

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "C", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

IT(TP)A No.2522/Bang/2017 : Asst.Year 2013-2014

M/s.Trianz Holdings Pvt. Ltd. #165/2, 6 <sup>th</sup> Floor, Kalyani Magnum, Doraisanipalaya, IIM Post, Bannerghatta Road Bangalore – 560 076. <b>PAN : AAFAC8051P.</b>	v.	The Dy.Commissioner of Income-tax, Circle 7(1)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.K.R.Vasudevan, Advocate

Respondent by : Sri.Pradeep Kumar, CIT-DR

<b>Date of Hearing : 15.12.2020</b>	<b>Date of Pronouncement : 15.12.2020</b>
-------------------------------------	---

**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against final assessment order dated 27.09.2017 passed u/s 143(3) r.w.s. 144C(13) of the I.T.Act. The relevant assessment year is 2013-2014.

2. The brief facts of the case are as follow:

The assessee is a company engaged in the business of providing information technology services. For the assessment year 2013-2014, the return of income was filed on 19.11.2013 declaring loss of Rs.5,55,17,930. The assessment was taken up for scrutiny by issuing of notice u/s 143(2) of the I.T.Act. During the course of assessment proceedings, the matter was referred to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of International Transaction undertaken by the assessee with its holding company in U.S.A.

After considering the assessee's objection, the total adjustment made u/s 92CA of the I.T.Act was Rs.28,27,00,781. The Assessing Officer included the arm's length adjustment in the draft assessment order passed u/s 143(3) r.w.s. 144C(1) of the I.T.Act. The assessee aggrieved, filed the objections before the Dispute Resolution Panel (DRP). The DRP vide its order dated 21.08.2017 did not give any relief on this issue to the assessee. Consequently, directions of the DRP with regard to adjustment made to the ALP was incorporated in the final assessment order dated 27.09.2017.

3. Aggrieved by the final assessment order, the assessee has filed this appeal before the Tribunal. Though several grounds are raised, the learned AR by referring to ground No.3, submitted that identical ground was raised in assessment year 2014-2015 and the Tribunal had restored the transfer pricing issue for *de novo* consideration to TPO / AO.

4. The learned AR has filed a brief written submission as regards various aspects of the TP adjustment. The learned Departmental Representative, however, in the written submission, did not refer to the ITAT order in assessee's own case for assessment year 2014-2015.

5. We have heard the rival submissions and perused the material on record. The primary and only issue argued in this case is that transfer pricing adjustment has been made without properly appreciating the business model of the assessee. This issue was there in the appeal for the assessment year 2014-2015, wherein the Tribunal in IT(TP)A No.3136/Bang/ 2018

(order dated 26.02.2020), after examining the facts of the case, had accepted the contention of the assessee that the TPO conducted transfer pricing analysis on erroneous understanding of the business model of the assessee. Accordingly, the entire transfer pricing issue was set aside to the TPO with a direction that the transfer pricing analysis may be carried out having regard to the business model of the assessee. The relevant finding of the Co-ordinate Bench of the Tribunal in assessee's own case, reads as follow:-

*“18. We observe that, Ld.TPO considered assessee to be a contract service provider, assuming minimal risk, which is contrary to the business model of assessee. We agree with contention of Ld.AR that Ld.TPO conducted TP analysis on erroneous understanding of business model of assessee, and comparables selected by Ld.TPO cannot be looked into.*

*19. We are therefore of opinion that, adjustment made by Ld.AO on the proposed adjustment by Ld.TPO should be revisited de novo. Accordingly, we set aside all issues raised by assessee on transfer pricing issues to Ld.AO/TPO. LD.AO/TPO is directed to carry out transfer pricing analysis having regard to the business model of assessee. It is also directed that comparables selected should be functionally similar with assessee, having similar business model like assessee.*

*20. Assessee is directed to produce all relevant documents to bring out its role in providing services to the parties situated outside India. Ld.TPO is also directed to grand working capital adjustments in comparables in actual where ever necessary, for computing correct margins of comparables. Needless to say, that assessee shall be granted proper opportunity of being represented.”*

6. Since the facts for the assessment year 2012-2013 is identical with regard to the facts considered by the Tribunal for assessment year 2014-2015, we restore the entire transfer

pricing analysis for *de novo* consideration to the AO / TPO. It is ordered accordingly.

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

Order pronounced on this 15<sup>th</sup> day of December, 2020.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 15<sup>th</sup> December, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The DRP-2, Bengaluru
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore