

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

**ITA No. 2543/Mum/2022**

(Assessment Year: 2018-19)

M/s Lubrizol Advanced Materials  
India Private Limited  
App. & Bus. Centre, 6<sup>th</sup> Floor,  
Mehra Industrial Estate,  
Jaswanti Landmark, LBS Marg,  
Vikhroli (West), Mumbai-400 079

**(Appellant)**

Assessment Unit (Income Tax  
Department)  
Mumbai

Vs.

**(Respondent)**

**PAN No. AAAC1436B**

**Assessee by** : Shri Madhur Agrawal, AR  
**Revenue by** : Shri Pankaj Kumar, DR

**Date of hearing:** 21.12.2023  
**Date of pronouncement :** 09.01.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by the assessee against the assessment order passed under section 143 (3) read with section 144C (3) read with section 144B of The Income Tax Act, 1961 (The Act) by Assessment Unit, Income Tax Department (The Learned Assessing Officer) for the assessment year 2018 - 19 on 1/8/2022 wherein the return filed by the assessee declaring a loss of ₹ 102,714,898/- on 29/11/2018 is assessed at Rs 189,01,260/- by making a transfer pricing adjustment under section 92CA of ₹ 121,616,158/-.
02. Assessee has raised following grounds of appeal:-



"1. On the facts and in the circumstance of the case and in the law, the impugned order dated 01.08.2022 passed by Assessment Unit, Income tax department (learned AO) under section 143(3) read with section 144C(3) and section 144B of the Act, is barred by limitation, since impugned order is passed/issued beyond the maximum time limit prescribed under section 144C(13) of the Act. Hence the assessment order is liable to be quashed/annulled as time barred.

2. Without prejudice to ground 1 above, on facts and circumstances of the case and in law, Deputy Commissioner of Income Tax (Transfer Pricing)-3(1)(1) ('Learned TPO) erred in proposing upward adjustment amounting to Rs.9,61,52,233 to total income of Appellant in respect of international transaction of provision of marketing support services and further the learned Dispute Resolution Panel -1, Mumbai (DRP) erred in confirming/enhancing the adjustments to Rs. 12,16,16,158.

3 Without prejudice to ground 1 above, on the facts and in the circumstances of the case and in the law, the learned DRP erred in confirming the action of learned TPO of rejecting the benchmarking analysis using Transaction Net Margin Method (TNMM) conducted by Appellant, based on the comparable companies selected by Appellant thereby making an addition of Rs. 12,16,16,158 of the alleged difference in the arm's length price of the 'international

*transactions of provision of Marketing Support Services ('MSS').*

*4. Without prejudice to ground 1 above, on facts and in the circumstances of the case and in law, learned TPO/DRP erred in mentioning that the method adopted by Appellant is Cost Plus Method (CPM') instead of TNMM without considering the submissions and transfer pricing study conducted by Appellant wherein margins are computed using operating profit/operating cost as PLI and learned TPO also have used same PLI while determining the arm's length price of the 'international transactions of provision of MSS.*

*5. Without prejudice to ground 1 above, on facts and in the circumstance of case and in law, the learned DRP erred in confirming the action of TPO by selecting the following companies as comparable to the Appellant in determining the arm's length price of the international transactions -*

*i. Focus Suits Solutions & Services Ltd.*

*ii. Majestic Research Services & Solutions Pvt. Ltd.*

*6. Without prejudice to ground 1 above, on facts and circumstance of case and in law, the learned DRP erred in determining the arm's length price of the international transaction by upholding the rejection of all comparable companies selected by the Appellant. The Appellant submits that the following companies should be considered as comparable in determining*



*the arm's length price of the international transactions -*

*i. Concept Public Relations India Limited*

*ii. Deepali Designs & Exhibits Private Limited*

*iii. Experience Commerce Software Private Limited*

*iv. Goldmine Advertising Limited*

*V. MCI Management India Private Limited*

*vi. Moms Outdoor Media Solutions Private Limited*

*vii. Killick Agencies & Marketing Limited*

*viii. Pioneer Publicity Corporation Private Limited*

*ix. Platinum Communications Private Limited*

*x. PR Pundit Public Relations Private Limited*

*xi. Pressman Advertising Limited*

*xii. MIG Media Neurons Limited*

*xiii. Outdoor Advertising Professionals India Private Limited*

*xiv. The Publicity Society of India Limited*

*xv. Kestone Integrated Marketing Services Private Limited*

*xvi. Netlink Solutions India Limited*

*xvii. Marketing Communications & Advertising Limited*

7. Without prejudice to ground 1, 5 and 6 above, on facts and circumstances of the case and in law, the learned TPO erred in arbitrarily selecting three companies with high margin to benchmark the international transaction of MSS merely on the premise that the companies were forming part of the accept-reject matrix of the Appellant thereby resorting to cherry picking of comparable companies and the learned DRP further erred in upholding/confirming the action of the learned TPPO.

8. Without prejudice to the ground labove, on the facts and in the circumstances of the case and in law, the Learned DRP erred in confirming the action of TPO who has considered the operating revenue of the Appellant at Rs.43,30,84,468 instead of Rs. 44,85,32,931 as credited to profit and loss account and offered to tax during the year under consideration and which includes accrued revenue of Rs. 1,54,48,463 not yet invoiced to Associated Enterprise while in determining Arm's length price of international transaction of provision of MSS.

9. Without prejudice to the ground labove, on the facts and in the circumstances of the case and in the law the Learned DRP/TPO has erred in computing the margin of Appellant without excluding the corresponding accrued cost to the accrued revenue of Rs. 1,54,48,463 while computing operating profit and operating cost in determining Arm's length price of international transaction of provision of MSS.

*10. Without prejudice to ground 1 above, on the facts and circumstances of the case and in the law, the learned TPO/DRP has erred in not appreciating the fact that the benchmarking approach adopted by the Appellant for the provision of MSS in preceding assessment years are consistently followed by Appellant and accepted by department in earlier year.*

*The Appellant craves leave to add, alter, amend, delete, modify or withdraw all or any ground or grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing."*

03. Brief facts noted from the assessment order shows that assessee filed its return of income on 29/11/2018 declaring loss of ₹ 102,714,898. The return was picked up for scrutiny on transfer pricing risk parameter as large international transactions are entered into. The assessee is mainly to support its associated enterprises in carrying out marketing support activities in India. The activities involved providing independent marketing support services. During financial year 2015 – 16 is also established a manufacturing unit to undertake manufacturing of CPC compound grades and selling it mainly to third-party customers. Regarding its marketing activities it caters to the requirement of the group company with regard to provisioning of marketing support services performing certain sales promotion, advertisement, presentation to various business groups,

conducting or participating in seminars, exhibitions tradeshow and marketing research activities for product manufactured by its group companies. During the year assessee provided market support services to its associated enterprises amounting to ₹ 433,084,468 taking the figure of revenue at ₹ 448,532,931 as per audited financial statements. No justification was given about the above difference. The assessee's profit level indicator by adopting operating profit/operating cost was 10.79%. The assessee benchmarked this international transaction by selecting 17 comparables whose margin was from 2.80% to 10.84% and therefore it was stated that 10.79% of the margin falls in the range of the margin of comparable companies and hence this market support services income from associated enterprises is at arm's-length.

04. The learned transfer-pricing officer examines the various details and examined the comparability study raising an issue that why three different comparable companies were excluded despite having similar functions assets and risk. The assessee was also questioned why a set-off comparable companies as transfer pricing study report are included when those are not functionally comparable. Assessee objected to the same as per letter dated 19/7/2021. The same was considered by the learned transfer pricing officer and retained only three comparable companies whose three year weighted unadjusted average operating profit/total cost PLI was determined at 30.73%. Based on this, arm's-length profit level indicator of 30.73% was applied to the operating revenue of ₹

433,084,468 resulting into a transfer pricing upward adjustment of ₹ 96,152,233. Accordingly The Assistant Commissioner Of Income Tax, Transfer Pricing – 3 (1) (1) Mumbai (the TPO) passed an order under section 92CA (3) of the act on 26/7/2021 proposing above transfer pricing adjustment.

05. The assessee preferred objection before The Learned Dispute Resolution Panel who passed the direction under section 144C (5) of the act on 14/6/2022 wherein in substance all the objections of the assessee was dismissed except computation of the margin of the comparable companies. Based on the direction of the learned dispute resolution panel the assessing officer computed the margin of the comparable companies, which came to 37.02 and therefore the transfer pricing adjustment, was revised from ₹ 96,152,233/- to ₹ 121,616,158. Consequently the assessment order was passed under section 143 (3) read with section 144C (3) read with section 144B of the income tax act on 1/8/2022 determining total income of the assessee at Rs 189,01,260/- against the returned loss of ₹ 102,714,898/-.
06. Pressing ground number 1 of the appeal the learned authorized representative submitted that assessment order passed in this case on 1/8/2022 is barred by limitation. He submitted that the draft assessment order was passed on 23/9/2021. The learned dispute resolution issued directions on 14/6/2022. Therefore, the final order

should have been passed within one month from the end of the month in which the directions is received by the learned assessing officer. Therefore, in the present case the order should have been passed on or before 31<sup>st</sup> of July 2022. The order has been passed on 1 August 2022 and digitally signed on 2 August 2022. Therefore, the assessment order passed on 1 August 2022 is barred by limitation. It was also shown that an email dated 14<sup>th</sup> June 22 was received by the assessee at 4.10 p.m. sent by the learned DRP through which it sent the direction digitally signed on 14 June 2022 by one of the members of the DRP. The direction also contains the DIN. Therefore, it is apparent that in ITBA portal it has been uploaded on the same day.

07. The learned departmental representative could not show us any evidence that the learned assessing officer has not received the direction on 14/6/2022 or even in the month of June 2022.
08. According to the provisions of section 144C (13) of the act the learned assessing officer shall upon the receipt of the direction issued under subsection (5) in conformity with such direction complete notwithstanding anything to the contrary contained in section 153 the assessment without providing any further opportunity by of being heard to the assessee within one month from the end of the month in which such directions are received.
09. According to rule 11 of The Income Tax (Dispute Resolution Panel) Rules, 2009 the panel shall after the



directions issued, communicate the same to the eligible assessee and to the assessing officer. The order is communicated to the assessee on 14 June 2022 at 4.10 p.m. digitally signed by one of the members of the learned dispute resolution panel. According to rule 11 of e Dispute Resolution Scheme 2022 dated 5/4/2022 the delivery of such direction would be by placing an authenticated copy of such order in the registered account of the assessee or by sending an authenticated copy to the registered email address of the assessee or any other person. It is not the case of the revenue that the direction is not been received by the learned assessing officer on or before 30 June 2022, if not on 14 June 2022. Therefore, apparently the assessment order passed on 1/8/2022 is barred by limitation and hence quashed. In view of this, ground number 1 of the appeal of the assessee is allowed.

010. As we have already quashed the assessment order passed is barred by limitation, adjudication on other grounds is not required.

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

Order pronounced in the open court on 09.01. 2024.

Sd/-  
(KAVITHA RAJAGOPAL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.01. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to :

1. The Appellant



2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai