

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.4225/Mum/2024
(Assessment Year :2020-21)**

International Packaging Products Pvt. Ltd. 7 th Floor, Alpha Building, Hiranandani Gardens, Powai Maharashtra-400076	Vs.	Deputy Commissioner of Income Tax Circle 2(1)(1) Mumbai
PAN/GIR No.AAACI7987D		
(Appellant)	..	(Respondent)

Assessee by	Shri Vijay Mehta a/w. Ms. Kinjal Mehta
Revenue by	Shri. Uodal Raj Singh
Date of Hearing	14/10/2024
Date of Pronouncement	16/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against final assessment order dated 06/07/2024 passed in pursuance of directions given by the DRP dated 07/06/2024 for the A.Y.2020-21.

2. Before us, following grounds of appeal have been pressed: -

"2.1 The TPO/AO/DRP has erred in not excluding non-operating income from two comparable having segmental accounts (Polyspin Export Limited and Commercial Syn Bags Limited) in parity with the margin calculated for the Appellant and other comparable companies."

"4.1 On the facts and circumstances of the case and in law, the Ld. AO erred in restricting MAT credit to INR 3,88,61,410 as per return of income as against INR 4,02,69,542 as claimed in the revised computation of income duly accepted during assessment proceedings resulting into short grant of INR 14,08,132"

"5.2 The Ld. AO erred in not considering the fact that interest under section 234C of the Act should be charged on the returned income and accordingly be restricted to interest calculated as per return of income filed by the Appellant"

3. The brief facts qua the issue raised are that the assessee company is engaged in the business of providing contract manufacturing services to its AEs as per specific demand requirements on design specifications provided by its AEs. IPPPL also supplies semi-manufactured products like scrims and finished products like coated woven products and printed fabric to its AEs.

4. The assessee's case was referred u/s.92CA to the Transfer Pricing Officer (TPO) and transfer pricing assessment under section 92CA the Act was completed vide order dated 20 July 2023, wherein the Learned TPO worked out transfer pricing adjustment of Rs.3,16,48,168 as per Transactional Net Margin Method (TNMM). Subsequently the said addition/disallowance was continued to be made in final assessment order dated 05/07/2024. The assessee in its Form 3CEB had reported many international transactions however, only the transactions

relating to exports of goods to AE has been benchmarked by the ld. TPO. In the TP study report, the assessee has aggregated the transaction on sale of goods to AE of Rs.594,75,95,019/- on purchase of materials and semi-finished goods from the AE of Rs.69,38,36389/- and old balances written back of Rs.14,13,028/- and applied TNMM as Most Appropriate Method. Assessee had shortlisted 23 comparables and held that the range of weighted average of OP/OC of the comparable companies is 1.34% to 3.95% with a median of 3.38%. Whereas, the assessee has calculated its OP/OC at 5.24% from exports to AE and stated that the transactions were at arm's length price. The ld. TPO did not reject the transfer pricing analysis done by the assessee, albeit out of 23 companies / comparables selected by the assessee, he partly accepted and rejected those comparables and he took OP/OC of 8 comparables chosen by the assessee and found that median of those 8 comparables was 5.80% whereas the assessee's margin was 5.24% and accordingly, he made the adjustment of sales to AE of Rs.3,16,48,168/-. These 8 comparables are as under:-

1	M/s Virgo Polymers (India) Ltd.	0.97%
2	Umasree Texplast Pvt. Ltd.	3.27 %
3	Veer Plastics P Ltd	4.89 %
4	Polysin Exports Ltd	5.75 % ^
5	Safeflex International Ltd.	5.80 %

6	Shankar Packagings Limited	6.91 %
7	Commercial Syyn Bags	6.92 %
8	Big Bags International Pvt Ltd	9.18%
9	Shri Jagdamba Polymers Ltd.	18.00%
	Count	9
	35 th Percentile	4
	65 th Percentile	6
	Median	5.80%
	Assessee's Margin	5.24%

5. The aforesaid adjustment after the direction of DRP has been confirmed by the ld. AO in his final assessment order.

6. Before us assessee has not challenged any of the comparables but made a very limited argument stating that with respect to only one of the comparable, i.e., 'Polyspin Export Limited' there is an error in the margin calculation. Before us, it has been demonstrated that the assessee before the ld. TPO has explained the segmental profit of 'Polyspin Export Limited' which also included other income. Same was demonstrated with reference to the annual report for the F.Y.2019-20 after pointing out the relevant pages in the paper book from and page 74 in the following manner:-

Particulars	Amount (In Rs. Crores)
FIBC Bags, Fabric, Yarn	11.89
Cotton Yarn	0.10
Total	11.99
Less Finance cost	(4.61)
Profit before tax (total)	7.38

7. Thus, it was pointed out from the comparison of segmental accounts and standalone profit and loss account given at page 52 of the paper book that the segmental profit before tax was Rs.7.38 Crores and “other income” of Rs.6.01 Crores as per Note No.23 of the financials of 'Polyspin Export Limited' for F.Y.2018-19 (which has been given at page 66 of the paper book). From there it has been pointed out that, total profit was Rs.12.99 Crores after referring to segmental accounts and standalone profit and loss account in the following manner:-

Particulars	Amount (In Rs. Crores)
Profit before tax	7.38
Add: Finance cost	4.61
Total Profit as per segmental accounts and standalone profit and loss	11.99

8. Thus, it has been submitted that segmental profit of Rs.11.89 Crores include the “other income” of Rs.6.07 Crores, the details of which has been given at page 66 of the paper book which contains income on account of interest receipts, dividend receipts, profit on sale of machinery, profit on high seas sales, fire insurance claim receipts cannot be treated as ‘operating income’. The details of these other income have been given in the following manner:-

Particulars	Amount (In Rs.)
Interest receipt	67,50,298
Foreign exchange fluctuations	2,77,80,316
Export incentives	37,431
Dividend	43,800
Profit on sale of machinery	3,57,394
Profit on High Seas Sales	8,12,627
Fire Insurance Claim receipts	2,50,10,381
Total	6,07,92,247

9. It has been further pointed out that Id. TPO himself had excluded the non-operating income from other comparables and for this particular comparable, 'Polyspin Export Limited', assessee had specifically submitted that the other income

includes non-operating income of interest, dividend, profit and gain on sale of assets and fire insurance claims and this has been reduced from other comparables as well as assessee's own margin. This has been demonstrated qua all the comparables finally selected by the TPO. For instance, following non-operating income has been removed by the ld. TPO in the case of other comparables:

Nature of non-operating income	Comparable companies (where non operating income is reduced)
Interest Income	Veer Plastic Private Ltd Umasree Texplast Private Ltd Virgo Polymers (India) Ltd Big Bags International Private Ltd Shri Jagdamba Polymers Ltd. International Packaging Products Private Limited ('the Assessee')
Dividend Income	Veer Plastic Private Ltd
Profit/gain on sale of assets	Veer Plastic Private Ltd Virgo Polymers (India) Ltd Big Bags International Private Ltd Shri Jagdamba Polymers Ltd International Packaging Products Private Limited ('the Assessee')
Fire Insurance claim	The loss on factory building by fire accident was added as non-operating expenses while calculating operating margin for FY 2018-19 Therefore, the fire insurance claim received in FY 2019-20 should be reduced as non-operating income.

Thus, it was submitted that these non-operating incomes should be removed from the operating profit of this comparable.

10. The ld. DR submitted that this issue can be remanded back to the ld. AO / ld. TPO to examine this non-operating income and then same can be excluded.

11. After considering the aforesaid submissions, we find substance in the limited argument raised by the ld. Counsel that in the case of other comparables, the ld. TPO himself has removed the non-operating income in the nature of interest income, dividend income, profit and gain on sale of assets and fire insurance claim. Ostensibly, these non-operating incomes cannot be treated as operating profit and *prima facie*, the “other income” of Rs.6.07 Crores should be removed from the segmental profit while comparing the margin of the comparable, 'Polyspin Export Limited'. Accordingly, we direct the ld. TPO to examine these details and allow deduction from operating income of 'Polyspin Export Limited', the element of other income under the head ‘interest income’; ‘dividend income’; profit / gain on sale of assets; and fire insurance claimed in line with other comparable companies and compute the margin accordingly, if they are not part of operating income. The reason being, assessee’s margin has also been calculated by reducing non-operating income. Accordingly, this issue remanded back to the ld. TPO for verification and work out the margin of the comparable, 'Polyspin Export Limited' while benchmarking the assessee’s margin.

12. As far as the MAT credit, we direct the ld. AO to allow after giving effect to this order as per law.

13. Interest u/s.234C is also to be restricted on the returned income.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 16th December, 2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 16/12/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai