

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.58/Bang/2019
Assessment year: 2014-15

M/s. ANZ Support Services India (P) Ltd., 'Eucalyptus', Manyata Embassy Business Park – SEZ, Outer Ring Road, Nagavara & Rachenahalli Village, K. R. Puram Hobli, Bengaluru – 560 045. PAN: AAGCA 5549 M	Vs.	The Income Tax Officer, Ward – 1(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Chavali Narayanan, CA
Revenue by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.08.2021
Date of Pronouncement	:	06.08.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the final Order of Assessment dated 31.10.2018 of ITO, Ward - 1(1)(1), Bengaluru, passed u/s.143(3) read with Section 144C(13) of the Income Tax Act, 1961 (Act) in relation to AY 2013-14.

2. The assessee is engaged in the business of provision of Information Technology enabled Services (ITeS) to its Associated Enterprise (AE). The assessee has raised as many as 24 grounds of appeal. Ground No.1 raised by the assessee is general in nature and calls for no specific adjudication.

Grounds 2 to 11 are with regard to determination of ALP in respect of international transaction of rendering ITeS by the assessee to its AE. These grounds were not pressed for adjudication as the assessee entered into a Bilateral Advance Pricing Agreement (APA) with the CBDT dated 31.08.2018 which is applicable for 5 years commencing from Assessment Year 2016-17 to 2020-21 and roll back year commencing from 2012-13 to 2015-16. It was submitted by the learned Counsel for the assessee that the assessee has filed modified return of income as per the margin agreed under the APA and paid taxes accordingly. The AO is yet to pass an order in the modified returns filed on 22.11.2018 by the assessee. Grounds 2 to 11 accordingly were not pressed for adjudication by the assessee, hence dismissed.

3. Grounds 12 to 16 raised by the assessee reads as follows:

Ground of appeal no. 12 - *The learned AO/DRP/TPO have erred, in law and in facts, in determining separate transfer pricing adjustment on account of the interest on outstanding receivables amounting to INR 4,71,47,515.*

Ground of appeal no. 13 - *Without prejudice to our ground of appeal no. 12 above, the learned AO/DRP/TPO have erred, in law and in facts, by not appreciating that the outstanding trade receivables from its AE's arise from the provision of IT enabled services transaction which is to be considered as closely linked to such transaction and should not be tested separately from arm's length perspective.*

Ground of appeal no. 14 - *Without prejudice to our ground of appeal no. 12 above, the learned AO/DRP/TPO have erred, in law and in facts, by re-characterizing the outstanding receivables as on 31 March 2014 as a loan transaction.*

Ground of appeal no. 15 - *Without prejudice to our ground of appeal no. 12 above, the teamed AO/DRP/TPO have erred, in law and in facts, by not providing the basis for arriving at the*

arm's length interest rate of Libor plus 400 basis point for computing notional interest to be charged on the alleged delay in collection of receivables.

Ground of appeal no. 16 - *Without prejudice to our ground of appeal no. 12 above, the learned AO/DRP/TPO have erred, in law and in facts, by using short term deposit rates of interest of State Bank of India prevailing for FY 2013-14 as the arm's length interest rate for computing notional interest to be charged on the alleged delay in collection of receivables.*

4. The assessee is engaged in the business of providing ITeS to its group companies. The assessee had entered into international transaction with its AE. The assessee had allowed credit period for payment by the AE. The Transfer Pricing Officer (TPO) in his order passed under section 92CA of the Act, considered the grant of excessive credit period beyond normal period to the AE as an international transaction and made adjustment by imputing interest on outstanding receivables and held that —

- a) Outstanding receivables is a separate international transaction
- b) These funds could have been deployed for earning atleast interest income and therefore, the Appellant has incurred cost in connection with a benefit and thus. provided services to its AEs by way of delayed receipt of receivables
- c) The delay in receipt of receivables from AEs was not compensated through a set off in any other transaction
- d) Delayed receivables are in the nature of unsecured loan given to AEs

5. The TPO levied interest on delayed receivables for the credit period in excess of 30 days (as mentioned in the inter-company agreement) @ 4.3836% for USD, 7.25% for AUD and 7.21% for NZD (i.e. 6 months

LIBOR plus 400 basis points) taking weighted average realization period from AEs as the average collection period.

6. The Dispute Resolution Panel (DRP) vide its directions dated 06 September 2018, did not grant any relief and upheld the same to be a separate international transaction. However, the Hon'ble DRP directed the learned AO / TPO to compute interest on delayed receivables using short term deposit rates of interest of State Bank of India prevailing in FY 2013-14. The DRP held that if the funds were brought in time and those funds were properly deployed, the assessee may earn an income at the maximum rate applicable to deposits and not at the rate applicable to loans. Aggrieved by the order of the AO incorporating the addition as modified by the DRP, the assessee has raised ground Nos.12 to 16 before the Tribunal.

7. The learned Counsel for the assessee brought to our notice that it had filed an application for Bilateral Advance Pricing Agreement to the competent authority under the Act in respect of the international transaction of allowing credit period to the AE also. As per the APA, a realization period of 60 days has been agreed for the realisation of invoices pertaining to international transactions (i.e. ITeS) from 01 April 2017 entered into with the AEs (refer Pg No. 643 of Paperbook I). Further, the actual weighted realization period for AY 2014-15 is 48 days (refer Pg No. 626 to 632 of Paperbook I). It was submitted by him that the realization period of 60 days as agreed in the APA for subsequent years (FY 2016-17 onwards) should also be applicable for AY 2014-15 (rollback year). It was submitted that during the APA proceedings, the detailed weighted average realization period for rollback years including AY 2014-15 were submitted with the

India Competent Authority office (Pg No. 622 to 632 of Paperbook I). The Indian Competent Authority office observed that the 60 days credit period will be considered as normal and for late realization beyond 60 days prevailing bank rate will be charged.

8. It is the plea of the learned Counsel for assessee that the concept and the methodology laid down in APA can have a guidance value for the revenue authorities. The main intent of the APA is to protect the fair share of the revenue of the states in simple and efficient manner and to protect the tax base. Therefore, the agreement entered into by CBDT with the assessee, which has considered all the aspects of the manner of determination of ALP should be given highest sanctity and hence, mechanism suggested in that agreement should be necessarily followed, wherein the APA clearly provides a realization period of 60 days to the assessee.

9. Our attention was drawn to the clarifications on rollback provisions issued by the CBDT vide Circular No. 10/2015 dated 10 June 2015, Rule 10MA(2)(i) of the Income Tax Rules mandates that the rollback provision shall apply in respect of an international transaction that is same as the international transaction to which the agreement (other than the rollback provision) applies. Further, the Functions, Assets and Risks ("FAR") analysis should not differ materially. Since there is no change in the FAR analysis of the assessee and the nature of international transactions are identical in nature for all the nine years covered under APA, that the approach on credit period agreed in the APA for subsequent years is applicable to the AY 2014-15 (rollback year) as well.

10. The learned Counsel for the assessee further placed reliance on judicial precedents in support of its arguments wherein, the Hon'ble Benches of the Tribunal have held that the methodology/approach as agreed with CBDT in the APA covered years shall be applied for other years as well which are not covered under APA.

Ameriprise India Pvt. Ltd. [TS-174-HC-2016(DEL)-TP]

Celltick Technologies Ltd. [TS-552-ITAT-2019(Mum)-TP]

Abicor Binzel Production (India) Pvt Ltd. [TS-1036-ITAT-2017(PUN)-TP]

11. We have considered the submissions and are of the view that AY 2014 -15 is covered under roll-back period of the APA. Also, the FAR for all the years covered under APA is same. Hence, the period of realization of 60 days which is agreed in the APA for 01 April 2017 onwards should be considered for AY 2014-15 as well. The principle laid down in the decisions referred to in paragraph 10 of this order will apply to the present case also. We hold and direct accordingly.

12. The issues with regard to corporate taxes are projected by the assessee in grounds 17 to 24 which reads as follows:

17. The learned AO/ DRP have erred, in law and in facts, in treating software expenses of INR 6.50,52.354 as capital expenditure, without appreciating that such expenses are recurring, do not result in any enduring benefit, and are revenue in nature.

18. The learned AO has erred in not following the directions of the Hon'ble DRP though the supporting invoices (with complete details including the period of expenditure) in

respect of software expenses pertaining to FY 2013-14 were furnished by the Company

19. *The learned AO has erred in not considering copies of the invoices submitted by the Appellant (vide its letter dated 10 October 2018) with respect to software expenses disregarding the fact that these invoices were submitted within the time granted by the learned AO, and consequently erred in disallowing the same.*

Without prejudice to the above, the Appellant prays to the Hon'ble Tribunal, being an Appellate authority to consider the invoices so submitted and admit/ consider ANZSS's claim as revenue expenditure for deduction in the computation of total income.

20. *Without prejudice to the above, the learned AO has erred in law and in facts in restricting the depreciation to INR 1,95,15,706 on software expenses of INR 6,50,52,354 to 30% without providing any basis of calculation of such depreciation amount.*
21. *The learned AO has erred in not considering the entire Foreign Tax Credits available for an amount of INR 1,727,084 based on the Withholding Tax certificates received from the service recipients.*
22. *The learned AO has erred in law and in facts in not considering the impact of the disallowances in relation to expense incurred towards renewal of software licenses on the profit and gains from business and profession, on the deduction under section 10AA of the Act*

13. As far as these grounds are concerned, the facts are that in the draft assessment order, the AO considered/ treated the software expenditure amounting to INR 6,50,52,354 as capital expenditure stating that license charges are paid for continuing the usage of software and allowed depreciation at 30% of the said expenses amounting to INR 1,95,15,706, thereby disallowing INR 4,55,36,648 and also re-determined the deduction under section 10AA of the Act after excluding travel and communication expenses only from export turnover, thereby disallowing INR 80,39,365.

According to the assessee, the AO was not correct in disallowing the software expenses as capital expenditure without appreciating that such expenses do not result in enduring benefit and are revenue in nature. According to the assessee, the AO erred in not considering the impact of the disallowances in relation to expense incurred towards renewal of software licenses on the profit and gains from business and profession, on the deduction under section 10AA of the Act when passing the order.

14. On objections to the draft Order of Assessment, the DRP passed an order directing the AO to verify the invoices and allow the software expenditure if the license is for a period less than a year and if not, expenditure to be capitalised and depreciation to be allowed at 60% and also exclude the communication expenses and travel expenses in foreign currency that are attributable to delivery of product or service outside India from export turnover as well as total turnover while computing the eligible deduction under Section 10AA of the Act.

15. The AO passed final Order of Assessment pursuant to DRP's direction which is the order impugned in this appeal in which the bills were not submitted as per the requirements and being not supported by the purchase order and that the bills did not mention the period for which the expenditure was incurred towards software license and subscription to data base. Further, the AO also disregarded with the submission dated 10 October 2018 on the basis that it was filed beyond 10 days granted by DRP and thereby disallowed INR 6,50,52,354 considering the same to be in the nature of capital expenditure and accordingly, allowed depreciation of INR 1.95,15,706. In this regard, the AO acknowledged the DRP direction of

allowing depreciation @ 60%, however, in the computation of tax liability, has considered depreciation at a rate of 30% only.

16. Further, in relation to deduction under section 10AA of the Act, while the AO did acknowledge the allowance as per the directions of DRP however, in the computation of tax liability, the disallowance was retained.

17. In the draft assessment order, the AO did not to grant credit of foreign tax paid by the assessee which was also upheld by the Hon'ble DRP. The assessee was not given an opportunity to file any detail in this regard, the copy of withholding tax certificate evidencing the taxes paid in foreign countries (Vietnam and Taiwan) were filed as additional evidence before the Tribunal.

18. It is the contention of the assessee that based on the DRP direction, the assessee filed the details of software expenses specifying the period of renewal of software in the said AY. However, the AO did not accept the details filed by assessee (vide its letter dated 26 September 2018 and 10 October 2018) disregarding the fact that the invoices disclosed the period of software licence and also balance details filed by the assessee was within the additional time granted by the AO (vide its letter dated 10 October 2018). The assessee has therefore filed an application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963, to admit the details as additional evidence which application in our view deserves to be accepted for adjudication of issue in appeal.

19. The learned Counsel for the assessee gave us the details of software expenses which was disregarded by the learned AO while passing the final assessment order for AY 2014-15.

Details of invoices filed vide submission dated 26 September 2018:

Name of payee	Invoice No	Invoice amount	Period of license/ subscription
Thomson Reuters	71905967A, 19/04/2013	10,06,624	3 Months
Thomson Reuters	71908763A, 01/01/2013	10,15,841	3 Months
ANZ Banking Group Limited	2014SW, 15/01/2014	3,00,39,114	MS License — 6 Months
ANZ Banking Group Limited	FY14SW, 12/06/2014	2,16,99,608	1 Month
Workware	8505, 31/01/2014	79,935.66	1 Month
Workware	8506, 31/01/2014	6,87,881.7	1 Month
Workware	8508, 31/01/2014	1,62,046.4	1 Month
Workware	8455, 31/12/2013	7,01,356.5	1 Month
Bloomberg	6750051347, 06/26/2013	10,17,514	1 Month
Reed Business	2726, 18/07/2013	2,08,916	1 Month
Reed Business	3772, 1/10/2013	251,950	1 Month
Reed Business	3499, 19/09/2013	28,66,484	1 Month
Total		5,97,37,271.26	

Details of invoices filed vide submission dated 10 October 2018:

Name of the Payee	Invoice No	Invoice Amount (INR)	Period of License/ Subscription
Valuepoint Techsol	100163	6,00,300	12 Months
Dimension Data	7930028498	3,68,764	12 Months
Thomson Reuters	71908763C	3,40,507	6 Months
Thomson Reuters	71905967C	3,37,417	6 Months
Bloomberg	6750047978	3,30,311	2 Months
Bloomberg	6750049085	3,26,331	3 Months
Bloomberg	6750057557	3,26,776	3 Months
Bloomberg	6750054783	3,22,123	4 Months
Bloomberg	6750051998	3,03,091	4 Months
Bloomberg	6752500499	2,87,668	4 Months
Bloomberg	6750050386	2,75,667	4 Months
Bloomberg	6750050385	8,884	2 Months

Bloomberg	6750049253	2,71,692	3 Months
Bloomberg	6750049213	2,71,692	4 Months
Thomson Reuters	71912265	2,39,604	3 Months
Thomson Reuters	71908763b	2,10,500	6 Months
Thomson Reuters	71905967B	2,08,591	6 Months
Bloomberg	6750058243	62,453	1 Month
Bloomberg	6750057422	62,326	1 Month
Hewlett-Packard	1211KA1L003785	55,008	12 Months
Thomson Reuters	I N-WCC25241-000	51,276	12 Months
Softcell	BA1314-SZ-ST-00002	5,644	-
Thomson Reuters	IN-WCC25189-000	5,368	1 Month
Bloomberg	6750058690	4,965	3 Months
Softcell	BA1314-SZ-ST-00001	2,427	-
Total		52,79,384	

20. The assessee has also filed the copy of invoices that were submitted before the AO (vide its letter dated 26 September 2018) in the Paperbook filed before us. (Pg No. 899 of Paperbook II). Further, in relation to the details of invoices filed by assessee vide submission dated 10 October 2018, the assessee has filed copy of invoices as an additional evidence before us on 18 February 2021.

21. In relation to deduction under section 10AA of the Act (with respect to communication and travelling expenses), the AO acknowledged the allowance as per the directions of DRP, however, in the computation of tax liability, the disallowance was retained.

22. The assessee has submitted the copy of withholding tax certificates before us evidencing taxes amounting to INR 17,27,084 paid in foreign countries, hence the assessee should be allowed the credit under section 90 of the Act.

23. We have considered the submissions of the learned Counsel for the assessee who reiterated the facts stated above. Learned DR relied on the order of the AO. We have given a careful consideration to the rival submissions. As far as grounds 17 to 20 raised by the assessee are concerned, we are of the view that it would be just and appropriate to direct the AO to consider the claim of the assessee regarding software expenses in the light of the invoices admitted as additional evidence by us. To the extent that the software expenditure is in the nature of payment of licence fee for a period of less than 1 year, the same could not be regarded as a capital expenditure and should be allowed as a deduction as was directed by the DRP in its directions dated 06.09.2018. As far as the grant of foreign tax credit projected in grounds 21 and 24 of the grounds of appeal raised by the assessee is concerned, we admit the withholding tax certificate evidencing payment of tax in foreign country and direct the AO to give credit to such taxes in accordance with law as mentioned in section 90 of the Act, after affording assessee opportunity of being heard. The AO is also directed to exclude communication and travelling expenses from the total turnover while computing eligible deduction under section 12AA of the Act. Thus, the relevant grounds of appeal of the assessee are treated as allowed for statistical purposes.

24. Ground No.25 raised by the assessee is with regard to levy of interest under section 234A of the Act on the ground that the assessee had filed the return of income within the due date prescribed. The AO is directed to examine the claim of the assessee in this regard, after affording opportunity of being heard. The ground with regard to levy of interest under section

234B is purely consequential ground with regard to initiation of penalty proceedings under section 271(1)(c) of the Act is not appealable.

25. In the result, the appeal of the assessee is treated as partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Bangalore,

Dated: 06.08.2021.

/NS/*

Sd/-

(N. V. VASUDEVAN)
Vice President

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.