

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 1300/Del/2020
Assessment Year: 2016-17**

Sinopharm India Pvt. Ltd., Unit No. 403-404, 4 th Floor, Southern Park, Saket District Centre, New Delhi. PAN: AASCS3650F (Appellant)	Versus	Income-tax Officer, Ward – 33(4), New Delhi. (Respondent)
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Assessee by	:	Sh. Vishal Kalra, Advocate Ms. Sumisha Murgai, AR Mr. Kashish Gupta, AR
Revenue by	:	Sh. Manu Chaurasia, Sr. DR

Date of hearing : 06.11.2023
Date of pronouncement: 06.11.2023

ORDER

This is an appeal by the assessee against order dated 17.02.2020 of learned Commissioner of Income-tax (Appeals)-8, New Delhi for the assessment year 2016-17.

2. Grounds raised by the assessee are as under :

“1. That on facts and in the circumstances of the case and in law, the Assessing Officer ("AO") erred in assessing the total income of the Appellant at INR 1,97,17,420 as against the returned income of INR 4,460 and the Commissioner of Income-tax (Appeals) ("CIT(A)") erred in upholding the action of the AO.

2. That on facts and in the circumstances of the case and in law, the order passed by the AO is bad in law and liable to be quashed as the same has been passed in violation to the mandatory provisions of section 144C of the Income Tax Act, 1961 ("Act").

3. That on facts and in the circumstances of the case and in law, the order passed by the AO suffers from jurisdiction defect been passed in contravention of CBDT Instruction No. 3/2016, thus, is bad in law and void ab initio liable to be quashed.

3.1 That on the facts and in the circumstances of the case and in law, the AO erred in failing to comply with the binding CBDT Instruction No. 3/2016 dated 10.03.2016 by suo moto making a transfer pricing adjustment without reference to the Transfer Pricing Officer ("TPO").

4. That on facts and in the circumstances of the case and in law, the CIT(A) erred in dismissing the appeal of the Appellant in limine for want of prosecution and not disposing the same on merits and by way of speaking order.

Notwithstanding and without prejudice to the above legal grounds:

TRANSFER PRICING GROUNDS:

5. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the transfer pricing adjustment made by the AO amounting to INR 1,85,63,138, by arbitrarily rejecting the benchmarking analysis undertaken by the Appellant in respect of the transactions pertaining to sale of goods to Associated Enterprises ("AEs").

5.1 That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in applying an arbitrary mark-up of 10% on sales made to AEs.

5.2 That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the arbitrary action of the AO in making a transfer pricing adjustment without applying any of the methods prescribed under section 92C(1) of the Act.

5.3 That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the contradictory approach of the AO in making an adjustment to arm's length price of the sales to AEs, while accepting similar benchmarking approach / method for purchases made from the AEs.

6. That on the facts and in the circumstances of the case and in law, the action of the CIT(A) in upholding the adjustment made by the AO is not warranted inasmuch as the adoption of unusually high margin of 10% on sales by the AO is not just arbitrary, but also not sustainable, as the Appellant, on the Group level, has earned a much lower profitability in the entire supply chain.

CORPORATE TAX GROUNDS:

7. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the disallowance made by the AO amounting to INR 11,49,817, in respect of devaluation of closing stock / inventory alleging it to be an unascertained liability, ignoring the regularly followed accounting policy and accepted accounting principles to value closing stock of inventories.

8. That on the facts and in the circumstances of the case and in law, the AO erred in not allowing setoff of brought forward losses as borne out from records.

9. That on the facts and in the circumstances of the case and in law, the AO erred in levying interest under sections 234A, 234B, 234C and 234D of the Act.

10. That on the facts and in the circumstances of the case and in law, the AO erred in initiating penalty proceedings under section 271(1)(c) of the Act.

The aforesaid grounds are mutually exclusive and without prejudice to each other.”

3. We have heard Shri Vishal Kalra, learned counsel appearing for the assessee and Shri Manu Chaurasia, learned Departmental Representative.

4. Though, the assessee has raised multiple grounds, however, at the time of hearing, learned counsel submitted that the Commissioner (Appeals) has dismissed assessee's appeal *in limine* without passing a speaking order on merits on various grounds raised by the assessee including a very crucial issue raised in ground No. 2 and 3 challenging the validity of the assessment order. Thus, he submitted, the impugned order of learned first appellate authority deserves to be set aside with a direction to dispose of assessee's appeal on merits by a speaking order after providing due and reasonable opportunity of being heard to the assessee.

5. Learned Departmental Representative though, submitted that the assessee did not avail the opportunities granted by learned first appellate authority to represent its case, however, he submitted, the issues can be restored back to the first appellate authority for deciding them afresh.

6. Having considered rival submissions, it is observed that challenging the assessment order dated 28.12.2018 passed under section 143(3) of the Act for the impugned assessment year, the assessee had preferred appeal before learned first appellate

authority. One of the issues before learned first appellate authority, as raised in ground Nos. 2 & 3, was in relation to the validity of the assessment order on the ground that the Assessing Officer had no jurisdiction to determine the Arm's Length Price (ALP) of the international transactions without making reference to the Transfer Pricing Officer (TPO). On a perusal of the impugned order of learned first appellate authority, it is observed that he has alleged that though, the appeal was fixed for hearing on a number of occasions, however, the assessee sought repeated adjournments and no submissions were filed by the assessee on the grounds raised. Considering the aforesaid fact, learned first appellate authority concluded that the assessee was not interested in disposal of its appeal. Accordingly, he proceeded to dispose of assessee's appeal *ex parte* without providing any further opportunity to the assessee. While doing so, he held that since, the assessee failed to justify its claim that no additions are needed to be made, the additions/disallowances made by the Assessing Officer are to be sustained. Accordingly, he dismissed assessee's appeal.

7. Though, in principle, we agree that no party has any vested right in seeking repeated adjournments without any genuine or valid reasons, however, as per the scheme of the Act, an appeal filed by an assessee before the first appellate authority has to be decided on merits through a speaking and reasoned order. In the facts of the present appeal, on perusal of the impugned order of learned Commissioner (Appeals), it is quite clear that he has not passed a speaking order with valid reasoning on any of the grounds raised by the assessee. Inasmuch as, learned first appellate authority has dismissed assessee's appeal, more or less, *in limine*. In fact, we do not find any conclusive observation of learned first appellate authority on the legal ground raised by the assessee challenging the validity of the assessment order. Thus, in our view, not only the impugned order of learned first appellate authority is in gross violation of principles of natural justice, but also bereft of any reasoning. In view of the aforesaid, we are inclined to set aside the impugned order of learned first appellate authority and restore the issues to his file for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee. At this stage, we must make it clear, while

deciding the appeal, learned first appellate authority must, at the outset, address the legal and jurisdictional issue raised by the assessee challenging the validity of the assessment order. Grounds are allowed for statistical purposes.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 06/11/2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 06.11.2023

*aks/-