

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

IT(TP)A No.1714/Bang/2016 : Asst.Year 2012-2013

IT(TP)A No.1364/Bang/2017 : Asst.Year 2012-2013

M/s.Toyota Kirloskar Auto Parts Private Limited Plot No.21, Bidadi Industrial Area Bidadi, Ramangara District – 562 109. PAN : AABCT5590Q.	v.	The Assistant Commissioner of Income-tax, LTU, Circle-1 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.R.Vasudevan, Advocate

Respondent by : Sri.Muzaffar Hussain, CIT-DR

Date of Hearing : 09.02.2022	Date of Pronouncement : 10.02.2022
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against two orders of the Assessing Officer. The IT(T)A No.1714/Bang/2016 arises out of A.O's order passed u/s 143(3) r.w.s. 144C of the I.T.Act, (order dated 29.07.2016). The IT(TP)A No.1364/Bang/2017 arises out of the A.O.'s order passed u/s 154 (order dated 31.01.2011). The A.O. after passing the order u/s 143(3) of the Act, passed rectification order u/s 154 of the Act giving effect to the order passed by the Transfer Pricing Officer (TPO) in determining the Transfer Pricing (TP) adjustment from Rs.37,24,00,000, to Rs.39,13,10,000, hence two appeals are filed by the assessee. The relevant assessment year is 2012-2013.

2. The grounds raised for both the appeals are identical. The assessee has also filed additional ground vide letter dated 27.11.2021. The additional grounds are essentially, shades of grounds raised in Form No.36. The additional grounds are legal grounds supported by judicial pronouncements and does not require examination of new facts other than on record. Hence, the additional grounds raised are taken on record for adjudication. We shall first adjudicate IT(TP)A No.1714/Bang/2016 arising out of the order of the A.O. passed u/s 143(3) r.w.s. 144C of the I.T.Act.

IT(TP)A No.1714/Bang/2016

3. The brief facts of the case are as follows:-

The assessee is a company engaged in the business of manufacturing of automobile parts. For the assessment year 2012-2013, the return of income was filed on 24.11.2012 declaring total income of Rs.28,92,79,000. The assessment was selected for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, the matter was referred to the TPO to determine the Arm's Length Price (ALP) of the international transactions undertaken by the assessee with its Associated Enterprises (AEs). The TPO by his order dated 29.01.2016, determined the adjustment u/s 92CA of the Act at Rs.37.24,00,000 at entity level. The TPO also observed that this amount includes adjustment on account of royalty amounting to Rs.22,82,57,924. The assessee filed objections before the Dispute Resolution Panel (DRP). The DRP vide its directions dated 20.06.2016 disposed of the objections of the assessee. The objections of the

assessee was partly accepted by the DRP. Pursuant to the DRP's directions, final assessment order was passed vide order dated 29.07.2016. Apart from the TP adjustment of Rs.37,24,00,000 in the final assessment order, the A.O. had disallowed depreciation of Rs.1,21,46,113.

4. Aggrieved by the final assessment order, the assessee has filed this appeal before the Tribunal, raising sixteen grounds and also various additional grounds. The issues raised in the grounds raised in Form No.36 and the additional grounds are as follows:-

Grounds raised in Form No.36

- (i) Grounds 1 to 3 – General.
- (ii) Grounds 4 & 5 – Application of turnover filter.
- (iii) Grounds 6 to 10 – Benchmarking of Royalty.
- (iv) Grounds 11 & 12 – Adjustments towards capacity utilization and project expenses.
- (v) Ground 13 – Restricting the adjustment to international transactions.
- (vi) Ground No.14 – Two companies wrongly included as comparable companies.
- (vii) Ground No.15 – depreciation on assets acquired on slump sale.
- (viii) Ground No.16 – Interest u/s 234B – consequential.

Additional Grounds

- (ix) Ground No.14A – Application of turnover filter and related to Ground 4 & 5.
- (x) Ground No.14B - Two companies wrongly included in the set of comparables, which was included by DRP by applying arbitrary turnover limit.
- (xi) Ground No.14C – One company (Fiem Industries Ltd) wrongly included in the set selected by TPO.
- (xii) Ground No.14E – One company to be included as comparable (Rane Madras Ltd.)
- (xiii) Ground No.14F – RPT filter applied wrongly at 5%, without any basis.

- (xiv) Ground No.14G – Four companies to be included, which had got excluded only because of wrong application of RPT filter.

5. The learned AR submitted as regards the TP adjustment, the entire TP analysis by the TPO is without any legal basis and directly in contravention of many of the legal principles laid down by various judicial pronouncements. The learned AR submitted that while making independent search for benchmarking, the TPO applied the lower filter of Rs.300 crore. It was contended that such a filter has no legal basis or sanction. It was submitted that the DRP arbitrarily changed the lower turnover limit from Rs.300 crore applied by the TPO to 10 times of the turnover. This change also has no basis and no legal sanction. Similarly, the learned AR submitted as regards the Related Party Transactions (RPT) is concerned, the TPO arbitrarily applied 5%. It was submitted that it is settled by various orders of the Tribunal that RPT filter of 15% should be applied. It was further submitted that the TPO had made TP adjustment at entity level, which is against the principle laid down by the Bangalore Bench of the Tribunal in the case of IKA India (P.) Limited v. ACIT reported in (2019) 101 taxmann.com 276 (Bangalore – Tribunal). As regards the capacity utilization, it was stated that the assessee had set up a new plant which had commenced production during the relevant assessment year. Therefore, it was submitted that the TPO ought to have granted the assessee the benefit of capacity utilization as stated in the order of the Tribunal in the case of IKA India (P.) Limited v. ACIT (supra). As regards the issue of corporate tax is concerned, the learned AR

submitted that the AO had disallowed a portion of depreciation as excess claimed by following his order for assessment year 2003-2004 (in assessee's own case). It was stated that the Tribunal for assessment year 2003-2004 had remitted the issue back to the A.O. for verification and after due verification the A.O. allowed the claim of depreciation. Copies of the orders of the Tribunal for assessment year 2003-2004 and OGE passed thereafter is placed in the case law compendium. In view of the above submission, the learned AR prayed that both the transfer pricing adjustment and the corporate tax issue raised in this appeal ought to be remitted to the AO for *de novo* consideration.

6. The learned Departmental Representative has filed a brief written submission essentially supporting the TPO's order and the directions of the DRP. As regards the remitting the issue of TP adjustment and corporate tax to AO / TPO for fresh examination, the learned DR did not have any serious objection.

7. We have heard rival submissions and perused the material on record. The assessee admittedly is a manufacturing company. The claim of turnover filter in the instant case has not been demonstrated by conducting a proper FAR analysis. The TPO had applied lower turnover filter of Rs.300 crore, without any basis or legal sanction. The decision on turnover filter are mainly for companies in IT industry and the report of Dun and Bradsten relied on by the Tribunal in the case of M/s.Genisys Engineering System (India) Pvt. Ltd. v. DCIT in ITA No.1231/Bang/2010 (order

dated 05.08.2011) was concerning IT industry. The TPO having applied the lower turnover filter has failed to apply the upper limit to the turnover. The DRP has arbitrarily changed the lower turnover filter to 10 times the turnover of the assessee's turnover, without any legal basis. Therefore, the entire issue of application of turnover filter has to be examined afresh by taking a proper FAR analysis.

7.1 Further, the TPO has applied RPT filter of 5% (para 7 at page 8 of the TPO's order), the application of filter at 5% has no basis and has no legal sanction. Various orders of the Bangalore Tribunal had held that RPT filter of 15% should be adopted. Hence, fresh TP analysis should be conducted by applying RPT filter at 15%.

7.2 The assessee had submitted before the TPO (vide letter dated 11.11.2016) that international transaction in relation to the cost is less than 20% (computed at 19.13%) and hence TP adjustment should be restricted only to the international transaction. Similar contention was raised before the approving authority vide assessee's letter dated 25.01.2016, which is placed at page 379 of the paper book in Vol.I. However, the TPO disregarded the contention of the assessee and made TP adjustment at entity level. It is settled position of law as upheld by the Tribunal in the case of IKA India (P.) Limited v. ACIT (supra) that transfer pricing adjustment should be restricted to only to the international transaction. It is further to be mentioned that for assessment year 2007-2008 in assessee's own case, the CIT(A) had held that the TP adjustment has to be restricted only to the international

transaction by assessee with the AEs. The Revenue has accepted the same and did not carry the issue in appeal. Copy of the CIT(A)'s order in assessee's own case for assessment year 2007-2008 is placed on record at pages 44 to 53 of the case law compendium.

7.3 The assessee had claimed depreciation for capacity utilization, indirect project expenses and foreign loss (Annexure E of the TP adjustment at page 1169 of the paper book Val.I). The TPO did not agree for these adjustments (refer page 5 and 6 of the TPO's order) for the following reasons :-

- (i) Adjustment has been made on comparable and not on the tested party.
- (ii) Company is already 10 years old and there is no logic in giving such adjustment in the 10th year of operation.

However, the A.O. has disregarded the fact that the assessee had set up a new plant and the new plant had commenced production during the relevant assessment year. The details of the same are placed at pages 309 of the paper book. The Tribunal in the case of IKA India (P.) Limited v. ACIT (supra) had held that capacity utilization adjustment shall be granted. It was further held by the Tribunal that in absence of details, adjustment can be made on the tested party also.

7.4 For the aforesaid reasons, we are of the view that the AO / TPO has to conduct fresh TP analysis. Therefore, grounds / issues raised in this appeal as regards the TP issues are restored to the files of the AO / TPO. The AO / TPO is directed to restrict the TP adjustment to the international transaction. Further, the AO / TPO by following the dictum laid down by the Tribunal in the case of IKA India (P.) Limited v. ACIT (supra), shall consider the claim of the assessee as regards the capacity utilization, RPT filter, etc.

7.5 As regards the corporate tax issue, we notice that an identical issue was considered by the Tribunal in assessee's own case for assessment year 2003-2004. The Tribunal (refer pages 57 to 78 of the paper book) had restored the issue relating to the restriction of claim of depreciation to the files of the AO for fresh verification. The AO after due verification had allowed the claim. Copies of the orders of the Tribunal and the order of the AO giving effect to the Tribunal's order for assessment year 2003-2004 are placed on record. Therefore, in light of order of ITAT in assessee's own case for assessment year 2003-2004, the claim of depreciation is restored to the files of the AO for *de novo* consideration. The AO is directed to examine the claim afresh by taking into consideration the directions of the Tribunal in assessee's own case for assessment year 2003-2004 and pass appropriate order expeditiously after affording a reasonable opportunity of hearing to the assessee.

7.6 Hence, all the issues raised in this appeal are restored to the files of the AO / TPO.

IT(TP)A No.1346/Bang/2017

8. The learned AR, during the course of hearing, has stated that identical grounds/ issue are raised in this appeal to that of IT(TP)A No.1714/Bang/ 2016. It was submitted that if IT(TP)A No.1714/Bang/2016 is disposed off, this appeal would be rendered infructuous. In view of the submission of the learned AR, the appeal in IT(TP)A No.1346/Bang/2017 is dismissed as infructuous. It is ordered accordingly.

9. In the result, the appeal in IT(TP)A No.1714/Bang/2016 is allowed for statistical purposes and IT(TP)A No.1364/Bang/2017 is dismissed.

Order pronounced on this 10th day of February, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 10th February, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-2, Bangalore.
4. The Pr.CIT-1, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore