

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.383/Kol/2022
Assessment Year: 2014-15

ACIT, Circle-49(1), Kolkata..... Appellant

vs.

M/s Alkaloids Corporation..... Respondent
8, Bentinch Street, Lal Bazar,
Kolkata-700001.
[PAN:AAEFA8293P]

C.O. 13/Kol/2022
(A/o I.T.A. No.383/Kol/2022)
Assessment Year: 2014-15

M/s Alkaloids Corporation Cross-Objector
8, Bentinch Street, Lal Bazar,
Kolkata-700001.
[PAN:AAEFA8293P]

vs.

ACIT, Circle-49(1), Kolkata..... Respondent

Appearances by:

Shri G. Hukugha Sema, CIT-DR appeared on behalf of the appellant.
Shri Siddharth Agarwal, Adv., appeared on behalf of the Respondent.

Date of concluding the hearing : February 09, 2023

Date of pronouncing the order : April 19, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue and cross-objection by the assessee against the order dated 25.03.2022 of the Commissioner of Income Tax (Appeals)-22, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue is aggrieved by the action of the CIT(A) in deleting arm's length price adjustment of Rs.2,41,33,061/- made by the Assessing Officer/TPO on account of import of raw material, processing charges and purchase by the assessee from its associate enterprises.

3. The assessee in the business of manufacturing of ingredients of drugs and pharmaceutical products. The assessee as required by section 92D r.w.r. 10D of the Act, the assessee firm had obtained a Transfer Pricing Study Report for the financial year 2013-14 relevant to assessment year 2014-15. In the Transfer Pricing Study Report, the assessee applied the following filters:

1. Industry- Pharmaceutical
2. Segment – Drugs
3. Financial Year-2013-14
4. Turnover Filter- Rs 50-100 crores

Hereinafter 45 companies were left. Thereafter filter applied of:

1. Net-Worth. Range selected was Rs 0-100 crores. 7 companies were filtered out.
2. Filter applied of related party Transaction less than 60% 7 companies again filtered out. Leaving us with 31 companies
3. Negative profit Before tax filter applied. 4 companies got filtered out.
4. Operating Margin Turnover filter applied, Range Selected Above 10%.
By this process 13 companies got filtered out.

This process of filters finally concluded 14 companies as proper comparable.

4. The Id. TPO though accepted all the 14 functionally comparable companies chosen by the assessee for determining of arm's length price of the transaction, however, the TPO selected 6 more companies in addition to the aforesaid 14 companies selected by the assessee and thereby the Assessing Officer/TPO determined the profit level indicator of 19.63% taken by the assessee as per the Transfer Pricing Study Report.

5. Being aggrieved by the above action of the Assessing Officer, the assessee preferred appeal before the CIT(A). The Id. CIT(A) vide impugned order dated 25.03.2022 directed the Assessing Officer to delete the impugned additions. The relevant part of the order of the CIT(A) is reproduced as under:

".....the AO/TPO is directed to verify whether the above said five companies indeed have a size differential with the appellant company as shown by the appellant, if the size differential in terms of turnover is found to be seven (7) times or more- whether smaller or larger than those companies are to be removed from the list of valid comparable.

Since, in the case of 14 comparable selected by the appellant, it has already been demonstrated that they fall within the acceptable scale of operations and same have already been accepted by the TPO/AO in his order in terms of other parameters, the final list of comparable comprises the fourteen (14) comparable selected by the appellant plus the one comparable selected by the TPO, that has not been rejected as per above discussions. This leads to the selection of a final set of 15 comparable.

The AO/TPO is directed to calculate the operating margin on turnover (op/or) in the case of each of these resulting comparable. The average of this ratio (OP/OR) for this entire set of surviving comparable would serve as a comparison for the present appellant.

In case this average obtained for the entire set of surviving comparable varies from the corresponding margin-the ratio (OP/OR) of the appellant company for the same period by less than 3% and, after calculation of the ALP for the appellant, it is found that the excess expenditure so calculated varies from the actual expenditure by less than 3%, then no adjustment are to be made in keeping with the provisions as stipulated in

section 92C(2) of then I. T. Act. These grounds therefore are allowed subject to the above verification.”

6. A perusal of the above directions of the CIT(A) would reveal that in this case, the 14 comparables selected by the assessee for determining of arm's length price have not been rejected by the Assessing Officer. The TPO however added 6 more comparables but the assessee disputed the same on the ground that the said comparables were not appropriate as the 5 companies out of the said 6 comparables were different, had a size differential with the assessee company in terms of turnover. They had a size differential about 7 times or more in terms of turnover.

7. Further, the AR of the assessee also explained that even the said companies were involved in manufacturing of complete drugs, whereas, the assessee was involved in manufacturing of ingredients to be used in manufacturing drugs and pharmaceuticals and that the said companies were not functionally comparables with the assessee. The Id. CIT(A) out of the 6 more comparables taken by the TPO has accepted one comparable and directed the Assessing Officer to remove the remaining 5 companies from the list of valid comparables. The Id. counsel for the assessee has submitted that the TPO has not found any fault with the transfer pricing study taken by the assessee and even has not rejected any comparable chosen by the assessee. It was well demonstrated before the CIT(A) that the additional comparables taken by the TPO were not functionally similar not only on account of their large turnover which was more than 7 times than that of the assessee, rather, the product manufactured by them were formulations of complete drugs, whereas, the products manufacturing by the assessee were used by the other companies for formation of drugs.

8. The ld. DR, on the other hand, could not point out any distinct fact warranting our interference in the above order of the CIT(A).

9. In view of the above, we upheld the order of the CIT(A).

10. So far as the cross-objection of the assessee is concerned, the ld. counsel stated in the Bar that he does not press the cross-objection.

11. In the result, the appeal of the Revenue and cross-objection of the assessee are hereby dismissed.

Kolkata, the 19th April, 2023.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]

लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 19.04.2023.

RS

Copy of the order forwarded to:

1. ACIT, Circle-49(1), Kolkata

2. M/s Alkaloids Corporation

3. CIT

(A)-

4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches