

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

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

IT(TP)A No. 210/Bang/2017

Assessment Year : 2012-13

M/s. Amicorp Management India Pvt. Ltd., Unit No. 701 & 702, 7 th Floor, Campus 6B, RMZ Ecoworld, Sarjapur, Marathalli Outer Ring Road, Bangalore – 560 103. PAN: AAFCA1468C	Vs.	The Income Tax Officer, Ward – 1 (1)(3), Bangalore.
APPELLANT		RESPONDENT

&

IT(TP)A No. 2171/Bang/2017

Assessment Year : 2013-14

M/s. Amicorp Management India Pvt. Ltd., Unit No. 701 & 702, 7 th Floor, Campus 6B, RMZ Ecoworld, Sarjapur, Marathalli Outer Ring Road, Bangalore – 560 103. PAN: AAFCA1468C	Vs.	The Deputy Commissioner of Income Tax, Circle – 1 (1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sherry Goyal, Advocate
Revenue by	:	Shri Sanjay Kumar, CIT DR

Date of Hearing	:	21-12-2021
Date of Pronouncement	:	07-03-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by assessee against final assessment order dated 05/12/2016 and order dated 25/09/2017 passed by the Ld.ITO Ward 1(1)(3) and Ld.DCIT, Circle -1(2), Bangalore for assessment years 2012-13 and 2013-14 respectively on following grounds of appeal:

IT(TP)A No. 210/Bang/2017 (A.Y. 2012-13):

“Based on the facts and circumstances of the case and in law. Amicorp Management India Private Limited (hereinafter referred to as "Appellant"), respectfully craves leave to prefer an appeal against the assessment order passed by the learned Assessing Officer [hereinafter referred to as the "learned AO] under section 143(3) read with section 144C of the Income-tax Act, 1961 ("the Act") on the following grounds:

That on the facts and circumstances of the case and in law:

1. The learned AO/ Hon'ble DRP erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant with respect to recovery of expenses from associated enterprises and holding that the Appellant's international transaction is not at arm's length, thereby making a TP adjustment of Rs. 6,09,708

2. The learned AO/ Hon'ble DRP erred, in law and in facts, by concluding that a mark-up of 5% on net reimbursements should be charged towards finance cost for the funds blocked by the Appellant in the process of facilitating payments on behalf of it's associated enterprises and then subsequently recovering it from them:

3. The learned AO has erred in law and in facts by restricting the amount of Minimum Alternate Tax ("MAT") credit set-off to the amount claimed by the Appellant in its return of income and not providing the complete MAT credit set off as per the provisions of Section 115JAA of the Act, while computing the tax liability of the Appellant for the subject year.

4. The learned AO has erred. in law and in facts, by levying incorrect interest of INR 9,27.832 under section 234B of the Act

5. *The learned AO has erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.*

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."

IT(TP)A No. 2171/Bang/2017 (A.Y. 2013-14)

"Based on the facts and circumstances of the case and in law, Amicorp Management India Private Limited (hereinafter referred to as "Appellant"), respectfully craves leave to prefer an appeal against the assessment order passed by the learned Assessing Officer [hereinafter referred to as the "learned AO"] under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ("the Act") on the following grounds:

That on the facts and circumstances of the case and in law:

1. The learned AO/ Hon'ble DRP erred, in law and in facts, by not accepting the economic analysis undertaken by the Appellant with respect to recovery of expenses from associated enterprises and holding that the Appellant's international transaction is not at arm's length, thereby making a TP adjustment of INR 13,13,200;

2. The learned AO/ Hon'ble DRP erred, in law and in facts, by concluding that a mark-up of 5% on net reimbursements should be charged towards finance cost for the funds blocked by the Appellant in the process of facilitating payments on behalf of its associated enterprises and then subsequently recovering it from them;

3. The learned AO/ Hon'ble DRP has failed to appreciate the fact that working capital adjustment made by the Assessee in its transfer pricing study is after taking into account the outstanding trade receivables and payables. Thus the impact of blockage of funds and extension of any kind of credit facility by Amicorp India to its AE's is already considered in undertaking the transfer pricing analysis. Therefore, levying a mark-up of 5% on net reimbursement cost is not warranted;

4. The learned AO has erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.”

At the outset, the Ld.AR submitted that issues alleged by assessee in both the appeals are identical and accordingly they are disposed by way of common order. For sake of convenience, we are considering the facts for A.Y. 2012-13.

2. Brief facts of the case are as under:

2.1 The assessee is a company and filed its return of income for assessment 2012-13 on 29/11/2012 declaring total income of ₹ 5,64,04,840/- and for assessment 2013-14 on 26/11/2013 declaring total income of ₹ 7,38,69,480/-.

2.2 The Ld.AO observed that assessee entered into international transactions with its AE exceeding ₹ 15 crores and accordingly reference was made to the transfer pricing officer. Upon receipt, of reference, the Ld.TPO called upon assessee to file the economic details of international transactions undertaken by assessee in Form 3CEB.

2.3 From the details filed, the Ld.TPO observed that the assessee is a registered STPI and operates as back-office service provider for Amicorp Group companies. The Ld.TPO observed that assessee had international transaction being provision of back office support services, reimbursement of costs paid and

reimbursement of costs received for both the years under consideration.

2.4 The Ld.TPO observed that payments made to AE on account of reimbursement were routed through profit and loss account, however the recovery of expenses from the AE was not routed to the profit and loss account. The Ld.TPO accordingly called upon assessee to file its submission in respect of the same. The Ld.TPO also proposed to carry out transfer pricing adjustment in case of the recovery of expenses by adding a markup of 14.72%.

2.5 The assessee submitted that the reimbursement of expenses by AE was on cost to cost basis, and there could not have been any markup on the same. However the Ld.TPO concluded that markup has to be imputed at 14.72% based on certain comparables selected during the transfer pricing proceedings.

2.6 On receipt of the transfer pricing order, the Ld.AO passed the draft assessment order incorporating the adjustment so proposed.

Against the draft assessment order, assessee filed its objections before the DRP.

2.7 Before the DRP, it was submitted that the recovery of expenses from the AE was under following heads being fixed assets, information technology expenses, travel expenses, professional fees, printing expenses, career charges, training and development expenses and other receivables.

2.8 The DRP after considering the submissions of assessee observed and held as under.

“Having considered the submissions, we have perused the record to find that the assessee has incurred certain expenditure for the AE and it also made the AE's to incur

some expenditure on its behalf. The expenditure incurred by the assessee is for various needs of the AEs as listed in the submissions of the assessee. The expenses incurred both, for the AE by the assessee and for the assessee by the AE, are almost similar and the same cannot be considered as administrative support services as the assessee and the AEs, in providing the same are acting as mere facilitators only.

Further, we are in agreement with the assessee when it argued that the cost of the resources used/ incurred by the Assessee towards provision of these services / assistance i.e. employee cost, rent, depreciation, etc has been included in the total cost of Amicorp India considered for the purpose of mark-up and recovered from the Group at cost plus 20 percent and the same has been held to be arms length by the TPO. Respectfully, following the decisions relied on by the assessee; we are of the considered view that, there cannot be any separate adjustment for this purpose of loss of profit.

However, coming to the issue that the funds were blocked in the process and there has to be some finance cost, the same is covered by the decision of the Hon'ble ITAT, Hyderabad in the case of M/s Kirby Building Systems India Limited in ITA No. 1759/Hyd/2012, and in ITA.No.262/Hyd/2014, in respect of assessment years 2008-2009 and 2009-2010, considering the similar issue in paragraph 10 of the order, wherein it was held that "considering the fact that some services are certainly required and assessee has to incur cost in the beginning thereby extending some credit facility, we are of the opinion a mark up of 5% on the above re-imburement cost would justify the fact of the case."

2.9 On receipt of the DRP directions, the Ld.AO passed final assessment order, against which assessee is in appeal before this Tribunal.

3. At the outset the Ld.AR submitted that an additional ground number 6 has been raised, which is in connection with ground number 2. He submitted that no new issue needs to be looked into in order to adjudicate the additional ground.

The Ld.DR could not oppose the submissions of assessee as the issue raised in additional ground is in connection with the ground number 2 raised in the original ground of appeal.

4. We have perused the records and found that ground number 2 raised in the main grounds of appeal as well as ground number 6 reason that issue grounds are on similar facts and therefore can be admitted to be considered together.

Accordingly the additional ground raised versus a vide application 27/02/2018 stands allowed.

5. Ground no. 1 raised by assessee is general in nature and does not require any adjudication.

6. Ground no. 2 and Additional ground no. 6 raised by assessee is in respect of the markup to 5% computed by the Ld.AO on the net reimbursement of costs by the AE.

The Ld.AR submitted that assessee incurred certain expenses on behalf of its AE towards printing, career, information technology, travelling and accommodation, professional fees, fixed assets etc. The Ld.AR submitted that assessee made payments to the 3rd party vendor's towards these expenses and across charged to its group companies at cost without any element of markup. It is also submitted by the Ld.AR that the cost of resources and time involved in making the arrangements as been debited in the profit and loss account as expenses and considered in the total cost base of assessee for the purpose of markup that comes to 20%.

7. The Ld.AR further submitted that working capital adjustment has been made and therefore the reimbursement which forms part of the receivables have already been accounted for while

computing working capital adjustment. It was thus submitted by the Ld.AR that 5% applied by the Ld.TPO/AO amounts to double taxation.

On the contrary the Ld.DR relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

8. We note that identical issue arose before the *Coordinate Bench* of this *Tribunal* in assessee's own case for A.Y. 2011-12 wherein the issue has been remanded to the Ld.AO by observing as under:

"21. In respect of reimbursements received and paid, the assessee did not bench mark the transactions, as it was the opinion that the reimbursements made on actual basis is at arms length. The TPO noticed that the reimbursements paid by the assessee towards expenses incurred by the AEs on its behalf has been debited to Profit and Loss account and claimed as deduction. The TPO did not make any adjustment in respect of this payment amounting to Rs.1,39,78,966/-, apparently since the PLI computed under TNMM would subsume this payment also.

22. In respect of reimbursements received by the assessee from its AE, the TPO has taken the view that the assessee has utilized its services, blocked its working capital etc., and the services so rendered would fall under the category of administrative support services. Accordingly, the TPO has selected three comparable companies and applied margin of 13.12% on the amount of reimbursements received by the assessee from its AEs. As noticed earlier, the Ld DRP has directed the AO to apply the above said margin on the net amount of reimbursements.

23. We have held earlier, the transactions of reimbursement of expenses cannot be considered as administrative support services, since both the parties have acted as mere facilitators, meaning thereby, both the parties have not performed any value added functions. Accordingly, in the case of transactions of mere reimbursement of third party vendor expenses, where the AEs do not add any value, we are of the view that there is no necessity to compute any mark-up on these

transactions. Accordingly, we are of the view that the determination of ALP of transactions under TNMM is not appropriate.

24. The question that arises at this stage is as to how the international transaction of reimbursement of expenses should be bench marked. We have noticed that the TPO has also observed that such kind of payments made on behalf of AEs would result in blocking of working capital. There should not be any dispute with this proposition. Under normal circumstances, the reimbursements are received/paid within a reasonable period. If there is delay in making reimbursements beyond the reasonable period, it will result in providing of or extending credit facility to the AEs. In that case, we are of the view that the assessee should have been compensated for the "interest cost".

25. In the instant case, in our view, the ALP of transactions should be examined from the above said angle of providing of/extending credit facility. If the reimbursements have been paid /received within reasonable period, then no transfer pricing adjustment is required, otherwise the same is called for. In our view, the following methodology may be adopted for this purpose, i.e., since there is mutual reimbursements, a ledger account of mutual reimbursements may be prepared date-wise and the same would reveal as to whether there was a case of extending/providing of credit facility by the assessee to its AEs.

26. We have noticed that the AO/TPO has not examined the issue from this angle and hence we are of the view that this issue needs to be restored to the file of AO/TPO for examining the same afresh. Accordingly, we set aside the order passed by the AO on this issue and restore the same to the file of the AO for examining it afresh in the light of discussions made supra.”

9. Respectfully following the above, we are of the view that the issue need to be remanded back to the Ld.AO to consider the claim in accordance with law. In the event the expenditure incurred, against which reimbursement is made by the AE, forms part of working capital adjustment, no further adjustment is warranted. We also note that there are receivables which are also being reimbursed by the AE which also needs to be subsumed in

the working capital adjustment in order to escape the rigors of adjustments.

The Ld.AO is directed to consider the claim of assessee in accordance with law. Needless to say that proper opportunity of being heard is to be granted to assessee.

Accordingly ground no. 2 and additional ground no. 6 raised assessee stands allowed for statistical purposes.

10. Ground no. 3 is in respect of restricting the minimum alternate tax credit set of as per the provisions of section 115JAA. Assessee is directed to file requisite documents in support of the claim. The Ld.AO shall verify the details and consider the claim in accordance with law.

Accordingly ground no. 3 raised assessee stands allowed for statistical purposes.

A.Y.: 2013-14:

As the issue raised by assessee for assessment in 2013-14 are identical, the Grounds-3 and additional ground raised therein stands allowed for statistical purposes *mutatis mutandis*.

In the result appeals filed by assessee for assessment years 2012-13 and 2013-14 stands allowed for statistical purposes.

Order pronounced in open court on 07th March, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 07th March, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore