

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A Nos. 2764/Bang/2017 & 3353/Bang/2018
Assessment Years : 2013-14 & 2014-15

M/s. Sami -Sabinsa Group Ltd. (Formerly Sami Labs Ltd.), No. 19/1 & 19/2, I Main, II Phase, Peenya Industrial Area, Bangalore - 560 058. PAN: AADCS2549E	Vs.	The Deputy Commissioner of Income Tax, Circle 6 (1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Bhavya Bansal, CA
Revenue by	:	Shri Manjunath Karkihalli, CIT-DR

Date of Hearing	:	15-02-2022
Date of Pronouncement	:	18-02-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals filed by assessee against the final assessment order undated for A.Y. 2013-14 and 23.10.2018 for A.Y. 2014-15 passed by Ld.DCIT, Circle - 6 (1)(1), Bangalore.

The above appeals are disposed of by way of a common order as common issues arises on identical facts. For the sake of convenience, we are reproducing the grounds raised by assessee for Assessment Year 2013-14.

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal</i>
1.	<i>The Learned Transfer Pricing Officer (TPO) and Hon'ble Dispute Resolution Panel (DRP) erred in law and in facts in not considering TNMM documentation and benchmarking as submitted and discussed by your appellant.</i>	Rs. 13,06,36,920
2.	<i>The Learned TPO and Hon'ble DRP erred in law and on facts by not considering the segmental results of international transactions, submitted before the DRP, even though the segmental results for obtaining the operating profitability was derived in a scientific manner and certified by an independent Chartered Accountant.</i>	
3.	<i>The Learned TPO and Hon'ble DRP erred in law and on facts by not considering the Internal TNMM, as submitted by your appellant before the DRP.</i>	
4.	<i>The Learned TPO and Hon'ble DRP has erred in law and on facts in holding that transfer pricing adjustment be made at the entity level including on sales made to Non-AE parties.</i>	
5.	Selection of wrong comparables <i>a. The learned TPO and Hon'ble DRP has erred in law and on facts in upholding the selection of AVT Natural Products Limited and Synthite Industries Limited as comparable companies to your appellant's business functions.</i>	Rs. 13,06,36,920
	<i>b. The learned TPO and Hon'ble DRP has erred in law and on facts in selecting comparables like AVT Naturals Products Limited and Synthite Industries Limited which have not passed quantitative filters, as applied by the TPO himself i.e. turnover filter of less than Rs. 200 crores.</i>	
	<i>c. The learned TPO and Hon'ble DRP has erred in law and on facts in rejecting the comparables selected by your appellant viz. Sanat Products Limited, Gujarat Organics Limited, Alchem International Private Limited, Kothari Phytochemicals and Industries Limited and Arjuna Natural Extracts Limited</i>	
6.	<i>The Learned TPO and Hon'ble DRP has erred in law and on facts in making addition under</i>	

	<i>section 92CA of Income-tax Act, 1961 to international transaction with associated enterprises on the contention that profits are shifted from India to other AEs outside India though the AEs earned considerable lower margins than the holding company i.e. your appellant.</i>	
7.	<i>The Learned TPO and the Hon'ble DRP has erred on facts in considering expenditure incurred on research & development activity by your appellant for PL1 calculation, though the R&D expenditure was not linked with the manufacturing activity and same principles have not been applied in computing PLI of comparables.</i>	
8.	<i>The Learned TPO and Hon'ble DRP has erred in law and on facts in considering the "Liability written back" amounting to Rs.2,74,675/- as a non-operating income.</i>	
9.	Corporate Guarantee Commission <i>a)The learned TPO and Hon'ble DRP has erred in law and on facts in holding that corporate guarantee given to a third party for raising funds by Associated Enterprises in the normal course of business is an international transaction within the meaning of Section 92B of Income-tax Act, 1961.</i> <i>b)The Learned TPO and Hon'ble DRP has erred in law and on facts in holding that a commission of 3% is to be charged to the AE for the guarantees given to them.</i>	
10.	<i>For these and other grounds that may be adduced during the course of the hearing, the order of the TPO and AO to the extent upheld by the DRP be ordered to be modified to the extent appealed against.</i>	NA
	<i>Total tax effect</i>	Rs. 13,06,36,920

2. Brief facts of the case are as under:

The assessee is in the business of manufacture of herbal and fine chemical extracts also known as nutraceuticals and it is selling to both related parties / associated enterprises ("AE") as well as to unrelated parties. The international transaction subject matter of this appeal is sales of herbal products to AE.

3. At the outset, it is submitted that assessee bench marked the transaction of sale to the AE using Cost Plus Method (CPM) analysis, however, the Ld.TPO rejected the CPM analysis and used Transactional Net Margins Method (TNMM) as most appropriate method.

3.1 The Ld.AR at this juncture submitted that assessee do not object for the use of TNMM.

Accordingly, ground no. 1 stands dismissed.

However, she submitted that there are internal comparables available and sufficient data were filed before the DRP which were not considered for purpose of comparability analysis. She prayed that as against the external comparables used by the Ld.AO/TPO, the internal comparables submitted by assessee may be considered in order to bench mark the international transaction for the years under consideration. She submitted that all the details are available in order to assist the revenue authorities to use the internal comparables.

3.2 In support of her submission, she placed reliance on the decision of *Hon'ble Special Bench, Mumbai* in case of *Tecnimont ICB (P.) Ltd. vs. Addl. CIT* reported in [2012] 24 taxmann.com 28 (Mum.) (TM). Referring to the said decision, she submitted that when the data is available showing the profit margin of that enterprise itself from third parties, it is always safe and advisable to have recourse to such internal comparable case. The reason is patent that the various factors having bearing on the quality of output, assets employed, input cost etc. continue to remain by and large same in case of an internal comparable.

The effect of difference due to such inherent factors on comparison made with the third parties, gets neutralized when comparison is made with internal comparable. *Ex consequenti*, it follows that an internal comparable uncontrolled transaction is more noteworthy vis-a-vis its counterpart i.e. external comparable.

3.3 The Ld.AR submitted that the proposition laid down by the *Hon'ble Mumbai Special Bench* has been followed in various decisions of this *Tribunal* the same principle.

3.4 The Ld.CIT.DR though opposed the use of internal comparables could not controvert the observation by *Hon'ble Mumbai Special Bench* and various other decisions filed by assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. We note that admittedly, the transactions in a controlled transaction with a related party and an uncontrolled transactions with unrelated parties will result into more appropriate bench marking of arm's length price.

Under the circumstances, if there is availability of sufficient data of internal comparables, the Ld.TPO first should have recourse to such internal compares before moving on to external comparables. Only on insufficiency of data in respect of internal comparables, support must be drawn from the external comparables.

4.1 We therefore, direct the Ld.TPO to carry out detailed analysis of the international transactions using TNMM as MAM,

based on the materials filed by assessee related to internal comparables. In the event the details filed are satisfactory, the determination must be confined to the internal comparables so filed by assessee. In the event, the details filed by assessee is not verifiable or not in accordance with law, the Ld.AO/TPO is open to carry out analysis in accordance with law.

Ground nos. 2-4 raised by assessee stands allowed for statistical purposes.

Ground nos. 5-10 becomes academic at this juncture as the entire assessment in respect of transfer pricing adjustment has been remanded to the Ld.AO/TPO for *de novo* consideration based on the directions hereinabove. These grounds may be considered by the Ld.AO/TPO afresh in the remand proceedings.

Needless to say that proper opportunity of being heard needs to be granted to assessee.

Accordingly, grounds raised by assessee stands partly allowed for statistical purposes.

In the result, appeals filed by assessee for both the years stands partly allowed for statistical purposes.

Order pronounced in the open court on 18th February, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 18th February, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore