

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “B” BENCH, BENGALURU**

**Before Shri N.V. Vasudevan, Vice President  
and  
Ms.Padmavathy S., Accountant Member**

<b>IT(TP)A No. 444/Bang/2022</b> (Assessment Year: 2017-18)		
M/s. Trivium eSolutions Pvt. Ltd. 204, Double Road Indiranagar, II Stage Bangalore 560038 PAN – AACCT8193J	vs	DCIT, Circle - 7(1)(1) BMTC Building 80 Feet Road Koramangala Bangalore 560041
(Appellant)		(Respondent)

Assessee by:	Shri Atul Ninawat, CA
Revenue by:	Shri Manjunath Karkihalli, CIT-DR
Date of hearing:	14/09/2022
Date of pronouncement:	20/09/2022

**ORDER**

**Per: Padmavathy, A.M.**

This appeal is against the final assessment order dated 31.03.2022 passed under Section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (the Act) and it pertains to AY 2017-18.

2. The assessee is a wholly owned subsidiary of Trivium GmbH, Germany. The assessee offers consulting and software development services to its Associated Enterprise (AE). The assessee filed return of income for AY 2017-18 declaring a total income of Rs.3,00,10,320/-. The case was referred to the Transfer Pricing Officer (TPO) since the assessee had international transactions to determine the arm's length price (ALP). The TPO made an adjustment of Rs.1,39,87,510/-. Aggrieved the assessee filed appeal before the DRP.

3. The DRP in the order dated 17.01.2022 upheld the order of the TPO dated 28.01.2021 on all grounds of objections raised by the assessee except Ground of Objections No. 5.1 and 5.3 in which DRP gave direction to the TPO for certain inclusion/exclusion and to re-compute the TP adjustment accordingly. However, in the final order of assessment the AO retained the same TP adjustment of Rs.1,39,87,510/- as in the draft assessment order by stating that the TPO has not passed the Order Giving Effect to DRP directions and the time limit for passing final assessment order is approaching.

4. Though assessee raised several grounds pertaining to the TP adjustment, during the course of hearing he learned A.R. contended only the issue of the final assessment order of the AO not being in accordance with the directions of the DRP and therefore liable to be quashed. The learned A.R. further submitted that if this ground is adjudicated the rest of the grounds raised with regard to TP adjustment would become academic.

5. We heard the learned D.R. We notice that coordinate bench of this Tribunal in case of Flextronics Technologies (India) Pvt. Ltd. Vs. ACIT in IT(TP)A No.832/Bang/2017 dt.31.12.2018 has considered the identical situation observed and held in paras 9 to 12 as under:

“9. We have considered the rival submissions. We find that on identical facts, this Tribunal in the case of Software Paradigms Infotech (P.) Ltd. (supra) has quashed the final order of assessment observing as follows:-

"3.3.1 We have heard the rival contention of both parties in the matter and perused and carefully considered the material on record. The undisputed facts on record, as brought out by the discussions above, is that the AO, as per law, was required to pass the final order of assessment dated 17/1/2014 for asst. year 2009-10 u/s 143(3) r.w.s 144C of the Act in conformity with the directions issued by the DRP u/s 144C(5) of the Act, which are binding on him as per section 144C(10) thereof and within the time prescribed u/s 144C(13) of the Act. We find that instead of passing the final order of assessment as required by law, the AO passed the impugned final order of assessment dated 17/1/2014 u/s 143(3) r.w.s 92CA of the Act; which, as contended by the id AR, is identical to the draft order of assessment passed

on 14/3/2013 by only incorporating this TPOs proposals and , thereby evidently giving the DRPs mandatory directions issued u/s 144C(5) of the Act a complete go-by. In our view, it is factually established that the AO in the final order of assessment dated 17/1/2014 has not given effect to or carried out the binding directions of the DRP as required u/s 144C(10) within the time specified u/s 144C(13) of the Act; which is a clear violation of the binding provisions of sec. 144C(10) and (13) of the Act. Therefore, in our considered opinion, the conduct of the AO/TPO in passing the impugned final order of assessment is a clear case of defiance and disregard to the binding directions of the higher authorities, i.e, the DRP in the case on hand. In fact, in the impugned order dated 17/1/2014 there is not even a single reference to the DRPs directions issued u/s 144C(5) of the Act vide order dated 30/12/2013.

3.3.2 In the factual and legal matrix of the case on hand, as discussed above, we are of the considered view that the impugned final order of assessment for asst. year 2008-09 passed u/s 143(3) r.w.s 92CA of the Act by the AO, in violation of the express mandatory provisions of sec. 144C(10) and (13) of the Act by not passing the impugned order in pursuance of and in conformity with the binding directions of the DRP issued u/s 144C(5) of the Act, within the time specified for this purpose, has rendered the said impugned final order of assessment unsustainable in law. We, therefore, quash the impugned final order of assessment for asst. year 2009-10 passed by the AO u/s 143(3) r.w.s 92CA of the Act dated 17/1/2014 in the case on hand. We hold and direct accordingly. Consequently, ground No. 17 of assessee's appeal is allowed."

10. Respectfully following the aforesaid view of the Tribunal, we quash the impugned order of assessment. Since the impugned order of assessment is quashed on the ground that the same is not in conformity with the provisions of section 144C of the Act and further on the ground that the time for passing the final order of assessment is barred by time, we are of the View that the other issues raised by the assessee in its grounds of appeal and the grounds raised by the revenue in its appeal does not require any consideration. As far as the decision cited by the learned DR in the case of H & M Hennes&Mauritz India (P) Ltd. (supra) is concerned, we find that in the said decision, the counsel for the Assessee has in para 3.8 of the said order prayed for setting aside the final order of assessment of AO to pass orders in accordance with the directions of the DRIP. Thus, it is a case of concession by the Assessee and not on the basis of arguments advanced by the parties. The law is well settled that a decision on concession of the counsel cannot be regarded as a precedent. Therefore, the decision cited by the learned DR does not support the case of the revenue.

11. In view of the conclusion that the assessment order is null and void, the other grounds of appeal raised by the assessee on merits of the Addition made do not require any Adjudication.

12. In the result, the appeal of the assessee is allowed."

6. In the present case on perusal of the DRP directions we notice that against the Ground of Objection No. 5.1 the DRP directed the TPO to consider for inclusion of Inteq Software Pvt Ltd., and for Ground of Objection No.5.3 which the assessee raised with regard to rejecting method of applying the persistent loss filter the DRP directed that

"Having considered the submissions of the assessee and the TPO's order the panel directs the TPO to verify the correctness of the contentions made by the assessee. If the company has made losses in 2 out of 3 years, it is directed to be excluded. If the assessee's computation of the persistent losses is correct, the TPO is directed to include this company as comparable"

7. However, we notice that in the final order of assessment the AO retained the same TP adjustment as in the draft assessment order by observing that: -

"6. The assessee filed its objections before the DRP and DRP has passed the order giving directions u/s 144C(5) of IT Act, which is received on 02.02.2022. The DRP in its order upheld the order of TPO dated 28-01-2021 on all 11 ground of objection raised by the assessee except ground no. 5.1, 5.3 on which DRP directed TPO to consider the referred companies for comparable. In this regard, the letter to TPO was issued requesting for consequential order passed, if any, to DRP order, but till dated (29-3-2022), no reply has been received. In view of the above, as the TB date for passing order approached, the order u/s 143(3) rws 144(c) of IT Act is passed as under:

7. Thus, the order is passed u/s 143(3) 144B r.w.s 144C(13) of IT Act and subject to the above remarks, total income of the assessee company for the A.Y. 2017-18 determined u/s 143(3) 144B rws 144C(13) of IT Act for AY 2017-18 is computed as under:

**Computation of tota income for order** u/s 143(3) 144B rws144C(13) of IT Act for AY 2017-18:

Total income as admitted in the ITR	Rs.3,00,10,320/-
Add: Addition of TP adjustment under Section 92CA(3) of the Act as per the TPO order of Rs.1,39,87,510/- and DRP order as discussed in above paragraphs	Rs.1,39,87,510/-

Total assessed income U/s 143(3) 144B/a44 and read with section 144C(13)	Rs.4,39,97,830/-
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8. It is an admitted position that the directions of DRP as extracted above would result in the changes to the TP adjustment originally proposed by the TPO. The AO in the final assessment order has retained the TP adjustment at the same figure as in draft assessment merely for the reason that the TPO has not passed the order giving effect to the directions of the DRP and considering the time limit to passing the final assessment order. This in our considered view would mean that the final assessment order passed by the AO is not in accordance with the directions of the DRP. Respectfully following the decision of the coordinate bench of the Tribunal in the case of *Flextronics Technologies (India) Pvt. Ltd.(supra)* we hold that the assessment framed in this case is quashed. However we make it clear that, this order would not, in any way, stop the revenue from taking such steps as are available to it in law and the assessee also from contesting the action of the revenue in accordance with the law, if it so desires. It is ordered accordingly.
9. Since we have decided the primary ground on applicability of Section 144C(13) of the Act, the other grounds raised on the issue by the assessee does not warrant separate adjudication.
10. In the result, the appeal filed by the assessee is partly allowed.

Pronounced in the open Court on 20<sup>th</sup> September, 2022.

Sd/-  
**(N.V. Vasudevan)**  
**Vice President**

Sd/-  
**(Padmavathy S)**  
**Accountant Member**

Bengaluru, Dated: 20<sup>th</sup> September, 2022

Copy to:

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

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Bengaluru*

n.p.