

IT/ILT: Where TPO selected comparable companies which were manufacturing product different from one manufactured by assessee, since assessee had also filed additional evidence, i.e., process-flow document in relation to manufacturing of goods for AE and non-AE, assessee had also prepared an analysis of comparable companies selected by TPO and assessee, matter be re-examined by TPO

■ ■ ■

[2018] 92 taxmann.com 242 (Chennai - Trib.)

IN THE ITAT CHENNAI BENCH 'D'

Industries Del Recambio India (P.) Ltd.

v.

Deputy Commissioner of Income-tax, Company Circle- 2 (2), Chennai*

**N.R.S. GANESAN, JUDICIAL MEMBER
AND ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
IT APPEAL NO. 530 (CHNY) OF 2017
[ASSESSMENT YEAR 2012-13]
MARCH 23, 2018**

Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and Adjustments/Comparables - General) - Assessment year 2012-13 - Whether where TPO selected comparable companies which were manufacturing product different from one manufactured by assessee, since assessee had filed additional evidence, i.e., process-flow document in relation to manufacturing of goods for AE and non-AE, and had also prepared an analysis of comparable companies selected by TPO matter be re-examined by TPO - Held, yes [Para 7][Matter remanded]

N.V. Balaji, Adv. *for the Appellant.* **Ruby George**, CIT *for the Respondent.*

ORDER

N.R.S. Ganesan, Judicial Member - This appeal of the assessee is directed against the order of the Assessing Officer consequent to the direction of the Dispute Resolution Panel for the assessment year 2012-13.

2. The first issue arises for consideration is the method adopted by the Transfer Pricing Officer for determining the arm's length price.

3. Shri N.V. Balaji, the Ld.counsel for the assessee, submitted that the assessee adopted Cost Plus Method as the most appropriate method. However, the Transfer Pricing Officer adopted Transaction Net Margin Method. In the transfer pricing study, the assessee also supported the Transaction Net Margin Method. Therefore, according to the Ld. counsel, the issue with regard to method of determination of arm's length price is not pressed. The Ld.counsel also made an endorsement to that effect in the appeal folder.

4. Shri N.V. Balaji, the Ld.counsel for the assessee, further submitted that the products sold by the assessee were used as input by the assessee's customers. According to the Ld. counsel, the

manufacturing process and design of the products differs as per the specifications of the customer. Even though there was a small variation, there was no change in the basic character of the finished goods. According to the Ld. counsel, the Transfer Pricing Officer selected the comparable companies which are manufacturing product different from one manufactured by the assessee. therefore, there was a functional difference between the comparable companies and that of the assessee. Moreover, according to the Ld. counsel, the adjustment has to be restricted only with regard to transaction of the assessee with Associated Enterprise. The Transfer Pricing Officer has taken the entire transaction of the assessee. According to the Ld. counsel, the assessee has also filed revised segmentation based on cost audit along with details of allocation keys used therein. This revised segmentation was not filed before the TPO and DRP. Therefore, according to the Ld. counsel, this was filed as additional evidence before this Tribunal. According to the Ld. counsel, the assessee has also filed process-flow document in relation to manufacturing of goods for Associated Enterprises and non- Associated Enterprises. According to the Ld. counsel, the assessee has also prepared an analysis of comparable companies selected by the Transfer Pricing Officer and the assessee. These documents and other documents filed along with additional evidence need to be examined to determine the arm's length price. According to the Ld. counsel, these documents could not be filed before the DRP as well as Transfer Pricing Officer. The Ld.counsel submitted that the matter may be remitted back for reconsideration.

5. With regard to corporate taxation, the Ld.counsel for the assessee submitted that the assessee has raised issues in relation to disallowance made under Section 14A, 43B, 40(a)(i), 40(a)(ii) and 40A(7) of the Income-tax Act, 1961 (in short 'the Act'). The assessee has also raised issue with regard to income chargeable under Section 41 of the Act. According to the Ld. counsel, since the main issue of transfer pricing adjustment has to be reconsidered by the Assessing Officer on the basis of additional evidence filed by the assessee, these issues also need to be reconsidered on the basis of additional material filed before this Tribunal.

6. We heard Smt. Ruby George, the Ld. Departmental Representative also. According to the Ld. D.R., these materials filed now before this Tribunal were not available before the Assessing Officer or before the TPO and DRP. Therefore, according to the Ld. D.R., for determination of correct arm's length price, these documents need to be examined. Therefore, according to the Ld. D.R., if the Tribunal admits the additional evidence, an opportunity may be given to the Transfer Pricing Officer as well as the Assessing Officer to re-examine the matter.

7. We have considered the submissions on either side and perused the relevant material available on record. The assessee has now filed additional evidence before this Tribunal. Admittedly, the documents filed before this Tribunal as additional evidence were not available before the Assessing Officer and the Transfer Pricing Officer. Therefore, this Tribunal is of the considered opinion that in order to determine the correct arm's length price, the Transfer Pricing Officer has to re-examine the matter. The very object of the income-tax proceeding is to assess the correct taxable income. Therefore, remitting the matter back to the file of the Assessing Officer for reconsideration in the light of the additional material filed by the assessee may not prejudice the interests of Revenue in any way. Moreover, the corporate taxation issue raised by the assessee also needs to be reconsidered in the light of the additional material filed before this Tribunal. Accordingly, the orders of both the authorities below are set aside and the entire issue raised by the assessee other than the issue of method of determination of arm's length price is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and refer the matter to the Transfer Pricing Officer for determination of arm's length price after considering the additional evidence filed by the assessee and thereafter follow the procedure prescribed under Section 144C of the Act.

8. With the above observation, the appeal filed by the assessee is allowed for statistical purposes.

pooja

*Matter remanded.