



IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT, AND

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.149/Mum./2018
(Assessment Year : 2013-14)

Amcol Minerals And
Materials India Pvt. Ltd.
Office no.6, 3rd Floor
Rosa Vista building
Opp. Suraj Water Park
Wagbil, Gorbunder road
Thane (West) 400 615
PAN – AAJCA2681D

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-1, Thane

..... Respondent

Revenue by : Shri Ujjawal Kumar
Assessee by : Shri Sanjay Chokshi

Date of Hearing – 17.02.2020

Date of Order – 04.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 24th October 2017, passed under section 143(3) r/w section 144C(13) of the Income Tax Act, 1961 (for short "the Act") pertaining to the assessment year 2013-14, in pursuance to the directions of the Dispute Resolution Panel-1 (DRP), Mumbai.

2. The grounds raised in the memorandum of appeal are concerning the issue of addition made of ₹ 1,53,16,666, on account of adjustment made to the arm's length price of certain international transactions with the Associated Enterprise (AE).

3. Brief facts are, the assessee, a resident company, is stated to be engaged in the business of minerals blending, warehousing and trading of chromite sand, bentonite and allied products. As stated by the Transfer Pricing Officer, to supplement its business the assessee imports chromite sand from its group company in South Africa and sold to customers in India. As stated, the assessee also imports bentonite and related minerals from its AE in USA and Australia for further processing/blending with other minerals/ingredient to be utilized in the manufacturing activity carried on by the assessee. It is stated that the assessee is a subsidiary of Amcol, Mauritius, which is ultimately owned by Minerals Technologies Inc., USA. During the year under consideration, the assessee entered into various international transactions, such as, procurement of raw materials from AEs in Australia and USA, purchase of goods from AE in South Africa for the purpose of trading, purchase of fixed assets from the AE in Europe, royalty for use of intangible assets, management service, issue of equity shares, etc. In the Transfer Pricing Officer report, the assessee

benchmarked all these transactions by applying Transactional Net Margin Method (TNMM) at entity level. After examining the transfer pricing study report and other materials, the Transfer Pricing Officer was not satisfied with assessee's benchmarking insofar as it relates to purchases of raw materials from the AEs. Therefore, he proceeded to independently benchmark the arm's length price of the purchase of raw material from the AEs. In the process, he rejected some of the comparables selected by the assessee. Ultimately, he considered a single comparable viz. Ashapura Minechem Ltd. and adopting the margin of the said comparable computed @ 15.52%, he determined the arm's length profit at ₹ 58,56,312, thereby, making an adjustment of ₹ 1,53,16,666. The adjustment suggested by the Transfer Pricing Officer was added back to the income of the assessee. Against the draft assessment order, the assessee raised objections before learned DRP. However, learned DRP did not find merit in the objections of the assessee.

4. Before us, at the outset, the learned Authorised Representative submitted, some errors have crept into the original transfer pricing study report, as, while computing the arm's length price, certain adjustment on account of capacity utilization and scale of operations in relation to comparables were not considered. Further, he submitted, figures in relation to working of arm's length price derived from

manufacturing activity by utilizing the raw material purchased from the AEs were incorrectly mentioned in the transfer pricing study report. Thus, he submitted, to rectify the errors in the original transfer pricing study report, the assessee has prepared a revised transfer pricing study report from a reputed Chartered Accountant firm which he wants to submit as additional evidence. He submitted, since the additional evidence goes to the root of the addition made, the same may be admitted and issue may be restored back to the file of the Assessing Officer/Transfer Pricing Officer for examining the revised transfer pricing study report and decide the issue accordingly.

5. The learned Departmental Representative submitted, though, sufficient opportunity was given to the assessee at different stages, the assessee has not furnished the revised transfer pricing study report at any earlier stage. However, he left it to the discretion of the Bench to restore the issue to the Assessing Officer.

6. We have considered rival submissions and perused the material on record. As could be seen from the application filed by the assessee under rule 29 of the IT(AT) Rules, 1963, it has prepared a revised transfer pricing study report rectifying certain mistakes stated to have crept into the original transfer pricing study report furnished before the Transfer Pricing Officer. An affidavit sworn by an officer of the

assessee company has also been filed explaining the need for filing the additional evidence and the bearing it has on the transfer pricing adjustment. After considering the relevant facts as well as the nature of additional evidences filed, we are of the view that the revised transfer pricing study report furnished by the assessee may have a crucial bearing on the disputed issue. Therefore, in the interest of fairplay and justice, the additional evidence furnished by the assessee needs to be admitted.

7. However, considering the fact that the aforesaid additional evidence has been furnished for the first time before this Tribunal and the Revenue authorities never had an occasion to go through the same, we are inclined to restore the issue relating to the transfer pricing adjustment of purchase of raw materials to the Assessing Officer/Transfer Pricing Officer for fresh adjudication after taking note of the revised transfer pricing study report. At this juncture, we must make it clear, we have not expressed any opinion on the merits of the issue which has to be decided by the Assessing Officer/Transfer Pricing Officer keeping in view all relevant facts and in accordance with law. Needless to mention, the assessee must be afforded a reasonable opportunity of hearing before deciding the issue.

8. It is relevant to observe, before us the assessee has also filed additional grounds challenging the initiation of penalty proceedings under section 271G and 271AA of the Act. In our view, at this stage the grounds raised by the assessee challenging the initiation of penalty proceedings are premature as no orders have been passed imposing penalty. It is always open to the assessee to raise objections, if any, against imposition of penalty only in course of such proceeding and before the concerned authority. These grounds are dismissed.

9. In the result, appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 04.03.2020

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 04.03.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai