

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI J. S. REDDY, HON'BLE ACCOUNTANT MEMBER &

SMT. MADHUMITA ROY, HON'BLE JUDICIAL MEMBER

(THROUGH VIRTUAL COURT)

आयकरअपीलसं./ITA Nos.633 & 442/Kol/2016

आयकरअपीलसं./ITA No.387/Kol/2017

(निर्धारणवर्ष / Assessment Years: 2009-10, 2011-12 & 2012-13)

Cookson India Pvt. Ltd. (Address 1) C/o, S. P Chatterjee & Co No. 10, Old Post Office Street, Room No. 15A, Kolkata-700001 (Address 2) Mr. Sriram Kumar/ Ravi Kumar Developed Plot No. 16 (North phase) SIDCO Industrial Estate, Ambattur, Chennai-600098	Vs.	D CIT, Company Circle-3(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCC 1679 B		
(Appellant)	..	(Respondent)

Appellant by : Shri Ajit Kumar Jain, A.R

Respondent by : Shri Vijay Shankar, CIT

सुनवाईकीतारीख/ Date of Hearing : 18/11/2020

घोषणाकीतारीख/Date of Pronouncement : 20/11/2020

आदेश / ORDER

Per Smt. Madhumita Roy, JM:

The instant three appeals filed by the Assessee are directed against the separate orders passed by the Commissioner of Income Tax (Appeals), Kolkata, which in turn arise out of final assessment orders passed by the Assessing Officer u/s 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (in short the 'Act') which incorporate the findings of the Transfer Pricing Officer u/s 92CA(3) of the Income Tax Act, 1961 which followed the direction of the DRP for assessment year 2009-10, 2011-12 & 2012-13 respectively,

2. The assessee, Cookson India Pvt. Ltd. , is part of the Electronics division of Cookson Group, and is a 100% subsidiary of Cookson Group Plc, UK. It is engaged in the manufacture and supply of materials to the electronics industry, primarily serving fabricators and assemblers of PCBs, assemblers of semiconductor packaging and the electrical and industrial markets. It has its manufacturing facility at Chennai, and a R & D centre in Bangalore. The R&D centre is a 100% EOU and provides contract R&D services to Cookson Group Plc. During the assessment year 2009-10, number of international transactions were entered into by and between the appellant before us with its associated enterprises (AE's). However, only international transactions pertaining to 'Management and Support Service Fee' (hereinafter referred to as the MSSF) for Infra Group Services (hereinafter referred to as "IGS") and R & D services is under dispute before us. These transactions were referred to the Transfer Pricing Officer u/s 92CA of the Act for computing Arm's Length Price (ALP), after obtaining due approval of the Pr.CIT, Kolkata-1, Kolkata. It was held by the TPO that the IGS performed by the AE of the assessee under MSSA falls into the category of stewardship activity and for the reasons given by the TPO, the Arm's length price of the IGS provided by the assessee under MSSA was determined to be "Nil" and the total income of the assessee upwardly adjusted for infra group services was Rs. 5,89,83,473/-. In respect of R & D services the TPO has also made an

upward adjustment of Rs. 5,03,62,107/-. The order of TPO issued u/s 92CA(3) of the Act dated 30.01.2015 was incorporated in the draft assessment order dated 23.03.2015 against which objections were preferred by the District Resolution Panel-2 and the same was adjudicated vide DRP order dated 28.10.2015. Pursuant to this the final assessment order dated 02.02.2015 was passed by DCIT(TPO)-1, Kolkata.

3. The case of the appellant is that, it had signed an Advance Pricing Agreement (APA) dated 17.01.2020 with the Central Board of Direct Taxes (CBDT) for five years i.e. F.Y. 01.04.2015 to 31.03.2020. The appellant also filed for rollback period and the agreement also provides for roll back of the said APA for three previous year i.e. FY 2012-13 to 2014-15. Copy of the agreement is annexed with the Paper Book filed before us. As per the APA, for management fees for IGS is the amount of management charges paid in the manufacturing segment does not exceed 2.95% of operating revenue of the manufacturing segment of the previous year. Similarly computation of revenue of contract R & D segment, shall be the revenue arrived at by considering the mark up of 19.90% on the operating cost of this segment excluding the management charges. It is the case of the appellant that all the facts, including functional and risk profile of the company with respect to the year under appeal is identical to the facts and the functional profile of the assessee company for the year's covered by the APA and that the ALP agreed to between the Government and the assessee for these assessment years may be applied for the impugned assessment year also.

At the time of hearing of the instant appeals, the Ld. Counsel for the assessee submitted before us that in the above background the ALP determined in the APA for different international transaction, for the APA period and the rollback period, may be applied for the earlier assessment year also as the facts are identical. He also relied on several orders of the ITAT and the judgment of the Hon'ble Delhi High Court for this proposition. These decisions are (i) Hon'ble Delhi High Court in the case of Ameriprise India Pvt. Ltd. in ITA NO. 206/2016, (ii) Order of Hon'ble co-ordinate Bench of Kolkata in ITA No. 564/Kol/2014 in

the case of Ixia Technologies Pvt. Ltd. vs. DCIT, Circle-2, Kolkata and (iii) Decision of Hon'ble Delhi Tribunal in the case of Ranbaxy Laboratories Ltd. in ITA No. 196/Del/2013. He submitted before us that ALP agreed to by the APA with respect to management fees for "IGS" as well as R & D service should be considered as the ALP for the impugned assessment year and the Ld. A.O. be directed to adopt the same.

4. On the other hand, the Ld. D.R relied upon the order passed by the authorities below. He argued that ALP depends on facts and that economic circumstances vary year after year and hence it cannot be said that the facts are the same. On a query from the Bench he failed to point out the difference in factual matrix in the case for all these three years as compared to the years where APA was applicable as per the agreement, which could lead to determination of a different ALP. According to him, Advance Pricing Agreement is a contractual agreement which is specific to a party and that the benefit can be extended only for the period of agreement. However, he has failed to cite any judgment taking a contrary view than that of the ratio laid down in the judgment cited by the Ld. A.R which were listed by us above.

5. We have heard both the parties and perused the materials available on records. The question arises as to whether, when the factual matrix including the functional and risk profile of the assessee with respect to these three years under appeal is similar, to the factual matrix and functional profile of the assessee considered by the CBDT while determining the ALP in the APA, for the five Financial years 2015-16 to 2019-20 and for the rollback period i.e. FY 2012-13 to 2014-15. In our view the ALP determined and agreed to in the APA should necessarily be applied as the ALP, on the international transaction of IGS and R & D services for the assessment year in appeal. While holding so, we have considered the various judgments one of which is of passed by the Hon'ble Delhi High Court in the case of Ameriprise India Pvt. Ltd. in ITA 206/2016 wherein it was held as under:

“5. Additionally, it is pointed out by Deepak Chopra, Learned Counsel for the assessee, that for the subsequent AYs an Advance Pricing Agreement has been entered into between the Assessee and the Central Board of Direct Taxes under Section 92CC of the Act on 22nd January, 2016 whereunder the aforementioned ‘cost plus pricing methodology’ has been implicitly accepted. Therefore, in the facts of the present case, the Court is of the view that no substantial question of law arises.”

The Co-ordinate Bench of ITAT, Kolkata in the case of Ixis Technologies Pvt. Ltd. in ITA No. 564/Kol/2014 wherein it was held as under:

“7.1 Applying the proposition laid down in these case laws to the facts of our case and as the ALP determined by the assessee had apparent profit mark up of 18.88% in its SDS scheme and as this is within the margin laid down in the APA, this is to be considered as at arm’s length price. Hence, no adjustment is warranted.”

Further the order passed by the Hon’ble Delhi Tribunal in Ranbaxy Laboratoris Ltd. (supra) has also been considered by us. The relevant paragraph is reproduced as under:

“28.May that be the case, but the concept and the methodology laid down in APA can have the guidance value for the revenue authorities for the purposes of comparability analysis. The main intent of the advance pricing agreements isto protect the fair share of the revenue of the states in simple and efficient manner and to protect the tax base. Need for Advance pricing agreements are emerging out of current global complex economic situations and its impact on revenue of tax compelling governments to intensify and streamline their transfer pricing compliance efforts to reduce the disadvantage in staking their claim for tax. Higher risk of disputes may be reduced by the advance pricing agreements. On the same intentions and objects, the ld. TPO is also required to compute the ALP of the International transactions of the Assessee for this year. Therefore, the agreement entered into by CBDT with the assessee, which has considered all the aspects of the manner of determination of ALP which are also similar for the this year, should be given highest sanctity and therefore mechanism suggest in that agreement should be necessarily followed in determining ALP of the transactions for this year.

30. As the FAR Analysis of the year under APA as well as the year under appeal are similar and it is also an established fact that the tested parties selected by the APA i.e. foreign AEs are least complex and adequate financial data for comparison on region basis / country basis are available and further the financial transactions are same, we hold that

based on APA for A Y 2014- 15 the selection of tested party should be taken as Foreign AE for the current year too.....”

Thus, in the absence of any contrary judgment relied upon by the Ld. D.R, we respectfully relying upon the ratio laid down by the judicial forum as stated above, direct the Assessing Officer to adopt the ALP determined in the APA as the ALP of the international transaction of MSSF for IGS and R & D services for all the impugned assessment years.

6. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 20.11.2020

**Sd/-
(J. SUDHAKAR REDDY)**

लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 20/11/2020

(SB, Sr.PS)

**Sd/-
(MADHUMITA ROY)**

न्यायिकसदस्य / JUDICIAL MEMBER

Copy of the order forwarded to:

1. Cookson India Pvt. Ltd.
2. DCIT, Company Circle-3(1) Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches