

THE INCOME TAX APPELLATE TRIBUNAL  
"K" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)  
I.T.A.(TP) No. 1213/Mum/2016 (Assessment Year 2011-12)

DCIT-14(1)(1) Room No. 460 4 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. APL Logistics (India) Private Limited Trade Plaza, 2 <sup>nd</sup> Floor 414 Veer Savarkar Marg Cadell Road, Prabhadevi Mumbai-400 025.  PAN : AACCA9694B
(Appellant)		(Respondent)

Assessee by	Shri Nikhil Tiwari
Department by	Shri Sunil Deshpande
Date of Hearing	23.06.2021
Date of Pronouncement	01.07.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of Dispute Resolution Panel dated 14.10.2015 for assessment year 2011-12.

2. Grounds of appeal read as under :-

1. On the facts and the circumstances of the case and in law, the Hon'ble DRP has erred in rejecting Seaways Shipping Ltd as comparable for computation of Arm's Length Price.
2. The appellant prays that the order of the Hon'ble DRP on the above grounds be set aside and that of the Assessing Officer be restored.

3. At the outset in this case learned Counsel of the assessee made submission that even after giving effect to the DRP's order the assessee arm's length price (ALP) will be within the tolerance limit of 5%. Hence no TP adjustment would be required. The detailed submission is as under :-

"1. APLLI is engaged in the business of providing logistics support services to its AEs in the 'Cargo Consolidation' and 'Freight Forwarding' segments. The Appellant has benchmarked its international transaction in the 'Cargo Consolidation' and 'Freight Forwarding' segment using Transaction Net Margin method by selecting 10 companies as comparables. Since the

arithmetic mean of the margin earned by comparable companies worked out to 3.56% which was lower than the margin of 5% on cost earned by APLLI, it concluded its international transactions to be at arm's length.

2. The learned Transfer Pricing Officer ('TPO') rejected 1 company (Gordon Woodroffe Limited) selected by the Appellant and additionally identified 6 companies as comparables to arrive at an arm's length margin of 10.81% using a final set of 15 companies as comparables. Since, APLLI's margin (5% on cost) was lower than the arm's length margin of 10.81%, the learned TPO passed an order dated 13 January 2015 making a transfer pricing of Rs 3,06,47,938.

3. The learned Assessing Officer ('AO') passed a draft order dated 4 March 2015, *inter alia*, making a transfer pricing adjustment of Rs 3,06,47,938 in accordance with the transfer pricing order dated 13 January 2015.

4. Subsequently, the Assessee, *inter alia*, filed its objections before the Hon'ble DRP against the above transfer pricing adjustment.

5. The Hon'ble DRP passed an order dated 14 October 2015, succinctly rejecting 2 companies: Seaways Shipping Limited (refer para 4.1.1 of DRP order) and Empire Industries (refer para 3.2.1 of DRP order).

6. Further, in relation to India Cements Capital Limited, the Hon'ble DRP did not provided a clear finding on the certainty of the company being excluded from the final comparable set since the company has been accepted as a comparable in para 3.3.1 of the DRP order and subsequently rejected in para 4.2.1 of the DRP order. In this connection the Appellant had filed a letter dated 08 January 2016 seeking clarifications from the DRP of exclusion of India Cements Capital Ltd. from the final comparable set.

7. Thereafter, the Hon'ble DRP vide order dated 18 February 2016 clarified that India Cement be considered as a comparable and the margin of the company be taken at 19.26% on cost in the final comparable set.

8. Based on the above directions of the Hon'ble DRP, the learned TPO determined the arm's length margin of the final comparable companies at 8.96% using the following companies as comparables.

Sl. No.	Name of the Company	As per TP Study	As per TP order	As per DRP directions
1	Gati Ltd	10.05%	10.05%	10.05%
2	Gordon Woodroffe Logistics Ltd	-2.47%	NC	NC
3	Seaways Shipping Limited	-1.95%	23.10%	Rejected
4	Chartered Logistics Limited	9.53%	9.53%	9.53%
5	Coastal Roadways Limited	1.35%	1.35%	1.35%
6	Delhi Assam Roadways Corpn. Ltd	3.96%	3.96%	3.96%
7	Patel Integrated Logistics Limited	2.46%	2.46%	2.46%

8	Transport Corporation of India Ltd	5.56%	5.56%	5.56%
9	Hindustan Cargo Ltd	4.48%	4.48%	4.48%
10	Sical Logistics Limited	2.67%	2.67%	2.67%
11	Empire Industries	-	22.63%	Rejected
12	HSCC (India) Ltd	-	16.99%	16.99%
13	HCCA Business Services Pvt Ltd	-	13.99%	13.99%
14	ICRA Management Consulting Services Ltd	-	15.90%	15.90%
15	India Cement Capital Limited	-	19.26%	19.26%
16	Spectrum Business Solutions Ltd	-	10.25%	10.25%
	Arithmetic mean	3.56%	10.81%	8.96%

9. Since, the arm's length margin of 8.96% (as determined by the learned TPO above) was within the +1-5% range (upper range being 10.25%) as provided in proviso to Section 92C(2) of the Act, the learned TPO deleted the entire transfer pricing adjustment of Rs 3,06,47,938. Copy of the letter forwarded by the learned TPO to the learned AO directing that the transfer pricing adjustment is reduced to Rs NIL is attached as Annexure 1.

10. However, the final assessment order incorporating the directions of the learned TPO giving effect to the DRP order has not yet been received by the Appellant. Accordingly, we request your Honour's to direct the learned AO to pass the final assessment order incorporating the directions of the Hon'ble DRP dated 18 February 2016.

11. Further, it is submitted that the Revenue Department has filed an appeal before the Hon'ble ITAT (in ITAT No. 1231/Mum/2016) against the directions of the Hon'ble DRP to reject Seaways Shipping Limited ('Seaways Shipping') as a comparable.

12. In this connection, without prejudice to our submissions against the re-instatement of Seaways Shipping as a comparable, it is submitted that even if the Department succeeds on the above ground and Seaways is reinstated then too APLLI's margin meets the arm's length test.

13. The arm's length margin of the final comparable set after inclusion of Seaways Shipping as a comparable is 9.97% using the following companies as comparables:

Sl. No.	Name of the Company	As per TP Study	As per TP order	As per DRP directions	As per Department appeal
1	Gati Ltd	10.05%	10.05%	10.05%	10.05%
2	Gordon Woodroffe Logistics Ltd	-2.47%	NC	NC	NC
3	Seaways Shipping Limited	-1.95%	23.10%	Rejected	23.10%
4	Chartered Logistics Limited	9.53%	9.53%	9.53%	9.53%

5	Coastal Roadways Limited	1.35%	1.35%	1.35%	1.35%
6	Delhi Assam Roadways Corpn. Ltd	3.96%	3.96%	3.96%	3.96%
7	Patel Integrated Logistics Limited	2.46%	2.46%	2.46%	2.46%
8	Transport Corporation of India Ltd	5.56%	5.56%	5.56%	5.56%
9	Hindustan Cargo Ltd	4.48%	4.48%	4.48%	4.48%
10	Sical Logistics Limited	2.67%	2.67%	2.67%	2.67%
11	Empire Industries	-	22.63%	Rejected	Rejected
12	HSCC (India) Ltd	-	16.99%	16.99%	16.99%
13	HCCA Business Services Pvt Ltd	-	13.99%	13.99%	13.99%
14	ICRA Management Consulting Services Ltd	-	15.90%	15.90%	15.90%
15	India Cement Capital Limited	-	19.26%	19.26%	19.26%
16	Spectrum Business Solutions Ltd	-	10.25%	10.25%	10.25%
	Arithmetic mean	3.56%	10.81%	8.96%	9.97%
	Upper range	10.25%	10.25%	10.25%	10.25%

14. It is submitted that APLLI has earned a margin of 5% on cost and that the arm's length margin of 9.97% (after reinstating Seaways Shipping) falls within the +/-5% range provided in proviso to Section 92C(2) of the Act (upper range being 10.25%). Thus, the international transactions entered into by the Appellant meets the arm's length test.

15. Therefore, it humbly submitted that the Department appeal is academic in nature and should be dismissed.”

4. We further note that in a submission by the assessee, the Revenue has accepted that the Assessee has earned a margin of 5% on cost and the arm's length margin o: 8.96% falls within the +/-5% range as provided under proviso to Section 92C(2j) of the Act. Hence, the adjustment in this case, is reduced to NIL. That the effect to DRP's order is passed with the prior approval of the Addl. Commissioner of Income-tax (TP)-1(l), Mumbai contained in the letter bearing F.No. Addl.CIT/TP-1(1)/Approval/2017-18 dated 03.05.2017.

5. Learned Departmental Representative also accepted that even after giving effect to the DRP order no TP adjustment is required. As such we accept

the assessee's plea that this appeal by the Revenue is infructuous. Hence, the Revenue appeal is dismissed as infructuous.

Pronounced in the open court on 1.7.2021.

Sd/-  
(PAVANKUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai