

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMEBR
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 3197/Ahd/2010
(निर्धारण वर्ष / Assessment Year : 2006-07)

M/s. Jewel Consumer Care Pvt. Ltd. (For and on behalf of Coronet Product Pvt. Ltd., which is merged with Jewel Consumer Care Pvt. Ltd.) "Subhaag" B-15/16, Ramin Park, Old Padra Road, Vadodara - 390020	बनाम/ Vs.	DCIT Circle - 1(2) Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC5637K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Bhavin Marfatia, AR
प्रत्यर्थी की ओर से / Respondent by :	Mohd. Usman, CIT. D.R.

सुनवाई की तारीख / Date of Hearing	01/06/2022
घोषणा की तारीख/Date of Pronouncement	29/08/2022

ORDER

PER WASEEM AHMED, AM:

The appeal has been preferred by the assessee against the order of the Dispute Resolution Panel, Ahmedabad ('DRP' in short) dated 31.08.2020 under s. 143(3) r.w.s. 144C(5) of the Income Tax Act, 1961 (the Act) concerning AY 2006-07.

2. The assessee has raised the following grounds of appeal:

"1. *The learned Deputy Commissioner of Income Tax, Circle - 1(2), Vadodara ("the AO") in pursuance of directions issued by the Dispute Resolution Panel, Ahmedabad ("the DRP") erred in fact and in law in making an upward adjustment of Rs. 1,42,63,729/- to the ALP in respect of international transactions.*

Adjustment in the set of Comparables:

1.1 *The learned AO as well as the DRP erred in fact and in law in determining the comparable Profit Level Indicator ("PLI") to be 10.64 % without properly applying the FAR tests and also ascertaining the functional similarity.*

1.1.1 *The learned AO as well as the DRP erred in fact and in law in altering the set of comparable companies for the purpose of working out the average PLI.*

1.1.2 *The learned AO as well as the DRP erred in fact and in law in holding that M/s. Harbans Lal Malhotra & Sons Pvt. Ltd. is not comparable and is therefore required to be excluded from the set of comparables.*

1.1.3 *The learned AO as well as the DRP erred in fact and in law in holding that M/s. OK Play India Ltd. and M/s. Tokyo Plast International Ltd. is required to be included in the comparable set for the purpose of computing the average PLI despite the fact that the said companies are not comparable and operate in a totally different field.*

Adjustment in the PLI:

1.2 *The learned AO as well as the DRP erred in fact and in law in making adjustment in the Profit Level Indicator ("PLI") worked out by the Appellant.*

1.2.1 *The learned AO as well as the DRP erred in fact and in law in holding that PBIT / Operating Cost is the appropriate PLI instead of PBDIT / Sales considered by the Appellant.*

1.2.2 *The learned AO as well as the DRP erred in fact and in law in holding that provision for doubtful debts of Rs. 26,30,795 is operating cost and therefore required to be considered while working the operating cost for the purpose of computing PLI.*

1.2.3 *The learned AO as well as the DRP erred in fact and in law in not considering foreign exchange gain amounting to Rs. 83,176/- in the total operating income while computing the PLI.*

Use of Multiple Year Data:

1.3 *The learned AO as well as the DRP erred in fact and in law in rejecting the contention of the Appellant that data of FY 2005-06 cannot be used for the purpose of comparison as the same was not available in the public domain at the time of transfer pricing study.*

- 1.3.1 *The action of the Appellant in using the data of FY 2003-04 and FY 2004-05 while preparing the transfer pricing study is in consonance with Rule 10B(4) and ought not to be rejected.*
- 1.4 *The learned AO as well as the DRP erred in fact and in law in not granting the benefit of variation of 5% as required u/s. 92C(2) of the Act.*
2. *The learned AO as well as the DRP erred in fact in law in reducing the book loss / increasing book profit for the purpose of section 115JB by increasing the book profit by Rs. 26,30,795/- in respect of provision for doubtful debts.*
3. *The learned AO erred in fact and in law in charging interest u/s.234B of the Income Tax Act, 1961.*
4. *The learned AO erred in fact and in law in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961."*

3. The issue raised by the assessee in ground number 1.2.1 is that the learned DRP erred in upholding the order of the AO/TPO by not allowing the adjustment of impairment loss being non-operating expenditure from the operating cost worked by the TPO/AO.

4. The necessary facts arising from the order of the authorities below are that the assessee in the present case is a private limited company and engaged in the business of manufacturing of plastic moulded products, house hold brushes, tooth brushes etc. The assessee in the year under consideration has entered into various international transaction with its associated enterprises which were duly reported in form 3 CEB, filed along with the income tax return. The assessee has adopted different methods of determining the ALP for the different transactions.

4.1 The assessee with respect to the export of goods to its AE has adopted TNM method for determining the ALP. The assessee has taken PLI as PBDIT to sales which was worked out at 25.68% in its case whereas the average PLI of the comparables was worked out at 8.31%. Thus it was contended by the assessee that no adjustment is required to be made.

4.2 However, the TPO was not satisfied with the contention of the assessee and rejected the same. The TPO has adopted PLI of the assessee as PBDIT to

total cost and worked out the same at 5.81% whereas PLI of the comparables was determined at 13.92% on average basis. Thus the TPO made an upward adjustment of ₹ 1,34,47,600.00 by adding to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A who has confirmed the order of the AO by adopting the PLI of the assessee company as PBIT to total cost which was worked out at 3.34% whereas the PLI, was calculated, of the comparables at 10.64% on average basis. Thus the learned DRP made an upward adjustment of ₹ 1,42,63,729 only.

6. Being aggrieved, the assessee preferred an appeal before us.

6.1 The learned AR before us has filed a paper book running from pages 1 to 299 and agreed with the order of the authorities below but made a prayer before us that while calculating the operating cost the non-operating expenditure being impairment loss should be ignored for determining the PLI. Accordingly the learned AR submitted that the PLI of the assessee would stand at 13.40% as against the average PLI of the comparable cases at 10.64% and therefore no adjustment with respect to the export to the AE is required to be made. The learned AR in support of his contention has relied on various orders which are placed on record.

6.2 On the other hand the learned DR before us has filed the submissions running from pages 1 to 18 and vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us revolves to the extent whether the impairment loss claimed by the assessee is non-operating expenditure, therefore the same should be excluded while working out the PLI of the assessee company. In this regard we note that there various orders of the Tribunal wherein the impairment loss has been considered as non-

operating. The Delhi Tribunal in the case of M/s Imsofer Manufacturing India (P) Ltd Vs DCIT reported in 121 taxmann.com 209 has held as under:

“7. We have carefully considered the orders of the authorities below. There is no dispute that the machinery purchased by the assessee was lying in capital work in progress. It is also not in dispute that the treatment given by the assessee is in line with the accounting standard issued by the ICAI. In our considered opinion a provision for impairment of assets is not a depreciation charge nor amortisation of fixed assets but it is a provision made to the carrying amount of the fixed assets which is reversible in nature. Moreover section 92(1) of the Act requires that any income arising from an international transaction/allowance for any expenses shall be computed having regard to arms length price. In our considered view impairment of assets cannot be related as international transaction of the assessee. Further the provision for impairment of assets is not regular business expenditure since it is not recurring in nature and is not related normal business operation and hence not in the nature of operation expenses, therefore, in our considered opinion the same cannot be treated as operating expenditure for the calculation of PLI of the assessee. We accordingly direct the AO/TPO to exclude provision of impairment of assets as operating expenditure. This ground is accordingly allowed.”

7.1 Admittedly, all the details were furnished by the assessee before the TPO with respect to the impairment loss which can be verified from the details submitted by the assessee, placed on page 243-244 of the paper book. Thus, in view of the above, we are of the considered opinion that the impairment loss being non-operating expenditure should be excluded while working out the PLI of the assessee company. Thus the ground of appeal of the assessee is allowed.

7.2 As the assessing has succeeded on this ground, the other contentions and grounds of appeal raised by the assessee with respect to the determination of ALP for the transactions of the export of goods becomes infructuous and therefore we hold that no separate adjudication is required. Hence the grounds of appeal of the assessee are partly allowed.

8. The 2nd issue raised by the assessee in ground No. 2 is that the AO and the learned DRP erred in increasing the amount of book profit by ₹ 26,30,795.00 representing the provision for doubtful debts.

9. The assessee in the year under consideration has claimed provision for bad and doubtful debts amounting to Rs. 26,30,755.00 which as per the AO/learned DRP was nothing but diminution in the value of assets and therefore the same cannot be allowed as deduction while calculating the book profit under section 115JB of the Act.

10. Being aggrieved by the order, the assessee is in appeal before us.

10.1 The learned AR before us contended that the company from which the assessee was to receive the impugned amount has become insolvent but the same has not been written off in the books as bad debts for the reason that the RBI did not allow the permission to write off such amount as bad debts. Therefore, the provision was made in the books of accounts. The learned AR further submitted that bad debts has actually been written off in the books of accounts for the year ending 31.3.2018 relevant to the AY 2018-19 and in that AY no benefit for writing off such bad debts was claimed. The learned AR in support of his contention has filed the copy of the ledger and statement of income for the assessment year 2018-19 which is available on record. Accordingly, the learned AR requested allow the deduction of the provision for the bad and doubtful debts while computing the book profit under the provisions of section 115 JB of the Act.

10.2 On the other hand the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us revolves whether the provision for bad and doubtful debts created by the assessee represents the diminution in the value of assets as per clause (i) of explanation (1) of section 115 JB of the Act. If that be so then, the deduction cannot be allowed to the assessee. However, on perusal of the facts of the case brought to our notice, we find that the assessee in the later years has actually written off the bad

debts and no benefit of whatsoever was claimed in that relevant year i.e. AY 2018-19 which can be verified from the details filed by the assessee. Thus the action of the assessee suggests that it was the actual bad debts but the same were claimed under the nomenclature of provision for the bad debts for the reason that the RBI did not allow the assessee to write off the same in the books of accounts. However, in the given facts and circumstances there remains no ambiguity that these bad debts were actually representing the bad debts. Thus, we set aside the finding of the authorities below and direct the AO to allow the deduction to the assessee with respect to such provision for bad debts while calculating the book profit under the provisions of section 115 JB of the Act. Hence the ground of appeal of the assessee is allowed.

12. In the result, the appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on 29/08/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad: Dated 29/08/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।