

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.645/DEL/2015
Assessment Year 2010-11

M/s. Bridal Jewellery Mfg. Co., 2705, Basement, Bank Street, Karol Bagh, New Delhi.	v.	Dy. CIT, Circle-1, Noida.
TAN/PAN: AADFB0557C		
(Appellant)		(Respondent)

Appellant by:	Ms. Ananya Kapoor, Adv.		
Respondent by:	Shri Subha Kant Sahu, Sr.D.R.		
Date of hearing:	25	11	2019
Date of pronouncement:	17	02	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Assessee against the final assessment order dated 30.12.2014, passed u/s.144C(5) r.w.s. 143(3)/92CA for the Assessment Year 2010-11 in pursuance of direction given by the DRP vide order dated 21.10.2014. In various grounds of appeal the assessee has challenged the disallowance of Rs.8,38,860/- on account of interest on grant of loan to AE; and addition / disallowance of Rs.21,48,474/- on account of interest on unrealized export proceeds.

2. The facts in brief qua the issue involved are that

assessee is a partnership firm engaged in the business of manufacturing and export of gold jewellery. During the year, it has export its goods to its AE as well as to unrelated parties and has used CUP method as the most appropriate method and net margin of comparable companies. During the year, assessee has given loan/advances to its AE in foreign currency for financial support on which it has not charged any interest. The TPO has proposed to charge the interest @ 15 % and thereby made an upward adjustment of Rs.25,01,566/- by taking the average PLR of State Bank of India. The TPO has further noted that the assessee has receivable from its AE against its sale made during the year on which assessee has not charged any interest. Accordingly, the TPO has applied interest rate of 15% on the delayed receivables and made adjustment of Rs.65,86,585/-.

3. The DRP in so far as adjustment on account of loan given to AE, held that, since loan has been given in foreign currency, therefore, PLR of SBI is not a suitable comparable and accordingly, direct the TPO/Assessing Officer to comply LIBOR rate to determine the ALP of interest to be charged. In respect of interest on outstanding receivables, DRP held that credit period allowed to the AE is much more than allowed to non AE and assessee has not substantiated its case with evidence that for similar delays no interest has been charged from third parties. The DRP has further directed the TPO/Assessing Officer to allow the LIBOR rate.

4. Before us, ld. counsel for the assessee submitted that the Tribunal in assessee's own case for the Assessment Years 2011-12 and 2012-13 has held that period of 90 days credit is reasonable in the trade of the assessee and matter was restored to the file of the Assessing Officer/TPO to compute the Transfer Pricing Adjustment to the receivable having delayed receipt of payment of more than 90 days. In so far as Transfer Pricing Adjustment on account loan is concern, no argument was placed and in fact even before the Tribunal these grounds were not adjudicated in the earlier years.

5. After hearing both the parties on the issue of interest on receivables, we find that the assessee's contention before the authorities below was that it has realized invoices raised during the year, within 12 months from the date of invoice and further assessee has not charged any interest from the unrelated parties. Since, the DRP has also directed to compute interest at LIBOR rate to determine the Arm's Length for the interest to be charged on the receivables, therefore, interest rate of SBI PLR of 15% made by the TPO is no longer issue before us. We find that Tribunal in assessee's own case has decided this issue holding that period of 90 days credit is reasonable. The relevant finding of the Tribunal for the Assessment Year 2012-13 in ITA No.5989/Del/2016 reads as under:-

"8. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer/TPO/DRP and the paper book filed on behalf of the

assessee. We have also gone through the various decisions relied on by the ld. counsel for the assessee in the paper book. We find the Assessing Officer, in the instant case, on the basis of the report of the TPO, made addition of Rs.81,14,875/- being interest on unrealized export proceeds @ 12.65 per annum when the outstanding was received beyond a period of 60 days from the date of invoice. We find, the DRP restricted such disallowance to Rs.30,98,408/-. We find identical issue had come up before the Tribunal in assessee's own case for assessment year 2011-12. We find the Tribunal, after considering the arguments made by both the sides has held that the period of 90 days credit is reasonable in the trade of the assessee and accordingly it was restored to the file of the A.O./TPO to compute the transfer pricing adjustment of receivables having delay in receipt of payment of more than 90 days. The relevant portion of the order of the Tribunal reads as under: -

“20. As far as the issue of request of the Ld. Counsel for allowing credit of 90 days is concerned, we find that this period of 60 days adopted by the Ld. TPO or 90 days requested by the assessee depend on the prevalent business practice in the trade. The Ld. Counsel has pointed out before us that in assessment year 2015- 16 the Ld. TPO himself as considered the receivables beyond the period of 90 days for the purpose of transfer pricing adjustment. We have verified this fact from the order of the Ld. TPO for assessment year 2015-16 available on page 254 to 277 of the paper book. We find from the Annexure-1 to the order of the TPO that receivables beyond 90 days have been considered for transfer

pricing adjustment. In view of the rule of consistency, the period of 90 days credit is found to be reasonable in the trade of the assessee and accordingly we direct the Ld.AO/TPO to compute the transfer pricing adjustment for receivables having delay in receipt of payment more than 90 days. Accordingly the ground of the appeal raised by the assessee in respect of transfer pricing adjustment for interest on receivables are partly allowed for statistical purposes.

9. Respectfully following the decision of the coordinate Bench of the Tribunal in assessee's own case, we restore the issue to the file of Assessing Officer/TPO to compute the TP adjustment for receivables having delay in receipt of payment of more than 90 days. The ground raised by the assessee is accordingly partly allowed for statistical purposes."

6. Thus, consistent with the view taken in the earlier years, we direct the TPO to compute the Transfer Pricing Adjustment of receivables from AE on the delay of payment of more than 90 days and that to by applying LIBOR rate. Thus, appeal of the assessee is partly allowed. Other grounds are not adjudicated as same were not argued before us.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 17th February, 2020.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED: 17th February, 2020

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER