

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.6168/Del/2018
Assessment Year: 2013-14

DCIT Circle 1 (2) New Delhi	Vs	Agrozan India P. Ltd. C-1, Panchsheel Enclave, New Delhi PAN No.AAKCA0249C
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Manu Chaurasia, Sr. DR
Respondent by	Ms. Vandana Bhandari, Advocate

Date of hearing:	12/10/2023
Date of Pronouncement:	12/10/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-44, New Delhi dated 25.07.2018 pertaining to A.Y. 2013-14.

2. The grievance of the revenue read as under :-

1. *Whether in the facts and circumstances of the case the Hon'ble CIT(A) has not adjudicated on the fourth comparable in M/s. Rikka Global Impext Ltd. While giving direction to the TPO.*

2. *Whether in the facts and circumstances of the case the Hon'ble CIT(A) erred in giving direction to the TPO for exclusion of comparable Bhartiya Beej Nigam Ltd. Pallshree Ltd. And RBRL Agro Commodities Ltd. On account of functional dissimilarity without considering the Rule 10B (1).*

3. *Whether in the facts and circumstances of the case the Hon'ble CIT(A) erred in giving direction in para 5.15 to the TPO for determining the ALP after verifying CUP data submitted by the assessee in this case to the AO/TPO which is beyond the jurisdiction of CIT(A).*

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of rule 18 (6) of the ITAT Rules.

4. Assessee is engaged in trading of agricultural products such as grains, Agricultural produce, oilseeds, rice, sugar and spices. During FY 2012-13, it imported chickpeas, green peas, yellow peas, green moong, red lentils, Lemon Toor, Pigeon Peas from Agrozan Commodities, DMCC (For short Agro Dubai") and exported maize to Agro Dubai.

5. Considering the nature of international transactions, functional and risk profile of Agro India and Agro Dubai, degree of comparability of import and export transactions of Agro India with closely similar comparable uncontrolled transactions and

availability of data assessee Selected Comparable Uncontrolled Price Method ("CUP") to be the most appropriate method.

6. The prices paid/charged for import and export of similar agricultural products in a comparable uncontrolled transaction, or a number of such transactions, during the FY 12- 13 were identified. Rule 10B(4) of the Income-tax Rules, 1962, requires the use of the data relating to the financial year in which the international transaction has been entered into. Therefore, assessee's analysis has been conducted using comparable data for FY 2012-13

7. As the prices paid/charged by Agro India on import/export of Agricultural produce is less(more in case of export) than price paid/received by/from independent parties for November 2013 Transfer Pricing Review Memorandum for the financial year ended 31" March-13 purchase/sale of similar products therefore, the international transaction of import/export of Agricultural produce from Agro Dubai is considered at arm's length.

8. During the F.Y 2012-13 Agro Dubai has incurred expenses such as analysis and testing charges, shipping line charges, storage transportation and agency charges, freight storage and warehouse rent on behalf of Agro India. The expenses are reimbursed by Agro India to Agro Dubai at cost only without applying any mark-up.

9. These reimbursements do not warrant any mark-up as there is no element of service involved in above. Accordingly these reimbursements do not warrant a determination of arm's length price.

10. On the above undisputed facts, we find that the TPO made adjustment of Rs.76434314/- in the order passed u/s. 92CA(3). Thereafter, the assessment was completed u/s. 143 (3) at an assessed income of 81368904/-.

11. The assessment was agitated before the CIT(A) and the assessee was successful hence this appeal by the revenue.

12. On careful perusal of the Transfer Pricing order we find that the TPO without providing any reason for rejecting the TP document and without even discussing the TP study of assessee arbitrarily applied TNMM and selected following 4 companies as comparable :-

1. *Bhartiya Beej Nigam Ltd.*
2. *Pallishree Ltd*
3. *RBRL Agro Commodities Ltd*
4. *Rika Global Impex Ltd*

13. While applying the aforementioned comparables the TPO has not even discussed the search process, most appropriate

method and comparables applied by the assessee in its TP document.

14. When the appeal was argued before the CIT(A). The CIT(A) held as under :-

“15.5 I have considered the facts and the circumstances of the case. The appellant trades in agricultural products. It has been concluded earlier in this order that TNMM cannot be applied as the comparables chosen by the TPO are functionally dissimilar. The Hon'ble High Court of Gujarat in the case of CIT V/S Adani Wilmar Ltd. in ITA No. 240 of 2014 dated 07.04.2014 has held that published prices could be used for benchmarking international transactions. In view of the same, use of published prices in the public domain would be the best method for benchmarking the international transactions in the instant case. Hence, the methodology used by the appellant in its transfer pricing documentation is accepted. However, it is also observed that the AO/TPO has not discussed the application of external CUP by the appellant in the impugned TP report. In view of the same, the AO/TPO is directed to peruse the TP documentation filed by the appellant and examine whether the data provided by the appellant has been chosen and applied correctly. The appellant has not given any data substantiating why it has taken 60 days as the cost of shipment while calculating ALP on the basis of data available on www.infodriveindia.com while calculating the ALP of green moong, green peas, lemon toor, pigeon peas, red lentils and yellow pea. Similarly, the appellant has claimed that the average freight rate was about 2% of FOB value with regards to

export of maize. In view of the same, the AO/TPO is directed to examine the content of the appellant and to decide the issue on the basis of data pertaining to the transactions under reference. The ground of appeal No 4 is accordingly disposed off.”

15. A perusal of the above show that while setting aside the assessment to the files of the AO the CIT(A) has decided the appeal beyond his powers conferred upon him. The CIT(A) ought to have call a remand report from the AO/ TPO failing which the findings of the CIT(A) becomes erroneous.

16. However, in the interest of justice and fair play we deem it fit to restore the entire quarrel to the files of the AO/ TPO. The AO/ TPO shall decide the issue afresh after considering the TP documents of the assessee and after considering the comparables selected by the assessee. Needless to mention the AO/ TPO shall frame denovo assessment after affording a reasonable and sufficient opportunity of being heard to the assessee.

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

18. Decision announced in the open court on 12.10.2023.

Sd/-

[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .10.2023

Neha, Sr. Private Secretary

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER