

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 1537/Mum/2016

(Assessment Year 2011-12)

Roche Diagnostics India P. Ltd.
501 B Siler Utopia Cardinal
Gracious RD
Chakla, Andheri (E)
Mumbai-400 069

Vs.

The Asst. Commissioner of
Income Tax
Circle 11(1)(1),
Room No.204,
2nd Floor,
M.K. Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAACA0266H

Assessee by : Shri Nitesh Joshi, AR
Revenue by : Shri Shaym Prasad, CIT DR

Date of hearing: 12.10.2022
Date of pronouncement : 09.01.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This is recalled matter by miscellaneous application number 204/M/2021 for assessment year 2011 - 12 vide order dated 2/3/2022 where in the order passed by coordinate bench in ITA number 1537/M/2016 dated 10/1/2020 was recalled to decide Ground no 1 & 2 of The Appeal.
02. The reason for allowing miscellaneous application of the assessee was that, coordinate bench was to decide regarding the issue of exclusion/inclusion of TTK

healthcare limited. It was argued before the coordinate bench that this issue has already been considered by the learned dispute resolution panel in assessee's own case for assessment year 2012 - 13. It was further stated that all the relevant information was already on the record. Despite this, the coordinate bench restored the matter back to the file of the learned AO/TPO.

03. Accordingly the coordinate bench accepted the arguments of the assessee and held that there is a mistake apparent on record while adjudicating this issue and therefore it was recalled to decide ground number one and two of the appeal.

04. Those Grounds are as under :-

"GROUND NO. 1:

The Ld. DRP has erred in law and on facts in upholding the action of the Ld. AO/TPO of cherry-picking TTK Healthcare Limited (TTK Healthcare') as a comparable company without providing search process to the appellant, which is not permissible as per the Transfer Pricing Regulations.

2. GROUND NO. 2:

The Ld. AO/TPO/DRP have erred in law and on facts in selecting TTK Healthcare as a comparable company without appreciating the following:

a) TTK Healthcare is engaged in manufacturing activity as opposed to the appellant, which is engaged in trading activity.

b) TTK Healthcare has earned abnormally high margin beyond industry standards for trading activity.

c) Related party transactions of TTK Healthcare account for 21% of its revenue, which is exceeding 15% and hence, it should not be considered as a comparable to ensure reliable comparability analysis.

05. Thus, the only issue involved is whether the TTK healthcare Ltd is a functionally comparable to the the Assessee or not for deciding the arm's length price of the international transaction of the assessee.
06. Meanwhile, pursuant to the order of the coordinate bench dated 10/1/2020, the learned transfer pricing officer passed an order under section 92CA (3) read with section 254 of the income tax act on 28/1/2022 wherein the inclusion or exclusion of the comparable M/s TTK healthcare Ltd [Segmental] was examined. The learned TPO after considering the explanation of the assessee issued a notice under section 133 (6) of the act to TTK healthcare limited which was replied to stating that medical devices segment of TTK healthcare limited is engaged in manufacturing activity having its own manufacturing units. Further that company has also submitted the margin in trading and manufacturing segments. The margin in trading segment is 1.36% which is very less. The learned TPO therefore held that TTK healthcare limited is not comparable to the

assessee/tested party and therefore it is finally excluded from the list of final comparables. After that the learned TPO computed the margin of comparables at 2.69% and also computed the margin of the assessee at 3.98%. He held that since the profit level indicator of the assessee is higher than the profit level indicator of the comparables the international transactions under discussion is at arm's length.

07. From the above order of the learned transfer pricing officer, it is apparent that TTK healthcare limited is not a good comparable and therefore is required to be excluded. Further on exclusion of this comparable the margins of the assessee is higher than the margin shown by the comparables. Therefore, no transfer pricing adjustment can be made.
08. This is the only dispute even in recalled order.
09. We have heard the rival contentions and perused the orders of the learned transfer pricing officer passed under section 92CA (3) read with section 254 of the income tax act. The learned departmental representative could not show any reason that the order passed by the learned transfer-pricing officer pursuant to the direction of the coordinate bench, is not correct.
010. In view of this, ground number 1 and 2 of the appeal of the assessee is allowed.
011. As decision on ground number one and ground number two of the appeal of the assessee was the only mandate



available as per the recalled order, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.01.2023.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.01.2023

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