

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 275/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Corteva Agriscience Services Vs. Deputy Commissioner of
India Pvt. Ltd., Income Tax,
Hyderabad Circle-1(1),
[PAN No. AACCE0509M] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Sandeep Bansal, AR
(appeared through virtual mode)

राजस्व द्वारा / Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 11/01/2024
घोषणा की तारीख/Pronouncement on: 30/01/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 27/03/2023 passed under section 263 of the Income Tax Act, 1961 (for short "the Act"), in the case of M/s. Corteva Agriscience Services India Private Limited ("the assessee") for the assessment years 2017-18, assessee filed this appeal.

2. Assessee is engaged in the business of providing sourcing, finance including evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formation of customer services and pricing policies, infrastructural support services and other transaction processing to Du Point group companies. For the assessment year 2017-18, assessee filed the revised return of income on 23/03/2018 declaring an income of Rs. 1,77,52,150/-. In view of the international transactions of the assessee with the Associated Enterprises (AEs) the determination of the Arm's Length Price (ALP) was referred to the learned TPO and in respect of interest on delayed receivables, the learned TPO suggested an upward adjustment to the tune of Rs. 18,46,834/-.

3. During the proceedings before the learned TPO, learned TPO proposed to consider the foreign transactions (gain/loss) as operating in nature. The assessee while placing reliance on the decision of the Co-ordinate Benches of the Tribunal in the cases of Bucher Hydraulics Private Limited in ITA No. 124/Del/2017 and DHL Express (India) Private Limited vs. ACIT in ITA No. 7360/Mum/2010 and submitted that the foreign exchange loss on account of realization of foreign currency receivables should be treated as non-operating expense.

4. Learned TPO dealt with this aspect in his order in the following way:

“13. Taxpayers objection regarding the margin computation:

Taxpayer submitted that the TPO has erred in computing margin of the assessee company. Submission of the taxpayer are considered and accordingly, the margins are rectified and the revised margin of the taxpayer is as under:

Description	Amount in Lakhs
Operating Revenue (OR)	1,81,99,99,883
Operating Cost (OC)	1,73,19,55,730
Operating Profit (OP) = OR-OC	8,80,44,153
OP/OR (%)	4.84
OP/OC (%)	5.08

As per the revised margin, the profit margin of the taxpayer (OP/OC=5.08) is within the range of the comparables PLI computed by the TPO (35th percentile 4.57 to 65th percentile 13.85). Hence, no adjustment is proposed with respect to the transaction of provision of administrative support services.”

5. Subsequently, the learned PCIT-1, Hyderabad issued notice under section 263 of the Act proposing to visit the issue relating to the assessee treating the foreign exchange loss as operating, and the assessee reiterated their stand as was taken before the learned TPO and also pleaded that there was detailed investigation by the learned TPO and, therefore, no revision of order could be done in view of the decision of the Hon’ble Supreme Court in the case of Malabar Industrial Co. Vs. CIT [243 ITR 83] (SC), where the twin conditions mandated under section 263 of the Act are satisfied.

6. In view of the amended provisions of section 263 of the Act, learned PCIT informed the learned CIT(IT&TP) that the jurisdiction to proceed under section 263 of the Act vests with the learned CIT(IT&TP) and, therefore, learned CIT(IT&TP) proceeded with the proceedings under section 263 of the Act.

7. Learned CIT(IT&TP) noticed that for all the years between 2015-16 and 2020-21, except the assessment year 2017-18, the assessee considered the foreign exchange loss as non-operating while computing the ALP margin. Learned CIT(IT&TP) further noticed that the learned TPO failed to consider the following tests to be applied for determining the nature of foreign exchange gain or loss :

(i) Foreign Exchange Gain/Loss, to the extent it relates to or connected with the business for which ALP is determined is to be regarded as Operating Revenue or Loss, as the case may be.

(ii) Foreign Exchange Gain/loss in relation to the International Transactions is to be regarded as Operating Revenue or Loss, as the case may be.

(iii) Foreign Exchange Gain/loss arising out of Revenue Transactions, is to be regarded as Operating Revenue or Loss, as the case may be.

(iv) What is the accounting method consistently followed by the assessee for the same international transactions with the AE in the earlier years.

(v) What is the accounting treatment given by the statutory auditors for the said forex gain/loss in the audited financial statements."

8. And that the assessee was selectively treating the foreign exchange, that when it is beneficial to the assessee it is treating as operating in nature as it would increase its PLI, but at the same time, for

the assessment year 2017-18, it treated the same as non-operating as it would decrease its PLI, but this aspect is totally not considered by the learned TPO. According to the learned CIT(IT&TP) not considering the nature of the foreign exchange loss in the light of the consistent accounting treatment given by the statutory auditors for the earlier and subsequent years, makes the assessment order erroneous insofar as prejudicial to the interest of Revenue. Learned CIT(IT&TP), therefore, set aside the assessment order and directed the learned TPO to compute the ALP of international transaction in respect of the foreign exchange loss by carrying out benchmarking of the same, afresh, after affording adequate opportunity to the assessee of being heard.

9. Aggrieved by such an order, assessee preferred this appeal stating that when there was an enquiry, the learned CIT(IT&TP) cannot invoke jurisdiction under section 263 of the Act and since in this case there was enquiry by the learned TPO on this aspect, the issue relating to the treatment of foreign exchange loss as operating in nature, cannot be taken up under section 263 of the Act. Learned AR invited our attention to paragraph No. 10.2.3 of the notice dated 18/01/2021 issued by the learned TPO and also the reply given by the assessee. He, therefore, submits that when once all the record is available before the learned TPO, if the learned TPO does not consider the same, the assessee cannot be punished. According to him, the twin conditions mandated under section 263 of the Act are satisfied in this matter, and, therefore, there is no scope for revision of the assessment order under section 263 of the Act.

10. Per contra, it is the submission on behalf of the Revenue that undisputedly for the years earlier and subsequent to 2017-18, the assessee has been treating the foreign exchange loss as operative and it is only for this particular year the assessee deviated from the same only because it is beneficial to it. Learned DR submitted that proper and adequate enquiry includes the consideration of the issue in the light of the consistent accounting treatment given by the statutory auditors for the foreign exchange gain/loss in the audited financial statements and nowhere in the notice issued by the learned TPO or in the reply furnished by the assessee this aspect is adverted to assessee simply referred to the decisions reported in Bucher Hydraulics Private Limited and DHL Express (India) Private Limited (supra) and without considering the vital aspects, the learned TPO accepted the explanation of the assessee and, therefore, the learned CIT(IT&TP) is justified in revising the order under section 263 of the Act.

11. We have gone through the record in the light of the submissions made on either side. It could be seen from the notice dated 18/01/2021 issued by the learned TPO at paragraph No. 10.2.3 and also in the reply dated 25/01/2021 given by the assessee at paragraph No. 13, the consistency of assessee treating the foreign exchange gain/loss as operating or non-operating did not fall for consideration. Only certain case law were discussed. But the fact remains that, as admitted by the assessee itself, except the assessment year 2017-18, for all the years between 2015-16 and 2020-21, the assessee treated the foreign exchange gain/loss as operating, but only for the assessment year 2017-18, the assessee treated the same as non-operative. No plausible reason

is given by the assessee for this deviation nor did the learned TPO deal with the same.

12. Facts are nine tenths of law and before applying any precedent, the learned TPO should have processed the facts in their proper perspective. Learned TPO did not consider the aspect whether the case law cited by the assessee are applicable to the cases where the assessee is changing the stand to suit their benefit. Had the learned TPO considered this aspect and took a conscious decision as to the allowability of the foreign exchange loss as non-operating, the Revenue has no case now. But unfortunately, it is not the case.

13. As rightly observed by the learned CIT(IT&TP), the purpose of proceedings before the learned TPO was to determine the ALP by taking all the constituent facts into consideration and to clarify the doubt about the truth and such a verification should have been undertaken by collecting all the relevant facts which promote the accuracy of the decision. In this case, the non-consideration of the consistent economic policies and the accounting treatment given by the statutory auditors of the assessee to the foreign exchange gain/loss, impacts the correctness of the conclusions to be reached by the learned TPO insofar as the application of the correct precedent to such facts is concerned.

14. Though the submission of the learned AR that every assessment year has to be considered in relation to its own fact sounds correct, but it cannot be stretched to the extent of leading the exercise of the assessment proceedings to the level of absurdity. An assessee cannot approbate and reprobate in the same breath and say that for all the years

between 2015-16 and 2020-21, except 2017-18, the foreign exchange gain/loss is operating and it is only for the assessment year 2017-18 it is non-operating, and that too without justifying such an action, basing on admissible facts. Consistency is the prime factor to ascertain the intention of the assessee in giving treatment to the foreign exchange gain/loss. We can understand if the assessee takes either of the view, but consistently.

15. With this view of the matter, we are of the considered opinion that there is no strength in the argument of the learned AR that the assessee placed before the learned TPO all the material sufficient to take a view and, therefore, the assessee cannot be put to peril for the learned TPO not considering such material. Here, the prime factor relates to the consistent treatment given by the auditors to the foreign exchange gain/loss and unless and until assessee establishes that such a fact of the assessee treating the foreign exchange gain/loss as operative for the assessment years between 2015-16 and 2020-21, except 2017-18, being borne on record before the learned TPO such an argument is not at all helpful to it. Observation of the learned CIT(IT&TP) that at the cost of consistency and bonafide intention, only to cause leak of revenue, the assessee adopted a different criterion for the assessment year 2017-18 goes undisturbed and its non-verification by the learned TPO is fatal to the assessment proceedings.

16. For the foregoing discussion, we are of the considered opinion that non-considering of the consistent treatment given by the assessee to the foreign exchange gain/loss either prior or subsequent to 2017-18 amounts to error insofar as it is prejudicial to the interest of Revenue

and, therefore, we find it difficult to hold that the learned CIT(IT&TP) committed anything illegality or irregularity in setting it aside and directing the learned TPO to consider the issue afresh, after affording an opportunity of being heard to the assessee. Grounds of appeal are accordingly found to be devoid of merits and liable to be dismissed.

17. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this 30th the day of January, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 30/01/2024

TNMM

Copy forwarded to:

1. M/s. Corteva Agriscience Services India Private Limited, 8th & 9th Floor, Tower 2.1, Waverock Building, Survey No. 115(P), Nankramguda Village, Serilingampally Mandal, Hyderabad.
2. The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.
3. The Commissioner of Income Tax (IT & TP), Hyderabad.
4. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ITAT, HYDERABAD