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

\+ W.P.(C) 3025/2019

HUMBOLDT WEDAG INDIA PRIVATE LIMITED.....Petitioner

Through: Mr Arjit Chakravarty, Advocate.

versus

DISPUTE RESOLUTION PANEL-1, NEW DELHI & ORS.

.....Respondents

Through: Mr Vipul Agrawal, SSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **29.11.2024**

1. The petitioner has filed the present petition impugning an order dated 12.02.2019 (hereafter *the impugned order*) passed by the learned Dispute Resolution Panel (hereafter *DRP*). It is the petitioner's case that the learned DRP had passed the impugned order pursuant to an order dated 11.06.2018 passed by the Income Tax Appellate Tribunal (hereafter *ITAT*). In terms of the said order dated 11.06.2018, the ITAT had allowed the petitioner's challenge to the earlier directions issued by the learned DRP, which had resulted in deletion of the transfer pricing adjustment of ₹27,979,689/-. The learned ITAT had restored the matter to the learned DRP with a direction to pass a speaking order after giving a proper opportunity to the petitioner. Paragraph 13.1 of the order dated 11.06.2018 passed by the learned ITAT is set out below:

"13.1 Ground No. 2 challenges the action of the Ld. DRP in directing that the TPO / AO has to consider the margin realized by the assessee only from its international transactions with its AEs and there cannot be entity level margins. This has resulted in deletion of transfer pricing adjustment of Rs. 2,79,79,689/-. Although, the Ld. CIT DR has vehemently argued against the directions of the Ld. DRP in this regard, the Ld. AR has been equally vehement in arguing that for the purpose of undertaking the benchmarking analysis, the assessee had followed transaction by transaction approach which was in accordance with Rule IOB and IOC of the Income Tax Rules, 1962. It has been further argued that the assessee had identified separate functions and line of operation while undertaking the benchmarking analysis. It was also argued that the principle of undertaking transaction by transaction analysis for determination of ALP is embedded in the Indian Transfer Pricing Regulations, OECD Transfer Pricing Guidelines and UN Transfer Pricing Manual. It was further submitted that as per the UN Practice Manual, the Transfer Pricing analysis should ideally be made on a transaction-by-transaction basis. It has also been argued that each of the international transaction under dispute viz. purchase of spare parts, provision of technical services, provision of global marketing services were distinct and independent transactions and warranted separate analysis so as to determine the ALP. Also comparative analysis has been submitted by the Ld. AR in this regard. However, a perusal of the directions of the Ld. DRP shows that this aspect has not been considered in a proper perspective by the Ld. DRP and the directions in this regard have been given without recording a finding of fact in this regard and without giving any sound reason for such direction. In the circumstances, we have no option but to restore this ground to the file of the Ld. DRP with a direction to pass a speaking order on the issue after giving proper opportunity to the assessee. Accordingly, ground no. 2 stands allowed for statistical purposes."

2. According to the petitioner, the aforesaid directions have not been complied with.

3. Concededly, the petitioner has an equally efficacious remedy of challenging the final assessment order that may be passed by the Assessing Officer (AO) pursuant to the impugned order passed in the present petition.

4. In view of the above, this court does not consider it apposite to entertain the present petition leaving it open to the petitioner to avail its remedies. Concededly, the petitioner has a statutory remedy of appeal against the final assessment order that would be passed by the AO pursuant to the impugned order passed by the learned DRP.

5. It is clarified, if the petitioner prefers an appeal against the final assessment order, he will not be precluded from raising the grounds of challenge as set out in the present petition.

6. The petition is disposed of in the aforesaid terms. It is clarified that all rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 29, 2024 /tr

Click here to check corrigendum, if any