

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

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

IT(TP)A No.322/Bang/2022 : Asst.Year 2017-2018

M/s.Trianz Holdings Private Limited No.165/2, 6 th Floor Kalyani Magnum, Doraisani Palya IIM Post, Bannerghatta Road Bangalore – 560 076. PAN : AAFCA8051P.	v.	The Additional /Dy./ Addl/Jt.Commissioner of Income-tax, NFAC, Delhi
(Appellant)		(Respondent)

Appellant by : Sri.Ankur Pai, Advocate
Respondent by : Sri.Manjunath Karkihalli, CIT –DR

Date of Hearing : 16.11.2022	Date of Pronouncement : 22.11.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against final assessment order dated 28.02.2022 passed u/s 143(3) r.w.s. 144C of the I.T.Act. The relevant assessment year is 2017-2018.

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

The assessee is a private limited company, engaged in providing offshore information technology consulting and services to its Associate Enterprises (AEs). For the assessment year 2017-2018, the return of income was filed on 28.11.2017, declaring total taxable income of Rs.21,81,86,930 under the normal provisions of the Income-tax and book profits of Rs.37,00,23,664 u/s 115JB of the I.T.Act. The return was processed u/s 143(1) of the I.T.Act.

The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued on 09.08.2018. During the course of assessment proceedings, the matter was referred to the Transfer Pricing Officer (TPO) to determine the Arm's Length Price (ALP) of the international transactions undertaken by the assessee. The TPO passed an order dated 29.01.2021 u/s 92CA of the I.T.Act. The TP adjustment proposed by the TPO in the said order, are as under:-

Description	Amount (Rs.)
SWD segment	6,36,89,932
Corporate Guarantee fee	66,71,892
Interest on delayed receivables	1,95,78,321
Total adjustment u/s 92CA of the I.T.Act	8,99,40,145

4. Pursuant to the TPO's order, the Assessing Officer passed draft assessment order dated 08.04.2021 incorporating the TP adjustments of Rs.8,99,40,145 proposed by the TPO. The A.O. also proposed to disallow a sum of Rs.4,53,000 u/s 14A of the I.T.Act r.w.r 8D(2) of the I.T.Rules, 1962. The A.O., accordingly, proposed to assess the income of the assessee at Rs.30,22,80,075 against the returned income of Rs.21,18,86,930. The A.O. also proposed to make adjustment u/s 14A of the I.T.Act to the book profits u/s 115JB of the I.T.Act.

5. Aggrieved by the draft assessment order, the assessee has filed objections on 28.05.2021 before the Dispute Resolution Panel (DRP). The DRP vide its directions dated 18.01.2022, disposed off the objections of the assessee. As

regards the transfer pricing adjustment for SWD segments, the DRP gave certain positive directions to the AO / TPO. As regards the corporate guarantee fee, the objections of the assessee was rejected and the DRP upheld the view of the TPO in computing the corporate guarantee fee at 1.75%. As regards the TP adjustment on interest on outstanding receivables, the objections of the assessee was rejected and the TPO's order benchmarking the same as a separate international transaction was upheld by the DRP (refer page 66 of the DRP's order). On the corporate tax front, the disallowance u/s 14A of the I.T.Act made by the A.O. was upheld by the DRP. The DRP, however, accepted the objections of the assessee and directed the A.O. to delete the amount of disallowance u/s 14A of the I.T.Act, which was added to the book profit u/s 115JB of the I.T.Act. The DRP also rejected the claim of the assessee for higher profits u/s 10AA of the I.T.Act.

6. Pursuant to the DRP's directions, the A.O. passed the impugned final assessment order, without giving effect to the directions of the DRP. The A.O. observed that the TPO has not provided the order giving effect to the directions of the DRP and the assessment was getting time barred. Therefore, the A.O. adopted the additions proposed in draft assessment order in the final assessment order. The A.O. assessed the income of the assessee as under:-

Income under normal provisions of the Act.

Particulars	Amount (Rs.)	Amount (Rs.)
Total taxable income as per ITR		21,18,86,930
Add : TP addition under section 92CA of the Act	8,99,40,145	
Add : Disallowance under section 14A of the Act	4,53,000	
Total additions / disallowances		9,03,93,145
Assessed taxable total income		30,22,80,075

Book Profits under section 115JB of the I.T.Act.

Particulars	Amount (Rs.)	Amount (Rs.)
Book profits as per ITR		37,00,23,664
Add : Disallowance under section 14A of the Act.	4,53,000	
Assessed taxable total income		37,04,76,664

7. Aggrieved by the final assessment order, the assessee has filed the present appeal before the Tribunal raising 42 grounds. The grounds are exhaustive and elaborative. The gist of the issue raised ground-wise, which were pressed before the ITAT, are as under :-

Ground No.1 to 5 – Validity of assessment order without giving effect to DRP directions

Ground No.9 – Arithmetical error in computing operating margin of assessee.

Ground No.18 – Turnover filter.

Ground No.19 – Exclusion of comparables.

Ground No.20 – Working capital adjustment.

Ground No.21 to 27 – Rate of corporate guarantee fee.

Ground No.28 to 33 – Interest on outstanding receivables.

Ground No.34 to 39 & 42 – Disallowance u/s 14A of the I.T.Act.

8. No specific plea was raised by the learned AR with reference to ground 1 to 5 as regards validity of assessment. With reference to ground 9, 18, 19 and 20 regarding TP adjustment of software development segments, the limited submission of the learned AR is that the A.O. has not given effect to the directions of the DRP and the A.O. may be directed to incorporate the relief granted in the order of TPO giving effect to the DRP's directions.

9. The learned Departmental Representative, on the other hand, furnished copy of the order of the TPO giving effect to the DRP's directions, wherein, the TP adjustment under SWD segment was completely deleted.

10. We have heard rival submissions and perused the material on record. On perusal of the DRP's directions, it is seen that the TP adjustment with reference to the software development segment has been completely deleted. We notice that the A.O. has not given effect to the directions of the DRP and incorporated the adjustment proposed in the draft assessment order, while completing the final assessment order. The A.O. is directed to give effect to the DRP's directions and accordingly modify the final assessment order. With these observations, we disposed off grounds 1 to 20.

The other grounds, we shall dispose off as under:

Grounds 21 to 27 : Rate of corporate guarantee fee (TP adjustment)

11. In the above grounds, the assessee had only pressed for ground 26 with reference to the rate of corporate guarantee.

12. The TPO also benchmarked the corporate guarantee fees charged by the assessee and determined adjustment of Rs.66,71,892. The TPO rejected the contention of the assessee that the corporate guarantee was a shareholder activity and treated the same as an international transaction. The TPO applied Comparable Uncontrolled Price (CUP) as MAM and determined the corporate guarantee fee at 1.715% of the guarantee value (page 65 of TP order). The TPO assumed the credit rating of the subsidiary as that of the junk bond considering that its finances for year would be BBB-. The TPO held that the yield from BBB- grade corporate bond was 11.38% for 5 year period for the FY 2016-2017. The assessee's rating by ICRA was AA+ for which the 5 year yield was 7.89%. The difference between the yield of the AE and the assessee was 3.43%. The TPO held that the benefit from assessee forwarding corporate guarantee to AE has gone entirely to AE and that it should have accrued to both in equal ratio. The 50% of the yield i.e., 50% of 3.43% was determined as the corporate guarantee fee. The computation of the corporate guarantee fee by the TPO is provided below:-

Particulars	Amount (Rs.)
Amount for which corporate guarantee has been issued	38,90,31,600
Rate of corporate guarantee fee to be paid (ALP)	1.715%

rate)	
Arm's Length Corporate guarantee fee	66,71,892
Corporate Guarantee fees charged by the assessee	NIL
Adjustment	66,71,892

13. The DRP rejected the objections of the assessee and upheld the addition made by the AO / TPO in computing corporate guarantee fee at 1.75%.

14. The learned AR confined his submission only to the rate that is to be adopted (ground 26). The learned AR submits by relying on the order of the Tribunal in assessee's own case for the immediately preceding assessment year, namely, A.Y. 2016-2017 in IT(TP)A No.233/Bang/2021 (order dated 30.05.2022) that fee of 1.75% adopted by the TPO may be modified to 0.50%.

15. The learned DR was duly heard.

16. We have heard rival submissions and perused the material on record. The Tribunal in assessee's own case for assessment year 2016-2017(supra) had held that 0.50% of the amount of loan for which the assessee stood as guarantee would be appropriate arm's length guarantee commission the assessee ought to have earned, and accordingly, restricted the addition of corporate guarantee commission to 0.50% of the total loan amount. The relevant finding of the Tribunal with reference to the same reads as follows:-

"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."

17. Facts for the relevant assessment year are identical to the facts of the Tribunal for the immediately preceding assessment year. Therefore, following the order of the Tribunal in assessee's own case for assessment year 2016-2017, we direct the AO / TPO to restrict the rate of corporate guarantee commission to 0.50% of the total loan amount for which the assessee stood as a guarantor. It is ordered accordingly.

18. In the result, ground 26 is partly allowed.

Ground 28 to 33 : Interest on outstanding receivables (TP Adjustment)

19. The brief facts in relation to the above grounds are as follows:

The TPO has made adjustment on interest on delayed receivables. The TPO treated the delayed receivables as international transaction and impugned interest, making TP adjustment of Rs.1,95,78,321 (refer page 78 of the TPO's order). The TPO had observed that the credit period of 60 days is allowed as per the agreement and adjustment is computed on amount outstanding beyond 60 days. The objections of the assessee was rejected by the DRP and the TPO adjustment was upheld.

20. Aggrieved, the assessee has raised this issue before the Tribunal.

21. We have heard rival submissions and perused the material on record. We find an identical issue was considered by the Tribunal in assessee's own case for assessment year 2016-2017 (supra). The said order of the Tribunal for assessment year 2016-2017 had followed an earlier order of the Tribunal in assessee's own case for assessment year 2015-2016 in IT(TP)A No.2639/Bang/2019 (order dated 16.11.2021). The Tribunal by following the assessee's own case for assessment year 2016-2017, had restored the matter to the AO / TPO to consider the issue afresh in line indicated by the Tribunal in the order passed for assessment year 2015-2016. Both the learned AR and the DR had submitted that a similar course may be adopted for this assessment year also. The relevant finding of the Tribunal for assessment year 2016-2017, which in turn had followed the Tribunal order in assessee's own case for assessment year 2015-2016, reads as follows:-

“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.”

22. In light of the submission of both sides, we restore this issue to the files of the AO / TPO. The AO / TPO is directed to decide the issue afresh in the light of the directions issued by

the Tribunal in assessee's own case for assessment year 2015-2016 (supra). It is ordered accordingly.

23. In the result, grounds 28 to 33 are allowed for statistical purposes.

Ground 34 to 39 & 42 (Corporate Tax disallowance u/s 14A of the I.T.Act.

24. The learned AR submitted that the assessee has not earned exempt income for the relevant assessment year, hence, no disallowance is called for u/s 14A of the I.T.Act. In this context, the learned AR relied on the order of the Tribunal in the case of Toyota Tsusho India P.Ltd. Joint/Deputy CIT in IT(TP)A No.175/Bang/2022 (order dated 09.09.2022).

25. The learned DR pointed out that there is no clarity from the records whether the assessee has earned exempt income or not during the relevant assessment year. Therefore, it was submitted that the matter may be remanded to the AO to examine the issue just like the Tribunal has done in of assessee's own case for assessment year 2016-2017 (supra).

26. The learned AR did not have any serious objection for the matter to be remanded to the AO to examine whether the assessee has earned any exempt income during the relevant assessment year.

27. We have heard rival submissions and perused the material on record. It is claimed that the assessee had earned

exempt income during the relevant assessment year. If the assessee proves that it had not earned any exempt income during the relevant assessment year, no disallowance u/s 14A of the I.T.Act can be resorted to. For examination whether the assessee has earned any exempt income during the relevant assessment year, the matter is restored to the files of the A.O. Since the issue with regard to the disallowance u/s 14A of the I.T.Act is restored to the files of the AO, ground 39 with reference to adjustment of 14A disallowance while computing book profit u/s 115JB of the I.T.Act and ground 42 as regards re-computation of deduction u/s 10AA of the I.T.Act on higher profits after considering disallowance u/s 14A of the I.T.Act are left open and not adjudicated. It is ordered accordingly.

28. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 22nd day of November, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 22nd November, 2022.
Devadas G*

Copy to :

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