<u>Court No. - 35</u>
Case :- INCOME TAX APPEAL No. - 7 of 2017
Appellant :- Pr. Commissioner Of Income Tax-Ii Kanpur
Respondent :- M/S Rahman Exports Pvt. Ltd.
Counsel for Appellant :- Shubham Agarwal
Counsel for Respondent :- Nishant Mishra,Ashish Bansal,Shalini Goel

Connected with

Case :- INCOME TAX APPEAL No. - 269 of 2015
Appellant :- Pr. Commissioner Of Income Tax-Iikanpur
Respondent :- M/S Rahman Exports Pvt. Ltd.
Counsel for Appellant :- Ashok Kumar,Shubham Agrawal
Counsel for Respondent :- Ashish Bansal,Shalini Goel,Shubham Agrawal

<u>Hon'ble Bharati Sapru,J.</u>
<u>Hon'ble Neeraj Tiwari,J.</u>

Since the controversy involved in these two appeals is identical, the same is being decided by a common judgement and order treating the Income Tax Appeal No.07 of 2017 as the leading case.

Heard Sri Shubhan Agarwal, learned counsel for the department and Sri Ashish Bansal, learned counsel for the assessee.

The Income Tax Appeal No.07 2017, under Section 260-A of the Income Tax Act, 1961(hereinafter referred to as the 'Act') has been filed by the department against the order of the Income Tax Appellate Tribunal dated 12.06.2015 for the assessment year 2008-09 raising following questions of law:-

"A. Whether on the facts and circumstances of the case, the learned ITAT was justified in law in rejecting the appeal of the revenue without appreciating that the assessee had not furnished the details of closing stock which were attributed to the sales to the Associated Enterprises (AE) before the TPO?

B. Whether on the facts and circumstances of the case, the learned ITAT was justified in law in confirming the order of CIT (A) in respect of addition of Rs. 2,23,73,153/- made u/s. 92 of the I.T. Act on the basis of order of TPO, who had calculated Transfer pricing on the basis of existing data available on record?"

The Tribunal has considered the matter at length. One thing which is clear from the record is that the assessee was an exporter of goods and not an importer and the consistent approach of the department was that it was adopting the CUP Method i.e. Comparable Uncontrolled Price Method for assessing the transaction made by exporters. The Transfer Price Officer (T.P.O) had wrongly used resale method(RS) for the assessee for the given aspect in question. The Tribunal therefore while examining the matter has discussed hereunder:-

"*4.4.1 I have perused the order of the TPO and also the submission made by the Ld. A.R. At the outse, it may be observed that the RSM Method as adopted by the TPO was not legally correct as the same is applicable only for importers, whereas the present assessee is in the business of exports only. the CUP method has already been rejected by the TPO and the assessee has not disputed such rejection. I also find that in the subsequent year i.e. 2008-09, the TPO has adopted TNMM as the most appropriate method to compute the ALP. Accordingly, I am of the considered view that TNMM should be adopted as the most appropriate method for computing ALP even for this year i.e. A.Y. 2007-08. In this regard, the Ld. A.R. of the appellant/ vide my letter dated 04.01.2013 was requested to give financial details of comparable companies (as adopted by the TPO in A.Y. 2008-09). The letter reads as under:*

"*F.No. CIT(A)-I/310/DCIT-VI/KNP/2012-13 Dated:04/01/2013 To, The Principal Officer M/s Rahman Industries Ltd.*

Kanpur Sub: Appellate Proceedings for A.Y. 2007-08--Reg Please refer to above.

2. In this regard, it is noticed from the T.P. Order for A.Y. 2007-08 that the CUP method adopted by you to compute the ALP was rejected by the TPO. The TPO had applied RSM method for computing the ALP. You have stated in your submissions that RSM was not a correct method to determine the ALP for the assessee, who was an exporter and not an importer.

3. You are requested to file the necessary financial details along with computation of PLI (OP/TC) for your company and also for the comparable companies as adopted by the TPO in his order for A.Y.2008-09.

4. Compliance is requested within 7 days.

(Raj Kumar Lachbiramka) Commissioner of Income-tax (Appeals)-I, Kanpur"

The Assessing Officer has filed an appeal before the CIT (Appeals) who has partly allowed the appeal.

Aggrieved with the order of the CIT (Appeals) the department approached the ITAT and after examining the matter at length, the Tribunal held in paragraph 10 as under;

"10. *Having carefully examined the orders of the lower authorities in the light of the rival submissions, we find that in this order, the T.P.O. himself has adopted the TNMM method for determining the Arm's Length Price but while determining the same he has not taken into* *account the variation in closing stock. Before the CIT (A), the assessee took a specific plea that while determining the Arm's Length Price as per TNMM method, the TPO has not considered a sum of Rs. 22,57,58,291/- being variation in closing stock in order to arrive on the figure of operating cost. The assessee has given the figure of correct calculation before the CIT(A) and CIT(A has examined both the calculations i.e. assessee as well as TPO and having noticed that there was factual error in the TPO's calculation, the CIT(A) has held that the average PLI of other comparables, as compared by TPO himself, comes to 8.11%. Since the PLI of the assessee is 9.56%, which is more than the average PLI of comparables, there was no reason for the TPO for any adjustment. No defect in the order of CIT(A) was pointed out by learned D.R. therefore, we find ourselves in agreement with his order and accordingly we confirm the same."*

The order of TPO has also been placed before us by way of a supplementary affidavit, by which it is clear that there is only minor mistake in the order.

After examining the matter, we find that the entire matter has been considered at length and the department does not deny that TNMM method was being used for exporters and, therefore, the resultant concession granted to the assessee on this count is correct. It has also been noticed by the Tribunal that even otherwise the difference in the PLI was only marginal and was below 5%.

The question of law is, therefore, answered in favour of the assessee and against the department.

Both the appeals are accordingly dismissed.

Order Date :- 11.1.2018
Arvind