

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'J' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)]
and Sandeep S Karhail (Judicial Member)]**

ITA No.2181/Mum/2021
Assessment Year: 2016-17

Signity India Private Limited,
*B-302, 303 Sagar Tech Plaza, Andheri Kurla Road,
Saki Naka Junction Andheri (E) Mumbai 400 072
[PAN: AAMCS1635E]*

..... Appellant

Vs.

**Commissioner of Income Tax (A) 58 &
Deputy Commissioner of Income Tax, Circle 11(2)(1)
Mumbai**

.....Respondent

Appearances:

Vikram R. *for the appellant*

Tejinder Pal Singh Anand *for the respondent*

Date of concluding the hearing : May 31, 2022

Date of pronouncement the order : August 26, 2022

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 1st October 2021, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the assessment year 2016-17.

2. The short issue that we are required to adjudicate is whether or not the learned CIT(A) was justified in upholding the arm's length price adjustment of Rs. 17,63,878 on the facts and in

the circumstances of this case. For the records, however, the detailed grounds of appeal, as set out in the annexure to the memorandum of appeal, are as follows:-

1. *Learned PO and CIT(A) erred in not understanding the business of the typical distributor engaged in the distribution of products, as any distribution agreement would include comprehensive clauses for protecting (PR, Copyrights, Distribution rights, exclusivity etc.), promoting (sales support, marketing guidance, etc.,) and enhancing operations.*
2. *Learned TPO and CIT(A) erred in not appreciating the fact that the Appellant is a Limited-Risk Distributor ('LRD') and all commercial risks with respect to the products sold is borne by Associates Enterprises (AE's).*
3. *Learned TPO and CIT(A) erred in not appreciating the fact that the LRD ideally bears expenses (selling, distribution, incentives, discounts) incurred toward selling the products. However, in addition to higher gross margins, AE have compensated these cost incurred by the Appellant to ensure that it does not incur any losses. Further, AE have not charged any fee for providing support services and the IPR rights for carrying the business in India.*
4. *Learned TO and CIT(A) erred in concluding that market support services are provided without considering the fact that expenditure incurred by the Appellant wholly and exclusively for its domestic business operations. Further erred in not providing any evidence of incurring these expenses corresponds to rendering any services to AE.*
5. *Learned TPO and CIT(A) erred in not considering the fact that the Appellant has been adequately compensated as per the transfer pricing policy (mentioned in the agreement) by providing significant discount on purchase price, resulting in higher gross margins. Considering the fact that transaction as been concluded at arm's length with gross margins factoring all services, it does not warrant any mark up or separate fee for alleged services.*
6. *Learned TPO and CIT(A) erred in violating Section 92C of the Income Tax Act, 1961 (the Act), Rule 10B of the Income Tax Rules, 1962 (the Rules') indetermining the arm's length price for alleged services. The arbitrary approach adopted by Learned TPO to ascertain the markup is unjustified, flawed & incorrect.*

3. The assessee before us is engaged in the business of distribution of synthetic stones and related products. These products are imported from its associated enterprises abroad, and sold in the domestic market. During the course of ascertainment of the arm's length prices of its transactions with the AE's, as referred to the TPO during the scrutiny assessment proceedings, the TPO, *inter alia*, noted that the assessee has incurred expenses of Rs. 2,57,12,512 for sale promotion under instructions from D. Swarovski KG, and was reimbursed the same without any mark up by the said AE. The TPO was of the view that by incurring these expenses, the assessee was providing marketing support services to the AE, and the assessee needs to be compensated for the same adequately. It was in this backdrop that the TPO recommended an ALP adjustment

of 6.86% on the amount spent on behalf of the AE, and this figure of 6.86% was arithmetic mean of seven comparables that the TPO picked up for market support services margin. Accordingly, the Assessing Officer made an ALP adjustment of Rs. 17,63,878/-. Aggrieved, assessee carried the matter in appeal before the CIT(A) who confirmed the action of the authorities below, and, while doing so, he observed as follows:-

I have gone through the AO/PO's finding and assessee's submission.

It can be seen that the entire expenses related to business promotion were reimbursed by its AE. In this regard, the appellant contended that considering the fact that assessee is limited liability entity these expenses were reimbursed by AE but in fact assessee has also benefited from the same.

The fact, that the entire expenses were reimbursed by its AE, itself shows that these expenses were spent under the specific instructions of the AF. The same is also cleared from the clause 4.17 of the Distribution Agreement which shows that the marketing plan has to be discussed and decided in advance.

Considering the above, I agree with the finding of TPO that these expenses were incurred under the specific instructions of the AE. Therefore, the assessee should have charged a mark-up on the same for providing these services to the AE.

Regarding computation of arm's length price, the assessee submitted that the TPO's has cherry picked the comparable however, apart from the data submission, no specific details with respect to comparable was given to show that the comparable selected by TPO were erroneous.

In view of the above, the contentions raised by assessee are rejected and the finding of TO is confirmed.

This ground of appeal is dismissed.

4. The assessee is not satisfied and is in further appeal before us.
5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.
6. We have noted that the assessee is a limited risk distributor and this sale promotion expenses was incurred, under the terms of the agreement and under the instructions of the principal, as a part of this composite activity, and that the sale promotion activity, on behalf of the overseas AE, is not a standalone activity. It is also important to bear in mind that the margins of the assessee have been accepted to be at an arm's length, on the basis of the arithmetic mean of the margins of the selected comparables with admittedly similar activity, and, therefore, whether the additional profits on account of the mark-up are taken into account or not, the profits of the assessee cannot be subjected to the arm's length price adjustment. We, therefore, deem it

fit and proper to delete the impugned ALP adjustment of Rs 17,63,878/-. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 26th of August 2022

Sd/-
Sandeep S Karhail
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 26th day of August, 2022

Copies to:

(1)	<i>The Appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar/Sr. PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*