

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2' NEW DELHI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**ITA.No-1516/Del/2016
Assessment Year: 2011-12**

**BTR Packaging Pvt. Ltd.,
18, Commercial Centre,
Panchsheel Park, New Delhi-110017.**

vs

**ITO,
Ward-5(2),
New Delhi**

PAN- AACCB6465B

(Applicant)

(Respondent)

Appellant by: Sh.Mukesh Aggarwal, FCA
Respondent by: Sh. Rakesh Kumar, Sr.DR

Date of hearing: 25/07/2019

Date of order : 31 /07/2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the Order dated 27.01.2016 passed by the Ld. Assessing Officer, New Delhi, M/s BTR packaging private limited ("Assessee") preferred this appeal.

2. Brief facts of the case are that the assessee was incorporated on 18/07/2005 as 100% export oriented unit

and has been engaged in manufacturing and exporting of high-quality polyethylene retail carrier bags, including merchandise bags, box-bottom bags, insulated bags, hand-strung shoulder totes, draw cord bags, duffle bags, rope handle bags with a turnover tops having cardboard inserts and other custom strung bags. For the assessment year 2011-12, they have filed their return of income on 21/09/2011 showing NIL income.

3. During the year, the assessee entered into following international transactions:-

- (i) Export of finished goods
- (ii) Import of raw materials
- (iii) Import of spare parts
- (iv) Charge for cylinder cost
- (v) Loan conversion to the equity shares
- (vi) Issue of share capital.

4. The assessee had adopted Transactional Net Margin Method ("TNMM") for determining the Arm's Length Price ("ALP") for principal amount of exports to Associated Enterprise ("AE") and the same was accepted by the Ld. TPO. Ld. TPO, however, passed an order dated 22/01/2015 by suggesting adjustment under section 92 CA of the Income Tax Act, 1961 ("the Act") to the tune of Rs. 5,27,706/-in respect of the interest on receivables outstanding.

5. The assessee filed objections before the Ld. Dispute Resolution Panel ("DRP"). Ld. DRP directed that the interest

on receivables has to be computed in accordance with the decision of the Hon'ble Delhi High Court in the case of CIT vs Cotton Naturals (I) Private Limited [2015-TII-09-HC-DEL-TP] and the period for which interest has to be calculated. It has to be limited to the year under consideration as interest accrued in other years, cannot be taxed in this year.

6. The assessee is, therefore, before us in this appeal challenging the directions of the Ld. DRP and consequential assessment order, stating that the credit period on sale of goods is not a separate and distinct international transaction and when credit period allowed to AE is already embedded in the TNMM, there was no need for any separate benchmarking. He placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of Ld. CIT Vs. Kusum Health Care Pvt.Ltd, (2017) 398 ITR 66 Delhi.

7. Ld. DR placed reliance on the orders of the authorities below.

8. We have gone through the record in the light of the submissions made on either side. It remains an undisputed fact that the assessee had adopted TNMM method for determining the arm's length price for principal amount of exports to AE and it was duly accepted by the Ld. TPO. No adjustment under section 92 CA of the Act was suggested in respect of the price for their exports to AE. Ld. TPO had taken the notional interest on the outstanding receivables as

a separate international transaction and suggested for the adjustment, which the assessee has been assisting basing on the decision of the Hon'ble jurisdictional High Court in the case of Kusum Healthcare Pvt.Ltd. (supra).

9. It is the settled principle of law, after the decision of the Hon'ble Jurisdictional High Court in the Case of Kusum Healthcare Pvt.Ltd. (supra), that in TNMM, the net margin earned was exposed with appropriate working capital adjustment to comparable companies; that the receivable mentioned in the Explanation to Sec.92B can be taken up for transfer pricing scrutiny only when it is a standalone activity or a demonstrated approach is adopted by the assessee to use Accounts Receivable to have free working capital funding; and that if the impact of extended credit period on working capital was factored in the pricing / profitability, then there is no tax leakage or evasive tactics adopted by the taxpayer while transacting with the AE. With this view of the matter, we find it difficult to countenance the argument that, had the funds been received in time and deployed would have earned interest income, which would have been relevant only when the original transaction of sale or services provided to the AE was benchmarked under CUP method.

10. In view of this settled position of law, we are of the considered opinion that, if the impact of extended credit period on working capital was factored in the pricing / profitability, then any credit period allowed to AE gets subsumed in TNMM and there is no tax leakage or evasive tactics adopted by the taxpayer while transacting

with the AE, and there is no need for a separate benchmarking. Consequently, we find it difficult to sustain the addition and accordingly, delete the same.

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

Pronounced in open court on this 31st of July 2019.

Sd/-

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated: 31 /07/2019

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	
Draft placed before author	
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	