

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI '1-2' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 6751/DEL/2018
[A.Y 2014-15]

Orange Business Services India
Solutions Pvt. Ltd
Tower B, 8th Floor, DLF
Infinity Tower, Phase - II
Sector 25, Gurgaon

Vs.

The Dy. C.I.T
Circle - 3
Gurgaon

PAN : AABCE 4540 P

[Appellant]

[Respondent]

Date of Hearing : 11.12.2018
Date of Pronouncement : 31.12.2018

Assessee by : Shri Ravi Sharma, Adv
Shri Anubhav Rastogi, Adv

Revenue by : Ms. Namita Pandey, Sr.DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Dy. Commissioner of Income Tax [Appeals] - dated 25.09.2018 framed u/s 143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] pertaining to assessment year 2014-15.

2. The solitary grievance of the assessee relates to the transfer pricing adjustment of Rs. 1.45 crores made by the Assessing Officer following the directions of the DRP by treating the receivables outstanding beyond 60 days from the associated enterprises [AEs] as deemed loan and charging notional interest on the basis of average State Bank of India base rate of 9.83% per annum plus 300 basis points.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the appellant company is a subsidiary of EGN BV, Netherlands. The appellant company is primarily engaged in providing Information Technology enabled network management / technical support and other back-office support services to its Group Company. It also undertakes software development services for developing software applications which are used within the Orange Group.

5. The international transactions reported by the assessee during the year in Form 3CEB report is as under:

Sl. No.	Description of the transaction	Amount [INR
1.	Provisions of information and technology services	2,48,87,11,426/-
2.	Cost recharges	2,22,89,684/-
3.	Receivables [as on 31.03.2014]	86,07,95,107/-
4.	Receivables [as on 31.03.2014]	4,11,07,016/-

6. During the course of transfer pricing assessment proceedings, the TPO was of the firm belief that since the payment for invoices raised by the assessee have not been received within the stipulated time. Delayed payments were treated as unsecured loan advance to the AEs. The TPO proposed to charge a normal rate as per the annual average yield of corporate bonds pertaining to credit rating of the AEs for the period of delay in receipt of payment beyond the time stipulated in the services agreement.

7. In its reply dated 09.10.2017, the assessee furnished invoice details of receivables alongwith their duration/period. The TPO was not convinced with the reply of the assessee and proceeded by treating the receivables as loan to the AEs and bench marked the interest rate

based on base rate of SBI taking the same at 9.83% to which 400 basis points were added and, accordingly, interest rate was arrived at 13.83%. The TPO proposed an upward adjustment of Rs. 2,48,13,810/-

8. The assessee raised objections before the DRP and the DRP issued directions dated 23.03.2018 upholding the action of the TPO for taking SBI PLR as CUP but directed to add 300 basis points to the same. The DRP further directed to take 60 days to be reasonable period beyond which interest must be charged on outstanding receivables. Following the directions of the DRP final addition was made at Rs. 1,45,27,731/-.

9. Aggrieved by this the assessee is before us.

10. It is the say of the Id. AR that interest on receivables is not an international transaction as the interest proposed to be charged, if any, is already built in the sale price and thus no interest needs to be computed on the outstanding receivables from the AEs. The Id. AR further pointed out that the operating profit margin has not been disturbed by the Assessing Officer/TPO. Therefore, no separate adjustment is to be made in so far as outstanding receivables are concerned.

11. Per contra, the ld. DR supported the findings of the DRP. It is the say of the ld. DR that the objections raised by the assessee have been duly considered by the DRP and, therefore, the ld. DR directed the TPO to take 300 basis points over and above SBI PLR and to consider 60 days as reasonable period beyond which interest must be charged.

12. Having heard the rival submissions, we are of the considered opinion that since no disturbance has been made in so far as OP margin of the assessee is concerned the OPN has been arrived after making working capital adjustment. Operating mark up of the appellant company is 16.19% whereas the comparables working capital adjustment mark up comes to 15.72%. This shows that the profit margin of the appellant company is higher than that of the comparables. The ratio laid down by the Tribunal in the case of Kusum Healthcare Pvt Ltd 6814/DEL/2014 squarely applies. The relevant findings of the coordinate bench read as under:

"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 inextricable 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."

13. This decision of the coordinate bench has been affirmed by the Hon'ble High Court of Delhi in ITA No. 765/2016 vide order dated 24.04.2017. The relevant findings of the Hon'ble High Court read as under:

11. *The court finds that the entire focus of the AO was on just one AY and 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 the court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Del)."

14. The ld. DR pointed out that the Revenue has preferred SLP before the Hon'ble Supreme Court against the judgment of the Hon'ble High Court of Delhi. In our understanding, since the operation of the judgment of the Hon'ble High Court is not stayed by the Hon'ble Supreme Court, the same is binding on us and, therefore, respectfully following the decision of the coordinate bench, affirmed by the Hon'ble High Court [supra] we direct the Assessing Officer/TPO to delete the addition of Rs. 1,45,27,731/-

15. In the result, the appeal filed by the assessee in ITA No. 6751/DEL/2018 is allowed.

The order is pronounced in the open court on 31.12.2018.

**Sd/-
[SUDHANSHU SRIVASTAVA,]
JUDICIAL MEMBER**

**Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: December, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	31.12.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	