

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C" BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

**IT(TP)A. No. 377/Bang/2021
Assessment Year: 2015-16**

M/s. ANZ Operations and Technology Pvt. Ltd., SEZ Unit, RMZ Ecoworld, Campus 5A-Ground Floor and Levels 4 to 9, Sarjapur-Marathahalli Outer Ring Road, Devarabeesanahalli Village, Varthur Hobli, Bengaluru East Taluk, Bangalore – 560103. PAN: AABCA9002G	vs.	The Deputy Commissioner of Income Tax, Circle-1(1)(1), Bangalore.
(Appellant)		(Respondent)

Appellant by	:	Shri Chavali Narayan, CA
Respondent by	:	Shri Sundar Rao Chintala, CIT (DR)

Date of Hearing :	18.10.2021
Date of Pronouncement :	28.10.2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

The assessee filed this appeal challenging the final assessment order dated 29.06.2021 passed by the A.O. for assessment year 2015-16 u/s 143(3) r.w.s. 144C of the Income-tax Act, 1961 [the Act' for short] pursuant to directions given by Ld. Dispute Resolution Panel (DRP). The issues urged in the appeal relate to transfer pricing adjustments made in respect of Software development

services, ITES segment, outstanding receivables and a corporate issue relating to capitalization of software expenses.

2. The assessee is engaged in the business of software development and providing IT enabled services.

Ground Nos. 1 -5:

3. At the time of hearing, the Ld. A.R. submitted that the assessee has entered into bilateral Advance Pricing Agreement (APA) with CBDT on 31.8.2018, which is applicable for 5 years commencing from financial years 2015-16 to 2019-20 (relevant to assessment years 2016-17 to 2020-21) with roll back of 4 years commencing from financial years 2011-12 to 2014-15 (relevant to assessment years 2012-13 to 2015-16). Accordingly, the Ld. A.R. submitted that the APA would apply for the year under consideration.

4. The Ld. A.R. submitted that under APA entered by CBDT, the period of realization of receivables has been fixed at 60 days. He submitted that, the above period of 60 days may be adopted for determining the transfer pricing adjustment in respect of outstanding receivables. In this regard, the Ld. A.R. placed reliance on the decision dated 6.8.2021 passed by coordinate bench of this *Tribunal* in the assessee's sister concern's case; *M/s. ANZ Support Services India (P) Ltd. (IT(TP)A No.58/Bang/2019)*, by order dated 06.08.2021 for assessment year 2014-15 wherein similar claim of the assessee was accepted.

5. We heard Ld. D.R. on this issue and perused the record.

We notice that identical issue was examined by the coordinate bench in the assessee's sister concern's case referred above as under:-

“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.

0. 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.

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] AbicorBinzel Production (India) Pvt Ltd. [TS-1036-ITAT2017(PUN)-TP]

10. 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.”

6. It has been submitted that the FAR for year under consideration is identical to the years covered under APA. The Ld.AO rejected considering the realization period to be 60 days as agreed in APA for the reason that, it is beyond the purview of APA. Further vide cl(7) of APA how adjustment needs to be computed for roll back period has been provided.

Following the above said decision, we restore this issue to the file of AO/TPO with a direction to follow the principle laid down in the above said case.

6.1 Accordingly, these grounds raised by assessee stands allowed for statistical purposes.

6.2 In the result, the appeal filed by the assessee stands allowed.

Order pronounced in open court on 28th October, 2021.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 28th October, 2021.
/MS/

Copy to

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore