

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

IT(TP)A Nos. 282/Bang/2021 & 367/Bang/2022
Assessment Years : 2016-17 & 2017-18

M/s. Target Corporation India Pvt. Ltd., C2 Block, 3 rd Floor, Manyata Embassy Business Park, Outer Ring Road, Nagwara Hobli, Hebbal, Bangalore – 560 045. PAN: AAECA8990N	Vs.	The ACIT, Special Range – 7, Bangalore. The DCIT, Circle – 7(1)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Mahima Goud, Advocate
Revenue by	:	Dr. Shahnawaz Ul Rahman, Addl. CIT-DR

Date of Hearing	:	05-08-2024
Date of Pronouncement	:	22-08-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of the final assessment order dated 30.04.2021 and 14.03.2022 by NFAC, Delhi for A.Ys. 2016-17 and 2017-18.

2. At the outset, the Ld.AR submitted that assessee has entered into bilateral APA with the CBDT on 26/03/2024 pursuant to which the grounds raised by the assessee in relation to the transfer pricing issues stands withdrawn. The assessee has filed the application seeking withdrawal of the grounds on 28.05.2024 which is scanned and annexed herewith.

B' 0367

Ru
31/5/24
M
31/5/24

आयकर अपीलीय अदिकरण
Income Tax Appellate Tribunal
बैंगलूर बेंच, बैंगलूर
Bangalore Benches, Bangalore
ई.नं. 424 दिनांक 21/5/24
Sl.No. Date


TARGET

28 May 2024

The Assistant Registrar
Income-tax Appellate Tribunal,
No. 51, Behind Jal Bhawan, 1st Cross,
4th T Block, Tilak Nagar, Jaya Nagar,
Bengaluru- 560041

Dear Sir/Madam,

Subject: Target Corporation India Private Limited (hereinafter referred to as "Target India" or "the Company" or "the Appellant") (PAN: AAECA8990N) - Request for withdrawal of grounds of appeal in relation to the transfer pricing adjustments in accordance with Rule 10RA of the Income-tax Rules, 1962 ("the Rules")

Reference: Appeal No. ITA 282/ Bang/ 2021 filed on 28 June 2021 for Assessment Year ("AY") 2016-17
Advance Pricing Agreement ("APA") signed on 26 March 2024

We refer to the subject appeal filed by the Appellant on 28 June 2021 before the Hon'ble Income Tax Appellate Tribunal ("Tribunal") for AY 2016-17. In this regard, we hereby submit our request to withdraw the transfer pricing related grounds in the said appeal pursuant to the fact that Target India has signed a bilateral APA with the Central Board of Direct Taxes ("CBDT") on 26 March 2024. A copy of the agreement has been enclosed as **Annexure 1** for your goodself's reference.

The said bilateral APA is applicable for a period of five consecutive years commencing from AY 2019-20 to AY 2023-24 (relevant previous years 2018-19 to 2022-23) in respect of the international transactions entered into by Target India with its associated enterprises. The agreement also covers three preceding years commencing from AY 2016-17 to 2018-19 (relevant previous years 2015-16 to 2017-18) under the rollback provisions.

As the transfer pricing issues involved in the subject appeal before the Hon'ble Tribunal are resolved pursuant to the signing of the bilateral APA, the said grounds in the said appeal do not bear validity. Accordingly, as directed by the CBDT and in accordance with sub-rule (4) and (5) of Rule 10RA of the Rules, the Appellant seeks to withdraw the transfer pricing grounds No. 1 to 20 raised in the subject appeal filed before the Hon'ble Tribunal.

Further, the Appellant had also raised grounds 21 to 30 pertaining to corporate tax and other related issues. In this regard, given the grounds 22 and 23 are now res integra and pursuant to the signing of the Bilateral APA, the Appellant seeks to withdraw the said grounds and shall pursue only grounds 21, 26, 27 and 28 and consequential grounds 24, 25, 29 and 30 under the subject Appeal before the Hon'ble Tribunal.

We request the Hon'ble Tribunal to take the above application to on record and dismiss the abovementioned grounds of appeal as withdrawn. We shall be pleased to provide any further information/clarification that may be required in this regard.

Thanking you,

For and on behalf of Target Corporation India Private Limited


Authorised Signatory

Enclosures: As above

Cc: Departmental Representative B' Bench



Target Corporation India Private Limited
CIN: U72900KA2004PTC033455

1

Registered Office : C2 - Manyata Embassy Business Park, SEZ Unit, Outer Ring Road, Rachenahalli & Nagwara Village, Bengaluru, Karnataka 560045.
Tel : +91 804673 4000 Fax : +91 80 46734100 website : www.target.com

आयकर अपीलिंग अधिकरण
 Income Tax Appellate Tribunal
 बंगलूरु
 Bangalore Bench, Bangalore
 476 Date 31/5/24



TARGET

Ro
 31/5/24
 B' 03/07/23
 31/5/24

28 May 2024

The Assistant Registrar
 Income-tax Appellate Tribunal,
 No. 51, Behind Jal Bhawan, 1st Cross,
 4th T Block, Tilak Nagar, Jaya Nagar,
 Bengaluru- 560041

Dear Sir/Madam,

Subject: Target Corporation India Private Limited (hereinafter referred to as "Target India" or "the Company" or "the Appellant") (PAN: AAECA8990N) - Request for withdrawal of grounds of appeal in relation to the transfer pricing adjustments in accordance with Rule 10RA of the Income-tax Rules, 1962 ("the Rules")

Reference: Appeal No. ITA 367/ Bang/ 2022 filed on 10 May 2022 for Assessment Year ("AY") 2017-18
Advance Pricing Agreement ("APA") signed on 26 March 2024

We refer to the subject appeal filed by the Appellant on 10 May 2022 before the Hon'ble Income Tax Appellate Tribunal ("Tribunal") for AY 2017-18. In this regard, we hereby submit our request to withdraw the said appeal pursuant to the fact that Target India has signed a bilateral APA with the Central Board of Direct Taxes ("CBDT") on 26 March 2024. A copy of the agreement has been enclosed as **Annexure 1** for your goodself's reference.

The said bilateral APA is applicable for a period of five consecutive years commencing from AY 2019-20 to AY 2023-24 (relevant previous years 2018-19 to 2022-23) in respect of the international transactions entered into by Target India with its associated enterprises. The agreement also covers three preceding years commencing from AY 2016-17 to 2018-19 (relevant previous years 2015-16 to 2017-18) under the rollback provisions.

As the transfer pricing issues involved in the subject appeal before the Hon'ble Tribunal are resolved pursuant to the signing of the bilateral APA, the said appeal does not bear validity. Accordingly, as directed by the CBDT and in accordance with sub-rule (4) and (5) of Rule 10RA of the Rules, the Appellant seeks to withdraw the transfer pricing grounds No. 1 to 23 raised in the subject appeal filed before the Hon'ble Tribunal.

Further, the Appellant had also raised grounds 24 to 26 pertaining to corporate tax issues. Accordingly, the Appellant seeks to pursue only said grounds 24 and 25 and consequential ground 26 under the subject Appeal before the Hon'ble Tribunal.

We request the Hon'ble Tribunal to take the above application on record and dismiss the appeal as withdrawn. We shall be pleased to provide any further information/ clarification that may be required in this regard.

Thanking you,
 For and on behalf of Target Corporation India Private Limited


 Authorised Signatory


 Target
 India
 Bangalore

Enclosures: As above
 Cc: Departmental Representative: B' Bench

Target Corporation India Private Limited
 CIN: U72900KA2004PTC033455

Registered Office : C2 - Manyata Embassy Business Park, SEZ Unit, Outer Ring Road, Rachenahalli & Nagwara Village, Bengaluru, Karnataka 560045.
 Tel : +91 804673 4000 Fax : +91 80 46734100 website : www.target.com

3. She submitted that upon withdrawal of the transfer pricing issue, the other grounds raised by the assessee on corporate tax issue that needs consideration are as under

3.1. At the outset the Ld.AR also submitted that, assessee has filed application dated 25/08/2021 seeking admission of additional ground for A.Y. 2016-17 being ground nos. 24 and 25. She submitted that the assessee do not wish to press these grounds and accordingly is withdrawn the same at the instructions of the assessee.

Corporate tax issue (Assessment Year 2016-17)

Corporate Tax

21. Disallowance of deduction claimed under section 80G of the Act on expenses incurred towards Corporate Social Responsibility ('CSR') activities

- a) The learned AO and Hon'ble DRP has erred in denying the deduction claimed by the Appellant under section 80G of the Act.
- b) The learned AO and Hon'ble DRP has erred in holding that deduction under section 80G is not allowable, if the donations are made as a part of CSR expenses.
- c) The learned AO and Hon'ble DRP has failed to appreciate that none of the conditions for claiming deduction under section 80G of the Act state that the donation should be voluntary in nature.
- d) The learned AO and Hon'ble DRP ought to have appreciated that the disallowance under section 37 of the Act is applicable only to Chapter IV-D of the Act and does not extend to Chapter VI-AC of the Act, which provides for deduction under section 80G of the Act.

- e) The learned AO and Hon'ble DRP has failed to take cognizance of the General Circular no. 1/2016 dated 16 January 2016 issued by the Ministry of Corporate Affairs, which clarify the tax benefits that can be availed under CSR.
- f) Hon'ble DRP has grossly erred in not following the judgments of the jurisdictional Tribunal which has held that CSR expenditure is eligible for deduction under section 80G of the Act.

22. Grounds with respect to adjustment proposed for ESOP granted to employees of the Appellant

- a) The learned AO and Hon'ble DRP has erred in making an addition to the total income on account of mark-up on employee stock option/ stock-based compensation ('ESOP') costs not forming part of the cost base of the Appellant.
- b) The learned AO and Hon'ble DRP has erred in computing a mark-up on such ESOP expenses not incurred by the Appellant without appreciating the terms of the inter-company services agreement which specifically require the Appellant to only consider costs incurred in its cost base.
- c) The learned AO and Hon'ble DRP has erred in holding that non-payment of ESOP charges to the Target US is a sham transaction.
- d) The Learned AO and Hon'ble DRP has failed to appreciate that the Appellant has duly complied with all the applicable laws/ rules/ regulations w.r.t. preparation of annual accounts including Accounting Standards ['AS'] prevailing in force and applicable to the Appellant during the relevant AY. Therefore, it cannot be said that the Appellant has entered into a sham transaction merely to shift profit
- e) The learned AO and Hon'ble DRP has failed to appreciate that the arrangement to not cross charge ESOP expenses by the Target US to the Appellant is a business decision and it is not for the Learned AO and Hon'ble DRP to judge if the business decisions are rational/necessary.
- f) Without prejudice to the above, the learned AO and Hon'ble DRP has erred in not appreciating that ESOP cost is an extra-ordinary cost and therefore, should not form part of the cost base for levying a mark-up.
- g) Hon'ble DRP has erred in not considering the favorable order passed by the Hon'ble Commissioner of Income tax Appeals in Appellant's own case for AY 2015-16
- h) The learned AO and Hon'ble DRP has failed to appreciate that the impugned adjustment is not contemplated within the provisions of chapter IV of the Act.
- i) Without prejudice to the above, the learned AO and Hon'ble DRP has failed to appreciate the fact that as per Section 92CA of the Act, the powers vested with the learned TPO are only to determine the ALP of an international transaction. The said power to determine the

ALP under section 92C of the Act is also vested with the AO only under specific circumstances which are not applicable in the case of the Appellant with respect to the issue of non-payment of ESOP charges by the Appellant.

- j) Notwithstanding above, where the appropriate mark-up to be levied by either segments of the Appellant is re-calculated, the said benefit should also be available to the Appellant in determining the mark-up on ESOP expenses
- k) Deduction under section 10AA of the Act - Without prejudice to the above, the Learned AO and Hon'ble DRP has erred in not granting deduction under section 10AA of the Act on addition of notional mark-up on ESOP cost, to the extent it pertains to the SEZ unit
23. Additional Ground: Deduction in respect of 'education cess on income-tax' and 'secondary and higher education cess on income-tax' for the year under consideration, while assessing the total income of the Appellant
- a) The Learned AO and Hon'ble DRP, while assessing the total income of the Appellant for the year under consideration, have erred in not allowing a deduction for education cess and secondary & higher education cess (collectively known as 'education cess') for the year under consideration.
- b) On the facts and circumstances of the case and in law, the learned AO and Hon'ble DRP ought to have allowed deduction of education cess for the year under consideration, though not claimed as a deduction by the Appellant while filing its return of income
24. The Learned AO has erred in considering total income as INR 1,50,96,82,420 in the computation sheet as against INR 1,49,77,07,458 determined based on impugned additions in the assessment order
25. The Learned AO has erred in computing interest under section 234C of the Act without appreciating that interest is to be computed on the returned income and not the assessed income

Penalty proceedings under Sec. 271(1)(c)

26. The learned AO erred in initiating penalty proceedings under Section 271(1)(c) of the Act.
27. The learned AO failed to appreciate the fact that the Appellant has not furnished any inaccurate particulars of income. The AO failed to appreciate the fact that a mere difference of opinion between the Appellant and the AO would not amount to furnishing of any inaccurate particulars of income
28. The learned AO failed to appreciate the fact that the additions made by him are on items, which are *sub-judice*, and hence, no penalty can be levied on such contentious adjustments

Interest under Sec. 234B

29. The learned AO/ Hon'ble DRP erred in levying interest under section 234B of the Act in the final assessment order.

NP
Habit
5/8/2

|| -

30. Without prejudice to the above, the Appellant submits that interest under section 234B of the Act is consequential in nature.

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.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.

Corporate tax issue (Assessment Year 2017-18)

Corporate Tax

24. Short-grant of deduction under section 80G of the Act

- The Learned AO has erred in restricting deduction under section 80G of the Act to INR 77,22,621/- as against INR 1,40,24,410/- claimed by the Appellant in the return of income.
- The learned AO has erred in restricting the deduction claimed under section 80G of the Act in the final assessment order without proposing an adjustment in the draft assessment order.
- The Learned AO has erred in restricting deduction under section 80G of the Act in the computation sheet without providing any basis for the same.
- The Learned AO ought to have granted deduction amounting to INR 1,40,24,410/- under section 80G of the Act.

25. Non-grant of relief under section 90 of the Act

- The Learned AO has erred in not granting foreign tax credit ["FTC"] amounting to INR 68,48,185/- under section 90 of the Act.

26. Interest under Sec. 234B

- The learned AO has erred in levying interest under section 234B of the Act amounting to INR 9,22,15,200/-, being consequential in nature.

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.

For the above and any other grounds which may be raised at the time of hearing, it is prayed that necessary relief may be provided.


(Signature)

Name: Anand Venkateswaran
Designation: Director

3.2. Ground no. 23 is thus dismissed as withdrawn.

4. This *Tribunal* is thus left with issues raised by the assessee in ground nos. 21, 24 to 30. For the sake of convenience, the grounds that are adjudicated in this order for both the years under consideration are tabulated as under:

S.No.	Issues	Assessment Year 2016-17 (Ground nos.)	Assessment Year 2017-18 (Ground nos.)
1.	80G	21	24
2.	Error in computation	24	Nil
3.	Penalty u/s. 271(1)(c)	26-28	Nil
4.	Interest u/s. 234B & C	29 & 30	26
5.	Non-grant of relief u/s. 90	Nil	25

A) Issue 1 – 80G:

4.1. The Ld.AR submitted that, deduction claimed u/s. 80G was denied to the assessee by holding that, the claim forms part of CSR expenses. She submitted that, identical issue was considered by *Coordinate Bench of this Tribunal* in case of *First American (India) Pvt. Ltd. vs. ACIT* in *ITA No. 1762/Bang/2019* vide order dated 29/04/2020. The Ld.AR submitted that, the issue may be remanded to the Ld.AO to verify the claim of the assessee in accordance with the principles laid down in the aforestated decision.

4.2. The Ld.DR did not object for the submissions made by the Ld.AR.

4.3. In the interest of justice, we remit this issue to the Ld.AO to verify the claim in accordance with the principles laid down in the decision relied by the assessee.

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

B) Issue – 2 (Error in computation):

4.4. The Ld.AR submitted that the Ld.AO considered wrong figures of the total income declared by the assessee and the same needs to be rectified.

4.4.1 We direct the Ld.AO to carry out verification and correct the computation if there is any error.

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

C) Issue 3 (Penalty u/s. 271(1)(c)):

4.5. This is consequential in nature and do not require any adjudication.

Accordingly, ground nos. 26-28 need not be adjudicated.

D) Issue 4 (Interest u/s. 234B &C):

4.6. The Ld.AO directed to compute the interest leviable u/s. 234B and C in accordance with law.

Accordingly, the grounds raised by the assessee for A.Y. 2016-17 stands allowed for statistical purposes.

5. It is noted that the assessee raised an issue in A.Y. 2017-18 in respect of non-grant of relief u/s. 90.

5.1. The Ld.AR submitted that foreign tax credit u/s. 90, amounting to Rs.68,48,185/- was denied to the assessee.

5.2. 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.

5.3. It's a trite law that DTAA overrides the provisions of the Act and the Rules, as held by various *High Courts*, which has also been approved by *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence (P.) Ltd.* reported in (2021) 432 ITR 471.

5.4. We accordingly, hold that FTC cannot be denied to the assessee. Assessee is directed to file the relevant details/evidences in support of its claim. We thus remand this issue back to the Ld.AO to consider the claim of assessee in accordance with law, based on the verification carried out in respect of the supporting documents filed by assessee.

Accordingly, ground no. 25 raised by the assessee for A.Y. 2017-18 stands partly allowed for statistical purposes.

6. The other common issues raised by assessee in A.Y. 2017-18 are to be considered *mutatis mutandis* with the observations hereinabove provided while considering the issues in A.Y. 2016-17.

Accordingly, the grounds raised by the assessee for A.Y. 2017-18 stands partly allowed for statistical purposes.

In the result, the appeals for A.Ys. 2016-17 and 2017-18 stands partly allowed for statistical purposes.

Order pronounced in the open court on 22nd August, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd August, 2024.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore