

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No.233/Bang/2021
Assessment Year : 2016-17

M/s. Trianz Holdings Pvt. Ltd., No.165/2, 6 th Floor, Kalyani Magnum, Doraisani Palya, IIM Post, Bannerghatta Road, Bengaluru-560 076. PAN : AAFCA 8051 P	Vs.	ACIT, Circle – 7(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Shri. Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.05.2022
Date of Pronouncement	:	30.05.2022

ORDER

Per N V Vasudevan, Vice President

This is an appeal by the assessee against the final order of assessment dated 30.04.2021 of ACIT, Circle – 7(1)(1), Bengaluru, passed under section 143(3) r.w.s. 144C of the Income Tax Act, 1961, in relation to Assessment Year 2016-17. The grounds of appeal raised by the assessee read as follows:

A. Transfer Pricing

1. *The Learned Assessing Officer (“Learned AO”), Learned Transfer Pricing Officer (“Learned TPO”) and the Honourable*

Dispute Resolution Panel (“Hon’ble DRP”) grossly erred in adjusting the transfer price of the Appellant’s international transactions with its Associated Enterprises (“AEs”) by INR 18,122,690 under Section 92CA of the Income-tax Act, 1961 (“the Act”).

Adjustment pertaining to Corporate Guarantee

2. *The Learned AO/ Learned TPO / Hon’ble DRP erred in not appreciating the fact that the issuance of corporate guarantee is not an international transaction as per section 92B of the Act.*
3. *The Learned TPO/ Learned AO/ Hon’ble DRP has erred in not considering the fact that corporate guarantee provided to its AE has been given in the capacity as parent company and with the purpose of furthering its own business interest.*
4. *The Learned TPO/ Learned AO/ Hon’ble DRP has erred in assuming that a concrete benefit is accrued to the Associated Enterprise (“AE”) without considering the fact that the provision of guarantee by the Appellant is a shareholding activity.*
5. *The Learned TPO/ Learned AO/ Hon’ble DRP has erred in not considering the fact that the promoters of the Appellant have also provided personal guarantee for the line of credit sanctioned by State Bank of India, California to the AE, thereby evidencing the fact that the corporate guarantee by the Appellant and personal guarantee provide by the promoters is to further the business interests of the Appellant.*
6. *The Learned TPO/ Learned AO/ Hon’ble DRP has erred in applying an arbitrary approach to benchmark the corporate guarantee transaction by erroneously using Comparable Uncontrolled Price (“CUP”) method as the most appropriate transfer pricing method, although the said method applied is not in accordance with the first proviso to section 92C (2) of Act and Rule 10B (1) (a) of the Income-tax Rules,1962 (“the Rules”).*
7. *The Learned TPO/ Learned AO / Hon’ble DRP has erred in determining the arm’s length guarantee fee rate at 2 percent arbitrarily without undertaking benchmarking analysis as required under the Rules.*

Adjustment pertaining to interest on delayed receivable

8. *The Learned TPO/ Learned AO/ Hon'ble DRP has erred in considering outstanding receivables as an international transaction and have erred in not accepting the contention of the Appellant that it does not fall within the purview of capital financing as stated by Section 92B of the Act and thereby erred in imputing an interest on the same during the year.*
9. *Without prejudice to the ground of appeal that outstanding receivables is not an international transaction, the Learned TPO/ Learned AO / Hon'ble DRP has erred in disregarding the fact that the receivables are arising out of transaction of rendering of services that are being determined to be at arm's length by application of Transactional Net Margin Method ("TNMM") and thereby separate adjustment for outstanding receivables is not warranted.*
10. *The Learned TPO/ Learned AO/ Hon'ble DRP has erred in imputing interest without carrying the benchmarking analysis as required under the Rules and arbitrarily using SBI short term fixed deposit interest rate as arm's length price.*
11. *The Hon'ble DRP has erred in arbitrarily directing the Learned TPO/ Learned AO to recompute the interest adjustment on delayed receivables after allowing credit period of 30 days, without considering that the Learned TPO had accepted the Appellant's contention to compute the interest on delayed receivables beyond 60 days.*

B. Corporate tax**Disallowance under section 14A of the Act**

12. *The Learned AO/ Hon'ble DRP have erred in law and on facts in computing disallowance under section 14A of the Act.*
13. *The Learned AO/ Hon'ble DRP ought to have appreciated that the Appellant had not earned any exempt income during the previous year and hence no disallowance shall be made under section 14A of the Act as held by various judicial rulings including the Hon'ble Supreme Court.*

14. *The Learned AO/ Hon'ble DRP failed to appreciate that the Appellant had not incurred any expenditure towards earning any exempt income and hence section 14A read with Rule 8D cannot be invoked.*
15. *The Learned AO/ Hon'ble DRP erred in invoking the provisions of section 14A read with Rule 8D without establishing a direct and proximate connection between the expenses incurred and the exempt income earned by the Appellant.*
16. *The Learned AO/ Hon'ble DRP ought to have appreciated that the Appellant had sufficient own funds and had not made the investments from the borrowings.*
17. *The learned AO/ Hon'ble DRP has erred in considering the interest on specific borrowing of while computing disallowance under Rule 8D.*
18. *Notwithstanding the above, the Learned AO/DRP failed to follow the similar directions of the Hon'ble DRP given in AY 2015-16 to exclude foreign investments while computing the section 14A disallowance.*

Set- off of Brought forward losses not granted

19. *The Learned AO has erred in not giving effect to the brought forward business loss and unabsorbed depreciation against the assessed income.*

Deduction under section 10AA of the Act not recomputed

20. *Notwithstanding and without prejudice to other grounds of appeal, the learned AO has erred by not recomputing deduction under section 10AA of the Act considering the assessed total income.*

Levy of interest under section 234B of the Act

21. *The Learned AO has erred in computing interest under section 234B which is consequential to the above grounds of appeal.*

The Appellant craves to leave/ to add to / to alter/ to amend/ to rescind/ to modify the grounds herein above or produce further documents, facts, and evidence before or at the time of hearing this appeal.

2. The assessee is a company engaged in the business of providing software services to clients in high technology, banking, healthcare, insurance, telecom manufacturing. The assessee renders services through its subsidiaries and therefore those transactions are in the nature of international transactions entered into with Associated Enterprise (AE) and the income from such transactions has to be determined having regard to Arm's Length Price (ALP) as laid down in section 92 of the Act.

3. The assessee provided software development services to AE and those transactions were accepted by the TPO as at arm's length. Apart from provision of software development services to the AE, the assessee also provided corporate guarantee for a loan availed by assessee's AE M/s. Trianz Incorporated, USA for a loan taken by the said AE from a bank in USA. The value of the loan was Rs.26,53,31,600/- for which the assessee gave a corporate guarantee. The first question before the TPO was as to whether providing corporate guarantee would be in the nature of an international transaction attracting the provisions of section 92 of the Act. On this aspect, the TPO, after referring to several decisions ultimately came to the conclusion that providing bank guarantee to AE was an international transaction and ALP had to be determined in respect of the said international transaction. The next question was as to the quantum of addition i.e., the income which the assessee ought to have earned from providing such guarantee and which the assessee did not charge to the AE. The same was determined at 2% of the loan amount which resulted in the determination of

ALP of the guarantee transaction at Rs.53,06,632/- which sum was added to the total income of the assessee. The action of the AO against which the assessee filed objections before the DRP was confirmed by the DRP. The AO passed the final order of assessment incorporating the directions of the DRP against which the assessee has raised ground Nos.2 to 7 before the Tribunal.

4. As far as the question whether the transaction of providing bank guarantee would amount to an international transaction or not, the law by now is well settled and this Tribunal in the case of United Spirits Ltd., in IT(TP)A No.2701/Bang/2017, order dated 05.04.2022, held that providing bank guarantee was an international transaction. The Bench, however, took the view that charging of guarantee commission at 0.5% in the value of the corporate guarantee would be an appropriate addition. The following were the relevant observations of the Tribunal in this regard:

“8.6.1 The Bombay High Court in CIT v Everest Kento Cylinders Ltd [2015] 378 ITR 57 dismissed the revenue’s appeal and upheld the charging of guarantee commission at 0.5% on the corporate guarantee. Thus, the contention of the learned AR that TP adjustment should not be made cannot be accepted. The co-ordinate bench in the case of Manipal Global Education Services Pvt. Ltd ITA No 388/Bang/2016 and recently in Medreich Ltd ITA No 1574 to 1576/Bang/2019 (order dated 12.4.2021) has followed the Bombay High Court decision mentioned above and confirmed the TP addition at 0.5%. Following the above decisions, we direct the AO/TPO to restrict the TP addition on corporate guarantee at 0.5% of the corporate guarantee.”

5. Learned DR, however, placed reliance on the decision of the ITAT, Hyderabad Bench, in the case of M/s. Synergies Castings Ltd., Vs. ACIT,

ITA No.285/Hyd/2021 order dated 23.09.2021, wherein the Tribunal took the view that 0.875% should be the quantum of income and would be the arm's length guarantee commission income that the assessee should have earned.

6. We have considered the rival submissions. We have perused the decision cited by the learned DR and we find that in that case, the assessee himself had offered 0.875% as the appropriate arm's length guarantee commission and therefore the said decision will not be applicable as a precedent in other cases. We are therefore inclined to follow the decision of the Bengaluru Benches of the Tribunal in the case of United Spirits (supra) and hold that 0.5% of the amount of the loan for which the assessee stood as a guarantee would be the appropriate arm's length guarantee commission that the assessee ought to have earned and this addition is accordingly directed to be restricted to 0.5% of the loan amount.

7. As far as ground No.8 to 11 raised by the assessee is concerned, the issue is with regard to interest on delayed realisation of receivables from the AE to which the assessee provided software development services. The first question before the TPO was as to whether delayed realization of receivables over and above the agreed credit period would at all amount to international transaction and this aspect was considered by the TPO and after referring to judicial decisions on the subject, the TPO came to the conclusion that delayed realisation of receivables from the AE over and above the agreed credit period, would amount to an international transaction. Thereafter, the TPO applied 6 months libor rate in March 2015 of 0.485% and arrived at the bench marking rate of interest @ 4.985% and arrived at a

sum of Rs.56,39,729/- as the addition on account of determination of ALP of the international transaction.

8. The assessee filed objections before the DRP against the draft order of assessment of the AO which incorporated the order of the TPO. The DRP confirmed the order of the AO with regard to the question whether the impugned transaction would amount to an international transaction or not. On the quantum of addition, the DRP substituted SBI short term deposit interest rates instead of the libor rate of interest and thereby the addition made by the AO stood enhanced.

9. Aggrieved by the order of the AO incorporating the directions of the TPO, assessee has raised ground Nos.8 to 11 before the Tribunal. At the time of hearing, it was agreed by the parties that identical issue had come up for consideration in assessee's own case in Assessment Year 2015-16, in IT(TP)A No.2639/Bang2019, the Tribunal in its order dated 16.11.2021 remanded the issue to the AO/TPO for fresh consideration. The following were the relevant observations of the Tribunal in this regard:

“5.2 Aggrieved, the assessee has raised this issue before the Tribunal. The gist of the submissions made by the learned AR are as follows:-

(a)The weighted average method adopted by TPO is incorrect.

(b)The assessee has not charged interest on outstanding receivables, both from AEs and Non-AEs and hence the Benchmarking analysis should be done with uncontrolled transactions and not by adopting an arbitrary number.

(c)The average credit period for both the AEs and non-AEs are the same and the credit period is about 99 days for invoices raised during the current year and 74 days for the invoices raised during the earlier year, which is within the credit period allowed in the RBI circular.

(d)The rate of LIBOR at 6 months + 400 basis points adopted by the TPO is without any basis. The rate should be adopted after a proper benchmarking analysis.

(e)The DRP directed the TPO to rework the interest computation based on the delay of individual invoices, which has not been done.

5.3 *The learned Departmental Representative supported the order of the AO / TPO.*

5.4 *We have heard rival submissions and perused the material on record. The DRP has directed the TPO to re-work the interest computation based on the delay of individual invoices. However, the DRP has not complied with the directions of DRP. The TPO was wrong in stating that the assessee did not furnish the invoice wise details of trade receivables. These details are furnished by the assessee vide its letter dated 24.10.2018 and are placed on record at pages 597 to 612 of the paper book, Volume-II. The assessee had given detailed submissions on the issue (refer page 471 to 476 of the paper book) and the same has not been considered by the TPO. The TPO is directed to re-work the interest computation based on the delay of individual invoice as per the directions of the DRP. It is ordered accordingly.*

5.5 *In the result, grounds 26 to 31 are allowed for statistical purposes.”*

10. The parties accordingly prayed for a remand of the issue to the TPO/AO for consideration on the lines indicated by the Tribunal in the order referred to above. It was also accepted by the parties that the facts and circumstances in the present Assessment Year is identical to the facts and circumstances as it prevailed in Assessment Year 2015-16. Accepting the

prayer of the parties, the issue is set aside to the TPO/AO for consideration afresh on the lines indicated by the Tribunal in the order passed for Assessment Year 2015-16 in assessee's own case.

11. As far as ground Nos.12 to 18 raised by the assessee is concerned, the issue is with regard to the quantum of disallowance that should be made under section 14A of the Act. As far as this issue is concerned, it has been the submission of the learned Counsel for the assessee that it did not earn any exempt income during the relevant previous year and therefore there can be no disallowance under section 14A of the Act. In this regard, he relied on the decision of the Tribunal in assessee's own case in Assessment Year 2015-16 (supra) wherein the Tribunal held that in the absence of any exempt income, no disallowance under section 14A of the Act can be made. However, on perusal of the order of the Revenue authorities as well as ground No.18 raised by the assessee, it appears that the assessee earned dividend income and there is no specific ground in the grounds of appeal on this issue that the assessee did not earn any exempt income. In these circumstances, we are of the view that it would be just and appropriate to set aside this issue to the AO for fresh consideration, after affording assessee opportunity of being heard.

12. As far as ground No.19 is concerned, it would be sufficient if the AO is directed to give effect to brought forward business loss and unabsorbed depreciation in accordance with law after due verification.

13. As far as ground No.20 is concerned, it is the contention of the assessee that deduction under section 10AA of the Act should be allowed on

the assessed income and not on the returned income. This issue had arose in assessee's own case in Assessment Year 2015-16 (supra), this Tribunal held as follows:

“Deduction u/s 10AA of the I.T.Act is to be allowed as assessed income

8. In ground 33, the assessee contends that notwithstanding and without prejudice to other grounds of appeal, the A.O. has erred in not computing deduction u/s 10AA of the I.T.Act on assessed total income instead of income returned by the assessee.

8.1 We have heard rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of *M Pact Technology Services Pvt. Ltd. in ITA No.228/2013* (judgment dated 11.07.2018) had held that deduction u/s 10AA of the I.T.Act should be computed on the assessed income and not on the returned income. The relevant finding of the Hon'ble Karnataka High Court reads as follows:-

“6. The relevant portion of the Circular No.37/2016 dated 02.11.2016 issued by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, relating to the subject:

Chapter VI-A deduction on enhanced profits, is quoted hereunder:

“The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

[i] If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS

under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40[a][ia] of the Act would qualify for deduction under section 80IB of the Act. This view was taken by the courts in the following cases:

[a] Income-tax Officer-Ward 5[1] vs. Keval Construction, Tax Appeal No.443 of 2012, December 10 2012, Gujarat High Court

[b] Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, 2015, Bombay High Court

[ii] If deduction under section 40A[3] of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act."

7. Applying the same analogy, it can be held that if deduction u/s. 40[a][ia] of the Act is not allowed, the same would have been to be added to the profits of the undertaking on which the Assessee would be entitled for deduction u/s. 10A of the Act. This view is fortified by the decision of Bombay High Court in the case of 'Commissioner of Income Tax v. Gem Plus Jewellery India Ltd.,' [2011] 330 ITR 175 [Bom] , wherein it is held thus:

"13. By reason of the judgment of the Supreme Court in Commissioner of Income Tax v. Alom Extrusions Limited [2009] 319 ITR 306 the employer's contribution was liable to be allowed, since it was deposited by the due date for the filing of the return. The peculiar position, however, as it obtains in the present case arises out of the fact that the disallowance which was effected by the Assessing Officer has not, the Court is informed, been challenged by the assessee. As a matter of fact the question of law which is formulated by the Revenue proceeds on the basis that the assessed income was enhanced due to the disallowance of the employer's as well as the employees' contribution towards Provident Fund

/ESIC and the only question which is canvassed on behalf of the Revenue is whether on that basis the Tribunal was justified in directing the Assessing Officer to grant the exemption under Section 10A. On this position, in the present case it cannot be disputed that the net consequence of the disallowance of the employer's and the employee's contribution is that the business profits have to that extent been enhanced. There was, as we have already noted, an add back by the Assessing Officer to the income. All profits of the unit of the assessee have been derived from manufacturing activity. The salaries paid by the assessee, it has not been disputed, relate to the manufacturing activity. The disallowance of the Provident Fund/ESIC payments has been made because of the statutory provisions - Section 43B in the case of the employer's contribution and Section 36(v) read with Section 2(24)(x) in the case of the employee's contribution which has been deemed to be the income of the assessee. The plain consequence of the disallowance and the add back that has been made by the Assessing Officer is an increase in the business profits of the assessee. The contention of the Revenue that in computing the deduction under Section 10A the addition made on account of the disallowance of the Provident Fund / ESIC payments ought to be ignored cannot be accepted. No statutory provision to that effect having been made, the plain consequence of the disallowance made by the Assessing Officer must follow. The second question shall accordingly stand answered against the Revenue and in favour of the assessee."

8.2 *In view of the above judgment of the Hon'ble jurisdictional High Court, we direct the A.O. to grant deduction u/s 10AA of the I.T.Act on the assessed income and not on the returned income. It is ordered accordingly.*

8.3 *In the result, ground 34 is allowed."*

14. Following the aforesaid decision, we accept the plea of the assessee as raised in ground No.20.

15. The other grounds relating to levy of interest is purely consequential. The AO is directed to give consequential relief.

16. In the result, appeal of the assessee is partly allowed.

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

Sd/-
(PADMAVATHY S)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated: 30.05.2022.
/NS/*

Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.