

TPO had to consider revised Form 3CEB, filed after one year from end of AY, if it includes proper comparable

Summary – The Chennai ITAT in a recent case of Ashok Leyland Ltd., (the Assessee) held that Revised Form 3 CEB submitted during TP proceedings after one year from end of assessment year, should be accepted

Facts

- The assessee was in the business of manufacturing of commercial vehicles, industrial and marine engines. The assessee made transactions with the Associated Enterprise during the financial year 2005-06 and provisions of section 92CA were attracted. The transactions the assessee had entered with associated enterprise were supply of chests, fully built vehicles and spare parts. These three transactions with AE have resulted in a profit.
- The assessee entered into the international transactions at a price determined and charged to the Associated Enterprise which was not considered reliable by TPO.
- The assessee submitted that the TPO passed order without considering revised working of arms length price (ALP) submitted by the assessee within time-limit under the Income-tax Act. The assessee further submitted that assessee filed revised Form 3 CEB in transfer pricing proceedings before TPO on 1-6-2009 with proper comparables and was very much before passing of TP order under section 92CA(3) on 24-7-2009.
- The TPO treated the revised Form 3 CEB as belated and held that the time-limit for filing Form 3 CEB along with return was 31-10-2006 and revised Form 3 CEB for the relevant assessment year could be filed within one year from the end of the assessment year or before completion of assessment whichever was earlier under section 139(5) and rejected the contention and passed the order.

Held

- Under provisions of section 92CA(3) there is no specific time-limit specified for filing revised form. The statutory Form 3 CEB is a report of Chartered Accountant furnished under section 92E relating to international transactions and specific domestic transactions based on the documents prescribed and maintained by the assessee in respect of international transactions. The Chartered accountant report is based on the audited books of account maintained by the assessee where the international transaction have been incorporated and are authenticated. The report of the Chartered Accountant cannot be ruled out and also factual position has to be considered to correct any mistake in calculating of Arms Length Price (ALP) for valuation, and it is evident that the revised Form 3 CEB includes the proper comparables in respect of vehicles, parts which are integral product of commercial vehicles. The action of TPO in rejecting the revised Form 3 CEB is not proper as factual comparables certified by the Chartered accountant is revised Form 3 CEB cannot be ignored. Therefore, in the interest of justice, the disputed issue is to be remanded to the file of the Assessing

Officer and to consider revised Form 3 CEB filed by the assessee for assessment and calculation of arms length price.