

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एबी टी वकी, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI JAGADISH, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 1241/Chny/2017

निर्धारण वर्ष / Assessment Year: 2010-11

M/s. Poclain Hydraulics Private
Limited,
No. 131/2, Kothapurinatham
Road,
Mannadipet Commune
Panchayat, Thiruvandarkoil,
Puducherry – 605 102.

[PAN: AAACP-0947-Q]

DCIT,
v. Corporate Circle -5(2),
Nungambakkam,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. S.P. Chidambaram, Advocate
: Shri. Suresh Guduri, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.04.2024

घोषणा की तारीख/Date of Pronouncement

: 10.05.2024

आदेश / O R D E R

PER JAGADISH, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-3, Chennai, confirming the assessment order passed by the DCIT, Circle -5(2), Chennai-34.

2. The assessee is wholly owned subsidiary of Poclain Hydraulics S.A, France. The assessee was incorporated on 1st December 2006 and was initially engaged in the business of trading of hydrolics motor parts. Assessee commenced its manufacturing activity in relation to Hydrolics Motors in July 2008. During the relevant Financial year, the assessee has made sales of Rs.18,59,55,638/- to its AE , which is the first full year after the commencement of manufacturing activity. The Assessee in its TP documentation adopted TNMM for substantiating the international transaction at arms's length. The TPO while accepting TNMM as MAM has not accepted the PLI (OP/OC) of 8.7% arrived by assessee after capacity utilization adjustment and recomputed the PLI at 9.26% without considering the capacity utilization adjustment and excluding certain comparable companies considered by assessee and including certain new comparable companies, making TP Adjustment of Rs.3,90,15,046/- on the above transactions. The Id. CIT(A) has confirmed the addition. The assessee is mainly aggrieved by not considering the capacity utilization adjustment and has filed an appeal before the Tribunal, inter alia, other grounds regarding comparables/working capital adjustment. However, the

assessee has argued only on non-consideration of capacity utilization adjustment, which will be examined (infra).

3. The Id. AR has submitted that the assessee in its transfer pricing documents has arrived at the PLI (OP/OC) at 8.7%, after adjusting the capacity utilization. However, the TPO has rejected the capacity utilization adjustment and taken PLI at (-) 6.55%. The TPO has made adjustment by taking comparable companies PLI @ 9.26%. The Id. AR, has submitted that the TPO while computing the capacity utilization had included the quantitative details of the Hydraulic Motor parts which is not part of manufacturing activity. The quantitative information in respect of annual capacity as submitted by the appellant was as under:

Production, Sales and finished goods stocks:

Class of Goods manufactured	Hydraulics Motors and Hydraulics Motor Parts
Installed Capacity p.a. on single-shift basis (units)	
Hydraulics Motor	30,000 Nos. P.a
Hydraulics Motor Parts	3,50,000 Nos. p.a
Actual Production (Units)	
Hydraulics Motor	1,170 No's
Hydraulics Motor Parts	2,81,727 No's

4. The assessee has claimed capacity adjustment for the actual capacity utilized i.e., 1170 units as against the installed

capacity of 30,000 Hydraulic Motors, that is the utilization rate of capacity is only 4% during the year. The TPO has computed the capacity utilization of 75% including the Hydraulic Motors parts as under:

Installed capacity H.M = 30000 nos H.M P= 350000 nos 380000 nos	Actual production H.M = 1170 nos H.M P = 281727 nos 282897 nos
Capacity Utilization = $\frac{282897}{38000} = 75\%$	

5. The Id. AR, has submitted that he has provided additional evidences in the form of letters filed with MEPZ/Central Excess office proving that the assessee has not undertaken any manufacturing activity or motor parts before the Id. CIT(A). The Id. AR, has also submitted follow up letter filed by the appellant to MEPZ, wherein it has been confirmed that Hydraulic Motor parts does not form part of manufacturing function. However, the Id. CIT(A) has not considered the above documents and not adjudicated on the claim of capacity adjustment. The Id. AR, has relied upon the decision of Hon'ble ITAT, Chennai in the case of Triumph International (India) Pvt Ltd vs ACIT in ITA No. 987/Chny/2015 for assessment year

2010-11, order dated 18.11.2022, wherein the capacity adjustment has been granted owing to its startup phase.

6. The Id. DR, has relied upon the order of authorities below.

7. We have considered rival submission. The assessee has entered into international transaction with its AE in the form of sales to its AE at Rs.18,59,55,638/-. The assessee in the transfer pricing document has followed TNMM for benchmarking its transactions with AE. The tested party is the assessee company and the PLI adopted is operating profit to cost. There is no dispute on the MAM. The assessee has computed PLI at 8.7%, after making certain adjustments including that of capacity utilization. The assessee has taken the capacity utilization at 4% which is no of Hydrolic Motor manufactured / Installed Capacity. However, the learned TPO has computed the capacity utilization at 75% including Hydraulic motors (pertaining to manufacturing activity) and hydraulic motor parts (pertaining to trading activity). The learned TPO has included hydraulic motor parts as part of capacity utilization, without considering the evidence submitted by assessee that assessee has not manufactured hydraulic motor parts. The learned

CIT(A) has not considered the evidences submitted before him regarding hydrolic motor parts are not manufactured by the assessee. We are therefore of the considered view that learned TPO and CIT(A) have not considered the evidences submitted by assessee regarding capacity utilization adjustment. Therefore, impugned order of Ld. CIT(A) is set aside and the matter is restored to the file of AO. Assessee is directed to file all the evidences filled before learned CIT(A) within 30 days of receipt of this order for the purpose of making reference to the TPO. As we have set aside the assessment with the above observation, all issues are kept open before assessing officer/TPO and after hearing the assessee to frame assessment in accordance with law.

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

Order pronounced on 10th May, 2024 at Chennai.

Sd/-
(एबी टी वर्की)
(ABY T VARKEY)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(जगदीश)
(JAGADISH)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 10th May, 2024
JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy to:

1. ँ पीलर्षी/Appellant

2. प्रत्यर्षी/Respondent

3. आयकर आयुक्त/CIT

4. विभर्षीय प्रतिनिधि/DR

5. गर्ड फर्डल/GF