

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1163/Mum/2024
Assessment Year: 2020-21

Jushi India Fiberglass Private Limited G-19-20 Creative Industrial Estate N.M. Joshi Marg Lower Parel Mumbai - 400011 [PAN: AAECJ1513A]	Vs	Deputy Commissioner of Income Tax, Circle - 6(1)(2)
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Ms. Chaitee Londhe, A/R
Revenue by :	Shri Nihar Ranjan Samal, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 04/07/2024
घोषणा की तारीख /Date of Pronouncement: 18/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 17/01/2024, framed u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), pertaining to Assessment Year 2020-21.

2. The assessee has raised the following issues:-

1. Hon'ble Dispute Resolution Panel ("DRP") and consequently the learned Assessing Officer ("AO") erred in facts and in law in confirming the addition of Rs. 8,83,76, 149/- on account of variation in Arm's Length Price ("ALP") of the transaction of purchase of goods from Associated Enterprises ("AE").
2. Hon'ble DRP and consequently the learned AO erred in facts and in law in rejecting Transaction Net Margin Method ("TNMM") as most appropriate method for determination of ALP of the transaction of purchase of goods from AE.

3. *Hon'ble DRP and consequently the learned AO erred in facts and in law in adopting Resale Price Method ("RPM") as most appropriate method for determination of ALP of the transaction of purchase of goods from AE.*
4. *Hon'ble DRP and consequently the learned AO erred in facts and in law in rejecting the economic analysis done by the Appellant and carrying out fresh search to identify new comparables.*
5. *Hon'ble DRP and consequently the learned AO erred in facts and in law in rejecting Ecmas Resins Private Limited ("ECMAS") as a comparable company.*
6. *Hon'ble DRP and consequently the learned AO erred in facts and in law in not appreciating that Arrow Technical Textiles Private Limited is not comparable on both qualitative and quantitative criteria and therefore should not be considered as a comparable company.*
7. *Without prejudice to the above grounds of appeal hon'ble DRP and consequently the learned AO erred in facts and in law in not considering working capital adjustments for selected comparable companies.*
8. *Without prejudice to the above grounds of appeal, hon'ble DRP and consequently the learned AO erred in facts and in law in not considering the direct expenses for computation of gross margins of all of the selected comparable companies.*
9. *Without prejudice to the contention of the Appellant that TNMM should be adopted ("MAM"), in the alternative, hon'ble DRP and consequently the learned AO erred in not applying Comparable Uncontrolled Price (CUP) method as the MAM for determination of ALP of the transactions of purchase of goods from AE.*
10. *The Appellant craves leave to add, alter and amend any of the grounds of appeal prior to or at the time of hearing of the appeal."*

3. Representatives of both the sides were heard at length. Case records carefully perused and the judicial decisions brought to our notice duly considered.

4. Briefly stated, the facts of the case are that the primary business of the assessee during the year under consideration is to sell and distribute fiber glass products which are manufactured by its overseas AEs. The assessee adopted both the buy-sell model as well as sales

commission model depending on how the customers are acquired and maintained.

5. In the buy-sell model, assessee imports products from its overseas AEs and resells the same to the customers in India and in the sales commission model, assessee's overseas AEs sell the products to the third party customers in India directly and the assessee charges sales commission to the overseas AEs based on a certain percent of the product value of the direct sales made by the overseas AEs.

6. Considering the nature of activities and the business profile as mentioned in the Transfer Pricing (TP) study report, it can be safely concluded that the assessee is not doing any value addition and the products imported from AEs are sold in the market, therefore, consider the FAR analysis, Resale Price Method (RPM), is to be considered as a Most Appropriate Method (MAM) as adopted by the TPO.

7. During the year under consideration, the assessee has entered into the following international transactions within the meaning of Section 92B of the Act with its AEs:-

Sr. No.	Nature of Transaction	Name of AE	Amount
1	Purchase of finished goods	Jushi Egypt for Fiberglass industry S.A.E.	Rs.60,56,66,266
2	Purchase of finished goods	Jushi Group Co. Ltd.	Rs.49,74,79,069
3	Purchase of finished goods	Jushi Group Jiujiang Co. Ltd.	Rs.7,20,66,457
4	Purchase of finished goods	Jushi USA Fiberglass Co. Ltd.	Rs.3,11,48,186
5	Commission received	Jushi Egypt for Fiberglass industry S.A.E.	Rs.21,795
6	Commission received	Jushi Group Co. Ltd.	Rs.44,73,452
7	Commission received	Jushi Group Jiujiang Co. Ltd.	Rs.3,40,145
8	Issue of Shares	China Jushi Co. Ltd.	Rs.35,03,860
9	Issue of Shares	Jushi Group Hong Kong Co. Ltd.	Rs.35,390
10	Reimbursement of expenses	Jushi Group Co. Ltd.	Rs.9,99,999
		Total	Rs.121,57,34,619

8. During the course of scrutiny assessment proceedings, the Transfer Pricing Officer (TPO) showcaused the assessee to explain as to why Transactional Net Margin Method (TNMM), should not be rejected and RPM applied as MAM. The assessee in its reply, strongly rejected the RPM as the MAM contending absence of reliable data with respect to degree of comparability and absence of reliance date relating to gross margins earned by the comparable companies. The objections raised by the assessee were dismissed by the TPO.

9. Coming to the comparables selected by the assessee, the TPO rejected ECMAS Resins Private Limited (ECMAS) as the said company was engaged in manufacturing and sale of unsaturated polyester resins and trading component of its income is 40.06% only. Before us, the Id. Counsel for the assessee had strongly contended that due to paucity of the comparables available, a trading filter range of 30%-40% should be considered as an appropriate threshold for selecting comparable companies.

9.1. We are inclined to accept this contention of the assessee for the simple reason that "ECMAS" is a manufacturer and while carrying out its activities, it is also doing trading activities but which is very less as compared to the manufacturing activity and its trading results is completely dominated by its manufacturing activities. Therefore, rejection of "ECMAS" is upheld.

10. The TPO has included Arrow Technical Textile Private Limited (ATTPL) as a good comparable. The business description of this entity as extracted from its website shows that it is a dynamically upstart company offering world-class Structural Strengthening Materials,

Carbon Fibers, Basalt Fibers Products, High Strength Fiberglass, Fiberglass Product Insulation Cloth, High Silica Fibers, Filter Cloth, Non Woven Fabric and many more. Its core purpose is to provide innovative solutions in advanced industrial fiber and fabric to Indian Industry and SAARC Nations with a sustainable ecological environment commitment. Moreover, this company has a wide range of product mix which primarily deals in textile fiber and carbon fiber and fabrics and this company is offering composite fibers such as High Silica, Carbon Fiber, Basalt Fiber, Aramid, EMI (electromagnetic induction) and ESD (electromagnetic sensitive devices). The principle business activity of the company is trading in textile products.

10.1. In our considered opinion, this is entirely different from the products sole by the assessee. The assessee deals in basic glass fiber products like assemble rovings, direct rovings, chopped strands, shopper strand mat. Thus, the products offered by ATTPL are quite different from fiber glass products in terms of its uses and industrial application. Because of the product dissimilarity, we are of the considered view that ATTPL is not a good comparable and direct the TPO to exclude the same from the final list of comparables.

11. We further find that the TPO has dismissed the claim of working capital adjustments on the ground that the assessee has failed to explain as to how by not treating the working capital adjustment would materially affect the amount of gross profit margin in the open market. We are of the considered view that there is some force in the contention of the TPO but at the same time, improvement in the results, in the comparability study after giving working capital

adjustment cannot be ruled out. The assessee is directed to demonstrate how the working capital adjustment would make the difference in the comparability and the TPO is directed to examine the working capital adjustment furnished by the assessee and decide this claim after offering reasonable and adequate opportunity of being heard to the assessee.

12. To sum up, exclusion of ECMAS stands and ATTPL is directed to be excluded. With this, the TPO is directed to re-compute the Arm's Length Price adjustment, if any, after giving effect to the working capital adjustments. The assessee has also claimed for the application of external Comparable Uncontrolled Price (CUP) method as the MAM. We are of the considered view that application of any method as MAM for the determination of ALP margin depends upon the functional profile of the tested party and on the facts of the case in hand, in the light of the functional profile of the assessee RPM is the MAM. With the above directions, appeal of the assessee is partly allowed.

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

Order pronounced on 18th July, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Kolkata, Dated 18/07/2024

SC S/P

7

आदेश की प्रतिलिपि ँ ग्रेषरत/Copy of the Order forwarded to :

1. ँ पीलररर / The Appellant
2. प्रतररर / The Respondent
3. संबधरत आरकर आयुक्त / Concerned Pr. CIT
4. आरकर आयुक्त (ं पील) / The CIT(A)-
5. वरभरणीय प्रतरनरधर ,आरकर अपीलीय अधरकरण, मुंरई /DR,ITAT, Mumbai,
6. गार्ड फार्ई/ Guard file.

आदेशरनुसर/ BY ORDER,
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Assistant Registrar
आरकर अपीलीय अधरकरण
ITAT, Mumbai