

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.802/DEL/2022
(Assessment Year : 2017-18)**

Boeing India Private Limited,
3rd Floor, DLF Centre,
Sansad Marg,
New Delhi – 110 001.

vs.

DCIT, Circle 4 (2),
New Delhi.

(PAN : AAHCB1218P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravi Sharma, Advocate
REVENUE BY : Shri Rajesh Kumar, CIT DR

Date of Hearing : 29.11.2023
Date of Order : 08.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Assessing Officer passed under section 143 (3) r.w.s. 144C read with section 144B of the Income-tax Act, 1961 (for short 'the Act') dated 28.02.2022 for the Assessment Year 2017-18 pursuant to the directions issued by the ld. DRP.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts, in circumstances of the case & in law, the final assessment order passed by Ld. Assessing Officer ('Ld.AO') of the

National Faceless Assessment Centre ('NaFAC') under section 143(3) read with section 144C(13) read with section 144B of the Income-tax Act, 1961 ('the Act') is bad in law and void ab initio.

1.1. On the facts and circumstances of the case & in law, the draft assessment order dated April 15, 2021 is barred by limitation as prescribed under Section 153 of the Act;

1.2. On the facts and circumstances of the case & in law, the Ld. AO erred in passing the draft assessment order without making a reference to the Ld. TPO under Section 92 CA(3) of the Act and relying upon the findings of the TP Order dated January 29, 2021 issued in relation to different assessee (i.e. Boeing International Corporation India Private Ltd. (BICIPL)).

3. On the facts, in the circumstances of the case & in law, the Ld. AO/DRP has grossly erred in making a transfer pricing adjustment which is neither related to the case of the Appellant nor arising out of the transfer pricing proceedings in the case of the Appellant as:

2.1 The benchmarked transaction of interest on outstanding receivables (though disputed) pertains to another entity i.e. BICIPL;

2.2 An identical addition has also been made in the transfer pricing proceedings for BICIPL for AY 2017-18, thereby leading to a double addition;

2.3 Erroneously relying on submissions and upholding the adjustment which were made during separate assessment proceedings.

3. On the facts, in circumstances of the case & in law, the Ld. AO/DRP has grossly erred in transfer pricing adjustments of INR 21,52,899 in the final assessment order passed in case of the Appellant whereas the same arises out of transactions entered by BICIPL and basis the Transfer Pricing Order passed in case of BICIPL.

4. On the facts, in the circumstances of the case and in law, the Ld. AO/DRP grossly erred in not appreciating that since the Appellant did not have any business operations during FY 2016-17, the issue of interest on outstanding receivables does not arise in the year under consideration.

5. On the facts, in the circumstances of the case and in law, the Ld. AO erred in levying interest under section 234A of the Act disregarding the fact that return of income was filed under section 139 (1) of the Act within the due date specified therein.”

3. The assessee, Boeing India Private Limited (BIPL) was incorporated on 9th March, 2017 i.e. during Financial Year 2016-17 for the purpose of providing market information, knowledge support services, technical publication services, engineering design services to its Associated Enterprises (AEs) on cost plus markup basis. Further, the assessee submitted that it had not undertaken any business operations during FY 2016-17. For the concerned assessment year, assessee filed return of income declaring nil income. There was no reference to Transfer Pricing Officer (TPO) by the AO nor any proceeding was initiated by the TPO against the assessee. AO passed the draft order dated 15th April, 2021 proposing an adjustment of Rs.21,52,899/-. The adjustment was made on account of interest on outstanding receivables being in the nature of TP adjustment without any reference to the TPO.

4. Aggrieved with this order, assessee filed its objections before the DRP. The assessee has raised specific objection that a TP adjustment has been proposed without any TP reference. However, the DRP did not grant any relief to the assessee.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. The submissions of the assessee in this regard are stated as under :-

“1. At the outset, it is respectfully submitted that the impugned order cannot be sustained as the benchmarked transaction of interest on outstanding receivables (though disputed) pertains to another entity i.e. Boeing Corporation India Ltd. ('Boeing Corporation'). An identical addition was also made in the transfer pricing proceedings for Boeing Corporation in AY 2017-18. A copy of the Draft order & Final order for Boeing Corporation is enclosed at page no 46 to 55 and 56 to 67 of the Paper Book respectively. Hence, if the said addition is confirmed in the instant case, it would result in double taxation of same amount.

2. It is submitted that the Boeing Corporation merged with the Appellant pursuant to a scheme of merger approved by the Regional Director having an appointed date of 1 April 2017. The scheme of merger was duly filed with Registrar of Companies on 15 February 2018 and was approved by RoC on 27 February 2018, w.e.f. 15 February 2018 (kindly refer page no 93 and 106 of Paper book).

3. The Appellant also wishes to highlight that the above fact was already discussed, communicated and the relevant documents were filed with the jurisdictional officer of the Appellant (kindly refer page no 91 - 92 of Paper book).

4. Thus, since Boeing Corporation merged with the Appellant in AY 2018-19 and was an independent entity until March 31, 2017 (AY 2017-18), any adjustment in the case of Boeing Corporation, has nothing to do with the assessment of the Appellant.

5. It is humbly prayed that in view of the above submissions alone, the impugned addition is liable to be dismissed.

6. As submitted earlier, it is reiterated that the impugned international transaction referred in the TPO order dated 29 January 2021 has not been entered by the Appellant for the subject year and thus, does not pertain to the Appellant. The same can be corroborated from Audited Financial Statements and Form 3CEB filed by the Appellant for the subject year (Refer Item NO.5 & 6 of Paper Book)

7. Further, it is respectfully submitted that the order of TPO dated 29 January 2021 which has been referred to in the assessment order was passed after considering the international transactions entered by BICIPL which supports the fact that such TPO order pertains to Boeing Corporation rather than BIPL (i.e. the Appellant) (Refer Item NO.1 of Paper Book)

8. It is reiterated that Boeing Corporation merged with the Appellant pursuant to scheme of merger approved by Regional Director having an appointed date of 1 April 2017. The scheme of merger was duly filed with Registrar of Companies on 15 February 2018 and got approved by on 27

February 2018, w.e.f. 15 February 2018. The Appellant also wishes to highlight that the above fact was already discussed, communicated and the relevant documents were filed with the jurisdictional officer of the Company. (Refer page no 93 and 106 of Paper Book)

9. Considering the above, it may be noted that since the merger scheme had the appointed date as 1 April 2017, the Appellant ought to be assessed as a standalone entity (i.e., before merged for the subject year (i.e. FY 2016-17) being the first year of incorporation.

10. Additionally, it is submitted that if such addition is confirmed in the instant case, same would result in double taxation of said amount on two occasions.

11. It is humbly prayed that since the impugned TP transaction of INR 21,52,899 does not pertain to the Appellant (i.e. BIPL), the same is liable to be deleted.”

7. Ld. DR for the Revenue did not contradict the submissions of the assessee in this regard.

8. Upon careful consideration, we note that assessee was incorporated on 9th March, 2017 i.e. during FY 2016-17. It has not undertaken any business operation during the year. There was no reference to TPO in this case. AO took the TPO's order in the case of Boeing Corporation India Ltd. (BCIL) and made an identical addition in this regard in the hands of the assessee. Thus, it is amply clear that there was no reference to TPO in the case of the assessee and the TPO in this case relates to BCIL. The BCIL merged with the assessee pursuant to a scheme of merger on appointed date of 1st April 2017. Thus, since BCIL merged with the assessee in AY 2018-19, it was an independent entity until March 31, 2017. Hence, any adjustment in the case of BCIL has nothing to do with the assessment of the assessee. The assessee's submissions

has sufficient cogency that impugned international transaction referred to in TP order dated 29th January 2021 has not been entered by the assessee for the subject year and thus, does not pertain to the assessee. The said TPO's order which has been referred in the assessment order is in the case of BCIL, thus, the TP order pertains to BCIL rather than the assessee. In this factual background, when the assessee has not entered said transaction and there was no TPO reference in the case of assessee and the transaction of BCIL, which has merged with the assessee company on 01.04.2017, has been taken as assessee's transaction, the assessment order in this case is liable to be quashed. Ld. DR for the Revenue could not refute any submission of the assessee. Hence, we set aside the orders of the authorities below and direct that the transfer pricing adjustment is deleted.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 8th day of December, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 8th day of December, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

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NEW DELHI.