

आयकर अपीलीय अधिकरण
दिल्ली पीठ "आई", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री प्रदीप कुमार केडिया, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आअसं . 516/दिल्ली/2022 (नि. व. 2017-18)
ITA No.516/DEL/2022 (A.Y.2017-18)

D Light Energy P. Ltd.,
Unit No. 102, Block B, Pegasus One, First Floor,
Golf Course Road, Sector-53, Gurgaon 122001
PAN: AABCJ9318G

..... अपीलार्थी/ Appellant

बनाम Vs.

Assessing Officer, National Faceless Assessment Centre,
New Delhi

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Hari Om Jindal, AR
प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Kumar, CIT-DR
सुनवाई की तिथि/ Date of hearing : 28/05/2024
घोषणा की तिथि/ Date of pronouncement : 10/06/2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 31.01.2022 passed u/s 143(3) r.w.s 260 r.w.s 144B of the Income Tax Act 1961(hereinafter referred to as 'the Act'), for assessment year 2017-18.

2. The assessee in appeal has raised eight grounds of appeal. Ground no. 1 to 4 are in respect of a single issue i.e. adjustment of Rs. 6,94,53,296/- on account of international transaction of purchase of solar goods/lights and reimbursement of expenses and warranty cost claim.

2.1. In ground no. 5 of appeal, the assessee has assailed selection of comparables to benchmark the transactions of purchase of solar lights and goods.

2.2 In ground no.6 of appeal, the assessee has assailed adjustment in respect of interest rates. The Id. Authorized Representative of the assessee at the outset stated that, he is not pressing this ground of appeal on account of smallness of the amount involved.

2.3 Ground 7 and 8 of appeal are general, hence, require no separate adjudication.

3. Shri Hari Om Jindal, appearing on behalf of the assessee submitted that the assessee is a reseller of solar goods. The assessee purchases solar products/goods i.e. solar lanterns, solar power lights etc. from its Associated Enterprises (AEs) for resale in India. The assessee re-sales solar products purchased from AEs without any value addition. The assessee adopted Resale Price Method (RPM) as the most appropriate method to benchmark the transaction. During the period relevant to assessment year under appeal, the assessee entered into following international transactions in relation to purchase of solar goods.

<i>Sl.No</i>	<i>Nature of transaction</i>	<i>Method Applied</i>	<i>Amount (in INR)</i>
1	<i>Purchase of lights and other accessories</i>	<i>RPM</i>	<i>1366399221</i>
2	<i>Reimbursement of expenses</i>	<i>Other Method</i>	<i>2553734</i>
3	<i>Warranty cost claim</i>	<i>Other Method</i>	<i>16489970</i>
	<i>total</i>		<i>1385442925</i>

He pointed that during the impugned assessment year, the assessee has claimed loss of Rs. 9,45,78,855/-

4. The TPO rejected RPM and applied Transactional Net Margin Method (TNMM) as the most appropriate method. The TPO held that the transaction of warranty claims is clearly linked to the transaction of purchase of solar goods. Thus, the TPO to bench mark the transaction of purchase of solar goods and warranty claims aggregated the transaction and applied TNMM as the most appropriate method. The TPO made an adjustment of Rs. 10,61,47,428/- on account of purchase of solar goods and other accessories and warranty cost claim. The Id. AR submitted that the sole reason of TPO to reject RPM selected by the assessee is that the warranty claims are to be clubbed with transaction of purchase of solar goods. The Id. AR vehemently submitted that warranty claims where the goods are replaced on account of manufacturing defect is taken care of by the AEs. The warranty against manufacturing defects is given by the AE and the assessee is only a pass through entity. In support of his contention that where product is resold without any value addition, RPM is the most appropriate method he placed reliance on the following decisions: *PCIT vs. Fujitsu India (P.) Ltd.* 156 taxmann.com 310 (DEL) and *Karcher Cleaning Systems P Ltd vs. Addl. CIT* 156 taxmann.com 623 (Del Trib).

4.1. The Id.AR further contended that the assessee's gross margin (GP/sales) is 38.97%, whereas the average margin of comparables is 25.42%. Thus, the profit margins of assessee is higher than that of the comparables. The assessee filed objections before the Dispute Resolution Panel (DRP). The DRP upheld, TNMM as the most appropriate method and also included two more companies in the list of comparables i.e. Avery Dennison India P. Ltd. and Cummins India Ltd. Both the aforesaid companies are not good comparables on account of functional disparity.

Avery Dennison India P. Ltd. is engaged in manufacturing segment, whereas, Cummins India Ltd. is providing after sales services. The Id. AR submitted that, if RPM is held to be the most appropriate method, the other ground raised in appeal assailing selection of comparables would become academic.

5. On the other hand, Shri Rajesh Kumar, representing the Department strongly defending the assessment order and the order of TPO submitted that the assessee has applied RPM as the most appropriate method to purchase solar goods only. Warranty claims and reimbursement of expenses is inextricably linked to purchase of solar goods i.e. solar lights and lanterns. For reimbursement of expenses and warranty claims, the assessee has applied the other method. The Id. DR referring to the functions of assessee as stated in Transfer Pricing Analysis Report submitted that though the assessee has claimed that it has not made any value addition but the entire responsibility for developing market strategy including advertising marketing etc. is that of the assessee. Further, as per assessee's own submissions the replacement services are not backed by corresponding warranty by AE. The AE only takes care of manufacturing defects. Product liability and warranty risks are borne by the assessee. This fact has been admitted by the assessee in risk profile at page 113 of the paper book. In other words, rendering of services after sales is value addition made by the assessee. The Id. DR further referred to United Nations Article Manual on Transfer Pricing to contend that though product comparability is less important under resale price method, greater product similarity is likely to provide reliable transfer pricing results. He asserted that the assessee has been paying huge costs towards payments to contractors, professional technical services and commission/

brokerage. The quantum of expenditure under the aforesaid heads clearly indicate that the assessee is undertaking some value addition activity after purchase of goods from the AE. No plausible reason has been given by the assessee for incurring huge costs for payments to contractors, fees for professional and technical services and commission or brokerage, if the activity of assessee is simply restricted to reselling solar goods purchased from AEs.

6. Rebutting the submissions made on behalf of the Department, the Id. AR reiterated that the business activities of the assessee are only confined to reselling of solar goods purchased from AEs. He submitted that majority of solar goods including solar lights and lanterns are sold in rural and far flung areas where there is scarcity of electricity, therefore, the assessee has to bear substantial cost towards marketing and transportation of solar products.

7. The Id. AR has drawn our attention to the sample invoice at page no 254 of the paper book to show the quantity of solar chargeable lanterns purchased and unit price of each lantern purchased from AE.

8. We have heard the submissions made by rival sides and having examined the order of authorities below. The issue before us, is in narrow compass i.e. Whether the RPM applied by the assessee is the most appropriate method in the given facts or TNMM as adopted by the TPO after aggregating the transactions is to be applied?

9. In so far the activity of assessee viz. purchase of solar goods and accessories from AE and its resale in India, it is not under dispute. The assessee is also providing solar warranty claims on solar goods purchased from AEs. The assessee

has applied RPM to benchmark the transaction of purchase of solar goods from AE and to benchmark the transaction of warranty claims and reimbursement of expenses, the assessee has applied the 'other method'. The TPO has aggregated the transaction of purchase of solar goods, reimbursement of expenses and warranty cost claims and has applied TNMM on aggregating transaction to benchmark the transaction.

10. We find that international transaction of purchase of solar products is to the tune of Rs. 136.63 crores, whereas, the total cost of reimbursement of expenses and warranty claims put together is only Rs. 1.9 crores. The reimbursement expenses and warranty claims are minuscule part of total transaction. The cost of reimbursement and warranty claims is merely little over 1.5% of purchase cost of solar products from AE. If the contention of Department is accepted then it would be like putting a cart before the horse. Apart from aforesaid objection, no other reason has been given by the revenue to replace RPM with TNMM.

11. The Hon'ble Jurisdictional High Court in the case *PCIT vs. Fujitsu India (P.) Ltd* placing reliance on the decision in the case of *PCIT vs. Matrix Cellular International Services (P.) Ltd. 90 taxmann.com 54 (Del)* has held that where there is no value addition made before reselling the product, RPM is the most appropriate method. Except for suspicion the revenue has not placed on record, any documentary evidence to substantiate that the assessee has undertaking any other activity resulting in value addition to the solar goods purchased by the assessee from the AEs. In such circumstances, we do not find any merit in the contentions of the revenue that TNMM should be applied as the most

appropriate method. As emanating from the records, the assessee is merely a reseller of solar goods in India, therefore, we are of considered view that the assessee has rightly adopted RPM is the most appropriate method to bench mark the transaction of purchase of solar goods. We further hold that even if the transaction of reimbursement of expenses & warranty claims is aggregated with the transaction of purchase of solar goods, it would not impact the method of bench marking as the former transactions are far smaller in value as compared to later transaction of purchase of solar goods. In light of our above findings, the assessee succeeds on ground no 1 to 4 of appeal.

12. In ground no. 5 of appeal, the assessee has assailed selection of comparables. Since, we have granted relief to the assessee on method of benchmarking, this ground is left open and is not deliberated at this stage.

13. In respect of ground no. 6 of appeal the Id. AR for the assessee has made a statement at Bar that he is not pressing this ground on account of smallness of the amount involved. In view of the statement made by Id. AR, ground no. 6 of appeal is dismissed as not pressed.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Monday the 10th day of June, 2024.

Sd/-

(PRADIP KUMAR KEDIA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 10/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI