

IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1225/Mum./2021
(Assessment Year : 2016-17)

Zodiac Maritime Agencies India Pvt. Ltd.
402, Hubtown Solaris, N.S. Phadke Marg
Andheri (East), Mumbai 400 091
PAN – AAACZ6864E

..... Appellant

v/s

National e-Assessment Centre (NeAC)
New Delhi

.....Respondent

Assessee by : Shri Anil Sathe

Revenue by : Shri Tejinder Pal Singh Anand

Date of Hearing – 31/05/2022

Date of Order – 18/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned final assessment order dated 27/04/2021, passed under section 143(3) r/w section 144C(13) r/w section 144B of the Income Tax Act, 1961 ("*the Act*"), for the assessment year 2016-17.

2. In this appeal, the assessee has raised following grounds:-

1. The learned Income Tax Officer erred in law and in facts in determining taxable income at Rs.1,78,52,8111, instead of returned income at Rs.22,12,570.

2. The learned Income Tax Officer erred in law and in facts in determining tax payable at Rs. 85,65,440, including interest of Rs.33,64,211, u/s 234B of the Income Tax Act, 1961.

3. *The learned Income Tax Officer erred in law and in facts in computing and levying interest u/s 234 8 amounting to Rs. 33,64,211.*

4. *Without prejudice, on the facts and in the circumstances of the case and in law, the learned Income Tax Officer erred in making an addition of Rs.1,56,40,237, to the total Income of the assessee even though TP adjustment as per the draft order was Rs.1,53,15,595. (Ground No.5 – Rs.1,42,29,492, + Ground no.6–Rs.10,86,103 = Total – Rs.1,53,15,595).*

5. *On the facts and in the circumstances of the case and in law, the learned Income Tax Officer erred in adding an amount of Rs.1,42,29,492, being entire Reimbursement of seafarer expenses to the total income without appreciating the facts of the case that these expenses were later reimbursed by the Associated Enterprise and have not been claimed as an expense by the appellant either in its Statement of Profit and Loss or in its Computation of Income.*

6. *On the facts and in the circumstances of the case and in law, the learned Income Tax Officer erred in adding an amount of Rs.10,86,103 to the total income through an: adjustment made to the Arm's Length Price with regards to international transactions entered into by the Appellant with its Associated Enterprise for the provision of services rendered to Associated Enterprise without considering the facts of the case and the submission of Appellant in this respect.*

Further, learned Income Tax officer erred in making the said addition by using comparables that are not of the same nature as your assessee and ignoring the objections filed by your assessee during DRP and other proceedings before the learned assessing officer.”

3. The only grievance of the assessee, in present appeal, is against the transfer pricing adjustment on account of reimbursement of seafarer expenses.

4. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is engaged in the business of providing on-board crew management services for foreign Ship managers/ Owners. This includes co-ordination of activities such as training, documentation, travel, promotions and other essential activities with respect to Indian sea farers employed on vessels managed / owned by foreign principals. For the year

under consideration, the assessee filed its return of income electronically on 10/11/2016, declaring total income of Rs.22,12,570.

5. During the course of assessment proceedings, it was observed that the assessee has entered into international transactions with its Associated Enterprises ('A.E.') by way of mutual agreement. Accordingly, reference was made under section 92CA of the Act to the Transfer Pricing Officer ('TPO') for determination of arm's length price of international transactions reported by the assessee. The TPO, vide order dated 31/10/2019, passed under section 92CA(3) of the Act, inter-alia, observed that the assessee has reimbursed an amount of Rs.1,42,29,492, to its A.E. In the absence of any document / information pertaining to benchmarking of the transaction of reimbursement of sea farer expenses, the TPO determined the arm's length price of transaction as Nil. Accordingly, adjustment of Rs.1,42,29,492, was proposed in respect of international transactions pertaining to reimbursement of sea farer expenses. In conformity, the Assessing Officer ('A.O.'), inter-alia, passed the draft assessment order incorporating the adjustment proposed by the TPO.

6. In proceedings before the learned Dispute Resolution Panel ('DRP'), the assessee filed detailed objections against the aforesaid adjustment proposed by the TPO / A.O. Before the learned DRP, assessee submitted that during the year under consideration, the assessee has made payment of certain expenses on behalf of its A.E., which were later reimbursed by the A.E. The assessee submitted that it has reported the said transaction in its Form no.3CEB, as "*reimbursement of expenditure received /*

receivable". However, the TPO considered it to be reimbursement paid by the assessee to its A.E. In support of its submissions, the assessee also filed petition under rule 9 of the DRP Rules, 2009, seeking admission of additional evidences in the nature of agreement entered into between the assessee and its A.E., summary of reimbursement of expenditure and other supporting documents. The said evidences were forwarded by the learned DRP to the TPO for analysis and comments. The TPO, vide letter dated 02/03/2020, filed its remand report in response to the additional evidences filed by the assessee. The learned DRP, vide directions dated 26/02/2021, issued under section 144C(5) of the Act, rejected the objections filed by the assessee on this issue on the basis that the assessee has failed to prove need, benefit and evidence test vis-a-vis the reimbursement of expenses. In conformity with the directions issued by the learned DRP, the A.O. passed impugned final assessment order dated 27/04/2021. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, the learned Authorised Representative ("*learned A.R.*") submitted that in the international transaction of reimbursement of sea farers expenses, the reimbursement was made by the A.E. to the assessee and not the other way around as understood by the lower authorities. In support of its submissions, the learned A.R. referred to copy of agreement between the assessee and the A.E., summary of reimbursement of expenses and sample vouchers, forming part of paper book.

8. On the other hand, the learned Departmental Representative ("*learned D.R*") submitted that the assessee has not done any benchmarking in respect of the aforesaid international transaction.

9. We have considered the rival submissions and perused the material available on record. From the perusal of the aforesaid agreement dated 10/03/2014 entered into between the assessee and Zodiac Maritime Agencies Ltd., London, UK, we find that the assessee agreed to provide crew for employment on principal's vessels. For same, agency fee was agreed to be payable by the A.E. in U.K. for all crew members recruited by the assessee, which was agreed to be billed at operating cost "*including but not limited to administrative and other expenses*" incurred by the assessee in operating its business + 10%. It is the plea of the assessee that pursuant to the aforesaid agreement, expenses incurred by the assessee were reimbursed by the A.E. As per the assessee, a summary of reimbursement of expenditure is as under:-

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Crew Visa Fees</i>	<i>16,99,112</i>
<i>Crew Miscellaneous Expenses</i>	<i>15,83,625</i>
<i>Crew Medical Treatment</i>	<i>2,23,867</i>
<i>Crew Training cost</i>	<i>22,83,280</i>
<i>Crew Hotel Cost</i>	<i>16,82,936</i>
<i>Crew Pre joining Medical</i>	<i>28,01,975</i>
<i>Crew Compensation</i>	<i>9,00,000</i>
<i>Crew SWF</i>	<i>24,40,728</i>
<i>Crew Seminar</i>	<i>1,37,220</i>
<i>Bank Charges</i>	<i>6</i>
<i>Courier charges</i>	<i>2,88,426</i>
<i>Crew Travel charges</i>	<i>1,77,849</i>

Service Tax	10,467
Total	1,42,29,492

10. As the aforesaid expenses were reimbursed by the A.E., hence, these amounts were not debited to the Profit & Loss Account being not in the nature of expenditure. The aforesaid agreement and the vouchers for expenses forms part of the factual paper book filed by the assessee. We find that these documents were also furnished by way of application seeking admission of additional evidences before the learned DRP. In its remand report dated 02.03.2020, in reply to the additional evidences filed by the assessee, the TPO agreed with the fact that in the present case, the assessee has received reimbursement of expenses from the A.E. and not reimbursed the expenses to its A.E. as mentioned in the order of the TPO. The relevant observations of the TPO, in this regard, in the remand report are as under:–

"7. On perusal of the agreement between the assessee & AE, the contention of the assessee that they have received the said amount of 1,42,29,492/- and not reimbursed the same to its AE as mentioned in the order, was found to be correct. However, it is pertinent to mention here that during the TP proceedings, despite being given ample opportunities, the assessee had failed to produce any documentary evidences w.r.t. the transaction of Reimbursement of Expenses."

11. However, despite correctly noting the aforesaid factual position, the TPO in its remand report emphasized upon satisfaction of need, benefit and evidences test. We find that the DRP also did not correctly appreciate the transaction between the assessee and its A.E. and upheld the adjustment made by the TPO by treating the arm's length price of international transaction to be Nil. From the perusal of the record, it is evident that it is

not the case of the Revenue that the mark-up charged by the assessee for the services rendered to the A.E. under the aforesaid agreement is not at arm's length price. The Revenue has only doubted the genuineness of the alleged reimbursement of expenses made by the assessee to its A.E. However, as noted above, the transaction is not reimbursement of expenses by the assessee to its A.E. and rather, is reimbursement of expenses by the A.E. to the assessee. In view of the above, we are of the considered opinion that the impugned adjustment made by the TPO and upheld by the learned DRP in respect of international transactions of reimbursement of the sea farers expenses is based on incorrect appreciation of facts. Therefore, we direct the TPO / A.O. to delete the said adjustment. Accordingly, ground no.5, raised in assessee's appeal is allowed.

12. Ground no. 6 was not pressed by the learned A.R. during the course of hearing. Therefore, ground no.6 is dismissed as not pressed.

13. Grounds no.1 and 2 are general in nature and therefore, need no separate adjudication.

14. Ground no.3, is pertaining to levy of interest under section 234B of the Act, which is consequential in nature. Therefore, ground no.3, is allowed for statistical purposes.

15. Insofar as ground no. 4 raised in assessee's appeal is concerned, the total income of the assessee shall be recomputed in view of our aforesaid

findings. Accordingly, ground no.4 raised in assessee's appeal is rendered consequential in nature and is allowed for statistical purpose.

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

Order pronounced in the open Court on 18/08/2022

**Sd/-
PRAMOD KUMAR
VICE PRESIDENT**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 18/08/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai