

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.357/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Yongsan Automotive India
Pvt. Ltd.,
No.99, Pappambakkam Village
& Post,
Thiruvallur Dist – 602 025.

v. The Assistant Commissioner of
Income Tax,
Corporate Circle 3(2),
Chennai - 600 034.

PAN : AAACY 2879 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Raghunathan Sampath, Advocate

प्रत्यर्थी की ओर से/Respondent by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 08.11.2017

घोषणा की तारीख/Date of Pronouncement : 16.11.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order passed by the Assessing Officer consequent to the directions of the Dispute Resolution Panel dated 21.10.2016 and pertains to assessment year 2012-13.

2. Shri Raghunathan Sampath, the Ld.counsel for the assessee, submitted that the Dispute Resolution Panel has violated the principles of natural justice and made downward adjustment by taking the entire transaction at entity level instead of Associated Enterprise transaction. According to the Ld. counsel, under the scheme of Income-tax Act, the transaction of the assessee being tested party with Associated Enterprise outside the country has to be compared with transaction of the similarly placed company in uncontrolled transaction. In the case before us, according to the Ld. counsel, the Assessing Officer has taken the entire transaction of the assessee, including the domestic transaction, for the purpose of transfer pricing adjustment.

3. Referring to the judgment of Bombay High Court in CIT v. Alstom Projects India Limited 2016 (12) TMI 1408, a copy of which is available at page 4 of the paper-book, the Ld.counsel for the assessee submitted that under Chapter X of the Income-tax Act, 1961 (in short 'the Act'), transfer pricing adjustment has to be done in order to determine the consideration received in a transaction with Associated Enterprise outside the country. Therefore, according to the Ld. counsel, Chapter X of the Act does not require

any adjustment with regard to domestic transaction, hence, the Dispute Resolution Panel is not justified in considering the entire transaction of the assessee including the domestic transaction. Referring to the decision of this Bench of the Tribunal in Caterpillar India Pvt. Ltd. v. ACIT in I.T.A. Nos.204 & 365/Mds/2012 dated 05.04.2017, the Ld.counsel submitted that this Tribunal found that the entire transaction of the assessee has to be taken into consideration for the purpose of transfer pricing adjustment. In view of the judgment of Bombay High Court in Alstom Projects India Limited (supra), according to the Ld. counsel, the decision of this Bench of the Tribunal may not be applicable to the facts of the case.

4. Shri Raghunathan Sampath, the Ld.counsel for the assessee, further submitted that the Dispute Resolution Panel has also removed the royalty reversal of ₹1,27,05,764/- from operating income of the assessee-company without appreciating the basis of such reversal. Therefore, according to the Ld. counsel, the DRP is not justified in giving direction to the Assessing Officer for adjustment.

5. We have heard Smt. Ruby George, the Ld. Departmental Representative, also. According to the Ld. D.R., the entire transaction of the assessee, including domestic transaction, has to be taken into consideration for the purpose of transfer pricing adjustment. Moreover, the royalty reversal needs to be removed from operating income for the purpose of transfer pricing adjustment. Therefore, according to the Ld. D.R., there is no reason to interfere with the direction of the Dispute Resolution Panel.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The first issue arises for consideration is whether the entire transaction of the assessee needs to be taken into consideration for the purpose of transfer pricing adjustment or the TPO and DRP have to confine themselves only to international transaction? This issue was examined by the Delhi High Court in CIT v. Keihin Panalfa Ltd. 92016) 381 ITR 407. The Delhi High Court found that the international transaction constitutes only 23.38%, therefore, the transfer pricing adjustment proportionate to that extent can be made in respect of such international transaction. This judgment of Delhi

High Court was followed by Bombay High Court in Alstom Projects India Limited (supra). The Bombay High Court found that Chapter X of the Act is not triggered to make adjustment to considerations received or paid unless they are Specified Domestic Transactions. The transaction with non-Associated Enterprises are presumed to be at arm's length as there is no relationship which is likely to influence the price. In the absence of any segmental accounting, proportionate basis can also be adopted as done by the Delhi High Court in Keihin Panalfa Ltd. (supra). In view of these judgments of Delhi High Court and Bombay High Court, it is obvious that for the purpose of transfer pricing adjustment, the transaction of the assessee with Associated Enterprise outside the country alone has to be taken into consideration. The domestic transaction unless it is a Specified Domestic Transaction, cannot be a basis for making any adjustment. Therefore, the order of this Tribunal in Caterpillar India Pvt. Ltd. (supra) may not be applicable to the facts of the case.

7. This Tribunal is of the considered opinion that under the scheme of the Income-tax Act, the transfer pricing adjustment has to be made only in respect of the transaction of the assessee being a tested party, with Associated Enterprise outside the country after

comparing the transaction made by similarly placed company in uncontrolled transaction with non-Associated Enterprise. Therefore, we are unable to uphold the order of the Dispute Resolution Panel Accordingly the order of the DRP is set aside and the entire issue is remitted back to the file of the Assessing Officer.

8. Since the main issue is remitted back to the file of the Assessing Officer, this Tribunal is of the considered opinion that reversal of royalty to the extent of ₹1,27,05,764/- also needs to be reconsidered. Accordingly, the order of the TPO as confirmed by the DRP is set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter once again to the file of the TPO. The TPO shall re-examine the issue in respect of the international transaction of the assessee with Associated Enterprise outside the country and compare the same with the transaction of similarly placed company with non-Associated Enterprise and thereafter, decide the issue in accordance with law. Similarly, the reversal of royalty also needs to be examined by the TPO and the procedure prescribed under 144C of the Act needs to be followed both by the assessee and the DRP.

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

Order pronounced on 16th November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(TP-2), Chennai
4. Principal CIT-3, Chennai
5. TPO-3(2), Chennai
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.