

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1814 OF 2013

The Commissioner of Income Tax-8, Mumbai ..Appellant

Vs.

M/s Tara Jewels Exports Pvt. Ltd. ..Respondent

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Mr. Arvind Pinto, Advocate for Appellant.

Mr. B.V. Jhaveri, Advocate for Respondent.

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**CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.**

DATED : 5 OCTOBER 2015

P.C.:

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 23 January 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The Assessment Year involved is A.Y. 2006-07.

2. Although numerous questions were proposed by the revenue in the memo of appeal, at the hearing, Mr. Arvind Pinto, the learned Counsel for the revenue urges only following reframed question of law for our consideration:

“Whether in law and on the facts of the instant case, was the Tribunal justified in holding that while computing the ALP of international transactions the AO/TPO is precluded from taking into consideration transactions with Non Associate Enterprises, while arriving at the ALP using the Net Transactional Margin Method (TNMM); whereas Rule 10B(1)(e) mandates the consideration of profit margins with unrelated enterprises?”

3. The respondent-assessee is engaged in manufacturing and export of studded precious jewelery. Along with its return, the respondent-assessee had disclosed the international transactions entered in respect of its sales/exports to its Associated Enterprises (AE) determining its Arm's Length Price (ALP) in respect of transactions with AE's by using Cost Plus Method. The Transfer Pricing Officer (TPO) rejected the same and applied the Transaction Net Margin Method (TNMM). On application of TNMM, the TPO arrived at the rate of 4.79% being the margin by which the transaction value would have to be enhanced to determine the ALP. However the TPO while applying the margin of 4.79% applied the

same in respect of the universe of sales of respondent-assessee i.e. both to AE's and non-AE's sales. Thus leading to enhancement of sales consideration even in respect of transaction entered into with non-AEs which are undisputadely done at ALP.

4. Being aggrieved, the respondent carried the issue to the Dispute Resolution Panel (DRP). By order/direction dated 25 June 2010, the DRP did not disturb the adjustment recommended by the TPO in his order dated 29 October 2009. This resulted in the final order of the assessment in the above terms by the Assessing Officer.

5. On appeal, the Tribunal by the impugned order recorded the fact that the only grievance of the respondent-assessee before it was the application of the margin of 4.79% computed by the TPO under the TMM across all it's sales and not restricted only to the international transactions entered into by it with it's AE. The Tribunal by the impugned order held that the entire exercise of determining the ALP is done in accordance with Chapter X of the Act and in particular to Section 92A and 92B of the Act require the

transfer pricing adjustment to be done only in respect of the transaction entered into between the respondent-assessee with its AEs and not with the non-AEs. In the above circumstances, the Tribunal set aside the order of the Assessing Officer/TPO and directed the Assessing Officer to compute the ALP by enhancing the consideration by 4.79% only in respect of the international transactions entered into between the respondent-assessee with its AEs only.

6. The question as proposed by the revenue does not seem to arise from the impugned order of the Tribunal nor is the method of determination of ALP on application of TNMM arriving at the margin of 4.79% is disputed before Tribunal or before us. We are unable to understand the grievance of the revenue as formulated in the proposed question. The respondent-assessee has not challenged the application of TNMM and arriving at the margin of 4.79% arrived at by the TPO to determine ALP. The grievance of the respondent-assessee before the Tribunal is only with the margin of 4.79% being applied in respect of all its sales and not restricted to

the international transactions entered into by the respondent-assessee with its AEs. It is evident from the provisions of Chapter X of the Act that the adjustment which has to be done to arrive at ALP is only in respect of the transaction with its AEs. Thus no fault can be found with the order of the Tribunal.

7. Mr. Pinto is unable to point out how the aforesaid finding of the Tribunal is incorrect in law in the face of the clear provisions in Chapter X of the Act. The question as framed by the revenue to our mind do not arise from the impugned order of the Tribunal as the issue raised in the proposed question is not disputed. Accordingly, we see no reason to entertain the proposed reframed question of law as it does not give rise to any substantial question of law.

8. Accordingly, appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J]

[M.S. SANKLECHA, J.]

CERTIFICATE

Certified to be true and correct copy of the original signed Order.