

IN THE INCOME TAX APPELLATE TRIBUNAL  
“J” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 7373/Mum/2019  
(A.Y: 2015-16)

Torrent Petrochem Ltd., (Presently Known as Blue Cross Road Solutions Ltd.,) Unit 406, Cello Triumph, IB Patel Road Off Western Express, Goregaon (E), Mumbai 400063	Vs.	Dy. Commissioner of Income Tax Transfer Pricing – 4(2)(2) 5 <sup>th</sup> Floor, Room No. 529, Air India Bldg, Nariman Point, Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECT5860G		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Jayant Jhaveri.DR

Date of Hearing	12.12.2022
Date of Pronouncement	19.12.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order passed u/s 143(3) r.w.s 144C(13) of the Act in pursuance to the directions of the DRP u/s 144C(5) of the Act dated 28.08.2009. The assessee has raised the following grounds of appeal:

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*The company Blue Cross Road Solutions limited has been incorporated under companies Act 1956, the company is into trading of goods related to road constructions and related products and is been doing this activity since incorporation and during the proceedings with DRP -2 against the order passed by A.O., the DRP-2 wrongly confirmed the demand raised by the A.O. and assessed income of Rs. 15,92,45,149/- u/s 144C(5) which is prejudicial in the interest of the company for which Appeal has been sought and the grounds of appeals is as below.*

*The Learned A.O. had originally passed the order confirming the transaction with sister concern as income which was referred to DRP-2 which in turn confirmed the order on the technical ground that the change of name from Torrent Petrochem Limited to Bluecross Road Solutions Limited and stated that the ground that filing of 35A and verification by the Director using the NON-Existence name and incorrect seal, was no proper and valid, hence the application in form 35A is required to be treated as non est. and objection filed in FORM 35A in this case is dismissed without considering the given the fact and submission the order was wrongly passed assessing the income to Rs. 15,92,45,149/-.*

*The Appellant craves to add, to amend, alter or vary the grounds of appeal at or before the hearing of the appeal*

2. At the time of hearing, it was brought to the knowledge that the assessee has filed the appeal on 2.12.2019, subsequently the appeal was posted for hearing on 07.07.2021, 07.09.2021, 3.11.2021, 09.05.2022, 12.07.2022, 14.07.2022, 08.12.2022 and

none appeared on the dates of hearing and even today i.e on 12.12.2022 there is no appearance. We consider the facts and the action of the assessee in non appearance on the dates of hearing and the presumption is that after filling the appeal, the assessee is not inclined/ interested to prosecute the appeal. Accordingly, we heard the Ld. DR submissions and considered the material information available on record.

3. The brief facts of the case are that the assessee company is engaged in the business of import, trading /dealing in bitumen, fabrics, textile goods, ferrous and non ferrous material and scrap. The assessee has filed the return of income for the A.Y 2015-16 on 30.1.2015 disclosing a total income of Rs. 15,91,620/- and the Book profits of Rs. 11,22,153/- under the provisions of sec. 115JB of the Act and the return of income was processed u/s 143(1) of the Act. Subsequently, the Assessing Officer(AO) has issued notice u/s 143(2) and 142(1) of the Act along with the questionnaire. The AO found that the assessee has

international transactions with the Associated Enterprises (AE) exceeding Rs. 15 Crores, and therefore the matter was referred to Transfer Pricing Officer (TPO) to determine the Arms Length Price(ALP). Whereas the TPO has passed the order u/sec92CA(3) of the Act on 18.10.2018 with ALP adjustment of Rs.15,92,45,149/- Subsequently the draft assessment order was passed u/s 143(3) r.w.s 144C(1) of the Act and was forwarded to the assessee. Against the draft assessment order the assessee has filed objections before the Hon'ble Dispute Resolution Panel (DRP). Whereas the objections raised by the assessee were dismissed in limine and the DRP has passed the order u/s 144C(5) of the Act on 28.08.2019. The A.O. considering the directions of the DRP, has passed the final Assessement order observing at page 6 Para 9 as under:

*9. The order u/s 92CA(3) of the IT Act dated 18.10.2018 was passed after taking into account the assessee's contentions raised in the course of transfer pricing proceedings before transfer pricing officer. Hence, in view of the order passed u/s 92CA(3) dated*

18.10.2018, a sum of Rs. 15,92,45,149/- is being added to the total income of the assessee on account of the Transfer Pricing adjustments as above in accordance with the provisions of Section 92CA(4) of the Income Tax Act, 1961. In light of the facts of the case and findings made by ACIT, Transfer Pricing, 4(2)(2), Mumbai in the order u/s 92CA(3) dated 18.10.2018, it clearly emerges that assessee company has furnished inaccurate particulars of Income. The penalty proceedings u/s.271(1)(c) of the I.T. Act are being initiated separately for furnishing inaccurate particulars. Further, as mentioned above, the assessee has failed to keep and maintain information and documents as required by sub section (1) of section 92 (D) of the Income Tax Act, 1961, penalty proceedings u/s.271AA are being initiated separately for non compliance to the provisions of section 92C of the Income Tax Act, 1961. Similarly, as the assessee has failed to furnish a report from accountant as required by Section 92E of the Income Tax Act, 1961, penalty proceedings u/s 271BA are being initiated separately for non compliance to the provisions of section 92D of the Income Tax Act, 1961. Further, as the assessee has also failed to furnish information/document as required by sub section (3) of Section 92D, penalty proceedings u/s. and 271G of the IT Act 1961 are also being separately initiated for non compliance to the provisions of Sec. 92E of the Act in respect of above stated specified domestic transactions.

<i>i. Income from Business or profession</i>	15,91,917
<i>Addition U/s 92CA(3)</i>	15,92,42,149
 <i>Gross Total income</i>	 16,08,37,066
 <i>Less: Deduction U/s Chapter VIA</i>	 Nil

<i>Total Income</i>	16,08,37,660
<i>Rounded off to</i>	16,08,37,070
<i>MAT Calculation u/s 115JB of the Act Book Profit (As per compaction)</i>	11,22,153
<i>Addition u/s 92CA</i>	15,92,42,149
<i>Total income</i>	16,03,67,302
<i>Rounded off to</i>	16,03,67,300

4. Aggrieved by the order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. We heard the Ld.DR submissions and perused the material available on record. The contentions of the Ld.DR that that the assessee has filed the objections in the Form.no 35A in the none existing name and the verification was carried out by the director using the incorrect seal of the assessee and the objections filed are treated as no nest and was dismissed in limine by the DRP. The facts enumerated from the DRP order that the assessee name Torrent Petrochem Limited was changed to Torrent Industries Ltd and further w.e.f 10-02-2017 was changed to Blue Cross Road Solutions Limited. Whereas the assessment order was

also passed in the name of the non existing company. We considering the facts and circumstances find that there are no merits in the grounds of appeal and are dismissed.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 19.12.2022.

Sd/-

(PRASHANT MAHARISHI)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 19.12.2022

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai