

THE INCOME TAX APPELLATE TRIBUNAL  
"K" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 7950/Mum/2019 (A.Y. 2015-16)

ALA Chemicals Pvt. Ltd. B-Wing, Ground Floor Manav Mandir Complex Sector-1, Off. 100 Ft. Road Ambadi Road, Vasai Road West, District Palghar Pincode No. 401 202.  PAN : AAACA3957H (Appellant)	Vs.	DCIT-5(1)(1) Room No. 525 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400020.  (Respondent)
--	-----	--

Assessee by	Shri Jitendra Jain & Ms. Aasifa Khan
Department by	Shri Samruddhi Dhananjay Hande
Date of Hearing	15.11.2022
Date of Pronouncement	28.11.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the assessment order passed by the Assessing Officer under section 143(3) read with section 144C(13) of the Income Tax Act for A.Y. 2015-16 in pursuance of the direction issued by learned Dispute Resolution Panel (DRP).

2. The assessee is aggrieved with the addition relating to the transfer pricing adjustment made by the Assessing Officer.

3. The assessee is engaged in the business of manufacture and sale of chemicals and ancillary products. The assessee had entered into international transaction with its Associate Enterprises (AE) and also entered into Specified domestic transactions. Hence, the Assessing Officer referred the matter of determination of arm's length price of the above said transactions to the Transfer Pricing Officer (TPO), who proposed an

adjustment of Rs.2,76,89,691/-. The Learned DRP also confirmed the same and hence, the Assessing Officer passed the assessment order making addition of the amount mentioned above.

4. The above said addition consisted of addition made in respect of the Specified domestic transaction and also in respect of international transaction.

5. The assessee has filed an additional ground before the Tribunal, wherein it is contended that the adjustment towards Specified domestic transactions should not have been made in view of the omission of Clause (i) in section 92BA of Act by the Finance Act 2017 w.e.f. 1.4.2017. The Learned AR first argued on the additional ground. He placed his reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of PCIT Vs. Texport Overseas Pvt. Ltd. (2020) 271 Taxman 170 (Karnataka), wherein it was held that the omission of the provisions of section 92BA(i) from the Statute would mean that it had never been passed and to be considered as law never been existed . Accordingly he submitted that the Assessing Officer/TPO was not justified in making transfer pricing adjustment in respect of Specified domestic transactions. The Learned AR further submitted that the decision rendered by Hon'ble Karnataka High Court in the above said case has been followed by the Mumbai Bench of the Tribunal in the case of Edelweiss Rural & Corporate Services Limited (ITA No. 7475/Mum/2017 dated 24.6.2022). Accordingly, the learned AR submitted that the addition relating to transfer pricing adjustment in respect of Specified domestic transaction should be deleted.

6. The Learned DR, on the contrary, submitted that the Tribunal, in the above said case, has held that the Specified Domestic transactions entered with the related parties are required to be examined in terms of section

40A(2)(a) of the Act. Accordingly, he submitted that this issue may be restored to the file of the Assessing Officer for examining it afresh.

7. We have heard the parties on this issue and perused the record. We noticed that the effect of omission of clause (i) in section 92BA relating to the specified domestic transaction was examined by the Coordinate Bench in the case of Edelweiss Rural & Corporate Services Limited (supra) and the Tribunal, by following the decision rendered by Hon'ble Karnataka High Court in the case of Texport Overseas Pvt. Ltd. (supra), held that the reference made to learned TPO under clause (i) to section 92BA is not valid and consequently transfer pricing adjustment made in respect of the Specified domestic transaction is liable to be deleted. For the sake of convenience, we extract below observations made by the Coordinate Bench in the above said case.

“15. The next issue urged by the assessee relates to the transfer pricing adjustment made in respect of specified domestic transactions. The TPO had proposed transfer pricing adjustment of Rs.15,43,05,000/-. The Ld DRP reduced the same to Rs.9,18,05,000/-.

16. Without going into the merits of this addition, the Ld A.R submitted that the clause (i) of sec. 92BA has been omitted by the Finance Act, 2017 w.e.f. 1<sup>st</sup> July, 2017 without making any 'saving clause' and hence the said omission shall have retrospective effect as if the said clause was never in existence. Therefore, the transfer pricing adjustment made by the TPO with respect to Specified Domestic Transactions are bad in law. In support of this legal proposition, the Ld A.R placed his reliance on the following case law:-

- (a) Neogenetics Foods P Ltd vs. DCIT (IT(TP)A No.361/Bang/2021
- (b) PCIT vs. Texport Overseas P Ltd (2020)(313 CTR (Kar) 485)
- (c) Mahindra Two Wheelers Ltd vs. DCIT (ITA No.519/Mum/2018)

17. In the case of Neogenetics Foods (P) Ltd vs. CIT (supra), the Bangalore bench of ITAT has accepted the above said legal contentions following the decision rendered by Hon'ble Karnataka High Court in the case of PCIT vs. Texport Overseas (P) Ltd (2020)(313 CTR (Kar) 485). However, the Tribunal restored the issue to the file of the AO for examining the claim in terms of sec. 40A(2)(a) of the Act. For the sake of convenience, we extract below the decision rendered by the Bangalore bench of Tribunal in the above cited case:-

13. We have carefully considered the rival submissions. [The Finance Act, 2012](#) extended its scope to cover certain domestic transactions with related parties

within India, defined as 'Specified Domestic Transactions' (SDT) with effect from AY 2013-14. [The Finance Act, 2012](#) introduced [Section 92BA](#) giving the meaning of SDT and it provided as follows:

"SECTION 92BA: MEANING OF SPECIFIED DOMESTIC TRANSACTION.

For the purposes of this section and [sections 92, 92C, 92D](#) and [92E](#), "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:--

(i) any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of [section 40A](#).

(ii) any transaction referred to in [section 80A](#);

(iii) any transfer of goods or services referred to in sub- section (8) of section 80IA;

(iv) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;

(v) any transaction, referred to in any other section under Chapter VI-A or [section 10AA](#), to which provisions of sub- section (8) or sub-section (10) of [section 80-IA](#) are applicable;

or

(vi) any other transaction as may be prescribed, and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees.

[Section 92\(2\)](#), as amended provided that where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be. [Section 92\(2A\)](#) provided that any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

14. In terms of the above statutory provisions of [Sec.92BA\(i\)](#) the transactions in question are to be regarded as falling within the ambit of [Sec.40A\(2\)\(b\)](#) of the Act and therefore covered by the provisions of [Sec.92BA\(i\)](#). Before DRP, the assessee submitted (i) that the transaction between the Assessee cannot be regarded as SDT, because by [Finance Act, 2017](#) w.e.f. 01.04.2017, clause (i) of [section 92BA](#) was omitted from the statute and by virtue of omission of clause (i) from the statute, the proceedings already initiated or action taken under clause (i) becomes redundant or otiose. In this regard, the Assessee placed reliance on decision of ITAT Bangalore Bench in the case of [Textport Overseas Pvt.Ltd. Vs. DCIT IT\(TP\)A.No.1772/Bang/2017](#) order dated 22.4.2021 wherein it was held that in the light of provisions

of [section 6](#) of the General Clauses Act, in such a case, the court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by [Section 6](#) of the General Clauses Act or there is a pari-materia provision in the statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provisions in the statute or in the rule, the pending proceeding will lapse under rule under which the notice was issued or proceeding being omitted or deleted.

15. With regard to the contention that there could be no addition u/s.92BA in view of the subsequent deletion of the aforesaid provisions by the [Finance Act, 2017](#), the DRP refused to follow the decision of ITAT in the case of Textport Overseas Pvt.Ltd. (supra). The learned AR reiterated submissions made before the DRP and brought to our notice that the decision of the ITAT in the case of Textport Overseas Pvt.Ltd. (supra) has been confirmed by the Hon'ble Karnataka High Court and hence the order of the DRP is unsustainable. The question is whether the transactions in question can be said to be an SDT. On this issue, as rightly pointed out by the learned counsel for the assessee, the decision of the ITAT in the case of Textport Overseas Pvt.Ltd. (supra) has been confirmed by the Hon'ble Karnataka High Court in the very same case of Textport Overseas Pvt. Ltd in ITA No.392/2018 order dated 12.12.2019, with the following observations:-

"5. Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of [Section 92BA](#) of the Act came to be omitted w.e.f. 01.04,2019 by [Finance Act, 2014](#). As to whether omission would save the acts is an issue which is no more res-intigra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of [KOB LAPUR CANESUGAR WORKS LTD. v. UNION OF INDIA](#) reported in AIR 2000 SC 811 whereunder Apex Court has examined the effect of repeal of a statute visa-vis deletion/addition of a provision in an enactment and its effect thereof. The import of [Section 6](#) of General Clauses Act has also been examined and it came to be held:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of [Section 6\(1\)](#), If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the ITA No.2936/Bang/20180 M/s. Sobha City, Bangalore omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in [Section 6](#) or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a

saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

6. In fact coordinate bench under similar circumstances had examined the effect of omission of sub-section (9) to [Section 10B](#) of the Act w.e.f. 01.04.2004 by [Finance Act, 2003](#) and held that there was no saving clause or provision introduced by way of amendment IT(TP)A No.361/Bang/2021 by omitting sub-section (9) of [Section 10B](#). In the matter of [GENERAL FINANCE CO. vs. ACIT](#), which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of [Section 92BA\(i\)](#) of the Act. Thus, when clause (i) of [Section 92BA](#) having been omitted by the [Finance Act, 2017](#), with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of [Section 92BI](#) and reference made to the order of Transfer Pricing Officer-TOP under [Section 92CA](#) could be invalid and bad in law.

7. It is for this precise reason, Tribunal has rightly held that order passed by the TPO and. DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of M/s.GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res Integra."

16. Since the decision rendered by the Hon'ble High Court of Karnataka is binding on this bench of Tribunal sitting in Bengaluru, we follow the same. Accordingly, we hold that the reference to the TPO in respect of specified domestic transactions mentioned in clause (i) of sec.92BA is not valid, as the said provision has been omitted. Accordingly, we direct the AO to delete the addition relating to specified domestic transactions made u/s 92CA of the Act.

17. We however notice that the co-ordinate bench in the case of Textport Overseas (supra) has restored the matter to the file of the A.O. with the direction to examine the claim of expenditure in accordance with the provisions of [section 40A\(2\)](#) of the Act. Following the same, we restore this issue to the file of the AO with the direction to examine the claim of expenditure mentioned above in terms of the provisions of [section 40A\(2\)](#) of the Act. Accordingly, following the binding decision rendered by Hon'ble High Court of Karnataka in the case of Texport Overseas P Ltd (supra), we hold that the reference to the TPO in respect of specified domestic transactions mentioned in clause (i) of sec.92BA is not valid, as the said provision has been omitted. Accordingly, we direct the AO to delete the addition relating to specified domestic transactions made u/s 92CA of the Act. However, as pointed out by Ld D.R, the co-ordinate bench, in the case of Texport overseas P Ltd, has restored the matter to the file of the A.O. with the direction to

examine the claim of expenditure in accordance with the provisions of [section 40A\(2\)](#) of the Act. Following the same, we restore this issue to the file of the AO with the direction to examine the claim of expenditure mentioned above in terms of the provisions of [section 40A\(2\)](#) of the Act. In view of the above conclusion, we refrain from adjudicating other issues raised by the assessee in the grounds of appeal with regard to correctness of determination of ALP of the SDT.”

18. We notice that the co-ordinate Mumbai bench has also taken an identical view in the case of Mahindra Two Wheelers Ltd (supra). Accordingly, following the above said decisions, we hold that the reference made to TPO under clause (i) of sec.92BA is not valid and consequently, the transfer pricing adjustment made in respect of Specified Domestic Transaction is liable to be deleted. Accordingly, we direct the AO to delete the transfer pricing adjustment.

19. However, as held in the above said cases, the issue is required to be examined afresh in terms of sec. 40A(2)(a) of the Act. Accordingly, we restore this issue to the file of the AO with the direction to examine the claim of expenditure mentioned above in terms of the provisions of [section 40A\(2\)](#) of the Act.”

8. Accordingly, following the above said decision, we direct the Assessing Officer to delete the transfer pricing adjustment made in respect of specified domestic transaction. However as submitted by learned DR, the Specified Domestic transactions entered with the related parties are required to be examined afresh in terms of section 40A(2)(a) of the Act. Accordingly, we restore this issue to the file of the Assessing Officer with the direction to examine the same in terms of section 40A(2)(a) of the Act.

9. The TPO had also made transfer pricing adjustment in respect of international transactions entered with AE. The learned AR submitted that the TPO has made the adjustment at entity level, i.e., on the transactions entered with non-AE also. By placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Thyssen Krupp Industries Pvt. Ltd. (2016) 381 ITR 413, the learned AR submitted that the transfer pricing adjustment should be restricted to the international transactions entered with AEs only.

10. We have heard learned DR on this issue and perused the record. The Hon'ble Bombay High Court, in the above said case, has held that the transfer

pricing adjustment is mandated in respect of international transaction entered with the related parties, meaning thereby, there is no requirement of making any adjustment in respect of transactions entered with unrelated parties. Accordingly, we direct the Assessing Officer/TPO to restrict the transfer pricing adjustment on the international transactions entered with AEs only.

11. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 28.11.2022.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
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.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS