आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.567/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Tata BlueScope Steel Ltd.,
The Metropolitan, 4th Floor, Final Plot No. 27,
Survey No. 21, Wakdewadi, Shivaji Nagar,
Pune – 411005

PAN : AACCB5628E

.......अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Circle – 7, Pune

......प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.510/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Tata BlueScope Steel Ltd.,
The Metropolitan, 4th Floor, Final Plot No. 27,
Survey No. 21, Wakdewadi, Shivaji Nagar,
Pune – 411005

PAN : AACCB5628E

.......अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Circle – 7, Pune

......प्रत्यर्थी / Respondent

Assessee by	: Shri Yogesh Thar
Revenue by	: Shri T. Vijaya Bhaskar Reddy

सुनवाई की तारीख / Date of Hearing	: 18-12-2019
घोषणा की तारीख / Date of Pronouncement	: 30-01-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These two appeals by the assessee against separate assessment orders dated 06-01-2016 and 30-12-2016 passed by the AO (DCIT, Circle-7, Pune) for assessment years 2011-12 and 2012-13, respectively.

2. Shri Yogesh Thar, the ld. AR submits that the issues raised in both the appeals are based on the same identical facts and prayed to hear both the appeals together. With the consent of both the parties, we proceed to hear both the appeals together and pass consolidated order for the sake of convenience.

3. First, we shall take up the appeal in ITA No. 567/PUN/2016 for A.Y. 2011-12.

4. Ground Nos. 1 and 2 raised by the assessee challenging the action of AO in making transfer pricing adjustment in respect of international transactions involving Technical Assistance Agreement Fees and Project Management Fees.

5. The brief facts of the case as emanating from records are: The assessee company is a joint venture between Tata Steel Ltd, India and BlueScope Steel Asia Holding Pte. Limited, Australia. The assessee is engaged in manufacturing and sale of Pre-Engineering Buildings (PEBs), coated steel products, steel building solutions etc. The assessee is primarily operates in SAARC region. During the period relevant to the assessment year under appeal, the assessee entered into various

international transactions with its Associated Enterprises (AEs). The two international transactions with AEs which are subject matter of appeal are as under:

i.	Technical Assistance Fees	:	Rs.1,19,64,701/-;
ii.	Project Management Services	:	Rs.98,99,864/-.

6. The Transfer Pricing Officer (TPO) issued show cause notice to the assessee in respect of payment towards technical assistance fees of Rs.1,19,64,701/- and for project management services of Rs.98,99,864/-. The assessee furnished various documents to show the services received by the assessee from its AEs. However, TPO concluded that documentation provided by the assessee does not prove the services rendered. The TPO determined the Arm's Length Price (ALP) of the above said two transactions as 'Nil'. On the basis of order of TPO, the Assessing Officer passed draft assessment order making upward adjustment of Rs.2,18,64,565/-.

7. Aggrieved by the additions proposed by TPO, the assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide directions dated 14-12-2015 rejected the contentions of the assessee and upheld the adjustment made by the TPO on account of both the above said services. In line with the directions of the DRP, the Assessing Officer made on addition of Rs.2,18,64,565/-. Hence, present appeal before us by the assessee.

8. Heard both parties and perused the material available on record. The international transactions involving technical assistance fees and project management fees totaling to Rs.2,18,64,565/- were referred to Transfer Pricing Officer (TPO). The AO received report of TPO on 29-01-

2015. Accordingly, draft assessment order u/s. 144C(1) of the Act prepared with a proposal on adjustment of Rs.2,18,64,565/- involving above said two transactions. The DRP upheld the adjustment proposed by the TPO involving the above said two services. A similar issue arose for consideration before this Tribunal in assessee's own case in ITA No. 847/PUN/2016 for A.Y. 2010-11, the same is placed on record by the ld. AR. We note that the contention was raised before this Tribunal that the TPO proposed upward adjustment on similar services without determining ALP of the transactions. Considering the same the Tribunal vide its order dated 15-02-2019 remanded both the issues to the file of TPO to determine the ALP of transactions by applying the most appropriate method. The ld. AR and ld. DR both agreed in the present case that upward adjustment was proposed without determining the ALP of international transactions involving technical assistance fees and project management fees. Thereby, taking into consideration the facts and circumstances of the case and the findings of Tribunal in assessee's own case for A.Y. 2010-11, we deem it proper to remand the ground Nos. 1 and 2 to the file of TPO/AO. The relevant portion in order dated 15-02-2019 for A.Y. 2010-11 at para No. 12 is reproduced here-in-below for ready reference :

> *"12. Thus, in view of the fact that the TPO in the instant case at the outset had determined the services i.e. technical assistance and project management services at 'Nil' without determining ALP of the transactions, hence, we deem it appropriate to restore the ground No.1 and 2 of the appeal back to the file of TPO/Assessing Officer to ascertain the ALP of the transactions by adopting most appropriate method prescribed under the Act. The assessee is granted liberty to furnish necessary documents to further substantiate rendering of technical assistance and project management services by AEs to the assessee. The assessee is further directed to furnish the details of comparable services rendered by the AEs to third parties. The TPO/Assessing Officer while reconsidering the issue shall grant reasonable opportunity of hearing to the assessee, in accordance with law. Accordingly, ground No.1 and 2 raised in the appeal by assessee are allowed for statistical purposes."*

9. In view of the above, ground Nos. 1 and 2 raised by the assessee are allowed for statistical purposes.

10. Ground No. 3 becomes academic in view of our decision taken in ground Nos. 1 and 2, hence, no adjudication is required.

11. Ground No. 4 is general in nature, hence, requires no adjudication.

12. In the result, the appeal of assessee is allowed for statistical purposes.

<u>ITA No. 510/PUN/2017, A.Y. 2012-13</u>

13. First issue raised in this appeal is against the transfer pricing adjustment amounting to Rs.51,34,588/- on account of disallowance of depreciation towards Technical Assistance Fees/Know-how.

14. Briefly stated, the facts of the case are that the assessee declared an international transaction of 'Payment of Technical Assistance Fees' amounting to Rs.1,46,82,000/-. On being called upon to explain by the TPO as to why the ALP of this international transaction be not treated as Nil, the assessee submitted that it received technical assistance vide 'License Agreement Assistant Agreement' entered into with BIEF International Inc. for the Jamshedpur plant, currently under construction. The assessee further submitted that these costs were capitalised and not claimed as expenditure. The TPO did not agree with the assessee on the ground that it failed to produce the evidence for determining the ALP of the transaction. Treating ALP of the transaction at Nil, the TPO proposed transfer pricing adjustment of Rs.1.46 crore and odd, being the value of the international transaction. The DRP accepted the TPO's point of view in determining Nil ALP of the transaction but directed to quantify the amount of technical assistance fee in this year and preceding years and then to

disallow the amount of depreciation related to such cumulative amounts capitalised by the assessee. While giving effect to the directions of the DRP, the AO, on recommendation of the TPO, disallowed the capitalised amount of depreciation to the tune of Rs.51,34,588/-, against which the assessee has come up in appeal before the Tribunal.

15. Having heard both the sides and gone through the relevant material on record, it is primarily noted that determination of the ALP of an international transaction of purchase of asset is one thing and making transfer pricing adjustment is another thing. When an asset is purchased, the TPO is required to first determine the ALP of such asset. Thereafter, the transfer pricing adjustment is made by seeing the amount of depreciation on the transaction value *vis-a-vis* the amount of depreciation on the Arm's Length value of the asset as determined by the TPO. Here is a case in which the assessee purchased the technical know-how etc. from its AE during the year for Rs.1.46 crore which was capitalized by the assessee. The TPO instead of considering the amount of depreciation on the determined ALP and then proposing the transfer pricing adjustment in respect of such claim made during the year, went on to make transfer pricing adjustment w.r.t. the ALP of the international transaction of purchase of asset. This course of action is obviously without any mandate of law, which was also rightly accepted by the DRP, in principle. However, the DRP went on to direct the AO/TPO to quantify the cumulative amount of technical assistance fee claimed by the assessee whose ALP was determined by the TPO in the preceding years and also the year under consideration and then disallow depreciation *qua* such cumulative amounts capitalized. While giving effect to such direction, the TPO made some calculation vide his rectification order dated 30-12-2016

and proposed the transfer pricing adjustment of Rs.51,34,588/- towards depreciation of capitalized amount. In our considered opinion, the right course of action was to first find out the ALP of the international transaction of purchase of asset for the year under consideration. If such determination has been done in the preceding years as well on the respective payments made for acquisition of technical know-how fees, then the ALPs determined by the TPO in the course of the proceedings before him for such preceding years should also be clubbed with the ALP of the transaction for the year under consideration. Depreciation should be computed on such determined ALP. Difference between the amounts of actual depreciation claimed in current year *vis-a-vis* depreciation on the current and the earlier determined or non-determined ALPs of such technical know-how purchased, calls for disallowance alone. We, therefore, set-aside the impugned order on this issue and remit the matter to the file of AO/TPO for deciding this issue accordingly. Needless to say, the assessee will be given reasonable opportunity of hearing.

16. Ground No. 3 raised by the assessee questioning the action of AO/TPO in determining the ALP of project management fees at Nil.

17. We note that this issue is similar to ground No. 2 in ITA No. 567/PUN/2016 wherein with the consent of both the parties we remanded the issue to the file of AO/TPO to ascertain the ALP of the transactions by adopting most appropriate method by placing reliance on the order of this Tribunal order dated 15-02-2019 in assessee's own case in the aforementioned paragraphs. In view of the same we deem it proper to remand the ground No. 3 involving transfer pricing adjustment in respect of project management fees to the file of AO/TPO to ascertain the ALP of

the transactions by adopting most appropriate method prescribed under the Act. The assessee is liberty to furnish necessary documents to substantiate rendering of technical assistance and project management services by AEs to the assessee. The assessee is further directed to furnish the details of comparable services rendered by the AEs to third parties. The TPO/AO while reconsidering the issue shall grant reasonable opportunity of hearing to the assessee, in accordance with law. Accordingly, ground No. 3 raised by the assessee is allowed for statistical purposes.

18. Ground No. 4 raised by the assessee for not granting short rate of TDS. It was submitted that the AO/TPO did not grant entire TDS credit while computing the income based on revised return of income. The ld. AR prayed to give a direction to AO to consider the same. The ld. DR did not report objection in remanding the issue raised in ground No. 4 to the file of AO/TPO by the ld. AR. Therefore, with the consent of both the parties we remand the issue to the file of AO/TPO to consider the issue afresh in terms of claim made by the assessee. Thus, ground No. 4 raised by the assessee is allowed for statistical purposes.

19. Ground No. 5 raised by the assessee for granting short credit of interest on refund u/s. 244A of the Act. The contention of ld. AR is that the AO should have granted interest on refund u/s. 244A of the Act for 31 months but however granted interest only for 25 months. Upon hearing both the parties, we find the issue is required to be examined by the AO for which both the ld. AR and ld. DR agreed for restoration of issue to the file of AO/TPO for its fresh examination. Therefore, we deem it proper to remand the issue raised in ground No. 5 to the file of AO/TPO for its fresh

verification. Thus, ground No. 5 raised by the assessee is allowed for statistical purposes.

20. Ground No. 6 raised by the assessee is general in nature, hence, requires no adjudication.

21. In the result, the appeal of assessee is allowed for statistical purposes.

22. To sum up, both the appeals of assessee are allowed for statistical purposes.

Order pronounced in the open court on 30th January, 2020.

Sd/-	Sd/-
(R.S. Syal)	(S.S. Viswanethra Ravi)
VICE PRESIDENT	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th January, 2020.
RK

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel-3, Mumbai
4. The CIT (IT& TP), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune