

आयकर अपीलीय अधिकरण
मुंबई पीठ "आई", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.2327/मुं/ 2022 (नि.व.2018-19)
ITA NO. 2327/MUM/2022(A.Y. 2018-19)

Oxford University Press,
22 Workspace, 2nd Floor, 1/22 Ansari Road,
New Delhi, Delhi – 110 002

PAN: AAACO-3278-K

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT, International Taxation, Circle -3(2)(2)
16th Floor, Air India Building,
Nariman Point, Mumbai 400 007.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rishabh Malhotra

प्रतिवादी द्वारा/Respondent by : Shri Soumendu Kumar Dash

सुनवाई की तिथि/ Date of hearing : 31/05/2023

घोषणा की तिथि/ Date of pronouncement : 12/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 20/07/2022 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act], for the assessment year 2018-19.

2. The assessee in appeal has assailed the assessment order on two counts:

(i) Enhancement of income by Rs.2,98,84,072/- holding that the international transactions do not satisfy Arm's Length Price (ALP).

(ii) Assailing disallowance of sales and promotion expenses amounting to Rs.1,05,21,136/- u/s. 40(a)(ia) of the Act.

The assessee has raised additional ground, which is an offshoot of ground No.1. The same reads as under:

"1.2 On the facts and circumstances of the case & in law, the Ld. Transfer' Pricing Officer ought to have granted to the appellant the benefit of working capital adjustment on account of the differences in the working capital position of the Appellant vis-a-vis the comparable companies."

3. Shri Rishabh Malhotra appearing on behalf of the assessee submits that the assessee is a branch of Oxford University Press UK and is engaged in the business of publishing and trading of books. The assessee had claimed expenditure to the tune of Rs.2,72,02,043/- in respect of payment made to different schools. The said payment was made under School Support Payment(SSP) scheme to schools for specified education purpose. The assessee had deducted TDS on such payments made. Further, the assessee had also created a provision for SSP Rs.78,68,411/-. The Assessing Officer vide impugned order disallowed the provision made u/s. 40(a)(ia) of the Act .

3.1 The Id. Authorized Representative of the assessee in respect of other ground of appeal submitted that the assessee had entered into various international transactions during the period relevant to assessment year under appeal. To benchmark the transactions with its Associated Enterprises(AE), the assessee adopted Transactional Net Margin Method (TNMM) as the most appropriate method. The Transfer Pricing Officer (TPO) did not accept the comparables selected by the assessee to benchmark the transactions. The TPO

selected fresh set of comparables and consequently made adjustment of Rs.11,25,21,247/-. The assessee filed objections before the Dispute Resolution Panel (DRP), against the addition /adjustment made by the Assessing Officer. The DRP vide directions dated 14/06/2022 partly accepted the objections. The DRP restricted the adjustment in respect of transfer pricing issues to Rs.2,98,84,072/- and u/s. 40(a)(ia) of the Act to Rs.1,05,21,136/-. The Assessing Officer consequent to the directions of the DRP passed the impugned order.

3.2 The Id. Authorized Representative of the assessee submitted at the outset that in respect of ground No.1 of appeal, he is confining his submissions to the additional ground raised i.e. seeking working capital adjustment and to consider weighted average of current year and preceding two years. He pointed that the data for current year was not available during the assessment proceedings. The Id. Authorized Representative of the assessee submitted that the additional ground of appeal raised by the assessee does not require filing of any additional evidence. All the material documents relevant to decide the additional ground are already available on record. To support his arguments, seeking admission of additional ground of appeal, he placed reliance on the decision in the case of NTPC Ltd. vs. CIT,229 ITR 353(SC).

3.3 In respect of ground No.2 relating to disallowance u/s. 40(a)(ia) of the Act, he submitted that identical ground was considered by the Tribunal in assessee's own case for assessment year 2016-17 in ITA No.2186/Mum/2021, decided on 13/12/2022. The ground may be decided in similar terms.

4. Per contra, Shri Soumendu Kumar Dash representing the Department vehemently opposed the admission of additional ground of appeal raised by

the assessee. The Id. Departmental Representative submitted that assessee had never claimed working capital adjustment before the TPO or DRP. Now, at this later stage the assessee cannot raise a fresh ground. The Id. Departmental Representative prayed for upholding the assessment order and dismissing the appeal of assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. In ground No.1 of appeal the assessee has assailed transfer pricing adjustment of Rs.2,98,84,072/-. The assessee has raised an additional ground seeking working capital adjustment in respect of international transactions on which the TPO has made adjustment. We find that in proceedings before the TPO or the DRP, the assessee had never raised any argument seeking working capital adjustment. It is for the first time before the Tribunal that the assessee has raised a plea for grant of working capital adjustment. For adjudicating additional ground no fresh document is required to be adduced. Therefore, we admit additional ground of appeal. Since, the relief sought has been raised for the first time before the Tribunal, we deem it appropriate to restore the additional to the file of Assessing Officer for his consideration. The Assessing Officer is directed to consider the claim of working capital adjustment made by the assessee in the additional ground of appeal and he may also entertain/consider any other legitimate plea raised by the assessee qua transfer pricing adjustment and thereafter, decide the issue, in accordance with law. Thus, ground No.1 and the additional ground of appeal is allowed for statistical purpose in the terms aforesaid.

6. In ground No.2, the assessee has assailed disallowance of sales promotion expenditure u/s. 40(a)(ia) of the Act. We find that similar ground

was raised by the assessee in Assessment Year 2016-17 before the Tribunal in ITA No.2186/Mum/2021 (supra). The Co-ordinate Bench after examining the issue threadbare restored the issue back to the file of Assessing Officer with following directions:

“ 9. Having extensively heard both the parties, we have no hesitation in drawing the following conclusions:-

(a) xxxxxxxx

xxxxxxx

f) Hence it could be safely concluded that the assessee is bound to deduct tax at source, failure of which , would be invited with disallowance u/s 40(a)(ia) of the Act. However, we find lot of force in the alternative argument advanced by the Id.AR before us that in view of second proviso to section 40(a)(ia) of the Act, since the payees / recipients had disclosed the said receipts in their returns of income, no disallowance should be made in the hands of the assessee payer. In view of this second proviso, we direct the Id. AO to make factual verification as to whether the recipients had duly disclosed the subject mentioned receipts in their returns of income. The assessee is directed to furnish the necessary details in this regard in the prescribed form. If on verification, it is found that the recipients had disclosed the receipts from the assessee in their returns of income, even if the entire income of the recipients is exempt under the provisions of the Act in their hands, still the assessee cannot be treated as an ‘assessee in default’ and consequentially the disallowance u/s 40(a)(ia) of the Act made in the hands of the assessee payer would have to be deleted. Accordingly, the revised grounds raised by the assessee are disposed off in the abovementioned manner.”

The ground No.2 of the appeal is allowed for statistical purpose, in similar terms.

7. In the result, appeal of the assessee is allowed for statistical purpose .

Order pronounced in the open court on Monday the 12th day of June, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 12/06/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai