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

INCOME TAX APPEAL NO. 414 OF 2018

The Pr. Commissioner of Income Tax, Pune 5 ..... Appellant
Vs.
Spicer India Ltd. ..... Respondent

Mr. Suresh Kumar, for Appellant.
Mr. Sanjiv M. Shah, for Respondent.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 28, 2023

P.C.

1. The following two questions of law have been proposed:

> (a)Whether the ITAT was correct in holding that the TP adjustment should be proportionately to the value of international transaction same is contrary to the prescription of Rule 10B(1)(c). Further, the Indian Transfer Pricing Regulations does not allow it as it presupposes that if the net margins of AE & non-AE are not same, then ITTPL does not permit further adjustment to the adjustment. Because the presumption underlying arm's length principle is that uncontrolled transactions are at arm's length, and therefore, if the overall margins are less than arm's length margins, the shortfall must be on account of AE transactions only and not on prorate basis?
>
> (b) Whether the ITAT was correct in allowing the proportionate adjustment claim even though the SLP on the similar filed by the Revenue has been admitted by the Hon'ble Supreme Court in the case of Fire Stone International Pvt. Ltd. Vide its order dated 16/08/2016?

2. The actual question, however, is whether benchmarking should be done only on the associated enterprises transactions or for the entire turnover ?

3. Mr. Shah has placed on record 7 judgments of this Court and 1 judgment of the Supreme Court which are as under :

i) [1]***Commissioner of Income Tax Vs. Alstom Projects India Ltd.***

ii) [2]***Commissioner of Income Tax Vs. Tara Jewels Exports P. Ltd.***

iii) [3]***Commissioner of Income Tax Vs. Thyssen Krupp Industries India P. Ltd.***

iv) [4]***Commissioner of Income Tax Vs. Hindustan Unilever Ltd.***

v) [5]***Commissioner of Income Tax Vs. Phoenix Mecano (India) Pvt. Ltd.***

vi) [6]***Commissioner of Income Tax Vs. Firestone International P. Ltd.***

vii) [7]***The Pr. Commissioner of Income Tax Vs. M/s. Bunge India Pvt. Ltd.***

viii) [8]***Commissioner of Income Tax Vs. Essar Teleholdings Ltd.***

4. In all these matters, the Courts have held that the benchmarking should be done only on the associated enterprises transactions and not for the entire turnover.

1 (2017) 394 ITR 141 (BOM)
2 (2016) 381 ITR 404 (BOM)
3 (2016) 381 ITR 413 (BOM)
4 (2017) 394 ITR 73 (BOM)
5 (2019) 414 ITR 704 (BOM)
6 (2015) 378 ITR 558 (BOM)
7 Order passed by Bombay High Court dated 03/06/2019 in Income Tax Appeal No. 445 of 2017
8 (2018) 401 ITR 445 (SC)

5. Therefore, the ITAT was correct in holding that the TP adjustment should be proportionate to the value of international transaction.

6. As regards the proposed question of law no. 2, appeal in case of *Firestone International P. Ltd (supra)* was part of the appeals that was considered by the Apex Court in *Essar Teleholdings Ltd. (supra)* but what we find from the judgment of the Apex Court *Essar Teleholdings Ltd. (supra)* is that Revenue in its appeal in *Firestone International P. Ltd (supra)* has only raised the issue of disallowance under Section 14A and not regarding TP adjustment.

7. Therefore, the 2nd issue also cannot be considered as a substantial question of law.

8. Appeal dismissed.

9. Mr. Shah states that against the judgment of the Bombay High Court in *Hindustan Unilever Ltd. (supra)*, Revenue had preferred SLP which came to be dismissed by order dated 29/10/2018 in [9]***Commissioner of Income Tax Vs. Hindustan Unilever Ltd.***

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**

9 (2018) 99 taxmann.com 135(SC)