

आयकर अपीलिय अधिकरण  
मुंबई पीठ "के", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " K ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आसं. 7344/मुं/2018 (नि.व. 2014-15)  
ITA NO.7344/MUM/2018(A.Y.2014-15)

LANXESS India Private Limited,  
LANXESS House, Plot No.A/162-164,  
Road No.27, Wagle Estate, Opp.ITI College,  
MIDC, Thane (West) – 400 604  
PAN: AACCB-3880-A

..... अपीलार्थी / Appellant

बनाम Vs.

Dy.Commissioner of Income Tax, Circle -1, Thane,  
Room No.22, 6<sup>th</sup> Floor, B Wing,  
Ashar IT Park, Ambika Nagar,  
Road No.16-Z, Wagle Estate,  
Thane (West)- 400 064

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dhanesh Bafna with  
Ms.Hirali Desai & Ms.Riddhi Maru  
प्रतिवादी द्वारा/ Respondent by : Ms. A. Alankrutha, Sr.A.R  
सुनवाई की तिथि/ Date of hearing : 06/12/2023  
घोषणा की तिथि/ Date of pronouncement : 01/03/2024

आदेश / ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 31/10/2018 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act'], for the Assessment Year 2014-15.

2. The assessee in appeal has raised following grounds assailing the assessment order:

*“ 1. On the facts and circumstances of the case and in law, the learned Deputy Commissioner of Income Tax, Circle-1, Thane ('the AO') / The Additional Commissioner of Income Tax, Transfer Pricing - 3(1), Mumbai ('the TPO') erred in making an adjustment to the arm's length price of the international transaction of export of finished goods (Manufacturing segment) by applying Comparable Uncontrolled Price ('CUP') Method instead of Transactional Net Margin Method ('TNMM') and thereby erred in computing transfer pricing adjustment of Rs. 2,38,66,092/-.*

*It is prayed that the learned AO/TPO be directed to consider the international transaction of the Assessee as arm's length and accordingly the transfer pricing adjustment of Rs. 2,38,66,092/- be deleted. .*

*2. On the facts and circumstances of the case and in law, the learned AO / Deputy Commissioner of Income Tax, Transfer Pricing - 3(1)(1), Mumbai ('the DCIT') erred in not giving appropriate effect to the directions of the Hon'ble DRP which state that the adjustment has to be calculated in respect of each concerned transaction and the +/-3% variation has to be considered only from the total and not individually. It is prayed that appropriate effect be given based on the directions of the Hon'ble DRP.*

*3. On the facts and circumstances of the case and in law, the learned AO / TPO erred in disregarding the assessee's transfer pricing analysis of aggregating the allocated IT support service costs to various business segments, thereby disregarding the application of TNMM and making an adjustment of Rs.1,01,09,073/- to the arm's length price of the international transaction of availing of IT Support Services [Regional AP cost] by using Other Method.*

*It is prayed that the learned AO/TPO be directed to consider the international transaction of the Assessee as arm's length and accordingly the transfer pricing adjustment of Rs. 1,01,09,073/- be deleted.*

*4. On the facts and circumstances of the case and in law, the learned AO erred in determining the taxable income as NIL as per the normal provisions of the Act instead of Book Profits under section 115JB of the Act amounting to Rs. 2,80,21,250/-.*

*The appellant prays that the taxable income of 2,80,21,250/- as per Book Profits under section 115JB be considered.*

*5. On the facts and circumstances of the case and in law, the learned AO erred in determining NIL refund as per notice of demand under section 156 of the Act and thereby erred in not issuing refund of Rs.8,86,885/- along with interest under section 244A due as per the return of income filed on 29.11.2014.*

*The appellant prays that the AO be directed to issue ITNS 150 and issue refund of Rs.8,86,885/- along with interest under section 244A.”*

3. The brief facts of the case as emanating from records are: The assessee is a company engaged in the business of manufacture and trading of chemical and chemical intermediates. The assessee is a subsidiary of Lanxess Deutschland GmbH. During the period relevant to Assessment Year under appeal, the assessee entered into following international transactions with its Associated Enterprises(AEs):

- (i) Sale (export) of manufactured finished goods - Rs.376,90,83,404/-  
(ii) Royalty expenses - Rs. 1,34,68,967/-  
(iii) Intra group services (IT support services) - Rs. 7,88,84,983/-

For manufacture and export of chemicals the assessee has three manufacturing sites i.e. Nagda, Chennai and Jhagadia. The assessee has another plant in Jhagadia, Gujarat i.e. Jhagadia Plant (ION Exchange). The assessee adopted internal TNMM as the most appropriate method to benchmark its transactions for all plants excluding ION Plant. The margin of export to AEs and non-AEs from its various plants is as under:-

S.No.	Particulars	Margin of Export to AEs(OP/Sales)	Margin of Export to third Parties (OP/Sales)
1.	Nagda Plant	6.14%	8.30%
2.	Chennai Plant	27.95%	2.45%
3.	Jhagadia Plant (excl.ION exchange)	0.64%	(15.57%)

In respect of ION Plant the assessee adopted external TNMM as most appropriate method. The segmental margin i.e. OP/OC of ION Plant is as under:

S.No.	Particulars	Margin of Export to AEs(OP/TC)	Margin of Export to third Parties (OP/TCs) (Weighted Average of 3 Years)
1.	Jhagadia Plant (ION exchange)	8.26%	6.49%

The TPO after analyzing the transactions under manufacturing segment reject assessee's method i.e. TNMM and applied CUP to benchmark the export transactions of the assessee with AEs and made adjustment of Rs.2,38,66,092/-.

3.1 In respect of international transaction under intra group services i.e. IT Services, the assessee bench marked its transactions applying TNMM as the most appropriate method. The TPO rejected the same and applied "Other Method" i.e. Need- Evidence – Benefit Test". The TPO after examining IT Services Agreement and the submissions of the assessee came to the conclusion that the assessee has not been able to establish the functions performed, assets deployed and the risk assumed by the AE in providing the services. He held that the assessee has not provided quantification of services in terms of actual expenditure incurred by AE and commensurate benefit therefrom to the assessee and thus, held cost of intra group services as Nil.

3.2 Aggrieved by the Transfer Pricing adjustment, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide directions dated 21/09/2018 rejected objections in respect of manufacturing segment in toto. In so far as intra group services, the DRP concluded that the action of the TPO is not proper in respect of all IT Services except the Regional(AP) Cost. The DRP observed that the assessee has failed to furnish requisite details of Regional (AP) Cost, therefore, in respect of the said cost the arm's length price can be taken as Nil and directed the TPO to retain adjustment in respect of Regional (AP) Cost. The Assessing Officer in accordance with the directions of

DRP passed the impugned order making following additions on account of TP adjustments:

Sr.No.	Issues	Amount in Rs.
1.	Manufacturing segment (CUP)	2,38,66,092/-
2.	Intra group services received	1,01,09,073/-
	Total	3,39,75,165/-

4. Shri Dhanesh Bafna appearing on behalf of the assessee submitted that the TPO has made adjustment in relation to export of goods (manufacturing segment) by applying CUP instead of TNMM adopted by the assessee for benchmarking the transactions. He submitted that the manner and the reasons given by the TPO for making the adjustment under manufacturing segments are identical to Assessment Year 2010-11. The assessee carried the issue in appeal before the Tribunal in ITA NO.971/Mum/2015. The Tribunal vide order dated 06/12/2022 held that TNMM is the most appropriate method for benchmarking transaction of export of finished goods. The Id.Authorized Representative of the assessee further submitted that similar adjustment was made in respect of manufacturing segment in Assessment Year 2013-14. The assessee carried the issue in appeal before the Tribunal in ITA No.7220/Mum/2017. The Tribunal following earlier order for Assessment Year 2010-11 held that CUP is not the most appropriate method for benchmarking the transaction for export of goods under manufacturing segment and upheld the assessee's method of benchmarking i.e. TNMM as the most appropriate method. The Id.Authorized Representative of the assessee placed on record copy of the Tribunal order in ITA No.971/Mum/2015 and ITA No.7220/Mum/2017.

5. In respect of ground No.2 the Id.Authorized Representative of the assessee submitted that this ground is raised without prejudice to ground No.1. The DRP has directed the TPO/Assessing Officer to rework the entire adjustment by considering range benefit of +/- 3% on totality basis instead of each transaction. If, the valuation of +/-3% is considered on totality basis, the transaction would fall within arm's length and no further adjustment shall be required. The TPO/A.O have not given effect to the aforesaid directions of the DRP. The Id.Authorized Representative of the assessee submits that if, ground No.1 in assessee's appeal is allowed, the plea raised in ground No.2 would become academic.

6. In respect of ground No.3 relating to TP adjustment qua IT Services (Regional AP Cost) using 'Other Method', the Id.Authorized Representative of the assessee submitted that the assessee had availed IT support services from its AEs in accordance with IT Service Agreement. He referred to the said agreement at page 285 to 307 of the paper book. Explaining the nature of services, he pointed that IT Services include licenses such as SAP and Axapta for ERP, Lotus Notes for e-mail, net connectivity AP, Wireless Access for connectivity and other services such as share point i-net, note book security, etc. The assessee had also incurred certain Regional (AP) Cost for management and support services provided by the AEs. Explaining the Regional (AP) Cost, he pointed that these are cost incurred by Singapore group entity for South Asia region. He referred to sample invoice at page 367 of the paper book to show Regional (AP) Cost. The TPO without appreciating the facts and documents on record applied the 'Other Method' namely Need-Evidence-Benefit Test and computed the ALP of the Intra Group Services segment as nil. The DRP after examining the evidences furnished by the

assessee and came to the conclusion that licenses/services are essential for the conduct of assessee's business and that the assessee had also submitted quantification of cost, evidences for usage of such services, third party invoice, etc. The DRP directed the TPO to allow payment of IT support services to the extent of Rs.6,87,75,910/- out of the total payment of Rs.7,88,84,983/-. The DRP sustained the addition on the ground that the assessee has not furnished requisite details/evidences in respect of Regional(AP) Cost. The Id. Authorized Representative of the assessee submitted that Regional (AP) Cost is only extension of the other IT costs made by the assessee. He submitted that IT environment of any company requires management of various licenses, users and infrastructure. The Regional (AP) Cost is an integral part of the IT support cost incurred by the assessee and is necessarily required to support and managing cost allowed by the DRP. The Id. Authorized Representative of the assessee referring to clause (iii) (i.e. organization of IT Service) of the IT Services Agreement submitted that the IT Services are provided by the holding company either on its own or through affiliates or third party consultants. To substantiate that the regional services were indeed provided to the assessee, he referred to the e-mails at pages 381 and 382 of the paper book and the invoices for providing such services at page 367 of the paper book. In so far as the observation of the DRP that requisite details/evidences in respect of Regional (AP) Cost were not provided by the assessee, the Id. Authorized Representative of the assessee submitted that the assessee vide application dated 24/04/2018 furnished additional evidences before the DRP. The said additional evidences were in the nature of IT Service Agreement, invoices raised by Lanxess Germany on the assessee, documentary evidences to show IT support services availed by the assessee from AEs and the cost of

each services along with proof and description of the services, etc. He contended that Regional (AP) Cost were paid by the assessee since 2007 and the same were billed in the invoices. The TPO never questioned these services in the past. This is the first Assessment Year when the TPO questioned the need and benefit of the said services. He referred to page 437 of the paper book, wherein the description of the services, need/benefit, etc. are given in respect of Regional(AP) Cost.

7. In respect of ground No.4 the Id.Authorized Representative of the assessee submits that the Assessing Officer has erred in determining the taxable income as 'nil' under normal provisions of the Act instead of Book Profits u/s. 115JB of the Act. He prayed for direction to the Assessing Officer to compute total taxable income by considering Book Profits u/s. 115JB of the Act.

8. In respect of ground No.5 of appeal, the Id.Authorized Representative of the assessee submits that the Assessing Officer has erred in not granting refund of Rs.8,86,885/- consequently, no interest u/s. 244A of the Act was allowed to the assessee.

9. Per contra, Ms. A. Alankrutha representing the Department vehemently defending the order of TPO and the assessment order submits that the assessee is exporting manufactured goods to AE and non-AEs. In the Assessment Year under appeal, there is no major difference in quantity of exports to AEs and non-AEs. In the preceding Assessment Years the Tribunal has granted relief by placing reliance on the decision in the case of Amphenol Interconnect India Pvt. Ltd. vs. ACIT, 105 taxmann.com 382(Pune-Trib). In the said case majority of exports were to AEs and only miniscule part of exports was to non-AEs, hence, the decision rendered in preceding Assessment Year

would not apply to the facts of the impugned Assessment Year, therefore, the decision in the case of Amphenol Interconnect India Pvt. Ltd.(supra) is distinguishable on facts. He further submitted that geographical differences have already been factored by the TPO while applying CUP. The Id. Departmental Representative thus, prayed for sustaining the findings of the TPO in respect of manufacturing segment.

9.1 In respect of ground No.3 the Id. Departmental Representative submits that the Regional (AP) Cost are not third party cost. No proof of services was furnished by the assessee either before the TPO or before the DRP. Hence, the DRP has rightly sustained the TP addition in respect of Regional (AP) Cost. She further submitted that assessee has not furnished any cost benefit analysis or the request for rendering such services, hence, the DRP has rightly determined the arm's length price of such cost as Nil. To support her contentions, she placed reliance on the decision in the case of Lintas India (P) Ltd. vs. ACIT, 148 taxmann.com 482(Mum-Trib).

10. Rebutting the submissions, the Id.Authorized Representative of the assessee submitted that in respect of manufacturing segment, geographical differences have not been considered by the TPO at all. The TPO has put Europe and US market in the same category. He further pointed that as against total turnover of Rs.376 crores, the TPO applied CUP on the turnover of Rs.18 crores only. He further submitted that a bare reading of the rules would show that geographical differences cannot be ironed out. With regard to submissions made in respect of ground No.3 by the Id. Departmental Representative, the Id.Authorized Representative of the assessee submitted that the TPO and DRP has questioned rendering of services. The assessee had

furnished documentary evidences to prove that services were indeed rendered by the AE. To substantiate rendering of services, the Id.Authorized Representative of the assessee referred to page 437 of the paper book.

11. We have heard the submissions made by rival sides and have examined the orders of authorities below. In ground No.1 of appeal, the assessee has assailed TP adjustment in relation to export of goods i.e. TP adjustment on manufacturing segment. The assessee is manufacturing chemical and chemical intermediates and exporting it to its AEs and non-AEs across the globe. The assessee adopted TNMM as the most appropriate method to benchmark its transaction of export of finished goods from its various plants located in India. The TPO applied CUP to benchmark the transaction. We find that similar adjustment was made under manufacturing segment in Assessment Year 2010-11 and 2013-14. The issue travelled to the Tribunal in appeal by the assessee i.e. ITA No.971/Mum/2015(supra). The Co-ordinate Bench after placing reliance decisions in the case of Firmenich Aromatics Production (India) Pvt. Ltd. vs. ITO in ITA No.7145/Mum/2017 for Assessment Year 2013-14 decided on 13/11/2018 and Amphenol Interconnect India Pvt. Ltd. vs. ACIT (supra) came to the conclusion that since the TPO has accepted application of internal TNMM on 65% transactions of exports and has applied CUP on the transaction to the extent of 35% only the Tribunal directed the Assessing Officer to apply TNMM to benchmark the balance transaction of 35%. Similar view was taken by the Tribunal in appeal by the assessee in ITA No.7220/Mum/2017 for Assessment Year 2013-14 (supra). In the impugned assessment year the Id.Authorized Representative of the assessee pointed that the TPO has accepted TNMM as the most appropriate method for

benchmarking substantial turnover of Rs.376 crores and has applied CUP small part of the turnover i.e. Rs.18.00 cores only. This fact has not been rebutted by the Department. Thus, in facts of the case, we see no reason to take a divergent view. Respectfully following the decision of Co-ordinate Bench in assessee's own case in preceding Assessment Years, we direct the Assessing Officer to apply TNMM as most appropriate method to benchmark entire transaction under manufacturing segment. Ergo, the assessee succeeds on ground No.1 of appeal.

12. In ground No.2 the assessee has made a prayer to direct the TPO/Assessing Officer to give effect to the direction of DRP in granting benefit of +/- 3% on the entire transaction under manufacturing segment. Since, we have allowed ground No.1 of appeal, the relief sought in ground No.2 has become academic.

13. In ground No.3 of appeal, the assessee has assailed TP adjustment on account of IT support services (Regional AP Cost). Initially, TPO had determined intra group services relating to IT Services as Nil. In proceedings before the DRP, the assessee referred to agreement and furnished various documentary evidences to substantiate rendering of intra group services by the AEs. The DRP after examining the documents on record came to the conclusion that the assessee has been able to show that the IT Services were indeed rendered and were required by the assessee. However, the DRP sustained TP adjustment in respect of Regional (AP) Cost on the ground that the assessee was not able to furnish requisite details/evidences in respect of such cost. Hence, the DRP determined the ALP of such transaction as Nil. During the course of submissions, the Id.Authorized Representative of the

assessee has referred to page 437 of the paper book, wherein description of the services under the head "Regional Cost Asia" is tabulated. The brief description of the services under Regional Cost Asia is as under:

*"To support the Regional IT CIO-s and co-ordinate activities in the following areas – WAN connectivity, Regional Hosting, Global and IT Security areas and Regional Infrastructure initiatives. APAC- shared infrastructure cost like the APAC internet service fee, the APAC firewall management fee and AP domain hosting and management fee."*

The assessee referred to e-mail trail at page 381 of the paper book to show proportionate allocation of Regional (AP) Cost to India. A perusal of e-mail shows that Regional Cost Asia has been billed to various Asian countries viz. China, India, Korea and Singapore. A further perusal of IT Service Agreement at page 285 of the paper book shows that Lanxess Germany is under obligation to perform all or any part of the IT services either on its own or through its affiliates, third party or consultants. The regional costs are in relation to the services rendered by one of the assessee's affiliates based in Singapore. This fact is evident from e-mail trails at page 381 to 383 of the paper book. Thus, it is emanating from the records that some sort of services were rendered by the AE based in Singapore. However, the exact nature of services and the proof of rendering of such services is not emanating from the documents available on record

14. The Id. Departmental Representative has placed reliance on the decision in the case of Co-ordinate Bench in the case of Lintas India (P) Ltd. (supra). The Tribunal in the said case observed that the assessee is required to maintain basic documents such as Service Agreement between the parties to demonstrate the right and obligation of the parties, nature of services, nature of reporting, the manner of billing along with documentary evidence. It is

obligatory on the part of assessee to maintain full proof documents of every business activity. If the documents is not available of a particular business activity, the determination of ALP at Nil is proper. There is no denying the fact that in order to substantiate rendering of services relevant documentary evidences are necessary. Without there being any documentary proof of rendering of services by the AEs it would not be possible to determine the nature of services and proof of rendering of such services. The provisions of section 92CA of the Act cast an obligation on the TPO to determine the ALP of the international transaction. Here it would be imperative to record that the TPO cannot sit in the armchair of the assessee to decide whether the services are required or not. The role of the TPO under section 92CA is limited to the computation of ALP of the international transaction. For determination of ALP of the transaction, the assessee has to provide complete details of the nature of services and to discharge onus of proving rendering of services by A.E. Taking into consideration entire facts of the case, we deem it appropriate to restore this issue back to the file of Assessing Officer. The assessee is directed to furnish relevant documentary details substantiating services rendered to the assessee in lieu of payment of Regional (AP) Cost to the AE. The Assessing Officer/TPO after examining the same shall decide the issue, in accordance with law. In the result, ground No.3 of appeal is allowed for statistical purpose.

15. In ground No.4 of appeal, the assessee has prayed that the TPO has failed to determine book profits u/s. 115JB of the Act. The assessee has furnished computation of tax payable u/s. 115JB of the Act at page 33 of the paper book. We deem it appropriate to restore this issue to the file of Assessing Officer. The Assessing Officer shall examine the computation of tax

payable u/s. 115JB of the Act furnished by the assessee and shall determine the Book Profits under the MAT provisions, in accordance with law. The ground No.4 of appeal is thus, allowed for statistical purpose.

16. In ground No.5 of appeal the assessee has assailed non-grant of interest u/s.244A of the Act. The contention of the assessee is that Assessing Officer has not granted interest u/s. 244A of the Act on refund of Rs.8,86,885/-. The Assessing Officer is directed to examine the aforesaid claim of assessee and allow interest u/s. 244A of the Act on the refund, if any, in accordance with law. Ground No.5 of appeal is thus, allowed for statistical purpose.

17. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 01st day of March , 2024.

Sd/-

(S.RIFAUH RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/03/2024

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,  
Mumbai