

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 15/Ahd/2019
(Assessment Year: 2007-08)

Deputy Commissioner of Income-tax, Circle-2(1)(2), Ahmedabad	Vs.	Mission Pharma Logistics (India) Pvt. Ltd. 302, 301, 3 rd Floor, Zodiac Square, Opp. Gurudwara, S. G. Highway, Bodakdev, Ahmedabad-380054
[PAN No. AACCM6133D]		
(Appellant)	..	(Respondent)

C.O. No. 155/Ahd/2019
(in ITA No. 15/Ahd/2019)
(Assessment Year: 2007-08)

Mission Pharma Logistics (India) Pvt. Ltd. 302,301, 3 rd Floor, Zodiac Square, Opp. Gurudwara, S. G. Highway, Bodakdev, Ahmedabad-380054	Vs.	Deputy Commissioner of Income-tax, Circle-2(1)(2), Ahmedabad
[PAN No. AACCM6133D]		
(Appellant)	..	(Respondent)

Revenue by	:	Shri Mohd. Usman, CIT DR
Assessee by	:	Shri Ajit Kumar Jain & Shri Gunjan Shah, ARs

Date of Hearing	25.10.2021
Date of Pronouncement	29.10.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 26.09.2018 passed by the Ld. CIT(A)-13, Ahmedabad arising

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out of the order dated 07.02.2011 passed by the ACIT(OSD)-I, Range-4, Ahmedabad under Section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2007-08. The assessee has also filed a Cross Objection against the said appeal. The Revenue raised the following grounds:-

“1. The Ld. CIT(A) has erred in deleting the adjustments on the basis of “aggregation” of international transactions without giving cogent reasons for such aggregation even when the separate evaluation of all transactions was carried out by TPO.

2. The Ld. CIT(A) has erred in law and on facts in deleting the adjustments by finding faults with the analysis carried out by the TPO without examining the appropriateness of the benchmarking carried out by the assessee.

3. The Ld. CIT(A) has erred in law and on facts in deleting the adjustments based on the terms of Advanced Price Agreement entered by the Appellant with the CBDT which is effective only from 2010-11.

4. The appellant craves leave to amend alter any ground or add a new ground, which may be necessary.”

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2. At the outset it was submitted by the Ld. DR that there is delay of 12 days in filing the instant appeal before us. He prays for condonation of such delay. In support of his prayer it was submitted by the Ld. DR that the order impugned passed by the Ld. CIT(A)-13 was received on 24.10.2018 which was thereafter forwarded to the ACIT, Circle-2(1)(1), Ahmedabad who in turn pointed out the disputed issue of upward adjustment of Rs. 17.08 crores made by the TPO. Accordingly, the copy of the appellate order was sent to the Additional CIT (TPO), Ahmedabad for his comments which was received on 18.12.2018. The central scrutiny report was prepared thereafter and the same was independently

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examined by the erstwhile PCIT as regards filing of the instant appeal before us. The details of the process with respective dates as mentioned by the Ld. PCIT in its request for condonation of delay filed before us on 23.09.2021 has also been brought to our notice by the Ld. DR. Taking into consideration the entire aspect of the matter we find the explanation made by the Revenue in support of delay is justified and hence such delay is condoned.

3. At the very outset of the proceeding the Ld. Advocate appearing for the assessee submitted before us that in the event the Ground No. 3 relating to deleting of adjustment based on the terms of the Advance Price Agreement entered by the appellant with the CBDT is decided in favour of the assessee the first two grounds would be infructuous and therefore, he prays for deciding this particular issue at the first juncture. Such submission made by the Ld. AR has not been controverted by the Ld. DR with all his fairness. We, therefore, after hearing the parties and upon perusal of the records made available before us proposed to deal with the Ground No. 3 as indicated hereinabove.

4. The facts pertaining to the issue is this that the appellant for the subsequent years commencing from A.Y. 2010-11 entered into an Advance Pricing Agreement (APA) dated 13.10.2015 and agreed for a specific mark up. The assessee proposed to apply the terms of Advance Pricing Agreement entered into by and between the appellant and the CBDT in the year under consideration in order to buy peace of mind and reduce litigation with the Revenue Department. In this regard, the

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appellant filed the submission dated 06.12.2017 before the Ld. CIT(A) annexing the copy of the said APA, working of possible adjustment in the event the APA is applied by the appellant for the year under consideration along with the additional ground by and under the letter dated 25.06.2018. The appellant relied upon the order passed by the Hon'ble Delhi ITAT in the case of Ranbaxy Laboratories Ltd. vs. ACIT, Range-15, New Delhi (2016) 68 taxmann.com 322 (Delhi-Trib.) and Hon'ble Pune ITAT's order in the case of M/s. Abicor Binzel Production (India) Pvt. Ltd. vs. DCIT in ITA No. 139/PN/2014, where such proposition of the appellant was accepted and therefore, the APA entered into by the appellant with CBDT has been prayed to be applied for in the year under consideration. The Hon'ble ITAT has also pleased to dismiss the departmental appeal for A.Y. 2010-11 which was finalized on the basis of the said Advancing Price Agreement dated 13.10.2015. On 25.09.2018 while dealing with the matter the Hon'ble ITAT has been pleased to observe as follows:

“1. By way of this appeal, the Assessing Officer appellant has challenged correctness of the order dated 27.05.2015, passed by the learned CIT(A), in the matter of assessment under section 143(3) r.w.s 144C of the Income Tax Act 1961, for the assessment year 2010-11.

2. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the fact that the matter has been resolved under Unilateral Advance Pricing Agreement (APA) with CBDT vide agreement dated 13th October 2015. He also invites our attention to letter dated 4th August, 2016 written by Commissioner of Income Tax (JT& TP) Ahmedabad and addressed to the Principal Chief Commissioner of Income Tax, International Taxation, submitting Compliance Audit Reports in respect of the said APA. Learned Counsel submits that in view of this development, appeal filed by the Department is required to be dismissed as infructuous.

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3. Learned Departmental Representative does not dispute the contentions of the assessee. He also files letter dated 25.04.2018 written by the Assessing Officer, addressed to the learned Commissioner of Income Tax (D.R.), confirming the Unilateral Advance Pricing Agreement signed by the assessee with CBDT. He thus does not oppose the prayer of the Id. counsel for the assessee.

4. In view of the above discussion as also bearing in mind entirety of the case, we deem it fit and proper to dismiss the appeal filed by the Assessing Officer as infructuous.

5. In the result, appeal is dismissed as infructuous. Pronounced in the open court today on the 6th August, 2018.””

5. The assessee further relied upon the judgment passed in the matter of Tieto IT Services India (P.) Ltd. vs. DCIT, reported in (2018) 92 taxmann.com 8 (Pune-Trib.) and Warburg Pincus India (P.) Ltd. vs. ACIT, reported in (2017) 78 taxmann.com 273 (Mumbai – Trib.) which have been considered by us. It also appears from the order passed by the First Appellate Authority that when this above fact was placed before him by the appellant comment was sought for on the merits of admissibility as well as on the content of the additional evidence submitted before the First Appellate Authority from the Ld. AO under Rule 46A of the Act on 13.07.2018 followed by a reminder dated 14.09.2018 directing the Ld. AO to furnish his comments by 20.09.2018. Since nothing was forthcoming the appeal had been decided by the First Appellate Authority on the basis of the order passed by the Hon'ble ITAT in favour of the assessee applying the APA entered into by the assessee and the CBDT on 13.10.2015 in the Assessment Year 2010-11 and allowed the appeal in favour of the assessee for the year under consideration which according to us is just and proper so as to warrant interference. Hence, this ground of appeal preferred by Revenue is found

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to be devoid of any merit and, thus, dismissed. Since this very ground has been disposed of in favour of the assessee the other two grounds raised by the Revenue in the instant appeal before us become infructuous and hence dismissed.

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6. Consequently, the Cross Objection filed by the assessee becomes infructuous.

7. In the combined results, the appeal preferred by the Revenue is dismissed and C.O. preferred by the assessee is dismissed.

This Order pronounced in Open Court on	29/10/2021
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Sd/-

(WASEEM AHMED)

ACCOUNTANT MEMBER

Ahmedabad; Dated 29/10/2021

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

(Ms. MADHUMITA ROY)

JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad