

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1104/Del./2015
(ASSESSMENT YEAR : 2010-11)**

**ITA No.1115/Del./2017
(ASSESSMENT YEAR : 2012-13)**

M/s. Global Logic India Ltd., vs. DCIT, Circle 12 (1),
(formerly known as Global Logic New Delhi.
India Private Limited),
207, Gupta Arcade,
LSC Plot No.5,
Mayur Vihar Phase-1 Extension,
New Delhi – 110 034.

(PAN : AABCI2526F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Vohra, Senior Advocate
Shri Neeraj Jain, Advocate and
Shri Abhishek Agarwal, CA
REVENUE BY : Shri Sanjay Batra, CIT DR

Date of Hearing : 21.11.2017

Date of Order : 12.12.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, M/s. Global Logic India Limited (hereinafter referred to as 'the taxpayer') by filing the present appeals sought to set aside the impugned orders dated 24.12.2014 & 23.11.2016,

passed by the AO in consonance with the orders passed by the ld. DRP/TPO under section 143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment years 2010-11 & 2012-13 respectively on the grounds inter alia that :-

“ITA NO.1104/DEL/2015 (AY 2010-11)

1. That the assessing officer erred on facts and in law in completing assessment under section 143(3) read with section 144(C) of the Income-tax Act ('the Act') at an income of Rs.5,45,07,770 as against returned income of Rs.1,44,76,534.

2. That the assessing officer erred on facts and in law in making an adjustment of Rs.4,00,31,234 in respect of the receipt of receivable from the associated enterprise considering the same to be an 'international transaction' of loan, on the basis of the order passed under section 92CA(3) of the Act by the Transfer Pricing Officer ('TPO').

2.1 That the Dispute Resolution Panel ('DRP') erred on facts and in law in upholding the order of the TPO, wherein, it was held that the alleged delay in realization of receivables is as an international transaction in terms of section 92B of the Act.

2.2 That the DRP erred on facts and in law in holding that the TPO is justified in determining the arm's length price of the international transaction and determining the arm's length rate of interest by considering Prime Lending Rate of SBI, applying CUP method.

2.3 That the assessing officer erred on facts and in law in not considering the order passed by TPO giving effect to the specific directions of DRP regarding the

arm's length rate of interest, while passing the final assessment order.

2.4 That the DRP/TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an 'international transaction', per se, under section 92B of the Act but is a consequence of an 'internal transaction' undertaken in the form of services rendered to the associated enterprise.

2.5 That the DRP/TPO erred on facts and in law in re-characterizing the alleged delay in receipts of receivables as unsecured loans advanced to the associated enterprises and making a transfer pricing adjustment on that basis.

Without prejudice,

2.6 That the DRP/TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked to the 'international transaction' of exports and since the profit earned by the appellant as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.

2.7 That the DRP/TPO erred on facts and in law in not appreciating that even after considering adjustment on account of working capital in the margin of the appellant and the comparable companies since the adjusted margin of the appellant is higher than that of comparable companies no interest ought to be imputed on the alleged delay in receipt of receivables.

2.8 That the DRP/TPO erred on facts and in law in rejecting the delay in receipt of receivables on transaction undertaken with unrelated third parties as comparable uncontrolled price for the purpose of benchmarking the delay in receipt of receivables on transaction undertaken with associated enterprises, applying CUP method.

2.9 While applying CUP method, the DRP/TPO erred on facts and in law in rejecting interest rate computed on the basis of Libor rates, without appreciating that since the receivables outstanding from the associated enterprises were denominated in foreign currency, the interest applicable on loan available in the international market ought to be considered.

4. That the assessing officer erred on facts and in law in not allowing credit of advance tax, TOS, foreign tax and tax paid under MAT provisions, while computing the tax liability on assessed income and thereby raising a frivolous tax demand.

5. That the assessing officer erred on facts and in law in determining the assessed tax demand under normal provisions of the Act without appreciating that tax liability is higher as per book profits computed under the MAT provisions of the Act.

6. That the assessing officer erred on facts and in law in levying interest under Section 234B and Section 234C of the Act.”

“ITA NO.1115/DEL/2017 (AY 2012-13)

1. That the assessing officer erred on facts and in law in completing assessment under section 143(3) read with section 144(C) of the Income-tax Act ('the Act') at an income of Rs.42,15,26,930 as against returned income of Rs.39,08,14,360.

2. That the assessing officer erred on facts and in law in making an adjustment of Rs.3,07,12,570 in respect of the receipt of receivable from the associated enterprise considering the same to be an 'international transaction' of loan, on the basis of the order passed under section 92CA(3) of the Act by the Transfer Pricing Officer ('TPO').

2.1 That the Dispute Resolution Panel ('DRP') erred on facts and in law in upholding the order of the TPO, wherein, it was held that the alleged delay in receipt of

receivables as unsecured loans advance to the associated enterprise which is as an international transaction in terms of section 92B of the Act.

2.2 That the DRP/TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an international transaction, per se, under section 92B of the Act but is a consequence of an 'internal transaction' undertaken in the form of services rendered to the associated enterprise.

2.3 That the DRP/TPO erred on facts and in law in re-characterizing the alleged delay in receipts of receivables as unsecured loans advanced to the associated enterprises and making a transfer pricing adjustment on that basis.

Without prejudice,

2.4 That the DRP/TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked to the 'international transaction' of exports and since the profit earned by the appellant as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.

2.5 That the DRP/TPO erred on facts and in law in not appreciating that even after considering adjustment on account of working capital in the margin of the appellant and the comparable companies since the adjusted margin of the appellant is higher than that of comparable companies no interest ought to be imputed on the alleged delay in receipt of receivables.

2.6 That the DRP/TPO erred on facts and in law in rejecting the delay in receipt of receivables on transaction undertaken with unrelated third parties as comparable uncontrolled price for the purpose of benchmarking the delay in receipt of receivables on transaction undertaken with associated enterprises, applying CUP method.

2.7 That the DRP/TPO erred on facts and in law in adding an adhoc mark-up of 400 points on the Libor rate of interest, arbitrarily on account of credit rating risk, security risk, transaction cost etc.

2.8 That the DRP/TPO erred on facts and in law in not appreciating that in terms of Master Circular No.10/2011-12, Reserve Bank of India allows a period of 12 months to all companies for receiving repatriation of export sales proceeds, and therefore, interest if any, ought to be impute don the period of delay beyond 12 months.

2.9 That the AO/TPO erred on facts and in law in computing interest in respect of the alleged delay in realization of receivables even for the period after the close of the relevant previous year i.e. after 31.03.2012.

3. That the assessing officer erred on facts and in law in calculating surcharge and education cess on gross tax payable without giving effect to MAT credit under section 115JAA of the Act.

4. That the assessing officer erred on facts and in law in not allowing foreign tax credit of Rs.15,70,867 without assigning any specific reason.

5. That the assessing officer erred on facts and in law in allowing short credit of tax deducted at source to the extent of RS.45,737/-.

6. That the assessing officer erred on facts and in law in levying interest under Section 234C of the Act on the returned income.

7. That the assessing officer erred on facts and in law in levying interest under Section 234B of the Act.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Global Logic India Private Ltd., the

taxpayer is engaged in the profession of software development services to Global Logic Inc. and other Global Logic group companies. During the year under assessment, the taxpayer entered into international transaction to the following effect :-

<i>S.No.</i>	<i>International Transaction</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Software development and related services</i>	<i>1,723,446,486</i>
<i>2</i>	<i>Reimbursement of expenses from associated enterprises</i>	<i>107,691,808</i>

3. The international transactions entered into by the taxpayer qua software development and related services have been found at arm's length by Id. TPO as per TP report prepared by the taxpayer. However, the Id. TPO disputed the international transactions entered into by the taxpayer qua reimbursement of expenses from Associated Enterprise (AE) to the tune of Rs.10,76,91,808/- on the ground that realization of payments exceed from 30 days to 248 days which is on account of non-realization of payment from its AE as specified in the agreement.

4. The Id. TPO further called upon the taxpayer to show cause as to why the penal interest be not charged from the AE qua the payment made beyond the period of 30 days from the date of receipt of invoice on account of delay in realization of payment. TPO proposed a total of 14.88% mark up to be appropriated on the

basis of PLR of SBI at 11.88% for FY 2009-10 and 300 basis points to be added for risk including lack of security processing fee, credit rating and loan tenure and show-cause the taxpayer as to why arm's length interest is determined at Rs.6,56,56,435/- as adjustment u/s 92CA from the AE.

5. Assessee filed reply claiming that the transaction as to outstanding receivables cannot be recharacterized as loan advance to AE. The taxpayer also relied upon Explanation (i) (a) and (c) of section 92B which recognizes sales and receivables arising during the business as separate transaction.

6. Being dis-satisfied with the contentions made by the taxpayer, the TPO proceeded to calculate the arm's length interest to the tune of Rs.4,00,31,234/- proposed as TP adjustment thereof u/s 92CA.

7. The taxpayer carried the matter by way of raising objections before the Id. DRP who has approved the adjustment made by the Id. TPO. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

8. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 IN**ITA NO.1104/DEL/2015 (AY 2010-11) AND
ITA NO.1115/DEL/2017 (AY 2012-13)**

9. Ground No.1 being general in nature does not require any adjudication.

FOUNDATIONS NO.2 TO 2.9 IN**ITA NO.1104/DEL/2015 (AY 2010-11) AND
ITA NO.1115/DEL/2017 (AY 2012-13)**

10. Ld. TPO rejected the contentions raised by the taxpayer inter alia that there is no international transactions involved qua outstanding receivables; that the benchmarking of delay in receipt of receivables is at par with internal comparables; that the taxpayer has earned higher margin vis-à-vis comparable companies in TNMM; that the interest rates proposed on unsecured loan cannot be applied on delay of receivables; that no interest can be charged on the opening balance of receivables; that interest shall be charged on LIBOR rate and proceeded to calculate the arm's length interest as under :-

“5.9 Following the discussions in the preceding paras, the following conclusions can be drawn :-

(i) The assessee in the process of extending credit facility on outstanding receivables to its AEs has not followed the arm's length principle.

(ii) *The assessee did not correctly assess the risk associated with the international transaction of non recovery of dues, the risk like foreign exchange fluctuation risk, credit risk, financial risk, business risk etc.*

(iii) *The assessee's cost of borrowing or availability of surplus funds is not relevant for determining the arm's length interest to be charged by the assessee.*

(iv) *The assessee should have used the standard of the return that it would have earned in India if money was lent here to a company with the same economic status as that of AE.*

(v) *The assessee has not been able to provide any substantial argument against the use of the PLR of SBI. The 14.88% rate of return on this particular rating has been calculated in a scientific manner and was also provided in the show cause notice.*

Hence, following the discussion in the preceding paras the interest is calculated in the Annexure – 1 to 5 and made a part of this order. The ledger account details have been taken as furnished by the assessee.

Based on the calculation above, the arm's length interest is determined as Rs.4,00,31,234/- and accordingly, the same is the proposed adjustment u/s 92CA.

The assessing officer shall enhance the income of the assessee by Rs.4,00,31,234/-."

The Id. TPO proposed adjustment u/s 92CA on account of arm's length interest on receivables to the tune of Rs.4,86,19,810/- for AY 2012-13.

11. Ld. AR for the taxpayer challenging the impugned order contended inter alia that a continued debt balance is not an international transaction; that transaction of accounts receivables cannot be recharacterized as loans; that there cannot be no separate adjustment on account of interest in cases where the entity level margin of the taxpayer is higher than the comparable company; that even if the pricing / profitability of the taxpayer is more than working capital adjustment margin of the comparables then imputing additional interest on the outstanding receivables is unwarranted and that there cannot be adjustment of interest as the taxpayer is not charging interest from both AE and unrelated third parties qua receipt of remittances.

12. However, on the other hand, Id DR for the Revenue to repel the arguments addressed by the Id. AR for the taxpayer contended that as per Explanation (i), (c) to section 92B(1) inserted by Finance Act, 2012 with retrospective effect from 01.04.2002, payment or deferred payment or receivables or any other debt arising during the course of business is an international transaction and relied upon the order passed by Id. TPO.

13. The Id. TPO while treating the outstanding receivables as international transaction relied upon Explanation (i), (a) & (c) of section 92B which is reproduced as under for ready reference :-

“Explanation (i), (a) and (c) of section 92B recognizes sales and receivables arising during the course of business as separate transaction. The explanations read as under :-

- (i) the expression “international transaction” shall include—***
- (a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;***
- (b)***
- (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business”***

14. Provisions contained under Explanation (i), (a) & (c) of section 92B have been analyzed by Hon'ble Delhi High Court in case cited as ***Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 order dated 25.04.2017***, wherein it is held that the expression added in Explanation to section 92B does not mean that de hors the context, every item of receivables appearing in the accounts of an entity, which may have dealing with foreign AE, would automatically be characterized as an international transaction and decided the issue in favour of the taxpayer by returning following findings :-

“10. The Court is unable to agree with the above submissions. The inclusion in the Explanation to Section 92B of the Act of the expression ‘receivables’ does not mean that de hors the context every item of ‘receivables’ appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterised as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the Assessee will have to be studied. In other words, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way.

11. The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO concluding that the figure of receivables beyond 180 days constitutes an international transaction by itself. With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterised the transaction. This was clearly impermissible in law as explained by this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).

12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed.”

15. So, in view of the law laid down by Hon’ble High Court in ***Pr. CIT-V vs. Kusum Health Care Pvt. Ltd.*** (supra), we are of the

considered view that no adjustment can be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Hon'ble Delhi High Court in case of *Pr. CIT-1 vs. M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 order dated 21.07.2016*.

16. Furthermore when we examine the entity level margin of the taxpayer vis-à-vis comparable companies, the taxpayer has earned higher margin i.e. taxpayer earned 38.39% OP/OC margin vis-à-vis margin of comparable companies at 11.43%. In such circumstances, no separate adjustment on account of interest can be made. Because the credit period extended to AE cannot be considered as a standalone transaction without considering the main transaction of the sale.

17. Furthermore when the taxpayer is undisputedly a debt free company, as it is not the case of the ld. TPO that borrowed funds have been appropriated enabling the AE to make the delayed payment on receivables. So when outstanding receivables is not a separate international transaction, the delay in realization of the sale proceeds is incidental to the transaction of sale and as such no

notional interest can be levied by treating the same as unsecured loan.

18. Furthermore it is the case of the taxpayer that when the taxpayer is not charging interest from unrelated third party / non-AE, in case of such delay, no adjustment on interest in case of AE can be made and drew our attention towards the details of invoices raised qua unrelated parties available at page 183A of the paper book wherein delay in realization of the receivables is also up to 218 days for AY 2010-11 and up to 417 days qua AY 2012-13 as per detail of invoices raised on unrelated parties qua AY 2012-13, available at page 236 of the paper book.

19. This issue has been dealt with by Hon'ble Bombay High Court in case cited as *CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L) No.1053 of 2012 order dated 08.01.2013* wherein following question was framed :-

“B. Whether on the facts and in the circumstances of the case and in law the ITAT was justified in deleting the addition of Rs.87,66,641/- being internet receivable on outstanding amount due to the Assessee Company from the Associated Enterprises?”

20. Aforesaid question was decided in favour of the taxpayer by upholding the order rendered by the Tribunal by making following observations :-

“5. On appeal filed by the Revenue, the ITAT upheld the order of CIT (A). While, upholding the order of CIT (A), the ITAT held that interest income is associated only with the lending or borrowing of money and not in case of sale. We express no opinion on the above reasoning of the ITAT and keep that reasoning open for debate in an appropriate case. However, in the facts of the present case, the specific finding of the ITAT is that there is complete uniformity in the act of the assessee in not charging interest from both the Associated Enterprises and Non Associated Enterprises-debtors and the delay in realization of the export proceeds in both the cases is same. In these circumstances, the decision of the Tribunal in deleting the notional interest on outstanding amount of export proceeds realized belatedly cannot be faulted.”

21. So, when the taxpayer has not been making any distinction between AE and non-AE in charging any interest on outstanding receivables, the adjustment made by the TPO/DRP/AO on account of arm's length interest is not sustainable. Moreover the interest can be charged only on loaning or borrowing of money and not in case of sale. Particularly when there is no penal clause in the agreement entered into between the taxpayer and its AE/non-AE to charge the interest on delayed receivables. Even otherwise, a transaction cannot be recharacterized merely on ground of delay in payment of receivables.

22. Identical issue has also been examined by coordinate Bench of the Tribunal in *Kadimi Tool Manufacturing Co. Pvt. Ltd. vs. DCIT in ITA No.7068/Del/2014 order dated 25.09.2017* and has

been decided in favour of the taxpayer by relying upon *Kusum Healthcare Pvt. Ltd. vs. ACIT – 170 TTJ 411* and *Bechtel India Pvt. Ltd.* (supra) wherein SLP filed in the Hon'ble Supreme Court has been dismissed.

23. In view of what has been discussed above, TPO/DRP/AO have erred in making adjustment on account of arm's length interest which is not sustainable in the eyes of law, hence no adjustment on account of interest on receivables can be made. So, Grounds No.2 to 2.9 are determined in favour of the taxpayer.

GROUND NO.4 & 5
ITA NO.1104/DEL/2015 (AY 2010-11) AND

GROUND NO.3, 4 & 5
ITA NO.1115/DEL/2017 (AY 2012-13)

24. AO has not allowed credit of advance tax, TDS, foreign tax and tax paid under MAT provision while computing the tax liability on assessed income.

25. We are of the considered view that while calculating the tax paid under MAT provision, it is required to be deducted from gross tax payable. Similarly, while calculating the tax credit of advance tax, TDS and foreign tax is also required to be set off first in computing the overall tax liability by the taxpayer. Particularly when tax liability of the taxpayer is higher as per peak profit

computed under MAT provision of the Act, so AO is directed to recomptue the tax liability by considering the credit of advance tax, the TDS, the foreign tax and tax paid on MAT provision in the light of the decision rendered by Hon'ble Allahabad High Court in the case of *CIT vs. Vacment India - 369 ITR 304 (All.)*. So, Grounds No.4 & 5 in ITA NO.1104/DEL/2015 (AY 2010-11) and Grounds No.3, 4 & 5 in ITA NO.1115/DEL/2017 (AY 2012-13) are determined in favour of the taxpayer.

GROUND NO.6 in
ITA NO.1104/DEL/2015 (AY 2010-11) AND

GROUNDS NO.6 & 7
ITA NO.1115/DEL/2017 (AY 2012-13)

26. The aforesaid grounds qua levy of interest u/s 234B and 234C needs no specific finding being consequential in nature.

Order pronounced in open court on this 12th day of December, 2017.

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 12th day of December, 2017
TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

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