

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 660/MUM/2022

(Assessment Year 2017-18)

Torrecid India Private Limited
Flat No. 29,30,31, GIDC, Savli,
Alidra, Vadodara,
Gujarat-391775

Income Tax Circle-3(3)(1)
Aaykar Bhavan, Mumbai-400
020

(Appellant)

(Respondent)

PAN No. AABCL4860B

Assessee by : Shri. Sagar Sawhney.

Revenue by : Shri. Samuel Pitta SRAR

Date of hearing: 01.09.2022

Date of pronouncement : 28.11.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Torrecid India Private Limited, for A.Y. 2017-18 against the assessment order passed by National Faceless Appeal Centre, Delhi (the Id. AO) on 16.02.2022 pursuant to the direction of Dispute Resolution Panel dated 18.01.2022 u/s.143(3) r.w.s. 144C (13) of the Income Tax Act, 1961 (the Act) wherein the transfer pricing adjustment of ₹ 99,31,763/- was made on account of computation of arm's length price of international transaction of import of finished goods rejecting the most appropriate method adopted by the assessee of resale price method, but the transactional net margin method adopted by the TPO.

02. The assessee has raised following grounds of appeal:

"Based on the facts and circumstances of the case, and in law, Torrecid India Private Limited (hereinafter referred to as 'the Appellant') respectfully craves leave to prefer an appeal against the order passed by National Faceless Assessment Centre, Delhi / learned Assessing Officer ("Id. AO") dated 16 February 2022/ learned Transfer Pricing Officer ("Id.TPO) in pursuance of the directions issued by Hon'ble Dispute Resolution Panel ("DRP") (dated 18 January 2022) under Section 143(3) read with Section 144C(13) of the Income-tax Act 1961 ('the Act') on the following grounds:

1. Transfer Pricing Adjustment INR 99,31,763/-

On the facts and in the circumstances of the case and in law, the Id. TPO and the Id. AO under the directions issued by Hon'ble DRP dated January 18, 2022, erred in confirming the adjustment of INR 99,31,763 by virtue of computation of arm's length price of international transaction of import of finished goods from AEs vide its impugned order dated February 16, 2022.

2. Rejection of Methodical Transfer Pricing analysis and selection of most appropriate method for benchmarking analysis without providing any cogent reasons :



- *On the facts and in the circumstances of the case and in law, the Id. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the TPO in unjust/erroneous rejection of Resale Price Method (RPM) considered by the Appellant in its Transfer Pricing Study Report for benchmarking the international transaction of import of finished goods for distribution without providing any cogent reasons.*
- *On the facts and in the circumstances of the case and in law, the Id. TPO erred in and the Hon'ble DRP further erred in not appreciating the fact that the appellant has not undertaking any value addition to the imported finished goods before sale to customers.*
- *On the facts and in the circumstances of the case and in law, the id TPO erred in and the Hon'ble ORP further erred in upholding / confirming the action of the TPO in selecting the Transactional Net Margin (TMM) method, as the most appropriate method for benchmarking the international transaction of import of finished goods without providing any cogent reasons and summarily relying on the directions of Hon'ble DRP for AY 2013-14*

The above grounds of appeal are mutually exclusive & without prejudice to each other.

The appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case."

03. The brief facts of the case show that assessee is company engaged in manufacturing products for ceramic industries and is a subsidiary of Spanish group. The assessee manufacturers and sale products and also provision of designing and technical support in that field engaging itself in providing customized products and services tailored to meet the specific need of customers in different market.
04. The assessee filed return of income on 30.11.2017 declaring nil income. The assessee has entered into international transaction of purchase of ceramic colors and glaze from associated enterprises. The assessee benchmarked this international transaction taking itself as a tested party adopting profit level indicator of gross profit ratio of trading segment. The gross profit of the assessee was 8.53%. Assessee selected 8 comparable companies computed their weighted average gross profit where 35th percentile was 4.43%, 65th percentile is 13.26% and thus, median was 5.93%. Thus, the international transaction as per transfer pricing study report was claimed to be at arm's length.
05. The Transfer Pricing Officer held that for A.Y. 2013-14, transactional net margin method was considered as the most appropriate method and therefore, same should be applied. Assessee was asked to show cause why TNMM should not be taken as most appropriate method .

Assessee objected but the Id. TPO rejected the same. The Id. Transfer Pricing Officer following the consistent approach for benchmarking as adopted in A.Y. 2013-14 for trading segment selected 8 comparable whose median margin was computed at 2.06%. The assessee's trading segment margin was computed at (-) 8.62% and accordingly the adjustment of ₹ 99,31,763/- was made as per order under section 99CA(3) of the Act dated 27.01.2021. Accordingly, the AO made a draft assessment order u/s. 144C of the Act on 13.04.2021 where the total income of the assessee was determined at ₹ 99,31,760/-.

06. The assessee preferred objections before the Id. Dispute Resolution Panel, which issued direction on 18.01.2022 holding that the issue is identical which came up for direction before the DRP in A.Y. 2013-14 and therefore, same was followed. The learned DRP in its direction for A.Y. 2013-14 rejected the contention of the assessee holding that RPM is not acceptable as the most appropriate method rejecting reliance on the decision of L'Oreal India Private Limited. Thus, the assessment order was passed on 16.02.2022 reinstating the total income of ₹ 99,31,760/-.
07. We have heard the rival contention. We have also perused the orders of the lower authorities. On careful consideration of the issues involved before us, which is limited to the fact that whether in case of the assessee Resale Price Method is the most appropriate method or not. The revenue is consistently relying on its finding for

A.Y. 2013-14 holding that TNMM is the most appropriate method rejecting assessee's claim of Resale Price method as most appropriate method. . We find that co-ordinate bench in ITA No. 7076/MUM/2017 for A.Y. 2013-14 [2022] 141 taxmann.com 373 (Mumbai - Trib.) as per order dated 22.07.2022 relying on the decision of the Hon'ble Bombay High Court held that in assessee's case the Resale Price Method is the most appropriate method for benchmarking international transaction in trading segment of import of finished goods. It held as under :-

"14. We have carefully considered the rival contentions and perused the orders of the lower authorities and direction of the learned dispute resolution panel. Facts at the cost of the reiteration are stated that assessee is subsidiary of a foreign company engaged in the manufacture of products for the ceramics and glass industry. Company purchases the finished goods for distribution in India. It also imports raw material, which is used in the manufacturing activity. The international transaction shown by the assessee as under :—

Serial number	Nature of transaction	Value of the transaction	Most appropriate method selected by assessee
1	Import of raw materials from Torrecid SA, Al farben SA and Torrecid Suzhou	14,02,80,914	Transactional net margin Method taking foreign associated enterprises as tested parties
2	Import of raw materials from Chilches materials SA Torrecid Maxico	74,07,971	CUP
3	Import of finished goods from Torrecid SA and Digital Services Ceramics SL	29,09,58,928	Resale price method taking assessee as a tested party

15. Now there is no dispute with respect to the benchmarking of transaction stated at serial number 1 and 2 of the above table.

16. Only issue that remains for our adjudication is whether the transactions listed at serial number 3 being import of finished goods from associated enterprises amounting to Rs. 290,958,928/- benchmarked by the assessee adopting the resale price method where the profit level indicator is determined of gross profit ratio and the gross profit ratio of assessee was found to be at 15.35% whereas of the other comparable companies was 14.64% which is stated to be at arm's-length by the assessee, is proper or not.

17. The assessee submitted before the lower authorities that assessee does not undertake any value addition to the goods imported from its associated enterprises and sold them to the independent third parties. Despite these facts, the learned transfer-pricing officer selected transactional net margin method without providing any cogent reasons for changing the method adopted by the assessee. Assessee is aggrieved since the learned transfer-pricing officer did not provide the assessee of an opportunity of being heard on this aspect. The claim of the assessee is that the honourable Bombay High Court affirmed a decision of the coordinate bench accepting the taxpayer's use of the resale price method is the most appropriate method with respect to its distribution activity in case of L'Oreal India (P.) Ltd. (supra). The

learned dispute resolution panel agreed that assessee is engaged in two different segments of business (1) trading of finished goods importing the same from the associated enterprises and (2) manufacturing of certain products in India for which it imports raw material from associated enterprises. The learned DRP also confirmed that assessee is maintaining segmental financial results of up to level of gross profit. It also recorded a fact that assessee is not in the business of trading only but also in the business of manufacturing. However it held that it cannot be said that assessee is only engaged in business of resale of finished products imported from the associated enterprises, as it is also engaged in manufacturing activities, therefore learned that DRP upheld the action of the learned TPO in rejecting the resale price method adopted by the assessee and transactional net margin method adopted by the TPO for benchmarking of trading segment as well as manufacturing segment of the assessee was upheld. It also rejected the reliance on the decision of the honourable Bombay High Court stating that assessee was only having trading business in that decision whereas in the issue before them, in the present assessee's case it is engaged in trading as well as manufacturing activity. We find that when the learned dispute resolution panel has concluded that assessee is engaged in two different segments (1) trading, (2) manufacturing segment. The details with respect to the gross profit level are available as depicted from the segmental accounts produced.



Therefore, when it is claimed undisputedly by the assessee that with respect to the trading of goods, assessee does not undertake any value addition, we failed to understand the reasoning given by the learned dispute resolution panel in rejecting the resale price method as most appropriate method and upholding transactional net margin method. According to rule 10B(1) (b) resale price methods is the method where the normal gross profit margin earned by a tested party is required to be compared with comparable uncontrolled transactions. When undeniably assessee is selling the goods imported from associated enterprises to the third parties, the resale price method is the most appropriate method, where the segmental results to the gross profit level are available. Direction of the learned dispute resolution panel in rejecting reliance on the decision of the honourable Bombay High Court in case of L'Oreal India (P.) Ltd. (supra) is also not proper. The finding of the learned dispute resolution panel that in that case that assessee was engaged only in trading activities is clearly an incorrect fact recorded by the learned dispute resolution panel, which can be gathered from the coordinate bench decision L'Oreal India (P.) Ltd. (supra), which was challenged by the revenue before the honourable Bombay High Court. Thus, in that case honourable Bombay High Court in case of an assessee who was engaged in the business of manufacturing and trading in cosmetics held that for the trading activities in cosmetic segment, adoption of the resale price method by



the assessee was upheld. In view of this, we do not have any hesitation in accepting submission of the assessee that for benchmarking of the international transaction of trading activities where assessee imports finished goods and sold it to third party without undertaking any value addition, resale price method should be adopted as most appropriate method. The submission of the assessee is also supported by the order of the honourable jurisdictional High Court. As we already noted that the margin shown by the assessee of gross profit is 15.35% compared to the comparable companies of 14.60%, we direct the learned transfer pricing officer/AO to delete the consequent adjustment of Rs. 2,99,06,541/-Accordingly we reverse the order of the learned lower authorities and allow ground number 2 of the appeal.

08. As the issue is squarely covered in favour of the assessee and that is the only ground of appeal before us, consequently, we allow the appeal of the assessee following the decision of the co-ordinate bench in assessee's own case for A.Y. 2013-14.

09. As a result, appeal of the assessee is allowed.

Order pronounced in the open court on 28.11.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.11.2022

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