



ITA No.1226/Mum/2017
Assessment Year :2012-13

M/s. China First Metallurgical Construction 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.1226/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. China First Metallurgical Construction India Pvt. Ltd. Flat No.1-B/1302, 13 th Floor Bhoomi Sector Paradise Sector-11, Sanpada (E) Navi Mumbai.	बनाम/ Vs.	Income tax Officer-15(1)(3) Aaykar Bhavan GF, Room No.15B Mumbai- 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCC-4228-P		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Ritika Agarwal/Mr. Salman Balbale- Ld. ARs
Revenue by	:	Shri Anand Mohan-Ld. CIT DR

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

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 contest final assessment order dated 31/01/2017 passed by Ld. Income Tax Officer-15(1)(3) 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.349.05 Lacs, which is under challenge before us.



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2. The assessee has raised as many as 4 grounds of appeal along with Form No. 36B and also filed additional grounds of appeal vide petition dated 09/01/2019. However, Ld. Authorized Representative for Assessee (AR) submitted that keeping in view the decision of this Tribunal in cross-appeal for AY 2011-12, ITA Nos. 2132/Mum/2016 & 555/Pun/2016, common order dated 20/12/2019, the only ground urged under the appeal is ground no. 4 which read as under: -

- 4(i) The Ld. AO has erred in law and on facts in failing to grant the working capital adjustment, without making any comment in this regard.
- 4(ii) The Ld. AO has erred in law and on facts in failing to grant the working capital adjustment, ignoring the detailed explanation on record on this issue

In support of the same, Ld. AR placed on record working capital adjusted operating profit by sales ratio and submitted that the Profit Level Indicator (PLI) of comparable entities would stand reduced to 0.39% which would be lower than assessee's PLI. Our attention has been drawn to the fact that similar adjustment has been granted by the Tribunal in para 7.10 of the cited order which read as under: -

7.10 We hold that the Id. TPO while giving effect to the order of this Tribunal should also arrive at the final list of comparables as directed hereinabove and grant working capital adjustment on the margins of respective comparables as the law thereon is very well settled. The assessee is also directed to re-furnish the workings for working capital adjustment of the final comparable companies to inform the TPO to make necessary verification and arrive at the revised margin in accordance with law.

The Ld.CIT-DR submitted that the working would require verification by Ld. TPO and therefore, the matter may be remitted back to the file of Ld. TPO on similar lines.



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3. In the above background, we find that the assessee being corporate assessee stated to be carrying out projects in metallurgical industry 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(3)(1), Mumbai. These transactions were in the nature of supply of manpower, purchase of drawings, purchase of material, geographical surveys and consultancy charges etc. The Ld. TPO, modifying the comparables selected by the assessee, arrived at mean PLI of comparable entities @6.24% as against assessee's PLI of 2.38% and accordingly, proposed TP adjustment of Rs.1151.84 Lacs vide its order dated 28/01/2016. The order was rectified u/s 154 on 29/03/2016 revising proposed adjustment to Rs.1515.93 Lacs.
4. The Ld. DRP directed for inclusion of one comparable entity and directed for exclusion of two comparable entities which reduced the proposed adjustment to Rs.349.05 Lacs. The same was incorporated in final assessment order dated 31/01/2017, which is under challenge before us.
5. It is admitted position that the issue of comparable entities as raised by the assessee in its ground of appeal would not require any interference on our part keeping in view the cited decision of Tribunal in cross-appeal for AY 2011-12. The assessee is only seeking working capital adjustment as directed by the Tribunal in the said order.
6. Keeping in view the stated position, we remit the matter back to the



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file of Ld. TPO / Ld. AO to consider the assessee's plea of working capital adjustment on similar lines as directed by Tribunal in its order for AY 2011-12. The assessee is directed to provide the working thereof and substantiate the same. For the said limited purpose, the issue stand remitted back to the file of Ld. TPO / Ld. AO. The ground stand allowed for statistical purposes.

7. 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/-

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

(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.



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Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop		Sr.PS/PS
2	Draft dictated on	Not Applicable/		Sr.PS/PS
3	Draft Placed before author	Not Applicable		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			