

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

IT(TP)A No.699/Bang/2017
Assessment Year: 2012-13

Mr.Trianz Holdings Pvt. Ltd., #165/2, 6 th Floor, ‘Kalyani Magnum’ Bannerghatta Road, Bangalore – 560 076. PAN NO : AAFCA 8051 P	Vs.	ITO, Ward – 3, Vijayapura.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Srinivas K. P, CA
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	02.12.2020
Date of Pronouncement	:	04.12.2020

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is by the assessee directed against the final Assessment Order dated 31.01.2017. The first ground is with regard to Transfer Pricing Adjustment of Rs.1,50,63,720/-. The facts are that assessee charged interest at 8.28% on the loan given to Associated Enterprise (AE). However, the TPO charged interest at 14.47% to determine the TP adjustment on this issue. On the other hand, DR submitted that libor interest is to be charged.

2. We have heard both the parties and perused the material on record. In this case, the assessee advanced money to its sister concern after availing loan

from State Bank of India which charged interest at 8.28%. The same interest was charged by the assessee to its AE. However, the TPO charged interest at 14.47% and made TP adjustment at 1,50,63,720/-. The DR observed that advancing money to AE is being international transaction, calls for TP adjustment. However, with regard to quantification, it is observed that assessee has not advanced any arguments on this. But before us, learned AR submitted that the assessee charged interest at 8.28% p.a. which is more than libor. In our opinion, the AO has to examine libor rate in the specific transaction under consideration and if it is more than 8.28%, the same is to be charged otherwise the rate at which assessee advanced should be applied. The issue is remitted to AO/TPO for fresh consideration.

3. With regard to TP adjustment of Rs.1,63,76,216/- on reimbursement of expenses, the TPO in his order under section 92CA dated 29th January 2016 has added back an amount of Rs.1,63,76,216/- on the contention that to that extent technical, commercial, administrative and finance cost were reimbursed in excess to the AE. The AO in his draft Assessment Order under section 143(3) r.w.s. 144C(1) dated 28.03.2016 has proposed to add back this amount to the income. The DRP observed on this as follows:

“This has been objected to by the Revenue on the pretext that the DRP erred (i) as the nature of these expenses were such that they cannot be attributed to have been solely and exclusively for the distribution business of the assessee; (ii) as the assessee that it had derived tangible benefit from the expenditure has not been substantiated with evidence; and (iii) as no evidence or likelihood of any independent entity dealing in similar circumstances being such expenditure.

However, on a careful scrutiny of the documentary evidences produced by the assessee during the course of hearing, the detailed reasoning (directions) of the DRP in allowing the assessee's claim based on the documentary evidences adduced, we are of the view that the directions of the DRP are justifiable which require no interference, It is ordered accordingly.”

4. Consequently, the AO made TP adjustment on this issue. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. This issue came up for consideration before this Tribunal in the assessee's own case for the Assessment Year 2010-11 in IT(TP)A No.1419/Bang/2015 dated 06.04.2016. The Tribunal held as under:

"After due consideration of the copies of the (i) Cost Reimbursement Agreement entered into by the assessee with M/s. Trianz Inc. dated .4.2009; and (ii) Reimbursement Agreement with M/s. Trianz Consulting Inc. dated 1.10.2009 respectively, the DRP had directed as under:

"5 5 the reimbursement of expenses has been made in the case of M/s. Trianz Consulting Inc. in accordance with the agreement-dated 1/10/2009 which is as per the laws of our country. Therefore, reimbursement of expenses is as per the agreement and, therefore, should not be taken by the TPO towards determining the transfer pricing adjustment. However, adjustments .can be made with reference to M/s Trianz Inc. and transfer pricing adjustments may be recalculated accordingly."

Further, while disposing off of the assessee's petition for rectification of its earlier directions issued through order u/s 144C (5) the Act dated 3.12.2014, the DRP, in its Order u/s 154 r.w.s 144C of the Act dated 13.3.2015, had directed as under:

"4. We have carefully considered the directions of the DRP dated 03/12/2014 and copies of the reimbursement agreements with MIs. Trianz Consulting Inc dated 01/04/2009 and 01/10/2009 respectively, placed on record. We find that there is a mistake on the part of the DRP in not considering the expenses listed in annexure - I of the agreement with M/s. Trianz Inc stating that the agreement does not contain any such provision. At present, it is noted that the details of the expenses to be determined are listed in annexure. I and referred to in Clause. 2 of the agreement. As logical corollary to this finding, the expenses, as per the agreement in the case of M/s Trianz inc . are also to be allowed as in the case of M/s Trianz consulting Inc and should not be taken by the TPO/AO towards determining the Transfer Pricing adjustments. Accordingly, we direct the AO to exclude the amount of USD

473392 paid to M/s. Trianz Inc from the Transfer pricing Adjustments."

This has been objected to by the Revenue on the pretext that the DRP erred (i) as the nature of these expenses were such that they cannot be attributed to have been solely and exclusively for the distribution business of the assessee; (ii) as the assessee that it had derived tangible benefit from the expenditure has not been substantiated with evidence; and (iii) as no evidence or likelihood of any independent entity dealing in similar circumstances being such expenditure.

However, on a careful scrutiny of the documentary evidences produced by-the assessee during the course of hearing, the detailed reasoning (directions) of the DRP in allowing the assessee's claim based on the documentary evidences adduced, we are of the view that the directions of the DRP are justifiable which require no interference. It is ordered accordingly."

6. In view of the above order of the Tribunal, we are inclined to decide the issue in favour of the assessee.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated : 04.12.2020.
NS*

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.**