

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.212/PUN./2023
Assessment Year 2016-2017

Roopam Steel Rolling Mills, Plot No.C-53, Additional MIDC Area, Aurangabad Road, Jalna – 431 203. Maharashtra PAN AABFR7873D	vs.	The ACIT, Aayakar Bhavan, Nr. TV Centre, Siraswadi Road, Jalna – 431 203. Maharashtra.
Appellant		Respondent

For Assessee :	Shri Kishor B Phadke
For Revenue :	Shri Suhas Kulkarni, Addl.CIT

Date of Hearing :	23.08.2023
Date of Pronouncement :	23.08.2023

आदेश / ORDER

PER SATBEER SINGH GODARA, JM :

This assessee's appeal, for assessment year 2016-17, arises against the CIT(A)-13, Pune, Pune's Order in Appeal No.PN/CIT(A)-13/ACIT, Circle, Jalna/10093/2019-20/234, dated 28.12.2022, involving proceedings u/s. 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties at length. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“The learned CIT(A) erred in law and on facts in confirming the addition made by the learned AO / TPO amounting to Rs.5,32,48,058/- to the total income of the Appellant on account of transfer pricing adjustment to the specified domestic transactions entered into by the Appellant.*
2. *The learned CIT(A) erred in law and on facts in confirming the transfer pricing adjustment in specified domestic transaction, without appreciating that, section 92BA(i) of the Act, has been omitted by Finance Act, 2017 with effect from 1 April 2017 without a saving clause.*
3. *The learned CIT(A) and learned AO erred in law and on facts in confirming the addition on account of transfer pricing adjustment on specified domestic transaction without appreciating that, reference to the learned TPO is without complying with the provisions of sections 92CA (1) of IT Act, 1961 read with CBDT instruction 3/2016 dated 10/03/2016.*
4. *The learned CIT(A) erred in law and on facts in confirming the transfer pricing addition amounting to Rs.5,32,48,058/- without appreciating the principles laid down by Honorable Supreme Court in case of CIT Vs. Glaxo Smithkline Asia (P.) Ltd. (SPECIAL LEAVE TO APPEAL (CIVIL) NO. 18121 OF 2007) regarding tax neutral transactions. The learned CIT(A) and learned AO ought to have appreciated that, neither appellant nor its associated*

enterprise, with whom the specified domestic transaction has been entered into, are availing any income-tax holiday and thus, the impugned specified domestic transaction entered into by the Appellant is tax neutral.

- 5. The learned CIT(A) erred in law and on facts in confirming transfer pricing adjustment without appreciating that, on similar and identical set of facts for earlier years i.e. A.Y. 2013-14 and A.Y. 2014-15 arm's length value of specified domestic transaction entered by appellant have been accepted. The learned CIT(A) and learned AO ought to have appreciated that, there has been no change in the facts and circumstances in AY 2016-17, vis-a-vis such earlier years and ought to have followed the 'Principle of Consistency'.*
- 6. The learned CIT(A) and learned AO erred in law and facts in rejecting the CUP method, as the most appropriate method (MAM) and applying the TNMM as MAM for determining the arm's length price of the specified domestic transactions without giving any rational justification. The learned CIT(A) and learned AO ought to have appreciated that, CUP has been accepted as MAM for earlier assessment years and there is no any change in factual matrix.*
- 7. The learned CIT(A) and learned AO erred in law and facts in changing tested party to appellant as against the*

associated enterprise without providing any rational justification. The learned AO and CIT(A) ought to have appreciated that, associate enterprise is least complex entity as compared to appellant and the same ought to be considered as tested party. The learned CIT(A) and learned AO ought to have appreciated that, operating profit margin earned by such associated enterprise falls within the arm's length range of the operating profit margins of the comparable companies, and thus, the price charged for the specified domestic transaction satisfies the arm's length test.

- 8. The learned CIT(A) and learned TPO erred in law and facts in not extending the detailed working of search process and thereby, failed to discharge onus of substantiating selected companies are functionally comparable companies to appellant.*
- 9. The learned CIT(A) and learned TPO erred in law and facts in applying the filter of rejecting companies having negative operating profit and thereby, rejecting functionally comparable companies as such.*
- 10. The learned CIT(A) and learned TPO erred in law and on facts in not granting adjustment on account of burning loss to PLI of appellant to make like with like comparability.*

11. The learned CIT(A) and learned AO has erred in law and on facts in not allowing the set-off of brought forward business loss against the addition made.

12. Appellant craves leave to add/alter/delete/modify, all/any of the above grounds of appeal.”

3. Mr. Phadke's first and foremost submission before us is that the CIT(A) has neither framed points of adjudication nor has he recorded a detailed discussion thereupon as contemplated u/sec.250(6) of the Act. He sought to buttress the point that even if it is held that the CIT(A) has rightly affirmed the assessment findings pertaining to the assessee's specified domestic transactions making arm's length price [ALP] adjustment of Rs.5,32,48,058/-; his lower appellate discussion in paragraphs 3.3 to 3.4 at page 21 of the impugned order hardly discusses any issue much less a detailed adjudication thereof. Mr. Phadke's case, therefore, is that the assessee's instant appeal be restored back to the CIT(A) in larger interest of justice.

4. Learned DR could hardly rebut the clinching fact of the CIT(A)'s not having adjudicated the assessee's substantive grounds in the lower appeal by a speaking order in above terms.

5. Faced with the situation, we accept the assessee's instant appeal for statistical purposes and direct the CIT(A) to re-adjudicate the assessee's lower appeal afresh as per law, preferably within three effective opportunities of hearing. Ordered accordingly.

6. No other ground has been pressed at this stage before us.

7. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 23.08.2023

Sd/-
(DR.DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated 23rd August, 2023.

VBP

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-13, Pune.
4. The Pr. CIT-1, Nashik.
5. DR, ITAT, "C" Bench, Pune.
6. Guard File.

BY ORDER

// True Copy //

Senior Private Secretary
ITAT, Pune.