

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1354 OF 2013

The Commissioner of Income Tax, Central-III .. Appellant.
V/s.
M/s. Firestone International (P) Ltd. .. Respondent.

Mrs. S. V. Bharucha, for the Appellant.
Mr. Percy Pardiwalla, Sr. Advocate with Mr. A. K. Jasani, for the Respondent

**CORAM: M.S.SANKLECHA, &
N.M.JAMDAR, JJ.
DATE : 15th JUNE, 2015.**

PC:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 9th November, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2006-07.

2 The Revenue has urged the following questions of law for our consideration:-

“(a) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in restricting the adjustment only on international transactions where the assessee has selected TNMM and applied the same on entity level because presumption underlying arms length principle is that uncontrolled transactions are at arm's length, and therefore, if the overall margins are less than arms length margins, the short fall must be on account of AE transactions only and not on pro rata basis.

(b) *Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the addition of Rs.8,39,245/- as the adjustment is with +/-5% as the ITAT has restricted the adjustment only on AE transactions which has resulted the adjustment within +/-5%?*

(c) *Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in restoring the issue of disallowance u/s. 14A back to the file of the AO for fresh consideration in view of the decision of this Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (328 ITR 81) against which an SLP has been filed in the Apex Court?"*

3 As far as Question (a) is concerned, the learned Counsel for the Revenue is unable to show how it arises from the impugned order of the Tribunal. It appears that the question itself is academic. In the above view, there is no occasion to entertain Question (a) as substantial question of law.

4 (i) So far as Question (b) is concerned, the Respondent-Assessee is engaged in dealing with the Associated Enterprises (AE) in Import and Export of polished diamonds (Manufacturing). The Assessing Officer in line with the directions of the Transfer Pricing Officer (TPO) made an addition of Rs.1.20 Crores in respect of the Appellant's transaction with its AEs while arriving at Arms Length Price (ALP). This on the basis of the entire turn over of the Assessee and not only on the basis of the transaction with its AE.

(ii) On appeal, the Commissioner of Income Tax [CIT(A)] held that the addition cannot be on the entire turn over of the Assessee but has to be restricted only to transactions with AEs. Consequently, the additional was restricted to 1.80% of the sales to AEs i.e. on Rs.4.51 Crores (Sales) at Rs.8.39 lakhs.

(iii) Being aggrieved, the Revenue as well as the Respondent-Assessee carried the issue in appeal to the Tribunal. The impugned order of the Tribunal held that the addition made on account of ALP of Rs.8.39 lakhs at 1.86% is within the +/- 5% range as provided in Section 92C of the Act. Thus, if this was extended, no addition was called for. Besides, the Tribunal by the impugned order on examination of the facts held that even the ALP as determined by the TPO is taken into account at Rs.61.99 Crores is taken, even then it is within the 5% +/- safe harbor Rules not warranting any addition. The impugned order held that amount of Rs.8.39 lakhs added by the CIT(A) is to be deleted as it falls within +/- 5% variation provided under Section 92C of the Act.

(iv) We find that the decision of the Tribunal is a factual determination of the ALP and the same is found within +/- 5% safe harbor range. This is not shown to be perverse and/or arbitrary. Accordingly, no occasion to entertain question (b) can arise as it does not give rise to any substantial question of law.

5 As far as Question (c) is concerned, no fault can be found with the impugned order of the Tribunal inasmuch as it follows the decision of this Court in **Godrej & Boyce v/s. DCIT 328 ITR 81**. Accordingly, there is no occasion to entertain question (c) as it does not give rise to any substantial question of law.

6 Thus, **Appeal dismissed**. No order as to costs.

(N.M.JAMDAR,J.)

(M.S.SANKLECHA,J.)