IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

Tax Case (Appeal) Nos.725 & 726 of 2017
and
C.M.P.Nos.18259, 18260, 18262 & 18263 of 2017

M/s.Socomec Innovative Power
Solutions Pvt. Ltd.
Formerly known as Socomec
UPS India Pvt. Ltd.
B1, 2nd Floor, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai. rep. by its
Director Mr.Mohan Jayaraman ... Appellant

Vs.

Deputy Commissioner of Income Tax
Corporate Circle-6(2),
Room No.705, Vanaparathy Block,
Aayakar Bhawan, Chennai. ... Respondent

Tax Case (Appeals) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 26.4.2017 made in ITA No.617/Mds/2015 & 572/Mds/2016.

For Appellant : Mr.Himanshu Sinha for
Mr.M.V.Swaroop
For Respondent : Mr.J.Narayanasamy,
Senior Standing Counsel

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The present Appeals have been filed by the Assessee M/s.Socomec Innovative Power Solutions Private Limited aggrieved by the order dated 26th April 2017 of the learned ITAT 'D' Bench Chennai, by which the learned Tribunal partly allowed the Appeals of the Assessee for statistical purposes and decided certain issues with regard to Transfer Pricing Adjustments in the case on hand.

2. The purported substantial questions of law raised by the Assessee in the present Appeal as given in the Memorandum of Appeal are quoted below:-

"i) Whether the ITAT was justified in holding that Berry Ratio is the MAM for computation of ALP, when the Appellant as a trader of UPS, sells the same without any value addition?

ii) Whether the impugned order of the ITAT is perverse on account of mutually exclusive findings in para 5 and 6 of the impugned order?

iii) Whether the impugned order of the ITAT is untenable in the eyes of law on account of its failure to adjudicate and give a finding on issue of (i) wrongful

rejection of CUP as MAM by TPO/DRP; (ii) wrongful selection of comparables which are functionally not comparable to the Appellant for the purpose of application of TNMM by TPO/DRP and (iii) wrongful computation of berry ratio by considering "other income" as non-operating income?

iv) Whether the impugned order of the ITAT is untenable in the eyes of law as it failed to consider, adjudicate and give finding on the additional evidence submitted by the Appellant before the ITAT on fresh search of comparable companies using RPM and corrected gross profit margins?

v) Whether the impugned order of the ITAT is untenable in the eyes of law as it ignored the principle of consistency by ignoring the position of law settled in Appellant's own case in prior years?"

3. The main emphasis of the argument of the learned counsel for the Assessee Mr.Himanshu Sinha is that the learned Tribunal has not decided all the grounds raised before it by the Assessee and as many as 17 grounds have been raised before the Tribunal, the learned Tribunal without deciding all the grounds of appeal, has passed a

rather cryptic order.

4. Para 4 and 5 of the Tribunals order are quoted below for ready reference:-

> *"4. On the other hand, ld. D.R submitted that the TPO has discussed in detail the method adopted by the assessee and has observed the deficiencies and lacunae involved. According to TPO, the different brands of the same product cannot be compared under CUP method. The products which vary widely with respect to brand value, technology, cost of production, place of production, energy efficiency cannot be compared by CUP method. The DR argues that depending on the volume of sales, the sale price would vary. The assessee company had compared huge volumes of purchase with small / negligible quantities in the uncontrolled transactions, which is not proper. The DR has also quoted relevant judicial decisions in support of his action. Analysing the function carried out by the assessee company, the DR stated that Berry Ratio is the appropriate method for the comparability study in case of the assessee. It*

has been submitted that, the assessee for the relevant year apart from trading has done substantial value addition services. He pleaded to reject CUP as MAM and to adopt Berry Ratio as PLI.

5. We have heard both the parties and perused the material on record. The assessee is a trader in UPS system and accessories and also providing sales after services. There is no dispute that the assessee has not made any value addition to the UPS goods procured from its A.E. The UPS were sold in Indian market as it is procured from the AE. The TPO has accepted the TP study that Resale Price Method (RPM) is one of the accepted methods out of five methods in Transfer Pricing (TP). Even after suggesting that one, he is not ready to accept that method. The Resale Price Method (RPM) is a method to compare the gross profit of the assessee with the gross profit of the comparable companies and to compute the ALP. The RPM begins with the price at which a product that has been purchased from A.E as resold to an independent enterprises. This price is then reduced by an

appropriate gross profit, that this price representing the amount out of which the seller would seek to cover on selling and other operative expenses. In the light of the functions performed, make an appropriate profit margin can be recorded, after adjustments for other costs associated with the purchase of the product as an ALP filed original transfer of the pricing between A.Es. The TPO overwhelming the RPM adopted from Berry Ratio method on the reason that the company is not just trader. There was also value added service by the assessee company which is a permanent factor. According to TPO, the conduct of the assessee clearly shows that it is captive for AE. For this purpose rejecting the RPM, ***TPO has given the reasons that the assessee has not purchased all the materials from its AE.*** *It purchased merely 50% of the materials such as battery and other related materials from domestic market and other independent enterprises. If the RPM is considered as most appropriate method, the margin earned by the assessee to purchase the material from other*

independent parties is also part of the gross profit earned by the assessee, which leased to annually."

5. While dealing with the complex issue of Transfer Pricing and the method to be adopted in the Arms Length Price (ALP), firstly the final fact finding Body is expected to give its own reasons for the method to be adopted for ALP and if the Transfer Pricing given by the Assessee is not acceptable to the Revenue Authorities, cogent reasons have to be clearly spelt in the order. Secondly, if the Tribunal directs the Revenue Authorities for adopting any one of the methods as prescribed under Rule 10B of the IT Rules, the reasons therefor have to be clearly spelt by the learned Tribunal in its order.

6. A perusal of para 5 of the order giving alleged reasons by the learned Tribunal leaves more confusion than clarity. We are also satisfied that the learned Tribunal has not dealt with all the grounds of Appeal raised by the Assessee in a proper perspective and after detailed discussion a cogent findings have not been returned by the learned Tribunal insofar as the method of determining the Arms Length Price is concerned.

7. Therefore, the question of deciding the proposed substantial questions of law raised by the Assessee cannot arise, at this stage, unless first the learned Tribunal gives a proper findings of facts and

reasons therefor. We are satisfied that the order of ITAT impugned before us does not contain the reasons in a satisfactory manner.

8. Therefore, we are inclined to remand the case back to the learned Tribunal by setting aside the order dated **26.4.2017** for the Assessment Year 2010-2011 and 20011-2012 and request the learned Tribunal to decide the Appeal again on merits after giving opportunity of hearing to both the parties by giving appropriate reasons and findings of facts. The learned Tribunal is expected to deal with all the grounds raised before it in an appropriate manner and give its reasons for rejecting the CUP method adopted by the Assessee or for adopting any other method like TNMM for determining ALP (Arms Length Price.

8. With these observation, without answering the questions of law, the Appeals are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

(V.K.,J.) (M.S.R.,J.)
23.11.2020

Index : Yes/No
Internet : Yes/No
ssk.

To

1. Income Tax Appellate Tribunal,
   'D' Bench, Chennai,

2. Deputy Commissioner of Income Tax
   Corporate Circle-6(2),
   Room No.705, Vanaparathy Block,
   Aayakar Bhawan, Chennai.

3. M/s.Socomec Innovative Power
   Solutions Pvt. Ltd.
   Formerly known as Socomec
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