

आयकर अपीलीय अधिकरण
मुंबई पीठ "के", मुंबई
श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1963/मुं/2014 (नि. व.2009-10)
IT(TP)A NO.1963/MUM/2014(A.Y. 2009-10)

The Dy. Commissioner of Income Tax-10(3),
Room No.451, 4th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Renfro India Pvt. Ltd.
33, Mahalaxmi Chambers,
Bhulabhai Desai Road, Mumbai 400 026
PAN: AAACK2518C

..... प्रतिवादी/Respondent

C.O. NO.88/MUM/2014

[Arising out of IT(TP)A NO.1963/MUM/2014 (A.Y. 2009-10)]

M/s. Renfro India Pvt. Ltd.
33, Mahalaxmi Chambers,
Bhulabhai Desai Road, Mumbai 400 026
PAN: AAACK2518C

.... Cross Objector

Vs.

The Dy. Commissioner of Income Tax-10(3),
Room No.451, 4th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai 400 020

..... Appellant in appeal

Assessee by : Shri Madhur Agrawal

Revenue by : Shri Sushil Kumar Mishra

सुनवाई की तिथि/ Date of hearing : 24/02/2021

घोषणा की तिथि/ Date of pronouncement : 21/05/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the assessment order dated 29/01/2014 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2009-10. The assessee has filed Cross Objections (in short 'the CO') in the appeal of Revenue.

2. The Department has raised solitary ground assailing the findings of Dispute Resolution Panel (DRP)/assessment order. The same reads as under:-

"On the facts and in the circumstances of the case and in law, the Dispute Resolution Panel erred in rejecting TNMM method and thereby consequently deleting the adjustment for the transaction pertaining to export of socks merely accepting the details of the invoices submitted by the assessee to demonstrate that the gross margins earned by the AE is lower than the gross margin earned by AE parties."

3. The assessee in CO has raised following grounds:-

"1. On the facts and in the circumstances of the case and in law, the learned TPO and the learned A.O have erred and the Hon'ble DRP has further erred in rejecting Resale Price method as the most appropriate method.

2. On the facts and in the circumstances of the case and in law, the learned TPO and the learned A.O have erred and the Hon'ble DRP has further erred in rejecting Cost plus method as the next most appropriate method."

4. The brief facts of the case as emanating from records are: The assessee is engaged in manufacturing and sale/export of knitted socks. During the period relevant to assessment year under appeal, the assessee entered into international transactions amounting to Rs.36,12,07,715/- for export of socks to its Associated Enterprises (AE) in US and Europe. To benchmark the transactions, the assessee applied Resale Price Method (RPM) as the most appropriate method. The Transfer Pricing Officer (TPO) rejected RPM and applied Transactional Net Margin Method (TNMM) as the most appropriate method to determine Arm's Length Price (ALP) of the said international transactions. The change in method resulted in adjustment of Rs.9,19,76,222/- in the ALP of the international transaction. The Assessing Officer

passed the draft assessment order in line with the adjustment proposed by the TPO. The assessee filed objections before the DRP against the change in method from RPM to TNMM for determining ALP by the TPO. The DRP upheld the findings of TPO/AO, however, the DRP deleted adjustment on the ground that the assessee was been able to substantiate that the goods sold by assessee to its AE have been resold by the AE at a price equal or less than the price at which the AE purchased goods from the assessee. The assessee could reconcile 80% of exports during the relevant period. The Assessing Officer passed the impugned order in accordance with the directions of the DRP. Hence, the present appeal by Revenue.

5. Shri Madhur Agrawal appearing on behalf of the assessee at the outset submitted, that the assessee has been consistently following RPM to benchmark its international transactions. The TPO/Assessing Officer has been accepting ALP determined by applying RPM since assessment year 2004-05. Even in subsequent assessment years the TPO/Assessing Officer has been consistently accepting RPM adopted by the assessee to determine ALP of the exports to AEs. The TPO for the first time has disturbed the method of determining ALP in assessment year 2009-10, despite the fact that there was no material change in the nature of transactions, goods or other factors determining the sale price. The Id. Counsel for the assessee furnished chart tabulating the method followed by assessee in the assessment years starting from assessment year 2004-05 to assessment year 2013-14 and the acceptance of same by TPO. The Id. Counsel for the assessee pointed that the order of TPO accepting RPM as the most appropriate method for assessment year 2006-07 is at page 197, for assessment year 2007-08 at page 206, for assessment year 2008-09 at page 215, for assessment year 2010-11 at page 224 and for assessment year 2011-12 at page 233 of the Paper Book. The Id. Counsel for the assessee asserted that in the absence of any material change in facts, the TPO cannot deviate from a settled view. The Id. Counsel emphasised the need to maintain consistency in

applying the most appropriate method to benchmark the transactions. To support his arguments on principles of consistency, the Id. Counsel for the assessee placed reliance on following decisions:

- 1) Radhasoami Satsang vs. CIT, 193 ITR 321(SC);
- 2) DCIT vs. Vishay Components India P. Ltd., 103 taxmann.com 421(Bom.);
- 3) Omni Active Health Technologies Ltd. vs. DCIT, 92 taxmann.com 88 (Mum-Trib)

5.1. The Id. Counsel for the assessee further submitted that where a company procures a product from its AE and sells the same to unrelated parties without any further processing i.e. when no value addition is made in the product, RPM is the most appropriate method to determine ALP. To support this argument, the Id. Counsel for the assessee placed reliance on the following decisions:

1. CIT vs. L' Oreal India Pvt. Ltd., 53 taxmann.com 432 (Bom.);
2. Mattel Toys India Pvt. Ltd. vs. DCIT, 34 taxmann.com 203 (Mum.);
3. DCIT vs. Hazira LNG Pvt. Ltd. in ITA No.1056/Ahd/2014.

5.2. The third argument raised by the assessee against TP addition is that transfer pricing addition cannot exceed the eventual price charged by the AE from a third party. To support this argument the Id. Counsel for the assessee placed reliance on following decisions:

1. CIT vs. Global Vantedge Pvt. Ltd., 45 taxamman.com 475 (Del);
2. Sony Ericson Mobile Communications India Pvt. Ltd. vs. CIT, 374 ITR 118 (Del);
4. HCL Technologies BPO Services Ltd. vs. ACIT, 60 taxmann.com 186 (Del-Trib.)

6. Per contra, Shri Sushil Kumar Mishra representing the Department vehemently defended the order of TPO and directions of the DRP in applying TNMM to benchmark the international transactions. The Id. Departmental Representative submitted that the DRP has erred in deleting the adjustment on the ground that the assessee has been able to reconcile substantial part of the transactions.

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee applied RPM as the most appropriate method to benchmark its international transactions of export of socks to AEs. The first contention of the assessee is that the assessee has been consistently adopting RPM as the most appropriate method to benchmark ALP of transactions with AEs and the TPO has accepted the same in the past, as well as in later assessment years. To substantiate the point, the assessee has furnished copy of TPO orders for AY 2006-07 to 2008-09, 2010-11 and 2011-12. The chart furnished by assessee tabulating the most appropriate method adopted by assessee since AY 2004-05 till AY2013-14 is reproduced herein below:

Assessment Year	Method followed in Form no. 3CEB	TPO Order status
2004-05	Resale Price Method	Accepts the sales price at arm's length
2005-06	Resale Price Method	Accepts the sales price at arm's length
2006-07	Resale Price Method	Accepts the sales price at arm's length
2007-08	Resale Price Method PB Pg. 205	Accepts the sales price at arm's length
2008-09	Resale Price Method	Accepts the sales price at arm's length
2009-10	Resale Price Method	Under Dispute
2010-11	Resale Price Method	Accepts the sales price at arm's length
2011-12	Resale Price Method	Accepts the sales price at arm's length
2012-13	Resale Price Method	Accepts the sales price at arm's length
2013-14	Resale Price Method	Accepts the sales price at arm's length

The Revenue has not disputed the fact that in the preceding assessment years and succeeding assessment years, the assessee's RPM was not disturbed. Assessment year 2009-10 is the only assessment year where the TPO has upset determination of ALP

by the assessee. Lack of information, tedious process, difficulty in proving price in each case and complex computation are the reasons given by TPO for rejecting RPM applied by the assessee. The reasons given by TPO are superficial and unsubstantiated. No plausible reason has been given by the TPO to reject the method of determining ALP from RPM to TNMM. The fact that there is no material difference in the transactions with AEs over the years including the impugned assessment year is undisputed. It is true that principle of res-judicata does not apply to Income Tax Laws however, the rule of consistency has to be followed where there is no material change in the facts and nature of transactions. The Hon'ble Apex Court in the case *Radhasoami Satsang (supra)* has emphasized the relevance and need of consistent approach to be adopted where there is no change in the material facts and the Revenue has accepted the issue in proceedings for subsequent assessment years.

8. The Hon'ble Bombay High Court in the case of *PCIT vs. Vishay Components India (P) Ltd. (supra)* has held that where the Revenue has been consistently accepting a particular method of benchmarking transaction and deviate in one assessment year without there being any material change in facts, the onus is on the Department to show difference in facts warranting a different view. For the sake of ready reference, relevant extract of the judgement is reproduced herein below:

"8. We have considered rival submissions. We note that the Revenue has been accepting the TNM method as most proper method for benchmarking the aggregated international transactions with AE's over the period of time. The same has been accepted by the Revenue on examination of the issue. It is found that the TPO had for the other years on same facts has accepted the fact that there was no difference in two segments involved for transfer pricing. Thus, consistently accepting the TNM method as the most appropriate method to determine the ALP of the respondent's aggregated International Transaction till Assessment Year 2015-16. The Revenue has not been able to show any material difference in the subject assessment year which would justify a change in the most appropriate method (TNM method) adopted while benchmarking the international transactions. So far as the order dated 1st August, 2018 of this Court in case of John Deere India (P) Ltd. (supra) admitting the appeal of the Revenue is correct, we find that it has not been admitted on the

question which arises in the present petition, i.e. the effect of the Revenue consistently accepting TNM Method as the most appropriate method for benchmarking international transactions with AE's in the absence of any material change of the facts or law. This is not the issue on which the appeal of the revenue has been admitted by the Court in the case of John Deere India (P) Ltd. (supra). Therefore, it will have no application to the present facts. The objection to rejection of comparables taken by the Revenue before us, does not address the issue of the most appropriate method for benchmarking its international transaction. We are also unable to understand the contention on behalf of the Revenue that it is for the respondent to prove that there is no change/ difference in facts in the subject Assessment Year from the subsequent Assessment Years. Where TNM method is accepted to determine the ALP of international transaction. Infact, no change in facts has been asserted by the respondent. Therefore, it would be for the Revenue to show the difference in facts warranting a different view in this Assessment Year to that taken in the subsequent Assessment Years. We have herein above extracted paragraph 18 of the impugned order of the Tribunal and on its reading we are of the view that the same is a finding of fact based on appreciation of evidence. Thus, no interference is warranted."

In the instant case, the Revenue has not brought on record any material fact to show difference in the nature or manner of transactions with AEs. Thus, in the light of facts of the case and the decisions referred above, we find no cogent reason to reject assessee's RPM as the most appropriate method to benchmark ALP in the impugned assessment year, when the same was accepted in the earlier and later assessment years by the TPO. The assessee succeeds on rule of consistency. The ground no.1 of CO is thus, allowed.

Since, the assessee succeeds on ground no.1 of CO, alternate plea raised in ground no.2 of CO has become infructuous, hence dismissed.

9. The DRP deleted adjustment after recording finding of fact that the sale price of goods exported by the assessee to AE is more than or equal to the sale price of goods charged by AE from third parties. The DRP recorded this finding on the basis of documents submitted by the assessee and the report of TPO on same. The assessee could reconcile price of 80% of the goods exported to AE vis-a-vis the price charged by AE from third parties. The Department has not been able to controvert factual

findings of the DRP based on the report of TPO. Under such circumstances, no adjustment is warranted. We find no infirmity in the impugned findings of DRP. The appeal of Revenue is devoid of merit, hence, dismissed.

10. To sum up, appeal of the Revenue is dismissed and CO of the assessee is partly allowed.

Order pronounced in the open court on Friday the 21st day of May, 2021.

Sd/-
(PRAMOD KUMAR)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 21/05/2021
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai