

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 57/H/2016 Assessment Year: 2011-12		
Dy. Commissioner of Income-tax, Circle - 3(1), Hyderabad.	Vs.	Seaways Shipping and Logistics Ltd., Hyderabad. PAN - AADCS 0845B
(Appellant)		(Respondent)
and		
ITA No. 1656/H/2018 Assessment Year: 2012-13		
Seaways Shipping and Logistics Ltd., Hyderabad. PAN - AADCS 0845B	Vs.	Dy. Commissioner of Income-tax, Circle - 3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Ajit Tolani	
Revenue by:	Smt. Nivedita Biswas Shri Sunil Kumar Pandey	
Date of hearing:	27/01/2021 (ITA No. 57/H/16) 28/01/2021 (ITA No. 1656/H/18)	
Date of pronouncement:	08/02/2021	

ORDER

PER BENCH:

ITA No. 57/Hyd/2016

This Revenue's appeal ITA 57/Hyd/2016 for AY 2011-12 is directed against the DCIT, Circle - 3(1), Hyderabad's

assessment dt. 17/11/2015 framed in furtherance to the Dispute Resolute Panel – I, Bengaluru’s order/directions dt. 02/11/2015 in F.No. 148/CIT/DRP/2015 deleting section 92CA arm’s length price adjustment “ALP” addition of Rs. 5.63 crores, in proceedings u/s 143(3) rws 144C(1) rws 144C(5) of the Income Tax Act, 1961 ; in short “the Act”. The assessee’s appeal ITA 1656/Hyd/2018 for AY 2012-13 on the other hand is directed against the CIT(A) - 3, Hyderabad’s order dated 20/06/2018 passed in case No. 0523/DCIT-3(1)/Hyd/CIT(A)/2016-17 involving proceedings u/s 143(3) rws 144C(1) of the “the Act”.

Heard both the parties. Case files perused.

2. The Revenue has raised the following substantive grounds in its appeal ITA 57/Hyd/2016:-

- “1. The ld.DRP erred in law and on facts of the case:*
- 2. The ld.DRP erred in deleting the amount of Rs.5.63 crores made by way of adjustment u/s. 92CA of the Act.*
- 3. The ld.DRP erred in stating that profit earned on the whole as a result of linear agency services is Rs.10.42 crores as against Rs.26.73 crores.*
- 4. Any other ground(s) that may be urged at the time of hearing.”*

3. Both the learned representatives took us to the Dispute Resolution Panel's (DRP) directions dated 02.11.2015 under challenge, which read as follows:-

"3. During the course of hearing the AR submitted that Seaways Snipping & Logistics Ltd is a 100% Holding company of Maxicon Container Line Pte Ltd Singapore. Seaways Shipping & Logistics Ltd is an agent of Maxicon container Line Pte Ltd for all its operations in India. During the FY ended 31.03.2011 Maxicon container Line Pte Ltd Singapore has generated total revenue of S\$ 57518137. (Revenue USD 5707017 and the income of S\$ 443120) amounting to Rs. 184.05 Crores. This revenue Income includes Rs. 73.60 crores from India (on agency to Seaways Shipping & Logistics).

3.1. It is further submitted that the profit for the year generated by Maxicon container Line Pte Ltd Singapore was S \$ 970688 (Rs.3.10 crores) as per the Audited Accounts. The above profit is after charging Rs.7.72 Cr. as agency expenses paid to SSLL. In other words, the total profit generated (Rs. 3.10 cr. + Rs.7.72 cr.) = Rs. 10.82 cr. If the Rs10.82 cr. Is shared in the ratio of 50:50, it amount to 5.41 to Seaways Shipping & Logistics and Rs. 5.41 to Maxicon Container Line Pte Ltd. Singapore. The Seaways Shipping & Logistics Ltd. would get an income of Rs.5.41 cr. Whereas Seaways Shipping & Logistics Ltd. has charged the agency commission of Rs. 7.72 cr. based on the Agency Agreement. Seaways Shipping & Logistics Ltd. Has charged Rs.2.31 crores more profit and accounted Rs.7.72 crores in the Income Statement. As such the TPO has arbitrarily proposed to charge additional Rs.5.63 crores on PSM which is not necessary as Seaways Shipping & Logistics Ltd. Charged Rs.7.72 crores as agency commission.

3.2 It was also submitted that the revenue generated in India is accounted in Singapore correctly at Rs.73.60 Cr as for the operations cost only Rs.46.87 cr incurred in India is taken while the costs are also incurred in Singapore. There are establishment costs, operations cost, finance cost, depreciations costs etc. are all included in the profit and loss statement of Maxicon Container Line Pte Ltd. Singapore. Thus if we take all the costs into account the total profit before agency commission works out to Rs.10.82 cr. As stated at point 4 above.

4. Having considered the submissions, it is noticed by us that the TPO has incorrectly applied the profit split method, which is evident from the fact that the profit for the year of Maxicon container Line Pte Ltd Singapore (AE) was S\$970688 (Rs. 3.10 cr.) as per the Audited accounts, after charging Rs.7.72 as agency expenses paid to the assessee and therefore the total profit generated is Rs. 10.82 cr. (Rs. 3.10 + Rs. 7.72 cr) even if Rs. 10.82 cr is shared in the ratio of 50:50 as applied by the TPO, it comes to RS. 5.41 crores to the assessee, whereas in this transaction the receipt has been offered by the assessee at Rs.7.72 Crores. Therefore, there was no rationale to make a further adjustment of Rs.5.63 crores. The Assessing Officer is accordingly directed to delete the addition made."

4. Learned CIT-DR vehemently contended during the course of hearing that the DRP erred in law and on facts in reversing Transfer Pricing Officer "TPO"s proposed action making impugned ALP adjustment of Rs.5,63,56,082/- after adopting profit split method @ 50% between the assessee and its overseas associate enterprise (AE) involving

aggregate cost figures at Rs.26,72,77,158/-. The assessee's case on the other hand supports the DRP's directions under challenge that the panel has rightly taken the aggregate of the total profits at Rs.10.82 crores thereby reaching to the conclusion that its profits already declared of Rs.7.72 crores turn out to be excessive than that in issue of Rs.5.63 crores.

5. We have given our thoughtful consideration to the foregoing rival pleadings pertaining to the sole issue of aggregate figure to be adopted between the assessee and its overseas associate enterprise(s) pertaining to the international transactions in the nature of container line income/container line expenses, reimbursement of expenses paid, liner agency services, slot hire income & slot expenses totalling to Rs.19,60,49,865/- disclosed in Form 3-CEB report. We notice that neither the TPO's order dated 29.01.2015 nor the DRP's above extracted directions under challenge have specified as to whether they have adopted cost/revenues of the international transactions in issue only or that of the entire activities involving the twin

entities' gross transactions. We quote CIT Vs. Firestone International (P.) Ltd. 378 ITR 558 (Bom.) and restore the instant issue of the correct arm's length price of the assessee's international transactions with its "A.Es" which deserves to be adjudicated afresh keeping in mind the said international transactions between them only. It is made abundantly clear before parting that there is no other dispute between the parties regarding the method adopted as well the book results before us.

6. Mr. Tolani at this stage sought to clarify the fact that the assessee has carried its transactions with its overseas associate enterprise(s) only. The fact however remains that as already indicated in the preceding paragraph, the clinching issue of the entity level or International transaction level's gross receipts/incomes pertaining to this issue still stands unresolved. We thus reiterate our foregoing directions and restore the Revenue's sole substantive grievance back to the TPO for his fresh adjudication to this limited extent. It shall be open for the assessee to place on record all the relevant data in

consequential proceedings to be concluded within three effective opportunities of hearing.

7. This Revenue's appeal ITA 57/Hyd/10 is partly allowed for statistical purposes to the limited extent indicated hereinabove.

ITA No. 1656/Hyd/2018

8. The assessee has raised the following substantive grounds:-

"1) The order of the learned CIT (A) is erroneous both on facts and in law.

2) The learned CIT (A) ought to have provided proper opportunity to the appellant before deciding the appeal;

3) The learned CIT (A) erred in rejecting the petition for condonation of delay in filing the appeal without considering the fact that the appellant was prevented by sufficient reason in not filing the appeal within the time.

4) The learned CIT (A) ought to have considered the merits and decided the grounds of appeal

5) The CIT (A) erred in not considering the various grounds raised before him

6) The learned CIT (A) erred in not considering the grounds against the addition made by the Assessing Officer of Rs.8,25,26,416/- being the addition by virtue of order u/s 92CA; Rs.94,39,321/- made by disallowance

on account of share issue expenses and Rs.13,64,308/- made by disallowance u/s 40(a)(ia) of the I.T. Act.

7) Any other ground or grounds that may be urged at the time of hearing”.

We have heard both the parties. Case file perused.

9. The assessee's substantive grounds No. 1-5 and 7 are not pressed during the course of hearing. It emerges from a perusal of its 6th substantive ground that it has raised three substantive issues challenging correctness of the learned lower authorities action making ALP adjustment of Rs. 8,25,26,416/-, disallowance of share expenses to the tune of Rs. 94,39,321/- and section 40(a)(ia) disallowance of Rs. 13,64,308/-; respectively. Both the learned representatives are in agreement during the course of hearing that the Revenue's appeal ITA No. 57/Hyd/2016 on 27/01/2021 (supra) hereinabove has restored the above first issue back to the TPO with directions to compute the expenses as well as profit margins pertaining to international transactions with overseas or AE only i.e., those incurred and received from both the sides than at entity's level gross sum(s). We thus follow judicial consistency for this first issue and

restore the same back to the TPO to be decided afresh along with his adjudication in preceding AY 2011-12 (supra). The Assessee's instant first substantive issue is treated as partly allowed for statistical purposes in above terms.

10. Learned counsel is fair enough in conceding that the assessee does not wish to press for its 2nd and 3rd grievances provided the same are not taken as precedent. The Revenue is equally fair in accepting the conditional statement.

11. This assessee's appeal ITA 1656/Hyd/2018 is partly allowed for statistical purposes in above terms.

12. Both the Revenue's and assessee's appeals ITA No. 57/Hyd/2016 and ITA No. 1656/Hyd/2018 are partly allowed for statistical purposes in foregoing terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 8th February, 2021.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: February, 2021

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copy to :

<i>1</i>	<i>Seaways Shipping and Logistics Ltd., Seaways Pride, Road No. 36, Jubilee Hills, Hyderabad – 500 034</i>
<i>2</i>	<i>DCIT, Circle – 3(1), Signature Towers, Kondapur, Hyderabad.</i>
<i>3</i>	<i>CIT(A) – 3, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT - 3, Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>