

**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.7364/DEL/2019
Assessment Year 2015-16

Orange Business Services India Solutions Pvt. Ltd., Tower-B, 8 th Floor, DLF Infinity Tower, Phase-II, Sector-25, Gurgaon, Haryana.	v.	DCIT, Circle-3, Gurgaon.
TAN/PAN: AABCE 4540P		
(Appellant)		(Respondent)

Appellant by:	Shri Ravi Sharma, Adv., Ms. Shruti Khimta, AR		
Respondent by:	Ms. Nidhi Sharma, 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 22.07.2019, passed u/s.143(3) r.w.s. 144C for the Assessment Year 2015-16 in pursuance of DRP's direction dated 03.06.2019. In various grounds of appeal, the assessee has challenged the Transfer Pricing Adjustment at Rs.1,90,18,524/- by treating the receivables outstanding beyond 60 days from associated enterprises (AEs) as deemed loan and charging notional interest on the basis of LIBOR plus 300 basis points.

2. Before us, it has been submitted by the ld. counsel that in assessee's own case for the Assessment Year 2014-15, the Tribunal vide order dated 31.12.2018 in ITA No.6751/Del/2008 has held that no Transfer Pricing Adjustment on account of interest on receivables can be made, because in the computation of working capital adjustment, such interest receivables gets subsumed following the judgment of Hon'ble Delhi High Court in the case of **PCIT vs. Kusum Healthcare Pvt. Ltd. in ITA No.765/Del/2016** and have deleted the addition.

3. Ld. DR on the other hand has relied upon the order of the DRP.

4. The brief facts qua the issue involved are that the TPO observed that there were interests on receivables on the payment for the invoices raised by the assessee which have not been received within the stipulated time as provided in the service agreement with the AE. In response to the show cause notice, the assessee has given invoice wise details of the receivables along with duration / period. Ld. TPO after detailed discussion held that credit period of 60 days is reasonable in view of DRPs direction in assessee's own case and accordingly, he applied interest rate of SBI PLR and worked out the interest @ 13% and after the calculating the interest beyond 60 days made an adjustment of Rs.7,79,48,469/-.

5. The DRP, first of all, has given direction to the TPO to

give working capital adjustment by taking average opening and closing balance of the inventories and receivable/payables credit, debtors and creditors for the relevant year and the issue of adjustment on account of outstanding receivables. The DRP on the basis of direction in A.Y. 2014-15, held that the TPO has rightly allowed 60 days credit period and but has wrongly applied SBI PLR rate plus 300 basis point. The TPO should apply LIBOR plus basis points for making the adjustment on account of interest.

6. Since in assessee's own case, the Tribunal has held that once working capital adjustment has been made, then no separate adjustment is called for on interest of receivables. The Tribunal has followed the judgment of Hon'ble Delhi High Court in the case of **PCIT vs. Kusum Healthcare Pvt. Ltd. (supra)**. The relevant observation and the finding of the Tribunal in assessee's own case read as under:

"4. Briefly stated, the appellant company is a subsidiary of EGN BV, Netherlands. The appellant company is primarily engaged in providing Information Technology enabled network management / technical support and other back-office support services to its Group Company. It also undertakes software development services for developing software applications which are used within the Orange Group.

5. The international transactions reported by the assessee during the year in Form 3CEB report is as under:

Sl. No.	Description of the transaction	Amount [INR
1.	Provisions of information and technology services	2,48,87,11,426/-

2.	Cost recharges	2,22,89,684/-
3.	Receivables [as on 31.03.2014]	86,07,95,107/-
4.	Receivables [as on 31.03.2014]	4,11,07,016/-

6. During the course of transfer pricing assessment proceedings, the TPO was of the firm belief that since the payment for invoices raised by the assessee have not been received within the stipulated time. Delayed payments were treated as unsecured loan advance to the AEs. The TPO proposed to charge a normal rate as per the annual average yield of corporate bonds pertaining to credit rating of the AEs for the period of delay in receipt of payment beyond the time stipulated in the services agreement.

7. In its reply dated 09.10.2017, the assessee furnished invoice details of receivables alongwith their duration/period. The TPO was not convinced with the reply of the assessee and proceeded by treating the receivables as loan to the AEs and bench marked the interest rate based on base rate of SBI taking the same at 9.83% to which 400 basis points were added and, accordingly, interest rate was arrived at 13.83%. The TPO proposed an upward adjustment of Rs. 2,48,13,810/-

8. The assessee raised objections before the DRP and the DRP issued directions dated 23.03.2018 upholding the action of the TPO for taking SBI PLR as CUP but directed to add 300 basis points to the same. The DRP further directed to take 60 days to be reasonable period beyond which interest must be charged on outstanding receivables. Following the directions of the DRP final addition was made at Rs. 1,45,27,731/-.

9. Aggrieved by this the assessee is before us.

10. It is the say of the ld. AR that interest on receivables is

not an international transaction as the interest proposed to be charged, if any, is already built in the sale price and thus no interest needs to be computed on the outstanding receivables from the AEs. The ld. AR further pointed out that the operating profit margin has not been disturbed by the Assessing Officer/TPO. Therefore, no separate adjustment is to be made in so far as outstanding receivables are concerned.

11. Per contra, the ld. DR supported the findings of the DRP. It is the say of the ld. DR that the objections raised by the assessee have been duly considered by the DRP and, therefore, the ld. DR directed the TPO to take 300 basis points over and above SBI PLR and to consider 60 days as reasonable period beyond which interest must be charged.

12. Having heard the rival submissions, we are of the considered opinion that since no disturbance has been made in so far as OP margin of the assessee is concerned the OPN has been arrived after making working capital adjustment. Operating mark up of the appellant company is 16.19% whereas the comparables working capital adjustment mark up comes to 15.72%. This shows that the profit margin of the appellant company is higher than that of the comparables. The ratio laid down by the Tribunal in the case of Kusum Healthcare Pvt Ltd 6814/DEL/2014 squarely applies. The relevant findings of the coordinate bench read as under:

“From the above analysis, it is clear that assessee had earned significantly higher margin than the comparable companies (which have been accepted by the TPO) which more than compensates for the credit period extended to the AEs. Thus, the approach by the assessee of aggregating the international

transactions pertaining to sale of goods to AE and receivables arising from such transactions which is undoubtedly inextricable connected is in accordance with established TP principles as well as ratio laid down by the Hon'ble jurisdictional High Court in the case of Sony Ericsson Mobile Communication India (P.) Ltd. (supra). For the aforesaid reasons, we allow the appeal of the assessee. It ordered accordingly.”

13. *This decision of the coordinate bench has been affirmed by the Hon'ble High Court of Delhi in ITA No. 765/2016 vide order dated 24.04.2017. The relevant findings of the Hon'ble High Court read as under:*

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

14. *The ld. DR pointed out that the Revenue has preferred SLP before the Hon'ble Supreme Court against the judgment of the Hon'ble High Court of Delhi. In our understanding, since the operation of the judgment of the Hon'ble High Court is not stayed by the Hon'ble Supreme Court, the same is binding on us and, therefore, respectfully following the decision of the coordinate*

bench, affirmed by the Hon'ble High Court [supra] we direct the Assessing Officer/TPO to delete the addition of Rs. 1,45,27,731/-.”

4. Since similar facts are permeating in this year also and already direction for working capital adjustment has been given by DRP, therefore, we hold that no Transfer Pricing Adjustment on account of interest on payment of receivables can be made separately. Thus, the Transfer Pricing Adjustment on account of interest on receivable is deleted.
5. In the result, the appeal of the assessee is 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