

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.798/DEL./2022
(Assessment Year : 2016-17)**

DSI – Bridgecon India Private Limited,
Plot No.265, Okhla Industrial Phase 3,
Delhi – 110 020.

vs. ACIT, Circle 7 (2),
Delhi.

(PAN : AAFCD3018D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Neeraj Jain, Advocate
Shri Ramit Katyal, Advocate
REVENUE BY : Shri Rajesh Kumar, CIT DR

Date of Hearing : 26.12.2023
Date of Order : 27.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.

CIT (A)-44, Delhi dated 04.03.2022 for the Assessment Year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the Commissioner of Income Tax (Appeal) ('CIT(A)') erred on facts and in law in dismissing the appeal of the appellant in limine without adjudicating on the merits of grounds of appeal raised by the appellant.

1.1 That on the facts and circumstances of the case and in law, the CIT(A) erred in passing the impugned ex-parte order in gross violation of principles of natural justice, on the alleged

ground that the appellant was not inclined to prosecute the appeal

2. That the Commissioner of Income Tax (Appeal) ('CIT(A)') erred on facts and in law in confirming the transfer pricing adjustment amounting to Rs 17,76,746 made by the Transfer Pricing Officer ('TPO')/Assessing Officer ('AO') allegedly on account of the difference in arm's length price of the international transaction of availing testing services entered into by the appellant with the associated enterprises.

2.1 That the CIT(A)/TPO erred on facts and in law in selecting following companies as comparable without appreciating that such companies do not meet the test of functional comparability as laid down under Rule 10B(2) of the Rules:

- ✓ Vijay M Mistry Construction
- ✓ G.R Infraprojects Ltd .
- ✓ S.P Singla Constructions Pvt Ltd
- ✓ T &T Infra Ltd.

2.2 That the CIT(A)/TPO erred on facts and in law in rejecting Mac Alloys Pvt Ltd as a comparable on the basis that the company is incurring persistent losses without appreciating that persistent losses is not a relevant criteria for selection or rejection of companies which are otherwise functionally comparable to the tested party.

2.3 That the CIT(A)/TPO erred on facts and in law in not appreciating that the services have been provided by the associated enterprise to the appellant on cost to cost basis and the transaction is at arm's length applying CUP method.

2.4 That the CIT(A)ITPO erred on facts and in law in not appreciating that the services have been provided by the associated enterprise to the appellant on cost to cost basis and the associated enterprise has not retained any profit for performing the functions while rendering services to the appellant.

2.5 That the CIT(A)/TPO erred on facts and in law in not appreciating that the associated enterprises and the appellant have incurred combined loss in respect of the international

transaction of availing testing services and in absence of profit in the entire value chain, no transfer pricing adjustment in respect of international transaction of availing testing services was warranted.

2.6 Without prejudice, that the CIT(A)ITPO erred on facts and in law in not allowing adjustment on account of differences in working capital while computing the operating margins of the comparable companies.”

3. Brief facts of the case are that the return of income was filed electronically on 28.11.2016 showing a total loss of Rs.37,65,723/-. The case was taken up for scrutiny. The assessee is engaged in the business of installation, acquisition and execution of cable projects, cable and concrete bridges etc. The assessee had entered into international transactions with its AE which were referred to the TPO u/s 92CA(2) for determination of arm's length price. In his order dated 30.10.2019, the TPO proposed an adjustment of Rs.17,76,746/-. The AO passed a draft assessment order dated 11.12.2019. Thereafter, a final assessment order was passed u/s 143(3) of the Act on 20.02.2020 assessing the total loss at Rs.19,88,977/- after making the transfer pricing adjustment of Rs.17,76,746/-.

4. Upon assessee's appeal, Id. CIT (A) noted that despite notices, nobody has attended, so he summarily referred to the TPO's order and dismissed the assessee's appeal. The Id. CIT (A) concluded a sunder :-

“No written submission has been filed by the appellant despite having repeated opportunities. The approach of the TPO is found to be reasonable and in accordance with law, relevant

guidelines and international practices. The appellant was afforded opportunity to explain its case both by the TPO and the AO. Multiple opportunities not availed during the appeal show that the appellant has nothing to say in support of the grounds of appeal. In view of the facts and circumstances of the case, the TP adjustment is found to be justified. The same is confirmed and the related grounds of appeal are dismissed.”

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. At the outset, Id. Counsel of the assessee submitted that assessee has sought adjournment before Id. CIT (A) who has ignored the same and passed the order dismissing the assessee’s appeal for non-prosecution.

7. Upon careful consideration, we find that section 251 of the Income-tax Act, 1961 (for short 'the Act') does not give any power to the Id. CIT (A) dismissing the appeal for non-prosecution. Hence, in the interest of justice, we remit the issue to the file of Id. CIT (A). Ld. CIT(A) shall pass a speaking order on merits after giving the assessee adequate opportunity of being heard.

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

Order pronounced in the open court on this 27th day of December, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 27th day of December, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
