

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

SA No. 611/Del/2019
(In ITA No. 4453/Del/2019)
(Assessment Year: 2015-16)

Concentrix Daksh Services India Pvt. Ltd, DLF IT SEZ, Building No. 14, Tower-D, 17 th Floor, DLF Cyber City, Sector-24 & 25A, DLF Phase-III, Gurgaon (Appellant)	Vs.	DCIT, Circle-6(2), New Delhi (Respondent)
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Concentrix Daksh Services India Pvt. Ltd, DLF IT SEZ, Building No. 14, Tower-D, 17 th Floor, DLF Cyber City, Sector-24 & 25A, DLF Phase-III, Gurgaon (Appellant)	Vs.	DCIT, Circle-6(2), New Delhi (Respondent)
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Assessee by :	Shri Ajit Korde, Adv
Revenue by:	Shri H. K. Choudhary, CIT DR
Date of Hearing	04/06/2019
Date of pronouncement	27/08/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal [ITA No 4453/Del/2019] is filed by Concentrix Daksh Services (India) Pvt Limited (Assessee, Appellant) against the order of The Deputy Commissioner of Income tax, Circle 6 (2) , New Delhi [The ld AO] passed u/s 143(3) rws 144C of The Income tax Act [The Act] in pursuance to Direction of The Dispute Resolution Panel – 1, New Delhi [The ld DRP] passed u/s 144C (5) of the Act on 29/03/2019 issued on

objection filed by the Assessee against draft order of assessment passed by the Ld AO on 30/11/2018 where in transfer pricing adjustment u/s 92CA (3) of the act proposed by the Additional Commissioner of Income tax , Transfer Pricing Officer -1 92), New Delhi [The Ld TPO] per order dated 28/9/2018 were incorporated.

2. The assessee has raised the following grounds of appeal:-

- “1. That, the final assessment order framed by the learned Deputy Commissioner of Income- tax, Circle - 6(2), New Delhi (hereinafter referred to as “the Ld. AO”) pursuant to the directions of the Hon’ble Dispute Resolution Panel - I (hereinafter referred to as “the Hon’ble DRP”) under section 143(3) read with section 144C of the Income-tax Act, 1961 (“the Act”), is a vitiated order having been passed in violation of principles of natural justice and is otherwise arbitrary and is thus bad in law and is void ab-initio.
2. That on the fact of the case and in law, the Ld. AO/ Ld. TPO /Hon’ble DRP has erred, in making an adjustment of INR 30,82,559 to the total income of the Appellant in respect of notional interest on outstanding receivables.
 - 2.1 That on the facts of the case and in law, the Ld. AO/ Ld. TPO/ Hon’ble DRP has erred in re-characterizing the inter-company receivables as a separate international transaction of unsecured loan and imputing interest on such transaction.
 - 2.2 That on the facts of the case and in law, the Ld. AO/ Ld. TPO/ Hon’ble DRP has erred in not appreciating the fact that accounts receivable/ accounts payable arising out of the international transaction of provision of IT enabled services by the Appellant to its AEs, are closely linked to the international transaction and since the TPO/ Hon’ble DRP has determined the primary international transaction at an arm’s length price after considering working capital adjusted margins of comparable companies, no separate adjustment can be made for such inter-company receivables.
 - 2.3 That on the facts of the case and in law, the Ld. AO/ Ld. TPO/ Hon’ble DRP has erred in not appreciating the fact that since the weighted average period of realization of inter-company invoices of 36.12 days is less than the credit period of 60 days as stipulated in the intercompany agreement, no TP adjustment in respect of notional interest on outstanding receivables is warranted.
 - 2.4 That on the facts of the case and in law, the Ld. AO/ Ld. TPO/ Hon’ble DRP has erred in making TP adjustment on notional interest on outstanding receivables from AEs even though no interest was charged for delayed realisation from third party customers as well.

- 2.5 *That on the facts of the case and in law, the Ld. AO/ Ld. TPO/Hon'ble DRP has erred in not considering the period of 90 days, as provided under section 92CE of the Income Tax Act, 1961 read with Rule 10CB of the Income Tax Rules, 1962, for the purpose of computing the subject adjustment.*
- 2.6 *That on the facts of the case and in law, the Ld. AO/ Ld. TPO/Hon'ble DRP has erred, by not giving the benefit of set off the outstanding payables and advances from AEs while computing the TP adjustment on notional interest on outstanding receivables*
- 2.7 *That on the facts of the case and in law, the Ld. AO/ Ld. TPO/Hon'ble DRP has erred, by considering the interest rate of LIBOR plus 400 basis points without any legal basis for the same.”*

3. Assessee is in Indian company engaged in providing IT enabled services in the nature of customer relationship management [CRM] services in India and worldwide. It is 100% subsidiary of a Netherlands company. It is remunerated on a cost plus basis. The assessee filed its return of income for the impugned assessment year on 30/11/2015 declaring the total income of INR 147,51,34,650/-. The learned assessing officer found that assessee has entered into international transactions and therefore referred the matter to the learned transfer pricing officer for determination of the arm's-length price of the international transactions. It was noted that assessee has entered into following international transactions:-

serial number	nature of transaction	value of transaction in INR
1	provision of business process services to associated enterprise	8002840828/-
2	Receipt of subcontracting services from associated enterprises	979542202/-
3	Receipt of legal and professional charges from associated enterprise	498230/-
4	Reimbursement of expenses paid to associated enterprise	26018514/-
5	Reimbursement of expenses from associated enterprises	71799201/-

4. Assessee also entered into certain specified domestic transactions. In the transfer pricing documentation all the international transactions and specified domestic transactions were aggregated and Transactional Net Margin Method [TNMM] was used as the Most Appropriate Method [MAM] adopting the profit level indicator [PLI] of operating profit to operating cost (OP/OC) which was calculated of the assessee at 14.13 % whereas the profit level indicator of the comparable selected by the assessee using multiple year data was less than PLI of the assessee, it was contested that the transactions entered by into by the assessee are at arm's-length.
5. The learned transfer pricing officer proposed an adjustment of INR 17,58,64,489/- in the provision of ITES services international transaction and further proposed an adjustment of INR 30,82,559/- on account of interest on overdue receivable from the associated enterprises. Consequently the draft assessment order was passed by the learned AO.
6. On 30/11/2018, draft of assessment was passed at total income of the assessee at INR 165,40,81,698/- against the returned income of the assessee at INR 147,51,34,650/- wherein transfer pricing adjustment amounting to Rs. 17,89,47,048/- proposed by the learned transfer pricing officer was incorporated. Assessee filed objection before the learned Dispute Resolution Panel. The learned DRP passed certain directions for deletion of adjustment of ALP on ITES services. However the addition on account of overdue of receivable from associated Enterprises of Rs. 30,82,559/- held to be an 'international transaction.' Adjustment on account of ALP was also upheld. Accordingly the learned assessing officer passed order u/s 143 (3) read with section 144C of the income tax act on 26/4/2019 wherein

the only adjustment was made with respect to interest on receivable of INR 30,82,559/-. Consequently the total income of the assessee was assessed at INR 147,82,17,210/- against the returned income of INR 147,51,34,650/-. The assessee aggrieved with the order of the learned assessing officer has preferred this appeal before us.

7. The only dispute in this appeal is adjustment to the international transaction of the assessee on account of the arm's-length price with respect to the interest on overdue receivable of INR 3082559/-.
8. The learned authorised representative submitted that the working capital adjustment has been granted by the learned transfer pricing officer himself while computing the arm's length price of the provision of ITES services to associated enterprises and further the working also considered in the learned transfer pricing officer's order giving effect to directions of the learned Dispute Resolution Panel. He therefore submitted that where working capital adjustment has been granted, it takes into account the impact of outstanding receivable on the profitability, therefore, no separate adjustment is warranted on account of overdue receivables. He further relied upon the decision of THE PRINCIPAL COMMISSIONER OF INCOME TAX VS. KUSUM HEALTHCARE PRIVATE LIMITED (ITA number 765/2016) of the honourable Delhi High Court and the decision of the coordinate bench in case of AGILENT TECHNOLOGIES (INTERNATIONAL) PRIVATE LTD VS ASST COMMISSIONER OF INCOME Tax (ITA number 4191/del/2018). He therefore submitted that the issue is squarely covered in favour of the assessee.

9. The learned departmental representative vehemently supported the order of the learned transfer pricing officer and the Learned Dispute Resolution Panel.
10. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly in this case the working capital adjustment is granted by the learned transfer pricing officer, same is also not disputed before the learned dispute resolution panel. Therefore it is apparent that the outstanding receivable from the associated enterprises which are shown as a debtor in the books of the assessee are part of the working capital of the assessee. If the outstanding debtors are part of the working capital of the assessee, they have already been included in the working capital adjustment worked out. Thus, if the adjustment proposed by the learned transfer pricing officer and approved by the learned dispute resolution panel accepted working capital adjustment, then it will amount to double addition in the hands of the assessee. Further the issue is also squarely covered by the decision of the honourable Delhi High Court in case of **PRINCIPAL COMMISSIONER OF INCOME TAX VS KUSUM HEALTHCARE PRIVATE LIMITED** wherein para number 11 of the decision the honourable High Court has accepted the reasoning that with the assessee having already factored in the impact of the receivable on the working capital and thereby on its pricing/profitability and that of its comparables, any further adjustments only on the basis of the outstanding receivable would have distorted the picture and re-characterize the transaction. Thus, respectfully following the decision of Honourable Delhi High court, we do not find any reason to sustain the addition of INR 3 082559/- made by the learned transfer pricing officer incorporated in the

final assessment order. Orders of lower authorities on this issue are reversed. Accordingly ground number 2 of the appeal of the assessee is allowed.

11. Ground number 1 of the appeal of the assessee is general in nature and therefore same is dismissed.
12. In the result appeal filed by the assessee is partly allowed.
13. As we have already allowed the appeal of the assessee, the consequent stay petition filed by the assessee in SA No. 611/Del/2019 becomes infructuous and hence same is dismissed.

Order pronounced in the open court on 27/08/2019.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 27/08/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi