

**IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4731/MUM/2023
(Assessment Year: 2020-21)**

Aries Agro Limited,
Plot No.24, Aries House,
Deonar, Govandi,
Mumbai – 400 043, Maharashtra
[PAN:AAACA5035G]

..... **Appellant**

Vs

Assessment Unit, NFAC
Deputy Commissioner of Income Tax
Circle 14(1)(1), Mumbai
Ayakar Bhavan, M.K.Road,
Mumbai – 400 020. Maharashtra.

..... **Respondent**

Appearance

For the Appellant : Shri Firoze B. Andhyarujina Sr. Advocate,
/Assessee Shri Sandeep Sheth

For the Department : Shri Uodal Raj Singh

Date

Conclusion of hearing : 09.07.2024
Pronouncement of order : 07.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. This present appeal preferred by the Assessee against the Final Assessment Order, dated 26/10/2023, passed by the Assessing Officer under Section 143(3) r.w.s. 144C(13) and Section 144B of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], as per the direction issued by Dispute Resolution Panel (1), Mumbai [for short '**DRP**'] on 25/09/2023 under Section 144C(5) of the Act for the Assessment Year 2020-2021.

2. The Appellant has raised following grounds of appeal :

- "1. *On the facts and in the circumstances of the case, the Hon'ble DRP, Mumbai erred in confirming the actions of the Transfer Pricing Officer in making upward revision of Rs.1,03,26,939/- to the income and dismissing the objections of the assessee on account of the following:-*
 - a) *Rs.1,03,26,939 on account of notional interest on share application monies invested in overseas subsidiary.*
 - b) *On the facts and in the circumstances of the case and in law, the Assessing Officer erred in holding that the share application monies were interest free loans to Associate Enterprise (AE).*
 - c) *Assessing Officer further erred in not considering that the investment in AE is in nature of Share capital and not in nature of loan.*
 - d) *Assessing Officer further erred in not considering the fact that the share application monies were converted into equity and the delay was due to the provision of law in UAE where the entities registered under the Free Trade Zone (FTZ) require approval of share capital amount. Further, the monies are remitted with the due knowledge of the RBI and there is no loan element.*
 - e) *Assessing Officer erred in not considering the fact that in absence of income arising out of an international transaction, transfer pricing provisions are not applicable.*
2. *Assessing officer and Hon'ble DRP also erred in not considering the rectification order passed by assessing officer u/s.154 of Income Tax Act, 1961 regarding the intimation under section 143(1)(a) of Income Tax Act, 1961 and adding the income as per intimation u/s.143(1)(a) of Income Tax Act, 1961.*
3. *The assessing officer also erred in not providing the proper opportunity of being heard while making addition of income as per intimation u/s.143(1) of Income Tax Act, 1961.*
4. *All the above grounds of appeal are mutually exclusive and without prejudice to each other.*
5. *The assessee prays for leave to add, alter or amend any or all of the above grounds of appeal at or before the date of*

hearing.”

3. The relevant the Appellant is a company engaged in the business of manufacturing and marketing of micronutrients, fertilizers and food Additives. The Appellant-company is part of Aries Agro Group that was set up in 1969. For the Assessment Year 2020-2021, the Appellant filed return of income on 18/01/2021. The aforesaid return was processed and intimation order, dated 30/12/2021, was issued under Section 143(1) of the Act computing the taxable income of the Appellant at INR 90,77,64,640/- as against the return of income of INR 21,96,41,290/-. Subsequently, the case of the Appellant was selected for scrutiny. During the assessment proceeding, the Assessing Officer noted that the Appellant had entered into International Transaction which is Associated Enterprises [**AE**] during the relevant previous year and therefore, a reference was made to the Transfer Pricing Officer [**TPO**] for the computation of Arm's Length Price [**ALP**] in relation to the aforesaid international transactions. Vide order, dated 30/11/2022, passed under Section 92CA(3) of the Act, TPO proposed transfer pricing adjustments of INR 1,03,26,939/-. According to the TPO, the Appellant had advance funds to its AE [i.e. Golden Harvest Middle East (FZC)] under the grab of share application money and there was inordinate delay in allotment of shares. Therefore, treating the share application money as interest free loan/advance to AE, the TPO proposed transfer pricing adjustments of interest of INR 1,03,26,939/- computed @ 5.10% on the share application money of INR 20,24,89,000/- remitted by the Appellant to AE. The Assessing Officer incorporated the aforesaid transfer pricing adjustment in the Draft Assessment Order, dated 15/12/2022, passed under Section 144C of the Act taking the income

computed under Section 143(1) of the Act as the basis. Thus, the Assessing Officer assessed the income of the Appellant at INR 90,80,91,579/- after making transfer pricing addition of INR.1,03,26,939/- to the income of INR 90,77,64,640/- computed under Section 143(1) of the Act. The Appellant filed objection before DRP against the Draft Assessment Order on 13/01/2023 challenging to the additions made in the intimation issued under Section 143(1) of the Act and the proposed transfer pricing adjustments on account of interest on share application money. Vide order dated 25/09/2023, DRP rejected the objections. Accordingly, the Assessing Officer passed the Final Assessment Order, dated 26/10/2023, making transfer pricing addition of INR 1,03,26,939/- being interest on share application money remitted to AE to the income of INR 90,77,64,640/- as computed under Section 143(1) of the Act.

4. Being aggrieved, the Appellant has preferred the present appeal on the grounds reproduced in para 2 above.
5. The Learned Senior Counsel appearing on behalf of the Appellant submitted that the issue relating to transfer pricing adjustment on account of interest on share application money stands decided in favour of the Appellant by the decision of the Tribunal in the case of the Appellant for the Assessment Year 2012-13 [ITA No.1452/M/2017, dated 28/11/2018], 2013-14 [ITA No.6947/Mum/2017, dated 20/03/2019], and 2014-15 [ITA No.6484/Mum/2018, dated 27/12/2019]. He submitted that for the A.Y. 2015-16, 2016-17, 2019-20 and 2021-22 the returns filed by the Appellant were processed u/s.143(1) of the Act and no transfer pricing adjustment was made. For the Assessment Year 2017-2018, 2021-2022 and 2022-2023, the return filed by

the Appellant was selected for regular scrutiny and in the assessment orders passed no addition on account of transfer pricing adjustments on interest on Share Capital has been made. It was clarified by the Learned Senior Counsel that for the Assessment Year 2023-2024 the issue of making Transfer Pricing adjustments in respect of interest on share application money did not arise since the shares were fully allotted on 23.08.2022. Learned Senior Counsel submitted that the Appellant had applied to the Sharjah Airport International Free Zone (for short '**SAIF Zone**') for the increase of authorised share capital and allotment of shares to the Appellant. However, the requisite approval was not received and this was the sole reason for delay in the allotment of share to the Appellant. Therefore, the delay in allotment of shares cannot be attributed to the Appellant. It was further submitted that identical stand taken by the Revenue has been considered and rejected by the Tribunal in the Appellants own case in the proceeding assessment years.

6. Per contra Learned Departmental Representative submitted that the DRP had noted in paragraph 6.3 of the Directions, dated 25/09/2023, that the Appellant had failed to submit any evidence to show that the application, dated 07/02/2017, was submitted before SAIF Zone Authority for seeking approval for allotment of shares. The decision on which reliance was placed by the Appellant pertained to Assessment Years 2012-13, 2013-14 & 2014-15, whereas the appeal before Tribunal pertained to Assessment Year 2020-21. Even, after the gap of five to seven years, the shares were not allotted to the Appellant during the relevant previous year. Thus, clearly there was inordinate delay in allotment of shares, and that the Appellant has failed to show that the delay was not on account of lapse of the Appellant. It was

further submitted that even the Share Certificated issued on 23/08/2022 there was no reference to any application filed by the Appellant. It was further submitted that the Appellant has placed reliance upon the Application, dated 07/02/2017, whereas the share application money was transferred prior to 2010.

7. In rejoinder the Learned Senior Counsel appearing on behalf of the Appellant submitted that the Appellant had also applied for increase in authorized share capital in the year 2007 and placed on record copy of application dated 07/02/2007 whereby the Appellant has sought enhancement of authorized share capital from 1,50,000/- AED to 50,00,000 AED for the purpose of setting of manufacture of organic and chemical fertilizers. It was submitted that there was no change in facts and circumstances of the case and in the earlier years the Tribunal had accepted the contention of the Appellant that delay in allotment of shares could not be attributed to the Appellant. The Appellant had again applied for seeking permission for enhancement of share and allotment of shares in the year 2017 and the shares were finally allotted on 23.08.2022. The Appellant was diligent and continued to follow up with the SAIF Zone Authority and therefore, it cannot be said that delay in allotment of shares was attributable to the conduct of the Appellant.
8. We have given thoughtful consideration to the rival submission and perused the materials on record. On perusal of the order passed by the authorities below and the decisions of the Tribunal cited by the Appellant during the course of hearing it is clear that the Appellant's AE was set-up in SAIF Zone at Sharjah and was governed by the applicable rules. It is admitted position that the Appellant had remitted funds to its AE as share application money

which were to be utilized for setting up a manufacturing plant in SAIF Zone at Sharjah. It is the consistent stand of the Appellant since the Assessment Year 2012-2013 that as per the said rules investment in any company set-up in SAIF Zone required approval of the SAIF Zone Authority. Since the aforesaid approval was not received, the AE was not able to allot shares. The shares were finally allotted on 23/08/2022. For the Assessment Years 2012-13, 2013-14 and 2014-15 Transfer Pricing adjustments in respect of interest on share application money was made by the Assessing Officer by treating the transaction as a loan transaction. However, the aforesaid transfer pricing addition was deleted by the Tribunal holding that no income had accrued from the aforesaid transaction of remittance of share application money by the Appellant to its AE and therefore, the same could not be subjected to the transfer pricing provisions contained in the Act in view of the judgment of the Hon'ble Bombay High Court in the case of Shell India Markets Pvt. Ltd. Vs. Asst. CIT - 369 ITR 516 (Bom), Vodafone India Services Pvt. Ltd. Vs. Add. CIT - 368 ITR 001 (Bom), and Equinox Business Parks (P.) Ltd Vs. Union of India - 230 Taxman 191 (Bom). Thus, the Tribunal had accepted the contention of the Appellant that the transaction between the Appellant and its AE was in the nature of remittance towards share application money and not in the nature of a loan transaction as characterized by the Revenue. During the appellate proceedings before us, it was contended on behalf of the Revenue as there was inordinate delay in allotment of shares by the AE and therefore, transaction should be regarded as loan transaction. On perusal of the decision of the Tribunal in the case of the Appellant for the Assessment years 2012-13, 2013-14 and 2014-15, we find that identical submissions were made by the

Revenue before the Tribunal. However, the same did not find favour with the Tribunal. In this regard we find that the Appellant has, right from the very beginning, contended that the sole reason for delay in allotment of shares was attributable to non-receipt of approval from SAIF Zone Authority even though an application was made by the AE for seeking such approval. However, on perusal of the order, date 30/11/2022, passed by the TPO under Section 92CA(3) of the Act, we find that the TPO has not taken into consideration the submission of the Appellant application was made to SAIF Zone Authority for seeking approval for increase of authorised share capital and for allotment of shares to the Appellant by the AE. Whereas, the DRP had rejected objection of the Appellant observing that the Appellant had failed to furnish the evidence to show that the application was actually made to SAIF Zone Authority. In this regard, we find that the Appellant had placed before Authorities below copy of the Application, dated 07/02/2017, addressed to Director SAIF Zone, Sarjah. However, the same was rejected by the DRP on the ground that there was no acknowledgement, seal or date of receipt on the aforesaid application. On perusal of paragraph 6.3 of the Directions issued by the DRP vide, order dated 25/09/2023, we find that the DRP has recorded - "*There is no way to examine that if this letter has been presented before Sharjah Airport International Free Zone (SAIF Zone) Authority/Director*". In case the aforesaid finding of the DRP is accepted, then the Appellant could not have done anything more to satisfy the DRP about the filing on the application, dated 07/02/2017, before the SAIF Zone, Authority. We note that the Appellant has explained that AE was not able to allot shares since requisite approval was not received from SAIF Zone Authority for the same. The circumstantial

evidences support the contention of the Appellant and therefore, the preponderance of probabilities lies in favour of the Appellant. The Revenue has not brought anything on record to dispute the contention of the Appellant that shares could have been allotted without seeking approval from the SAIF Zone Authority. No inquiry/verification has been conducted seeking any information in this regard from the AE or from the SAIF Zone Authority. The fact that the money has been utilized for setting up the manufacturing facility has not been doubted. In our view, the transaction cannot be regarded as bogus since the shares have been allotted by the AE to the Appellant on 23/08/2023. For the Assessment Year 2012-2013, 2013-2014 and 2014-2015, the Tribunal had accepted the contention of the Appellant that the Appellant had remitted share application money to its AE. Further, it also not disputed that by the Revenue that for the Assessment Years 2017-2018 and 2018-2019, no such transfer pricing addition was made even though regular scrutiny assessment was framed on the Appellant under Section 143(3) of the Act. Thus, as on date no transfer pricing addition on account on interest on share application money has been made/sustained for the Assessment Years 2012-13 to 2019-20 and for the Assessment Year 2020-21. Since the shares were allotted during the financial year 2022-2023, the issue does not arise from Assessment Year 2023-24 and onwards. Thus, as on date this issue is relevant for the Assessment Years 2020-2021 (i.e the assessment year before us), and Assessment Years 2022-23 (where appeal is pending before the first appellate authority). In view of the aforesaid facts and circumstances, the approach adopted by the DRP to simply rejecting the application, dated 07/02/2017, without bringing on record any material to doubt its veracity cannot be countenanced.

Taking into account the overall facts and circumstances of the present case we hold that the onus was on the Revenue to bring on record material to show that there was default on the part of the Appellant leading to inordinate delay in allotment of shares. In our view, the Revenue has failed to discharge the aforesaid onus and to controvert the contention of the Appellant that the delay in allotment of shares was on account of non-receipt of appropriate approval of SAIF Zone Authority despite appropriate application having been made. Accordingly, we accept the contention of the Appellant that the delay in allotment of shares cannot be attributed to the Appellant. Therefore, the transfer pricing addition which is based upon incorrect understanding that there was inordinate delay in allotment of shares cannot be sustained. Accordingly, the transfer pricing addition of INR.103,26,939/- is deleted. **Ground No. 1** raised by the Appellant is allowed.

Before parting we would like to observe that during the course of hearing a copy of letter, dated 07/02/2007, filed by the Appellant before the Director, SAIF Zone, was also furnished whereby the Appellant had sought increase the authorized share capital from 1,50,000/- AED to 50,00,000/- AED. However, since it was not clear that the same has also been filed before the authorities below, we have not taken the same into consideration

9. As regards Ground No. 2 and 3 raised by the Appellant are concerned it is admitted position that the Assessing Officer had passed rectification order under Section 154 of the Act on 06/06/2023 revising/rectifying total income to INR 22,01,32,774/. Accordingly the Assessing Officer is directed to re-compute the income and tax liability of the Appellant after

taking into consideration the aforesaid rectification order dated 16/06/2024. In terms of the aforesaid, **Ground No. 2 and 3** raised by the Appellant are allowed for statistical purpose.

10. **Ground No. 4 & 5** do not require separate adjudication and are dismissed as being general in nature.
11. In result, in terms of paragraph 8, 9 and 10 above, the present appeal preferred by the Assessee is allowed.

Order pronounced on 07.10.2024.

Sd/-
(Shri Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.10.2024
MP, LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai