

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "I-2" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.6331/Del./2016  
Assessment Year 2012-2013

M/s. Motherson Sumi Infotech & Designs Limited, F-7, Block B-1, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi – 110 044. PAN AACCM3199B.	vs.	The DCIT, Circle-17(1), Central Revenue Building, I.P. Estate, New Delhi. PIN – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Anubhav Rastogi, Advocate
For Revenue :	Shri Sanjay Kumar Yadav, D.R.

Date of Hearing :	22.02.2018
Date of Pronouncement :	26.02.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the assessment order dated 07<sup>th</sup> October, 2016, for the A.Y. 2012-2013 under section 143(3)/144C(1) of the I.T. Act, 1961, passed by DCIT, Circle-17(1), New Delhi, on the following grounds :

1. *“The Learned Assessing Officer (‘Ld. AO’)/ Learned Transfer Pricing Officer (‘Ld. TPO’) (following the directions of the*

*Learned Dispute Resolution Panel ('Ld. DRP')), have erred on facts and in law in enhancing the income of the Appellant by Rs.22,40,719/-.*

- 1.1. The Ld. TPO erred on the facts and in the circumstances of the case and in law in framing the order u/s 92CA of the Income Tax Act, 1961 ('the Act') on findings which are erroneous in law, contrary to the facts and based on mere conjectures and surmises.*
- 1.2. The Ld. TPO failed to appreciate the submissions made/ contentions raised by the Appellant and further erred in making several allegations, observations, assertions and inferences in the order, which were both factually incorrect as well as legally untenable.*
- 2. The Ld. AO/Ld. TPO (following the directions of the Ld. DRP), erred both on facts and in law in enhancing the income of the Appellant by Rs.22,40,719/- by treating the receivables outstanding beyond 30 days from associated enterprises as deemed loan and charging notional interest.*
- 3. The Ld. AO/Ld. TPO (following the directions of the Ld. DRP), erred in disregarding the detailed arguments/ submissions put forth by the Appellant during the course of the DRP/ assessment proceedings while passing its direction under section 144C of the Act."*

2. Briefly, the facts of the case are that draft assessment order prepared by A.O. under section 144C(1) of the I.T. Act proposing variations in the income returned for assessment year under appeal constitutes the basis for undertaking proceedings by the DRP in respect of the assessee-company. The draft order was forwarded to the assessee-company on 04<sup>th</sup> March, 2016, indicating the variations proposed to be made by the Assessing Officer under sections 144C(1)/143(3) in respect of its returned income. The DRP proceeded to issue directions as per section 144C(5) of the Act, after considering the draft order, objections filed by the assessee-company relating to the draft order, evidence collected by or evidence caused to be collected and result of enquiry made as per law relating to assessment year under appeal. The assessee was a joint venture between the "Samvardhana Motherson group, India and Sumitomo Wiring Systems Limited ('SWS') Japan, which have been incorporated in the year 2000 under the laws of India as a 100% Export Oriented Unit ('EOU'), the Company was engaged in the provision of software development and engineering design

services to its customers. The Company was also engaged in trading of information technology products. The assessee filed the return of income declaring total income of Rs.8.57 crores for assessment year under appeal. During the relevant assessment year, assessee undertook the international transactions with it's A.Es which were duly reported in the accountant's report filed with the return of income, details of which are noted in the impugned order. The TPO accepted all international transactions to be at arm's length except the payment of interest on loan. During the course of assessment proceedings, the TPO directed the assessee to submit information pertaining to receivables, services rendered and sale of I.T. products. The assessee submitted details called upon by TPO. The TPO arrived at the conclusion that assessee was not correct in not charging the interest on receivables from it's A.Es. Hence, he computed the interest on outstanding receivables beyond 30 days treating them as deemed loan. The assessee filed the objections before DRP challenging the enhancement to the income by Rs.22,40,719. The assessee referred to the submissions filed on

record in order to convince the TPO that the average outstanding days for recovering sales due was 57 days in the case of the A.Es whereas, from the non-A.Es, it was 66 days. The reason explained by assessee for non-charging of interest from the A.Es as well as non-A.Es on interest receivables was that it being the predominantly involved in the provision of services to it's A.Es as well as third parties, as a matter of norm, did not charge interest on outstanding receivables even beyond the credit free period from both the categories of parties. Reliance was placed on the decision of M/s. Indo American Jewellery Ltd., reported in 223 Taxman 8 (Bom.) (HC) in which it was held that *“where an assessee was not charging interest on the outstanding recoverable from the A.Es as well as non-A.Es, there was no need to compute the notional interest in the case of the outstanding receivables from the A.Es.”* The assessee also contended that following considerations should not be ignored :

- (a) Business and commercial considerations.
- (b) Long term business relationships predicate waiver of this right.
- (c) Interest income is only associated with loans and not services.
- (d) Question of interest on excess credit period arises only when there is a standard credit period for the services sold at the same price and the credit period allowed to the AEs is substantially more than the credit period allowed to independent enterprises.
- (e) If the 'A' is a debt free company and there was no interest burden on the A' then it cannot be safely presumed that the borrowed funds were utilized to pass on their benefits to the AEs.
- (f) The AEs were financially weak in support of which the 'A' filed the accounts of the AEs vide page nos 183 to 250, namely M/s Vacuform (Fty) Limited, SMR Automotive Mirrors Technology Hungary Bt, M/s SMR Automotive Mirrors stutgaret Hmbh, SMR Automotive Services Gmbh, MSSSL. Global RSA Module Engineering Limited and MSID, USA & OECD guidelines Para 109. Per contra the TPO while rejecting the above contentions of the 'A'

placed reliance on the following judgments which mainly pertained to the theory of “Form over substance”. The pages 169 to 172 of the same paper book contain the details :-

1. Swadeshi Cotton Mills Ltd. vs., CIT 63 ITR 57 (SC).
2. Madhavji Dharmashingh Mfg Co. (P) Ltd. vs. CIT 78 ITR 62 (SC).
3. JK Cotton Mfrs Ltd. vs., CIT 101 ITR 221.
4. Mcdowell & Co. Ltd Vs CTO 154 ITR 148 (S).
5. OECD guidelines.

3. The DRP rejected the contentions of the assessee regarding treatment of transactions on account of “outstanding receivables” because of the retrospective amendment of Section 92B(1) of the I.T. Act, 1961 covered all such transactions i.e., “International Transactions”. It was also noted that the table prepared exhaustively by the TPO as apparent from the order lucidly depicted the names of the entities, their countries of location with which the assessee transacted internationally, the date and number of invoice with amounts and their currency

denomination with their conversion rates, number of outstanding days and actual date of collection and collection of interest @ average monthly LIBOR plus 300 bps assuming 30 days to be the allowable credit facility without interest. The table prepared by the TPO was found correct. It is also noted that there was a delay in recovery of outstanding debts by the assessee, undoubtedly on which no interest was charged by the assessee. The TPO applied interest @ LIBOR + 300 bps on all the delays in recoveries beyond 30 days. It was also noted that in the process of belated repayment of the outstanding receivables, the assessee was indisputably exposed to exchange risks. Besides the assessee did not have any security against such outstanding receivables. The amount was left to remain with the A.Es without any guarantees. On balance the assessee sacrificed the opportunity cost of the outstanding amounts of money so lying with it's A.Es. The assessee did not furnish any details of comparable group affiliates who had entered into the transaction with independent third parties or of independent third parties who had entered into similar transactions with

third parties in this fashion. The order of TPO in charging notional interest was accordingly upheld and this ground of objection of assessee were dismissed.

4. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that TPO treated the receivables outstanding beyond 30 days as a loan. The TPO computed interest on loan @ of one month LIBOR plus 300 bps per annum for making the addition. The assessee filed detailed submissions which have not been appreciated. The assessee provides software solutions and design services to its customers both in the domestic and international markets. Customers of the assessee consists of both group companies as well as independent third parties. Further, the assessee is engaged in provision of maintenance and support services, upgradation and development of software. The majority of the assessee's operating income consists of receipt of service charges from group companies and independent third parties. The assessee raised the invoice/debit

notes after rendering the services to the customers and payments are received only after the satisfaction of the customer, as per their specification. The assessee is often engaged in re-work of the services after receiving the feedback from the customer and only after the customers are fully satisfied with the services, payment is made. Thus, outstanding debt is part and parcel of assessee's business and an early payment from any customer is commercially not feasible. The interest on receivable is not an international transaction as the interest proposed to be charged, if any, is already built in sale price and thus, no interest needs to be computed on the outstanding receivable from the A.Es. He has relied upon the decision of ITAT, Delhi Bench in the case of M/s. Kusum Healthcare Pvt. Ltd., vs. ACIT in ITA.No.6814/Del./2014 in which in para-17 of its order, the Tribunal held as under :

*“17. From the above analysis, it is clear that assessee had earned significantly higher margin than the comparable companies (which have been accepted by the*

*TPO) which more than compensates for the credit period extended to the AEs. Thus, the approach by the assessee of aggregating the international transactions pertaining to sale of goods to AE and receivables arising from such transactions which is undoubtedly inextricably connected is in accordance with established TP principles as well as ratio laid down by the Hon'ble jurisdictional High Court in the case of Sony Ericsson Mobile Communication India (P.) Ltd. {supra}. For the aforesaid reasons, we allow the appeal of the assessee. It ordered accordingly.”*

In this case, assessee had undertaken a working capital adjustment for the comparable companies selected in the T.P. report.

4.1. He has submitted that the said decision has been confirmed by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Kusum Healthcare Pvt. Ltd., in ITA.No.765 of 2016 dated 25<sup>th</sup> April, 2017, in which in paras 8 to 12 the Hon'ble Delhi High Court held as under :

- “8. *Aggrieved by the said order, the Assessee filed an appeal before the ITAT. By the impugned order dated 31<sup>th</sup> March 2015, the ITAT set aside the assessment order. The ITAT noted that the Assessee had undertaken working capital adjustment for the comparable companies selected in its transfer pricing report. It was further noted that “the differential impact of working capital of the Assessee vis-a-vis its comparables had already been factored in the pricing/profitability” which was more than the working capital adjusted margin of the comparables and, therefore, “any further adjustment to the margins of the Assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified.”*
9. *Mr. Raghvendra Singh, learned counsel appearing for the Revenue submitted that the ITAT overlooked the fact that the expression “international transaction” as defined in Explanation (i)(c) to Section 92B of the Act included “payments or deferred payment or receivable or any other debt arising during the course of business”, and therefore, the outstanding receivables could by themselves constitute an international transaction. He further referred to the OCED Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Paras 3.48 & 3.49 under Chapter III para A.6.1 of the said*

*Guidelines titled "Different types of comparability adjustments" spoke of the need to eliminate differences that may arise from different accounting practices between controlled and uncontrolled transactions. In particular, it was noted under para 3.49 that "a significantly different level of relative working capital between the controlled and uncontrolled parties may result in further investigation of the comparability characteristics of the potential comparable." Mr. Singh submitted that the ITAT erred in disagreeing with the TPO, who had characterised the outstanding receivables as an international transaction by itself which required benchmarking.*

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-a-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-a-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 JTR 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.”*

4.2. He has submitted that facts of the case of assessee are similar with the decision in the case of Kusum Healthcare Pvt. Ltd., Therefore, the issue is covered in favour of the assessee. Learned Counsel for the Assessee relied upon the order of the ITAT, Bangalore Bench in the case of ACIT vs. M/s. Millipore (India) Ltd., I.T.(T.P.) No.327/Bang./2015 dated 07<sup>th</sup> March, 2017 in which it was held that *“early or late realization of sale proceeds was only incidental to the transaction of sale and was not a separate international transaction and therefore, no ALP adjustment was permissible in respect of the same.”* Learned Counsel for the Assessee also relied upon the decision of ITAT, Hyderabad Bench in the case of Oakton Global Technology Services Centre (India) (P.) Ltd., vs. ACIT, Circle-16(2), Hyderabad (2016) 76 taxmann.com 119 (Hyd. Trib.) in which it was held as under :

*“Where TPO made addition of interest to assessee's ALP on ground that it had allowed excessive credit period to its AE for receiving payment of software development services, in*

*view of fact that assessee had allowed credit period of 79 days which was much below industry average of 112 days, impugned addition was to be set aside.”*

4.3. The Learned Counsel for the Assessee further submitted that it has computed average debtors collection period during assessment year under appeal for comparable companies selected by the assessee for determination of ALP, details of which, are reproduced in the written submissions and the average collection period comes to 122 days, whereas, the average collection period for the assessee was 68 days during assessment year under appeal. Therefore, adjustment in this regard, was wholly unjustified. The assessee is involved in provision of software development services to its A.Es as well as third parties. Therefore, as a norm, the assessee does not charge interest on outstanding receivables even beyond the credit free period from both A.Es and non-A.Es. Learned Counsel for the Assessee also relied upon decision of Hon'ble Bombay High Court in the case of CIT vs. Indo American

Jewellery Ltd., (2014) 223 Taxman 8 (Bom.) (HC) in which it was held as under :

*“Where there was complete uniformity in act of assessee in not charging interest from both Associated Enterprises and non-Associated Enterprises debtors for delay in realization of export proceeds, Assessing Officer was not justified in making addition of notional interest to assessee’s ALP on aforesaid ground in course of transfer pricing proceedings.”*

4.4. He has submitted that only in the case of loan, the average LIBOR could be applied. In support of this contention, he has relied upon the order of the Rajasthan High Court in the case of CIT vs. Vaibhav Gems Limited (2017) 88 taxmann.com 12 (Raj.) (H.C.) in which it was held that *“Where assessee extended loan to it’s A.E, adjustment should be made at average LIBOR rate existing at that time, i.e., at 0.79 percent, instead of LIBOR + 2 percent.”* Learned Counsel for the Assessee, therefore, submitted that whole addition is unjustified.

4.5. Ld. D.R, on the other hand, relied upon the orders of the authorities below and submitted that Section 92B(1)(c) provides that receivables itself is an international transaction. He has referred to PB-118 to show that in preceding assessment year, the trade receivables were of Rs.21.90 crores and in assessment year under appeal, it was Rs.26.88 crores. He has, therefore, submitted that receivables are increasing day-by-day, therefore, authorities below correctly made the adjustment.

5. We have considered the rival submissions and perused the material available on record. The assessee has given several reasons to explain that it being a business transaction, commercial consideration should have been considered by the authorities below. It was explained that the long term business relation with the customer and A.E. predicate waiver of this right. The interest is only associated with the loans and not services. It was explained that payments are received only after satisfaction of the customer

and therefore, there was delay in receiving the payments. The assessee also explained before T.P. authorities below that average outstanding days for recovering sales dues was 57 days in the case of A.Es, whereas, in the case of non-A.E. it was 66 days. It was also explained that non-charging of interest from A.Es. as well as non-A.E. on interest receivables was that it being pre-dominantly involved in the provision of services to it's A.Es. as well as third parties. The contention of the assessee have not been disputed by the authorities below. It may also be noted here that all international transactions were accepted by the TPO to be at arm's length, except, payment of interest on loan. The authorities below have treated the delayed payment beyond 30 days as loans. In fact, no loan have been extended by the assessee. It was the amount 'due' against the A.Es. as well as non-A.E. on which interest have been charged by considering the deemed loans. Therefore, the decision of ITAT, Delhi Bench in the case of M/s. Kusum Healthcare Pvt. Ltd., (supra), squarely apply in the case of the assessee,

since the assessee earned significantly higher margin than the comparable companies, which have been accepted by the TPO, therefore, there was no justification to charge interest on outstandings. The decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Kusum Healthcare Pvt. Ltd.,(supra), squarely apply to the facts and circumstances of the case. The assessee also explained that there are similar delays in collection of outstanding receivables from both A.Es and non-A.Es which is due to business and commercial reasons. Therefore, there is uniformity in act of assessee in not charging interest from A.Es and non-A.Es. Therefore, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Indo American Jewellery Ltd., (supra), squarely apply to the facts of the case.

5.1. Considering the nature of business of assessee and the facts explained above, we are of the view that there was no justification for the authorities below to make adjustment to the income declared by assessee. Recently,

the ITAT, I-2 Bench in the case of Terradata India Pvt. Ltd., vs. ACIT in ITA.No.7885/Del./2017 vide order dated 21<sup>st</sup> February, 2018, following the order in the case of same assessee, in which the decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. M/s. Kusum Healthcare Pvt. Ltd., (supra), have been relied upon, allowed the appeal of assessee on the similar ground. In view of the above discussion and in the light of various decisions above and facts of the case, we are of the view that the adjustment to the income of the assessee is wholly unjustified on account of interest on receivables. We, accordingly, set aside the orders of the authorities below and delete the entire addition.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court.

Sd/-  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**  
Delhi, Dated 26<sup>th</sup> February, 2018  
VBP/-

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT '1-2' Bench, Delhi
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// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.