



IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

IT(TP)A no.1873/Mum./2015
(Assessment Year : 2010-11)

ITA no.818/Mum./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Range-9(1)(1), Mumbai

..... Appellant

v/s

Agility Logistics Pvt. Ltd.
Polaris, 5th Floor, Andheri €
Mumbai 400 059
PAN – AAACL3717A

..... Respondent

C.O. no.77/Mum./2015
(Arising out of IT(TP)A no.1873/Mum./2015)
(Assessment Year : 2010-11)

C.O. no.29/Mum./2016
(Arising out of ITA no.818/Mum./2016)
(Assessment Year : 2011-12)

Agility Logistics Pvt. Ltd.
Polaris, 5th Floor, Andheri €
Mumbai 400 059
PAN – AAACL3717A

..... Cross Objector
(Original Respondent)

v/s

Dy. Commissioner of Income Tax
Range-9(1)(1), Mumbai

..... Respondent
(Original Appellant)

Assessee by : Shri Dhanesh Bafna a/w
Shri Ketan Ved
Revenue by : Shri Akhtar H. Ansari

Date of Hearing – 24.08.2020

Date of Order – 03.09.2020

ORDER**PER SAKTIJIT DEY, J.M.**

The captioned appeals by the Revenue and cross objections by the assessee arise out of two separate orders/directions of learned Dispute Resolution Panel, Mumbai, pertaining to the assessment years 2010-11 and 2011-12.

IT(TP)A no.1873/Mum./2015
ITA no.818/Mum./2016
Revenue's Appeals
For A.Y. - 2010-11 &2011-12

2. The first common issue as raised in grounds no.1 to 4, in both these appeals is assailing the decision of learned DRP in accepting Comparable Uncontrolled Price (CUP) method as applied by the assessee to be the most appropriate method and thereby deleting the addition made on account of transfer pricing adjustment.

3. Brief facts are, the assessee, as stated by the Revenue authorities is a resident company offering comprehensive portfolio of international and domestic and specialized freight handling services. During the impugned assessment year, the assessee had entered into international transactions with its overseas Associated Enterprises (AEs) and in course of such transactions has paid freight expenses to the AEs and has also received freight revenue from the AEs. For

benchmarking such transaction, the assessee has applied CUP as the most appropriate method. For comparability purpose, the assessee has relied upon comparable agreements entered into by the group companies with third parties, wherein, the terms are similar to the terms of agreement between the assessee and the group companies. Before the Transfer Pricing Officer, the assessee had submitted that as per corporate policy, after payment of cost the profits are shared equally between the AEs that have participated in transactions. It was also emphasized that the terms of contract between the group companies with the third parties as well as the assessee remains the same as per which the residual gross profit is shared between the original company and the destination company at 50:50 ratio. In support of such claim, the assessee also furnished all relevant and necessary information and evidences. Further, to corroborate the benchmarking under CUP, the assessee also provided an alternative economic analysis by applying Transactional Net Margin Method (TNMM) with operating profit (OP)/value added expenditure (VAE) as the Profit Level Indicator (PLI). Under TNMM, the assessee selected seven comparables with mean OP/VAE of 30% as against the OP/VAE shown by the assessee at 22.76%. Thus, it was claimed that the transactions with the AEs are at arm's length.

4. The Transfer Pricing Officer, however, did not accept the submissions of the assessee and rejected CUP method applied by the

assessee. Holding that TNMM is the most appropriate method, the Transfer Pricing Officer proceeded to benchmark the transaction with the AE by applying TNMM with operating profit (OP)/ total cost (TC) as the PLI. Out of seven comparables selected by the assessee, the Transfer Pricing Officer rejected certain comparables and ultimately proposed adjustment of ₹ 51,35,70,591, in assessment year 2010-11 and ₹ 14,53,03,285, in assessment year 2011-12. In terms with the adjustment proposed by the Transfer Pricing Officer, the Assessing Officer made additions in the draft assessment orders. Against the draft assessment order so passed, the assessee raised objections before learned DRP.

5. Having taken note of the fact that under identical facts and circumstances in assessee's own case, the Transfer Pricing Officer himself in assessment year 2002-03 and 2003-04 has accepted CUP as the most appropriate method and did not propose any adjustment and further, the Tribunal in assessee's own case in assessment years 2004-05, 2005-06 and 2006-07 has accepted the benchmarking done by the assessee by applying CUP method, followed the same and deleted the additions made on account of transfer pricing adjustment in both the assessment years under dispute.

6. We have considered rival submissions and perused the material on record. It is a common point between the learned Counsels

appearing on behalf of the parties that the issue in dispute is covered by various decisions of the Tribunal rendered in the preceding assessment years. In this context, the learned Counsel for the assessee has drawn our attention to the relevant observations of the Tribunal in the orders passed for the assessment year 2004–05 to 2009–10. On a perusal of the material placed before us, we find that while deciding identical issue in assessee's own case in assessment year 2004–05 in ITA no.2000/ Mum./2010, dated 25th January 2012, the Tribunal has accepted the benchmarking done by the assessee under CUP method and has also held that the profit sharing ratio of 50:50 is prevalent both in respect of agreement entered into between group companies with unrelated parties as well as the assessee. The same view was expressed by the Tribunal in assessment year 2005–06 vide ITA no.6004/Mum./2010, dated 25th January 2012, in assessment year 2007–08 vide ITA no. 8648/Mum./2011, dated 13th April 2012, in assessment year 2008–09 vide IT(TP)A no.7508/Mum./2012, dated 23rd July 2013 and in assessment year 2009–10 vide IT(TP)A no.1189/Mum./2014, dated 19th November 2014. There is no dispute between the parties that the facts on the basis of which the Tribunal has decided the issue in the preceding assessment years remain unchanged in the impugned assessment years as well. In fact, learned DRP following the decision of the Tribunal in assessment years 2004–05 to 2006–07 has decided the issue in favour of the assessee.

Therefore, respectfully following the consistent view expressed by the Tribunal in assessee's own case in preceding assessment year as noted above, we uphold the decision of learned DRP in both the years under appeal. Grounds are dismissed.

7. The next common issue as raised in ground no.5, of both the appeals relates to deletion of addition made to the gross profit.

8. Brief facts are, a search and seizure operation under section 132 of the Act was carried out in the premises of certain entities at New Delhi, which were awarded contract for relaying work for the commonwealth games. As a corollary to the aforesaid search and seizure operation, a survey under section 133A of the Act was carried out on the assessee for the reason that it has provided services/material to the concerned parties. In the course of survey, a statement was recorded from the Vice President of the assessee company. After calling for ledger account copies, invoices and other information, the Assessing Officer observed that the gross profit in freight forwarding division and logistic division has diminished in March 2010. The Assessing Officer was of the view that the decrease in gross profit might be due to the fact that the assessee must have adjusted Profit & Loss account on account of transaction relating to commonwealth games vis-a-vis the profit/loss in respect of other transactions. Accordingly, after rejecting the books of account, the

Assessing Officer computed the gross profit rate and proposed additions of ₹ 10,70,21,929, in assessment year 2010-11 and ₹ 2,67,86,959 in assessment year 2011-12 on identical reasoning. The assessee challenged the aforesaid additions before learned DRP.

9. After considering the submissions of the assessee and perusing the evidences furnished, learned DRP did not find any wrong doing by the assessee and accordingly deleted the additions made by the Assessing Officer.

10. While the learned Departmental Representative has strongly relied upon the observations of the Assessing Officer, the learned Counsel for the assessee has drawn support from the observations of learned DRP.

11. Having considered rival submissions and on a careful reading of learned DRP's direction, it is seen that in course of assessment proceedings, the assessee had furnished all the details/information called for by the Assessing Officer including copies of ledger account, invoices, copies of agreement in connection with commonwealth games. There is a specific finding by learned DRP that neither the Assessing Officer has made any adverse remark alleging non-furnishing of any details by the assessee nor regarding the maintenance of regular books of account by the assessee. It also

appears from record, the Assessing Officer has examined the books of account and the materials furnished before him and has not made any adverse remark regarding the correctness or completeness of the accounts. Simply relying upon a statement recorded from the Vice President of the company, the Assessing Officer has concluded that the assessee might have manipulated its profit. Thus, as could be seen from the material on record, there is no contrary evidence brought on record by the Assessing Officer to establish that the books of account maintained by the assessee are unreliable or the assessee has manipulated them. It is also a fact on record that the parties with whom the assessee has entered into transactions are not related parties. None of the factual finding rendered by learned DRP has been controverted before us with corroborative evidences. Thus, it is very much clear, the additions on account of low gross profit has been made purely on conjecture and surmises without any supporting evidence. That being the case, we do not find any reason to interfere with the decision of learned DRP on the issue. Ground raised is dismissed.

12. In the result, both the Revenue's appeals are dismissed.

C.O. no.77/Mum./2015
C.O. no.29/Mum./2016

13. In view of our decision in the context of Revenue's appeals in the preceding paragraphs, the grounds raised by the assessee in its cross objections have become infructuous, hence dismissed.

14. In the result, assessee's cross objections are dismissed.

15. To sum up, Revenue's appeals and assessee's cross objections are dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 03.09.2020

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 03.09.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai