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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA-85-2023 (O&M)

Date of Decision: 07.08.2024

THE PRINCIPAL COMMISSIONER OF INCOME TAX, FARIDABAD

.....Appellant

V/s.

M/S OSRAM INDIA PVT. LTD.

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Varun Issar, Senior Standing Counsel
for the appellant/Income Tax.

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-12792-CII-2024 and CM-8420-CII-2023

1. Applications are allowed as prayed for documents are taken on record.

ITA-85-2023 (O&M)

2. Heard learned counsel for the appellant/revenue on admission and relating to the Appeal assailing the order dated 22.09.2022 passed by the Income Tax Appellate Tribunal, Delhi Bench 'I', New Delhi (for short 'ITAT') whereby the ITAT has confirmed the order passed by the CIT(Appeals) setting aside the order passed by the Transfer Pricing Officer-II(1), New Delhi (for short "TPO"), New Delhi holding that there was no material change justifying the revenue to take a different view and the revenue has over a period of time accepted certain facts which were relevant for the purpose of establishing the arm's length price. There was not occasion for re-opening and departure from the settled position by the TPO. The revenue has failed to establish that there were no compelling reasons to depart from the settled position as accepted by the revenue earlier.



3. Learned counsel for the appellant has strenuously argued that the order passed by the TPO was in conformity with the provisions of Rule 10B (2) and 10B(4) of the Income Tax Rules, 1962 (for short 'the Rules') and both CIT(Appeals) and the ITAT have erred in setting aside the order.

4. Learned counsel for the appellant has taken this Court to the order passed by the TPO to submit that the tax payer's submissions were rightly not accepted by the TPO with regard to having used multiple air data for the purpose of determining the margins of comparables for the year 2008-2009. It is submitted that as per Rule 10B (4) of the Rules, the data of the comparable transaction should be the data pertaining to the financial year in which the tax payer has entered into the international transaction and the same is mandatory. While proviso to 10(b) (4) also mentions of considering the earlier period data that the same would only have an influence of determination of transfer prices in relation to the transactions being compared.

5. Learned counsel for the appellant submits that the provision does not say that the successive year's data can be considered excluded in the current year's data and the TPO has, therefore, rightly applied the current data for achieving the comparable for the international transactions at arm's length price with associated enterprise.

6. Learned counsel for the appellant has also argued that in terms of Rule 10B(2) only the current year data is required to be examined along with filters.

7. We have considered the submissions.



8. The aspects raised by the appellant before this Court are purely factual. Though the CIT(A) as well as ITAT have examined the facts in details and as discussed by the TPO and a finding has been arrived at which would be apposite to quote:-

“10. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the working capital adjustment that was sought by the assessee and allowed by the Ld CIT(A). We find that CIT(A) after considering the fact that the TPO has himself given the working capital adjustment to the assessee in A.Ys. 2010-11 & 2011-12 and after relying on the various decisions cited in his order has held that assessee is entitled to work in capital adjustment. We find that the Co-ordinate Bench of Tribunal in the case of Sony Mobile Communication International SB (supra) has held that working capital adjustment cannot be denied to the assessee if it is a service industry. It has further observed that in order to neutralize the differences on account of carrying high or low inventory, trade payables and trade receivables, as the case may be, it becomes eminent to allow working capital adjustment so as to bring the case of the assessee at par with other functionally comparable entities. It has further, by relying on the decision of the Tribunal in the case of Navisite India Pvt. Ltd. vs. ITO has held that the component of working capital deployed should be considered on annual basis with the average of opening and closing figures.

11. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier year. Revenue has also not placed any material on record to demonstrate that the decision relied upon by the CIT(A) has been stayed/set aside/overruled by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A) and thus the ground of Revenue is dismissed.”



9. It is also to be noticed that the TPO on identical facts of the Assessee's case for the subsequent assessment proceedings of 2010-2011, 2011-2012, 2012-2013 and 2013-2014 had rejected the comparables. Once the TPO himself has not accepted the said comparable which were considered for assessment proceedings in question while examining the subsequent assessment proceedings, we do not find any justification to allow the inclusion of such comparables for the first time for the year 2009-2010. Moreso, as even for the previous years, the comparables which may have taken into consideration as accepted by the TPO, the departure of course be made for each year assessment but as noticed by both the appellate authorities, the Revenue would have to establish compelling reasons for such departure.

10. In view of the above, we do not find any substantial question of law which needs to be examined afresh by this Court after the concurrent findings of the both the appellate authorities. The Appeal is devoid of merits and is accordingly **dismissed**.

11. All pending applications filed in this case shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

August 7, 2024

Ess Kay

[SANJAY VASHISTH]
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>