IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1182 OF 2014

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

Vs.

Phoenix Mecano (India) Pvt. Ltd. .... Respondent
Mumbai.

Mr. Arvind Pinto for the Appellant.
Mr. P.J. Pardiwalla, Senior Counsel a/w Mr. Atul K. Jasani for the Respondent.

CORAM : S.V. GANGAPURWALA AND G.S. KULKARNI, JJ.

DATE : 7 JUNE, 2017

PER COURT :

The Revenue has filed the present appeal against the order of the Tribunal. The present matter pertains to the Assessment Year 2008-2009.

2 The Revenue has filed the appeal on following grounds, stating to be the substantial questions of law:

> "6.1 Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was correct in directing the AO to restrict the determination of the ALP to transactions with the AE rather than on the entire turnover of the Company.
>
> 6.2 Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct while issuing the above directions without appreciating the observations of the DRP that there was no segmental audit of the transactions of AE and non AE and therefore there was no method whereby the AO could come to a fair determination of ALP by only restricting to transactions with AE."

3 Mr. Pinto, the learned counsel for the Appellant strenuously contends that the Tribunal has failed to consider that when the accounts are composite one and the same are not segmental, it would not be possible to consider the international transaction only. According to the learned counsel, the entire turnover of the Company was required to be considered for

determination of A.L.P. According to the learned counsel, the D.R.P. was right in observing that there was no segmental audit of the transactions of AE non-AE and therefore there was no method whereby the Assessing Officer could come to the conclusion of fair determination of ALP in restraining international transaction. The learned counsel submits that the same issue is under consideration of this Court and one of the appeal bearing ITXA No. 1395 of 2013 has been admitted on the said ground.

4 Mr. Pardiwalla, the learned Senior Counsel for the Respondent supports the order of the Tribunal and submits that this Court had occasion to consider the issue involved in Income Tax Appeal No.1395 of 2013 in subsequent matters viz. Income Tax Appeal No. 1066 of 2014, Income Tax Appeal No. 1814 of 2013 and Income Tax Appeal No. 1804 of 2013. The learned Senior Counsel further submits that the phraseology in Section 92 is abundantly clear, the arm's length has to be considered only on the basis of international transaction.

5 With the assistance of the learned counsel for respective parties, we have considered the submissions and the judgment of the Tribunal. The Tribunal in para 7 of it's order has observed as under.

"7 We have heard both the parties and their contention have carefully been considered. So far it relates to grievance of the assessee that the TP adjustment can only be applied to international transactions of the assessee with the AE and it cannot be applied at entity level, the issue is found to be covered by the aforementioned decision of the Tribunal in the case of Thyssen Krupp Industries India Pvt. Ltd. (supra). Therefore, we hold that determination of arms length price should be restricted only to international transaction of the assessee with its AE. It was pointed out that the figures are available with the AO, details of which has also been filed before us at page 170 of the paper-book. Therefore, we direct the AO to take only the international transactions of the assessee with its AE for the purpose of determining arms length price. We direct accordingly."

6 The Tribunal has held that the figures are available with the Assessing Officer, the details of which has also been filed with the Tribunal at page 170 of the paper-book. It would be clear that the details of the international transaction are specifically

made available and therefore the apprehension of the department as such is misplaced.

7 Moreover this Court in Income Tax Appeal NO. 362 of 2014 has dealt with the aspect of absence of segmental accounts. While delivering the order in the aforesaid Appeal No. 362 of 2014, the Court has also considered the order in Income Tax Appeal No. 1395 of 2013.

8 Considering the provisions of Section 92 of the Income Tax Act, so also the reasoning adopted by the Tribunal suggesting that separate figures of international transaction are available, so also the order referred above. No substantial question of law arises for consideration. As such the appeal is dismissed with no costs.

(**G.S. KULKARNI, J.**) **(S.V. GANGAPURWALA, J.)**