



ITA No.6791/Mum/2012
Assessment Year :2008-09
M/s. Edwards Lifesciences (India) Pvt.Ltd.

आयकर अपीलीय अधिकरण "के" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I. T. A. No.6791/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2008-09)

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| Edwards Lifesciences India P. Ltd. Techniplex-II, 7 th Floor Unit No.1 & 2, Off S.V. Road Goregaon (W), Mumbai-400 020. | बना म/ Vs. | ACIT-8(1) Aaykar Bhavan, Mumbai- 400 020. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-4203-F | | |
| (अपीलार्थी/Appellant) | : | (प्रत्यर्थी / Respondent) |

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| Assessee by | : | Shri Niraj Sheth-Ld.AR |
| Revenue by | : | Shri Akhtar Husain Ansari / Shri Anand Mohan-Ld.CIT- DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 12/03/2020 |
| घोषणा की तारीख / Date of Pronouncement | : | 22/05/2020 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2008-09 contest final assessment order dated 04/10/2012 passed by Ld. ACIT-8(1), Mumbai u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961. In the assessment order, the assessee has been saddled with certain Transfer Pricing (TP) Adjustment of Rs.252 Lacs, which is under challenge before us.



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2. Although the assessee has raised as many as 7 grounds of appeal along with Form No. 36B, however, Ld. Authorized Representative for Assessee (AR) submitted that only ground nos. 3 & 5 are being pressed in the appeal which read as under: -

3. On the facts, in law and in the circumstances of the case, the Ld. Panel and consequently the AO erred in selecting M/s Advanced Micronic Devices Ltd. - Health Care Segment as a comparable segment, merely on the basis of selection in the previous year, and without taking into consideration that the comparable company is not functionally comparable to the trading activities of the Appellant.

5. Without prejudice to grounds 2 to 4 above, on the facts, in law and in the circumstances of the case, the Ld. Panel and consequently the AO, erred in rejecting the fresh search of comparables undertaken by the Appellant merely on the premise that the reasons of rejections of other comparables was not provided.

3. The Ld. AR drew attention to the documentary evidences in support of exclusion of a comparable entity namely M/s Advanced Micronic Devices Ltd. The Ld. AR fairly submitted that the fresh comparability analysis carried out by the assessee was not considered by Ld. TPO. In support of argument, the assessee has filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 seeking permission to file additional evidences in support of its grounds. These evidences are in the shape of accept-reject matrix of the companies considered during the fresh benchmarking analysis undertaken by the assessee and public information on the operations of M/s Advanced Micronic Devices Ltd. The Ld. CIT-DR submitted that the additional evidences, if admitted, would require appreciation by Ld. TPO. Both the representatives converged on the point that the issue, for aforesaid limited purpose, may be remitted back to the file of Ld. TPO / Ld. AO.

4. In the above background, we find that the assessee being corporate



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assessee is stated to be engaged in designing, manufacturing and marketing of a comprehensive line of products and services to treat late-stage cardiovascular diseases. The assessee is primarily a distributor of cardiovascular products assuming normal risk. The assessee entered into certain international transactions with its Associated Enterprises which were subjected to determination of Arm's Length Price (ALP) thereof u/s 92CA (1) by Ld. Transfer Pricing Officer-1(8), Mumbai. We are concerned with transactions in the distribution segment which comprised-off of import of finished goods, purchase of fixed assets and I.Pass charges, all aggregating to Rs.22.45 Crores. There is no dispute regarding selection of most appropriate method which is Transactional Net Margin Method. The assessee's Profit Level Indicator was 2.81% which was stated to be within safe harbor of $\pm 5\%$ in comparison to comparable entities and therefore, no Transfer Pricing (TP) adjustments were proposed by the assessee in its TP study report. However, Ld. TPO, modifying the comparable matrix, arrived at mean PLI of 8.49% with respect to two comparable entities and proposed TP adjustment of Rs.252 Lacs. The two comparable entities selected in the final analysis were Advanced Micronic Devices Ltd. & Hicks Thermometer India Ltd.

5.1 Before Ld. DRP, the assessee sought exclusion of Advanced Micronic Devices Ltd, *inter-alia*, on the ground that this entity was engaged in manufacturing of healthcare products and not in trading as contemplated by Ld. TPO. However, the same was rejected by Ld. DRP, who observed that manufacturing revenue of this entity constituted less than 0.2% of turnover in healthcare segment.



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5.2 The comparable entities identified by the assessee in fresh search was rejected since the search was found to be doubtful and the results were found to be not acceptable. Aggrieved, the assessee is under further appeal before us.

6. The Ld. AR has taken us through Annual Report of Advance Micronic Devices Ltd. in support of the submissions that the said entity was engaged in manufacturing activities and hence, not a valid comparable. Our attention has also been drawn to erroneous observation made by Ld. DRP that manufacturing segment of this entity was less than 0.2% of turnover in healthcare segment. Upon due consideration of these documents, we find substance in the same. The Ld. AR also agreed to provide the requisite details in support of fresh comparability analysis and pleaded for another opportunity to substantiate the same. For the said purpose, an application for admission of additional evidences has been filed before us.

7. Keeping in view the submissions, the bench formed an opinion that the matter of comparable entity viz. Advance Micronic Devices Ltd. deserve to be set-aside the to file of Ld. TPO / Ld.AO in the light of the submissions made by the assessee. Also, the comparable entities selected in fresh search before Ld. DRP were never in contemplation of Ld. TPO and therefore, the same need examination / verification by Ld. TPO in the light of additional evidences submitted by the assessee before us. For the aforesaid limited purpose, the matter stand remitted back to the file of Ld. TPO / Ld. AO with a direction to the assessee to



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substantiate his stand, in this regard.

8. Resultantly, the appeal stands partly allowed for statistical purposes. This order is pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details of the same on the notice board.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22/05/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.