

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'J' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 5305/Mum/2012 (A.Y. 2008-09)

Paramount Shipping and Management Pvt. Ltd. 401, Olympia, 4 th Floor Hiranandani Gardens Powai, Mumbai-400 076. PAN : AAACP2717Q (Appellant)	Vs.	ACIT-10(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri PRV Raghavan
Department by	Shri Samuel Pitta
Date of Hearing	30.03.2023
Date of Pronouncement	29.05.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 20.7.2012 passed by the learned CIT(A)-15, Mumbai and it relates to A.Y. 2008-09. The assessee is aggrieved by the decision of the learned CIT(A) rendered on the following issues :

- a) Addition relating to the Transfer Pricing Adjustment.
- b) Disallowance of expenses relating to rental income.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of recruitment of crew for ships. It also provides training and management to them. During the year under consideration the assessee has provided above services to the Associated Enterprise (AE) and has received following amounts from them:-

Associated Enterprise	Amount of transaction in Rs.
Bernhard Schuite Ship management (L) Limited	5,61,46,057
Bernhard Schuite Ship management (Hong Kong) Limited Partnership (formerly known as Eurasia International (China) Limited Partnership)	60,750
Bernhard Schuite Shimanagement (Bermuda) Limited Partnership (formerly known as Atlantic Marine Limited Partnership)	24,22,950
Bernhard Schuite Shipmanagement (IOM) Limited (formerly known as Dorchester Limited)	1,37,841

The assessee adopted TNM method as the “most appropriate method” and OP/OC as “Profit level indicator”(PLI). The assessee has shown net profit (PLI) of 5%. The TPO noticed that the assessee has prepared transfer pricing study by selecting financial data of comparable companies for the year ending 31.3.2007. Hence, he asked the assessee for furnish comparable companies with the current financial year data i.e. the year ending 31.3.2008. Accordingly the assessee furnished following companies :-

Name of the Company	Net Revenues in Crores Rs.	Total Operating Costs in Crores Rs.	Operating Profit/Loss in Crores Rs.	Operating profit/Op. Cost %
Chowgule Steam	94.95	46.42	48.53	104.55%
Goa Maritime	14.46	14.58	-0.12	-0.82
Goa Shipyard	26.94	204.60	-177.66	-86.83%
Greatship India	83.66	38.34	45.32	118.21%
Hariyana Ship	113.15	121.80	11.35	9.32%
Ocean Diving Cnt	44.71	27.97	16.74	59.85%
PL shipping	89.52	86.34	3.18	3.68% 1

Seaways shipping	185.32	176.1	9.22	5.24% ;
Shreyas shipping	169.70	142.06	27.64	19.46%
SKS logistics	45.93	27.38	18.55	67.75%
TAG Offshore	36.42	19,05	17.37	91.18%
W I shipyard	35.53	38.88	-3.35	-8.62%

The assessee noticed that the above said margin of comparable companies has been computed excluding depreciation. Accordingly the assessee re-computed its PLI by excluding depreciation and the same worked out to 13.83%.

3. The TPO noticed that average mean margin of the comparable companies cited above worked out to 29%. The TPO proposed to adopt the same and make transfer pricing adjustment. The assessee submitted that the TPO has computed the average margin of comparable companies under simple average method. The assessee contended that mean should be computed under Weighted average method, i.e., it should be worked out by aggregating operating revenue and operating expenses of all comparable companies. It was submitted that the weighted average mean worked out to only 2%. Accordingly, the assessee contended before TPO that no transfer pricing adjustment is called for. The TPO rejected the above said claim by observing that the proviso to section 92C(2) of the Act makes it clear that the arithmetical mean margins of comparables has to be computed under simple average method only. Accordingly, learned TPO adopted the average mean margin of comparable companies of 29% and accordingly made transfer pricing adjustment of Rs. 74,79,380/-.

4. The Assessing Officer noticed that the assessee has let out its office building in the last quarter of the year. When questioned about the disallowance of expenses relating to the rental income, the assessee

submitted that it has considered society maintenance expenses, municipal taxes and depreciation as relatable to the rental income and has already disallowed proportionate amounts of those expenses while computing total income. The Assessing Officer noticed that the assessee has incurred expenses of Rs. 2,76,082/- towards insurance and Rs. 15,14,064/- towards repairs to building. The Assessing Officer took the view that the above expenses are also related to let out the building and accordingly disallowed proportionate amount of 25% of the above said expenses.

5. In the appeal filed by the assessee, the learned CIT(A) confirmed the addition relating to the transfer pricing adjustment. With regard to the disallowance of expenses, the learned CIT(A) noticed that the insurance expenses consisted of not only building insurance expenses but also other types of insurance expenses. He noticed that the building insurance expenses was Rs. 35,000/- only and accordingly directed the Assessing Officer to disallow 25% of the above said amount which worked out to Rs.8,750/-. With regard to repairs expenses, the learned CIT(A) noticed that same included society maintenance charges which has already been disallowed by the assessee to the extent of Rs.71,652/- at the time of filing return of income. Accordingly the learned CIT(A) directed the AO to exclude Rs.71,652/- and accordingly compute proportionate disallowance out of repairs expenses. Still aggrieved the assessee has filed this appeal before the Tribunal.

6. We heard rival contentions and perused the record. The first issue relates to the transfer pricing adjustment made by the TPO. It is the contention of the assessee that the average mean margin of comparable companies should be computed under "weighted average method". However, as rightly pointed out by Ld CIT(A), the said contention of the assessee is contrary to the proviso to sec. 92C(2) of the Act, which reads as under:-

“Provided that where more than one price is determined by the most appropriate method, the arm’s length price shall be taken to be the arithmetical mean of such prices.”

The margin computed for each of the comparable companies is the “price” mentioned in the above said proviso to Sec.92C(2). In the instant case, prices of 12 comparable companies have been computed, i.e., 12 prices were computed. Hence the arm’s length price shall be taken to be arithmetical mean of “such prices” only, which would mean that the average price shall be computed under simple average method only.

7. We noticed earlier that the assessee has reported net profit margin of 13.86%. We notice that the aggregate receipt of the assessee was Rs.5.61 crores during the year under consideration. It is in the knowledge of every one, the companies providing training services will have fixed costs and hence the profitability will be very low, when the gross service income is low and it will be high, when the gross service income goes up. This is the reason which motivated the assessee to seek computation of average margin under weighted average method. From the comparable companies, we notice that the following companies have reported more than 100% of profit.

Chowgule Steam	-	104.55%
Greatship India	-	118.21%

We notice that both the above said companies have reported profits exceeding 100%. Other companies have either reported loss or profits ranging from 3.68% to 91.18%. Thus, we notice that there is huge variation in the margins of comparable companies. As noticed earlier, the profitability in this types of business would depend upon the quantum of fixed expenses. Under these set of facts, in the facts and circumstances of the business carried on by the assessee, we are of the view that the companies earning profit of more than 100% of its cost cannot be considered to be comparable with the assessee company. Accordingly, we direct the AO/TPO to exclude

above said two companies and re-compute the margin of comparable companies accordingly.

8. With regard to the disallowance of expenses relating to Income from House Property, we notice that the Ld CIT(A) has already granted relief with regard to the contentions of the assessee. The amount of disallowance confirmed by Ld CIT(A) relates to building repairs expenses, for which the assessee would be getting standard deduction of 30% u/s 24 of the Act. Hence, we are of the view that the Ld CIT(A) was justified in confirming the disallowance partially on this issue.

9. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on 29.5.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 29/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS