IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER

IT(TP)A No. 189/Bang/2022
Assessment Year : 2017-18

M/s. Finastra Software Solutions (India) Pvt. Ltd., 4th to 6th Floor, Virgo Building, Bagmane Constellation Business Park Outer Ring Road, Dodanekundi, Bangalore. **PAN: AAACK9067G**	**Vs.**	The Deputy Commissioner of Income Tax, Circle – 3 (1)(1), Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	**:**	Smt. Tanmayee Rajkumar, Advocate
Revenue by	**:**	Ms. Neera Malhotra, CIT-DR

Date of Hearing	**:**	01-03-2023
Date of Pronouncement	**:**	31-05-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the final assessment order dated 27.01.2022 for A.Y. 2017-18 on following grounds of appeal:

> *"1. The impugned final assessment order dated 27.01.2022 was not communicated in the manner prescribed under the Income-tax Act, 1961 and the rules made thereunder, and therefore the proceedings are null and void.*

Transfer Pricing Grounds

2. The Assessing Officer (`A0')/Transfer Pricing Officer ('TPO') and the Dispute Resolution Panel ("the DRP") grossly erred in making an adjustment of Rs. 7,87,77,217/- in respect of overdue receivables.

3. The TPO erred in considering the delayed receipts as unsecured loans advanced to the Associated Enterprises ("AEs") and thereby erred in imputing interest on the same.

4. The DRP/ AO/TPO erred in treating the delayed receivables as a separate international transaction, although the same does not fall within the purview of "capital financing" in terms of Section 92B of the Income-tax Act, 1961 ("the Act").

5. The DRP/AO/TPO ought to have appreciated that the receivables emanating out of the principal transaction of rendering services, the same ought to, if at all, be benchmarked in an aggregate manner with the said services.

6. The DRP/AO/TPO erred in imputing interest on the outstanding receivables from AEs, without appreciating that the Appellant followed the same policy of not charging any interest on the receivables from non-AEs.

7. The DRP/AO/TPO erred in not appreciating the fact that the Act provides for taxing only real income whether received or accrued under the regular provisions and does not provide for taxing notional income.

8. The DRP/AO/TPO erred in not appreciating the fact that TP adjustment cannot be made on hypothetical and notional basis until and unless there is some material on record to show that there has been under charging of real income.

9. Without prejudice, the DRP/AO/TPO erred in determining an adjustment in respect of the delayed receivables, without considering the outstanding payables.

10. The DRP/AO/TPO ought to have appreciated that the group companies of the Appellant having faced losses for the year under consideration, the levy of interest would cause undue hardship to the Appellant.

11. Without prejudice, the DRP/AO/TPO erred in determining the interest by applying SBI rate instead of

LIBOR, as the invoices are raised by the Appellant in foreign currency.

12. Without prejudice, the AO/TPO erred in determining the interest by taking average of opening and closing debtors as on 01.04.2016 and 31.03.2017, instead of considering the delay as per invoice wise details.

Non-Transfer Pricing Grounds

13. The DRP/AO erred in law and on facts in making a disallowance under Section 80G of the Act of Rs. 5,50,000/- as being contributions made by the Appellant towards Corporate Social Responsibility ("CSR").

14. The DRP/AO erred in disallowing an amount of Rs. 1,84,63,980/- under Section 40A(7) of the Act, holding that the same was not disclosed in column number 26(i)(A)(a) of the Form 3CD, without appreciating that Section 43B of the Act would not apply to payments made under unapproved gratuity fund.

15. The DRP/AO erred in failing to appreciate that the amount was disallowed in the earlier years and accordingly, the claim made during the year under consideration, on actual payment, ought to be allowed.

16. The DRP/AO erred in not considering the employee-wise listing, demonstrating the actual payment of gratuity during the year.

17. The AO erred in making an addition to the book profits under Section 115JB of the Act.

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

2. Brief facts of the case are as under:

2.1 The assessee is a subsidiary of Finastra India Holdings Ltd., UK, which is a part of the Finastra Group. The assessee is engaged in the business of providing software development services (SWD), ITeS and marketing support services primarily to its AEs. For year under consideration, the assessee filed the return of income on 30.03.2018, declaring total income of

Rs.39,82,64,080/-. The case was selected for scrutiny under CASS and statutory notices u/s. 143(2) and 143(1) were issued and served on the assessee.

2.2 The Ld.AO noted that, the assessee had international transaction exceeding Rs. 15 crores and therefore reference was made to the Ld.TPO for computing the arms length price of such international transactions. The Ld.TPO upon receipt of the reference, called for the economic analysis in respect of the international transactions in form 3 CEB. It was noted that, the assessee had undertaken following international transactions:

International Transactions	Amount As per Form No. 3CEB (Amount in INR)
Provision of Software Development Support services	2,45,87,45,842
Provision of technical call centre services (ITES)	29,75,29,568
Provision of marketing support services (MSS)	10,40,06,090
Deemed International transaction	1,59,10,672
Not an international transaction – disclosed in Form No. 3CEB on abundant caution basis	
Unearned Revenue	6,69,41,648
Year end balances (Receivable)	128,38,26,528
Year end balances (Payable)	12,08,57,876

2.3 The Ld.AO noted that the assessee concluded the above international transactions to be at arms length in the TP study as it had earned a margin of 15.29% under each of the segment being, software development support service, ITeS segment and Marketing Support Service segment.

2.4 The Ld.TPO dissatisfied with the approach by assessee recomputed the proposed adjustment by selecting set of comparables under the SWD and ITeS segment. The Ld.TPO

however accepted the marketing support service segment to be at arms length as computed by the assessee.

2.5 The Ld.TPO also noted that there was interest on outstanding receivables in the hands of the assessee. The Ld.TPO computed notional interest by bench marking the transaction using six month LIBOR rate at 4.485%.

2.6 He thus proposed the following adjustment being

Sl.No.	Description	Adjustment u/s 92CA (In Rs.)
1.	Software development segment	23,22,30,921
2.	ITES segment	25,235,886
3.	Interest on delayed trade receivables	15,84,59,917
Total adjustment u/s 92CA		41,59,26,724

3. On receipt of the transfer pricing order, the Ld.AO passed the draft assessment order on 25.03.2021, by proposing further additions under corporate tax issues including the transfer pricing adjustment proposed by the Ld.TPO. The details of the additions proposed by the Ld.AO are as under:

Total income as per ITR	Rs. 39,82,64,080/-
Add: TP addition u/s 92CA	Rs.41,59,26,724/-
Add: Disallowance u/s 80G	Rs.5,50,000/-
Add: Disallowance u/s 40A(7)	Rs. 1,84,63,980/-
Total	**Rs. 83,32,04,784/-**

4. On receipt of the draft assessment order, the assessee filed objections before the DRP.

4.1 The DRP accepted most of the contentions of the assessee in respect of comparables under the SWD and ITeS segment.

4.2 However in respect of the interest on outstanding receivables, he modified the directions of the Ld.TPO by adopting SBI short term interest rate and directed to recompute the adjustment by applying credit period of 30 days as per the agreement or invoices.

4.3 In respect of the disallowances made by the Ld.AO u/s. 80G and section 40A(7), the DRP upheld the addition proposed in the draft assessment order.

5. On receipt of the DRP directions, the Ld.AO passed the final assessment order by making following additions in the hands of the assessee.

Total income as per ITR		Rs.39,82,64,080/-
Add: TP addition u/s 92CA	Rs.7,87,77,217/-	
Add: Disallowance u/s 80G	Rs.5,50,000/-	
Add: Disallowance u/s 40A(7)	Rs.1,84,63,980/-	Rs. 9,77,91,197/-
Total		Rs. 49,60,55,277/-
	Or	Rs.49,60,55,280/-

Aggrieved by the order of the Ld.AO, assessee is in appeal before this *Tribunal.*

6. At the outset, the Ld.AR submitted that the only issue alleged by the assessee under transfer segment provisions are in respect of the computation of notional interest on outstanding receivables.

6.1 He submitted that **ground nos. 2-12** are in respect of this issue and this issue stands covered by assessee's own case for A.Y. 2016-17 passed in *IT(TP)A No. 268/Bang/2021* by order dated *28/11/2022.* The Ld.AR submitted that all the contentions

of the assessee has been addressed therein by adopting the LIBOR rate + 200 basis points.

6.2 On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

6.3 Primarily before this *Tribunal,* the Ld.AR has submitted that interest on outstanding receivables cannot be treated as a separate international transaction. However this issue is no longer resintegra by virtue of the decision of *Hon'ble Special Bench* in case of *Instrumentation Corporation Ltd. vs. ADIT* reported in *(2016) 71 taxmann.com 193.* Therefore this argument by the Ld.AR stands rejected at the outset.

6.3.1 Now coming to the rate that needs to be applied for computing interest in the hands of assessee, the reliance is placed on the decision of *Hon'ble Delhi High Court* in case of *CIT vs. Cotton Naturals (India) Pvt. Ltd.* reported in *(2015) 55 taxmann.com 523. Hon'ble Court* has held that it is the currency in which the loan is to be repaid that determines the rate of interest and hence the prime lending rate cannot be considered. The Ld.AR before us has not provided the details of the outstanding debtors and the delay in respect of the same. However, as the agreement / invoice grants for 30 days credit period which is observed by the DRP, we direct the Ld.AO/TPO to compute interest on such outstanding receivables that exceeded 30 days credit period, by applying LIBOR rate + 200 basis points. In the event, the receivables get subsumed while computing the net margin of assessee, the same shall stand excluded.

6.3.2 We therefore remand this issue to the Ld.AO to compute the disallowance if any in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, these grounds 2-12 raised by assessee stands allowed for statistical purposes.

7. **Ground no. 13** is with regard to the disallowance of deduction claimed u/s. 80G of the act in respect of donations made in pursuance of the CSR policy.

7.1 It is submitted that the assessee incurred Rs. 11 Lakhs on account of CSR in line with the guidelines issued under the Companies Act, 2013. The Ld.AO noted that, the assessee claimed deduction to the extent of Rs.5,50,000/- under the 80G that was denied to the assessee.

7.2 The Ld.AR at the outset submitted that, this issue stands covered by the decision of *Coordinate Bench of this Tribunal* in assessee's own case for A.Y. 2016-17 in *IT(TP)A No. 268/Bang/2021* by order dated *28/11/2022,* wherein, this *Tribunal* followed the decision of *Coordinate Bench of this Tribunal* in case of *First American (India) Pvt. Ltd. vs. ACIT in ITA No. 1762/Bang/2019 by order dated 29.04.2020.*

In assessee's own case, this *Tribunal* has observed and held as under:

> *"68. The learned AR submitted that the amount of donation made has already suffered a disallowance under Section 37 of the Act. If a further disallowance is made under Section 80G of the Act, more so in view of such claimed not being prohibited by the said section, it would lead to double disallowance. Therefore the disallowance made by the Assessing Officer ought to be set aside. The learned AR placed reliance in this regard is placed on the decision of coordinate bench of the Tribunal in the case of First*

American (India) Pvt. Ltd. v. ACIT (Order dated 29.04.2020 passed in ITA No. 1762/Bang/2019).

69. We heard the rival submissions and perused the material on record. We notice that the impugned issue has been considered by the coordinate bench in the case of First American (India) Pvt. Ltd (supra) where it has been held that -

> *We have perused submissions advanced by both sides in light of records placed before us.*
>
> *11. Section 135 of Companies Act, 2013 requires companies with CSR obligations, with effect from 01/04/2014.*
>
> > *Finance (No.2) Act, 2014 inserted new Explanation 2 to subsection (1) of section 37, so as to clarify that for purposes of sub-section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*
>
> *12. This amendment will take effect from 1/04/2015 and will, accordingly, apply to assessment year 2015-16 and subsequent years.*
>
> *13. Thus, CSR expenditure is to be disallowed by new Explanation 2 to section 37(1), <u>while computing Income under the Head 'Income form Business and Profession'.</u> Further, clarification regarding impact of Explanation 2 to section 37(1) of the Income Tax Act in Explanatory Memorandum to The Finance (No.2) Bill, 2014 is as under:*
>
> > *"The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditure cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility*

referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein."

14. From the above it is clear that under Income tax Act, certain provisions explicitly state that deductions for expenditure would be allowed while computing income under the head, `Income from Business and Profession" to those, who pursue corporate social responsibility projects under following sections.

- *Section 30 provides deduction on repairs, municipal tax and insurance premiums.*
- *Section 31, provides deduction on repairs and insurance of plant, machinery and furniture*
- *Section 32 provides for depreciation on tangible assets like building, machinery, plant, furniture and also on intangible assets like know-how, patents, trademarks, licenses.*
- *Section 33 allows development rebate on machinery, plants and ships.*
- *Section 34 states conditions for depreciation and development rebate.*
- *Section 35 grants deduction on expenditure for scientific research and knowledge extension in natural and applied sciences under agriculture, animal husbandry and fisheries. Payment to approved*

universities/research institutions or company also qualifies for deduction. In-house R&D is eligible for deduction, under this section.

- *Section 35CCD provides deduction for skill development projects, which constitute the flagship mission of the present Government.*
- *Section 36 provides deduction regarding insurance premium on stock, health of employees, loans or commission for employees, interest on borrowed capital, employer contribution to provident fund, gratuity and payment of security transaction tax.*

Income Tax Act, under section 80G, forming part of Chapter VIA, provides for deductions for computing taxable income as under:

- *Section 80G(2) provides for sums expended by an assessee as donations against which deduction is available.*

a) Certain donations, give 100% deduction, without any qualifying limit like Prime Minister's National Relief Fund, National Defence Fund, National Illness Assistance Fund etc., specified under section 80G(1)(i)

b) Donations with 50% deduction are also available under Section 80G for all those sums that do not fall under section 80G(1)(i).

Under Section 80G(2) (iiihk) and (iiihl) there are specific exclusion of certain payments, that are part of CSR responsibility, not eligible for deduction u/s80G.

15. In our view, expenditure incurred under section 30 to 36 are claimed while computing income under the head, 'Income form Business and Profession", where as monies spent under section 80G are claimed while computing "Total Taxable income" in the hands of assessee. The point of claim under these provisions are different.

16. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) of the Act, they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 of the Act, for computing income under the head, "Income from Business and Profession".

17. For claiming benefit under section 80G, deductions are considered at the stage of computing "Total taxable income". Even if any payments under section 80G forms part of CSR payments (keeping in mind ineligible deduction expressly provided u/s.80G), the same would already stand excluded while computing, Income under the head, "Income form Business and Profession". The effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable Income" cannot be denied to assessee, subject to fulfillment of necessary conditions therein.

18. We therefore do not agree with arguments advanced by Ld.Sr.DR.

19. In present facts of case, Ld.AR submitted that all payments forming part of CSR does not form part of profit and loss account for computing Income under the head, "Income from Business and Profession". It has been submitted that some payments forming part of CSR were claimed as deduction under section 80G of the Act, for computing "Total taxable income", which has been disallowed by authorities below. In our view, assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing 'Total Taxable Income". If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature.

20. On the basis of above discussion, in our view, authorities below have erred in denying claim of assessee under section 80G of the Act. We also note that authorities below have not verified nature of payments qualifying exemption under section 80G of the Act and quantum of eligibility as per section 80G(1) of the Act.

21. Under such circumstances, we are remitting the issue back to Ld.AO for verifying conditions necessary to claim deduction under section 80G of the Act. Assessee is directed to file all requisite details in order to substantiate its claim before Ld.AO. Ld.AO is then directed to grant deduction to the extent of eligibility.

70. Respectfully following the above decision of the coordinate bench we remit the issue to the AO with a direction to verify the details and allow the deduction to the extent of eligibility. The assessee is directed to furnish the relevant details to substantiate the claim and cooperate with the proceedings. It is ordered accordingly"

Respectfully following the above, we remand this issue to the Ld.AO to consider the claim of the assessee having regards to the above observations and in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, these grounds raised by assessee stands allowed for statistical purposes.

8. **Ground nos. 14-16** is with regard to disallowance of provision for gratuity u/s. 40A(7).

8.1 The Ld.AO noted that assessee claimed Rs. 1,84,63,918/- on account of leave encashment and gratuity that was disallowed in earlier years and claimed in the year under consideration on payment basis this year. The Ld.AO disallowed the claim as the same was not verifiable with respect to Form 3CDB. The Ld.AR submitted that, all the payments were disallowed at the time when the provision was made in the previous years, and it is claimed as expenditure during the year under consideration on actual payment basis.

8.2 Referring to the return of income placed at page 874 of the paper book, the Ld.AR submitted that coln. 26 will not apply to assessee as the payment has been made during the year and therefore the same was kept blank.

8.3 The Ld.DR on the other hand submitted that the issue needs to be verified as assessee has stated that the contribution was made towards unapproved gratuity fund.

We have perused the submissions advanced by both sides in the light of records placed before us.

8.4 We note that the assessee has not provided satisfactory explanation with reference to documentary evidence to substantiate its claim of gratuity having paid during the year under consideration. It is also an admitted position that the contributions made by assessee was towards unapproved gratuity fund and therefore the disclosure of the actual payment of gratuity to the employees would not be reported in coln. 26 of form 3CED. However, the deduction in respect of gratuity is to

be allowed either in the year in which the gratuity is actually paid on retirement / termination or in the year in which the contributions are made to a gratuity fund which may be approved or unapproved. In support, we take strength from the decision of *Hon'ble Supreme Court* in case of *Shree Sajjan Mills Ltd. vs. CIT* reported in *156 ITR 585* and the decision of *Hon'ble Kerala High Court* in case of *CIT vs. Commonwealth Trust Pvt. Ltd.* reported in *(2004) 269 ITR 290.*

8.5 We therefore remand this issue to the Ld.AO for necessary verification in respect of the disallowance made by the assessee towards the gratuity in any of the previous year and subsequent payment to the extent it is paid should be allowed.

Accordingly, this ground raised by assessee stands allowed for statistical purposes.

9. **Ground no. 17** is in respect of the addition made to the book profits u/s. 115JB of the act.

We direct the Ld.AO/TPO to recompute the book profit in accordance with law if applicable in the present facts of the case on giving order effect to this order.

In the result, the appeal filed by the assessee stands allowed as indicated hereinabove.

Order pronounced in the open court on 31st May, 2023.

Sd/-	Sd/-
(PADMAVATHY S)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 31st May, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore