

आयकरअपीलीयअधिकरण "के " न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI VIKAS AWASTHY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through video conferencing mode)

आयकरअपीलसं./ I.T.A. No.5594/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)

Arysta LifeScience India Limited (successor entity to Chemtura Chemicals India Pvt. Ltd.) Arysta: 301, A Wing, 3 rd Floor Kanakia Zillion, CST Road, LBS Marg Kurla (West), Mumbai-400 070	बनाम/ Vs.	ACIT –Circle-3(1)(1) Aaykar Bhavan, Room No.609 Churchgate Mumbai.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AACCC-5796-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Kirit Kamdar-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Sunil Deshpande & Shri Sushil Kumar Mishra-Ld. DRs

सुनवाईकीतारीख/ Date of Hearing	:	15/06/2021
घोषणाकीतारीख / Date of Pronouncement	:	17/06/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-44, Mumbai, {CIT(A)} dated 29/06/2018. The effective grounds urged before us are ground nos. 2 & 3 which read as under: -

2. That the Ld. CIT(A) has erred in law and on the facts of the case in making an addition of INR 14,89,54,216 to the income of the Appellant simply following the predecessor CIT(A) without appreciating the facts of the case. The addition made by Ld. CIT(A) is based on conjectures, surmises and allegations contrary to the material on record.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in arbitrarily enhancing the income by INR 148,954,216 which was already offered to tax, thus, leading to taxing the income twice in the hands of the Appellant

As evident, the assessee is aggrieved by enhancement of certain income by Ld. CIT(A).

2. The Ld. AR, drawing our attention to the factual paper-book, assailed the enhancement made by Ld. CIT(A) and submitted that the observations made in the impugned order are contrary to facts on record. To substantiate the same, Ld. AR took us through financial statements of the assessee. The Ld. DR, on the other hand, submitted that the matter is factual one and may be remitted back for verification.

3. Having heard rival submissions and after due consideration of material on record, our adjudication to the subject matter of appeal would be as per succeeding paragraphs.

4.1 The material facts are that the assessee being resident corporate assessee was assessed u/s 143(3) r.w.s. 144C on 29/04/2016. The assessment was framed after considering the transfer pricing adjustment of Rs.62.24 Lacs as proposed by Ld. Transfer Pricing Officer in its order u/s 92CA(3) dated 29/01/2016. The adjustment was proposed by Ld. TPO in international transactions carried out by the assessee in the manufacturing segment. During proceedings before Ld. TPO, it transpired that the

assessee aggregated the international transactions in manufacturing segment as well as in business support service segment for the purpose of benchmarking. The Ld. TPO opined that the transactions was to be benchmarked separately as these segments have different functional profile. Accordingly, the results of two segments were re-worked which are given in para 6.3 of Ld. TPO's order. Upon perusal of the same, it could be seen that the assessee had revenue from operations under service segment for Rs.1489.54 Lacs and this segment had margin of 77.92%. The Ld. TPO proposed adjustment under manufacturing segment only which is not relevant for this appeal.

4.2 Upon further appeal, Ld. CIT(A) while adjudicating assessee's grounds, observed that the assessee earned management fees of Rs.1489.54 Lacs from two of its Associated Enterprises (AE) namely Chemtura Sales Europe Gmbh and Chemtura Corporation USA. These transactions were reported in Note No.19 of the audited financial statements. However, the said amount was reflected as Rs.1002.13 Lacs in Form 3CEB as filed by the assessee along with the return of income. Thus there was under reporting of income in Form No.3CEB to the extent of Rs.487.41 Lacs. Similar discrepancy was noted in appellate order for AY 2011-12 wherein the amount reported in Profit & Loss Account was found to be less than the figure reported in Form No.3CEB as well as notes to the account and accordingly, differential of Rs.159.95 Lacs was added to the income of the assessee in that year.

4.3 In the above background, the assessee was issued enhancement notice wherein it was proposed to make addition of concealed income for Rs.1489.54 Lacs. However, the assessee, vide reply dated 26/04/2018, explained that it incurred management service fee expenses of Rs.427.54 Lacs which formed part of selling and distribution expenses as was evident from item no.17 of Note No.26 of the Notes to the Accounts of the financial statements. The assessee also filed the detailed breakup of the selling & distribution expenses to demonstrate the same. It was submitted that there was inadvertent and bona-fide error in reporting the correct numbers in Form No.3CEB. Subsequently, the assessee filed details of tax deducted at source on management fees expenses to bolster its stand.

4.4 However, not convinced, Ld. CIT(A) chose to make the enhancement with following observations: -

5.30 The contention of the appellant is not accepted since the appellant has not reported the correct income in its form 3CEB. The income of the appellant is, therefore, enhanced by Rs.148,954,216.

The assessee preferred rectification application u/s 154 but the same was also dismissed vide order dated 31/10/2018. Aggrieved, the assessee is in further appeal before us.

Our findings & Adjudication

5. Going by the factual matrix, we find that the assessee has earned management fees of Rs.1489.54 Lacs from two of its Associates Enterprises. The said income has been credited in assessee's Profit & Loss Account as *other operating revenues* under the head *revenue from operations*. The same is evident from

Note-19 of assessee's financial statements. Similar figure has been reported as **earnings in foreign exchange (rendering services)** in schedule annexed to and forming part of the Balance Sheet. Similar figure was noted by Ld. TPO while re-working segmental results which has already been enumerated by us in preceding para-4.1 of this order. Quite clearly, the said income of Rs.1489.54 Lacs stood credited to assessee's Profit & Loss Account and form part of the assessee's financial statements. The same has already been considered while computing assessee's income.

6. Proceeding further, the assessee has debited Selling & Distribution Expenses of Rs.1133.89 Lacs which is evident from item no.17 of Note No.26 of the Notes forming part of the Balance Sheet. The break-up the same was already provided by the assessee in its submissions during appellate proceedings. This amount include inter-company service fees expense of Rs.427.54 Lacs which after including foreign exchange difference of Rs.56.20 Lacs comes to Rs.483.74 Lacs. The assessee has remitted Rs.483.74 Lacs after deduction of tax at source, the details of which have already been given by the assessee in the impugned order.

7. Thus, it is quite clear that the impugned amount of Rs.1489.54 Lacs already forms part of assessee's income and there is no concealment of income as alleged by Ld. CIT(A) in the impugned order. The figures in Form No.3CEB has been reported on 'net basis' which at the most, could be an inadvertent / bona-fide / oversight error. But on the given factual matrix, there would be no case to make impugned additions in the hands of the assessee.

The Ld. CIT(A), without considering assessee's submissions, erred in making enhancement in the hands of the assessee. The facts in AY 2011-12 were quite different since in that year the figure as reported in Profit & Loss Account was found to be less than the figure reported in Form No.3CEB. However, the same is not the case in this year. Therefore, we have no hesitation in deleting the same. We order so. The ground nos. 2 & 3 stand allowed. The other grounds are not urged and hence dismissed.

8. The appeal stand partly allowed.

Order pronounced on 17th June, 2021

Sd/-
(Vikas Awasthy)
न्यायिकसदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/06/2021
Sr.PS:-Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.