

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "1-2": NEW DELHI**

**BEFORE SHR AMIT SHUKLA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No.3560/Del/2018
(Assessment Year: 2012-13)

Richemont India Private Limited Earlier M/s. RLG Retail Pvt. Ltd., Regus Business Centre, Level-4, Rectangle-1, D-4, Commercial Complex, Saket, New Delhi – 110 017. PAN: AADCR9256R	Vs.	ACIT, Circle – 20 (2), New Delhi.
(Appellant)		Respondent)

Assessee by :	Shri Vishal Kalra, Adv.;
Department by:	Shri M. Baranwal, Sr. D.R.;
Date of Hearing	11/03/2021
Date of pronouncement	11 /03/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld. CIT (Appeals)-38, New Delhi, dated 15.12.2017 for Assessment Year 2012-13. The assessee has filed revised Form No. 36 stating that the name of the assessee has changed from RLG Retail Private Limited to Richemont India Private Limited.
2. The assessee has raised in substance 4 different grounds of appeal as under :-
 1. *That on facts and in the circumstances of the case and in law, the Assessing Officer ("AO") erred in completing the assessment of the Appellant at an loss*

of INR 3,20,78,082 as against returned loss of INR 4,03,83,257. The CIT (A) further erred in upholding the same.

2. *That on facts and in the circumstances of the case and in law, the Transfer Pricing Officer ("TPO") has erred in arbitrarily rejecting Handicrafts & Handloom Export Corporation Ltd ("HHECL") selected by the Appellant for benchmarking the international transaction in respect of purchase of finished goods for resale.*
3. *Without prejudice to grounds of appeal no. 2, that on facts and in the circumstances of the case and in law, the TPO erred in not excluding comparable companies, namely, Saga Department Stores Ltd and Central Cottage Industries Corporation of India, which were also not functionally comparable for reasons similar to exclusion of HHECL.*
4. *That on facts and in the circumstances of the case and in law, the CIT (A) has erred in summarily dismissing and not disposing grounds of appeal nos. 3 and 4 by way of a speaking order in relation to supplementary CUP analysis submitted by the Appellant, demonstrating that the associated enterprisec("AE") sold similar products to third party resellers in India at similar prices.*
 - 4.1 *That on facts and in the circumstances of the case and in law, the CIT (A) has erred in dismissing the alternate CUP analysis holding that the Appellant has not pressed grounds of appeal nos. 3 and 4 and ignoring the details submissions filed in this regard.*

That the above grounds of appeal are without prejudice to each other. “

3. Ground No. 1 is general in nature and, therefore, it is dismissed.
4. Ground No. 4 is with respect to the order of the Id. CIT (Appeals) against not passing speaking order, no arguments were advanced and, therefore, ground No. 4 is dismissed.
5. In ground No. 2 assessee has challenged the inclusion of Handicrafts & Handloom Export Corporation Ltd., upheld by the Id. CIT (Appeals) and in ground No. 3 assessee has contested inclusion of Saga Department Stores

Ltd. and Central Cottage Industries Corporation of India, which were not functionally comparable as per assessee.

6. The brief facts of the case show that assessee is a wholly subsidiary company of Richemont Services B.V. and is engaged in retail trading of goods in India under the brand name 'Cartier'. It is engaged in the retail sale of watches, jewellery and other luxury products. It filed its return of income declaring a loss of Rs. 4,03,83,257/- on 30th November 2012 which was revised on 30th March, 2013. During the year, the assessee has entered into five different international transactions. The main international transaction was purchase of finished goods for re-sale from its associate enterprise of Rs.7,30,84,376/- which was benchmarked by the assessee adopting re-sale price method (RPM) as the most appropriate method [MAM] and profit level indicator [PLI] of gross profit margin [OP/ sales]. The ld. Assessing Officer referred the matter to the ld. TPO for determining the Arms Length Price [ALP] of this international transactions. The ld. TPO vide his order dated 25.01.2016 proposed an upward adjustment of Rs. 83,05,175/-. Consequently the loss of the assessee was revised and assessed at Rs.3,20,78,082/- as per order under Section 143(3) read with Section 144C of the Act dated 29.04.2016. The assessee challenged the above order before the ld. CIT (Appeals) who dismissed the appeal of the assessee and, therefore, assessee is aggrieved.
7. The only dispute in this appeal is the upward adjustment proposed by the ld. TPO to the international transaction amounting to Rs. 83,05,175/-.
8. The brief facts of the international transaction and its adjustment shows that assessee is a company engaged in retail trading of 'Cartier' brand products and sales products such as jewellery, watches, writing instruments, lighters, leather bags, other leather articles, eyewear, perfumes and gift articles. These products are imported by assessee from its associated enterprise and sold in Indian market. In TP Study Report, assessee computed its gross profit margin at 37.27% as assessee was selected as tested party. It selected 4 comparable companies, namely,
 - a. Central Cottage Industries Corporation of India,

- b. Ethos Ltd.,
- c. Handicrafts & Handloom Export Corporation Ltd., and
- d. Saga Department Stores Ltd.

The arithmetic mean of the margins of the comparable was computed at 32.61% using the multiple year data and stated that the international transaction of products of finished goods for re-sale adopting re-sale price method of Rs.7,30,84,376/- is at Arm's Length. The ld. TPO examined the benchmarking method, rejected the use of multiple year data, and held that filter used by the assessee are not correct. He applied his own filter. Importantly he included a filter that the ratio of the trading to the total income is of at least 75%. Accordingly, he accepted three comparables of the assessee, but rejected Handicrafts & Handloom Export Corporation Ltd., whose margin was computed by assessee at 0.19%. The main reason for rejection of this comparable was that this company was not engaged in the business of trading of goods as that of the assessee and, therefore, there is a functional dissimilarity. Thus three comparables were retained, whose average margin of OP / OR was computed at 44.40%. Thus the Arms Length Price of the international transaction was determined by considering the margin of 44.40% on sales of Rs.18,52,63,774/- amounting to Rs. 8,22,57,116/-. The Arms Length cost of the assessee was determined at Rs.10,30,06,658/- whereas the cost of the assessee was Rs. 11,62,12,878/-. Thus, there was a difference in the cost of Rs. 1,32,06,220/- which was applied in proportion to the cost of purchases from its AE of Rs. 7,30,84,376/- resulting into a proportionate adjustment of Rs. 83,05,175/-. The order under Section 92CA(3) was passed by the ld. TPO on 25.01.2016. Before the ld. CIT (Appeals), the assessee challenged the exclusion of comparable company Handicrafts & Handloom Export Corporation Ltd. The ld. CIT (Appeals) in Para No. 5.3 of her order dated 15.12.2017 held that the product profile of this comparable is not at all comparable to the product of the assessee which are luxury products. The CIT (Appeals) noted that the key business segment of comparable comprises of Handicrafts, Carpets, Handlooms, Gold Jewellery and Bullion. Thus, this comparable cannot be taken for the comparability analysis and the order of the ld. TPO was upheld. Thus, assessee aggrieved in appeal on this issue.

9. The ld. AR in ground No. 2 challenged the rejection of Handicrafts & Handloom Export Corporation Ltd. as comparable. He submitted that the comparable company is also in the similar business. He submitted that 99.67% of the Revenue of the comparable is from trading in bullion. Thus, according to him the core activity of the comparable is also of retail trade of luxury goods like appellant. He also demonstrated that this company has now expenditure of manufacturing etc. therefore; it passes the filter applied by the ld. TPO on 75% of the trading activities. He further submitted that merely because it is a Govt. company, it is not a valid reason for rejection of this company. Therefore, he submitted that, this comparable company should be included as this was the comparable of the assessee, which was rejected by the ld TPO, and CIT (A).
10. For ground No. 3 he argued that the Saga Departmental Store was also challenged before the ld. CIT (Appeals) for exclusion, which was not considered at all by him. He referred to page No. 6 of the order of the ld. CIT (Appeals) wherein written submissions of the assessee were reproduced as an alternative argument. The AR submitted that Saga Department Stores is also having similar profile as of Handicrafts & Handloom Export Corporation Ltd. Therefore, it should also be excluded. On the contrary, his argument was that if Saga Department Stores Ltd. is considered as a comparable then Handicrafts & Handloom Export Corporation Ltd. could not be excluded. Before us, he further made that argument stating that on the similar grounds as mentioned by the ld. TPO even Central Cottage Industries Corporation of India cannot be included. Thus, according to him, only Ethos Ltd. remains a comparable company whose margin is 26.39% remains as a comparable. He also raised an alternative argument that there are other comparable companies also available such as Sheetal Diamonds Limited and Shukra Jewellery Limited, which should be included as comparable company. Therefore, these two companies should be included for the comparability analysis, as the functions performed by them are similar.
11. The ld. DR vehemently opposed the arguments of the ld. Authorized representative and submitted that Handicrafts & Handloom Export Corporation Ltd. has been correctly excluded by the ld. Transfer Pricing

Officer, as this company is not at all engaged in the business of trading of jewellery or any high end products as assessee is dealing in. he submitted that assessee is selling “ cartier” products where as the comparable company is handloom and handicraft business etc. He also submitted that major income of the comparable company is not trading in jewellery as stated by the ld AR but bullion such as Gold and silver. He specifically referred to the annual accounts of the Handicrafts & Handloom Export Corporation Ltd., which is placed at page Nos. 101 to 195 of the Paper Book. He referred to page No. 107 of the Paper Book to show that for the year ended on 31st of March, 2012 it imported 40,406 Kg. of gold and 73,618 Kg. of silver. This company sold this gold and silver, which is claimed by the ld. AR as comparable trading activity. Therefore, he submitted that there is no merit in the arguments of the ld. AR.

12. The ld. DR further submitted that there was no claim before the ld. CIT (Appeals) that Saga Department Stores should also be excluded as a comparable. He submitted that the argument was converse that if the Saga Department Stores is included, which is also having similar profile like Handicrafts & Handloom Export Corporation Ltd., it should also be excluded. He submitted that there was no argument that Saga Departmental Stores should be excluded. Thus, he submitted that there is no merit in the appeal of the assessee.
13. With respect to central cottage industry, ld DR submitted that no such arguments are before lower authorities.
14. With respect to two further comparable suggested by the ld AR during the course of hearing by additional ground, he submitted that this cannot be a method of inclusion or exclusion of comparable, so it cannot be now included without looking at database, applying filter and then comparing its functionality.
15. We have carefully considered the rival contentions. It is apparent that Handicrafts & Handloom Export Corporation Ltd. has been excluded by the ld. TPO for the reason that company is in developmental and marketing of Handicrafts & Handloom products from various textile. Thus, it does not deal with the products and materials like a very luxury brand ‘Cartier’ in

which assessee is trading. Furthermore, it is in trading of bullion and silver as demonstrated by the ld. DR. In view of this, we confirm the order of the ld. CIT (Appeals) in upholding the order of ld TPO in correctly excluding Handicrafts & Handloom Export Corporation Ltd from comparability analysis. Thus, ground No. 2 of the appeal of the assessee is dismissed.

16. Coming to the ground No. 3 where assessee is asking for exclusion of Saga Department Stores and Central Cottage Industries Corporation of India. It is apparent that assessee in its own benchmarking analysis included these companies. Before the ld. CIT (Appeals) it indirectly asked that if Handicrafts & Handloom Export Corporation Ltd. is to be excluded or included the similar treatment should be given to Saga Department Stores Ltd. and Central Cottage Industries of India Ltd. The margin of the Saga Department Stores is 63.53% and Central Cottage Industries Corporation of India is 45.11%. The submission of the assessee is correct that both these comparables are also not dealing in the products as well as the luxury brands such as 'Cartier'. This was also the comparable selected by the assessee. Ld TPO has also accepted these comparables. Now the assessee is disputing these comparables. Thus, it is apparent that both assessee as well as the ld. TPO has proceeded on selecting inappropriate comparable companies for benchmarking the international transactions. The ld. AR as well as the ld. DR also agreed on this aspect. Further, the request of the ld. AR also cannot be accepted for inclusion of two other comparables, which were neither the part of comparability analysis made by the assessee nor of the ld. Transfer Pricing Officer. In view of the above facts, we find it appropriate to set aside the whole issue back to the file of the ld. Transfer Pricing Officer, wherein the assessee is directed to submit the fresh search and comparability analysis before the ld. TPO, by using appropriate filters, keeping in mind the nature of the business and the product of the assessee. The ld. Transfer Pricing Officer may then decide the issue on the merits and determine the ALP of the international transaction after giving assessee an opportunity of hearing. The ld. Assessing Officer and the ld. TPO will keep in mind to pass the draft assessment order so that if assessee wishes, it can approach ld. DRP. Accordingly, ground No. 3 is allowed.

17. In the result, appeal of the assessee is partly allowed with above directions.

Order pronounced in the open court on conclusion of hearing on 11/03/2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 11 /03/2021.

MEHTA

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	11.03.2021
Date on which the typed draft is placed before the dictating member	11.03.2021
Date on which the typed draft is placed before the other member	11.03.2021
Date on which the approved draft comes to the Sr. PS/ PS	11.03.2021
Date on which the fair order is placed before the dictating member for pronouncement	11.03.2021
Date on which the fair order comes back to the Sr. PS/ PS	11.03.2021
Date on which the final order is uploaded on the website of ITAT	11.03.2021
date on which the file goes to the Bench Clerk	11.03.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	