

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.401/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

B.A Continuum India Private Limited, Building No.5, Mindspace, Raheja IT Park, HITEC City, Madhapur, Hyderabad – 500081. PAN: AACCC2310C	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by:

Shri K.C. Devdas, CA,
Shri Kranthi, CA.

राजस्व द्वारा/Revenue by:

Ms. TH Vijaya Lakshmi, CIT-DR.

सुनवाई की तारीख/Date of hearing: 29.11.2023

घोषणा की तारीख/Pronouncement on: 29.11.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee aggrieved by the assessment order passed by the Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad dt.30.06.2022 invoking proceedings under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short, "the Act") for A.Y. 2018-19.

2. The grounds raised by the assessee reads as under :

“1). Grounds against imputing interest on outstanding receivables due from AEs - Adjustment of INR 1,85,87,919

- a) *Not appreciating that outstanding receivables is not covered in the definition of international transaction as defined u/s 92B of the Act in the facts and circumstances of the case;*
- b) *Not appreciating that the receivables are consequential/ closely linked to the principal transaction of services and hence have been aggregated for determination of ALP under TNMM;*
- c) *Not appreciating the fact that the working capital adjustments, if undertaken takes into account the impact of outstanding receivables of the controlled transactions vis-à-vis the uncontrolled transactions in determining the arm's length margin and no separate benchmarking is required;*
- d) *Not appreciating the facts and circumstances surrounding the receivables and re-characterizing the outstanding receivables as unsecured loans advanced to AEs;*
- e) *Not following any statutorily prescribed method and without doing any comparability benchmarking as prescribed under Chapter X of the Act.*

2). Without prejudice grounds against imputing interest on outstanding receivables due from AEs - Adjustment of INR 1,85,87,919

- a) *Not appreciating that the receivables due from overseas AEs are in foreign currency and hence interest, if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans;*
- b) *Considering ad-hoc credit period of 30 days instead of the industry average credit period.*
- c) *Not following directions of Hon'ble DRP to provide credit period of 60 days as per service agreement.*
- d) *Not considering weighted average realization days of invoices*

3). Ground on erroneous initiation of penalty under section 274 r.w.s 270A of the Act

Ld. AO was not justified and rather grossly erred in law and in facts by initiating penalty proceedings under section 274 r.w.s 270A of the Act.”

3. The brief facts of the case are that assessee is a company engaged in the business of Providing Information Technology (IT) and IT Enabled Services (ITES). The assessee company electronically filed its original return of income for A.Y.2018-19 declaring total income of Rs.822,84,01,030/- on 28.09.2018. The return of income was processed by CPC determining total income u/s.143(1)(a) at Rs.849,99,22,282/-. Thereafter, the case was selected for scrutiny assessment through CASS and statutory notice u/s.143(2) of I.T.At, 1961 was issued on 22.09.2019 through ITBA and duly served upon the assessee. Subsequently, notices u/s.142(1) along with detailed questionnaire was issued on 10.08.2021 and duly served. The assessee company has submitted its response on 04.10.2019 & 26.08.2021. After verification of the information filed/submitted, Assessing Officer completed the assessment.

3.1. During the course of assessment, it was observed that assessee company was having international transactions with Associated Enterprises u/s 92CA of the Act. Thereafter, the case was referred to the Transfer Pricing Officer (TPO), who passed order u/s 92CA(3) of the Act on 30.07.2021 wherein the TPO made adjustment of Rs.1,85,87,919/-. Based on the order of TPO, NFAC, Delhi passed draft assessment order u/s 143(3) r.w.s. 144C of the Act on 27.09.2021 interalia making an addition of adjustment of Rs.1,85,87,919/- to the total income of the assessee and thereby determined the assessed income at Rs.851,85,10,201/-.

3.2. Aggrieved with such draft assessment order, assessee raised objections before the DRP, who directed the TPO to examine the veracity of the contention of the assessee with regard to the invoice dated 31.03.2017. The TPO after examining the issued, passed the order, confirming the adjustment made as per 92CA of the Act at Rs.1,85,87,919/- on account of interest on delayed receivables transactions undertaken by the assessee company for A.Y. 2018-19.

4. Feeling aggrieved with final assessment order, assessee preferred appeal before us.

5. Before us, ld. AR has submitted that the assessee had provided the details of the invoices raised by the assessee for which it was alleged that there was a delay in payment of amount due to the assessee. However, the Assessing Officer / TPO as well as the DRP had failed to take cognizance of the same. It was submitted by the ld.AR that when the assessee has pointed out the invoices raised and the payments received by the assessee at the time of passing of order giving effect by the Assessing Officer, the Assessing Officer had declined to grant the relief to the assessee.

6. Per contra, ld. DR has submitted that the assessee had not provided the details before the TPO before passing of the order on 30.07.2021 and the invoices raised by the assessee were beyond the contractual period as they were raised in the month of September whereas the invoices were required to be raised within the period provided by the agreement and in case of the delay, the interest required to be determined applying the SBI base rate on the delayed outstanding amount. The ld. DR further submitted

that the issue is covered in favour of the Revenue by the decision of the Tribunal in the case of Zeta Interactive, Satyam Venture, Apache Footware and other decisions.

7. In rebuttal, ld.AR had submitted that the Tribunal has granted 60 days time on outstanding receivables, in its earlier decision, hence, the same may be considered and further it was submitted that Hon'ble Rajasthan High Court in the case of Vaibhav Global Limited Vs. ACIT reported in 453 ITR 24 had decided the issue in favour of the assessee.

8. We have heard the rival submissions and perused the material on record. In the present case, DRP has not considered the submissions of the assessee on trade receivables and in para 2.1.21 it is categorically mentioned that the period granted for furnishing the details was too short and therefore, there was violation of principles of natural justice and thereafter, DRP has directed the TPO to grant one more opportunity to the assessee to explain and decide the issue. Paragraph 2.1.21 provides as under :

“2.1.21 The assessee has primarily has objected that proper opportunity of being heard has not been given in charging interest on delayed receivables. The assessee has alleged that the TPO has only asked for invoice wise aging details of outstanding receivables but not the proposed adjustment thus violating principles of natural justice. On careful examination of the show cause notice dated 22.07.2021, the TPO has specifically called for the details on outstanding receivables and also proposed to charge interest @ SBI short term deposit rate on outstanding receivables beyond credit period of 30 days. However, the TPO has asked the assessee to furnish the details on or before 24.07.2021 which in our opinion is short. Therefore, in order to do justice to principles of natural justice the TPO is directed to give another opportunity to the assessee to explain and furnish its objections on this issue. The TPO should consider the details of invoice and charge interest @ SBI short term deposit rate on outstanding receivables beyond the credit period as per intercompany agreement or as per invoice. If no credit period is mentioned in the intercompany agreement or invoice the TPO may consider 30 days as credit period. The TPO may also examine the veracity of the contention of the assessee with regard to the invoice dated 31.03.2017. The assessee also

should cooperate with TPO by providing necessary information and documents to decide the issue as the above directions.”

9. The TPO has passed the order pursuant to the direction of DRP on 22.06.2022 and thereafter, the Assessing Officer has passed the order on 30.06.2022. In our view and in the light of the submissions made before us by the ld. AR that sufficient opportunity was not granted by the lower authorities, we are of the opinion that one more opportunity is required to be given to the assessee to explain its case before the TPO. In the light of the above, we deem it appropriate to remand back the matter to the file of Assessing Officer / TPO for passing a fresh order after granting due opportunity of hearing to the assessee, in accordance with law. The assessee is also directed to produce all the documents / submissions in the light of the grounds raised hereinabove. The learned TPO is expected to apply the law laid down by this Tribunal in the case of Zeta Interactive, Satyam Venture, Apache Footware and other decisions. Thus, the appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 29th November, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2023.

TYNM/sp

Copy to:

S.No	Addresses
1	B.A Continuum India Private Limited, Building No.5, Mindspace, Raheja IT Park, HITEC City, Madhapur, Hyderabad – 500081.
2	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru.
4	Director of Income Tax (IT & TP), Hyderabad.
5	Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order