

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.754/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Trumpf (India) Private Limited,  
Raisoni Industrial Park, S. No. 276,  
Hissa No. 1, Village-Mann,  
Taluka-Mulshi, Pune-411057

PAN : AACCT8008J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Deputy Commissioner of Income Tax,  
Circle – 7, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ketan Ved  
Revenue by : Shri Mahadevan A.M. Krishnan

सुनवाई की तारीख / Date of Hearing : 20-09-2021  
घोषणा की तारीख / Date of Pronouncement : 21-09-2021

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the final assessment order dated 30-12-2016 passed by the TPO/DCIT, Circle-7, Pune u/s. 143(3) r.w.s. 144C(13) of the Act for assessment year 2012-13.

2. Ground No. 1 raised by the assessee challenging the action of AO/TPO in passing final assessment order in terms of direction of Dispute

Resolution Panel (DRP) in determining Arm's Length Price (ALP) at Nil on account of trademark charges in the facts and circumstances of the case.

3. The brief facts, as submitted by the ld. AR is that the Trumpf Group is a high-tech group focusing on production and medical technology and offers both innovative and high-quality products, as well as solutions to problems in-sheet metal processing, laser-based production process, electronic applications and in hospital equipment. The headquarter of Trumpf Group is in Germany.

4. In the year under consideration, the assessee i.e. M/s. Trumpf (India) Pvt. Ltd. which is a company, provided sales and market support services for the goods sold to its AE in South Asian market. A notice u/s. 92CA(2) of the Act along with a detail questionnaire was issued to the assessee to file details/explanations with regard to the computation of arm's length price in relation to the said international transaction. The details of international transactions undertaken by the assessee is reflected at Para No. 5 of the TPO's order, amongst which the only transaction raised before us is trademark license fees to an extent of Rs.77,29,064/-.

5. The assessee paid trademark license fees to an extent of Rs.77,29,064/- to its AE i.e. Trumpf Werkzeugmaschinen GmbH. The contention of ld. AR is that the said cost allocation is consistent with Group pricing policy and there were tangible benefits corresponding to such payments in the form of services income and customer base. The TPO held that the assessee failed to provide any documentary evidences to support either the receipt of the alleged tangible benefits, or the

quantification of the benefits received or the basis for determining the trademark charges. On perusal of the order of TPO dated 25-01-2016 in Page No. 4, we note that the TPO clearly held that the assessee did not file any documents or details for verification and computation of trademark charges on the basis of any agreement and he held that the ALP of international transactions on account of trademark charges are taken at Nil by suggesting upward adjustment regarding the above said amount.

6. Before the DRP, it was contended that the TPO did not give adequate opportunity of being heard to the assessee before passing the transfer pricing order. The DRP observed vide Para No. 2.2.7 that the assessee filed paper book containing Page Nos. 112 to 159 out of which a letter dated 04-03-2016 addressing the AO along with copies of trademark agreement and invoices raised by the assessee by the AE enclosing but no request was made by the assessee for admission of copies of trademark agreement, invoices etc. as additional evidences. Having no application requesting the DRP to admit the said additional documents which were not filed before the TPO, the DRP did not consider or admit the said copies of agreement and invoices as additional evidences, being so, held no infirmity in the order of TPO in determining the ALP for payment of trademark license fees at Nil.

7. Now, before us, the ld. AR submits that it was explained clearly in DRP proceedings about payment for using trademark for the benefit of business which was used on letter heads, visiting cards etc. The ld. AR referred to Page No. 108 and submitted that the assessee in response to the letter dated 11-02-2016 filed the details and documents to the DCIT, Circle-7 enclosing agreement, invoices etc. On perusal of the said letter,

we note that at Point No. 16 in Page No. 113 of the paper book that the assessee filed a detailed submission before the TPO on 28-01-2016, but, the TPO passed the transfer pricing order on 25-01-2016. Therefore, it is clear that the details of submissions along with the documents were filed before the TPO on a subsequent date to the date of TPO's order which clearly establishes that the agreement and invoices in support of assessee's claim on account of payment of trademark license fees to its AE is not in the knowledge of TPO at the time of passing order on 25-01-2016. As noted above, it was explained before the DRP taking support from agreement and invoices, the DRP having no application seeking admission of those documents rejected to take cognizance of said documents as additional evidences. We note that the agreement is placed on record before us at Page No. 115 of the paper book. Likewise invoices were placed on record from Page Nos. 148 to 155 of the paper book. The ld. AR fairly conceded these documents were not at all before the TPO and requested for an opportunity to the assessee and remand the matter to the file of TPO for verification afresh in terms of documents filed. The ld. DR submits that the said documents and oral submissions as advanced by the ld. AR before this Tribunal were not before the TPO and requires fresh examination in terms of the same. Therefore, taking into consideration the facts and circumstances of the case and submissions of ld. AR and ld. DR, we deem it proper to remand the issue to the file of TPO for its fresh verification in terms of evidences filed before this Tribunal by way of paper book and determine the ALP of international transactions on account of trademark license fees. Thus, ground No. 1 raised by the assessee is allowed for statistical purpose.

8. Ground No. 2, It was submitted that the assessee has got relief in 154 proceedings, hence, the same is become infructuous requiring no adjudication.

9. Ground No. 3, the ld. AR submits that the assessee has no interest to prosecute ground No. 3. Accordingly, the same is dismissed as not pressed.

10. Ground No. 4 raised by the assessee regarding the treatment of subvention money in the facts and circumstances of the case.

11. It was submitted that this ground was not raised before the AO/TPO and DRP and all along the assessee treated the same as income. The ld. AR submits that this ground was raised for the first time before this Tribunal as a legal ground in terms of decision of Hon'ble Supreme Court in the case of Siemens Public Communication Network (P.) Ltd. Vs. CIT reported in [2017] 77 taxmann.com 22 (SC). We note that the assessee has been treating the subvention money received as income treating the same as revenue receipt. The Hon'ble Supreme Court in the case of Siemens Public Communication Network (P.) Ltd. (supra) held the same as not a revenue receipt. We note that the details of amounts in Page No. 12 of the paper book wherein the assessee received the said amount from its AE for operation support in A.Ys. 2009-10, 2010-11 and 2011-12 to the extent of Rs.33,67,062/-, Rs.6,42,63,772/- and Rs.6,06,67,277/-, respectively. Since, it is not before the TPO, upon hearing both the parties, we deem it proper to remand this issue to the file of TPO for verification in terms of the principle laid down by the Hon'ble Supreme Court in the case of Siemens Public Communication Network (P.) Ltd. (supra). The assessee is liberty to

file evidences, if any, in support of its claim. Thus, ground No. 4 raised by the assessee is allowed for statistical purpose.

12. Ground Nos. 5, 7 and 7 regarding levy of interest u/s. 234A, 234B and 234C are consequential, hence, the same are dismissed.

13. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 21<sup>st</sup> September, 2021.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> September, 2021.

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
4. The Pr. CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune