

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.476/Chny/2016
निर्धारण वर्ष/Assessment Year: 2011-12

The Deputy Commissioner of
Income Tax, Corporate Circle 1,
63-A, Race Course Road, Coimbatore.

Vs. M/s. India Trimmings Private Limited,
6/636, Pillaiappan Palayam,
Telungupalayam Post, Annur,
Coimbatore 641 653.
[PAN:AAACI1639N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Dr. S. Palani Kumar, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri N. Arjunraj, CA &
: Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing : 15.03.2022
घोषणा की तारीख /Date of Pronouncement : 22.03.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the proceedings of the Id. Disputed Resolution Panel-2, Bangalore dated 24.11.2015 relevant to the assessment year 2011-12. The Revenue has raised the following grounds:

- "1. The directions of the Hon'ble DRP is against the facts and circumstances of the case.*
- 2. The Hon'ble DRP erred in allowing the claim of the assessee for inclusion of M/s. Ashnoor Textiles Mills Ltd., as a comparable and adjustment on account of personnel cost and also holding that there was no basis for the TPO to reject M/s. Ashnoor Textiles Mills Ltd.*

holding it as loss making.

3. *The Hon'ble DRP erred in holding that the assessee has furnished the details of break-up of employee cost for itself as well as comparables and directing that appropriate adjustment should be allowed to the assessee.*
4. *The Hon'ble DRP failed to note that the assessee while calculating the PLI of M/s. Ashnoor Textiles Mills Ltd. has not included other operational expenditure of the industry amounting to Rs.4.17 crore thereby ending with a positive operating profit, whereas, the TPO has included this operational expenditure and arrived at a negative OP/OC at (-)5.13%.*
5. *For these and other grounds that may be adduced at the time of hearing the directions of the DRP may be cancelled.”*

2. Brief facts of the case are that the assessee is a Private Limited Company carrying on the business of manufacturing and exporting of Ornamental Trimmings, Tassels, and Tiebacks, etc. The assessee filed its return of income for the assessment year 2011-12 on 20.09.2011 declaring total loss of ₹.(-)1,38,12,470/- under normal provisions. The return of income of the assessee was processed under section 143(1) of the Income Tax Act, 1961 [“Act” in short]. Subsequently, the case of the assessee was manually selected for scrutiny since the value of international transaction exceeds ₹.15 crores and notice under section 143(2) of the Act dated 18.09.2012 was issued and duly served on the assessee. Since the total amount involved in the international transaction exceeds ₹.15 crores, the case was subsequently referred

to the Transfer Pricing Officer for determination of Arm's Length Price. Vide order under section 92CA(3) of the Act dated 27.01.2015, the TPO has recommended for upward adjustment to the income of the assessee of ₹.5,32,73,631/- The upward adjustment proposed by the TPO was added to the total income of the assessee vide draft assessment order dated 25.02.2015. The assessee has objected the additions of the TPO/Assessing Officer before the Id. Dispute Resolution Panel. After considering the objections and submissions of the assessee, the Id. DRP has directed the Assessing Officer to include M/s. Ashnoor Textiles Mills Ltd. as a comparable and also directed the TPO to decide the percentage of risk adjustment to be calculated, after taking into account all the relevant facts and details.

2.1 Aggrieved, the Revenue carried the matter in appeal before the ITAT against the order of the Id. DRP. Vide order dated 31.01.2017, the Tribunal has observed that the Id. DRP has no power or authority to direct the TPO to decide the percentage of risk adjustment to be calculated, the Id. DRP was directed to decide the issue afresh after considering the relevant material on record.

2.2 The assessee carried the matter in appeal before the Hon'ble

Jurisdictional High Court. Vide order dated 10.06.2019 in Tax Case No. 118 of 2018, the Hon'ble Jurisdictional High Court has directed the Tribunal to consider on merits of the case as to whether the said assessment order was justified or not by observing as under:

“15. Thus, the order dated 24.11.2015 passed by the DRP is an order reducing the variation proposed in the draft assessment dated 25.02.2015. Thus, in our considered view, the Tribunal was not right in holding that the DRP exceeded its jurisdiction in passing the order. In any event, the order passed by the DRP was not impugned before the Tribunal rather what was impugned was the assessment order dated 28.12.2015 passed under section 144C(13) r/w section 143(3) of the Act. Therefore, the Tribunal was required to consider on merits whether the said assessment order was justified or not.

16. The learned counsel for the Revenue as well as the other senior standing counsel for the Revenue namely Mr. Swaminathan and Mr. Karthick Ranganathan submitted that the above judgement rendered by under section is likely to be misinterpreted with regard to the powers of the DRP as circumscribed under sub section 8 of section 144C. To be noted, that on facts, we held that the DRP has reduced the variation than what was granted to the assessee in the draft assessment order. The Revenue was clear in their mind in the challenge before the Tribunal which was an final order of assessment passed under section 144C(13) and therefore, on facts we found that the DRP has granted relief to the assessee and the correctness of relief granted to the assessee which has translated into a final assessment order which was questioned by the Revenue before the Tribunal on merits. Therefore, on facts we have held as above.

3. Upon the directions of the Hon'ble Jurisdictional High Court, the appeal was taken up for adjudication. Before us, the Id. DR has submitted that the assessee has projected the comparable M/s. Ashnoor Textiles Mills Ltd. margin as 5.06% before the Id. DRP by

omitting the other operational expenditure of ₹.4.17 crore from the operation cost, whereas, without omitting the same, it's margin will be - 5.13% only and therefore, the TPO's stand in rejecting this comparable is justified. The Id. DR has pleaded for confirming the order of the TPO. Further, the Id. DR has submitted with regard to personnel cost adjustment, the assessee has not provided the required details such as the number of years of operation of the comparable companies, the actual capacity utilization etc. to substantiate the said claim.

4. Per contra, the Id. counsel for the assessee has submitted that based on the audited financial statements as extracted at page 4 of the directions of the DRP, the operational cost of the comparable company was correctly taken at ₹.57.82 crores resulting in an operating profit at 5.06%. Therefore, the Id. DRP has rightly directed the TPO/Assessing Officer to include the said company as a comparable since the said company had made a profit during the assessment year under consideration. It was further submission that the personnel cost incurred by the assessee was at 29.09% of the turnover as against 3.92% and 7.33% in the case of the comparables. Therefore, it was prayed before the Id. DRP to consider various factors including the

unique activity of the assessee and the necessity to retain skilled man power by placing on record the break-up of the employee cost in contrasts to the other comparables and prayed for confirming the proceedings of the DRP/assessment order.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the first round of litigation, vide order dated 31.01.2017, the Tribunal was of the opinion that the Id. DRP has exceeded its jurisdiction and has no power or authority to direct the TPO to decide the percentage of risk adjustment to be calculated, thereby not adjudicated the issues on merits. After considering the submissions of both the parties and in view of the provisions of section 144C of the Act, the Hon'ble Jurisdictional High Court has held that the order dated 24.11.2015 passed by the Id. DRP is an order of reducing the variation proposed in the draft assessment order dated 25.02.2015 and thus, the Id. DRP has not exceeded its jurisdiction and accordingly directed the Tribunal to adjudicate the issues on merits.

5.1 In this case, the assessee is dealing in manufacture of trimmings, tassels, tie backs, etc. The assessee has adopted TNMM as MAM to

benchmark the transactions relating to sale of finished products and chose four comparables whose average PLI was 3.95%. The TPO has rejected two comparables namely, M/s. Ashnoor Textiles Mills Ltd. and SR Industries Ltd. as they are loss making entities and arrived at the comparables PLI of 5.62%. By working out the PLI of the assessee at - 16.60%, the TPO has proposed an upward adjustment of ₹.5.32 crore.

6. By considering the objections of the assessee as well as examining the computation sheet for Operating Margins for the financial year 2010-11 for the assessee as well as all four comparables and extracting the same in the proceedings of the DRP, the Id. DRP has held that the claim of the assessee is correct and there was no basis for the TPO to reject M/s. Ashnoor Textiles Mills Ltd. holding it as loss making. Accordingly, the Id. DRP has directed the TPO/AO to include M/s. Ashnoor Textiles Mills Ltd. as a comparable. We find no infirmity in the proceedings of the Id. DRP, which was rightly reflected in the final assessment order dated 28.12.2015 passed under section 144C(13) r.w.s. 143(3) of the Act. Under the above facts and circumstances, we find no infirmity in the proceedings of the Id. DRP as well as assessment order on this issue.

6.1 With regard to the directions of the Id. DRP to ascertain the percentage of risk adjustment, it was the submission before the Id. DRP that there were 334 employees engaged and that the products are manufactured using various types of viscose filament yarns and cotton yarns. It was further explained that the natural yarn was dyed according to the standards and specifications of the customers. The dyed yarns go through certain machine operations before it is assembled by hand workers. Before the Id. DRP, the assessee has furnished comparative chart for percentage of employee cost on turnover and pointed out that the percentage of employee cost on turnover was 3.92% for RIBA Textiles Pvt. Ltd., 7.33% for M/s. Heritage India Exports Pvt. Ltd., whereas in the case of the assessee, it was as high as 29.09%. After considering the arguments of the assessee as regards operating in a challenging market, competitive price offer from foreign and Chinese manufacturers and the necessity of retaining skilled manpower irrespective of fluctuation in volume of productions as well as the details of break-up of the employee cost, the Id. DRP was of the opinion that appropriate adjustment should be allowed to the assessee and accordingly directed the TPO to decide the percentage of risk adjustment to be calculated in this issue after

taking into account of all the relevant facts and details. After carrying out the directions contained in the proceedings of the Id. DRP, the Assessing Officer has completed the final assessment order under section 144C(13) r.w.s. 143(3) of the Act by revising the upward adjustment to Nil. Thus, we find no infirmity in the order passed by the Id. DRP/Assessing Officer.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 22nd March, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 22.03.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.