IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : I : DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.590/Del/2021
Assessment Year: 2016-17

Relaxo Footwear Ltd., Plot No.10, Aggarwal City Square, Manglam Place Sec.3, New Delhi – 110 085.	Vs	Assessing Officer, National e-Assessment Centre, New Delhi.
PAN: AAACR0259D		
(Applicant)		(Respondent)

Assessee by	:	Shri Ved Jain, CA
Revenue by	:	Shri R.D. Burman, CIT-DR
Date of Hearing	:	26.06.2023
Date of Pronouncement	:	20.07.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.590/Del/2021 for AY 2016-17 arises out of the order of the National e-Assessment Centre, Delhi (hereinafter referred to as 'ld. AO') passed u/s 143(3) r.w.s. 144C and 144C(13) r.w.ss 143(3A) & 143(3B) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2021.

2. Though the assessee has raised several grounds before us, the only effective issue to be decided in this appeal is as to whether the ld. AO was justified in

making transfer pricing adjustment of Rs.91,04,673/- pursuant to the directions of the ld. DRP in respect of the specified domestic transactions.

3. We have heard the rival submissions and perused the material available on record. The ld. TPO in his order has stated that the assessee company started off with manufacture of Hawaii slippers and subsequently diversified into manufacturing casuals, joggers, school and leather shoes. The assessee is one of India's most quality conscious and progressive footwear companies. The product range of the company include Hawaii, canvas, dip, Bahamas, leatherite, joggers and flite. The return of income for the AY 2016-17 was filed by the assessee company on 29.11.2016 declaring total income at Rs.160,16,70,610/-. The ld. TPO observed that in Form No.3CEB submitted by the assessee, the following domestic transactions have been entered into by the assessee with its associate enterprises (AEs):-

S.No.	Domestic Transaction	Method	Amount
1	Rent	CUP	112754431
2	Payment of Salary	CUP	69398080
3	Commission	CUP	149015170
4	Interest on unsecured loan	CUP	49260426
5	Contribution towards CSR	CUP	20495000
6	Semi Finished & finished Goods	CPM	274182307
	Total		675105414

4. The ld. TPO sought to examine the specified domestic transaction on account of transfer of semi-finished goods from non-eligible units to unit where deduction u/s 80IC of the Act is claimed by the assessee. The ld. TPO issued notice to the

assessee requiring the assessee to provide details relating to the said transaction together with the basis of computing the transaction price thereon. The assessee filed replies vide letter dated 10.07.2019 and 12.09.2019 along with documentary evidences. The assessee submitted that it transferred semi finished goods from non-eligible units where shoes and sandals were manufactured to eligible units, i.e., Unit-V, Haridwar where also shoes and sandals in the name of Sparx was manufactured. It is not in dispute that Unit-V, Haridwar is eligible for deduction u/s 80IC of the Act. It was explained that the price at which the semi-finished goods were transferred was determined on the basis of Cost Plus methodology by adding of margin of 15% on the cost of goods transferred. It was further explained that the transfer cost by adding a margin of 15% is more than the profit margin of the assessee company as a whole which is 10.35% as well as the profit margin of Unit-V for which deduction u/s 80IC of the Act was claimed. The complete details of semi-finished goods transferred from non-eligible unit to eligible unit were duly furnished by the assessee and they are also enclosed in pages 81-192 of the paper book filed before us.

5. The ld. TPO rejected the Cost Plus method adopted by the assessee as the Most Appropriate Method (MAM) and substituted the same with Transactional Net Margin Method (TNMM). The ld. TPO identified six comparables by adopting the Profit Level Indicator (PLI) as Operating Profit/Operating Cost (OP/OC) and arrived at the average margin of the comparables at 12.99%. This was compared with the

assessee's margin of 15% and arm's length price adjustment was made to the tune of Rs.87,99,670/- by the ld. TPO.

6. Before the ld. DRP, it was pleaded that the ld.TPO erred in applying the margin of 12.99% to be arm's length margin and the same was applied on the transaction price of Rs.27,41,82,307/- as against cost of Rs.23,84,19,397/- which was in complete disregard of the provisions relating to specified domestic transactions whereby domestic transfer pricing provision can only result in restriction of deduction u/s 80IC of the Act. It was accordingly contested that no addition is warranted even on application of TNMM even if the margin proposed by the TPO is assumed to be correct. Further, on without prejudice basis, it was argued that the addition in any case is to be restricted to 30% since the assessee had claimed deduction u/s 80IC of the Act only to the tune of 30% of the eligible profits.

7. The ld. DRP, vide its directions u/s 144C(5) of the Act dated 19.02.2021, excluded two comparables taken by the ld. TPO and arrived at the revised margin of the comparables at 13.09%; upheld the TNMM to be Most Appropriate Method and directed to recompute the deduction u/s 80IC at 30%. Subsequently, pursuant to the directions of ld. DRP, the ld. TPO passed an order dated 22.03.2021 whereby transfer pricing adjustment amount was worked out at Rs.91,04,673/- and it was observed that deduction shall not be allowed u/s 80IC of the Act in respect of such amount. Later, the ld. AO passed final assessment order u/s 143(3) r.w. section 144C(13) of the Act on 30.03.2021 wherein the ld. AO adopted the transfer pricing adjustment of Rs.91,04,673/- as proposed by the ld. TPO and further made one

more addition of Rs.27,31,402/- (30% of Rs.91,04,673/-) on account of disallowance of excess deduction u/s 80IC of the Act. Aggrieved, the assessee is in appeal before us.

8. The aforesaid facts are not in dispute. However, it would be pertinent to address the preliminary issue as to whether any transfer pricing adjustment *per se* can be made in respect of specified domestic transactions u/s 92BA of the Act in view of the fact that section 92BA(i) has been omitted from the statute by the Finance Act, 2017 w.e.f. 01.04.2017. This issue is no longer *res integra* in view of the decision of the Hon'ble Karnataka High Court in the case of *PCIT vs. Texport Overseas Pvt. Ltd., reported in 271 Taxmann 170* wherein it was held that clause (i) of section 92BA having been omitted by the Finance Act, 2017 w.e.f. 01.04.2017 from the statute, the resultant effect would be that it had never been passed and, hence, the decision taken by the ld. AO under the effect of section 92BA of the Act and reference made to the TPO u/s 92CA of the Act was invalid and bad in law. The relevant observations of the Hon'ble Karnataka High Court are as under:-

> ***5.*** *Having heard learned Advocates appearing for parties and on perusal of records in general and order passed by tribunal in particular it is clearly noticeable that Clause (i) of section 92BA of the Act came to be omitted w.e.f. 01.04.2017 by Finance Act, 2014. As to whether omission would save the acts is an issue which is no more res integra in the light of authoritative pronouncement of Hon'ble Apex Court in the matter of Kolhapur Canesugar Works Ltd. v. Union of India AIR 2000 SC 811 whereunder Apex Court has examined the effect of repeal of a statute vis-a-vis deletion/addition of a provision in an enactment and its effect thereof. The import of section 6 of General Clauses Act has also been examined and it came to be held:*
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> > *"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final*

relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

***6.** In fact, Co-ordinate Bench under similar circumstances had examined the effect of omission of sub-section (9) to Section 10B of the Act w.e.f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of section 10B. In the matter of General Finance Co. v. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of section 92BA(i) of the Act. Thus, when clause (i) of Section 92BA having been omitted by the Finance Act, 2017, with effect from 01.04.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92B(i) and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law.*

***7.** It is for this precise reason, tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Canesugar Works Ltd. referred to herein supra which has been followed by Co-ordinate Bench of this Court in the matter of M/s. GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of law raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra.*

9. Respectfully following the same, we have no hesitation in holding that the transfer pricing adjustment made in the sum of Rs.91,04,673/- and the further addition of Rs.27,31,402/-, which is in consequence of the same, could not be made, in the facts and circumstances of the instant case. Hence, the additions made by the ld. AO are hereby directed to be deleted.

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

Order pronounced in the open court on 20.07.2023.

Sd/-	Sd/-
(ANUBHAV SHARMA) JUDICIAL MEMBER	(M. BALAGANESH) ACCOUNTANT MEMBER

Dated: 20th July, 2023.

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi