

आयकर अपीलीय अधिकरण “आई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.7312/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Federal Express Corporation Boomerang, Unit No.801 Wing A, 8 th Floor Chandivali Farm Road, Andheri(East), Mumbai-400 072.	बनाम/ Vs.	DCIT(International Taxation)-2(3)(1) Room No.1614, 16 th Floor Air India Building, Nariman Point Mumbai-400 021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACF-4135-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Sreenivasaraghavan S.Iyengar-Ld. DR
Assessee by	:	Shri Dhanesh Bafna-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	28/01/2021
घोषणा की तारीख / Date of Pronouncement	:	11/02/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid matter is a recalled matter since the appeal was earlier disposed-off vide order dated 31/01/2020. However, upon assessee’s miscellaneous application MA No.204/Mum/2020 order dated 06/01/2021, the order has been recalled, though for very limited purpose, in the following manner: -

4. The plea of the assessee applicant is indeed correct. The Assessing Officer himself had adopted 4% as CLC/TLC ratio, and the same was, as noted by us required to be adopted this year as well. The mention of 7.5% as adjusted CLC/TLC ratio, in paragraph 7, was clearly an inadvertent error. We, therefore, deem it fit and proper to recall the

matter on this point, and refix the matter for adjudication afresh on that point. The Registry is directed to refix the matter for the above purposes, before the regular bench on 29.01.2021. Order accordingly.

Accordingly, the matter has come up for fresh hearing for limited purpose of determining correct Commercial linehaul charges to Total linehaul charges (CLC / TLC) ratio.

2. The perusal of Tribunal order dated 31/01/2020 would reveal that the assessee was engaged in the business of integrated air and ground transportation of time sensitive shipments. The assessee used its own aircrafts as well as third party aircraft for transportation of these shipments. In case of third part aircrafts, the assessee has been denied treaty protection under Article 8 of India USA DTAA and the profits from these operations were computed by Ld. AO by adopting ratio of commercial line haul (on third party aircrafts) @10% and profit on the same was estimated at global profitability ratio of 4.07% of such revenue. The stand of Ld. AO, upon confirmation by Ld. DRP, was under challenge before this Tribunal wherein the assessee argued for acceptance of actual CLC/TLC ratio of 2.08%. It was further argued that the estimated ratio should not be more than 7.5% as adopted by Ld. AO as a result of MAP proceedings. Further, Ld. AO himself had adopted rate of 4% in previous year and therefore, the same should have been adopted in this year as well. The bench, in para 7, directed Ld. AO to adopt this ratio @7.5%.

3. During MA proceedings, the attention was brought, inter-alia, to the fact that Ld. DRP had already reduced the ratio to 7.5% against which the assessee was in further appeal before this

Tribunal and keeping in view the fact that Tribunal agreed for adoption of methodology prescribed under MAP proceedings, the correct ratio to be adopted should have been 4% instead of 7.5%. Concurring with the submissions, the bench directed for placing the issue of determination of correct ratio afresh. Accordingly, we proceed to determine the same.

4. The Ld. AR, Shri Dhanesh Bafna, urged for adoption of 4% ratio as adopted by Ld. AO in the immediately preceding year. The Ld. DR, on the other hand, filed written submissions, by drawing attention to the fact that ratio taken by MAP authority for AYs 2007-08 & 2008-09 was 7.0% & 7.5% respectively against the actual ratio of 3.28% & 3.23% as against 10% adopted by Ld. AO in those years. Thus, MAP authorities made addition of 3.72% & 3.77% in both the years against the actual ratio. Therefore, in the current year, the ratio should be adopted as 5.3% after adding 3.22% (solely for the purpose of rounding) to the actual ratio of 2.08%.

5. At the outset, the final rates adopted in earlier years, as tabulated by Ld. AR, could be noted as follows: -

AY	Actual CLC/ TLC ratio (%) (A)	CLC / TLC ratio (%) considered by the AO during assessment (B)	Enhanced CLC / TLC ratio (%) as per MAP order / AO based on MAP order (C)	Authority providing relief (D)	Increase in the enhanced ratio based on MAP to actual (E)
2007-08	3.28	10.00	7.00	MAP	2.13 times
2008-09	4.23	10.00	7.50	MAP	1.77 times
2009-10	4.17	10.00	7.50	ITAT / AO	1.80 times
2010-11	4.40	8.00	8.00	AO	1.82 times
2011-12	3.44	7.00	7.00	AO	2.03 times
2012-13	1.53	3.50	3.50	AO	2.29 times
2013-14	1.81	4.00	4.00	AO	2.21 times
2014-15 (Assessment year under consideration)	2.08	10.00 (Reduced to 7.5% by the Hon'ble DRP)	4.00 (As per the method agreed in MAP proceedings)		1.92 times

Upon perusal of column (E), it could be observed that final ratio as adopted in assessee's case, in earlier years, varies in the narrow range of 1.77 to 2.29 times of actual ratio. Further, the ratio adopted by Ld. AO in immediately preceding years is 4% and more so, this ratio in AY 12-13 is 3.5%. Therefore, the ratio of 4%, as submitted by Ld. AR, in our considered opinion is fair and reasonable ratio on the facts and circumstances. We order so.

6. The appeal stands partly allowed to the extent indicated in the order.

Order pronounced on 11th February, 2021

Sd/-
(Amarjit Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11/02/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.