

THE INCOME TAX APPELLATE TRIBUNAL
“J” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 944/Mum/2021 (A.Y. 2016-17)

Ploycom Technology (R&D) Centre Pvt. Ltd. 7 th Floor, Uni-3B (Octave Block), Parcel-4 Salarpuria Saltiva Knowledge City, Inorbit Mall Road, Hitech City Hyderabd-500081. PAN : AAECPP3319G (Appellant)	Vs.	National e- Assessment Centre Delhi (Respondent)
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Assessee by	Shri Nikhil Tiwari
Department by	Ms. Vatsalaa Jha
Date of Hearing	08.08.2022
Date of Pronouncement	08.08.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 30.3.2021 passed by National e-Assessment Centre for A.Y. 2016-17 under section 143(3) read with section 144C(13) of the I.T. Act.

2. The assessee is aggrieved by the decision of the Assessing Officer in making addition towards transfer pricing adjustment as suggested by the Transfer Pricing Officer, disregarding the Advance Pricing Agreement (APA) entered by the assessee with the CBDT covering the year under consideration.

3. The Learned AR submitted that the assessee is engaged in the business of providing contract software development services providing to its associated enterprises. The assessee had received a sum of Rs.118.85 crores for providing contract software development services to its associated enterprises. The Assessing Officer proposed transfer pricing adjustment of Rs.19,20,39,380/-.

Accordingly the Assessing Officer passed a draft assessment order making the above said addition. The assessee objected to the addition by filing the objections before learned Dispute Resolution Panel. In the meantime, the assessee entered into Unilateral Advance Pricing Agreement (APA) with the CBDT, which covered year under consideration. Accordingly, the assessee intimated to the learned DRP about the APA entered by it. Hence, the learned DRP called for a remand report from the Assessing Officer. The Remand report submitted by the Assessing Officer has been extracted by learned DRP in its order as under:-

2. In response to the response to the assessee a report was called for from the AO. The AO furnished report vide letter dated 1.01.2021 Relevant portion of the report is reproduced as below.

3. The assessee has filed objection against the draft assessment order vide objection No, 59 on 15.01.2020. The assessee subsequently has entered into an Unilateral Advance Pricing Agreement (APA") with the Central Board of Direct Taxes (CBDT") u/s. 92CC of Income Tax Act, 1961 on 29.06.2020. The assessee has intimated the withdrawal of appeal from DRP. In view of the above the Hon'ble DRP has called for comments on the status of assessment order

4. It is submitted that the assessee has entered into an Unilateral advance Pricing Agreement (APA") with the Central Board of Direct Taxes ("CBDT) u/s. 92CC of Income Tax Act, 1961 on 29.06.2020. The agreement is applicable to consecutive five years commencing from previous year 2015-16 to previous year 2019-20 (relevant to assessment year 2016-17 to 2020-21) for the following international transactions (covered transactions) with its associate enterprises.

a) Provisions of software development services.

b) Reimbursement of expenses to AEs and

c) Reimbursement of expenses from AEs.

5. The assessment year in consideration ie 2016-17 is covered period under APA and covers the international transaction pertaining to provision of software development services.

6. The assessee has filed modified return of income tax on 23.12.2020 and has filed the annual compliance report (ACR) for the subject year on 29.12.2020 as per the relevant provisions of the Income Tax Act, 1961 and the Income tax rules, 1962. The assessee has submitted

that the assessee would be undergoing TP Audit of the aforesaid ACR in next for months.”

Since the assessee had settled the Arms length price of the international transactions mentioned above under the APA entered with CBDT, the learned DRP dismissed the objection filed by the assessee.

4. The Learned AR further submitted that, under APA agreement the assessee has offered additional income of Rs.5,17,24,272/-, which consisted of revised mark up of Rs. 4,23,02,785/- and interest of Rs. 94,16,987/- on account of delayed realization of invoices. The Learned AR submitted that the Assessing Officer should have made addition of Rs. 5,17,24,272/- as per the provisions of sec.92CC of the Act. However, the Assessing Officer has passed final assessment order making addition of Rs.19,20,39,380/- towards transfer pricing adjustment, as initially made by him in the draft assessment order. Accordingly learned AR submitted that the addition made by the Assessing Officer is not in accordance with law and the AO may be directed to follow the APA.

5. The Learned DR agreed with the factual aspects presented by the learned AR.

6. We have heard the rival contentions and perused the record. The Ld A.R submitted that the assessee has settled the Arms Length Price (ALP) of international transactions under APA entered with the CBDT and the said fact has also been accepted by the Assessing Officer in the remand report dated 1.1.2021 furnished by him to the learned DRP. However, in the final assessment order dated 30.3.2021, we notice that the Assessing Officer did not taken into account the APA entered by the assessee with CBDT and has made the addition proposed by the TPO. The said action of the Assessing Officer is in gross violation of provisions of sub-section 3 of section 92CC of the Act, which read as under :-

(3) Notwithstanding anything contained in section 92C or section 92CA or the methods provided by rules made under this Act, the arm's length price of any international transaction or the income referred to in clause (b) of sub-section (1) in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered].

In view of the above, the addition made by the AO is against the above said provisions. Accordingly, we delete the same and direct the Assessing Officer to determine the addition as per the APA entered by the assessee with CBDT.

7. The grounds urged by the assessee relating to interest charged under section 243A & 234B of the Act do not require adjudication, as charging of interest is consequential in nature.

8. The assessee has also raised a ground relating to initiation of section 271(1)(c) of the Act. This ground also does not require adjudication as it is premature in nature.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.08.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 08/08/2022

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai