

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5817/Del./2016  
(Assessment Year : 2010-11)**

M/s. McKinsey Knowledge Centre India Pvt. Ltd.,  
3<sup>rd</sup> Floor, Block III, Vatika Business Park,  
Sector 49, Sohna Road,  
Gurgaon – 122 018 (Haryana).

vs. DCIT, Circle 6 (1),  
New Delhi.

**(PAN : AACCM2356G)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Divesh Chowla, Advocate  
REVENUE BY : Shri Subha Kant Sahu, Senior DR

Date of Hearing : 01.10.2019  
Date of Order : 21.10.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER**

The Appellant, M/s. McKinsey Knowledge Centre India Pvt. Ltd. (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 21.07.2016 passed by the Id. CIT(A)-44, New Delhi in consonance with the orders passed by the Id. TPO/AO under section 250 of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2010-11 on the grounds inter alia that :-

*“On the facts and circumstances of the case and in law, the learned Assessing Officer ("AO") has erred in passing the assessment order under section 143(3) of the Income-tax Act, 1961 ("the Act") after considering the adjustment proposed by the learned Additional Commissioner of Income Tax, Transfer Pricing Officer-I(3), New Delhi ("TPO") in his order passed under section 92CA(3) of the Act and subsequently confirmed by the Hon'ble Commissioner of Income Tax (Appeals) ["CIT(A)"] Each of the ground is referred to separately, which may kindly be considered independent of each other.*

*That, on the facts and circumstances of the case and in law:*

**A. GROUND RELATING TO TRANSFER PRICING MATTERS**

*1. The learned TPO / AO / CIT(A) have erred in making an addition of INR 362,547 to the total income of the Appellant on account of notional interest on inter-company receivables arising from provision of IT support services by the Appellant to its associated enterprises (" AEs")*

*2. The learned TPO / AO / CIT(A) have erred in not accepting the economic analysis undertaken by the Appellant in accordance with provisions of the Act read with the Income-tax Rules, 1962 ("the Rules") and modifying the same for determination of arm's length price ("ALP") of the inter-company transaction to hold that the same is not at arm's length.*

*3. The learned TPO / AO / CIT(A) have erred in holding inter-company receivables arising from provision of IT support services to constitute an international transaction and proceeding to benchmark the same by application of Comparable Uncontrolled Price ("CUP") method.*

*4. The learned TPO / AO / CIT(A) have erred in not appreciating that once the primary transaction of provision of IT support services is held to be at ALP, then the inter-company receivables arising therefrom (being consequential and closely linked to the main transaction) also conform to the arm's length principle, and need not be analysed separately.*

*5. Without prejudice to Ground 3 and 4, the learned TPO / AO / CIT(A) have erred in imputing interest on outstanding receivables in respect of the Appellant without factoring into the credit period allowed by comparable companies, which essentially represents the arm's length conduct in uncontrolled transaction.*

**B. GROUND RELATING TO CORPORATE TAX MATTERS**

**6. The learned AO / CIT (A) has erred on the facts and circumstances of the case and in law by reducing the claim of depreciation on cable cubbies and wireless access points (collectively referred to as 'assets' hereinafter) by applying the depreciation rates of 15 percent as applicable to "Plant and Machinery" instead of 60 percent as applicable to "Computers" amounting to INR 123,483.**

**(i) The learned AD / CIT (A) failed to appreciate that the assets classified as computer accessories/peripherals i.e. cable cubbies and wireless access points are integral part of the computer system and cannot work independently.**

**(ii) The learned AD / CIT (A) has erred on the facts and circumstances of the case by arbitrarily computing the depreciation on computer peripherals and accessories and not clearly providing the basis of calculation of reducing the depreciation of computer and computer peripherals/ accessories.**

**7. Without prejudice to above, the learned AD / CIT (A) has erred in disallowing additional depreciation of 45 percent on printers, cable cubbies and wireless access points amounting INR 159,483 (being difference of depreciation claimed in tax return at 60 percent vis-a-vis 15 percent allowed as per assessment order under section 143(3) of the Act) based on figures as appearing in the Tax Audit Report ("TAR") for preceding AY 2009-10 and not based on 'Additions to fixed assets' as appearing in TAR for the subject AY 2010-11."**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. McKinsey Knowledge Centre India Pvt. Ltd., the taxpayer established in February 1999 to provide research and information services to McKinsey for assistance in their projects. During the year under assessment, the taxpayer has referred data analytics, competitor intelligence and admin for costing and domain specific unrelated to a party, which falls under the definition of Information Technology Support Services (ITSS).

3. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AE) as under :-

<i>S.No.</i>	<i>International Transaction</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Provision of research and information services</i>	<i>1,32,49,81,602</i>
<i>2</i>	<i>Provision of Information Technology Support Services</i>	<i>6,61,02,361</i>
<i>3</i>	<i>Provision of Research and Information Services</i>	<i>25,61,93,674</i>

4. Ld. TPO agreeing with the transfer pricing study relied upon by the taxpayer found international transactions qua ITES segment services at arm's length and has drawn no adverse inference. However, ld. TPO disputed the issues as to receivables and calculated the interest in the light of the service agreement, wherein the agreed period of payment of invoice is 8 weeks (56 days), on the days beyond the agreed period as under :-

<i>S.No.</i>	<i>Date of Invoice</i>	<i>Amount INR</i>	<i>Date of receipt of payment</i>	<i>Delay</i>	<i>Interest at 14.88% (till 31<sup>st</sup> March 2010)</i>
<i>Interest on invoices raised during the FY 2009-10</i>					
<i>1</i>	<i>31.03.2009</i>	<i>Rs.4,01,32,745</i>	<i>25.08.2009</i>	<i>87</i>	<i>Rs.14,12,250</i>
<i>Interest on receivables standing on 31<sup>st</sup> March 2009</i>					
<i>1</i>	<i>20.10.2009</i>	<i>Rs.2,94,79,692</i>	<i>09.12.2009</i>	<i>0</i>	<i>-</i>
<i>2</i>	<i>31.03.2010</i>	<i>Rs.3,90,79,428</i>	<i>12.08.2010</i>	<i>74</i>	<i>-</i>
<i>3</i>	<i>31.03.2010</i>	<i>Rs.3,38,578</i>	<i>12.08.2010</i>	<i>74</i>	<i>-</i>
				<i>Total</i>	<i>Rs.14,12,250</i>

And thereby proposed transfer pricing adjustment of Rs.14,12,250/- on account of outstanding receivables.

5. Assessing Officer also made addition of Rs.1,59,483/- on account of excess depreciation claimed on computer accessories on the ground that the assessee has purchased Cable Cubbies, printers and wireless access point of Rs.1,30,957/-, Rs.80,000/- & Rs.1,43,450/- total Rs.3,54,407/-, on which claimed depreciation @ 60% and thereby disallowed the excess depreciation @ 45% at Rs.1,59,483/- i.e. 45% of Rs.3,54,407/-.

6. The taxpayer carried the matter before the Id. CIT (A) by way of filing an appeal who has partly allowed the appeal. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. So far as question of proposed adjustment made by the TPO and confirmed by the Id. CIT (A) on account of interest of outstanding receivables arising from the international transactions of research and ITSS, is concerned, the Id. AR for the assessee at the very outset brought to the notice of the Bench that the present

issue has already been decided in favour of the taxpayer by the *co-ordinate Bench of the Tribunal in taxpayer's own case in ITA No.7349/Del/018 for AY 2014-15 vide order dated 16.09.2019.*

9. Undisputedly, there is no change in the business model of the taxpayer and services have been rendered by the taxpayer to its AE during the year under assessment as per the same service agreement of the taxpayer. Perusal of the order passed by the coordinate Bench of the Tribunal in *taxpayer's own case for AY 2014-15* (supra) shows that the issue as to making transfer pricing adjustment on account of outstanding receivables arising out of international transactions qua research and information and ITSS has been squarely dealt with and decided in favour of the assessee, the operative part of which is expected for ready perusal as under:-

*“5.7 We have heard the rival submission of the parties and perused the relevant material on record. The Tribunal in the case of Pegasystems Worldwide India (P) Ltd Vs ACIT (supra) has held as in case of a debt free company, there is no requirement for making transfer pricing adjustment on account of the interest on outstanding receivables. The relevant finding of the Tribunal is reproduced as under:*

*“17.2. Ld. Counsel submitted that the issue of charging of interest beyond the period was not adjudicated and DRP reduced the rate of interest from 12% LIBOR plus 2.5 points. It was submitted that Assessee was a debt free company, AE takes care of funding, no interest was charged and there is no liability of interest and therefore, notional interest income cannot be brought to tax. Assessee relied on the principles laid down by Co-ordinate Bench at Mumbai in the case of Lintas India Pvt. Ltd., in ITA No.2024/Mum/2007 dt. 09-11-2012 and also Mastek Ltd., Vs. ACIT in ITA No. 3120/Ahd/2010 then referring to the provisions of the Act the explanation brought by amendment in 2012 Finance Act. It was submitted that even though retrospective, it does not cover Assessee's transaction as*

*the word 'capital financing' used there particularly refers to loans or advances given for capital financing, whereas in Assessee's case, these are outstanding services rendered but not capital financing. The words are to be interpreted invoking the principles ejusdem generis and so the outstanding receivables cannot be equated to capital financing as amended by the provisions of the Act. It was further submitted that working capital adjustments are being made while analyzing the operational performance of the companies, therefore, outstanding amount gets adjusted in working capital adjustments and another separate addition is not required under the TP provisions. Thus, it was contended that the outstanding amounts are not to be considered for adjustment.*

*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."*

*5.8 We have verified the balance sheet of the assessee available on page 134 of the paper book along with notes on page 143 of the paper book and we find that the assessee has not borrowed any fund for its business activity and, thus, it being a debt free company, the ratio of the decision of the Tribunal in the case of Pegasystems Worldwide*

*India (P) Ltd Vs ACIT (supra) is squarely applicable on the facts of the case. Accordingly, we delete the transfer pricing adjustment made on account of interest on receivables. The grounds No. 13 to 15 of the appeal are accordingly allowed.”*

10. During the year under assessment, we have perused the balance sheet of the taxpayer, relevant pages 10 to 13 of the paper book, which shows that no funds have been borrowed by the taxpayer to carry out its business activities nor there was any such requirement. Moreover, the taxpayer is a captive service provider having no loan requirement nor paid any interest. So, following the decision rendered by the *coordinate Bench of the Tribunal in taxpayer’s own case for AY 2014-15* (supra), we are of the considered view that addition made/confirmed by TPO/AO/CIT (A) on account of transfer pricing adjustment qua interest on receivables is not sustainable, hence ordered to be deleted.

11. So far as second ground raised by the taxpayer as to reducing the claim of depreciation on cable cubbies and wireless access points by applying the depreciation rate of 15% as applicable to plant and machinery is concerned, the ld. AR for the taxpayer contended that the ld. DRP has already given the similar relief to the *taxpayer in AY 2009-10 vide order dated 23.12.2013* and this issue has since attained finality having not been challenged further by the Revenue, but the ld. CIT (A) has decided the issue in

mechanical manner by making a cut-paste of the findings returned by the AO in AY 2009-10 in para 4 at page 46 of the paper book.

12. We have perused the order dated 23.12.2013 passed by the ld. DRP for AY 2009-10 wherein the similar depreciation claimed by the taxpayer has been allowed by providing depreciation @ 60% on the computer peripherals by following the decision rendered by Hon'ble Delhi High Court in case cited as *CIT vs. BSES Rajdhani Powers Ltd. in ITA 1266/2010 order dated 31.08.2010*. Even otherwise, when we perused the list of computer peripherals provided by the taxpayer to AO/CIT (A), now available at pages 52 to 56 of the paper book, the taxpayer has not purchased any cable cubbies as mentioned by the AO. In view of the matter, we are of the considered view that the taxpayer is entitled for depreciation @ 60% of computer peripherals. Consequently, the AO is directed to allow the same after due verification

12. Resultantly, the appeal filed by the taxpayer is allowed.

**Order pronounced in open court on this 21<sup>st</sup> day of October, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 21<sup>st</sup> day of October, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.