

TransPrice Times

Edition: 1st June 2021 – 30th June 2021

Enfinity Solar Solutions Pvt Ltd- High Court Madras ['HC']

Ruling in favour of: Revenue

Nature of Issue: Final assessment without draft order

During AY 2012-13, draft assessment order was passed on 31.03.2016, pursuant to which Assessee filed its objections to DRP as per Sec.144C(2b). Thereafter, AO passed final assessment order u/s.143(3) r.w.s 144C(13) against which Assessee raised appeal to the ITAT on selected issue of MAM selection. ITAT, in its remand order, had directed TPO to examine the MAM selection and also to see whether the AEs had derived any benefit or mark up on the price charged by the vendor for supply of raw materials to Assessee's AE. Subsequently, TPO vide its final order dated 27.10.2018, computed the ALP of International transactions with respect to purchase of material. Aggrieved, Assessee filed a writ petition before the HC.

Before HC, Assessee argued that instead of issuing a draft assessment order as mandated u/s.144(C)(1) of the Act, the final assessment order has been issued u/s.143(3) r.w.s.254. In other words, Assessee contended that no draft assessment order had been passed after remitting the matter back by the ITAT thus depriving the Assessee of filing objections before the DRP by submitting its objections.

HC noted that the ITAT remand was for the specific issue of MAM selection only and not that the entire order was set aside, thus making it clear that the Assessee was at liberty to raise any other grounds in support of the claim of the Assessee in this case.

HC opined that the procedures contemplated u/s.144C in the present case had been scrupulously followed by passing a draft assessment order on 31.03.2016 and the

Assessee filed an objection before the DRP, who in turn, also passed an order and thereafter, a final assessment order u/s.143(3) was passed on 25.03.2016.

Thus, explained that "once again commencing from the beginning is not the idea behind the provision and therefore, the very principles mooted out by the petitioner to commence the proceedings right from the initial stage deserves no merit consideration and stands rejected."

HC also stated that once the procedure has been followed and ITAT has remitted the matter back to decide a particular issue with a specific finding, then it was sufficient if the remitted issue was decided by the AO/TPO and a final assessment order was passed.

HC thus opined that "Repetition of the same procedures would become an empty formality, which is not intended under the provision and therefore, this Court is of the considered opinion that when the matter was remitted with reference to a particular issue to be clarified or decided by the competent authority, it is sufficient if such an issue is decided and thereafter, a final assessment order is passed."

HC clarified that even in such circumstances, the Assessee has a right of appeal under the provisions of the Act and therefore, in the event of any grievance with reference to an assessment order subsequent passed after remitting the matter by the ITAT, the Assessee is at liberty to file an appeal and thus, the grounds raised once again to pass the draft assessment order would not arise at all.

Further, explained that the legislative intention is to provide an opportunity to an Assessee before passing the final assessment order. In this context, HC observed that such an opportunity is already provided and the

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Assessee also availed the opportunity by submitting an objection before the DRP and the AO and thereafter, a final assessment order was passed and after remitting the matter by ITAT to decide a particular issue.

HC held that “in the event of again directing the authorities to follow the procedures right from the beginning, the proceedings would not only be prolonged, but it will also be protracted, which would provide an undue advantage to the Assessee in the matter of payment of income tax.”

Accordingly, HC dismissed Assessee’s writ petition finding no acceptable ground for the purpose of considering the relief sought. Clarified that if the Assessee is aggrieved by the assessment order, which was impugned in this writ petition, then it is at liberty to prefer an appeal before the CIT(A) by following the procedures as contemplated.

TransPrice Comments: The ruling brings in a certainty and clarity to the litigation process especially when the case is remitted back and then climbs back.

Arysta LifeScience India Limited- Income tax Appellate Tribunal Mumbai [‘ITAT’] Ruling in favour of: Assessee
Nature of Issue: Concealment Penalty

During AY 2012-13, Assessee, being a resident corporate Assessee was assessed u/s.143(3) r.w.s.144C. During the appeal proceedings, CIT(A) observed that the Assessee earned management fees of Rs.1,489.54 Lacs from two of its AEs, viz, Chemtura Sales Europe GmbH and Chemtura Corporation USA, which was reported in the audited financial statements. However, CIT(A), stated that the said amount was reflected as Rs.1002.13 Lacs in Form 3CEB as filed by the Assessee along with the return of income. Thus, CIT(A) held that there was

under-reporting of income in and referring to appellate order for AY 2011-12 issued enhancement notice to the Assessee wherein it proposed to make addition of concealed income for Rs.1489.54 Lacs. Thereafter, rejecting Assessee’s submission that there was inadvertent and bona-fide error in reporting the correct numbers in Form No.3CEB, CIT(A) enhanced Assessee’s income by Rs.1489.54 Lacs. Similarly, Assessee’s rectification application u/s.54 was also dismissed vide order dated 31/10/2018.

Aggrieved, Assessee filed an appeal before the ITAT.

ITAT noted that the amount of management fees at Rs.1489.54 Lacs earned by Assessee stood credited in Assessee’s P&L Account (as other operating revenues under the head revenue from operations), formed part of Assessee’s financial statements and had already been considered while computing Assessee’s income since it had been noted by the TPO while re-working segmental results.

ITAT further noted that the amount of Selling & Distribution Expenses at Rs.1,133.89 Lacs (debited by Assessee) included inter-company service fees expense of Rs.427.54 Lacs which after including foreign exchange difference of Rs.56.20 Lacs came to Rs.483.74 Lacs. ITAT also noted that the Assessee remitted Rs.483.74 Lacs after deduction of tax at source.

Noting that the amount of Rs.1,489.54 Lacs already formed part of Assessee’s income, ITAT held that there was no concealment of income as alleged by the CIT(A) in the impugned order.

ITAT explained that the figures in Form No. 3CEB had been reported on ‘net basis’ which at the most, could be an inadvertent / bona-fide / oversight error.

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On the given facts, ITAT opined that there would be no case to make impugned additions in the hands of the Assessee. ITAT also stated that the CIT(A), without considering Assessee's submissions, erred in making enhancement in the hands of the Assessee.

ITAT rejected CIT(A)'s reference to appellate order for AY 2011-12 on account of difference in facts. Accordingly, ITAT rejected CIT(A)'s enhancement of Assessee's income.

Tasty Bite Eatables Limited- Income tax Appellate Tribunal Pune ['ITAT']
Ruling in favour of: Assessee
Nature of Issue: Entity level v. transaction level

Assessee Tasty Bite Eatables Limited was engaged in the manufacture and sale of ready to eat foods, filed its return declaring total income of Rs. 1.88 lacs, which was subsequently revised to total income of Rs. 9.38 lacs. The Assessee had reported certain international transaction in Form No.3CEB owing to which, AO made a reference to TPO for determining the ALP.

Assessee had 3 segments, namely Ready to Serve Food (RTSF) segment, Frozen Foods and Sauces and the Assessee exported finished goods to its Associated Enterprises (AEs) in the USA and Australia. Dispute under present appeal is wrt RTSF segment wherein the Assessee has applied TNMM as MAM at the segmental level for arriving at the ALP.

Though Assessee maintained combined P&L for all segments, it tried to justify the RTSF segmental claim by submitting a separate income statement allocating costs and income on a certain basis. TPO refused to accept such allocation and computed the PLI of RTSF segment on the basis of entity level Profit and

loss account and subsequently proposed a TP-adjustment of Rs. 9.91 cr.

ITAT noted that TPO had computed the ALP on the basis of entity level data as against the Assessee's plea for taking segmental level data.

Before ITAT, the Assessee had submitted that it had appropriated certain direct expenses to the RTSF segment and allocated remaining expenses on the basis of certain allocation keys as provided in TPO's order.

ITAT noting that ALP computation of RTSF segment is alone under dispute, opined that it becomes more important to ensure that all the relevant costs relating to the RTSF segment are properly accounted for in the segmental income statement and that any attempt to allocate more costs to this segment at the cost of the other segments needs to be eschewed.

ITAT, on examination of facts, noted that some of the important raw material costs were common to RTFS and Frozen Foods segments and that the Assessee failed to demonstrate a rational allocation of import costs to RTSF segment.

In this backdrop, ITAT upheld the ALP determination on the basis of combined accounts approach.