

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.4132/Del./2017
(Assessment Year : 2013-14)**

M/s. Target Sourcing Services India vs. ACIT, Circle 25 (1),
Private Limited, New Delhi.
2nd Floor, Copia Corporate Suites,
9, Non-Hierarchical Commercial Centre,
Jasola,
New Delhi – 110 044.

(PAN : AACCT7694Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Rajnandini Shukla, Advocate
REVENUE BY : Shri Rakesh Kumar, Senior DR

Date of Hearing : 18.12.2019
Date of Order : 31.12.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER

Appellant, M/s. Target Sourcing Services India Pvt. Limited (hereinafter referred to as 'the taxpayer') by filing the present appeal sought to set aside the impugned order dated 20.04.2017 passed by the AO in consonance with the orders passed by the ld. DRP/TPO under section 143 (3) read with section 144C of the Act qua the assessment year 2013-14 on the grounds inter alia that :-

“1. That the Hon'ble DRP erred in fact and law by upholding an adjustment of Rs. 19,79,520/- proposed by the Ld. AO/ Ld. TPO with respect to the outstanding receivables being re-characterised as loan deemed to be extended by the Appellant to its Associated Enterprise CAE”) and accordingly proceeded to impute an interest on such outstanding receivables from AE and in doing so have grossly erred by:

1.1. Ignoring the fact that working capital adjustment takes into account the impact of outstanding receivables on profitability and therefore, no further imputation of interest is warranted;

1.2. Disregarding the intercompany pricing arrangement and not appreciating the fact that unlike a loan or borrowing, outstanding receivable is not an independent transaction which can be viewed on standalone basis and needs to be examined/aggregated with the commercial transaction as a result of which the debit balance has come into existence;

1.3. Ignoring the fact that Appellant is a debt free company and therefore, imputation of interest on account of blocked funds is unwarranted;

1.4. Ignoring the fact that Appellant has earned higher operating profit to operating cost (OP/OC) margin as compared to the comparable companies and further the additions proposed falls within +/-3% range allowed under the Indian Transfer Pricing regulations; and

1.5. Ignoring the fact that even if the notional interest on the outstanding receivables is being charged, the same should be net-off against the outstanding payables.

2. The Hon'ble DRP has erred in law by upholding the reference made by the Ld. AO to the Ld. TPO by not appreciating that such a reference suffers from jurisdictional error as the Ld. AO has not recorded any reasons in the assessment order based on which he reached the conclusion that it was 'necessary or expedient' to refer the matter to the Ld. TPO for computation of the arm's length price ("ALP"), as is required under Section 92CA(1) of the Act.

3. The Hon'ble DRP has erred in law by upholding the adjustment made by the Ld. TPO/ Ld. AO thereby by not appreciating that while making the said adjustment the Ld. TPO/Ld. AO have not satisfied the conditions set out in section 92C(3) of the Act.

4. That the Ld. AO has erred both in facts and in law, in charging interest under Section 234A, 234B, 234C and 234D of the Act and withdrawing interest u/s 244A of the Act as applicable.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Target Sourcing Services India Pvt. Limited, the taxpayer was incorporated on 26.09.2007 in New Delhi to facilitate sourcing of goods and products from India including identification of vendors, and to provide assistance vendors in adhering to design standards communicated to them, quality control and follow up with vendor for timely delivery of the goods. During the year under assessment, the taxpayer entered into international transactions with its Associated Enterprises (AE) as reported in Form 3CEB as under :-

<i>S.No.</i>	<i>International Transactions</i>	<i>Method Used</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Provision of Sourcing Support Services</i>	<i>TNMM</i>	<i>25,80,37,141</i>
<i>2</i>	<i>Reimbursement of expense-paid/payable</i>	<i>TNMM</i>	<i>1,96,26,305</i>
<i>3</i>	<i>Reimbursement of expense-receive/receivable</i>	<i>NA</i>	<i>1,79,57,901</i>

3. Ld. Transfer Pricing Officer (TPO) noticed that taxpayer has substantial amount of outstanding receivables from the AE which

remained outstanding for a prolonged period and no interest has been charged on such amount. Ld. TPO treated the transactions between the taxpayer and its AE as to outstanding receivables as international transactions and proceeded to benchmark the same separately by relying upon the amendment to section 92B of the Income-tax Act, 1961 (for short 'the Act') inserting the Explanation (1)(c) to section 92B of the Finance Act, 2012 with effect from 01.04.2002.

4. Ld. TPO observed that since the taxpayer has failed to show that the delay in payment of receivables was compensated by the AE through a setoff of another transaction by declining a contention that no separate adjustment can be made towards interest on overdue receivables as the entity level results are already considered by the TPO and has also declined the aggregate approach adopted by the taxpayer. Declining the contentions raised by the taxpayer, ld. TPO proceeded to hold that normally in uncontrolled transactions of business, 30 days credit facility is given to make interest free payment and thereafter interest @ 4.4569% per annum that is average of 6 months LIBOR is chargeable on the outstanding amount and consequently, calculated the interest amount on the outstanding receivables at

Rs.54,09,237/- as per detailed computation made in Anenxure-1 annexed with the order.

5. The taxpayer carried the matter before the Id. DRP by way of filing objections, who has upheld the proposed additions by rejecting the objections. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

6. 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.

7. Ld. AR for the taxpayer challenging the impugned order contended inter alia that re-characterization of outstanding receivables as loan by the TPO extended by the taxpayer to its AE and thereby imputing interest on such outstanding receivables is not sustainable in the eyes of laws; that when working capital adjustment has already taken into account the impact of receivables on the profitability, no further charging of interest is warranted; that transaction of outstanding receivables is not an independent transaction to be examined on standalone basis; that the taxpayer is a debt free company and as such, imputation of interest on account of blocked fund is unwarranted; that when taxpayer has earned higher operating profit to operating cost margin as compared to

comparable companies, further addition proposed falls within +/- 3% range allowed under the Indian Pricing Regulation; and that notional interest on outstanding receivables should be net-off against the outstanding payables. Ld. AR for the taxpayer relied upon the decision of *Hon'ble Delhi High Court in case of Pr. CIT vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 order dated 25.04.2017.*

8. On the other hand, ld. DR for the Revenue relied upon the orders of the lower Revenue authorities.

9. Undisputedly, perusal of the calculation chart, Annexure-1, to arrive at the interest on the outstanding receivables show that minimum and maximum delay in payment on outstanding receivables are within the range of 189 days and 250 days respectively.

GROUND NUMBER 1

10. Undisputedly working capital adjustment in this case absorbs impact of outstanding receivables on profitability. All these arguments have been addressed by the taxpayer before the ld. DRP by way of submissions available at pages 29 to 53, operative part of order at pages 33 & 34 is extracted as under:-

“2.1.7 Accordingly, a working capital adjustment was undertaken by the Assessee for the comparable companies selected in the TP report and a snapshot of the result is provided

below for your Honour kind perusal (please refer to page 277 to page 281 for detailed working):

S. No.	Name of company	Working Capital Adjusted Margins
1	Asian Exhibition and Conference Limited	25.83%
2	Concept Communication Limited	8.82%
3	Gradiente Infotainment Limited	(207.01%)
4	Quadrant Communications Limited	11.14%
5	Times Innovative Media Limited	13.19%
	Average	(29.61%)

PLI	TSS India's Margin	Working capital adjusted margins of comparables
OP/OC	19.48%	(29.61%)

2.1.8 The above analysis empirically demonstrates that the differential impact of working capital of the tested party vis-a-vis its comparables has already been factored in the profitability of the Assessee which is less than working capital adjusted margin of the comparables. Hence, the Assessee humbly submits that keeping in view the above factual position any further adjustment on the pretext of outstanding receivables is uneconomical, unwarranted and wholly unjustified.

2.1.8.1 Further, the Assessee would like to place reliance on the case of Kusum Healthcare Private Limited Vs. ACIT (ITA No. 6814/Del/2014)], wherein the Hon'ble ITAT has evaluated the need to undertake working capital adjustment and concurred with the contentions of the Assessee that working capital adjustment takes into account the impact of outstanding receivables on the profitability. The relevant extract has been reproduced below for your Honour reference:

Quote

Para 7

..... The appropriate adjustments need to be considered to bring parity in the working capital investment of the assessee and the comparables rather than looking at the receivable independently. Such working capital adjustment takes into account the impact of outstanding receivables on the profitability

Para 8

..... Accordingly, while calculating the working capital adjusted, operating margin on costs of the comparable companies, the impact of outstanding receivables on the profitability has been taken into account. If the pricing/profitability of the assessee are more than the working capital adjusted margin of the comparables, then additional imputation of interest on the outstanding receivables is not warranted.

Para 10

10. The above analysis demonstrates that the differential impact of working capital of the vis-a-vis its comparables has already been factored in the pricing/profitability of the assessee which is more than that working capital adjusted margin of the comparables. Hence, any further adjustment to the margins of the assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified.

*Unquote
[Emphasis supplied]*

From the above, your Honour would appreciate that the Hon'ble ITAT has clearly acknowledged the need to undertake working capital adjustment to bring parity in the working capital investment of the tested party and the comparables rather than looking at the receivable independently.”

11. So, when undisputedly impact of working capital of tested party vis-a-vis its comparables has been factored in the profitability of the taxpayer which is otherwise less than working capital adjusted of margin of comparable, there is no need to impute the interest on outstanding receivables from AE.

12. Furthermore, when assessee is a debt free company imputation of interest on account of blocked funds that is delay in making payment of outstanding receivables from AE is not warranted. Moreover, when undisputedly the taxpayer has earned higher operating profit to operating cost (OP/OC), margin as

compared to comparable companies further proposed addition falls within +/- 3% range allowed under the Indian Transfer Pricing Regulation.

13. Hon'ble High Court of Delhi in case of *Kusum Health Care Pvt. Ltd.* (supra) confirmed the findings returned by the Tribunal on this issue of deferred payment of receivables by returning following findings :-

“9. Mr. Raghvendra Singh, learned counsel appearing for the Revenue submitted that the ITAT overlooked the fact that the expression “international transaction” as defined in Explanation (i)(c) to Section 92B of the Act included “payments or deferred payment or receivable or any other debt arising during the course of business”, and therefore, the outstanding receivables could by themselves constitute an international transaction. He further referred to the OCED Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Paras 3.48 & 3.49 under Chapter III para A.6.1 of the said Guidelines titled “Different types of comparability adjustments” spoke of the need to eliminate differences that may arise from different accounting practices between controlled and uncontrolled transactions. In particular, it was noted under para 3.49 that “a significantly different level of relative working capital between the controlled and uncontrolled parties may result in further investigation of the comparability characteristics of the potential comparable.”Mr. Singh submitted that the ITAT erred in disagreeing with the TPO, who had characterised the outstanding receivables as an international transaction by itself which required benchmarking.

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 characterised 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 analysing 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.”

14. In view of what has been discussed above and following the aforesaid decision rendered by the Hon’ble Delhi High Court, we are of the considered view that when the taxpayer has already taken into account the impact of outstanding receivables on profitability while making working capital adjustments of the taxpayer vis-a-vis its comparables which is less than the working capital adjusted margin of the comparables any further adjustment on account of delayed payment of outstanding receivables from AE would distort the entire picture of re-characterization the transactions. In other words, transactions as to outstanding receivables cannot be re-characterized as loan deemed to be advanced by the taxpayer to its AE. We are of the considered view that AO/DRP have erred in making addition of Rs.19,79,520/- on account of interest on outstanding receivables from AE, hence ordered to be deleted. Ground No.1 is determined in favour of the taxpayer.

GROUND NO.2

15. Ground No.2 is dismissed having not been pressed during the course of arguments.

GROUND NO.3

16. Ground No.3 being consequential in nature needs no specific findings.

GROUND NO.4

17. Ground No.8 being premature needs no specific findings.

18. Resultantly, the appeal filed by the taxpayer is partly allowed.

Order pronounced in open court on this 31st day of December, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

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

**Dated the 31st day of December, 2019
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**