

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SHRI GEORGE GEORGE. K, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**IT(TP)A No.1496(Bang) 2012
(Assessment year : 2008-09)**

M/s Biesse Manufacturing Co.Ltd,
Survey No.32, No.469,
Jakkasandra Village,
Sondekoppa Road, Nelamangala Taluk,
Bangalore-562 123

PAN No.AAJCS2898A

Appellant

Vs

The Deputy Commissioner of Income-tax,
Circle-11(2),
Bangalore

Respondent

**Assessee by : Shri Chythanya, K.K. Advocate
Revenue by : Shri G.R.Reddy, CIT-DR**

Date of hearing : 10-08-2015

Date of pronouncement : 14-08-2015

ORDER

PER SHRI GEORGE GEORGE, K, JM

This appeal at the instance of assessee is directed against the order dated 16-12-2011 passed u/s 143(3) r.w.s.144C of the IT Act, 1961. The relevant assessment year is AY: 2008-09.

2. Briefly stated the facts of the case are as follows;

The assessee is a company engaged in the business of manufacturing and sale of furniture machinery and its components. For the assessment year 2008-09, the assessee filed its return of income on 27-09-2008 declaring 'NIL' total income. The said return was processed under section 143(1) and subsequently selected for scrutiny by issuing notice under section 143(2) on 04-09-2009. A reference was stated to be made to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) by the AO. The TPO vide his order under section 92CA(3) dated 31-10-2011 called for an adjustment in the ALP to the extent of Rs.1,34,86,742/-. Subsequently, the AO passed a Draft Assessment Order dated 16-12-2011. (a) incorporating the adjustment to the ALP as suggested by the learned TPO (b) making an addition of Rs.9,01,401/- & (c) disallowing expenditure of Rs.6,77,534/-.

3. The assessee aggrieved by the aforesaid draft assessment order filed its objection before the Dispute Resolution Panel (DRP) on 23-01-2012. The DRP dismissed the application and refused to issue any directions in respect of ALP adjustments as carried out by the TPO in its direction dated 04-07-2012 and passed its direction under section 144C read with section 144C (8) of the IT Act. The AO thereafter, passed an assessment order under section 143(3) r.w.s.144C considering the directions of the DRP.

4. Aggrieved, assessee is in appeal before us raising several grounds, concerning the transfer pricing adjustment of Rs.1,34,86,742/- and the corporate issue with reference to addition of Rs.9,01,401/- relating to AIR information and disallowance of expenditure of Rs.6,77,534/- relating to raising of working capital through equity finance.

5. The learned AR submitted that the DRP directions issued u/s 144C of the IT Act, 1961 is without proper application of mind. It was submitted that the issue which are subject matter of objection before the DRP was non-granting of adjustment of under utilization of capacity which was not considered in its directions dated 04-02-2012. It was stated that the directions are nothing but cut, copy & paste of DRP directions in another case namely, M/s Aztec Software Pvt.Ltd. (DRP panel comprising same Commissioner's). As regards the corporate tax issue, the learned DR submitted that the assessee's objections were not considered in the correct perspective. Therefore, it was prayed that the issue of transfer pricing adjustment and two corporate issues raised in this appeal may be remanded to AO/TPO for fresh consideration.

6. Learned DR did not take strong objections for remanding the case to the AO/TPO, with reference to the transfer pricing adjustment.

7. We have heard rival submissions and perused the material on record. As regards the transfer pricing adjustment, the primary objection that was raised before the DRP was that suitable adjustment ought to have been granted to the assessee for under utilization of capacity utilization. We find that the DRP has not considered this objection of the assessee. In the instant case, the TPO has not collected any information u/s 133(6) of the IT Act, 1961. Such being the case, the question of assessee taking objection to alleged collection information u/s 133(6) of the IT Act, 1961 does not arise and as per the DRP the directions at para nos.8.1 to 8.3 in this regard is devoid of any merits. On reading the DRP directions, we notice that it is verbatim similar to what has been stated by the DRP in its directions dated 17-09-2012 in the case of M/s Aztec Software Pvt.Ltd (Supra) (Copy of which is placed at page-300 of the paper book filed by the assessee). Since the objections of the assessee are not considered by the DRP's and they have taken into consideration some other irrelevant issues, we deem it appropriate to restore the issue of transfer pricing adjustment, to the files of AO/TPO for *de-novo* consideration. As regards the corporate issues are concerned, namely the addition of Rs.9,01,401/- we find that the addition is on account of difference in turnover disclosed by the assessee in its VAT return and the AIR information. We find that the assessee had filed a reconciliation statement, whereby the assessee has been able to explain and reconcile to the extent of Rs.7,08,736/- out of the alleged difference

of Rs.9,01,401/-. We also notice that the information collected by the department in AIR is not placed on record to show how revenue have arrived at difference in figure of Rs.9,01,401/-. Therefore, in the interest of justice and equity and when substantial issue raised in this appeal namely TP adjustment is already remanded to the AO/TPO (which has not been strongly opposed by the learned DR), it is only appropriate, we restore the issue of corporate tax matters also to the files of the AO/TPO for *de-novo* consideration. It is ordered accordingly.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open Court on the 14th August, 2015.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore:

D a t e d : 14-08-2015

am*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(GEORGE GEORGE, K)
JUDICIAL MEMBER

By order

AR, ITAT, Bangalore