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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2034/PUN/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Robertshaw Controls India Private Limited,
Survey No. 197, Viman Nagar,
Nagar Road, Pune – 411014

PAN : AACCF3590M

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 5, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 01-11-2021
घोषणा की तारीख / Date of Pronouncement : 27-01-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the final assessment order dated 14-10-2019 passed by the ACIT, Circle-5, Pune u/s. 143(3) of the Act for assessment year 2015-16.

2. The first issue raised by the assessee relating to extraordinary expenses to an extent of Rs.1.70 crores.

3. The ld. AR submits that some raw material amounting to Rs.1,70,00,000/- belonged to earlier concern which was returned back due to quality concerns and it was a loss to the assessee. The TPO held that no supporting evidences except one list of raw material and no proof of inventory was furnished and in the absence of evidences the TPO/AO did not accept the submissions of the assessee. Before the DRP, it was submitted that the additional evidence regarding supporting the claim of loss relating to the extraordinary expenses were submitted and remand report was sought from the TPO/AO. We note that the said remand report relating to the issue was reproduced in the order of DRP from Page Nos. 10 to 17. On perusal of the same, we note that some charges involving export invoices of Invensys India to Invensys Brazil returned back on noticing some defects. The details of which the description unit wise and amount are also reflected in the said details. We note that the amount of extraordinary expenses inclusive of cost of goods returned and cost of demurrages, CFS and detention charges of Rs.90,63,334/- and Rs.79,95,645/-, respectively. It is noted that the Invensys India Pvt. Ltd. had sold goods to Invensys Brazil from April, 2012 to August, 2012. On finding some defects some goods were returned/re-imported to India. It was submitted that the returned goods could not be used and were scrapped. The AO/TPO asked the assessee to explain why the loss is treated as of extraordinary nature. It was submitted that the year under consideration is the first year of operation and the assessee did not treat the material returned in subsequent years A.Ys. 2016-17 and 2017-18.

Considering the same the TPO held the amount of goods returned will not be expenses of extraordinary nature. Further, we note that the claim of extraordinary expense due to the defective goods written off is not mentioned as separate item in the audited financials. The TPO held there was no such extraordinary item in the audited financials and suitable adjustment to that effect with proper comparability and analysis is not possible. Thereby, the AO/TPO rejected the claim of adjustment of extraordinary expense. Before us, the ld. AR did not bring on record supporting evidence showing that the cost of goods returned cost of demurrages, etc. is to be considered as extraordinary expenses. Therefore, we find no infirmity in the direction of DRP which was followed by the AO in its final assessment order. Thus, the first issue raised by the assessee is dismissed.

4. The second issue raised by the assessee is treating the foreign exchange gain as operating revenue.

5. The AO observed that the foreign exchange fluctuation gain/loss is included in the operating revenue/expense for the computation of PLI, the actual receipts/payments are substituted in the place of sale price or purchase price charged on the date of transfer and the PLI so computed would reflect the net margin prevalent at the time of realization/payment rather than the net margin at the time of sale or purchase. According to him the treatment of foreign exchange gain/loss as operating revenue for the purpose of computing the PLI of the tested party and the comparables causes distortions in the comparability analysis and rejected contention of the assessee to treat foreign exchange gain/loss as operating revenue in

nature. The ld. AR placed on record an order of this Tribunal in the case of Delval Flow Controls (P.) Ltd. reported in 128 taxmann.com 260 (Pune-Trib.) which was held foreign exchange gain/loss is operating revenue in nature. The relevant portion at Para No. 13 of the said order is reproduced here-in-below :

> *"13. The emphatic contention of the ld. DR - that section 92CB providing that the arm's length price under section 92C or section 92CA shall be subject to safe harbour rules and hence the application of rule 10TA(k) across the board is essential whether or not the assessee opts for the safe harbour - in our considered opinion does not merit acceptance. Section 92CB unequivocally states that the arm's length price under section 92C or section 92CA shall be subject to safe harbour rules. It only means that if there is an eligible assessee, who has exercised option to be governed by the safe harbour rules in respect of an eligible international transaction after complying with the due procedure, then the determination of the ALP shall be done in accordance with the safe harbour rules in terms of section 92CB of the Act and ex consequenti, the application of other rules will be ousted. The sequitur is that where such an option is not availed, neither section 92CB gets triggered nor the relevant rules including 10TA(k). In that scenario, determination of the ALP is done de hors the safe harbour rules. Once these rules are kept out of compass, the otherwise settled position by virtue of the judgment of the Hon'ble Delhi High Court in B.C. Management Services Pvt. Ltd. (supra) and various Benches of the Tribunal across the country holding foreign exchange gain/loss as operating revenue/loss in the ALP determination, comes to the fore. We, therefore, hold that the foreign exchange gain/loss earned/incurred by the assessee and the other comparables needs to be considered as a part of operating revenue/cost not only for the reason that the assessment year under consideration is prior to the applicability of the safe harbour rules but also that there can be no question of applying Rule 10TA(k) in the absence of the assessee having or exercising option to be subjected to the safe harbour Rules."*

6. In the light of the above, we hold the foreign exchange gain/loss as operating revenue/loss in the ALP determination and the other comparable needs to be considered as operating revenue/cost. Therefore, the issue raised above relation to foreign exchange gain/loss is allowed.

7. Regarding additional ground raised through letter regarding comparable company in the case of Kirloskar Pneumatic Co. Ltd., it was

submitted by the ld. AR that the assessee intends to withdraw the same and accordingly, the additional ground filed is treated as withdrawn.

8. Regarding RPM as the most appropriate method for benchmarking traded goods. The TPO held the TNMM is the most appropriate method for benchmarking traded goods.

9. We note that the assessee in the trading segment by using RPM benchmarked the international transaction considering the difference of sale and purchase price. The AO/TPO asked the assessee why the TNMM should not be considered as appropriate method. It was submitted the RPM is the most appropriate method for trading business as it works as gross margin rather than net operating margin. The AO/TPO observed that the goods sold by the assessee and comparable companies should be same or similar for taking RPM as most appropriate method. The ld. DR vehemently opposed the RPM method in terms of comparables selected by the assessee for trading segments. He argued that the comparable companies as reflected in Page No. 16 of the AO/TPO are all heavy earth moving machinery, replacement parts for motor car, earth moving equipments and the AO/TPO rightly held the RPM is not most appropriate method. We note that when the goods in the trading segment are sold to its AEs the RPM is the most appropriate method as there was no value addition to the goods at the time of selling the same to AEs if the goods are sold to non-AEs i.e. unrelated parties then the TNMM is the most appropriate method. On perusal of the record, we note that when there is no value addition to the goods traded, in our opinion, RPM is the most appropriate method but however, value of manufacturing is to be excluded.

Thus, the issue raised regarding the most appropriate method in respect of RPM in the trading segment is to be accepted and accordingly, we direct the AO/TPO to consider the same but however, the value of manufacturing is to be excluded. Thus, issue raised by the assessee is allowed for statistical purpose.

10. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 27th January, 2022.

Sd/-	Sd/-
(R.S. Syal)	(S.S. Viswanethra Ravi)
VICE PRESIDENT	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th January, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-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.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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