

**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.1943/Del/2022
Assessment Year: 2018-19

Golden Agri Resources (India) Pvt. Ltd. 208-A E-10=12 Triveni Complex, Laxmi Nagar, Delhi-1100092 PAN No.AARCS0961K	Vs.	ACIT (OSD) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Nishant Saini, AR Sh. Vinamra Vij, AR
Respondent by	Sh. Rajesh Kumar, CIT DR

Date of hearing:	18/03/2024
Date of Pronouncement:	21/03/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 25.07.2022 framed u/s.143 (3) r.w.s. 144C(13) of the Act.

2. The grievance of the assessee read as under :

“1. That on the facts and circumstances of the case and in law, the Ld. AO under Section 143(3) read with section 144C(13) and 144B of the Act is bad in law and liable to be quashed to the extent it confirms the additions/disallowances made in the assessment order.

2. That on the facts and circumstances of the case and in law, the Ld. AO/ Learned Transfer Pricing Officer ("Ld. TPO") have erred in confirming the action to assess the income of the Appellant at INR 58,33,20,850 as against INR 9,67,29,650 declared by the Appellant in its Return of Income ("ROI") for AY 2018-19.

3. That on the facts and circumstances of the case and in law, the Ld. AO/Ld. TPO have erred in enhancing the income of the Appellant by INR 48,63,44,380/- pertaining to the purchase of traded goods that allegedly do not satisfy the arm's length principle envisaged under the Act and in doing so, have grossly erred in:

3.1. erroneously rejecting the economic analysis undertaken by the Appellant in the Transfer Pricing ("TP") documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ("the Rules");

3.2. rejecting the core functional analysis of the Appellant as a trader of edible oil commodities which warrants/corroborates the use of quotations from brokerage firms/ associations/exchanges for close comparability;

3.3. erroneously rejecting Other Method for benchmarking the Appellant's international transaction pertaining to purchase of traded goods in absence of sufficient 'The Solvent Extractors' Association of India ("SEA") data';

3.4. not considering the tolerance range of 1% applicable in this case, as provided under the Act and the Rules;

3.5. selecting TNMM as the most appropriate method for the Appellant's international transaction pertaining to purchase of traded goods and, thereby rejecting/contradicting own methodology for suggesting an adjustment of INR 97,36,699 (representing merely 0.13% of the total value of international transaction pertaining to purchase of traded goods) using the Other Method;

4. That on the facts and circumstances of the case and in law, the Ld. AO/Ld. TPO have erred in selecting TNMM as the most appropriate method for benchmarking the Appellant's international transactions pertaining to

purchase of traded goods, and in doing so, have grossly erred in:

4.1. conducting a fresh comparability analysis based on the application of additional/ modified filters in determining the arm's length price of purchase of traded goods and rejecting the filters applied by the Appellant in the corroborative analysis used in the TP documentation;

4.2. rejecting the comparables selected by the Appellant engaged in trading activities and selecting the companies which are engaged in manufacturing activities, thereby disregarding the fact that the Appellant is a trader and not a manufacturer;

4.3. applying inappropriate filters like export earning filter, service income filter and employee cost filter in the fresh comparability analysis without appreciating that the Appellant is a trader which does not sell traded goods to its associated enterprises and doesn't have any export earnings or any service income;

4.4. selecting inappropriate profit level indicator ("PLI") to determine the impugned adjustment in Ld. TPO's order, thereby incorrectly computing the proposed adjustment as

*a measure of operating cost against operating revenue;
and*

*4.5. disregarding judicial pronouncements in India while
undertaking the TP adjustment.*

Other Grounds

*5. That on the facts and circumstances of the case and in
law, the Ld. AO has erred in charging interest under
Sections 234B, 234C and 234D of the Act.*

*6. That on the facts and circumstances of the case and in
law, the Ld. AO erred in initiating penalty proceedings
under Section 270A of the Act mechanically on the
additions made.*

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

5. The assessee is a Private Limited Company incorporated as a private limited company in India on February 10, 2012 under the Companies Act, 1956 and is a subsidiary of Golden Agri

International Pte Ltd. through its wholly owned subsidiary i.e. Golden Agri International Holding Pte Ltd.

5. The assessee is engaged in the trading of vegetable oils, specifically palm oil and derives 100% of its income from trading in goods.

6. The summary of economic analysis of international transactions during the year can be understood from the following chart :-

Name of Transaction	Name of AE	Amount (INR)	Method
Purchase of traded goods	Golden Agri International Pte Ltd.	729,42,85,461	Other Method Corroborative Approach: Transactional Net Margin Method ("TNMM")
Service fee		1,71,75,076	TNMM
Remittances for OTC transactions		3,51,89,100	Other Method Corroborative Approach : TNMM
Trade Receivables		2,24,66,448	Other Method
Trade payables		102,29,65,945	Other Method
IT related services	Integrated Advance IT Services Sdn Bhd	2,18,24,913	TNMM
Payables		1,25,81,158	Other Method

7. The assessee in its TPSR has mentioned that it is engaged in trading of the finished goods. It purchases goods from its AE primarily based on the quotes from third party brokers such as

Murji Meghan Services Private Limited, Sunvin Group, Malaysian Palm Oil Board (MPOB) and Solvent Extractors Association (SEA).

8. Based on the quotation from various brokerage houses / associations/exchanges, the average purchase price paid by assessee for purchase of traded goods was USD 744.99 per metric ton as compared the average third party market quotations of 744.84 per metric ton obtained from brokerage houses/associations/exchanges.

9. During the course of the transfer pricing assessment proceedings the TPO was of the opinion that the “other method” used by the assessee for carrying out the arms length analysis for the international transaction for purchase of traded goods is not correct approach for determining the ALP of the impugned international transaction. Rejecting the method adopted by the assessee the TPO proceeded by applying TNMM as the most appropriate method for bench marking assessee’s international transactions by doing fresh search for comparables. The TPO used following comparables :-

1. *Gokul Agro Resources Ltd.*
2. *Kaleesuwari Refinery Pvt. Ltd.*
3. *3 F Industries Ltd.*
4. *Bansal Oil Mill Ltd.*
5. *KPL Oil Mills Pvt. Ltd.*

6. *RSH Agro Products Ltd.*

7. *Mahesh Edible Oil*

8. *Agro Tech Foods Ltd.*

10. At the very outset we are of the considered view that the comparables used by the TPO are not at all comparable on functional dissimilarity.

11. The assessee is engaged in trading of edible oils whereas all the comparables mentioned here in above are in manufacturing of edible/ non edible oils.

12. Rule 10D(3) reads as under :-

(3) The information specified in [sub-rules)(1) and (2A)] shall be supported by authentic documents, which may include the following :

(a) official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprises, or of any other country ;

(b) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

(c) price publications including stock exchange and commodity market quotations;

(d) published accounts and financial statements relating to the business affairs of the associated enterprises;

(e) agreements and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions [or the specified domestic transactions, as the case may be];

(f) letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;

(g) documents normally issued in connection with various transactions under the accounting practices followed.

(4) The information and documents specified under [sub – rules (1) (2) and (2A)] should, as far as possible, be contemporaneous and should exist latest by the specified date referred to in clause (iv) of section 92F:

13. Since the market quotes were available on corresponding dates and when corresponding dates data was not available on the date of contract entered between the assessee and its AE, therefore, in our considered view the “other method” has been rightly applied by the assessee.

14. We have given a thoughtful consideration to the orders of the TPO we are of the considered view that the TPO has failed to analyze the TP documentation prepared by the assessee. We find that the assessee has appropriately compared the prices of third party

brokerage houses / associations/ exchanges where ever available during the time of preparation of the TP documentation.

15. We find that the assessee has considered all the market quotations available while maintaining the transfer pricing report and considering the contemporaneous nature of documentation process as provided under the relevant provision of the Act.

16. In our considered opinion if any third party rate is not considered for a particular date of contract due to non availability of the data would not give right to the TPO to reject the method adopted by the assessee. We find that the assessee has considered the rates based on the average of available third party market quotations of Murgi Meghan, Sunvin Group, Malaysian Palm Oil and Solvent Extractors and not specifically to any single broker rate.

17. In our understanding of the law, the objective of applying of any transfer pricing method is to determine the arm's length price for a given transaction and not to justify any transfer price at which the transaction may have been under taken.

18. We are of the considered view that if there is a difference between arm's length price determined by a particular method and the transfer price adopted by the assessee, it may warrant the transfer pricing adjustment, in case such variation is not within the permissible tolerance range specified in the Act. However, such

variations cannot be the basis of questioning appropriateness of the method.

19. A perusal of the order of the TPO show that he has mentioned a difference of Rs.97,36,699/- and rejected the applicability of “other method”. In our humble opinion this difference is miniscule when considered with the total value of international transaction of Rs.729 crores.

20. Considering the facts of the case in totality we do not find any merit in the impugned adjustment we, therefore, direct the AO/ TPO to delete the addition of Rs.486344380/-.

21. Ground No.3 with all its sub grounds is allowed.

22. Before closing the DR has referred to following judicial decisions in support of his submission :-

1. *Dentsply India (P) Ltd. 289 taxman 530 (Delhi)*
2. *Fidelity Business Services India (P) Ltd. 257 Taxman 266*
3. *Matrix Cellular International Services (P) Ltd. 90 taxmann.com 54*
4. *Kapurchand Shrimal 131 ITR 451 (SC)*
5. *CLSA India (P) Ltd. 119 taxmna.com 327 Mumbai Tribunal*
6. *Louis Dreyfus Company India (P) Ltd. 150 taxmann.com 392*
7. *Fuji India Pvt. Ltd. 296 taxmann 197 Delhi*

23. We have given a thoughtful consideration to the decisions relied upon by the DR. We are of the considered view that the documentation of arm's length price by the assessee by adopting quotations from various brokerage houses/ associations/ exchanges cannot be faulted with and, therefore, all the decisions relied upon by the DR are distinguishable on facts.

24. We, therefore, direct the AO/ TPO to delete the addition of Rs.486344380/-.

25. Ground No.4 becomes otiose.

26. Levy of interest is mandatory, therefore, the AO is directed to charge interest as per the relevant provisions of the law.

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

Order pronounced in the open court on 21.03.2024.

Sd/-

(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:- .03.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI