

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

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| IT(TP)A No.1613/Bang/2024 |
| Assessment Years : 2020-21 |

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| Target Corporation India Private Limited, C2 Block, Manyata Embassy Business Park SEZ Unit, Outer Ring Road, Nagawara Hobli, Hebbal Bangalore North, Arabic College S.O, Bengaluru – 560 045. PAN – AAECA 8990 N | Vs. | The Dy. Commissioner of Income Tax, Circle – 7(1)(1), Bengaluru. . |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Smt. Tanmayee Rajkumar, Advocate |
| Revenue by | : | Shri A Sreenivasa Rao, CIT (DR) |

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| Date of hearing | : | 08.10.2024 |
| Date of Pronouncement | : | 22.10.2024 |

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Id. CIT, Bengaluru dated 27/06/2024 in DIN No. ITBA/AST/S/143(3)/2024-25/1066161119(1) for the assessment year 2020-21.

2. The 1st issue raised by the assessee in ground Nos. 2 to 4 is that the AO/TPO erred in upholding the Transfer Pricing adjustment of ₹ 108,58,93,825.00 after ignoring the bilateral advance pricing agreement dated 26th day of March 2024.

3. The Id. AR appearing on behalf of the assessee at the time of hearing has filed written submissions dated 8 October 2024 along with bilateral advance pricing agreement dated 26th day of March 2024 and submitted that during the pendency of the objections raised before the Id. DRP, the assessee entered into bilateral advance pricing agreement with Central Board of Direct Taxes dated 26th of March 2024 with respect to certain international transactions carried out by the assessee with its AE. The year in dispute was also covered under such bilateral advance pricing agreement. This fact was also accepted by the Id. DRP while disposing of the objections raised by the assessee vide direction dated 14th of May 2024. It was directed by the Id. DRP to frame the final assessment afresh in the light of the modified return to be filed by the assessee.

4. The assessee subsequently filed the modified return of income dated 7 June 2024 and annual compliance report on 15 June 2024 containing the information as per the bilateral advance pricing agreement. The time limit for filing the modified return of income was up-to 30 June 2024 for all the years covered under bilateral advance pricing agreement.

5. However, the TPO vide order dated 5 June 2024 has sustained the additions representing the adjustments made in the earlier order passed under section 92CA(3) of the Act dated 30 July 2023. The TPO while sustaining the adjustments has observed that the assessee has not filed its modified return of income. However, the assessee, subsequently, vide letter dated 13th of June 2024 brought to the notice of the revenue about the fact of having filed the modified return of

income with a request to consider the same while framing the final assessment order. But the AO in the final assessment order has retained the TP adjustments as made by the TPO vide order dated 5 of June 2024.

6. In view of the above, the Id. AR appearing on behalf of the assessee submitted that the issue relating to the adjustment of transfer pricing may be set aside to the file of the AO/ TPO for fresh adjudication in the light of the modified return filed by the assessee dated 7th of June 2024 which is in pursuance to the bilateral advance pricing agreement. As per the Id. AR the TPO/AO grossly erred in not considering the modified return of income filed within the statutory period.

7. On the other hand, the learned DR could not controvert the arguments advanced by the Id. AR for the assessee.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The provisions of section 92CD of the Act provides for the assessment based on the modified return of income which is prepared in pursuance to the provisions of bilateral advance pricing agreement. However, we note that the AO/TPO did not consider the modified return of income despite the direction issued by the Id. DRP. As such, the AO/ TPO reaffirmed the adjustments with respect to the international transactions carried out by the assessee with its AE. In our considered view, the action of the AO/ TPO is contrary to the bilateral advance pricing agreement and therefore the same is not sustainable. In fact, the AO/ TPO were bound to follow the bilateral advance pricing agreement entered between the assessee with

the CBDT. In holding so, we also draw support and guidance from the order of Hyderabad Tribunal in the case of CDK global (India) private limited versus DCIT in ITA No. 135/Hyd/2022 for the assessment year 2017-18 wherein it was held as under:

"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 n ere between assessee an t e 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 p aced before this Bench.' Accordingly, appeal of the assessee is allowed."

8.1 In view of the above, we set aside the issue to the file of the AO/ TPO for fresh adjudication after considering the bilateral transfer pricing agreement and modified return of income filed by the assessee which is available on record. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

9. The issue raised by the assessee in ground No. 5 is that the AO / ld. DRP erred in not allowing the deduction of ₹ 1,17,36,000.00 being

50% of the total expenditure claimed under the provisions of section 80G of the Act.

10. At the outset, the Id. AR contended that the similar issue was also there in the assessment year 2017-18 in IT(TP)A No. 367/Bang/2022 in its own case which was set aside by the ITAT vide its order dated 22 August 2024 which is extracted as under:

"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) Put. 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 aforesaid 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."

11. The Id. AR further submitted that similar the direction can also be issued for the year in dispute.

12. However, on the other hand, the Id. DR contended that the assessment has to be made by the AO in pursuance to the modified return filed by the assessee. In other words, the return filed by the

assessee on earlier occasion has no sanctity and, therefore, the issue raised accordingly relating to the earlier return filed by the assessee cannot be agitated in the present proceedings, which is to be carried out based on the modified return of income.

13. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the issue raised by the assessee is covered by the order of the ITAT as stated above in its own case, therefore, respectfully following the order of this Tribunal in the own case of the assessee, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law.

13.1 Before parting it is necessary to deal with the arguments advanced by the Id. DR of the revenue, it is true that the assessment has to be made afresh based on the modified return of income in accordance with the provisions of sec. 92CD of the Act. However, as far as Bilateral Advanced Pricing Adjustment is concerned (BAPA) is concern, it is limited to the extent of international transactions carried out by the assessee with its AEs. As such, BAPA is not to be dealt with the corporate issues discussed above. Thus, the issue discussed above will remain sustained by the lower authorities even in the proceedings to be carried out u/s 92CD of the Act. It is for the reason that once any view has been taken up by any authority, he or she shall not change the same until and unless it is directed by any higher authorities. Thus, we are of the view that even if we go by the arguments advanced by the Id. DR, it will lead to the multiple proceedings for the same issues, which have been settled in the own case of the assessee. As such, the assessee will again go to Id. DRP, and its direction will be challenged by

the assessee before the ITAT. Considering the multiplicity proceedings on the issue involved on hand, though the argument of the Id. DR appears to be correct, yet in the interest of justice and fair play and to avoid multiplicity of the proceedings, we direct the AO to take note of the issue on hand as discussed above while framing the assessment to be passed based on the modified return of income. Hence, ground of appeal of the assessee is hereby allowed for statistical purposes.

14. The next issue raised by the assessee in ground No. 6 to 10 are consequential and, therefore, they do not require any separate adjudication. However, the AO is directed to consider these issues raised by the assessee in the impugned grounds of appeal, while framing the assessment based on the modified return of income. With these observations, the ground of appeal of the assessee is partly allowed for statistical purposes.

15. The issue raised by the assessee regarding imposition of penalty u/s 270A of the Act is premature to decide at this state and, therefore, we dismiss the same as infructuous.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 22nd day of October, 2024

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 22nd October, 2024

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore