishi Heavy Inds. India Precision Tools Ltd.	21.65%	17.80%
8	Solitaire Machine Tools Ltd.	14.62%	12.75%
9	Rane Brake Lining Ltd.	3.70%	3.57%
10	Federal-Mogul Anand Bearings India Ltd.	6.03%	5.68%
11	Birla Precision Technologies Ltd	7.17%	6.69%
12	Bharat Fritz Werner Ltd.	2.80%	2.72%
	Average	9.62%	8.51%

Accordingly, the TPO made transfer pricing adjustment of Rs.4.98 crores.

7. The Ld DRP confirmed the Transfer pricing adjustment made by the TPO and accordingly the AO passed the final assessment order.

8. (a) In Ground No.8, the assessee is assailing the decision of TPO & DRP in adopting the threshold limit of 25% for "Related Party Transaction" filter as against the limit of 10% adopted by the assessee.

8 (b) In Ground no.9, the assessee seeks exclusion of following four companies, viz.,

- (i) Ace Multi Axes Systems Ltd.
- (ii) Birla Precision Technologies Ltd
- (iii) Micromatic Manufacturing Systems P Ltd
- (iv) Federal Mogul Anand Bearings India Ltd.

8 (c) In Ground No.10, the assessee seeks inclusion of following two companies, viz.,

- (i) Porwal Auto Components Ltd
- (ii) Rane Engine Valve Ltd.

8 (d) Ground No.11 is general in nature. In Ground No.12, the assessee is assailing the decision of Ld DRP in rejecting the claim of "Capacity Utilisation Adjustment" without proper discussion.

8 (e) In Ground No.13, the assessee is assailing the decision of TPO in adopting OP/OC as PLI, as against OP/OR adopted by the assessee.

9. We heard the parties and perused the record. With regard to the threshold limit for RPT filter, we notice that the Ld DRP has observed as under:-

"5.1 Panel:- Assessee's submission and TPO order has been examined. Panel finds the analysis of application of this filter by the TPO at para 8.2 of his order as appropriate. Therefore, adoption of this filter by the TPO has been found acceptable and hence objections of the assessee are rejected."

While the objection of the assessee was with regard to the threshold limit, we notice that the Ld DRP has given its decision of adoption of RPT filter, which is not the objection of the assessee.

10. With regard to the plea of the assessee for inclusion of four comparable companies, the Ld DRP has observed as under:-

“7.5 On perusal of the order of the TPO, it is found that above 4 comparables qualified all filters adopted by the TPO and are functionally comparable. Panel finds that objections and submissions of assessee made before TPO have been considered and countered by the TPO correctly. Therefore assessee’s objection against adoption of Ace Multi Axes Systems Ltd., Micromatic Manufacturing Systems P Ltd; Federal Mogul Anand Bearings India Ltd; Birla Precision Technologies Ltd are not accepted.”

11. With regard to the plea of the assessee for inclusion of two comparable companies, the Ld DRP has observed as under:-

“7.6 At para 8 of his order the TPO has considered submissions of the assessee and has accepted the contention of the assessee in the case of Bharat Fritz Werner Ltd. However on the grounds of functional dissimilarities the TPO has rejected Porwal Auto Components Ltd and Rane Engine Valve Ltd. On careful examination of the TPO’s order and after careful consideration of the assessee’s submissions, panel finds that the TPO has rejected these cases correctly and hence assessee’s objection against rejection of Porwal Auto Components and Rane Engine Valve are rejected.”

12. With regard to the claim for Capacity Utilisation Adjustment, the Ld DRP, in paragraph 6.1 of its order, has expressed that the assessee has not raised this objection before the TPO and accordingly declined to adjudicate this ground. With regard to the substitution of PLI from OP/OR

to OP/OC, the assessee had raised objection in ground 8.1 urged before Ld DRP. However, the Ld DRP has not adjudicated the same.

13. We notice that the assessee has furnished details of the companies, cited above, in its paper book. We notice that the Ld DRP has rejected the claim of the assessee by making general observations, i.e., without addressing specific grounds urged in respect of each of the companies. We have noticed that the assessee, in its Transfer Pricing study, has made adjustment towards under utilization of capacity. However, the said adjustment was not given by the TPO. Hence, we are of the view that the Ld DRP was not justified in declining to adjudicate this claim of the assessee. As noticed earlier, the Ld DRP has not adjudicated the issue relating to selection of PLI.

14. In totality, we are of the view that the Ld DRP has passed a non-speaking order. In this view of the matter, we are of the opinion that all the issues relating to Transfer pricing adjustment need to be restored to the file of Ld DRP/AO for adjudicating all the objections of the assessee by a speaking order. Accordingly, we set aside the Transfer pricing adjustment made in the final assessment order and restore all the issues relating there to the file of AO/DRP with the direction to the Ld DRP to pass a speaking order.

15. The surviving ground relates to the disallowance made u/s 40(a)(ia) of the Act in respect of year end provisions made. The AO noticed that the tax auditor has reported the failure of the assessee to deduct tax at source from the year end provisions. Accordingly, it appears that the ITO(TDS) has initiated proceedings raising demand, apparently u/s 201(1) of the Act. In the appellate proceedings, the Ld CIT(A) has given relief in respect of TDS payments made subsequently and accordingly confirmed the demand to the tune of Rs.5,682/-. The corresponding amount of payment relating to

the above said TDS demand worked out to Rs.2,84,100/-. Hence the AO added the above said amount of Rs.2,84,100/- u/s 40(a)(ia) of the Act to the total income of the assessee in the draft assessment order. The Ld DRP also confirmed the same and hence the AO disallowed the above said amount u/s 40(a)(ia) of the Act in the final assessment order.

16. Before us, the Id A.R argued that the yearend provisions are required to be made as per accounting principles on estimated basis. Further the assessee could not deduct tax therefrom, since the payees are not known. However, we notice that the assessee has stated before Ld DRP that the provisions have been made for payment to contractors, sub-contractors, professional fees, royalty, rent and commission. Hence the payees should be known to the assessee. Accordingly, we are of the view that the assessee should have deducted tax at source, when the payees are known. Accordingly we confirm the addition made by the AO u/s 40(a)(ia) of the Act.

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

Pronounced in the open court on this 27th day of April, 2020.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(B R BASKARAN)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th April, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.