

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "K", MUMBAI**

सर्वश्री आर.एस. स्याल, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य, के समक्ष ।

Before Shri R.S.Syal, AM and Shri Vivek Varma, JM

ITA No.2044/Mum/2010 : Asst.Year 2005-06

The DCIT, Cir. 8(2), Mumbai.	बनाम/ Vs.	M/s.Isagro (Asia) Agrochemicals Pvt. Ltd., 101, Solitaire Corporate Park, 151, M.Vasanji Road, Chakala, Andheri (E), Mumbai - 93 PAN: AAACI 8431L
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : **Shri Ajit Kumar**

प्रत्यर्थी की ओर से /Respondent by : **Shri Shankarlal Jain**

सुनवाई की तारीख / Date of Hearing :15.01.2013	घोषणा की तारीख / Date of Pronouncement : 18.01.2013
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आदेश / O R D E R

Per R.S.Syal (AM) :

This appeal by the assessee is directed against the order passed by CIT(A)-15, Mumbai on 30.12.2009 in relation to assessment year 2005-06.

2. The only issue raised in this appeal is against the deletion of addition of Rs.3,59,82,993/- made by the AO under section 92CA(3) of the Income Tax Act, 1961(the Act). Before we take up the appeal for disposal on merits, it is pertinent to mention that there was a mistake in the amount of addition deleted by learned first appellate authority in the ground of appeal taken by the revenue. The ld. AR did not raise any objection to the amendment of the amount.

3. Briefly stated, the facts of the case are that the assessee entered into certain transactions with its Associated Entities (AEs) and independent parties. The AO made reference to the TPO under section 92CA(1) of the Act for determination of the arm's length price (ALP) with reference to the international transactions reported by the assessee in Form 3CEB. The TPO observed that the assessee is engaged in the business of manufacturing of agro chemical products including generics and formulations with its main line of business as pesticides. The assessee adopted Comparable Uncontrolled Price(CUP) method for determination of the ALP in respect of its international transactions. For benchmarking of the price in transactions with AEs, the assessee considered internal comparable transactions involving same products. The TPO disregarded the CUP method adopted by the assessee in its transfer pricing study for two reasons. First that there is difference in the date of comparable transactions and second the geographical domain is different. That is why the TPO applied the Transactional Net Margin Method (TNMM) with the Profit Level Indicator (PLI) as Operating profit to Total cost (OP/TC). As against the assessee's OP / TC margin 4.30%, the TPO applied OP /TC in comparables cases at 8%. Resultantly, an adjustment of Rs.3.59 crores was proposed which was made by the AO in the order passed under section 143(3) of the Act. The assessee challenged the addition made before CIT(A), who for the reasons stated in the impugned order, chose to delete the addition. In reaching this conclusion, the Id. CIT(A) held the CUP method as the most appropriate method in order and further the difference due to geographical location of AEs and Non-AE's was ironed out because of the comparison of FOB value of goods sold by the assessee to AEs and Non-AEs. The revenue is aggrieved against this deletion of addition.

4. We have heard the rival submissions and perused the relevant material on record. The undisputed facts of the case are that the assessee applied internal CUP method for benchmarking of the transactions with its AEs. The TPO rejected the internal CUP method and preferred TNMM in its place. First of all, we will try to find out as to whether the TPO was

justified in not accepting the CUP method. Various benches of the Tribunal including ACIT vs. MSS- India (I) Ltd., 123 TTJ (Pune) 657 and Philips Software Centre (PE) vs. ACIT, 119 TTJ (Bang) 721 have preferred the following of CUP method. It is obvious that when the price of similar goods or services as sold or provided to the non-AEs is available, such a price constitutes the best guide to find out whether the price charged or paid to the AEs is at ALP or not. It is more so when such comparable uncontrolled transactions is internal. When similar goods as traded with AEs constituting international transactions are traded with Non-AEs, it is always proper to consider the price of goods traded with non-AEs, for benchmarking price of goods traded with AEs. In our considered opinion the Id. CIT(A) was justified in upholding the preference of CUP method over TNMM.

5. First reason given by the TPO for rejecting CUP analysis was difference in geographical domain. The Id. DR took us through the details of transactions with AEs situated in Italy *vis-a-vis* transaction with non-AEs scattered over different countries such as, Tiwan, Singapore and Indonesia. The contention of the Id. DR that the difference in geographical locations makes its impact on benchmarking, in our considered opinion is well founded. However, when we consider the facts of the instant case in which the effect of such geographical differences has been removed by comparing FOB value of transactions with AEs and Non-AEs, the relevance of such factor gets mitigated.

6. The other objection taken by the TPO for rejecting CUP method was that there was difference in the dates of comparable transactions. The Id. DR brought to our notice the transactions entered into by the assessee with its AE on 27.11.2004 which was compared by the assessee with transactions entered with Non-AEs on 10.5.2004 & 12.3.2005. It can be observed that the comparison is made by the assessee with the transactions entered into in the same year with Non-AEs. It is very difficult to find out comparable transactions entered into between two different entities or for

that matter one entity entering into transaction with two different entities on same date. Whereas, it is possible to check up the dates of transactions in case of internal CUP method, such verification is ruled out in external CUP method. The essence of the matter is that the comparison should be made between the transactions entered into during the same financial year. Rule 10B(4) of IT Rules 1962 provides that “ The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which international transaction has been entered into.” We are not concerned with proviso to rule 10B(4) which also provides that the data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts which could have an influence on the determination of transfer prices in relation to the transactions being compared. Be that as it may, it is abundantly clear as per rule 10B(4) that the comparability is to be done of the uncontrolled transactions with an international transaction relating to the same financial year. There is no prescription in the Act or the rules to find out a comparable case having entered into transaction on the same date on which the assessee entered into an international transaction. As the assessee has made comparison of transactions with AEs and Non-AEs for the same financial year, in our considered opinion there is no logic in accepting TPO’s stand, who rejected the CUP method on the ground that there was difference in the dates of transaction with AEs and Non-AEs. When we compare the price charged by the assessee from its AEs with Non-AEs, it is palpable that no adjustment is required. It can be seen from page 35 of the paper book that the assessee charged price of Cyper Tech from third parties at Rs.373.33 as against that charged from AEs at Rs.381.28. Similar is the position as regards other products sold by the assessee to its AEs and non-AEs, which can be seen from pages 36 onwards of the paper

book. In view of the above reasons we are of the considered opinion that there is no infirmity in the impugned order warranting any interference.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced on this 18th day of January, 2013.
आदेश की घोषणा दिनांक: 18th को की गई ।

Sd/-

(Vivek Varma)
न्यायिक सदस्य / JUDICIAL
MEMBER

Sd/-

(R.S.Syal)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 18th January, 2013.

V.M

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The DRP-1, Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Registrar)

उप/सहायक पंजीकार (Dy./Asstt.

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai