

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I-2' NEW DELHI****SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER****ITA No. 7890/Del/2019
Assessment Year: 2015-16**

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| Teradata India Pvt. Ltd. 301-302, 3 rd Floor, Tower-4A, S-Block, DLF Corporate Park, DLF City Phase III, Gurugram, Haryana PAN : AACCT6715A (APPELLANT) | Vs | ACIT, Circle-4(1) New Delhi (RESPONDENT) |
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**Stay Application No. 955/Del/2019
(In ITA No. 7890/Del/2019)
Assessment Year: 2015-16**

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| Teradata India Pvt. Ltd. 301-302, 3 rd Floor, Tower-4A, S-Block, DLF Corporate Park, DLF City Phase III, Gurugram, Haryana PAN : AACCT6715A (APPELLANT) | Vs | ACIT, Circle-4(1) New Delhi (RESPONDENT) |
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| Appellant by | Sh. Ajit Korde, Adv. |
| Respondent by | Ms. Nidhi Sharma, Sr. DR |

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| Date of Hearing | 22.10.2019 |
| Date of Pronouncement | 22.11.2019 |

ORDER**PER SUCHITRA KAMBLE, JM**

This appeal is filed against the order dated 27.08.2019 passed u/s 144C(1) of the Income Tax Act, 1961 passed by ACIT, Circle 4(1), Gurgaon for assessment year 2015-16.

2. The grounds of appeal are as under :

1 *“That on facts and in law, the order passed by the Additional Commissioner of Income Tax - Transfer Pricing Officer - 1(3), New Delhi (“the learned TPO”), the draft assessment order and the final assessment order passed by the Assistant Commissioner of Income Tax, Circle-4(1), Gurugram (“Learned AO”) and the final order passed by the Assistant Commissioner of Income Tax, Circle-4(1), Gurugram pursuant to the directions of Dispute Resolution Panel -1, New Delhi (“Hon’ble DRP”), are bad in law and void- ab-initio.*

2 *The learned AO following the order of the learned TPO and the Hon’ble DRP has erred in law and on the facts of the case in making an upward adjustment of Rs. 1,66,10,1151- on account of interest on delayed receivables.*

Part I - Transfer Pricing Grounds

3 *That on facts of the case and in law, the DRP/TPO/AO have erred in rejecting the economic analysis undertaken by the Appellant by conducting a fresh economic analysis for the impugned transactions.*

4 *That on facts and in law, the DRP/TPO/AO have grossly erred by charging interest on credit period granted by the company under normal trade practices:*

i. *by Identifying outstanding receivables as a separate international transaction;*
ii. *by re-characterizing the nature of outstanding receivables as loan advanced to Associated Entities (“AEs”);*

iii. *by determining the Comparable Uncontrolled Price (“CUP”) method as the most appropriate method without providing any comparable uncontrolled transaction(s) thereby compromising the most fundamental rules and provisions laid down in the Act and the Rules to determine the arm’s length price of the international transaction;*

iv. *by applying an interest rate on outstanding receivables at LIBOR plus 400 basis points.*

v. *By ignoring the fact that account receivables arising from an international transaction are closely linked to the main transaction and should be benchmarked, using a combined transaction approach, by making a working capital adjustment.*

vi. *by disregarding the order passed by the Hon’ble ITAT in Appellant’s*

own case for AY 2012-13, AY 2013-14 and AY 2014-15.

vii. by disregarding the fact that the Hon'ble ITAT had placed reliance on the order passed in case of Kusum Health Care Private Limited (ITA No. 765/2016) by the Hon'ble High Court of Delhi.

5. That, without prejudice to the above, once working capital adjustment is granted no separate adjustment on account of outstanding receivables is maintainable.

Part II- Consequential grounds of appeal

6. That the learned AO has passed an order under section 143(3) r.w.s 144C(1) of the Act which suffers from computational errors, and consequently, erred in computing the amount of tax demand and interest payable as per the impugned order.

7. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty under section 271(1)(c) of the Act.

8. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in not giving credit of Foreign tax credit amounting to INR 1,24,35,314.

9. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234A, 234B and 234C of the Act.

The above grounds of appeal are mutually exclusive & without prejudice to each other. The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

The Appellant prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.”

3. Teradata India was incorporated on 22 May 2007 and is a wholly owned subsidiary of Teradata Belgium Holdings LLC, US which is a wholly owned subsidiary of Teradata International Inc., US. Teradata Corporation, US holds 100 percent shares of Teradata International Inc, US. Teradata India is the local sales and distribution centre in India of Teradata solutions. Teradata India also : 1) provides Software Services; and 2) hosts

Global Consulting Centre ("GCC") 'wherein services in the nature of IT enabled are provided to other non-Indian Teradata Associated Entities (*AEs"). For the distribution segment, Teradata India is assured of a targeted return by its AEs and for the software services and GCC services segment, the Assessee is remunerated on cost-plus basis where all costs incurred by the Assessee are recovered along with a mark-up from the AEs. Accordingly, the Assessee operates in a risk- mitigated environment in respect of each of the said services. For the relevant assessment year the Assessee filed its return of income on 30.11.2015 declaring a total income of Rs. 41,09,17,230. The return was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny and a notice under section 143(2) of the Act dated 13 April 2016 was issued to the Assessee for initiation of assessment proceedings. Reference was made u/s 92CA of the Act to the Transfer Pricing Officer. The TPO vide order dated 22.10.2018 made total adjustment of Rs. 12,50,25,217/- . During the course of assessment, the information was furnished by the Assessee. The Assessing Officer issued a draft assessment order dated 28.12.2018. Thereafter the assessee filed objection before DRP. The DRP issued certain direction to the TPO/ AO vide direction dated 22.10.2018. The Assessing Officer vide order dated 27.08.2019 made adjustment of Rs. 1,66,10,115 as regards to interest on receivables.

4. Being aggrieved by the assessment order the assessee filed present appeal before us.

5. The Ld. AR submitted that the only issue contested herein is related to ground no. 4 regarding charging of interest on credit period granted by the company under normal trade practices by identifying outstanding receivables as a separate international transaction and by re-characterizing the nature of outstanding receivables as loan advanced to Associated Entities The Ld. AR submitted that this issue is covered in favour of the assessee by assessee's own order for assessment year 2012-13, 2013-14 and 2014-15 bearing ITA No. 8054/Del/2018 order dated

25.02.2019.

6. The Ld. DR submitted that the receivable is related to ITES service or not should be verified first. The Ld. DR relied upon the Assessment Order.

7. We have heard both the parties and perused all the relevant material available on record. Ground nos. 1, 2, 3 are general in nature hence, dismissed. As regards to ground no. 4, the Tribunal in assessment year 2014-15 held as under :-

“4.2 We have heard the rival submission of the parties and perused the relevant material on record. We find that the learned DRP directed to give working capital adjustment and re-compute the interest chargeable on outstanidn net receivables by applying LIBOR + 400 bps. We also note that the Tribunal in ITA No. 87/Del/2017 for assessment year 2012-13 in case of assessee, following the decision of the Hon’ble Jurisdiction High Court in the case of Principal Commissioner of Income Tax vs. Kusum Health Care Pvt. Ltd. in I.T.A. No. 765/2016 vide judgment dated 25th April, 2017, held that “no separate adjustment on account of interest receivable is required when working capital adjustment has already been made to the margins of the comparables while comparing the margin of the assessee under the TNMM. The relevant finding of the Tribunal is reproduced as under:

“9. We have heard both the parties and perused the relevant case laws along with order of the TPO, DRP & A.O. In respect of first issue the Ld. AR relied upon the order of jurisdictional High Court in case of Kusum Health Care Pvt. Ltd. wherein it is held as under:-

10. The Court is unable to agree with the above submissions. The inclusion in the Explanation to Section 92B of the Act of the expression ‘receivables’ does not mean that de hors the context every item of ‘receivables’ appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterized as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed

limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the Assessee will have to be studied. In other words, there has to be a proper inquiry by the TPO by analyzing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way.

11. *The Court finds that the entire focus of the AO was on just on AY and the figure 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-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction. This was clearly impermissible in law as explained by this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).*

The issue in the present appeal is also identical therefore, squarely covered by this judgment in favour of the assessee. Therefore, Ground No. 4 & 5 are allowed.”

4.3 *In assessment year 2013-14, in ITA No. 7885/del/2017, also the Tribunal following the decision, allowed the appeal of the assessee observing as under:*

“8. *After considering the rival submissions, we are of the view that the issue is covered in favour of the assessee by the order of the ITAT, Delhi Bench in the case of same assessee vide order dated 08th August, 2017, in which the Tribunal following the judgment of the Delhi High Court in the case of Kusum Healthcare Pvt. Ltd., decided the issue in favour of the assessee. The DRP has also issued direction in its order that this issue have been decided in favour of the assessee. But, it is not clear whether any appeal has been filed/being filed by the*

Department before the Hon'ble jurisdictional Delhi High Court. Learned Counsel for the Assessee, however, made a statement that the Department has not filed any appeal before the Hon'ble jurisdictional Delhi High Court. In this view of the matter, we are of the view that the issue is covered in favour of the assessee by the order of the ITAT, Delhi Bench in the case of the same assessee for the A.Y. 2012-2013 in ITA.No.87/Del./2017 dated 08th August, 2017. Even if an appeal would have been pending before the Hon'ble jurisdictional Delhi High Court, is not a ground to take a contrary view against the assessee unless the order of the Tribunal have been set aside or stayed by the Hon'ble jurisdictional Delhi High Court. In this view of the matter, we set aside the orders of the authorities below and delete the entire addition. In the result, ground Nos. 3 to 6 of the assessee are allowed.”

4.4 In view of the above, following the decision of the Tribunal in assessment years 2012-13 and 2013-14, we set aside the finding of the learned DRP complied by the Assessing Officer in the impugned order and delete the adjustment on account of the interest receivables. In the result, the grounds No. 3 to 5 of the appeal of the assessee are allowed.”

From the perusal of the order passed in the Assessment Year 2014-15, it is seen that the issue involved in the present assessment is identical. Besides, the contentions of the Ld. DR does not sustain as there is no receivables in relation to ITES services as per the records. Thus, we set aside the finding of the DRP which was complied by the Assessing Officer and delete the adjustment on account of the interest receivables Therefore, Ground No. 4 is allowed. As regards to Ground No. 5, the same becomes infructuous as Ground No. 4 is decided in favour of the assessee. Thus, Ground No. 5 is dismissed. As regards to Ground No. 6 to 9, the same are consequential, hence are not adjudicated upon at this juncture. Thus, the appeal of the assessee is partly allowed for statistical purpose. The Stay Application becomes infructuous, therefore, dismissed.

8. In result, appeal of the assessee is allowed and stay application is dismissed.

Order pronounced in the Open Court on 22nd November, 2019.

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

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 22/11/2019
Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

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| Date of dictation | 22/10/2019 |
| Date on which the typed draft is placed before the dictating Member | 22/10/2019 |
| Date on which the typed draft is placed before the Other Member | 22.11.2019 |
| Date on which the approved draft comes to the Sr. PS/PS | 22.11.2019 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 22.11.2019 |
| Date on which the fair order comes back to the Sr. PS/PS | 22.11.2019 |
| Date on which the final order is uploaded on the website of ITAT | 22.11.2019 |
| Date on which the file goes to the Bench Clerk | 22.11.2019 |
| Date on which the file goes to the Head Clerk | |