

TRANSFER PRICING

CA. Bhavya Bansal, CA. Bhavesh Dedhia,
CA. Shazia Khatri

- **Final assessment-order not passed as per Sec 144C time-limit final would be barred by limitation and non-est in the eyes of law - Altran Technologies India Pvt Ltd [TS-852-ITAT-2022(Bang)-TP]**

The case refers to AY 2018-19; whereby the DRP directions are issued on 14 June 2022, and final AO order was passed on 11 August 2022.

As per section 144C(13) of the Act, the A.O. should have passed the final assessment order, within one month from the end of the month in which such direction is received. Accordingly, as per the timelines prescribed in Section 144C of the Act, the AO order was required to be passed on 31 July 2022 in the instance case.

Hon'ble Tribunal has considered the above facts and have held the final AO order as barred by limitation and non-est in the eyes of law.

- **Directs Section 94B disallowance qua interest on Compulsory Convertible Debentures ('CCDs') and rejects characterization of CCDs as equity - Summit Developments Private Limited [TS-789-ITAT-2022(Bang)-TP]**

Facts

- The Assessee issued Compulsory Convertible Debentures to M/s. Pollhater Investments Limited ('PIL').
- In terms of provisions of Section 92A(2)(c) of the Act, PIL is considered as Associated Enterprise of the Assessee. Accordingly, the Assessee considered interest payment as international transaction and benchmarked using external CUP method.
- The TPO in the TP order recharacterized the CCDs as Equity and held that once character of funds received from AE is determined as equity, no interest is payable and accordingly no interest is allowable.
- The DRP held that Reserve Bank of India has treated CCDs as equity and since conversion is compulsory, it shall be treated as equity rather than debt. The DRP therefore upheld the adjustment proposed by the TPO.

Hon'ble Tribunal

- Relying on the order of the Bangalore Bench of the Tribunal in the case of CAE Flight Training (India) Pvt. Ltd 2019 (8) TMI 554, held that the disallowance of Interest expenditure on CCD cannot be sustained on the basis that CCDs are in the nature of equity. Hon'ble Tribunal noted that it is well settled by judicial proposition that CCDs constitute debt and interest payable thereon is a deductible expenditure till the time the same are converted into equity.
- Separately, notes that the applicability of Section 94B applicable from 1 April 2018. Observes interest on CCD paid to PIL (deemed AE as per section 94A(2)(C)) also comes under the purview of Section 94B of the Act. Notes that the definition of AE as per Section 94A sub section (1) & (2) is referred in Section 94B of the Act.
- Directs the disallowance is liable to be made under Section 94B of the Act in respect of interest payment since the Assessee did not comply with the provisions suo moto while computing the taxable income in the income tax return filed for the impugned AY (probably due to oversight).

- **Treats amounts advanced as share application money as loan to the AE. - Prime Focus Ltd [TS-863-ITAT-2022 (Mum)-TP]**

Facts

- The Assessee advanced INR 23 crores to its AE which Assessee submitted to be share application money to its AE.
- Due to certain business and commercial decisions considered by the management, the same amount could not be converted into share capital in the same or the next year and it was subsequently advanced as a loan.
- The Assessee also submitted that for the year under consideration, it was a mere share application and not a loan transaction. Further, interest has been duly charged on such an amount when the same is treated as a loan in the subsequent year.
- The TPO did not agree to the contentions of the Assessee and determined the arm's length interest rate of 11.56%

- The CIT(A) dismissed the appeal filed by the Assessee on this issue and treated the transaction as a loan. However, reduced the interest rate to 8.375%.
- Being aggrieved with the reduction in markup percentage, the Revenue filed an appeal before Hon'ble Tribunal.

Hon'ble Tribunal

Upholding order of CIT(A), Hon'ble Tribunal noted as under:

- CIT(A) in the order has observed that the Assessee raised an amount of USD 5,50,00,000 in the UK via FCCB at a compound rate of 7.375%. Out of this fund, the Assessee advanced an amount of equivalent to USD 45,00,000 as share application money to its UK based AE.
 - Since it is undisputed that advance was made by the Assessee to its AE out of the funds generated from FCCB, therefore, CIT(A) was right in considering the FCCB compound rate of 7.375% as the base rate.
 - Further, since the funds have been borrowed in USD and also advanced in USD, the currency and exchange risks are minimised and the only risk to be considered is the lending risk for determining the markup. The CIT(A) considered 1% markup as an appropriate markup in the above circumstances.
 - "In view of the above, we find no infirmity in the impugned order in treating 7.375% plus markup of 1% as the arm's length rate of interest."
- **Upholds NIL ALP for management service fees as the Assessee fails to prove rendition via evidence - AB Mauri India Pvt Ltd [TS-818-ITAT-2022(CHNY)-TP]**

Hon'ble Tribunal in the said case upheld TPO's order of determining ALP of management cross charges at "NIL". Citing that the Assessee failed to discharge its onus of receipt of services, the Hon'ble Bench distinguished several key rulings on the subject such as EKL Appliances, Dresser Rand India, etc..

Following is a summary of the key observations of the Hon'ble Tribunal:

- The agreement was between UK group entity and 16 receiving parties. Further, the agreement was neither registered nor notarized and nothing was produced (including original agreement) to prove the genuineness of the agreement;
- The Assessee did not submit which services were provided by which AE / more than one AE;
- Services provided were to be billed at a fee Calculated at Budgeted Cost plus mark up, however no documents provided to prove the budgeted cost specifically what was the Budgeted cost of these services, what was the turnover of the AEs and how the costs were allocated to the Assessee;
- Peruses the email evidences submitted, in detail and opined that the Assessee failed to substantiate by documentary evidence for any services provided by the AE to the taxpayer, therefore no question arises for the benchmarking analysis.