

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

**[Coram: Pramod Kumar (Vice President)
And Ravish Sood (Judicial Member)]**

IT(TP)A No. 2056/Mum/2017
Assessment Year: 2012-13

Agility Logistics Private Limited
Polaris, A-501/502, 5th Floor,
Off Marol Maroshi Road, Marol,
Andheri (E), Mumbai-400 059
[PAN: AAACL 3717 A]

.....Appellant

Vs

Dy. CIT-Range 9(1)(1)
Room No. 260A, 2nd Floor,
Aayakar Bhavan, M. K. Road,
Mumbai-400 020

.....Respondent

Appearances by

Hirali Desai/Nishant Shah/Chandni Shah for the appellant
Sunil Jha for the respondent

Date of concluding the hearing : October 21, 2020
Date of pronouncement : December 8th, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 31.01.2012 passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, for the assessment year 2012-13.

2. Grievance of the assessee, in substance, is that "on the facts and in the circumstances of the case and in law, the A.O./TPO/DRP erred in confirming the upward adjustment of Rs.10.88,57,721/- to the income of the assessee in respect of international transaction of freight receipts and expenses."

3. The assessee before us is a logistic service provider, offering a comprehensive portfolio of international, domestic and specialized freight handling services. The assessee is a part of Agility Group, headed by Agility Holdings Inc. USA which holds 100% shareholding in the assessee company, through its step down subsidiaries namely Agility Holding Logistics Pte. Ltd. (Singapore), Agility Logistics Ltd. (Hong Kong) and Agility International Logistics Pte. Ltd. (Singapore).

4. Aggrieved, assessee carried the matter in appeal before the TPO/DRP but without any success. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

6. Learned representatives fairly agree that the issue is now covered, by a coordinate bench decision in the assessee's own case for A.Ys. 2010-11 and 2011-12. In the said order, i.e. Dy. CIT vs. Agility Logistics Pvt. Ltd. [IT(TP)A Nos. 1873/Mum/15 & 818/Mum/16 order dated 3rd September, 2020], the coordinate bench has, inter alia, observed as follows:

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/VAEj 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 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 Rs.51,35,70,591, in assessment year 2010-11 and Rs.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 Office himself in assessment year 2002-03 and 2003-04 has accepted CU as the most appropriate method and did not propose any adjustment and further, the Tribunal in assessee's own case in assessment year 2004-05, 2005-06 and 2006-07 has accepted the benchmarking done by the assessee by applying CUP method, followed the same and J 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 Counsel 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) no.H89/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. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the same, we uphold the plea of the assessee, and delete the impugned arm's length price adjustment of Rs. 10,88,57,721/-. The assessee gets the relief accordingly.

8. In the result the appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 8th December, 2020.

Sd/-
Ravish Sood
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 8th day of December, 2020
Roshani, Sr. PS

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai