

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No.392/Bang/2022
Assessment year : 2017-18

M/s. Rittal India Private Limited, No. 23 & 24, KIADB Industrial Area, Veerapura Dodaballapur, Bengaluru – 561 203. PAN: AAACR 7927A	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ramasubramaniyan, CA
Respondent by	:	Shri Bijoy Kumar Panda, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.08.2022
Date of Pronouncement	:	24.08.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the assessment order of the National Faceless Assessment Centre, Delhi passed u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] dated 22.3.2022 for the assessment year 2017-18.

2. The assessee raised grounds pertaining to the issue of addition of Rs.4,02,910 being adjustment towards notional interest on delayed

receivables from AE and disallowance of Rs.2,39,67,171 u/s. 37 of the Act.

3. The assessee is engaged in the business of manufacture and sale of enclosures, heat exchangers, industrial cooling equipment and power distribution equipment. For AY 2017-18, the assessee filed return of income on 30.11.2017 declaring total income of Rs.35,93,54,060. The case was selected for scrutiny under CASS and notice u/s. 143(2) was duly served on the assessee. The assessee had international transaction as per section 92 of the Act and therefore the case was referred to the Transfer Pricing Officer (TPO) in order to determine the Arms Length Price (ALP). The TPO while passing the order u/s. 92CA of the Act had made an adjustment of Rs.4,02,910 towards notional interest on delayed receivables by applying the interest rate at 6 month LIBOR + 450 basis points i.e. 5.975%. The AO passed a draft assessment order including the TP adjustment and also made a disallowance u/s. 37 for an amount of Rs.2,39,67,181 against the provision for expenses claimed as deduction by the assessee. The DRP confirmed the TP adjustment as well as the disallowance made by the AO. The AO passed the final assessment order against which assessee is in appeal before the Tribunal.

Notional interest on receivables

4. During the course of TP proceedings the AO treated the delay in receivables as a separate international transaction after considering the invoice wise details submitted by the assessee. The TPO computed

interest on delayed trade receivables at 6 months LIBOR + 450 basis points that worked out to 5.975% and arrived at an adjustment of Rs.4,02,910 which was confirmed by the DRP.

5. The Id. AR submitted that the assessee is not charging any interest on receivables from non-AEs and major portion of the receivable is received before the due date as agreed with the AE. It was further submitted that the rate of interest considered by the TPO is without any basis and the TPO had not done any separate benchmarking analysis with regard to the same.

6. The Id. DR supported the orders of the lower authorities.

7. We have considered the rival submissions and perused the material on record. We notice that the assessee has submitted the details of receivables with ageing as on 31.3.2017 [pg. 136 of PB] which is reproduced below:-

Particulars	Total	Receivables Not yet due	From 1 to 30	From 31 to 60	From 61 to 90	From 91 to 180	From 181
AE – Receivables	4,94,177,145	4,25,67,508	45,28,543	22,74,283	1,06,811	-	-
Non AE – Receivables	1,37,47,14,375	94,38,72,025	22,75,76,704	6,28,22,446	4,03,49,151	3,88,18,430	6,12,75,630

8. It is noticed from the above table that major portion of the receivable is not yet due and that the receivable balance beyond 30 days is very insignificant considering the overall receivable balance. It is also noticed that the receivables from the non-AEs is significantly higher than the receivables from AEs. It is settled position that interest on receivable is a separate international transaction and needs

to be benchmarked separately for TP analysis and that the TPO has applied the interest rate of 6 months LIBOR + 450 basis points on the interest receivable without doing any bench marking analysis. Considering the facts that major portion of the receivable is not yet due and that the assessee is not charging any interest on receivables on non-AE transactions, we are of the view that it is reasonable to adopt interest rate of LIBOR + 2% following the Bombay High Court judgment in the case of *Aurionpro Solutions Pvt. Ltd.*, 99 CCH 0070 (Mum). Accordingly, we direct the AO to recompute the interest on delayed payments at LIBOR + 2%. This ground of the assessee is partly allowed.

Disallowance of Rs.2,39,67,181 u/s. 37 of the Act

9. The AO observed that the assessee has claimed an amount of Rs.3,42,38,830 as provision for expenses towards various expenses such as works contract, loan/rent and fees/royalty. The AO also noticed that the assessee has disallowed 30% of the said provision amounting to Rs.1,02,71,649 u/s. 40(a)(ia) for non-deduction of tax at source. The AO disallowed the differential amount of Rs.2,39,67,189 stating that these are not in the nature of actual expenditure. The DRP upheld the disallowance on the basis that these expenses are not ascertainable.

10. The Id. AR submitted that the provision for expenses are ascertained liabilities and the invoice wise details of the said provision were submitted before the lower authorities. The Id AR also submitted that copies of sample invoices were submitted before the DRP and that these details have not been considered by the AO/DRP. The Id AR further submitted that in the subsequent assessment years the provisions are reversed to the extent the invoices are not received and the expense to that extent is offered to tax. The Id. AR prayed that since the lower authorities have not examined the evidences submitted by the assessee, the issue may be sent back to AO for proper verification and allow the claim accordingly.

11. The Id. DR supported the orders of the lower authorities.

12. We have considered the rival submissions and perused the material on record. We notice that the assessee has submitted the invoice-wise break-up of the provisions made with invoice number, date, vendor name, etc. [pg. 29 to 44 of PB] before the AO/DRP. It is also noticed that the assessee has submitted copies of sample invoices before the DRP [pg. 45 to 57 of PB]. The AO and DRP have made the disallowance on the basis that the provision made is not towards actual expenses and that they are not ascertainable. However, the lower authorities have not factually verified the details submitted by the assessee in order to decide the allowability of the provision made towards expenses. In view of the above, we remit the issue back to the AO with a direction to examine the details and evidence submitted by

the assessee with regard to the provision for expenses and decide the allowability of the same in accordance with law after giving reasonable opportunity of being heard to the assessee. The assessee is directed to submit all the relevant details before the AO and cooperate with the proceedings. It is ordered accordingly.

13. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 24th day of August, 2022.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th August, 2022.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.