आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 570/Hyd/2017**
(निर्धारण वर्ष / Assessment Year: 2012-13)

HM CLAUSE India Private Limited, (Previously known as Clause (India) Private Limited) Gowdavelli Village, Medchal Mandal [PAN No. AACCC0087A]	Vs.	Deputy Commissioner of Income Tax, Circle- 2(2), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S.P.Chidambaram, AR
राजस्व द्वारा/Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 17/05/2023
घोषणा की तारीख/Pronouncement on: 26/06/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the final assessment order dated 30/01/2017 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of M/s. HM CLAUSE India Private Limited (formerly known as Clause India Pvt. Ltd.) ("the assessee") for the assessment year 2012-13, under section 143(3) r.w.s. 92CA r.w.s. 144C of the Income Tax Act, 1961 (for short "the Act") assessee filed this appeal.

2. Briefly stated relevant facts are that the assessee is a trader of vegetable seeds in India and has an extensive network of recognized distributors all over India. It is engaged in the business of sale of imported vegetable seeds & research and development of seeds and seeding. It filed its return of income for the assessment year 2012-13 on 21/11/2012 declaring NIL income under the normal provisions of the Act and book loss of Rs. 2,86,36,352/- under the provisions of section 115JB of the Act.

3. Since the assessee made international transactions with its Associated Enterprises (AEs), determining the Arm's Length Price (ALP) thereof was referred to the Transfer Pricing Officer (TPO). Learned TPO, by order dated 30/01/2016, determined the ALP of the international transaction at Rs. 29,40,44,285/- and suggested an adjustment of Rs. 81,48,043/-. Consequently, the learned Assessing Officer passed draft assessment order dated 02/03/2016, computing the loss of Rs. 1,62,80,959/- under the normal provisions and at Rs. 2,86,36,352/- under section 115JB of the Act.

4. Aggrieved by the order of learned Assessing Officer, assessee filed objections before the learned DRP. Learned DRP by order dated 19/12/2016 considered the contentions raised by the assessee and issued certain direction to the learned Assessing Officer/learned TPO. Basing on that, learned Assessing Officer passed the final assessment order dated 30/01/2017, assessing the income of assessee at Rs. 78,16,750/-.

5. Assessee is, therefore, before us challenging the final assessment order that was passed consequent to the directions issued by the learned DRP on various grounds contending that the authorities below erred in rejecting the TP documentation of the assessee and in taking the fresh comparables. According to the assessee, the authorities failed to consider the reversal of the provisions of doubtful trade receivables as non-operating income and also in rejecting M/s. Excel Genetics Limited and M/s. Sunil Agro Foods Limited as comparables. Assessee also challenged

the adjustment on account of exceptional items, working capital adjustment, alternate analysis under Resale Price Method and also charging notional interest on the amount advanced to group companies.

6. Learned AR, however, at the time of arguments submitted that the learned DRP denied the adjustment to operating cost claimed by the assessee on the ground that claim lacks concrete evidence to support the claim of extraordinary events/expenses, which are peculiar to this assessment year, which actually affected margins earned in rejecting the adoption of Resale Price Method (RPM) as the Most Appropriate Method (MOM) on incorrect assumptions and presumptions. Learned AR confined his arguments to the addition, contending that such an adjustment should be allowed under Transactional Net Margin Method (TNMM) and in the alternative, RPM should be taken as the MOM. Learned AR further challenged the notional interest on money advanced to the AE.

7. Basing on these two contentions, learned AR submitted that in order to meet the observations of the learned DRP that inasmuch as the assessee failed to furnish the concrete evidence to substantiate claim of adjustment, the assessee has been furnishing the relevant material by way of additional evidence and, therefore, considering the additional evidence will clinch the issue and for such purposes, the additional evidence may be admitted for verification, on that aspect.

8. Learned AR in the alternative contended that since the assessee has been a trader in vegetable seeds in India, as was found out by the learned TPO himself and the assessee has not been performing any additional functions under the trading schemes, the verification of the suitability of RPM will go to the root of the case. He contended that according to the learned DRP, since the assessee is asking for adjustment to operating cost like inventory loss, forex fluctuation, finance cost while computing net margin, the assessee has not adjusted these while computing the gross margins and that there is no concrete evidence

brought on record to show that the assessee has been performing any additional functions. By placing reliance on rule 10B(1)(b) of Income Tax Rules, 1962 (for short "the Rules"), learned AR contended that RPM is the MAM in this case.

9. Learned DR submitted that the assessee failed to produce any relevant material before the authorities below and, therefore, the view taken by the authorities is justified. He further submitted that without verification of such material, it is not possible to conclude that the authorities committed any error. Learned DR submitted that factual verification is required in respect of material submitted by the assessee by way of additional evidence and, therefore, without such verification, no relief could be granted to the assessee.

10. We have gone through the record in the light of the submissions made on either side. By way of additional evidence, the assessee seeks to produce – copy of agreement reached between AE and the assessee, with respect to loss suffered by assessee on account of sale of watermelon seeds ARUN, copy of credit notes, as issued by the assessee to the customers in India towards the sale of watermelon seeds ARUN, mail communications for shortage of supply and computation of adjustment of import related expenses incurred by the assessee.

11. It is contended by the assessee that the additional evidence being filed as above only strengthens its claim and no prejudice or hardship will be caused to the respondent if this application is allowed; and the assessee had explained the reason of loss of inventory due to sales return and, therefore, assessee has made efforts to collate note issued to the customers and the agreement with the supplier of the seeds, and assessee further explained the reason for increase in cost of goods sold as to how the forex rate fluctuation has impacted the prices of the seeds imports and, therefore, assessee has made efforts to collate the comparative prices in INR for the financial year 2011-12 vis-à-vis financial

year 2010-11 along with copies of bill of entry and the assessee wishes to submit the import related expenses adjustment which were not incurred by the comparables.

12. It is not the contention of the Revenue that any new contention is raised by the assessee while filing the additional evidence. These documents are filed only to support the case that was already put forth and in respect of which the learned DRP observed that sufficient material to substantiate such a claim was not produced. According to the assessee, the collation of the credit notes issued to the customers and the agreement with the suppliers of seeds had taken considerable time. Further, the assessee had to make efforts to collate the comparative price for the financial year 2011-12 vis-à-vis financial year 2010-11 along with the copies of bills of entry and also the details relating to the import related expenses adjustment.

13. Having regard to this factual matrix, we are of the considered opinion that receiving additional evidence does not prejudice the case of the Revenue and on the other hand, promotes the determination of the tax liability of the assessee in a just way. With this view of the matter, we receive the additional evidence and restore the issue to the file of learned Assessing Officer/learned TPO for verification of the additional evidence in the light of the attendant facts and circumstances. In that process, learned Assessing Officer/learned TPO will re-visit the suitability of the RPM as the MOM and take a view according to law.

14. Insofar as the notional interest on money advances to AE, it is submitted by the assessee before us that Ceekay Seeds and Seedlings Pvt. Ltd., to whom the money was advanced is a resident entity situated at Secunderabad, India. Learned AR accordingly submits that for that reason, the transaction is outside the purview of the TP regulations.

15. Assessee will produce the relevant material before the learned Assessing Officer/learned TPO to establish its contention and learned Assessing Officer/learned TPO after giving an opportunity to the assessee will take a plausible view with this aspect. This issue also therefore, restore to the file of learned Assessing Officer/learned TPO. Grounds are accordingly treated as allowed for statistical purposes.

16. In the result, appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 26th day of June, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 26/06/2023

TNMM

Copy forwarded to:

1. HM CLAUSE India Private Limited (previously known as Clause (India) Private Limited), Survey No. 563/P, D.No. 6-98/4, Gowdavelli Village, Medchal Mandal, Ranga Reddy District.
2. Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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ITAT, HYDERABAD