

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-2' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1021/Del./2014
(ASSESSMENT YEAR : 2009-10)**

M/s. BG India Energy Solutions vs. ACIT, Circle 1(1),
Private Limited, Gurgaon.
3rd Floor, World Trade Centre,
Barakhamba Lane, Connaught Place,
New Delhi – 110 001.

(PAN : AAACB9739J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vishal Kalra, Advocate and
Ms. Sumisha Murgai, CA
REVENUE BY : Shri H.K. Choudhary, CIT DR

Date of Hearing : 13.09.2017
Date of Order : 30.10.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. BG India Energy Solutions Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 24.12.2013, passed by the AO in consonance with the orders passed by the ld. DRP/TPO under section 143 (3) read with section 144C of the

Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2009-10 on the grounds inter alia that :-

“1: 0 Re.: Adjustment of Rs.4,85,779/- on account of Time Writing Charges paid:

1: 1 The Assessing Officer 1 Dispute Resolution Panel 1 Transfer Pricing Officer have erred in making an upward adjustment of Rs.4,85,779/- to the total income of the Appellant by holding that the international transaction relating to the time writing charges paid by the Appellant to its Associated Enterprise ("AE") are not at arm's length.

1:2 The Appellant submits that, considering the facts and circumstances of its case and the law prevailing on the subject, the international transaction relating to payment of time writing charges to its AE are at arm's length and hence no adjustment in respect thereof was called for and the stand taken by the Assessing Officer / Dispute Resolution Panel / Transfer Pricing Officer in this regard is misconceived, erroneous and incorrect.

1: 3 The Appellant submits that the Assessing Officer be directed to delete the upward adjustment of Rs.4,85,779/- made by him to the Appellant's total income and to re-compute its total income and tax liability accordingly.

Without prejudice to the foregoing

2: 0 Re.: Double disallowance of Rs.4,85,779/- on account of Time Writing Charges paid:

2: 1 The Assessing Officer has erred in making a further disallowance of Rs.4,85,779/- of the time writing charges paid by the Appellant ignoring the fact that the said amount was suo-moto disallowed by the Appellant u/s. 40(a)(ia) of the Income-tax Act, 1961 while returning its total income for the year under consideration and by also ignoring the specific directions of the Dispute Resolution Panel in this regard.

2 : 2 The Appellant submits that the Assessing Officer be directed to delete the disallowance of Rs.4,85,779/-

made by him to the Appellant's total income and to re-compute its total income and tax liability accordingly.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee is a wholly owned subsidiary of BG Asia Pacific Holdings Pte Ltd. in India after obtaining approval of Foreign Investment Promotion Board of Government of India. Transfer Pricing Officer (TPO), during transfer pricing proceedings, noticed that the taxpayer has made payment of Rs.10,76,273/- for services provided to the BGIL which are in the nature of shareholder services for which the benefit is derived by the parent company, hence BG India Energy (the taxpayer) cannot be asked to pay for the same. The taxpayer was called upon to explain. The taxpayer claimed that out of the total amount of Rs.10,76,273/- claimed as reimbursement of expenses, the amount of Rs.4,85,779/- is reimbursement of the time writing charges which are not in respect of shareholder activities. However, Id. TPO by following the order passed by Id. DRP for AY 2007-08 proceeded to hold that services provided by BGIL are in the nature of shareholder services and the ALP of the same has been treated as Nil. TPO further held that since the facts and circumstances of the case are identical as in the previous years the Arms Length Price (ALP) of reimbursement of Rs.4,85,779/- on account of time

writing charges is taken as nil and thereby made total adjustment of Rs.4,85,779/-.

3. Assessee carried the matter by way of filing objections before the Id. DRP who has affirmed the order passed by TPO and directed the AO to appropriately include the basis of upholding the TPO's action in the final order to restrict the disallowance of impugned sum only once. In compliance to the proposal made by Id. TPO and direction issued by the Id. DRP, the AO passed assessment order by making addition of Rs.4,85,779/-. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The detail of reimbursement of expenses of Rs.10,76,273/- made to BGIL is as under :-

<i>S.No.</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Reimbursement of Time Writing charges</i>	<i>4,85,779</i>
<i>2</i>	<i>Reimbursement of Bank charges</i>	<i>5,87,307</i>
<i>3</i>	<i>Reimbursement of Third Party Travel Expenses</i>	<i>3,187</i>
<i>Total</i>		<i>10,76,273</i>

6. From the grounds of appeal, arguments addressed by Id. Authorized Representatives of the parties to the appeal and facts & circumstances of the case, the sole question arises for determination in this case is :-

“as to whether reimbursement of time writing charges to the tune of Rs.4,85,779/- are in the nature of shareholder services and the ALP thereof is to be treated as nil?”

7. Undisputedly, Id. TPO in order to maintain the consistency followed the order passed by Id. DRP in assessee's own case for AY 2008-09, wherein similar type of time writing services provided by BGIL has been treated in the nature of shareholder services and the ALP thereof has been treated as nil. So, likewise, Id. TPO proposed the ALP of Rs.4,85,779/- on account of time writing charges to be taken as nil and thereby made TP adjustment of Rs.4,85,779/-.

8. Id. AR for the assessee contended that the issue in controversy has already been set at rest by the coordinate Bench of the Tribunal in cases of *BG Exploration & Production India Ltd. vs. JCIT (International Taxation), Dehradun – (2017) 82 taxmann.com 446 (Delhi – Trib.)*, a group company and *Eaton*

Technologies (P.) Ltd. vs. DCIT, Circle 1 (2), Pune in favour of the assessee.

9. Ld. AR for the taxpayer further contended that the assessee has been continuously availing all the aforesaid services from its Associated Enterprises and in the subsequent assessment year AY 2011-12, TPO has accepted the international transaction of the payment of time writing charges at arm's length.

10. Identical reimbursement of time writing charges was claimed by the assessee company in AY 2010-11 and TPO has taken arms length price of reimbursement and the same at nil and proposed TP adjustment thereof. In the instant case, the TPO/DRP/AO have merely followed the decision rendered by ld. DRP for AY 2008-09 in assessee's own case which was challenged.

11. Now, so far as question of making upward adjustment of Rs.4,85,779/- by the AO/DRP/TPO on account of time writing charges is concerned, TPO has made adjustment for the sole reason that the taxpayer has not supplied any details of services provided and the employees of BGIL who have provided these services nor the assessee has produced any supporting documentary evidence for the service purportedly to be provided by the BGIL nor the taxpayer has proved any benefit has been derived. More so, the ld.

TPO has followed the order of AYs 2007-08 and 2008-09 in assessee's own case qua the identical issue.

12. However, the ld. AR for the taxpayer taken us to page 65 to 75 of the paper book wherein the complete detail as required by ld. TPO qua services provided along with invoices has been supplied vide letter dated 26.10.2012, available at page 63 of the paper book. This fact has not been controverted by the ld. DR during the course of arguments. Furthermore the ld. AR for the taxpayer by relying upon the order passed by the *coordinate Bench of the Tribunal in BG Exploration & Production India Ltd. vs. Addl. DIR in ITA No.534/Del/2013 order dated 28.04.2017* wherein similar services have been rendered by BGIL to the group company, wherein ALP of time writing charges services have been upheld by the ld. DRP in AYs 2009-10 and 2010-11 as documented by the taxpayer holding that need test, benefit test, rendition test, duplicity test and shareholder's activity test are to be satisfied.

13. The ld. AR for the taxpayer contended that the ld. DRP has deleted the identical adjustment made by the TPO for AYs 2009-10 and 2010-11 on account of time writing charges holding that the taxpayer has received useful services for its AEs. This contention raised by ld. AR for the taxpayer holds ground because the

decision rendered Id. DRP in case of group company of the taxpayer, namely, BG Exploration & Production India Ltd. has been affirmed by the coordinate Bench of the Tribunal in case cited as *BG Exploration & Production India Ltd.* (supra) by holding that the Id. DRP has rightly held that time writing services are neither duplicative in nature nor are shareholder activities as has been held by the Id. TPO in this case.

14. So, in view of the matter, we are of the considered view that when the entire evidence has been brought on record or assessed during TP proceedings as has been discussed in the preceding paras to prove the fact that adjustment of RS.4,85,779/- on account of time writing charges is at arm's length and also in consonance with the order passed by Id. DRP in AYs 2009-10 and 2010-11 in BG Exploration & Production India Ltd. decided by the coordinate Bench of the Tribunal vide order dated 28.04.2017 (supra) to whom similar services have been rendered by BGIL, the Id. TPO is directed to examine the issue afresh for determination of the ALP of the time writing charges paid by the assessee in the light of the decision rendered by the coordinate Bench of the Tribunal in BG Exploration & Production India Ltd. (supra) by following the rule of consistency.

15. So far as ground no.2 qua double disallowance of Rs.4,85,779/- on account of time writing charges paid by the assessee to its AE is concerned, the ld. DRP has made a categorical direction in para 4.2 of the order to the AO to appropriately include the basis of upholding the TPO's action on this account by the then Panel in the final order but restricted the disallowance of money only once as a disallowance of Rs.4,85,779/- is included in the disallowance of misc. expenses of Rs.11,07,758/- made by the taxpayer in the computation of total income filed with the return of income in compliance to the provisions contained u/s 40(a) of the Act, which otherwise amounts to double addition on this account. But these directions of the DRP have not been complied with by the AO while framing the assessment AO is directed to comply with the directions issued by the ld. DRP as contained in para 4.2 of the order passed by the ld. DRP.

16. Resultantly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on this 30th day of October, 2017.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 30th day of October, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.