

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.167/Viz/2017

(निर्धारण वर्ष / Assessment Year :2012-13)

M/s. Pioneer Elastic India Pvt Ltd.,
Plot No.06, Brandix India Appareal
City SEZ, Pudimadaka Road,
Atchutapuram Mandal,
Visakhapatnam – 531011.
PAN: AAACP 3529 N

(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of
Income Tax,
Circle-5(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

आयकर अपील सं./ I.T.A. No.05/Viz/2018

(निर्धारण वर्ष / Assessment Year :2013-14)

M/s. Pioneer Elastic India Pvt Ltd.,
Plot No.06, Brandix India Appareal
City SEZ, Pudimadaka Road,
Atchutapuram Mandal,
Visakhapatnam – 531011.
PAN: AAACP 3529 N

(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of
Income Tax,
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Visakhapatnam.

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Sri P.V.S.S. Prasad, CA and
Sri A. Vamsi Rajesh, CA

प्रत्यर्थी की ओर से / Respondent by

: Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 23/05/2022

घोषणा की तारीख/Date of
Pronouncement

: 27/07/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

Both the captioned appeals are filed by the assessee for the AY 2012-13 and 2013-14. Since, the issues involved in both the appeals are identical, for the sake of convenience, these appeals are clubbed heard together and disposed of in this consolidated order. Firstly, we shall take up ITA No.167/Viz/2017 as a lead appeal for adjudication.

ITA No.167/Viz/2017 (AY: 2012-13)

This appeal filed by the assessee is against the final order passed by the Ld. Dispute Resolution Panel-1, Bengaluru [Ld. DRP] u/s.144C(5) of the Income Tax Act, 1961 [“the Act”] for the AY 2012-13 in F.No.220/DRP-1/2016-17, dated 27/12/2016 arising out of draft assessment order passed U/s. 143(3) r.w.s 92CA(3) of the Act dated 30/03/2016 for the AY 2012-13.

Brief facts of the case are that the assessee is a wholly owned subsidiary of Pioneer Elastic Mauritius. The assessee is a manufacturer and exporter of fabric elastics, filed its return of income for the AY 2012-13 on 28/09/2012 admitting a total income of Rs. NIL while claiming a loss of Rs. 1,47,93,576/-. The return was summarily processed U/s. 143(1) and was

subsequently selected for scrutiny under CASS and statutory notices U/s. 143(2) was duly served on the assessee on 21/8/2013. The AO noticed that the international transactions entered into by the assessee company during the AY 2012-13 exceeded Rs. 15 Crores and therefore a reference was made to the Ld. Transfer Pricing Officer (Ld. TPO) u/s. 92CA of the Act for determining the Arm's Length Price (ALP). The Ld. TPO passed an order U/s. 92CA(3) of the Act dated 29/01/2016 determining the ALP at Rs. 10,26,61,671/- and the net ALP adjustment was determined at Rs.2,79,17,979/-. Aggrieved by the draft order of the Ld. AO passed U/s. 143(3) r.w.s 144C(13) of the Act, the assessee preferred an appeal before the Ld. DRP.

The Ld. Assessee's Representative made submissions and raised objections against the draft assessment order before the Ld. DRP. The Ld. DRP after considering the submissions and the objections, disposed off the petition rejecting the contentions of the assessee except with a direction to the Ld. AO to allow the under-utilisation of capacity adjustment in accordance with the ratio laid down in the case of M/s. Petro Araldite P Ltd (in ITA No.3782/Mum/2011, dated 24/07/2013) by the coordinate Bench of the Mumbai ITAT. Aggrieved by the order of the Ld. DRP, the assessee is in appeal before us.

Though the assessee has raised several grounds with regard to Transfer Pricing addition, the only effective issue to be decided in this appeal is with regard to Most Appropriate Method (MAM) and based on which whether the consequential adjustment to ALP was justified under the facts and circumstances of the case.

The other grounds raised in the grounds of appeal were not pressed by the Ld. Authorized Representative (Ld. AR) for both the AYs under consideration.

The Ld. AR argued that the purchases are made from the Associated Enterprises (AEs) on back-to-back basis. The Ld. AR also further submitted that the third party quotation has been submitted before the Ld. TPO to determine the ALP against which the purchases from AE were made by the assessee. The LD.AR submitted that the materials were purchased from third parties and hence at ALP. The Ld. AR also further submitted that the Ld. AO has erred in not considering the Cost Plus Method (CPM) adopted by the assessee for the export sales made to AEs is not correct. The Ld. AR further pointed out that the gross margin with respect to international transaction is positive whereas the net margin is negative. The Ld. AR also pointed out that the Ld. DRP has not examined the back-to-back purchases made by the assessee. The Ld. AR also submitted a certificate dated

30.01.2016, for the impugned AY from the Cost Accountant. The Ld. AR Referred to the paper book page 234 and made submissions disclosing the AE and non-AE margins and demonstrated that the AE margin was @ 25.08% and non-AE margin was @ 24.75% on sales. The Ld. AR therefore argued that the AE margins are more than the non-AE margins and hence internal comparables should be adopted by the Ld. TPO for the purposes of determining the ALP of the assessee. The Ld. AR therefore pleaded that Comparable Uncontrolled Price (CUP) method adopted as the MAM for the purchases and the CPM adopted by the assessee for the sales made to the AEs is in accordance with law and hence the order of the Ld. DRP be quashed.

Per contra, the Ld. Departmental Representative [Ld. DR] argued that the assessee was purchasing elastic webbing only from AEs being the group companies, amongst others, which is the major raw material. The contention of the Ld. AR was controverted by the Ld. DR with respect to the fact, that the assessee was purchasing only the packing material, spares, chemicals, consumables, yarn and testing material from non-AEs and not the major raw material. The Ld. DR also referred to the Cost Accountant Certificate submitted by the assessee wherein

he demonstrated that the selling price per meter for the AEs works out to Rs. 2.65 (sales values Rs. 7,47,43,693 ÷ quantity 2,82,71,581 meters) where as for the non-AE domestic supplies per unit works out to 5.41 (Sales Rs.6,18,61,931 ÷ quantity 11,429,940 meters). The Ld. DR therefore pointed out that the average selling prices of the exports made to AE is only 50% of the average selling price made to non-AE through domestic sales. Therefore, the Ld. DR pleaded that the assessee has supplied the materials at lower value to AE than to the non-AE customers. The Ld. DR also pointed out that the allocation of the cost between the AE and the non-AE in the Cost Accountant's Certificate was not done based on a scientific approach. The Ld. DR therefore pleaded that the order of the Authorities be upheld.

We have heard both the sides, perused the materials available on record and gone through the orders of the Ld. Revenue Authorities. Admitted facts are that during the FY 2011-12 relevant to the AY 2012-13 the company has entered into the following international transactions with AE:

AE	Nature of transaction	Amount (Rs.)	MAM
Pioneer Elastic	Freight Charges of Purchase of elastic / sale of elastic and capital	8,81,089	CUP

(Hongkong) Limited	items		
	Purchase of packing material	19,12,535	CUP
	Purchase of spares	1,51,351	CUP
	Purchase of Chemical	99,84,622	CUP
	Purchase of consumables	2,93,562	CUP
	Purchase of Elastic Webbing	8,25,29,345	CUP
	Purchase of Yarn	68,60,726	CUP
	Other purchases	2,26,640	CUP
	Goods in transit	67,01,598	CUP
	Exports of elastics	7,47,43,695	CPM
	Purchase of testing materials	1,39,866	CUP
	Advance received for future orders	2,65,18,652	NA
	Purchase of assets	1,52,97,061	NA
	Reimbursement of expenses	1,05,413	CUP
	Reimbursement of travel expenses	2,50,349	CUP
Charge of Forex Fluctuations gain	2,51,32,097	NA	
Pioneer AP Elastic Philippines Inc	Payment for purchase of assets	4,46,494	NA
Pioneer Elastic Holdings Limited	Purchase of capital goods	6,70,76,710	NA
	Advance Received	4,46,494	NA
	Charge of Forex Fluctuations Paid	18,76,596	NA
	Charge of Forex Fluctuations Received	75,156	NA
Pioneer Elastic (Mauritius Limited)	Share application money received	6,27,19,550	NA
	Allotment of shares	8,85,99,557	NA

We also find from the submissions that the assessee has carried out the economic analysis with respect to purchases and other consumables, for the international transaction and has adopted CUP method as MAM and accordingly stated that the

transactions are at ALP with respect to purchases and others. With regard to the exports of elastic the assessee has adopted CPM as the MAM. It is also seen from the order of the TPO that the operating profit (OP) ratio is determined as follows:

Description	Amount (Rs)
Operating revenue	13,69,21,158
Operating cost	18,28,83,863
Operating profit	(-)4,59,62,705
OP/OR (%)	(-) 33.57
OP/OC (%)	(-) 25.13

The assessee has also objected to the comparables analyzed by the Ld. TPO but has come up with an alternative search under TNMM and selected the following 7 comparables:

Sl No.	Name of the company	OR	OC	OP	OP/OC%
1	Gem Spinners Ltd	35.07	36.16	-1.09	-3.01
2.	Vogue Textiles Ltd	2.94	2.88	0.06	2.08
3.	Mallcom (India) Ltd	135.02	128.89	6.13	4.76
4.	Meridian Apparel Ltd	139.88	133.81	6.07	4.54
5.	Celebrity Fash Ltd	199.32	197.14	2.18	1.11
6.	Oscar Fashion Ltd	14.05	13.14	0.91	6.93
7.	Premo Global Ltd	34.10	32.98	1.12	3.40
	Average				2.83

Considering the submissions of the assessee the Ld.TPO has excluded 3 comparables proposed in the show cause notice and has considered 6 comparables submitted by the assessee while at an average PLI of 2.83%.

However, the Ld. TPO while disallowing the under-utilization capacity adjustment finally determined adjustment u/s 92CA(3) of the Act based on the average PLI as follows:

Description	Amount (Rs.)
% of AE sales on operating revenue	54.59%
Operating Cost	18,28,83,863
Arm's Length Margin	2.83%
Prop. Operating Cost	9,98,36,304
Arm's Length Price	10,26,61,671
Price received	7,47,43,695
Adjustment U/s. 92CA(3) of the Act	2,79,17,979

The assessee has also not disputed the Arm's Length Margin determined by the Ld. TPO by using 7 comparables selected by the assessee. The assessee has also submitted that CUP method is the acceptable method for imports and justified that M/s. Pioneer India has purchased the said goods at the price charged by the Group Companies to Pioneer Honk Kong and hence the pricing is legally justified. Similarly, while justifying the CPM as MAM, the assessee has also stated that the Cost Plus Method can be typically applied only when semi-finished goods are sold between AEs or where services are provided at significant value addition. The assessee also submitted that the elastics manufactured by Pioneer Elastic India were intended for both

domestic as well as international sales. The sales made to unrelated domestic parties accounted for 45.29% of the total sales. The assessee in his submissions also stated the CPM determines the ALP of goods supplied or services provided in controlled transactions by benchmarking the normal gross profit mark-up on the direct and indirect cost of production incurred by the enterprise in respect of goods supplied or services provided to an Associated Enterprise against the margin that would have been charged in an uncontrolled transaction. The mark-up of the comparable uncontrolled transaction must be computed as per the accounting norms of the tested party and should be adjusted taking into consideration the functional and other differences between the international transactions and the comparable uncontrolled transaction or between the enterprises entering into such transactions. Therefore the assessee has justified that the Cost Plus Method is MAM for benchmarking the sales made to AEs. The assessee has also submitted that since the price paid for purchase of goods (other than elastics) to Pioneer Hongkong was same as that charged by the end of supplier i.e., unrelated third party with respect to the packing material, Spares etc. As regards to the purchase of elastic webbing being a major raw material these are sourced from Pioneer Hongkong which in turn

purchase these from group companies located at China, Thailand and Philippines. The assessee has also submitted external quotations to prove the fact that the price charged by unrelated third party is higher than the price obtained from the AEs. As seen from the details of international transactions, it is importing raw material mainly from its AE and almost 2/3rd of the total production are to the AE segment. Thus, import as well as export transactions are interlinked and closely linked. We are also of the considered view that the price of export is not free from the impact of the import price. Therefore, the international transactions in respect of import of raw material has direct bearing on export of goods. Further, as claimed by the Ld. AR the internal comparables under CUP cannot be applied in the instant case as 2/3rd of the final product namely "elastics" are sold to AE and only 1/3rd of the final product namely "elastics" are sold to the unrelated parties domestically. Further as pointed by the Ld. DR the average selling price per meter of the elastics (finished goods) works out to Rs.2.65 per meter when compared with the domestic average selling price of Rs. 5.41 per meter. We also find from the report of the Cost Accountant that the allocation is made on the basis of the sales value and not on the basis of the sales quantities. It was also admitted by the Ld. AR Pioneer

Hongkong was the sole supplier of the raw material and again procured from group companies by the Pioneer Hongkong. Reliance placed by the Ld. AR under Rule 10B(1)(a) r.w.r 10AB is not acceptable due to the fact that the entire imports of the major raw material is from the group companies and more than 2/3rd of the export sales are to the group companies. In this context it can be substantiated that the price of imports from the group companies will have impact on the export pricing charged to the group companies. This is also evident from the Cost Accountant certificate where the per unit meter cost of the elastic in respect of the goods supplied to the AE is lower than the per unit meter cost of the elastic supplied to unrelated parties. Unlike the CUP method, TNMM does not require that comparable companies as to manufacture exactly the same product as that manufactured by the tested party. In TNMM what is to be seen is the functional comparability and not the product comparability. Further, it is observed that the Ld. AR has not objected to the comparables made by TPO under TNMM, but the assessee has come up with a set of 7 comparables under TNMM wherein the average OP/OC works out to 2.83%. We also observed from the financials submitted by the Ld. AR that 71% of the elastic produced during the FY has been exported to AEs. The Ld. AR also in his

submissions accepted that the production price is similar and the ultimate finished goods are similar in properties and hence are comparable. Since the ultimate finished goods are similar in nature and properties, the submission of the Ld. AR contradicts on the fact that the price per meter charged for AEs is far below the price per meter charged to non-AEs, where the difference is significant. Therefore, we are of the considered view that in the given facts and circumstances of the case, the TNMM adopted by the Ld. Revenue Authorities would be Most Appropriate Method for determining the ALP of the international transactions entered into by the assessee with the AE. We therefore do not find any infirmity in the order of the DRP on this issue and the same is confirmed. It is ordered accordingly.

In the result, appeal of the assessee is dismissed.

ITA No.05/Viz/2018 (AY: 2013-14)

Since the facts and circumstances as well as the issues raised in the assessee's appeals ITA No.05/Viz/2018 are identical to that of the appeal in ITA No.167/Viz/2017 and the only difference is in figures, our decision given on the issues involved in appeal ITA No.167/Viz/2017 in the above paragraphs of this order squarely applies *mutatis mutandis* to the appeal ITA

No.05/Viz/2018 also. Accordingly, both these appeals (No.167/Viz/2017 and ITA No.05/Viz/2018) are dismissed.

Ex-consequenti, both the appeals filed by the assessee are dismissed.

Pronounced in the open Court on the 27th July, 2022.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated : 27.07.2022

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s. Pioneer Elastic India Pvt Ltd., Plot No.06, Brandix India Appareal City SEZ, Pudimadaka Road, Atchutapuram Mandal, Visakhapatnam – 531011.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-5(1), Visakhapatnam.
3. The Dispute Resolution Panel-1, Bengaluru.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
(ii) The Deputy Commissioner of Income Tax (Transfer Pricing Officer)-1, 3rd Floor, B-Block, IT Towers, AC Guards, Hyderabad-500 004.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam

6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam