

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.624/PUN/2017
निर्धारण वर्ष / Assessment Year: 2012-13

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| ThyssenKrupp Electrical Steel India Pvt. Ltd., Gonde Village, Wadivarthe, Taluka, Igatpuri, Nashik-422403. PAN : AAACE7791B | Vs. | ACIT, Circle-1, Nashik. |
| Appellant | | Respondent |

Assessee by : Shri Nikhil S. Pathak
Revenue by : Shri Sunil Kumar

Date of hearing : 30.03.2022
Date of pronouncement : 01.04.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the final assessment order of the Id. Assistant Commissioner of Income Tax, Circle-1, Nashik ('the Assessing Officer') passed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act') dated 25.01.2017 for the assessment year 2012-13.

2. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act,

1956. It is engaged in the business of manufacturing of low carbon cold rolled electrical and mild steel. The return of income for the assessment year 2012-13 was filed electronically on 30.11.2012 declaring total income of Rs.13,01,63,940/-. The appellant company also reported the following international transactions in its

Form No.3CAB :-

| <i>S.No.</i> | <i>Nature of Transaction</i> | <i>Name of the AE</i> | <i>Amount (Rs.)</i> | <i>Method</i> |
|--------------|--|-----------------------|---------------------|--|
| 1 | Import of Raw Material | TK Steel Europe AG | 3,748,726,423 | Cost Plus Method ('CPM') |
| | | TKES GmbH | 1,183,269,288 | |
| 2 | Payment of Corporate Mark Fee | TKAG | 45,503,996 | Comparable Uncontrolled Price ('CUP') Method |
| 3 | Receipt of Commission on Sales | TKES GmbH | 148,579 | CUP Method |
| 4 | Provision of Payroll Services | TK Steel Europe AG | 98,717 | CPM |
| 5 | Payment of Information Technology Service Contract Fee | TKES GmbH | 1,456,347 | CPM |
| 6 | Payment of SAP Hosting Fee | TKES GmbH | 15,856,046 | CPM |
| 7 | Reimbursement of Common Corporate Expenses | TKES GmbH | 2,843,744 | CPM |
| 8 | Payment of Microsoft License Fee | TKES GmbH | 885,253 | CPM |
| 9 | Purchase of Roof Sheets | TK Steel Europe AG | 18,585,535 | CUP Method |
| 10 | Reimbursement of Expenses Received | TK Steel Europe AG | 1,003,760 | Other Method |
| | | TKES GmbH | 12,268 | |
| 11 | Reimbursement of Expenses | TKES GmbH | 1,724,219 | Other Method |
| | | TKAG | 400,302 | |
| | | | 5,020,514,417 | |

3. The appellant company sought to justify the above international transactions are arm's length price and for this purpose the assessee company submitted the TP study report wherein, the assessee company had adopted Cost Plus Method as the most appropriate method. On noticing on the above international transactions, the Assessing Officer had referred the matter to the TPO for the purpose of benchmarking the above international transactions u/s 92CA of the Act. The TPO vide order dated 28.01.2016 passed the order u/s 92CA(3) of the Act determined the arm's length price of the above international transactions adopting TNM Method as the most appropriate method and suggested the adjustments of Rs.56,24,38,069/-. Thereafter, the Assessing Officer passed the draft assessment order dated 24.02.2016 proposing the TP adjustment of Rs.56,24,38,069/-.

4. On receipt of the draft assessment order, the objections were filed before the Hon'ble DRP stating that the Assessing Officer/TPO ought not to have rejected the Cost Plus Method selected by the assessee company as the most appropriate method for the purpose of benchmarking the international transactions relating to purchase of raw material and this method had been

consistently applied by the assessee company and accepted by the Department since the year 2002-03 and also objected the comparables selected by the TPO on the ground of functionality differences. However, the DRP had confirmed the action of the Assessing Officer/TPO.

5. On receipt of the direction from the DRP, the final assessment order was passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) of the Act vide order dated 25.01.2017 wherein, the arm's length price adjustment of Rs.54,50,10,490/- was made.

6. Being aggrieved, the appellant is in appeal before us.

7. At the outset, Id. Counsel for the assessee submitted that in the last preceding 10 years as well as subsequent years, the Department had accepted the Cost Plus Method as the most appropriate method for the purpose of benchmarking the international transactions and, therefore, in absence of change in the facts from the preceding assessment years, on the principle of consistency, the Cost Plus Method should have been accepted by the lower authorities. He also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Vishay Components India (P.) Ltd., 103 taxmann.com 421 wherein, it was held by the Hon'ble

Jurisdictional High Court that in the absence of change of facts when the Revenue had accepted the TNM Method as the most appropriate method for the purpose of benchmarking the international transactions, there is no reason for the Revenue for justifying change of method for the purpose of benchmarking the international transactions.

8. On the other hand, ld. CIT-DR has no serious objection to remand the matter to the file of the Assessing Officer/TPO for benchmarking the international transactions adopting the Cost Plus Method as the most appropriate method.

9. We heard the rival submissions and perused the material on record. The appellant raised the preliminary issue which goes to the root of the matter that the lower authorities are not justified in rejecting the Cost Plus Method as the most appropriate method for purpose of benchmarking the international transactions relating to purchase of raw material and Cost Plus Method which had been accepted by the Department since the year 2002-03 as well as in the subsequent year i.e. A.Y. 2013-14. Undisputedly, there was no change of facts from the preceding assessment year and the subsequent assessment year. Therefore, the ratio laid down by the

Hon'ble Jurisdictional High Court in the case of Vishay Components India (P.) Ltd. (supra) wherein, it was held that when a particular method is accepted by the Department to determine the arm's length price of international transactions in the absence of change of facts, the Department should benchmark the international transactions adopting the same method as most appropriate method. Therefore, in the present case also, it is not the case of the Department that there is difference in facts warranting a different view in the current assessment year regarding the selection of the most appropriate method for the purpose of benchmarking the international transactions. Therefore, in the circumstances, we are of the considered opinion that the Assessing Officer/TPO/DRP was not justified in rejecting the Cost Plus Method adopted by the assessee for the purpose of benchmarking the international transactions in the absence of difference in the facts of the case. Therefore, we remand the matter to the file of the Assessing Officer/TPO with a direction to compute the arm's length price of the international transactions by adopting the Cost Plus Method as the most appropriate method *de novo* after affording due opportunity of being heard to the assessee company. Thus, the

present ground of appeal stands partly allowed for statistical purposes.

10. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on this 01st day of April, 2022.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01st April, 2022.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.