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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1344/2018

PR. COMMISSIONER OF INCOME TAX-2 Appellant
Through : Mr. Zoheb Hossain, Sr. Standing
Counsel

versus

M/S. BEAM GLOBAL SPIRITS & WINE INDIA PVT. LTD
..... Respondent
Through : Mr. Harpreet Singh Ajmani, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **11.12.2018**

CM No. 49395/2018 (condonation of delay in re-filing)

The application for condonation of delay in re-filing of the appeal is not opposed. Application is allowed.

ITA 1344/2018

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' for short) pertains to assessment year 2005-06 and assails the order dated 09.03.2018 passed by the Income Tax Appellate Tribunal ('Tribunal', for short) in the case of M/s Allied Domecq Spirits and Wine India Pvt. Ltd. ('respondent-assessee' for short), now known as M/s. Beam Global Spirits & Wine India Pvt. Ltd.

2. Respondent-assessee, a subsidiary of Allied Domecq Spirits

and Wine, United Kingdom, during the assessment year was engaged in manufacture and sale of Indian Made Foreign Liquor ('IMFL' for short) and processing, bottling and sale of scotch whisky bottled in India known as Bottled in India Scotch ('BIIS' for short).

3. Respondent-assessee had imported Compound Alcoholic Preparation (CAP, for short) from associated enterprises for processing and sale of BIIS in India as Teacher's highland Cream, Teacher's 50, Teacher's Royal Highland, Long John and Old Smuggler Scotch Brands.

4. IMFL, as per the assessee, was manufactured using purely domestic process not involving use of CAP imported from associated enterprises.

5. Respondent-assessee had adopted Transactional Net Margin Method ('TNM Method', for short) with net profit margin based on sales as the profit level indicator for BIIS segment for transfer pricing analysis to justify purchase price of CAP imported from Scotland.

6. Transfer Pricing Officer ('TPO', for short), held that the IMFL and BIIS segments i.e. manufacture and sales of IMFL and processing, bottling and sale of BIIS should be bunched for two reasons. Firstly, he referred Note No. 22 ('Note', for short) to the accounts of the auditors, which reads as under:-

"The company primarily manufactures and sells alcoholic beverages and related products. Accordingly, the Company has only alcoholic beverages as its business segment. Further, the economic environment in which the Company operates is significantly similar and is not subject to materially different risks and returns. Accordingly, no separate disclosure are necessary under Accounting standard 17 (Segment Reporting) issued by the Institute of Chartered Accountants of India."

Secondly, the Transfer Pricing Report/study in the case of another assessee, namely M/s. Seagram India Pvt. Ltd., it was stated that imported Concentrated Alcoholic Beverage ('CAB' for short) was also used in manufacture of IMFL. Same person had authored transfer pricing report in the case of the Respondent-assessee and M/s Seagram India Private Limited.

7. On this basis, the TPO held and the assessment order holds that the net profit margin of 6.02% on clubbing the two segments was lower than the net profit margin of 7.78% of the comparables. Accordingly, addition of Rs. 2,31,23,800/- by way of transfer pricing adjustments was made.

8. The Commissioner of Income Tax (Appeals) and the Tribunal have rejected the TPO's rationale in clubbing of IMFL and BIIS segments for the purpose of transfer pricing. They have held that BIIS and IMFL were two distinct segments, with different market positioning of the products, manufacturing process involved, raw material used and returns generated. The two cannot be equated and

treated as one segment. The respondent-assessee had followed segmental approach by segregating operations into BIIS and IMFL business verticals.

9. Appellate authorities have held that the Accounting Standards do not preclude an assessee from preparing internal segments from an economic and transfer pricing perspective as was undertaken by the respondent-assessee in the transfer pricing report for the year under consideration. No adverse finding was recorded by the TPO/Assessing Officer on this separation.

10. In our opinion the appellate authorities have rightly held that the TPO/Assessing Officer were guided by third party evidence to hold the IMFL manufactured by the respondent-assessee includes and had used imported CAP. There was no evidence, material and basis for this finding, except assumption purely predicated on the transfer pricing study in case of a third person. Statement made by the respondent-assessee that CAP imported was used for manufacture of the BIIS and not IMFL segment, cannot be rejected as false and pretence on a mere conjecture and surmise.

11. International transaction, as held by the appellate authorities, was undertaken by the assessee for BIIS segment. The Note states that segmented data was not prescribed by Accounting Standard 17 (Segment Reporting). The Note cannot be the basis for adding the two segments for benchmarking the international transaction to check the

transfer price of CAP, even if CAP was not used for manufacture of IMFL. Segmented accounts for BIIS were prepared and made available. These were not rejected as unreliable, nor was any adjustment or modification made by the TPO/Assessing Officer. Revenue does not dispute that the net profit margin of the BIIS segment was higher than the net profit margin of the comparable uncontrolled and arm's length transactions.

12. In the view of the above discussion, we hold that no substantial question of law arises for consideration in the present appeal. Appeal is dismissed, with no order as to costs.

SANJIV KHANNA, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 11, 2018

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