

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.5377/Del/2017  
Assessment Year : 2013-14

Turner International India Pvt. Ltd.,  
5<sup>th</sup> Floor, Radisson Commercial Plaza,  
NH-8, Mahipalpur,  
New Delhi.

Vs ACIT,  
Circle-25(2),  
New Delhi.

PAN: AA ACT3821H

(Appellant)

(Respondent)

Assessee by	:	Shri Ravi Sharma, Advocate
Revenue by	:	Shri H.K. Choudhary, CIT, DR
Date of Hearing	:	21.10.2019
Date of Pronouncement	:	08.01.2020

ORDER

PER R.K. PANDA, AM:-

This appeal filed by the assessee is directed against the order dated 29<sup>th</sup> June, 2017 passed u/s 143(3) r.w.s. 144C(13) of the IT Act, 1961, relating to assessment year 2013-14.

2. The grounds raised by the assessee read as under:-

On the facts and circumstances of the case and in law, the learned Assessing Officer (Ld. AO) has erred in passing an assessment order under section 143(3) read with section 144C of the Income-tax Act, 1961 (the Act) dated

June 29, 2017 giving effect to directions of the Learned Dispute Resolution Panel (øLd. DRPø) dated May 01, 2017. Each of the ground is referred to separately, which may kindly be considered independent of each other and without prejudice to each other.

1. That on facts and circumstances of the case and in law, the Ld. AO / Ld. TPO / Ld. DRP has erred in making a transfer pricing addition of Rs. 9,83,63,207 to the total income with respect to the distribution segment of the Appellant and a transfer pricing addition of Rs. 40,84,256 to the total income by imputing interest on alleged overdue receivables from the Associated Enterprises on an ad hoc basis.
2. That in relation to the transfer pricing addition with respect to the distribution segment of the Appellant, the Ld. AO / Ld. TPO / Ld. DRP has erred
  - 2.1. in completely disregarding the order passed by Honøble Income Tax Appellate Tribunal (øITATø) in the Appellantø own case for Assessment Years 2007-08 and 2008-09 and Assessment Years 2005-06 and 2006-07 which is squarely applicable in the instant case as well, thus violating the principal of judicial discipline;
  - 2.2. in not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 (øthe Rulesø). Further, the Ld. AO / Ld. TPO / Ld. DRP grossly erred:
    - 2.2.1. by not accepting the use of multiple year data, as adopted by the Appellant in its Transfer Pricing (øTPø) documentation; and
    - 2.2.2. in determining the armø length margins / prices using data pertaining only to financial Year (øFYø) 2012-13 which was not available to the Appellant at the time of complying with the Indian TP documentation requirements.
  - 2.3. in conducting a fresh comparability analysis based on application of incorrect keywords and filters, in contradiction of the Honøble ITATø direction in Appellantø own case, without providing any cogent reasons;
  - 2.4. in failing to understand and appreciate the functions performed, assets employed and risks assumed by the Appellant and its Associated Enterprises, thereby comparing companies which

are functionally incomparable vis-a-vis the distribution segment of the Appellant;

- 2.5. in rejecting functionally comparable companies; and instead selecting functionally dissimilar companies to determine the ALP for the distribution segment of the Appellant based on the fresh search conducted by the Ld. TPO;
- 2.6. by denying the benefit of economic adjustment on account of working capital to the Appellant in arriving at the arm's length margin even though it was accepted by the Ld. DRP in Assessment Year 2011-12 and Assessment Year 2010-11 with same facts and nature of business as in Assessment year 2013-14;
  - 2.6.1. that the Ld. AO / Ld. TPO / Ld. DRP grossly erred in not appreciating and considering the judicial pronouncements in relation to working capital adjustments.
3. That in relation to transfer pricing addition with respect to alleged overdue receivables, the Ld. AO / Ld. TPO / Ld. DRP has erred
  - 3.1. in re-characterizing the receivables due as unsecured loans advanced by the Appellant to its Associated Enterprises;
  - 3.2. in not appreciating that receivables is a consequence of the main transaction and cannot be considered as a separate international transaction;
  - 3.3. that the Ld. AO / Ld. TPO / Ld. DRP has grossly erred in denying the benefit of economic adjustment on account of working capital, which if taken into consideration would take into effect the alleged overdue receivables and thus no further addition would be warranted in the instant case; and
  - 3.4. in not appreciating that the Appellant is a debt free company & it does not pay any interest to its creditors, hence the question of charging interest to the Associated Enterprises does not arise;
  - 3.5. without prejudice, in selecting an ad hoc interest rate of LIBOR plus 250 basis points while computing the addition
4. The Ld. AO has grossly erred in initiating penalty proceedings under section 271(c) of the Act.

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.ö

3. Facts of the case, in brief, are that the assessee is a subsidiary of Historic TBS Asia LLC and is a part of Time Warner Group for the impugned assessment year. During the year, the assessee company is engaged in activities that are primarily directed towards distribution of foreign owned television networks, media products, television programmes and rendering of production related support services of television programmes in India. The AO referred the matter to the TPO for determination of the ALP of the international transaction entered into by the assessee during the F.Y. 2012-12. The TPO, during the course of TP assessment proceedings, noted that the assessee has undertaken the following international and specified domestic transactions:-

S.No.	Nature of transaction	Method applied	Amount (in Rs.)
1.	Purchase of distribution and advertising rights	TNMM (PLI as OP/OR)	2,903,341,259/-
2.	Availing of services		25,610,790/-
3.	Provision of support services		4,418,478/-
4.	Receipt of Distribution incentives		117,494,485/-
5.	Payment of Distribution Commission (SDT)		130,800,000/-
6.	Remuneration to Director (SDT)		11,514,340/-
7.	Payment for product and promotional licensing	CUP	39,359,287/-
8.	Provision of production services	TNMM (PLI as OP/OC)	167,770,379
	Total		3,400,309,018/-

4. He also analysed the profitability trend of the assessee which is as under:-

Particulars (Amount in crores)	FY 2012-13	FY 2011-12	FY 2010-11
Turnover	470.68	418.38	400.06
Net Profit/Loss	21.62	4.43	30.23
NP/Turnover	4.59%	1.05%	7.55%

5. The TPO, during the course of TP proceedings observed that the assessee has considered certain comparables which, according to him, are not functionally similar to that of the assessee's distribution activities. After considering the various submissions made by the assessee, the TPO retained two comparable companies selected by the assessee i.e., Sonata Information Technology Ltd. And Trijal Industries Ltd., in the final list of comparable companies. The TPO thereafter proceeded to conduct a fresh search and selected five other companies as comparables and arrived at the following set of comparables:-

S.No.	Name of the company	Unadjusted Operating Profit (OP)/Operating Revenue (OR) (%)	Source
1.	Sonata Information Technology Ltd.	2.48%	Selected by the Appellant in its TP documentation
2.	Trijal Industries Ltd.	0.54%	
3.	India Vision Satellite Communications Ltd.	-8.04%	Fresh search of the Ld. TPO
4.	Maa Television Network Ltd.	25.99%	
5.	Malayalam Communications Ltd.	23.30%	
6.	Raj Television Network Ltd.	18.79%	
7.	TV Today Network Ltd.	5.77%	
	Mean	9.82%	

6. The TPO did not allow the benefit of working capital adjustment to the assessee in arriving at the ALP of the international transaction and, accordingly, proposed an adjustment of Rs.19,14,88,077/-.

7. Similarly, the TPO noted that huge amount of outstandings are receivable from the AE, the details of which are as under:-

S. No.	Name of AE	Receivable as on 01.04.2012	Receivable as on 31.03.2013	Average of receivables	Delay in No. of days	Interest @ 4.4569%
1.	Turner Broadcasting System Asia Pacific Inc.	257,240,713	244,945,824	251,093,269	182	5,580,158
2.	CNN Inc.	15,151,432	15,151,432	15,151,432	182	336,717
3.	Historic TBS Asia LLC	-	-	-	182	-
4.	HBO Pacific Partners, V.O.F.	-	21,520,706	10,760,353	182	239,132
Total						61,56,007

8. Despite being asked by him to provide the invoice-wise details, there was no compliance from the side of the assessee. Since the proceedings were getting time barred by limitation, the TPO proceeded to complete the assessment and estimated the delay in outstanding receivables by estimating the average of outstanding receivables of six months. Applying the rate of 4.4569% i.e., six months LIBOR + 400 basis points for 2013-14, the TPO proposed an adjustment of Rs.61,56,007/- on account of interest on delayed payments. The TPO accordingly proposed the total upward adjustment of Rs.20,06,44,084/-. The assessee approached the DRP,

who, vide order dated 1<sup>st</sup> May, 2017, directed the AO/TPO to include the following three companies in the final list of comparables i.e.,

- i) Avance Technologies Ltd.,
- ii) Empower Industries India Ltd.; and
- iii) Integra Telecommunication and Software Ltd.

9. Pursuant to the direction of the DRP, TP adjustment was reduced from Rs.19,44,88,077/- to Rs.9,83,63,207/- on account of distribution and advertisement segment. So far as interest receivable is concerned, the DRP directed the AO/TPO to compute interest on the outstanding receivables using notional interest rate of 2.950% i.e., six months LIBOR + 250 basis points. Accordingly, the TP adjustment was reduced from Rs.61,56,007/- to Rs.40,84,256/- in respect of interest on receivables due from the AEs.

10. Aggrieved with such order of the AO/TPO/DRP, the assessee is in appeal before the Tribunal.

11. The Id. Counsel for the assessee vehemently challenged the order of the AO/TPO/DRP in not considering certain companies as comparables and adding certain comparables which, according to him, are not functionally similar. The Id. Counsel for the assessee, referring to the order of the Tribunal in assessee's own case for A.Y. 2006-07 which has subsequently been followed in A.Ys. 2009-10, 2010-11 and 2014-15, submitted that the Tribunal has directed that the following

software distributors are functionally comparable to the assessee's distribution segment:-

- i) Sonata Information Technologies Ltd.;
- ii) Softcell Technologies Ltd.;
- iii) Empower Industries India Ltd.; and
- iv) Trijal Industries Ltd.

12. He submitted that in assessee's own case for A.Y. 2009-10, 2010-11, 2011-12 and 2014-15, the Tribunal, relying on the decision of the Tribunal in assessee's own case for A.Y. 2006-07, has directed/upheld the inclusion of companies involved in the distribution of software in the final list of comparables to benchmark the distribution segment of the assessee. He submitted that during the TP assessment proceedings, the assessee had requested for introduction of two additional software distribution companies, namely, Unisys Software and Holding Industries Limited and JMD Ventures Limited for which data was not available at the time of undertaking of search. However, such companies being comparable to the assessee's distribution segment which were rejected by the TPO/DRP without any cogent reason, the same should be included. For the above proposition, he submitted as under:-

Sr.No.	Name of Company	Business description
1.	Unisys Software and Holding Industries Limited	The company is engaged in investment business and trading in computer hardware and software packages.
2.	JMD Ventures Limited	The company is engaged in Music Activities and trading of software and hardware products and miscellaneous investment activities.

13. He accordingly submitted that in the light of the decision of the Tribunal in assessee's own case for preceding assessment years, the above two companies introduced by the assessee which are engaged in the distribution of software should be selected as comparable companies to benchmark the operating margins of the distribution segment of the TIPL.

13.1 The Id. Counsel for the assessee, again, referring to the order of the Tribunal for A.Y. 2006-07 which has been followed in A.Ys 2005-06, 2012-13 and 2014-15, submitted that certain channel owners were excluded in the final set of comparables. Therefore, the TPO was not justified in selecting certain comparables which are primarily channel and content owners, thus, being functionally dissimilar to the assessee. He accordingly submitted that in view of the decision of the Tribunal, satellite TV channels cannot be selected for benchmarking the distribution segment of the assessee. He accordingly submitted that all channel/content companies identified by the TPO should be excluded from the list of comparables as they are not functionally comparable to the distribution segment of the assessee.

14. Without prejudice to the above, the Id. Counsel for the assessee further submitted that the Tribunal in assessee's own case for A.Ys 2006-07 and 2014-15, has categorically directed the exclusion of certain channel/content owner companies which are also included by the TPO for the year under consideration. He drew the attention of the Bench to the following table:-

S.No.	Name of the company	AY 2006-07	AY 2014-15
1.	Raj Television Network Ltd.	Rejected by Honøble ITAT	Rejected by Honøble ITAT
2.	Malayalam Communications Ltd.	Rejected by Honøble ITAT	Rejected by Honøble ITAT
3.	TV Today Network Ltd.	Rejected by Honøble ITAT	Rejected by Honøble ITAT
4.	Maa Television Network Ltd.	-	Rejected by Honøble ITAT

15. The Id. Counsel for the assessee, referring to page 3 of the annual report of India Vision Satellite Communication Ltd., drew the attention of the Bench to the following:-

*“India Vision News has completed 10 years of operations. The channel has marked its presence throughout in the past, through its commendable performance and trends in news presentation. The Board Members would like to express their gratitude for the support provided by all shareholders during this period...”*

*Future Prospects*

*The channel will be upgrading to the HD technology this year, thus enhancing the clarity and quality of the picture...”*

16. He accordingly submitted that India Vision Satellite Communication Ltd. Being full-fledged news channel company which owns and operates various news channels cannot be compared with the assessee company which undertakes limited distribution functions. So far as working capital adjustment is concerned, the Id. Counsel for the assessee submitted that the DRP in assessee's own case for A.Y. 2005-06, 2006-07 and 2014-15 has allowed the benefit of working capital adjustment. Further, the Tribunal in assessee's own case for A.Y. 2012-13 has allowed the benefit of working capital adjustment. Therefore, it is not justified on

the part of the lower authorities to deny the benefit of working capital adjustment for the impugned assessment year.

16.1 So far as the adjustment on account of interest on receivables is concerned, the Id. Counsel for the assessee submitted that the Tribunal in assessee's own case for A.Y. 2014-15 relying on the decision of the Honøble Delhi High Court in the case of PCIT vs. Kusum Healthcare Pvt. Ltd., has held that working capital adjustment subsumes the impact of outstanding receivables and payments of the assessee. Accordingly, once working capital adjustment is granted to the assessee, no adjustments are to be warranted on account of interest on outstanding receivables from the AEs in the hands of the assessee. Without prejudice to the above, he submitted that:

- i) Outstanding receivables cannot be recharacterised as unsecured loans advanced by the Company to its AEs;
- ii) Outstanding receivables from AEs is not a separate international transaction;
- iii) The Appellant is a debt-free entity and it does not pay any interest to its creditors;
- iv) Interest rate of LIBOR plus 250 basis points is ad-hoc and without any basis.
- v) The Appellant has undertaken various transactions with AEs resulting in accounts receivables from and accounts payables to the AEs, therefore,

the Appellant would like to draw attention to the directions issued by the Ld. DRP in the Appellant's own case for AY 2014-15 has directed the TPO to compute notional interest on net outstanding receivables and not on the gross outstanding receivables. Thus, no adjustment is warranted in Appellant's case as there is net payables position.

17. The Id. DR, on the other hand, while supporting the order of the AO/TPO/DRP, submitted that whether the companies selected by the assessee are functionally comparable or not needs to be verified especially in case of India Vision Satellite Communication Ltd. So far as working capital adjustment is concerned, the Id. DR submitted that the assessee has to demonstrate separately as to how interest on receivables from that segment can be worked out for working capital adjustment.

18. We have considered the rival arguments made by both the sides, perused the orders of the AO/TPO/DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The issue that has to be adjudicated on account of TP adjustment in respect of the distribution segment of the assessee company revolves around the inclusion of the following five comparable companies, namely,

- i) India Vision Satellite Communications Ltd.;
- ii) Maa Television Network Ltd.;
- iii) Malayalam Communications Ltd.;

- iv) Raj Television Network Ltd.; and
- v) TV Today Network Ltd.

19. So far as India Vision Satellite Communications Ltd., is concerned, we find the DRP retained this company as selected by the TPO on the ground that the company primarily operates in one segment i.e., telecasting through satellite from which income is generated. Further, there is close FAR comparability and, therefore, it is a good comparable. However, from the various details furnished by the assessee in the paper book, we find the assessee had demonstrated that India Vision Satellite Communication Ltd., is functionally different since it is a content owner and channel owner. It is a full-fledged channel owner company which owns and operates various news and entertainment channels. Being a channel owner, it has incurred high studio and production related cost and there is high intensity of deployment of asset which is 1.43% of the turnover as compared to the assessee's ratio of 223.86 times of the turnover.

20. Similarly, in case of Maa Television Network Ltd., we find this company was selected by the TPO and retained by the DRP on the ground that under TNMM method functional comparability is the important factor. Since the company is functionally comparable being in the same line of business and with comparable FAR, therefore, the DRP held that it should be retained. However, from the various details furnished by the assessee, we find Maa Television Network Ltd., is functionally different being content owner and channel owner. This being a full-

fledged channel owner company which owns and operates various entertainment channel such as Maa TV, MAA Gold, MAA Music, etc. Being a channel owner, it has incurred high studio and production related cost, its deployment of asset is 9.19 times of turnover as compared to assessee's ratio of 223.86 times of turnover. Further it holds significant intangible assets, therefore, this company, in our opinion, should be rejected on account of holding significant intangible assets and being functionally dissimilar.

20.1 So far as Malayalam Communications Ltd., is concerned, we find this company was selected by the TPO and retained by the DRP on the ground that this company being functionally comparable being in the same line of business and with comparable FAR. However, we find this company is functionally different being a content owner and channel owner. Being a full-fledged channel owner company it owns and operates various entertainment channels such as Kairali TV. Being a channel owner it has incurred studio and production related costs. Its deployment of asset is 1.20 times of the turnover as compared to the assessee's ratio of 223.86 times of the turnover. Therefore, this company, in our opinion, cannot be considered as a comparable company.

20.2 Similarly, in case of Raj Television Network Ltd., the company was selected by the TPO and retained by the DRP on the ground that it is functionally comparable being in the same line of business and with comparable FAR. However, from the various details furnished by the assessee, we find this company

is a full-fledged channel owner company which owns and operates various entertainment channel such as Raj TV, Raj Music Tamil, Raj Digital Plus, etc. Being a channel owner it has incurred high studio and production cost. Further, its deployment of asset is 1.05 times of its turnover whereas the deployment of asset in the case of assessee is 223.86 of its turnover. Therefore, in our opinion, this company should be excluded from the list of comparables being functionally dissimilar.

20.3 Similarly, in case of TV Today Network Ltd., we find this company was selected by the TPO and retained by the DRP on the ground that the company is primarily engaged in providing broadcasting and distribution services and with comparable FAR. However, we find from the details furnished by the assessee in the paper book that it is a full-fledged channel owner company which owns and operates various news channel such as Aaj Tak, Headlines Today, Tez, Delli Aaj Tak, etc. Being a channel owner, it has incurred high studio and production related costs, its deployment of assets is 1.35 times of the turnover as compared to the assessee's ratio of 223.86 times of the turnover. Further, it holds significant intangible assets. We, therefore, are of the considered opinion that this company should be excluded from the list of comparables.

20.4 We find the Tribunal in assessee's own case vide ITA No.1204/Del/2018, order dated 18<sup>th</sup> June, 2018 for A.Y. 2006-07, while excluding the channel owners/broadcasting companies selected by the TPO, has observed as under:-

11. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material referred to before us. From the stage of the DRP, ten comparables have been selected with an average mean of 11.95% and based on such comparables adjustment of Rs.10,07,35,464/- has been made in the distribution segment. The details of these comparable companies with this average margin have already been incorporated above. Out of the said comparable companies, seven comparables have been sought to be excluded by the assessee which are channel and contents owners who are full-fledged channel companies who owned and operate various TV channels and undertake content creation on their own. The Tribunal in assessee's own case for the Assessment Year 2007-08 and 2008-09 and also in Assessment Year 2006-07 have held that Satellite TV channels and cable network operators have significantly different operating models and provide earning model and once the Tribunal has held that such channel/content owner companies should not be included for the purpose of comparability analysis, then there is no reason why the TPO is again selecting such companies for the purpose of benchmarking the ALP of the assessee's distribution segment. Before us, the learned counsel has already clarified on the basis of material available on record that distribution activity and ancillary/production activity of the assessee are two distinct set of transactions for which, not only separate benchmarking has been done but also separate remuneration has been earned for each of the said activities. So far as production activity is concern, the same has been found at arm's length by the TPO and once these are two different segments then there is no justification to mix up the functions of such ancillary activities with that of distribution activity so as to justify selection of such channel/content owner companies, especially when transaction from such ancillary services constitutes only 4% of the value of the international transaction of the assessee. Apart from that, the assessee is providing these services as a captive service provider for which it is remunerated separately and ALP of such transaction is not in dispute. Accordingly, we reject the DRPs and TPO action for mixing the functionality of distribution and production activities which are in fact independent and also separately benchmarked. We are in tandem with the contention of the learned counsel that these two activities cannot be mixed up for distorting the functionality and justifying the selection of channel owner companies. Thus, we hold that the seven comparable companies, namely, i) Malayalam Communications Ltd.; ii) Raj Television Network Ltd.; iii) TV Today Network Ltd. iv) Sun TV Network Ltd.; v) Zee Entertainment Enterprises Ltd.; vi) Zee Media Corporation Ltd.; and vii) UTV Software Communications Ltd.; are directed to be excluded.

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21. We find the order of the Tribunal for A.Y. 2006-07 has been followed by the Tribunal in assessee's own case in subsequent assessment years. We find the Tribunal in assessee's own case vide ITA Nos.1203 & 6627/Del/2018, order dated 4<sup>th</sup> January, for AYs 2005-06 and 2014-15, respectively, has observed as under:-

8. Thus, respectfully following the Tribunal order for the Assessment Year 2006-07, we hold that the following comparable companies are to be excluded.

S.No.	Company Name	OP/OR(%)
1.	Malayalam Communications Ltd.	20.07
2.	Raj Television Network Ltd.	9.97
3.	TV Today Network Ltd.	15.45
4.	UTV Software Communications Ltd.	12.80

8.1 With regard to other three comparables, viz.,

S.No.	Company Name	Adjusted OP/Sales(%)
1.	Empower Industries India Ltd.	0.65
2.	Sonata Information Technology Limited	0.85
3.	Softcell Technologies Limited	2.23
	Mean	1.24

We direct the TPO to adopt the adjusted operating margin of the aforesaid comparables after giving working capital adjustment and accordingly, give consequential relief.

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

10. Similarly in the appeal for the Assessment Year 2014-15, the following comparables have been selected by the TPO.

S.No.	Company Name	Unadjusted OP/Sales(%)
1.	Sea TV Networks Ltd.	5.91
2.	Maa Television Network Ltd.	30.31
3.	Malayalam Communications Ltd.	19.40
4.	Raj Television Network Ltd.	24.53
5.	TV Today Network Ltd.	24.28

11. Accordingly, in view our decision given above, we direct the TPO to exclude these comparables, namely, Sea TV Network Ltd., Maa Television Network Ltd., Malayalam Communications Ltd., Raj Television Network Ltd.; and TV Today Network Ltd. Being channel owner companies as they have been found to incomparable by the Tribunal.

22. In view of the above discussion, we direct the AO/TPO to exclude the above five companies from the list of comparables.

23. So far as interest on receivables is concerned, we find identical issue had come up before the Tribunal in assessee's own case for A.Ys 2005-06 and 2014-

15. We find the Tribunal in ITA Nos.1203 & 6627/Del/2018, order dated 4<sup>th</sup> January, for AYs 2005-06 and 2014-15, respectively, has elaborately discussed this issue and has deleted the adjustment on account of interest on receivables by observing as under:-

14. Another issue raised in the appeal for the Assessment Year 2014-15 relates to Transfer Pricing Adjustment on transaction of alleged interest on receivable due from AEs. The Ld. TPO treated the outstanding inter-company receivables from its AEs as a separate international transaction, and imputed notional interest at the rate of 4.3311% (6 month LIBOR + 400 basis points for F.Y. 2013-14), on the average amount of receivables as on 1st April, 2013 and 31st March, 2014, by treating them as unsecured loan advanced by the assessee to its AE. Accordingly, an adjustment of Rs.82,91,688/- was made on account of notional interest on inter-company receivables.

15. The DRP directed the TPO to compute the interest on net outstanding receivable from AEs on a transaction to transaction basis using a notional interest rate of 2.83% which is six months LIBOR + 250 basis points.

16. Before us, learned counsel submitted that the working capital adjustment subsumes the impact of outstanding receivables and payables by the assessee and in support of this contention, he had relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs. Kusum Healthcare Pvt. Ltd., (2017) 398 ITR 66.

17. We agree with the contention of the learned counsel that if working capital adjustment is to be given, then it subsumes the impact of outstanding

receivables and payables made by the assessee and accordingly respectfully following the judgment of Hon'ble Delhi High Court, we hold that no adjustment is warranted on account of interest on receivable given.ö

24. Since the facts of the impugned assessment year are identical to the facts of the case decided by the Tribunal in assessee's own case for A.Ys 2005-06 and 2014-15, therefore, respectfully following the same, we hold that if working capital adjustment is to be given, then, it subsumes the impact of outstanding receivables and payments by the assessee and, therefore, in the light of the ratio of the decision of the Hon'ble Delhi High Court in Kusum Healthcare Pvt. Ltd. (supra), no adjustment is warranted on account of interest on receivables.

25. So far as allowing of working capital adjustment is concerned, from the various details furnished by the assessee, we find the DRP in assessee's own case has allowed working capital adjustment during A.Y. 2005-06, 2006-07 and 2014-15 and the Tribunal in assessee's own case has allowed the benefit of working capital adjustment during A.Y. 2012-13. We find identical issue had come up before the Tribunal in assessee's own case for A.Y. 2012-13 and 2009-10. We find the Tribunal, vide ITA No.218/Del/2017 for A.Y. 2012-13 and ITA No.1089/Del/2014 for A.Y. 2009-10, order dated 01.01.2019, while deciding the issue relating to working capital adjustment in favour of the assessee, has observed as under:-

ö15. As regards to this issue, the ld. Counsel for the assessee submitted that the ld. DRP in the directions has rejected the assessee's claim for granting working capital adjustment to the margin of the companies finally identified as comparable. However, for the assessment years 2010-11 and 2011-12, the ld. DRP had granted the benefit of working capital adjustment to the assessee.

Therefore, the consistent approach should have been followed and the assessee's claim may be allowed.

16. In his rival submissions, the ld. CIT DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

17. After considering the submissions of both the parties and the material available on the record. We are of the view that when the ld. DRP has allowed working capital adjustment for the preceding assessment years 2010-11 and 2011-12 then there was no reason to deviate from the said view for the year under consideration. We, therefore, direct the AO to allow the benefit of the working capital adjustment to the assessee while working out the arm's length price.

26. Respectfully following the decision of the Tribunal in assessee's own case for A.Y. 2012-13, we direct the AO/TPO to allow working capital adjustment to the assessee while working out the ALP of the international transaction.

27. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.01.2020.

Sd/-

Sd/-

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 08<sup>th</sup> January, 2020

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi