

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.2341/Bang/2019
Assessment Year : 2015-16

M/s. Reitzel India Pvt. Ltd. Plot No.98-99, KIADB Industrial Area Kunigal Tumkur 572126 Karnataka  <b>PAN NO : AACCR4566P</b>	<b>Vs.</b>	ACIT Circle-5(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Mahaveer C. Jain, A.R.
<b>Respondent by</b>	:	Shri Muzaffar Hussain, D.R.

Date of Hearing	:	24.08.2021
Date of Pronouncement	:	26.08.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the assessment order dated 26-09-2019 passed by the Assessing Officer (AO) for assessment year 2015-16 u/s 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [‘the Act’ for short] in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. All the issues urged by the assessee relate to the Transfer pricing adjustments made by the AO.

Page 2 of 6

3. The assessee is engaged in the business of growing, processing and exporting a vegetable called Gherkins to its Associated Enterprises (AE). As per the order of Transfer Pricing Officer (TPO), the assessee has exported pickled gherkins and preserved gherkins. During the year under consideration, the assessee has exported Gherkins for a sum of Rs.90.78 crores to its AE and also paid fee for technical services of Rs.2.32 crores. The assessee adopted TNMM method to bench mark its international transactions. The Profit Level Indicator (PLI) was adopted as Operating Profit/Operating Cost. The TPO rejected the T P Study conducted by the assessee. The TPO selected eighteen comparable companies by applying various filters. The 35<sup>th</sup> percentile margin of comparable companies worked out to 9.14%, which was more than the PLI declared by the assessee. Hence the TPO held that the transfer pricing adjustment is called for. The median margin of comparable companies was 9.43%. Accordingly, the prescribed formula, the TPO made Transfer Pricing adjustment of Rs.8,99,22,585/-. The TPO also made transfer pricing adjustment of Rs.1,66,592/- on account of delayed receivables. The same was confirmed by Ld DRP.

4. The Ld A.R submitted that comparable companies selected by the Ld TPO are engaged in food processing, which is totally different from Gherkins (Vegetable) processed & exported by the assessee. He further submitted that the TPO should have selected companies engaged in processing and export of Gherkins for the purpose of bench marking the international transactions of the assessee company. He submitted that the assessee is a member of M/s Indian Gherkin Exporters Association and following companies, who are members of the above said association, are carrying on identical business activities:-

Page 3 of 6

1. VRD Best Foods Ltd.
2. Bnazrum Agro Exports Pvt. Ltd.
3. Garden City Agro Exports Pvt. Ltd.
4. Good Greens India Pvt. Ltd.
5. Indus Vegpro Pvt. Ltd.
6. Exotic Agro Pvt. Ltd.
7. Green Agro Pack Pvt. Ltd.
8. Green Pickles Pvt. Ltd.
9. Ken Agritech Ltd.
10. Koeleman India Pvt. Ltd.
11. Neo Foods Pvt. Ltd.
12. Unicorn Pickles Pvt. Ltd.
13. Riviana Foods Pvt. Ltd.
14. Rajshree Industrial and Commercial Co. Pvt. Ltd.

5. The Ld A.R submitted that the assessee has gathered annual reports of the above said companies. Accordingly, he submitted that the TPO may be directed to bench mark the international transactions by considering the above said companies as comparable companies.

6. The Ld A.R submitted that the assessee has followed Net Cost plus Margin method, but the assessee is agreeing for adopting TNM method.

7. The Ld A.R further submitted that the TPO did not consider Export incentives as part of operating income, while computing margins. He submitted that the export incentives are part of operating income as per the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. Welspun Zucchi Textiles Ltd (391 ITR 211). He further submitted that the scrap sales receipts have

Page 4 of 6

been held by the TPO as non-operating income. He submitted that the scrap is generated out of its business activities only. Accordingly, he prayed that the AO/TPO may be directed to work out PLI by taking export incentives and scrap sales receipts as part of operating income.

8. The Ld A.R further submitted that the TPO has considered outstanding receivables due from AE as an “International Transaction”. He submitted that the same cannot be considered as International Transaction.

9. He submitted that the co-ordinate bench has considered identical issues in the assessee’s own case relating to AY 2014-15 in IT(TP)A No.3329/Bang/2018 dated 08.11.2019 and the matter relating to Transfer pricing adjustment has been restored to the file of AO/TPO for examining it afresh.

10. We heard Ld D.R and perused the record. We find merit in the prayer of the assessee to consider the companies, which are engaged in the similar line of business in the very same product, as comparable companies. It is the submission of the assessee that the comparables selected by TPO are engaged in different activities, though they are engaged in food processing only. The Ld A.R submitted that the assessee has already gathered annual reports of companies dealing in the very same product, i.e., gherkins dealt with by the assessee. Accordingly, we are of the view that the issue relating to bench marking of international transactions of export of gherkins requires fresh examination at the end of the AO/TPO by considering the fresh comparable companies cited above.

Page 5 of 6

11. The issue relating to export incentives, i.e., whether they are part of operating income or not has since been settled by Hon'ble Bombay High Court in the case of Welspun Zucchi Textiles Ltd (supra). Accordingly, we direct the AO/TPO to consider export incentives as part of operating income. If scraps are generated during the course of processing of gherkins, we do not find any reason not to consider it as part of operating profit. Accordingly, we direct the AO/TPO to take scrap sales as part of operating income, if the scrap is generated during out of its business activities.

12. The next issue contested by the assessee is whether the outstanding receivables due from AE is an international transaction or not. Since we are restoring main issue to the file of AO/TPO, we restore this issue also to the file of AO/TPO for examining it afresh.

13. In view of the foregoing discussions, we set aside the order passed by the AO on the above said issues and restore them to the file of AO/TPO.

14. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 26<sup>th</sup> Aug, 2021

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 26<sup>th</sup> Aug, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.