

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 1147/Mum/2021
(Assessment Year 2016-17)

M/s Aura Spinwell Ltd.
Office no. 209,
Kapadia Chambers,
J.S.S. Road,
Marine Line East,
Mumbai-400 002

Vs.

The ITO
Circle 4(1)(3)
Aaykar Bhavan
M.K. Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AACCE3114A

Assessee by : None
Revenue by : Ms. Samruddhi Dhananjay
Hande, DR

Date of hearing: 27.09.2022

Date of pronouncement : 27.09.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 1147/Mum/2021 is filed by the assessee against the orders passed by the learned Assessing Officer under Section 143(3) read with section 144C(13) and 144B of the Income-tax Act, 1961 (the Act) dated 24th April, 2021. Assessee has raised the following grounds of appeal:-

"1. *The impugned assessment order passed 143(3) r.w.s 144C(13) read with section 144B of the Income-tax Act, 1961 (the Act), 1961 is bad in law as clause (1) of section 92BA having been omitted by the Finance Act, 2017, the provisions of Chapter X of the Income Tax act*



were not applicable to the facts of the case and accordingly, the impugned assessment order has been passed without authority of law.

2. On the facts, in the circumstances of the case and in law, the Learned Assessing Officer has erred in passing the impugned assessment order on the basis of order passed by the Learned Transfer Pricing Officer (Ld TPO), according to the directions issued by the Hon'ble Dispute Resolution Panel (DRP) on the basis of inconsistent and perverse finding and evaluation of facts. The Hon'ble DRP and the Ld TPO have failed to appreciate that the method already found to be inapplicable to the facts of the case, as per remand report has been applied for determining the Arm's Length Price.

3. On the facts and circumstances of the case and in law, the learned AO, pursuant to the order of the Ld TPO passed on the basis of directions of the Hon'ble DRP, has erred in making an addition of ₹4,00,22,127/- in respect of purchase of goods from the Associate Enterprises (AE).

4. On the facts and circumstances of the case and in law, the learned AO, pursuant to the order of the Ld TPO passed on the basis of directions of the Hon'ble DRP, has erred in making an addition of Rs 75,360/- in respect of office rent paid to the AE.

5. On the facts and circumstances of the case and in law, the learned AO, pursuant to the order of the Ld TPO passed on the basis of directions of the Hon'ble DRP, has erred in making an addition of Rs 15,60,880/- in respect of remuneration paid to the Directors of the appellant company.

6. The appellant therefore prays your honour to be kind enough to -



1. Admit the appeal and grant stay against the demand.

2. Quash the order of the Ld AO passed u/s 143(3) r.w.s 144C(13) read with section 144B of IT Act, 1961, 3. Delete the addition of Rs 4.16,58,367/ made on the basis of doubt, surmises and conjectures.

4. Grant any other relief deemed fit by your honours.

5. Grant justice.”

02. The fact shows that assessee is a company engaged in the business of wholesale of trading activities of fabrics, grey fabrics, recycled polyester yarn and other allied textile products.
03. Assessee filed its return of income on 30th November, 2016 at ₹10,39,500/-. As the assessee has entered into certain specified domestic transactions which were mentioned in form no. 3CEB, the learned Assessing Officer made a reference to the Asst. Commissioner of Income-tax, Transfer Pricing Officer, 1(1)(2), Mumbai for determination of Arms Length Price of such specified domestic transactions. The assessee has entered into international transactions of purchase of goods from its Associated Enterprises amounting to ₹216,11,36,959/- which were benchmarked as Cost Plus Method. Before the learned Transfer Pricing Officer, assessee failed to provide any information on benchmarking of these transactions. Therefore, the learned Transfer Pricing Officer adopted the Transactional Net Margin Method as the most appropriate method and adopting PLI of operating profit to operate revenue selecting fifteen comparables whose margin is at 1.19% and margin of the assessee was determined at 0.04% made an adjustment of ₹4,04,58,834/-.



04. Assessee has paid rent of ₹4,80,000/- to the relative of Directors and further, Directors remuneration of ₹15,24,000/- and payment of professional fees of ₹1,40,000/- was also determined at ₹ nil as assessee could not furnish any information of benchmarking. The total transfer pricing adjustment of ₹4,26,12,834/- was made by order under Section 92CA(3) of the Act dated 1st November, 2019. Consequent to that draft assessment order was passed on 19th December, 2019.
05. Assessee preferred the objection before the learned Dispute Resolution Panel wherein the judgment of the co-ordinate Bench in case of Texport Overseas Pvt. Ltd. was submitted stating that the benchmarking of specified domestic transaction is not required. The learned Dispute Resolution Panel after detailed discussion held that co-ordinate Bench in Ts-354-ITAT-2020 in Firemenich Aromatics (India) Pvt. Ltd, has decided contrary to the decision of Bangalore Bench. Accordingly, the contentions of the assessee against omission of Section 92BA(1) of the Act were dismissed. With respect to the Arms Length Price of various transactions, certain directions were given. Based on these directions, the learned Transfer Pricing Officer retained the adjustment on purchase of goods at ₹4,22,127/-, on payment of rent of ₹75,360/- and on Directors' remuneration of ₹50,60,880/-. Consequently, assessment order was passed at a total income of ₹4,26,97,870/-. The assessee has preferred this appeal.
06. An adjournment request was received stating that the counsel of the assessee is busy in tax audit. We reject the adjournment petition for the reason that the issue in the appeal is covered in favour of assessee by the decision of Hon'ble Karnataka High Court.
07. The learned Departmental Representative vehemently supported the orders of lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case, the adjustment has been made on account of Arm's Length Price of specified domestic



transaction in terms of Section 92BA (i) of the Act. The above clause has been omitted by The Finance Act, 2017 with effect from 1st April, 2017. In such circumstances, the Hon'ble Karnataka High Court in 114 taxmann.com 568 in case of PCIT vs. Taxport Overseas Pvt. Ltd. has categorically held that the resultant effect of the above omission is that it had never been passed and is to be considered as law never been existed. Therefore, respectfully following the decision of Hon'ble Karnataka High Court, we hold that no transfer Pricing adjustment could have been made in the hands of the assessee on account of ALP of specified domestic transactions. Accordingly, we direct the learned Assessing Officer to delete the transfer pricing adjustment of ₹4,16,58,367/-.

09. However, we are conscious that the provision of Section 40A(2) of the Act, are there on the statute book and this expenditure are required to be tested under that Section with respect to their allowability. In view of this, we set aside the issue back to the file of learned Assessing Officer to determine the allowability of this expenditure under Section 40A(2) of the Act. This was also mandate of decision of the co-ordinate Bench in Taxport Overseas Pvt. Ltd. vs. DCIT in ITA No.1722 of 2017 dated 22nd December, 2017. Even otherwise it is not the case of assessee at all that provision of section 40A (2) does not apply to the assessee. Accordingly, ground nos.1 to 6 of the appeal of the assessee are allowed with above directions.

010. In the result, the appeal of the assessee is allowed with above directions.

Order pronounced in the open court on 27.09.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.09.2022
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai