

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

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|--|------------------------------|---|
| ITA No.135/Hyd/2022 | | |
| Assessment Year: 2017-18 | | |
| CDK Global (India) P Ltd Hyderabad PAN:AAGCR9879K (Appellant) | Vs. | Dy. CIT Circle 1(1) Hyderabad (Respondent) |
| Assessee by: | Adv Tanmayee Rajkumar | |
| Revenue by: | Shri Rajendra Kumar, CIT(DR) | |
| Date of hearing: | 12/12/2022 | |
| Date of pronouncement: | 13/12/2022 | |

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 13.3.2019 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2017-18.

2. In this case, the assessee has entered into advance pricing Agreement (APA) on 18.8.2021 and the copy of the said APA was furnished before the DRP which is duly recorded by the DRP in Para 2.37.1 to 2.37.4 at Page 102 to 104.

3. The assessee had sought to withdraw the effective grounds of appeal No 1 to 37 covered under APA . The DRP after recording it has held as under:

“2.37.1 Having considered the submissions, including the submission dated 01.12.2021 received on 03.12.2021, the objections 1 to 37 cover the following transactions entered into by the assessee company during the previous year relevant to the assessment year under consideration.

Provision of information technology services and IT enabled services

Interest on delayed receivables

2.37.2 In this regard the company vide letter dated 03.12.2021 expressed its desire to withdraw ground/objections numbers 01 to 37, as it has entered into Unilateral advance pricing agreement (APA) with CBDT The relevant submission is reproduced as under:

"Withdrawal of transfer pricing grounds (grounds 1 to 37) As referred in the captioned subject, the Assessee had filed a letter on 6 October 2021 before the Hon 'ble DRP to intimate that the Company has signed a Unilateral Advance Pricing Agreement ("APA) with the Central Board of Direct Taxes (CBDT) on 18 August 2021.As mentioned in our letter, the signed APA covers the following international transactions on which adjustments have been made by the Learned Transfer Pricing Officer ('Ld. TPO) / the National e-Assessment India Centre (LD. AO) for the captioned year:

| <i>S.No</i> | <i>International Transaction</i> | <i>T.P. Adjustment</i> |
|-------------|---|------------------------|
| <i>1</i> | <i>Provision of Information Technology (IT) Services and IT enabled services (ITES)</i> | <i>75,96,10,290</i> |
| <i>2</i> | <i>Interest on delayed receivables</i> | <i>82,51,464</i> |
| | <i>Total</i> | <i>75,13,58,826</i> |

The signed APA Covers the period starting from financial year (FY) 2016-17 to FY 2020-21 and hence, the Assessee submits that the APA already covers the captioned AY for which the Assessee has filed objections before the Hon'ble DRP.

The transfer pricing issues in question for the captioned AY have already been covered in the APA and, in accordance with Rule 10-0 of the Income-tax Rules, 1962, the Assessee has furnished the annual compliance report in Form 3CEF demonstrating compliance with the critical assumptions and ALP requirements as per the APA on 16 November 2021. Accordingly, the transfer pricing issues raised in the grounds of objections have become infructuous.

Based on the above facts and circumstances, during the hearing attended on 25 November 2021, the Hon'ble DRP directed the Assessee to file a letter requesting

for withdrawal of the transfer pricing grounds of objections filed before the Hon'ble DRP.

Accordingly, the Assessee hereby submits its request for withdrawal of the transfer pricing Grounds of Objections Nos. 1 to 37 preferred before the Hon'ble DRP. The assessee wishes to clarify that the request for withdrawal of grounds pertains only to transfer pricing issues and the assessee shall retain his right to context the non-transfer pricing issues under the referred appeal and the consequent proceedings thereafter.

We hereby request the Hon'ble DRP to accept the above and consider the impact of signing of the APA in your directions. Should the Hon'ble DRP require any further information or details on the above, we shall be happy to furnish the same”.

2.37.3 In view of the above, the objections/grounds 01 to 37 raised consist of the transactions which are covered under the APA with the CBDT. As per the APA guidelines the assessing officer would not be required to make any adjustment for the covered transactions except in accordance with the APA. The panel has examined the annual compliance report submitted vide letter dated 18.08.2021 wherein the period covered is from Financial Year 2016-17 to 2020-21. As the period of the assessment year 2017-18 is covered by the above APA agreement, there requires no adjustments for the covered transactions except with APA. We consider it appropriate not to adjudicate on the issues raised vide objections/grounds 01 to 37. Accordingly, the ground numbers 01 to 37 are dismissed as withdrawn.

2.37.4 We note on perusal of the copy of the APA agreement and the report of the Assessing Officer that the objections raised in grounds 1-37 pertain to transactions covered in the APA entered by the assessee with the Government of India. In accordance with the APA guidelines, no directions are issued by the DRP on these objections.

4. However even after passing the above said order by DRP, the Assessing Officer at page 53 to 54 observed as under:

“5. Transfer Pricing Issue:

....

The Draft order of TPO in this case was passed on 26.1.2021 suggesting the following adjustments:

| | | | |
|----|-----------------------------------|-------|-----------------|
| 1. | Software Dev.Services | – | Rs.75,13,58,826 |
| 2. | Interest on delayed receivables - | | Rs.82,51,464 |
| | Total | - Rs. | 75,96,10,290 |

The Taxpayer filed objections to the suggested objections and hon'ble DRP disposed of the objections vide order dated 24-1-2022. The order giving effect to the directions of Hon'ble is to be passed as below-

Hon'ble panel has noted that the taxpayer has withdrawn their objections as it has entered into unilateral Advance Pricing Agreement with CBDT. THE APA is applicable from F Y 2016-17 to 2020-21. The objections 1 to 37, as raised on behalf of the assessee were covered by APA and were accordingly rejected. The other issues raised on behalf of the taxpayer were not Transfer Pricing issues and accordingly no changes are required in the Draft Order of TPO.

It may further be noted that as per the details received in the office of TPO-1, Hyderabad, the Unilateral APA between M/s CDK Global (India) Private Limited and CBDT has been entered into on 18-08-2021 and covers the Financial Years 2016-17 to 2020-21. **The case has also been received by the TPO-1, Hyderabad for APA Audit and the Audit will be completed within the statutory limit as prescribed. However, since the TPO order for the AY 2017-18 has already been passed and the order under section 92CD(3), modifying the Draft Order of TPO as per the APA, may take some time before it is passed. Accordingly since the Assessment in this case is time barring one, it is being suggested that a final order may be passed for the A Y 2017-18. An order modifying the total income of the relevant Assessment Year as per the APA will be passed under section 92CD(3) of the Income Tax Act subsequently.**

Accordingly, the original order of TPO stands till an order under section 92CD(3) is passed for the A Y 2017-18. The Assessing Officer may pass a final order accordingly.

5.2 In view of the above, as stated by TPO-1, Hyderabad that the Unilateral APA between/s CDK Global (India) Private Limited and Hon'ble CBDT has been entered into on 18-02021 but TPO order for the AY 2017-18 has already been passed and the order under section 92CD(3), modifying the Draft Order of TPO as per the APA, may take some time for it is passed, therefore, the original order of TPO dated 26.01.2021 stands till an order under section 92CD(3) is passed for the AY 2017-18. Hence, the addition of 5,96,10,290/- is made to the total income of the assessee on account of Transfer Price adjustment. [Addition: Rs. 75,96,10,290/)].

5. The sole contention of the learned AR was that the Assessing Officer/TPO were duty bound to give effect to the terms & conditions of APA, however, for the alleged paucity of time the said authorities have not given effect to the APA entered into by the assessee and the CBDT.

6. Per contra, the learned DR submitted that the matter may be remanded back to the Assessing Officer/TPO to implement APA.

7. We have heard the rival arguments made by both the sides and perused the material available on record. The APA covering the issues 1 to 37 were entered between by the assessee and CBDT on 18.8.2021. This fact has duly been mentioned by the DRP in its order reproduced hereinabove. Unfortunately despite noticing entering of APA, he had not given the effect to the terms & conditions entered into by the assessee and the CBDT by way of APA . We are extremely disturbed on account of this callous, negligent and high handed attitude /conduct of the Assessing Officer/TPO. The revenue is bound by APA and further revenue is bound to implement APA under its statutory obligations. However, sufficient time has already lapsed and Assessing Officer/TPO failed to pass the order giving effect of APA entered between assessee and the CBDT.

In the light of the above, we direct the Assessing Officer/TPO to forthwith give effect to the APA terms entered between the assessee and the Board not later than the period of 2 months from the date of passing of this order, The copy of said order be placed before this Bench. Accordingly, appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 13th December,2022

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| Sd/- (R.K. PANDA) ACCOUNTANT MEMBER | Sd/- (LALIET KUMAR) JUDICIAL MEMBER |
|--|--|

Hyderabad, dated 13th December, 2022.

Vinodan/sps

Copy to:

| S.No | Addresses |
|------|---|
| 1 | CDK Global (India)Private Ltd, Unit No.401 and Unit 501, Building 12B, Rajeja Mindspace, Cyberabad, Survey No.64, APIIC Software Layout, Madhapur, Hyderabad 500081 |
| 2 | Dy.CIT, Circle 1(1) |
| 3 | Add/Jt/Dy/ACIT, NFAC, Delhi |
| 4 | Dy. CIT T.P.O-1 ,Hyderabad |
| 5 | Pr. CIT-1, Hyderabad |
| 6 | DR, ITAT Hyderabad Benches |
| 7 | Guard File |

By Order