

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.1532/Kol/2019  
Assessment Year: 2014-15**

DCIT, Kolkata	CIR-3(1),	Vs.	M/s. Manaksia Steels Ltd.  8/1, Lal Bazar Street, Bikaner Building, 3 <sup>rd</sup> Floor, Kolkata-700001.  <b>PAN: AACDM9719Q</b>
(Appellant)			(Respondent)

**C.O. No.1/Kol/2021  
Assessment Year: 2014-15**

M/s. Manaksia Steels Ltd.  8/1, Lal Bazar Street, Bikaner Building, 3 <sup>rd</sup> Floor, Kolkata-700001.  <b>PAN: AACDM9719Q</b>	Vs.	DCIT, CIR-3(1), Kolkata
(Cross-Objector)		(Respondent)

**Present for:**

Appellant by : Shri Amal Kamat, CIT

Respondent by : Shri S.K. Tulsiyan, Advocate & Lata Goyal,

ACA

Date of Hearing : 22.06.2022

Date of Pronouncement : 09.09.2022

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal filed by the Revenue and the cross-objection filed by the Assessee are directed against the order of the Learned Commissioner of Income Tax (Appeals) – 22, Kolkata (hereinafter the ['ld. CIT(A)'] passed u/s 250 of the

Income-tax Act, 1961 (the 'Act') dated 31.01.2019 for the Assessment Year 2014-15.

2. At the outset, it is come to our notice that there is a delay of 50 days in filing of the appeal by the department and further delay of 465 days in filing of cross-objection by the assessee also. Both the parties have filed applications stating the cause of such delay in filing the instant appeal as well as cross-objection and pray for condonation of such delay.

3. We after considering application filed by both the appellant as well as respondent and gone through such application and contents of the same, we condone the delay in filing the appeal as well as cross-objection by the parties and proceed to adjudicate them on merits. The department has come up before the Tribunal by raising the following grounds of appeal which are enumerated as follows:

*"i. Whether on the fact and in the circumstances of the case and in law the ld. CIT(A) was justified in deleting the impugned addition of Rs. 12,25,90,000/- on the issue of arms length price (ALP) and adjustment thereon rejecting the computation of ALP by TPO.*

*ii. Whether on the facts and circumstances of the case and in law the ld. CIT(A) was justified in restricting the disallowance on account of entertainment expenses to the extent of 10%.*

*iii. The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings or in the course of appellate proceedings."*

3.1. The assessee has challenged the following grounds in its cross-objection:

*"i. That on the facts and circumstances of the case, the ld. CIT(a) has erred in holding the PLI-OP/TC used by the TPO for benchmarking the sales as correct in place of OP/Sales as the PLI adopted by the assessee for determining ALP when he himself while deleting the addition of Rs. 12,25,90,000/- noted glaring infirmities in the entire approach followed by the TPO for making the said upward adjustment and had already held that the TPO having not pointed out*

*any error in the Transfer Pricing Report of the appellant, the TPO could not have made any changes to the said ALP of the appellant.*

*ii. That without prejudice to the above, the ld. CIT(A) erred in directing the TPO to verify the application of PLI-OP/TC in the international transaction and re-work the ALP by taking PLI-Op/TC of the comparables identified by the appellant, which was not in accordance with the power provided u/s 251(1)(a) of the Act.”*

4. The brief facts of the case are that the assessee-company is engaged in the business of manufacture of galvanized and colour coated metal coils/sheets. The assessee filed its return of income for the A.Y. 2014-13 on 30.11.2014 declaring a total income of Rs. 15,19,65,298/-. The return of the assessee was selected for scrutiny through CASS. Subsequently, notices u/s 143(2) and 142(1) were duly served upon the assessee in response to the notices, the AR of the assessee appeared and case was heard. On the basis of documents filed by the authorized representative of the assessee and other enquiries/examination made, the total income of the assessee is assessed and based on the observation of TPO, the AO assessed the income of assessee. The observation of TPO was that during the year under consideration, the company had entered with domestic as well as international transaction with related concerns. The case of the assessee was referred to TPO that is transfer pricing officer with prior approval of appropriate authority being the Pr.CIT-1, Kolkata for determination of arms length price of the specified domestic transaction as well as international transaction as seen in assessee's financial statement. The order of the TPO u/s 92CA(3) dated 16.10.2017 was received by the AO with upward adjustment of Rs. 12,25,90,000/- for assessment year in question. The TOP's observation and calculation is as under:

<i>Sl. No.</i>	<i>Particulars</i>	
<i>1</i>	<i>Operating Cost/total cost</i>	<i>Rs. 19563.61</i>
<i>2</i>	<i>Arm's Length Mean Margin Profit</i>	<i>16.02%</i>
<i>3</i>	<i>Arm's Length or (ALP) @ 116.2% of operating cost</i>	<i>Rs. 22697.70</i>
<i>4</i>	<i>Total Turnover (Operating Revenue)</i>	<i>21251.38%</i>
<i>5</i>	<i>Shortfall (3-4)</i>	<i>Rs. 1446.32</i>

6	<i>Percentage of transaction to total revenue</i>	84.76%
7	<i>Adjustment to be made upwards 84.76% of 1446.32/-</i>	Rs. 1225.90

5. The AO on the quantum of upward adjustment on account of sale of finished goods to assessee's AE to be made of Rs. 1225.90 lacs. Further during the assessment year in question, the assessee claimed entertainment expenses of Rs. 12,83,749/- in its profit and loss account and asked the assessee to furnish copy of ledger as well as bills and vouchers supporting of the said claimed expenses. However, the assessee-company could not furnish any supported documents for such expenses claimed and 50% of the said expenses is disallowed and added back to the total income of the assessee of Rs. 6,41,874/-. Dissatisfied with the above order, the assessee went in appeal before the Id. CIT(A). However, the appeal of the assessee was partly allowed by the Id. CIT(A) wherein the addition made by the AO of Rs. 12,25,90,000/- held to be unsustainable and directed to delete the same. Again on the issue relating to disallowance made by the AO a sum of Rs. 6,41,874/- in respect of entertainment expenses. The Id. CIT(A) restricted the disallowance of entertainment expenses to the extent of 10% on the total expenditure and partly allowed the appeal of the assessee.

6. At the time of hearing, the Id. counsel for the assessee submitted that the instant issue no. 1 is covered in favour of the assessee by the judgement of co-ordinate bench in the case of ACIT vs M/s. Manaksia Limited in ITA No. 1611/Kol/2019 which is sister concern of present assessee. However, the CIT, DR argued the matter vehemently and submitted a detailed arguments by placing a strong reliance on the order of TPO as well as Id. AO.

7. Per contra, the Id. counsel for the assessee submitted that the issue relating to upward adjustment made in the instant appeal is squarely covered by the

decision of co-ordinate bench of ITAT (supra) and submitted that para 13.7 where similar issue has been upheld by the co-ordinate stated as follows:

*“13.7. In respect of the issue relating to the manner in which the PLI is to be worked out, the assessee has computed it on the basis of OP/OR as the most appropriate PLI as against which the ld. TPO has considered OP/OC to be the most appropriate PLI. The ld. CIT(A) has given a finding that application of PLI as OP/OC is the most appropriate PLI and has directed the ld. TPO / AO to re-compute and re-work the PLI and the mean of PLI of the comparables. The assessee has not challenged this finding of the ld. CIT(A) and we do not find any reason to interfere with the finding given by the ld. CIT(A) to this effect. Accordingly, the PLI is to be computed on the basis of OP/OC. In respect of the issue relating to selection and rejection of comparables identified by the ld. TPO and by the assessee, we find that the ld. CIT(A) has meritoriously dealt with the matter by taking note of the FAR analysis and the economic analysis undertaken by the assessee in its TPSR which the ld. TPO failed to undertake in respect of the seven new comparables identified by him. We find force in the submissions made by the ld. Counsel of the assessee in respect of selection and rejection of comparables noted above. Accordingly, on this specific issue also we do not find any merit in interfering with the factual findings given by the ld. CIT(A).”*

8. We after going through the submission made by the ld. counsel of the assessee in respect of the above issue, accordingly on this specific issue, we do not find any infirmity with the factual finding given by the ld. CIT(A). We thus accordingly dismiss the ground no. 1 taken by the revenue and ground no. 2 in cross-objection filed by the assessee and ground no. 1 of the cross-objection filed by the assessee is allowed.

9. Further, the issue no. 2 raised by revenue in respect of restricting the disallowance on account of entertainment expenses to the extent of 10% by the ld. CIT(A), the ld. AO while disallowance made and he observed as under:

*“During the year, the assessee claimed “Entertainment Expenses” of Rs. 1283749/- in its profit and loss account. The assessee was specially asked vide notice u/s 142(1) dated 10.11.2017 to furnish the copy of ledger as well as bill and voucher in supporting of the said claimed expenses. The assessee company could not furnish the ledger copy as well as any voucher in support of the expenses claimed. Thus in absence of any evidence for the expenses, while*

*considering that such expenses cannot be ruled out in this business, 50% of the said expenses is being disallowed and added back to the total income of the assessee.”*

10. On the other hand, the ld. CIT(A) made his observation while dealing with this issue by observing as under:

*“i. I have carefully considered the submissions of the appellant and perused the observations of the ld. AO in the impugned order. The short issue in this ground is the estimated disallowance of 50% of the entertainment expenses made by the ld. AO for want of details and evidences. In the submissions made in the applicable proceedings, the appellant objected to the estimated disallowance by the details of the expenses were not fully furnished.*

*ii. In the circumstances the action of the ld. AO cannot be completely faulted with, however, given the turnover disclosed by the appellant company, and given the fact that the claim of entertaining expenses is not very high, in my considered view of the matter, the estimation of disallowance at 50% to be excessive and in the interest of fair play and justice, the ld. AO is directed to restrict the disallowance of entertainment expenses to 10%. This ground of the appeal is therefore partly allowed.”*

11. While examining the instant issue, the ld. CIT(A) observed that entertainment expenses was not very high and his considered view that the estimated disallowance of 50% to be excessive and in the interest of fair play and justice, he restricted such disallowance expenses @ 10% and partly allowed the appeal of the assessee in this regard.

12. On this specific issue, at the time of hearing before us the ld. AR of the assessee submitted a detailed Paper Book containing 121 pages containing copy of ledger in respect of entertainment expenses by which he bringing to our notice at page 61 & 62 where details of such expenditure has been inserted and submitted that those expenditure were genuine and all are recorded in its books of account and as such there is no question to disbelieve that the entertainment expenses incurred by the assessee are not supported by evidence and all are

supported by evidences, therefore, whole claim of entertainment expenses may be allowed.

13. We after perusing the material available on record considering the submission of parties, we find that order passed by Id. CIT(A) which is proper and reasonable in respect of this issue and accordingly, there is no need to interfere in respect of this issue. Since the Id. AR produced sufficient evidences in support of its claim in respect of entertainment expenses. Accordingly issue of ground raised by the revenue is dismissed.

14. In the result, the appeal of the Revenue is dismissed and cross-objection filed by the assessee is partly allowed.

**Order pronounced in the open court on 09.09.2022.**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated: 09.09.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: DCIT, CIR-3(1), Kolkata.
2. The Respondent: M/s. Manaksia Steels Ltd.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata