

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.2205/Hyd/2017
(Assessment Year: 2013-14)

M/s. Netenrich
Technologies Private Ltd
Hyderabad
PAN: AABCN8899A
(Appellant)

Vs Asstt. Commissioner of
Income Tax, Circle 16(1)
Hyderabad
(Respondent)

For Assessee : Shri Sampath Raghunathan
For Revenue : Shri J. Siri Kumar, DR

Date of Hearing: 02.07.2018
Date of Pronouncement: 27.07.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2013-14 against the assessment order passed by ACIT, Circle 16(1), Hyderabad, dated 25.10.2017, u/s 143(3) r.w.s.92CA(3) and 144C(13) of the I.T. Act.

2. Brief facts of the case are that the assessee company, engaged in the business of providing I.T. enabled support services to its parent company and its customers in India. It filed its return of income for the A.Y 2013-14 on 25.11.2014 admitting income of Rs.3,19,81,160 and the book profit u/s 115JB of the Act at Rs.2,97,01,603/-. During the assessment proceedings u/s 143(3), the AO noticed that during the relevant A.Y, the assessee

has entered into an international transaction with its AE and has reported same in its annual report. The AO therefore, referred the determination of the ALP to the TPO. The assessee had reported that its margin of the transaction was 20.12% as against the margin of the comparables at 10.71% and therefore, the assessee claimed its transaction to be at Arms' length.

3. The TPO, verified the TP documentation of the assessee and observed that the method of search process adopted by the assessee suffered from defects which resulted in selection of inappropriate comparables. Therefore, he rejected the assessee's TP study and conducted fresh analysis after aggregating all the transactions under TNMM and arrived at the average mean of the comparables margin at 28.45% after allowing the working capital adjustment and proposed the shortfall of Rs.1,26,41,140 as an adjustment u/s 92CA of the Act towards the transaction of ITES. Thereafter, the TPO noticed that the receivables were outstanding at the end of the financial year and observed that this also forms part of international transaction for which ALP is required to be determined. He accordingly charged interest on the delay in recovery of export receivables, received beyond due date and on the opening balances after giving credit period of 90 days. He adopted the interest @14.45% for proposing the adjustment of Rs.1,84,84,910.

4. Consequently, the AO proposed the draft assessment order, aggrieved by which, the assessee preferred its objections before the DRP which rejected the assessee's contentions and accordingly, the final assessment order was passed. Against the

final assessment order, the assessee is in appeal before us by raising the following grounds of appeal:

“1. On the facts and circumstances of the case and in contrary to law, the final assessment order ('Final Order') issued under section 143(3) read with section ('LW.S.') 92CA(3) LW.S 144C(13) of the Income-tax Act, 1961 ('Act') passed by the Learned Assistant Commissioner of Income Tax Circle 16(1), Hyderabad ('Ld. AO') dated 25 October 2017 in pursuance of the directions of the Hon'ble Dispute Resolution Panel ('DRP'), Hyderabad dated 04 September 2017 under section 144C (5) of the Act is bad in law.

Transfer pricing adjustment on the outstanding receivables is bad in law and the Appellant raises the following grounds:

2. On the facts and in the circumstances of the case and in law, the Ld. AO erred on facts and circumstances of the case in considering outstanding receivable, which is an outcome of the Principal international transaction, as a separate and distinct international transaction and further erred in confirming a transfer pricing adjustment in the nature of interest on receivables amounting to Rs.90,46,074/-.

3. On the facts and in the circumstances of the case and in law, the Ld. AO erred in not considering the fact that the working capital adjustment evaluates the outstanding receivable in a controlled scenario vis-a-vis uncontrolled scenario and that differential impact of working capital of the Appellant vis-a-vis its comparables has already been factored in the pricing/profitability of the Appellant. And hence, levying interest on receivables amounts to double adjustment.

Without prejudice to the fact that no arm's length determination and consequential transfer pricing adjustment is warranted on outstanding receivables, the Appellant would like to raise the following grounds against the computation methodology of the Ld. AD:

4. On the facts and in the circumstances of the case and in law, the Ld. AO erred in applying the credit period available to the Appellant, as per the intercompany agreement, as benchmark for computing the transfer pricing adjustment since credit period based on intercompany agreement defies transfer pricing provisions.

5. On the facts and in the circumstances of the case and in law, the Ld. AO erred in bringing notional interest to tax without considering the fact that neither the AE nor the Appellant charges any interest in case of delay in payment.

6. On the facts and in the circumstances of the case and in law, the Ld. AO erred in incorrectly calculating the interest on the opening balance of receivables considering the same as due for more than 365 days even though the same is realized during the year in different tranches.

Computation of interest liability under section 234B and 234C of the Act

7. On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest liability under section 234B and 234C of the Act”.

5. The learned Counsel for the assessee while reiterating the submissions made before the authorities below submitted that the TPO, while computing the ALP has allowed the working capital adjustment and the interest on receivables has factored in such working capital adjustment. In support of his contention, he drew our attention to the working capital adjustment computed by the TPO at -6.41% and the detailed working of the same, which is placed at pages 309 to 311 of the Paper Book. It is seen therefrom that the TPO has considered the receivables of the assessee as well as the receivables of the comparable companies and has also adopted 14.45% as benchmark interest rate and after such consideration, has arrived at the average working capital adjustment of -6.41%. We also find, that in similar circumstances, in the case of Open Text Corporation India Pvt. Ltd in ITA No.232/Hyd/2016 dated 28.03.2018, the “B” Bench of the Tribunal (to which the J.M. is a signatory) has considered similar situation at para 9 of its order and has held as under:

"9. Having regard to the rival contentions and material on record, we find that the issue whether notional interest is chargeable on receivables has been considered by the ITA No. 232/Hyd/2016 Open Text Corporation Indi Pvt Ltd., Hyderabad. Coordinate Bench in the case of Pegasystems Worldwide India Pvt Ltd (cited Supra) and it was held as under:

"17.3. We have considered the issue and examined the rival contentions. In the case of Evonik Degussa India P. Ltd., in ITA No. 7653/Mum/2011, it was already held the TP adjustment cannot be made on hypothetical and notional basis, until and unless there is some material on record that there has been under charging of real income. Thus on the facts and circumstances of the case, we are of the opinion that addition on account of notional interest relating to alleged delayed payment in collection of receivables from the AEs is uncalled for on the facts of the present case. Even though DRP tried to distinguish the above decision on facts, as seen from the facts in both the cases, we are of the opinion that the above decision will equally apply to Assessee's case. Assessee has outstanding service charges receivables and as seen from the order of TPO, the outstanding is only from 31- 07-2009. There seems to be no such delay in earlier months. Assessee has no interest liability at all so notional interest cannot be brought to tax under the provisions of TP. As rightly pointed out by the Ld. Counsel, the outstanding receivables on account of services cannot be equated with capital financing as provided for in the Explanation by the amendment by [Finance Act, 2012](#) retrospectively. Even otherwise, as rightly held by the *Logix Micro Systems Ltd v. ACIT [42 SOT 525]* (supra), TPO should have allowed some interest free period for receiving the outstanding service charges. While acknowledging the order of the ITAT, TPO did not even bother to exclude the reasonable period and levied interest not only from the date of invoice to the date of realization during the year but also for the period beyond 31- 03-2010 in later year. We were informed that no such addition was made in the later year on Assessee's receivables. We are of the opinion that both on the facts of the case and principles of law, there is no need for bringing to tax the notional interest on the outstanding receivables. Accordingly, we allow the grounds 7 & 8 of Assessee and direct AO/ TPO to delete the said addition made."

6. Since in the case before us, the TPO has already considered the interest on receivables as one of the factor for computing the working capital adjustment, we are of the opinion that the same cannot be considered again for making the T.P. adjustment. Thus, the grounds of appeal on this issue are allowed.

7. Vide letter dated 5/6/2018, the assessee had raised an additional ground of appeal that the learned TPO has erred in

rejecting its rectification application to reduce the opening balance from the outstanding for the entire year, but, since it has been held that, no adjustment on this account can be made, this ground becomes academic and needs no adjudication. Thus, it is not admitted.

8. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 27th July, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 27th July 2018.

Vinodan/sps

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- 3 DRP-1, Kendriya Sadan, 4th Floor, B&C Wing, Bengluru 560034
- 4 Pr. CIT – 4, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order