

sbw

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

INCOME TAX APPEAL NO.1046 OF 2012

The Commissioner of Income Tax 6 ..Appellant

-Versus-

L'Oreal India P. Ltd. ..Respondent

.....

Mr. Arvind Pinto for the Appellant.

Mr. P. J. Pardiwalla, Senior Counsel, with Mr. A. K. Jasani for the Respondent.

.....

**CORAM: S.C. DHARMADHIKARI
AND
A. A. SAYED, JJ.**

DATE :- 7th NOVEMBER, 2014

PC.:

This Appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Mumbai Bench, in Income Tax Appeal No.5423/Mum/2009. The assessment year is 2003-04. The Tribunal's order dated 25th April, 2012 confirms the order of the Commissioner of Income Tax (Appeals)-XIX, Mumbai, dated 24th July, 2009.

2] Mr. Pinto, learned counsel, submits that this Appeal raises following two questions of law which are substantial. They are formulated at page 4 of the paper book. They read as under:-

“(i)Whether on the facts and in the circumstances of the case and in law, the ITAT is erred in holding that the Resale Price Method (RPM) was the most appropriate method for determining the arms length price of the Assessee's international transaction in respect of imports of finished goods?

(ii) Whether on the facts and in the circumstances of the case and in law, the ITAT is erred in not appreciating that the substantial value addition made to the goods sold by the Assessee company has changed the degree of similarity in the functions performed; as the value of the goods originally transferred to the Assessee and the contribution to the value of the final product cannot be evaluated, thereby making RMP non applicable in the instant case?”

3] Mr. Pinto, submits that the Tribunal and the Commissioner of Income Tax had seriously erred in holding that the Resale Price Method (RPM) was the most appropriate method for determining the arms length price of the Assessee's international transaction in respect of import of finished goods.

4] Mr. Pinto, submits that the Transfer Pricing Officer was justified in holding that this would not be the appropriate method because the value of the goods originally transferred to the Assessee and the contribution of the value of the final product cannot be evaluated thereby making the

RPM as the applicable method. The Tribunal should have noted that the department had pointed out that the Assessee has business in two segments, namely, manufacturing and distribution. The Transfer Pricing Officer ('TPO' for short) has not made any adjustment in respect of business of manufacturing segment of the Assessee. However, in respect of business of distribution, the TPO suggested adjustment of Rs.4,90,07,000/- by applying the transactional net margin method and rejected the RPM adopted by the Assessee because the TPO found that the Assessee is incurring losses consistently. Hence, the pricing policy is not at arms length. The gross margin in case of comparable cases cannot be relied upon because of the product differences of comparable companies. It is, then, found by the TPO that the Assessee had to incur several expenses including promotional and advertising, that is why the stand of the departmental representative should have been accepted.

5] Mr. Pardiwalla, learned Senior Counsel, appearing on behalf of the Assessee, on the other hand, submitted that the questions of law cannot be termed as substantial because in the Assessee's own case, the Resale Price Method was accepted. It was accepted in subsequent assessment years and even a prior one. It is not that these expenses which are required to be incurred for the purposes of establishing the Assessee's

presence in the local or domestic market would make any difference and to such extent so as to reject the RPM. The Tribunal's findings of fact at para 17 and 18 are, therefore, not raising any substantial question of law. They cannot be termed as perverse.

6] Mr. Pardiwalla, relies upon an order passed by this Court in the case of this Assessee in Income Tax Appeal No.2320 of 2011 decided on 22nd March, 2013.

7] After having perused the relevant part of the order passed by the Commissioner and the Tribunal on this question, we are in agreement with Mr. Pardiwalla that the Tribunal did not commit any error of law apparent on the face of the record nor can the findings can be said to be perverse. The Tribunal has found that the TPO has passed an order earlier accepting this method. The Tribunal has noted in para 19 of the order under challenge that this method is one of the standard method and the OECD (Organization of Economic Commercial Development) guidelines also state in case of distribution or marketing activities when the goods are purchased from associated entities and there are sales effected to unrelated parties without any further processing, then, this method can be adopted. The findings of fact are based on the materials which have been produced before the Commissioner as also the Tribunal. Further, it was

highlighted before the Commissioner as also the Tribunal that the RPM has been accepted by the TPO in the preceding as well as succeeding assessment years. That is in respect of distribution segment activity of the Assessee. In such circumstances, and when no distinguishing features were noted by the Tribunal, it did not commit any error in allowing the Assessee's Appeal. Such findings do not raise any substantial question of law. The Appeal is devoid of merits and is, therefore, dismissed. There would be no orders as to costs.

(A. A. SAYED, J.)

(S.C. DHARMADHIKARI, J.)

wadhwa