



Dresser-Rand India Private Limited,
ITA Nos.5412 &5435/Mum/2014
Assessment Year: 2007-08

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

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI VIKAS AWASTHY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5412/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2007-08)

Dresser-Rand India Private Limited, Birla Aurora Tower Level 21 Dr. Annie Besant Road Century Bhavan, Prabhadevi Mumbai – 400 030 CIN: U29100MH1998PTC117293	बनाम/ Vs.	Add. CIT-Circle -6(2) Room No.504, 5 th Floor, Aaykar Bhavan MK Road, Mumbai 400 020
PAN/GIR No. AAACD-9897-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ I.T.A. No.5435/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2007-08)

DCIT-Circle 6(2), Room No.563, Aaykar Bhavan, M.K. Road Mumbai 400 020	बनाम/ Vs.	Dresser-Rand India Private Limited, Birla Aurora Tower Level 21 Dr. Annie Besant Road Century Bhavan, Prabhadevi Mumbai – 400 030 CIN: U29100MH1998PTC117293
PAN/GIR No. AAACD-9897-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Nitesh Joshi – Ld. AR
Revenue by	:	Smt. Samantha Mullumudi-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	31/07/2020
घोषणा की तारीख / Date of Pronouncement	:	10/08/2020



आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross-appeals for AY 2007-08 which contest the order of Ld. Commissioner of Income Tax (Appeals)-10, Mumbai [CIT(A)], Appeal No. CIT(A)-10/Addl. CIT(IT).Rg. 6(2)/IT-122/13-14 dated 20/02/2014 on certain grounds of appeal.

2. We have carefully heard the rival submissions and perused relevant material on record. The material on record would show that the assessee being resident corporate assessee stated to be engaged in manufacturing of various types of process gas compressors etc. was assessed u/s 143(3) r.w.s. 144C vide order dated 21/01/2011. In the said order, the assessee was saddled with certain Transfer Pricing (TP) Adjustments of Rs.726.84 Lacs on account of international transactions in the nature of *cost contribution allocation* as carried out by the assessee with its associated enterprises. These adjustments were proposed by Ld. Transfer Pricing Officer in its order u/s 92CA(3) dated 15/10/2010. While framing the assessment, these adjustments were incorporated in the order. As an alternative, Ld. AO also proposed disallowance of the same u/s 37, 40A(2)(b) & 40(a)(ia) as well.

3. Upon further appeal by assessee, Ld. CIT(A) reduced the adjustment to 50% i.e. Rs.363.42 Lacs and rejected alternative disallowance as proposed by Ld. AO. The adjudication by Ld. CIT(A) has given rise to cross-appeals before us. The revenue is agitating the relief



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granted by Ld. CIT(A) whereas the assessee, by way of ground nos. 1 to 6, is agitating the additions to the extent sustained by Ld. CIT(A).

4. It is admitted position before us that the assessee opted for Mutual Agreement Procedure (MAP), as per Article 27 of India USA Tax Treaty, for AYs 2007-08 to 2011-12 before appropriate authorities vide F.No.480/24/2012-FTD-1 dated 19/04/2018 wherein the Arm's Length Price (ALP) of cost contribution arrangement for AY 2007-08 was resolved vide para 5 at Rs.545.13 Lacs and the adjustments were settled at Rs.181.71 Lacs. In fact, the effect of the said proceedings has already been given by Ld. AO vide order dated 02/03/2020 wherein the adjustments of Rs.726.84 Lacs has been revised to Rs.181.71 Lacs. The copy of the order has been placed on page no. 410 of the paper-book. Accordingly, the assessee, vide letter dated 08/11/2018, requested for withdrawal of ground nos. 1 to 6 of the appeal. We find that since the issue of TP adjustments has already attained finality by competent authorities with mutual agreement, the revenue's appeal as well as assessee's ground nos. 1 to 6 would not survive and accordingly, stand dismissed as being infructuous. We order so.

5.1 The only surviving ground in assessee's appeal is ground no.7 which read as under: -

Ground No.7 – Additions under Section 145A of the Act of Rs.81,61,042/-

7. On the facts and circumstances of the case and in law, learned CIT(A) has erred in confirming addition of Rs. 81,61,042/- made under section 145A of the Act. The appellant prays that the adjustment under Section 145A on account of unutilized CENVAT credit to the closing stock is unwarranted and be deleted.



Dresser-Rand India Private Limited,
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5.2 The relevant facts are that during the course of assessment proceedings, it was noted by Ld. AO that the assessee followed exclusive method of accounting for MODVAT / CENVAT credit with regard to inventory, purchases and consumption in contradiction to the provisions of Sec.145A which mandate the assessee to follow inclusive method of accounting for the same. The assessee submitted that the aforesaid adjustment shall have no impact on the profit of the assessee as supported by Guidance note on Tax Audit u/s 44AB issued by ICAI. According to the guidance note, there will be no difference in the profit irrespective of method of accounting being followed by an assessee. The assessee also forwarded the re-casted Profit & Loss account following inclusive method of accounting to support the said propositions. Reliance was placed on various judicial pronouncements. It was also pointed that pursuant to the directions of ITAT for AY 2001-02, the assessee had prepared re-casted profit & loss account as per the provisions of Sec 145A which was accepted by Ld. AO and allowed relief on this account. Further, similar adjustment made in AY 2006-07 pursuant to the directions of Ld. DRP were subject matter of challenge before the Tribunal. In the alternative, it was submitted that opening stock should be increased by additions made in AY 2006-07 for Rs.98.85 Lacs on closing stock. However, not convinced, Ld. AO chose to adopt the stand taken in AY 2006-07 and made net addition of Rs.81.61 Lacs after providing adjustment in opening stock as proposed by the assessee in the alternative.

5.3 Upon further appeal, Ld.CIT(A) although observed that pursuant to directions of Tribunal for AY 2001-02 and pursuant to the directions of



Dresser-Rand India Private Limited,
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Ld. CIT(A) for AY 2005-06, Ld. AO accepted the re-casted Profit & Loss Account in both these years, but confirmed the additions by observing that Ld.AO had already made necessary adjustment in the opening stock as well as in closing stock. Aggrieved, the assessee is in further appeal before us.

5.4 As rightly pointed out by Ld. AR, we find that Tribunal in assessee's own case for AY 2006-07, ITA No.8753/Mum/2010 order dated 07/09/2011 followed its earlier order for AY 2001-02 dated 07/02/2008 and vide para 20, remitted the matter back to the file of Ld. AO for redoing the computation in accordance with order for AY 2001-02. Facts being pari-materia the same, we restore the matter back to the file of Ld. AO on similar lines to redo the computations in accordance with earlier years as per the directions of the Tribunal. Resultantly, this ground stand allowed for statistical purposes.

6. Finally, the appeal of the revenue stand dismissed whereas the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2020.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 10/08/2020
Sr.PS, Jaisy Varghese



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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.