

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 183/PUN/2021

निर्धारण वर्ष / Assessment Year : 2016-17

Taiyo Kagaku India Private Limited
(earlier known as Taiyo Lucid India Private Limited)
M-101, MIDC Industrial Area, Waluj,
Aurangabad-431 136
PAN : AABCT6570G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1, Aurangabad.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhay A. Avchat

Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 26.10.2021

घोषणा की तारीख / Date of Pronouncement : 26.10.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the directions of the Ld. CIT(DRP-3), Mumbai-1 dated 05.03.2021 for the assessment year 2016-17 as per the grounds of appeal on record.

2. The brief facts in this case are that the assessee is incorporated in 2002 and is a joint venture between Taiyo Kagaku Co. Ltd., Lucid Colloids Limited and CBC Co. Ltd., Japan. The assessee is the manufacturer of a water soluble dietary fibre. During the year under consideration, the assessee had disclosed transaction entered with CBC Co. Ltd. in the nature of purchase of raw materials and packing materials amounting to Rs.4,15,31,447/- in clause 22 of the Form 3CEB as specified domestic transaction. It was observed from Clause 21 of the Form 3CEB by the TPO that CBC Co. Ltd. was located at Japan and therefore, the said transaction should have been disclosed as international transaction as against specified domestic transaction. The assessee was given an opportunity to explain as to why the said transaction was disclosed as specified domestic transaction and the assessee was also asked to furnish the documentation required to be maintained mandatorily under Rule 10D(1) & 10D(3), Rule 10B & 10C of the Income Tax Rules, 1962. The assessee did not file any response and details. In absence of compliance from assessee to the statutory notices issued, it was concluded by the TPO that the assessee has not maintained any such documentation to justify the Arm's length price of the transactions. Thereafter, the TPO concluded that the ALP of these transactions to be Nil. It was suggested therefore, by the TPO that accordingly, the Assessing Officer may treat these amounts as unexplained expenditure in the hands of the assessee and adjustment was made of Rs.4,15,31,447/-.

3. That when the matter travelled up to the Ld. DRP, it was submitted before us by the Ld. AR that they had filed two written submissions through e-mails since that was the time when virtual hearing had started. However, the Ld. DRP has considered only one submission of the assessee and the other one was not considered at all. The Ld. DRP vide Para 4.2 of its order

has stated that before the TPO and also before the DRP, the assessee has not been able to file any document required to be maintained as per Rules 10D(1), 10D(3), 10B and 10C of the Income Tax Rules, 1962 to justify the Arm's length price of the transactions.

3.1 The conclusion arrived at by the Ld. DRP was that the assessee has not maintained the documentation required as per statutory requirements in this regard was inescapable. It was further held that in absence of such documentation, it was not possible to examine whether the transaction in question was at Arm's length price or not. In addition, the assessee has not been able to advance any written or verbal submissions on the merits of the issue. Thereafter, the Ld. DRP dismissed the objections filed by the assessee being not supported by any supporting material or arguments. Further, the Assessing Officer/TPO was directed to initiate penalty proceedings u/s.271AA and 271G of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for failure to keep/maintain information and documents in respect of an international transaction and failure to furnish information/document within the prescribed time limit as specified under provisions of Section 92D(3) of the Act.

4. At the time of hearing, the Ld. AR for the assessee submitted that they were unable to attend proceedings before the TPO and file necessary submissions with documentary evidences in support of the case on merits as was called for. However, the TPO could have derived the Arm's length price of the transaction based on materials available on record and it was not correct for the TPO to arrive at Arm's length price as Nil. This is more so because, it is an undisputed fact that there was purchase of raw materials and this purchase transactions could have been determined and the Arm's length

price could have arrived at by the TPO by conducting specific enquiry at his end and as per materials available with him on record. The Ld. AR further submitted that even before the Ld. DRP, they had filed two submissions out of which as evident from the order of the Ld. DRP, they had given consideration in respect of only one submission placed before them and other one was not considered at all. The Ld. AR further prayed for been given one more opportunity to represent his case on merits before the TPO by filing requisite details/documentary evidences for actual determination of Arm's length price of the transaction.

5. The Ld. DR submitted that on merits since no findings have been given by any of the Revenue Authorities in absence of proper documentation, therefore, as prayed by the assessee, the matter can go back to the TPO for re-adjudication.

6. We have heard the submissions of the parties herein and considered the facts and circumstances in this case. It is an agreed fact that the assessee had entered into a transaction of purchase of raw materials amounting to Rs.4,15,31,447/- and reflected it in Clause 22 of Form 3CEB. Now, as the facts on record demonstrate that neither before the TPO nor before the Ld. DRP, the assessee had filed necessary details/ documentary evidences in support of his case. The Assessing Officer had however derived the Arm's length price of the transaction to be as Nil and from the order of the Assessing Officer, we are unable to find any exercise in the form of enquiry or examination of facts on record by the Assessing Officer before arriving at Arm's length price as Nil. It is correct that the assessee has not complied with the directions of the Revenue Authorities and has not filed necessary documentations but also it is correct that the Revenue Authorities on their

own has not made necessary efforts to arrive at the correct conclusion in respect of the Arm's length price of the transaction related to purchase of raw materials.

7. Even the Ld. DR has not disputed that the Ld. DRP considered only one submission of the assessee and other one was ignored though it was on record, the assessee had filed both the submissions through e-mails. Even in a case of best judgment assessment u/s.144 of the Act, in a case where the assessee does not appear or does not provide proper evidences before the Assessing Officer, the Assessing Officer provides reasons and completes the assessment u/s.144 of the Act. In this case, while arriving at Arm's length price as Nil, the Assessing Officer has not given any specific findings. Furthermore, the Ld. DRP has come out with the same findings upholding the order of the Assessing Officer/TPO.

8. The sub-ordinate Authorities in their respective orders, have given no findings as regards the merits of the case and one of the reason for this that the assessee has not furnished necessary documentary evidences before the Revenue Authorities. Before us, the assessee has prayed for one final opportunity to represent his case on merits. We are of the considered view, in the interest of justice, one final opportunity should be provided to the assessee. The assessee is specifically directed to provide necessary details/evidences/documentation before the TPO as and when called for to represent his case on merits. Accordingly, we set aside the directions of the Ld. DRP and remand the matter to the file of the Assessing Officer/TPO for re-adjudication while complying with the principles of natural justice as per law.

9. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 26th day of October, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th October, 2021.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	26.10.2021	Sr.PS/PS
2	Draft placed before author	26.10.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		