IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

IT(TP)A No. 241/Bang/2021
Assessment Year: 2016-17

Toyota Tsusho India Private Limited, Plot No.33 & 34, Bidadi Industrial Area, Ramanagara District, Bengaluru-562 109. **PAN – AADCS 6230 N**	Vs.	The Asst. Commissioner of Income Tax, Circle – 3(1)(1), Bengaluru. The NFAC, Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Darpan Kriplani, CA
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	23.07.2024
Date of Pronouncement	:	05.08.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the National e-Assessment Center, Delhi dated 15/04/2021 in DIN No. ITBA/PNL/S/271(1)(c)/2021-22/1032414910(1) for the assessment year 2016-17.

2. At the outset, the ld. AR before us submitted that he has been instructed not to press ground Nos. 1 to 7 and 9 to 10 raised in the memo of appeal. Accordingly, we dismiss the same as infructuous.

3. The next issue raised in ground No. 8 is that the ld. DRP/AO erred in not excluding the comparable viz. Growtech Agri Science & Research Pvt. Ltd., (Growtech Limited), which is engaged in the manufacturing activity.

4. The assessee is engaged in the business of trading/distribution segment and manufacturing segment. The assessee during the year has carried out certain transactions with the associated enterprises in both the segments. The assessee prepared the TP study report for both the segments separately. The assessee has shown PLI for the trading segment and manufacturing segment taking operating profit/sales at 0.14% and 20.54% which is evident from the order of the TPO. The assessee has used transactional net margin method (TNMM) as the most appropriate method for determining the ALP with the associated enterprises. However, the TPO during the proceedings rejected the TP study furnished by the assessee and selected fresh comparable under the trading/ distribution segment. Finally, the TPO, after rejecting the objections raised by the assessee, proposed an upward adjustment of Rs. 23,39,86,957/- under trading segment, which was also upheld by the DRP.

5. Being aggrieved by the order of the ld. DRP/AO, the assessee is in appeal before us.

6. The ld. AR before us raised limited contentions stating that the comparable viz. M/s Growtech Limited is engaged in the manufacturing activity to the tune of 99.74% as evident from the annual report of it (M/s Growtech Limited). Therefore, the same cannot be taken as comparable

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for making the adjustment under trading segment. Thus, the ld. AR prayed before us to exclude the company viz. Growtech Limited from the list of comparable.

7. On the other hand, the ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival submissions of both the parties and perused the materials available on record. Admittedly, the company, namely M/s Growtech Limited, is engaged in the manufacturing activity to the tune of 99.74%, which is verifiable from the financial statement of the company available on record. Under transfer pricing study, the comparable companies are selected which are sufficiently comparable with the tested party. In the present case, the company, namely M/s Growtech Limited, is engaged in the manufacturing activity which cannot be compared with the trading activity the assessee as both the companies operate in different segment. Accordingly, we hold that such a comparable cannot be used while determining the ALP of the international transaction under the trading segment of the assessee. Thus, we direct the TPO/AO to exclude the comparable viz. Growtech Limited from the list of comparables for determining the ALP under trading segment. Hence, the ground of appeal of the assessee is hereby allowed.

9. The issue raised by the assessee in ground No.11 is that the AO has not considered the carry forward losses for the assessment year 2015-16 amounting to Rs. 3,90,920,833/- in the year under consideration.

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10. The ld. AR before us contended that there was a loss in the assessment year 2015-16 amounting to Rs. 3,90,920,833/-, which has not been considered for the purpose of carry forward while computing the income for the year in dispute. According to the ld. AR, the assessee is entitled to carry forward the impugned loss under the provisions of sec. 72 of the Act.

11. On the other hand, the ld. DR fairly submitted that the matter can be set aside to the file of the AO to look into the claim of the assessee as per the provisions of law.

12. We have heard the rival submissions of both the parties and perused the materials available on record. Considering the arguments of the parties and facts of the case, we, in the interest of justice and fair play, set aside the issue raised by the assessee to the file of AO to admit the claim of the assessee in pursuance to the provisions of sec. 72 of the Act. Hence, the ground of appeal of the assesee is hereby allowed for statistical purposes.

13. The issue raised by the assessee in ground No. 12 is that the ld. DRP/AO erred in not allowing the deduction to the assessee amounting to Rs. 1,15,00,000/- representing loss on account of financial guaranteed u/s 37 of the Act.

14. The assessee has made an investment in a company viz., Samvardhana Motherson Nippisun Technology Limited (SMNTL). As per the assessee the investment was made on account of business interest it had in the company SMNTL. It was also submitted that it has carried out various business transactions for the purchase of raw materials and

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sale of finished goods, which is evident from the financial statement for the year under consideration. The company, i.e. SMNTL was requiring the working capital loan and in this connection the assessee has furnished the financial guarantee. However, SMNTL defaulted on the repayment of loan and, therefore, the financial guarantee furnished by the assessee was invoked by the bank. Accordingly, the assessee has made a provision in the year under consideration for Rs. 1,15,00,000.00 on account of the loss incurred by it for furnishing the financial guarantee. As per the assessee, such liability was discharged in the immediate succeeding financial year. In view of the above, the assessee submitted that the loss incurred by it for furnishing the financial guarantee was in the course of its business and, therefore, the same should be allowed as deduction. However, the AO disagreed with the contention of the assessee on account of following reasons:

1. There was one single transaction between the assessee and SMNTL. Therefore, the business interest between the assessee and company was not established based on a single transaction.
2. The assessee failed to demonstrate that its business was getting affected without having interest in SMNTL.
3. There was an investment made by the assessee in the company SMNTL for which, the assessee has given financial/ corporate guarantee, which is out of the investment activities and has no relation with the business activities of the assessee.
4. The deduction claimed by the assessee represents the provision made by the assessee on account of the financial guarantee furnished by it which has not been crystallized.

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14.1 In view of the above discussion, the ld. DRP/AO was of the opinion that the deduction claimed by the assessee u/s 37 of the Act is not allowable and therefore, he added the same to the total income of the assessee.

15. Being aggrieved by the order of the AO, the assessee is in appeal before us.

16. The ld. AR before us filed two paper books running from pages 1 to 1333 and 1 to 1092 and contended that there were multiple transactions carried out between the assessee and the company, which can be verified from the details available on pages 142 to 197 of the paper book. It was also submitted by the ld. AR that the provision made by the assessee in the books of accounts was crystallized in the year under consideration, therefore, the same should be allowed. As such the liability towards the impugned loss was discharged in the immediate subsequent year.

17. On the other hand, the ld. DR vehemently supported the order of the authorities below.

18. We have heard the rival contentions of both the parties and perused the materials available on record. The provisions of section 37 of the Act provide for the deduction of the expenses incurred for the purpose of the business provided the same are not capital and personal in nature. In the present case, the assessee has furnished the financial guarantee in connection with the loan obtained by the third party namely SMNTL. Admittedly the assessee has made an investment in the form of equity shares as well as entering purchase and sale transactions with

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such 3rd party. Since the third party failed to make the payment of the loan, which was secured by the guarantee of the assessee, the assessee had to create the provisions in its books of accounts for the loss to be incurred on account of furnishing the bank guarantee.

18.1 Now it has to be tested on the parameters whether the provisions made for the loss by the assessee were in the course of the business or not. As per the revenue, the assessee has carried out only single transaction with the company namely SMNTL in the year in dispute and therefore the business interest between the assessee and the company was not established. In this connection, we note that the finding of the AO is contrary to the facts available on record. On perusal of the paper book, particularly pages 142 to 197, we note that the assessee has carried out multiple transactions for the purchases and sales which are also supported by the invoices placed on 167 to 197 of the paper books. The ld. AR on the direction of ITAT has also filed the details of the transactions between the assessee and SMNTL carried out in the earlier year i.e. AY 2015-16 which are available on record. Thus, we can safely hold that there was business connection between the assessee and SMNTL.

18.2 It was also observed by the revenue that the assessee has not established whether its business was affected on account of failure of the payments of loan by the company namely SMNTL. In this regard, we note that once the business connection has been established between the assessee and the company, the question whether the business of the assessee is getting affected or not becomes irrelevant. The assessee was to justify the business interest which appears to be established by looking at the purchase and sale transaction between the

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assessee and the company. In simple words it has to be seen whether the transactions for giving the financial guarantee were in the course of the business or not and not whether the business of the assessee was affected.

18.3 Admittedly the assessee has made investments in the company namely SMNTL and therefore a question arises whether such a financial guarantee was furnished on account of the investment made in the company and/ or on account of business interest. In this regard, we note that once the business interest is proved, the question becomes irrelevant whether the guarantee was furnished on account of investment or on account of business transactions. It is the decision of the assessee and once assessee claims to have furnished the financial guarantee on account of business interest which is also apparent, the benefit of the deduction to the assessee cannot be denied under the provisions of section 37 of the Act.

18.4 An issue also arises for our consideration whether the provisions made by the assessee are allowable deduction until and unless it is crystallized. In this regard, we note that the assessee has discharged the liability for such provision in the immediate financial year 2016-17 which can be verified from the submissions made during the assessment proceedings. The submission of the assessee has nowhere been doubted by the authorities below. Therefore, we hold that such provision was based on scientific foundation which has been translated into action in the subsequent assessment year. Nevertheless, the finding of the revenue authorities viz a viz the arguments of the assessee are contrary to each other as discussed above so long the business transaction carried out between the assessee and the company SMNTL. Therefore,

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we're of the view that the revenue authorities have not carried out the necessary verification of the facts presented by the assessee based on the sale and purchase transactions. Thus, in the interest of justice and fair play, we are of the view that the verification needs to be carried out at the level of the AO as per the provisions of law. Accordingly, we set aside the finding of the ld. DRP and remit the issue to the file of the AO for fresh adjudication after necessary verification as per the provisions of law. Hence the ground of appeal filed by the assessee is allowed for the statistical purposes.

18.5 The issue raised by the assessee in Ground No. 13 is that the Hon'ble DRP/AO erred in making the disallowance of Rs. 26,77,599/- under the provisions of sec. 14A r.w. Rule 8D of the Income-Tax Rule.

19. At the outset, the ld. AR before us submitted that the assessee had not earned any dividend income in the year under consideration, therefore, the question of making the disallowance u/s 14A r.w.r. 8D of Income Tax Rules does not arise. On the other hand, the ld. DR fairly admitted that if there is no income earned by the assessee, which is entitled for exemption u/s 10(34) of the Act, no disallowance is warranted u/s 14A r.w.r. 8D of Income Tax Rules.

20. We have heard the rival submissions of both the parties and perused the materials available on record. Admittedly, the assessee had not earned any income in the year under consideration, therefore, no disallowance u/s 14A r.w.r. 8D of Income Tax Rules is warranted in pursuance to the principles laid down by the Hon'ble Karnataka High Court in the case of Delhi International Airport Limited Vs. PCIT reported in 138 taxmann.com 541 wherein it was held as under:

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> ***24.*** *These appeals have been admitted to consider the following substantial questions of law;*
> *Common substantial question of law in all the appeals filed by the Revenue;*
> *"1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in law in remanding back the issue to assessing authority with a direction to allow the relief as the assessee do not have exempt income and as such no disallowance can be made under section 14A read with rule 8D of the Act contrary to provisions of section 14A and rule 8D and Circular No. 5 of 2014 dated 11-2-2014 which has clarified that rule 8D read with section 14A provides for disallowance of the expenditure even when the taxpayer in a particular year has not earned any exempt income?."*
> *XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*
> ***25.*** *Re: common substantial question of law No. 1:*
> *The issue involved herein is squarely covered by the decision of the Coordinate Bench of this Court in the case of CIT v. Quest Global Engineering Services (P.) Ltd. [IT Appeal No. 133 of 2015, dated 15-2-2021]. Concurring with the same, we answer the said substantial question of law in favour of the assessee and against the Revenue.*

20.1 The head note in the case of the above judgment reads as under:

> *INCOME TAX : Where assessee did not have exempt income, no disallowance could be made under section 14A read with rule 8D*

20.2 In view of the above, we set aside the findings of the ld. DRP and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

21. The next issue raised by the assessee in ground Nos. 14,15 and 16 is that the ld. DRP/AO has made the disallowance of Rs. 4,93,01,866.00 on the reasoning that the same has not been incurred for the purpose of business.

22. On perusal of the assessment order, it was noticed that the assessee has claimed deduction of certain expenses under the head

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'miscellaneous expenses', 'rental expenses', and 'legal and professional expenses but the AO disallowed the same on the reasoning that the assessee has failed to substantiate the claim based on the documentary evidence. However, the ld. AR before us submitted that the assessee has filed necessary details in support of the expenses running into pages 1 to 1092 of the 2nd paper book before the ld. DRP, which have not been considered by the AO. As such, it was prayed by the ld. AR to restore the issue to the file of the AO for fresh adjudication after considering the detailed replies made by the assessee during the proceedings before the ld. DRP.

23. The ld. DR, on the other hand, did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provision of law.

24. We have heard the rival submissions of both the parties and perused the materials available on record. In the present case, the finding of the AO among other observations is that the expenses in dispute were not supported by the necessary details, whereas the assessee has furnished the supporting documents before the ld. DRP, which is evident from the paper book available on record. As such, we note that the ld. DRP has disposed off the matter with the direction to the AO without calling any remand report from the AO. Nevertheless, in the interest of justice and fair play, we are of the opinion that the issue in question needs to be revisited at the level of AO as per the provisions of law. Accordingly, we set aside the finding of the ld. DRP and remit the issue to the file of the AO fresh adjudication as per the provisions of law.

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25. In the result, the appeal filed by the assessee is hereby partly allowed for statistical purposes.

Order pronounced in court on 5th day of August, 2024

Sd/- Sd/-

(GEORGE GEORGE K) **(WASEEM AHMED)**
Vice President Accountant Member

Bangalore,
Dated, 5th August, 2024

vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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