

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.146/Viz/2021 & 147/Viz/2021
(निर्धारण वर्ष / Assessment Year : 2012-13 and 2013-14)**

Lewek Altair Shipping Private Limited Vs. Dy.Commissioner of Income Tax
D.No.3-16-193/1, Sri Vidya Colony Circle-1
Suryarao Peta, Kakinada Kakinada
[PAN : AABCL9766C]

अपीलार्थी की ओर से/ Appellant by : Shri Jitendra Singh, AR
प्रत्यार्थी की ओर से / Respondent by : Shri MN Murthy Naik, CIT(DR)

सुनवाई की तारीख / Date of Hearing : 21.11.2022
घोषणा की तारीख/Date of Pronouncement : 23.01.2023

ORDER

Per Shri S.Balakrishnan, Accountant Member :

These appeals are filed by the assessee against the orders of the AO/TPO/Dispute Resolution Panel-1, Bengaluru(DRP in short) u/s 143(3) r.w.s 144C of the income tax act for the assessment years 2012-13 and 2013-14 respectively. Since the facts are identical, both the appeals are clubbed, heard together and disposed off in a common order for the sake of convenience and the facts are extracted from I.T.A.No.146/Viz/2021 for the A.Y.2012-13.

2. The assessee is a wholly owned subsidiary of Tunis Oil Pte Ltd., Singapore which is ultimately held by EZRA Holding Limited. The assessee has taken on hire two vessels from Lewek Shipping Pte Ltd., Singapore (AE) as per Bareboat Charter Agreements for a charter period of two years and has further given on hire to third party. For the A.Y. 2012-13, the assessee filed return of income declaring loss of Rs.12,10,43,947/-. During the assessment proceedings, the Assessing Officer (AO) found the international transactions in respect of payment of Bareboat Charter Rentals and Ship Management Services to it's Associate Enterprises (AE) Lewek Shipping Pte.Ltd., and Emas Offshore services Ltd., for an amounts of Rs.43.33 crores and 23.18 crores respectively apart from issue of shares of Rs. 82.75 lacs by Tunis Oil Pte.Ltd., therefore, the AO referred the international transaction to Transfer Pricing Officer (TPO) u/s 92CA of the Income Tax Act, 1961 (hereinafter called as 'Act') to determine the Arms Length Price (ALP in short). The assessee paid the Bareboat Charter Rentals to it's AE for an amount of Rs.43,35,50,310/- and ship management services of Rs.23,18,30,814 and worked out the PLI of the tax payer (OP/OC) at 28.36% against the margin of comparables at 19.22% and held the transaction are at arms length. The details of payments made to AEs, PLI

indicator, Most Appropriate Method (MAM) adopted by the assessee as per the transfer pricing document are furnished as under :

Nature of International Transaction	Amount (Rs.)	MAM	PLI	Margin of Taxpayer	Margin of comparables
Bareboat Charter Rentals	43,35,50,310	TNMM	OP/OC	28.36	19.22
Ship Management Services	23,18,30,814	TNMM	OP/OC	28.36	19.22
Issue of shares	82,75,970	Other Method	NA	NA	NA

3. Consequent to the directions of the Hon'ble ITAT vide it's combined order in I.T.A.No.93/Viz/2017 and 559/Viz/2017 for the A.Ys.2012-13 and 2013-14, wherein, the matter was set aside to the file of the TPO/AO for fresh verification of transfer pricing issue. Fresh approval has been obtained from Pr.CIT-2, Visakhapatnam and the case was referred to TPO, Hyderabad for determination of Arm's Length Price (ALP) in conformity with the directions of Hon'ble ITAT. In the instant case, the assessee has paid bareboat rentals of Rs.43,35,50,310/- to Lewek Shipping Pte Ltd., Singapore and Ship Management Service charge of Rs.23,18,30,814/- to another AE i.e. Emas Offshore Services Ptd Ltd. Considering the above facts of the case and directions of the Hon'ble ITAT, the Ld.TPO considered TNMM method as most appropriate method (MAM) and accordingly a fresh

search process was carried out on Prowess data base. The Ld.TPO selected the following comparables as functionally similar to that of the assessee:

S.No.	Name of the Company	OR	OC	OP	OP/OR	OP/OC
1.	Apeejay Shipping Ltd.	1165942000	984651000	181291000	15.55	18.41
2.	Arcadia Shipping Ltd.	1238372683	1054766289	183606394	14.83	17.41
3.	Samson Maritime Ltd.	2077095000	1436650000	640445000	30.83	44.58
4.	Poompuhar Shipping Corpn. Ltd	4920467156	4899911226	20555930	0.42	0.42
Average					15.04	19.73

The Ld.TPO proposed to compute the ALP by adopting the average ALP at 15.04% and arrived at downward adjustment of Rs.27,36,16,334/-. Consequently, a show cause notice dated 09.09.2019 was issued to the assessee and was requested to show cause as to why the above mentioned ALP should not be considered for benchmarking the transactions with the AEs. In response to the show cause notice, the assessee objected to the proposed adjustment, vide letters dated 06.09.2019, 15.09.2019, 20.09.2019 and 16.10.2019. Considering the objections raised by the assessee, the Ld.TPO in his comments observed that with regard to nature of functions performed by the assessee, there is limited availability of information and TNMM is generally considered as preferred method for applying ALP. The TPO also narrated the practical difficulties faced while examining the applicability of the other prescribed methods. The Ld.TPO

justified the selection of comparables as it represents the NIC code and NIC activity, similar to that of the assessee. The Ld.TPO accordingly determined the adjustment u/s 92CA of the Act at Rs,27,36,16,334/- and directed the AO to enhance the total income of the assessee by Rs.27,36,16,334/-. Based on the order of the Ld.TPO, the Ld.AO passed draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act.

4. Aggrieved by the Draft Assessment Order, the assessee filed its objections before the Ld.DRP. The Ld.DRP observed that the assessee has filed same set of replies which were filed during the first round of appeal. The DRP also referred to the crucial observations of the Hon'ble ITAT in para No.6 and 6.1 of the order in ITA No.93/Viz/2017 and 559/Viz/2017 dated 10.10.2018. Hon'ble ITAT observed that the assessee failed to explain as to why it had paid huge lease rentals and ship management services to its AE. The assessee during the DRP proceedings submitted that the bareboat charges determined and paid to AE, is to cover the servicing principal amount of the loan, interest expense and other incidental costs on the loan which were to be serviced by Lewek Singapore. The Ld.DRP referred the objections raised by the assessee to the Ld.TPO vide letter dated 11.01.2021 and the Ld.TPO submitted before the Ld.DRP, the comparables identified by the TPO are operating in the same industry

group as per NIC code and NIC activity. The Ld.TPO also submitted before the DRP that under the TNMM method, the degree of functional comparability required to obtain the reliable result is generally less than that required under the other methods since the net margins are less affected by transactional difference. Considering the reply filed by the TPO, the Ld.DRP concluded that there is practical difficulty in identification of exact comparables and the TPO has made every effort to identify suitable comparables having regard to the nature and functions performed by the assessee. The Ld.DRP also rejected the objections made by the assessee by selecting the comparable by M/s Reliance Industries Limited and adopting the CUP method for determining the ALP. The Ld.DRP distinguished the facts and comparables selected by the assessee and hence, rejected it. The Ld.DRP also rejected the objection of the assessee that there was delay in sanctioning of the External Commercial Borrowing (ECB) loan and therefore, it was forced to take ships on lease basis from its AEs. The Ld.DRP also examined the fact whether management services were received by the assessee and why such huge amount was paid as management service fee to its AE. The assessee could not provide any valid documentation regarding the same and hence, the Ld.DRP directed the Ld.TPO to treat the management charges at Nil. The Ld.DRP observed that

further on enquiry by the Ld.TPO with Vision Projects Technologies Pvt Ltd., to whom two vessels were sub leased, categorically denied of availing any managerial services from the assessee. Considering the above facts, the Ld.DRP directed the AO to make an addition of Rs.23.18 crores to the total income u/s 37 of the Act and an amount of Rs.4,17,85,520/- towards ALP adjustment of charter charges. The Ld.AO passed final assessment order u/s 143(3) r.w.s.144C(13) of the Act incorporating the directions of the Ld.DRP.

5. Aggrieved by the final assessment order of the Ld.AO, the assessee is in appeal before us. The Ld.AR submitted that the assessee could not purchase the vessels due to delay in the approval by RBI for external commercial borrowings. The Ld.AR therefore submitted that the assessee has requested the holding company to purchase two vessels namely Lewek Altair and Lewek Atlas and lease it out to the assessee, due to delay in securing the approval from RBI for ECB. Accordingly, the Ld.AR submitted that the Lewek Pte Ltd., Singapore purchased vessels by taking loan from DBS Bank and Overseas Chinese Banking Corporation Ltd and chartered out the said vessels to the assessee. The Ld.AR submitted that Lewek Altair Pte Ltd., Singapore, has incurred EMI and other charges of USD 23,485 and by including average minimal margin chartered it to the assessee at USD

25,000 per day, for two vessels. The Ld.AR further submitted that the assessee is continuously rendering services for the assessment year 2014-15, 2015-16 and 2015-16 also. The Ld.AR also relied on the case Kellogg India Pvt Ltd. of ITAT Mumbai in ITA No.6005/Mum/2010 dated 10.08.2012 and argued that there cannot be any scope of enhancement of assessment while giving effect to the order of the Hon'ble Tribunal and disallowance made in the original assessment should stand.

6. Per contra, the Ld.DR submitted that the assessee purchased its own vessel during the A.Y.2014-15 and hence, it cannot be compared with the impugned assessment year, where the vessels are leased. The Ld DR referred to the sub lease contract with Vision Projects Technology Pvt Ltd., where the assessee has charged USD 15500 per day as against the cost incurred by the assessee at USD 25000 per day. The Ld.DR also referred to the reply of Vision Projects Technology Pvt Ltd., denying any receipt of management services from the assessee. The Ld.DR questioned the wisdom of the assessee why it was sub leased at huge loss.

7. We have heard both the sides and perused the material available on record. We find from the directions of the Hon'ble ITAT in the first round that the assessee has not explained the compelling reasons for taking the vessels on lease at USD 25000 per day without having any profitable deal

on hand. We also find from the order of the Hon'ble Tribunal that the assessee has engaged the vessels at higher rate and paid huge sums of bareboat rentals and ship management services without plausible reasons which resulted into loss. The Ld.TPO based on the directions of the Hon'ble ITAT has taken every effort to select suitable comparables with respect to the functions carried out by the assessee which is evident from the order of the Ld.TPO u/s 92CA(3) of the Act. The Ld.TPO has justified the selection of comparables and most appropriate method in his order which was upheld by the Ld.DRP. The Ld.AR could not produce any documentary evidences or suitable explanation why the assessee was charging lower lease rentals from Vision Projects Technologies Pvt Ltd. when compared to payment of lease rentals to the AE at higher rate. We also find from the order of the Ld.TPO that the margin of the taxpayer (OP/OR) is -29.22, which is not within the range of +/- 3% of the OP/OR of the comparable which stood at 15.04%. We are therefore of the considered view that the Ld.TPO and the Ld.DRP has rightly examined the facts and has made downward adjustment of Rs.27,36,16,334/- and hence, we do not wish to interfere with the order of the Ld.DRP and dismiss the ground raised by the assessee.

8. Ground No. 7 relates to initiation of penalty proceedings is consequential in nature and needs no adjudication.

9. Ground No. 8 and 9 are general in nature and need not be adjudicated.

10. In the result, the appeal of the assessee is dismissed.

I.T.A.147/Viz/2021, A.Y.2013-14

11. The assessee filed appeal for the A.Y.2013-14, with similar grounds raised in I.T.A.146/Viz/2021 for the A.Y.2012-13, except change in figures. Since the grounds raised in the appeal for the A.Y.2012-13 are adjudicated and the appeal of the assessee is dismissed, the decision shall apply *mutatis mutandis* to this appeal also.

12. In the result, appeals of the assessee for the A.Y.2012-13 and 2013-14 are dismissed.

Order pronounced in the open court on 23rd January, 2023.

Sd/-

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

न्यायिकसदस्य/JUDICIAL MEMBER

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 23.01.2023

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant -Lewek Altair Shipping Private Ltd., #3-16-193/1, Srividya Colony, Suryaraopet, Kakinada - 533003
2. प्रत्यार्थी / The Respondent-The DCIT, Circle-1, Kakinada
3. The Commissioner of Income Tax, DRP-1, Bengaluru.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam