

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD
BEFORE SHRI P.M.JAGTAP, ACCOUNTANT MEMBER
AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.914/Hyd/13 : **Assessment year 2008-09**

Dy. Commissioner of Income-tax,
Circle 1(1), Hyderabad

V/s. M/s. St. Jude Medical India private
Limited, Hyderabad

(PAN - AAICS 9821 J)

(Appellant)

(Respondent)

Appellant by : *Shri Kiran Katta, DR*

Respondent by : *Shri H.Srinivasulu*

Date of Hearing	17.09.2014
Date of Pronouncement	19.09.2014

ORDER

Per P.M.Jagtap, Accountant Member :

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax(Appeals) IV, Hyderabad dated 20.3.2013 and in the solitary substantive ground raised therein (as revised), the Revenue has challenged the action of the learned CIT(A) in deleting the TP adjustment made by the AO/TPO by accepting the Profit Level indicator(PLI) taken by the assessee as Operating Profit to Operating Revenue instead of Operating Profit to Operating Cost, as taken by the Assessing Officer/TPO.

2. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that the TP adjustment to be made to the total income of the assessee was worked out by the Assessing Officer/TPO by taking the Operating Profit to Operating Cost as PLI instead of Operating Profit to Operating Revenue taken by the assessee as PLI. On appeal, the learned CIT(A), however, accepted the Operating Profit to

Operating Revenue as PLI as taken by the assessee for the following reasons given in Paragraph 6.2 and 6.3 of his impugned order-

"6,2 I have considered the submissions of the TPO and the appellant in this regard. The purpose of identifying the PLI is to ensure that the comparability analysis of the controlled transactions is objective. Reference may be made to the OECD Transfer Pricing Guidelines, 2010 in this regard, which are self-explanatory.

"2.88 The denominator should be reasonably independent from controlled transactions, otherwise there would be no objective starting point. For instance, when analyzing a transaction consisting in the purchase of goods by a distributor from an associated enterprise for resale to independent customers, one should not weight the net profit indicator against the cost of goods sold because these costs are the controlled costs for which consistency with the arm's length principle is being tested. Similarly, for a controlled transaction consisting in the provision of services to an associated enterprise, one should not weight the net profit indicator against the revenue from the sale of series because these are the controlled sales for which consistency with the arm's length principle is being tested. Where the denominator is materially affected by controlled transaction costs that are not the object of the testing (such as head office charges, rental fees or royalties paid to an associated enterprise, caution should be exercised to ensure that said controlled transaction costs do not materially distort the analysis and in particular that they are in accordance with the arm's length principle.

2.89 The denominator should be one that is capable of being measured in a reliable and consistent manner at the level of the tax-payer's controlled transactions. In addition, the appropriate base should be one that is capable of being measured in a reliable and consistent manner at the level of the comparable uncontrolled transactions. This is practice limits the ability to use certain indicators, as discussed at paragraph 2.99 below. Further, the taxpayer's

allocation of indirect expenses to the transaction under review should be appropriate and consistent over time."

6.3 In the appellant's case the controlled transaction is the purchase of goods from the AE which are later sold to unrelated parties. Adoption of cost as the denominator would lead to a situation where there is no objective starting point for the comparability analysis. The Assessing Officer is therefore directed to adopt operating profit to operating revenue ratio as the PLI and the third ground of appeal is allowed."

3. As noted by the learned CIT(A), the purpose of identifying the PLI is to ensure that the comparability of the controlled transactions is objective and reference in this regard was made by him to the OECD Transfer Pricing Guidelines 2010, wherein it was explained that the denominator should be reasonably independent from controlled transactions, as otherwise, there would be no objective starting point. Explaining further, it was observed in the OECD Transfer pricing Guidelines that when analysing a transaction consisting in the purchase of goods by a distributor from an associated enterprise for resale to independent customers, one could not weigh the net profit indicator against the cost of goods sold because these costs are the controlled costs for which consistency with the arm's length principle is being tested. In the present case, the issue involved was relating to determination of Arms length price of the international transactions of the assessee company with its AE involving purchase of medical devices, and this being so, we are of the view that the CIT(A) was fully justified in accepting the Operating Profit to operating Revenue as the PLI, as claimed by the assessee for Transfer Pricing Analysis, and not Operating Profit to Operating Cost as taken by the Assessing Officer/TPO, relying on the relevant OECD Transfer Pricing Guidelines, 2010. At the time of hearing before us, the Learned Departmental Representative has also not been able to

raise any material contention to dispute or controvert this position. We, therefore, uphold the impugned order of the learned CIT(A) on this issue and dismiss the appeal of the Revenue.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the court on 19th September, 2014

Sd/-

(Saktijit Dey)
Judicial Member

Sd/-

(P.M.Jagtap)
Accountant Member

Dt/- 19th September, 2014

Copy forwarded to:

1. M/s. St. Jude Medical India private Limited, 1-11-250/A, Matarani Sensation. Lane Behind Syndicate Bank, Begumpet, Hyderabad
2. Dy. Commissioner of Income-tax Circle 3(3), Hyderabad
3. Commissioner of Income-tax(Appeals) 9, Mumbai
4. Commissioner of Income-tax III, Hyderabad
5. Departmental Representative, ITAT, Hyderabad.

B.V.S