

।आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE

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

आयकर अपीलसं. / ITA No.619/PUN/2021
निर्धारण वर्ष / Assessment Year : 2013-14

Renishaw Metrology Systems Limited, S.No.283, Hissa No.2, S.No.284, Hissa No.2 & 3A, Rasoni Estate, Taluk – Mulshi, Dist-Pune. PAN: AABCR6361F	V s	The Dy.Commissioner of Income Tax, Circle- 5, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Ajit Jain & Shri Siddesh Chaugule – AR's
Revenue by	Shri Suhas Kulkarni – Addl. CIT(DR)
Date of hearing	04/01/2024
Date of pronouncement	24/01/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Id.Commissioner of Income Tax(Appeals)-13, Pune dated 21.09.2021. The grounds of appeal raised by the assessee are as under :

"1. Transfer Pricing General Ground

1.1 making an addition to the Appellant's total income based on the provisions of Chapter X of the Act and have further erred in fact and in law in not providing any reasons to show that the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied before making an adjustment to the income of the Appellant.

2. Transfer Pricing adjustment in respect of Software Development Services

2.1 *disregarding the benchmarking analysis and comparable companies selected by the Appellant in the transfer pricing study report maintained as per Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules');*

2.2 *applying inappropriate filters and cherry-picking companies earning high margins to arrive at a fresh set of companies as comparables to the Appellant;*

2.3 *rejecting certain comparable companies which are comparable to the Appellant;*

2.4 *selecting companies as comparable which are in fact not comparable to the Appellant.*

2.5 *not making negative working capital adjustment to PLI of the comparable companies without appreciating the fact that the company does not bear any working capital risks.*

3. Other Transfer Pricing Grounds

3.1 *computing the operating margins by treating foreign exchange gain / loss as non-operating in nature in the case of the Appellant as well as the comparable companies;*

3.2 *not allowing risk adjustment in accordance with the provisions of Rule 10B of the Rules;*

3.3 *rejecting the use of multiple year data i.e. contemporaneous data in the transfer pricing study report maintained as per Section 92D of the Act read with Rule 10D of the Rules used for determining the arm's length price of the international transaction of the Appellant;*

3.4 *violating the principle of "Rule of Consistency" while making the adjustment to the international transaction of provision of software development services and provision of marketing support services.*

3.5 *not allowing the variation/reduction of 3 percent while determining the arm's length price as envisaged under the proviso to Section 92C(2) of the Act.*

4. Corporate Tax Ground

adding the differential amount of Rs.15,95,000 to the taxable income of the Appellant without considering the explanation provided by the Appellant that the said income has already been offered to tax in preceding/subsequent years.

5. Others

On the facts and in the circumstances of the case, the Ld. AO erred in initiating penalty proceedings under Section 271(l)(c) of the Act on the premise that the Appellant has concealed/ furnished inaccurate particulars of income, without appreciating the fact that adjustment made is not in accordance with the law.”

Findings & Analysis :

2. We have heard both the parties and perused the records. The Id.Authorised Representative(Id.AR) for the assessee at the outset explained that he would not like to press Ground No.1, 2 & 3. The Id.AR explained that he is pressing for only Ground of appeal i.e. Ground No.4 related to addition of Rs.15,95,000/-. Therefore, Ground No.1, 2 & 3 are dismissed as not pressed.

Ground No.4 (addition of Rs.15,95,000/-) :

3. The relevant part of the assessment order is reproduced here as under:

“8. During the course of assessment proceedings, the A.R. of the assessee was provided copy of ITS data and requested her to furnish reconciliation along with relevant evidences. In response, the assessee has filed reconciliation of ITS data which shows differences in respect of the following parties:

S.N	Name of the Party	Income as per ITS	Income as per books	Difference
1.	Council of Scientific & Industrial Research	58,823	0	58,823
2.	Defence Research and Development Establishment	2,65,000	1,49,940	1,16,060
3.	Interest u/s 194A HSBC Bank- 88,30,674 Axis Bank- 93,12,963 ICICI Bank- 79,08,166 JSBL - 1,46,355 MSDCL- 1,59,385	2,63,57,543	2,49,37,426	14,20,117
	Total	2,66,82,366	2,50,87,366	15,95,000

9. In this regard, the A.R of the assessee was asked to explain the difference in receipts as per ITS data and receipts as per books of account and also requested to file further reconciliation with evidences. In this regard, the AR clarified that further reconciliation is not possible, the company is not in position to provide the same. Further, it is pointed out that the assessee had mentioned reasons in all above differences as "Income offered to tax in previous/subsequent year" in the reconciliation chart submitted. However, no evidence or ledger copy of previous/subsequent year is provided in support of such claim. In response, the AR further clarified that the company is unable to provide evidence in support of reason for difference mentioned in the reconciliation chart, therefore, the difference in income as per ITS and books of account is reported. The attention of the AR was also invited towards interest income earned from different banks, however, no party wise details were furnished but compared with total interest income. In response, the AR of the assessee clarified that party wise interest income could not be provided because the company kept record of interest income in separate account. Therefore, the interest income offered for tax and interest income as per 26AS was compared and difference is reported in ITS reconciliation chart.

10. In view of above, the assessee failed to reconcile the differences as discussed in above chart and also failed to provide supporting evidences. Accordingly, the difference between receipts as per ITS and receipts as per books of accounts in the case of above parties is treated unaccounted income of the assessee and the

differential amount of Rs. 15,95,000/- is added to the total income of the assessee. Since the assessee has. concealed particulars of income, the penalty u/s 271(l)(c) r.w. explanation 1 thereto is initiated.”

4. Aggrieved by addition of Rs.15,95,000/-, assessee had filed appeal before the ld.CIT(A), Pune. However, ld.CIT(A) in his order dated 21.09.2021 upheld the addition as no evidence was filed by the assessee.

5. We have specifically asked ld.AR to demonstrate how the impugned income was shown as claimed, in subsequent year. However, ld.AR could not demonstrate before us by documentary evidence that the impugned income was offered for taxation in subsequent year. No documentary evidence has been filed before us. Even otherwise, the income is taxed on accrual basis in the case of company. In this case, as per ITS Data the income has accrued in A.Y.2013-14 but the assessee has not offered the impugned income for taxation. We have already explained that no evidence has been filed before us to demonstrate that the impugned addition made by the Assessing Officer is unsustainable. Therefore, we uphold the addition of Rs.15,95,000/- made by the AO, accordingly, Ground No.4 of the assessee is dismissed.

6. Ground No.5 is consequential in nature, hence dismissed.
7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 24th January, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 24th January, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.