

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I(i)', NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 6387/Del./2016
Assessment Year: 2011-12

M/s. iQor India Services Pvt. Ltd., B-92, 9 th Floor, Himalaya House, 23, K.G. Marg, New Delhi	Vs.	DCIT, Circle-12(2), New Delhi
PAN :AABCI2835F		
(Appellant)		(Respondent)

Appellant by	Shri Ravi Sharma, Adv. Shri Rishabh Malhotra, Adv.
Respondent by	Shri M. Baranwal, Sr.DR

Date of hearing	20.07.2020
Date of pronouncement	23.07.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 24/08/2016 passed by the Learned CIT(Appeals)-44, New Delhi [in short 'the learned CIT(A)'] for assessment year 2011-12, raising following grounds:

On the facts and in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) {CIT(A)}, while disposing the appeal u/s 250 of the Income-tax Act 1961 ('the Act'), has erred in:

1) Considering outstanding receivables as an international transaction and upholding the adjustment done by the assessing officer by considering notional interest @ LIBOR + 300 base points.

2) *Considering outstanding receivables as a separate international transaction and not appreciating the fact that the same emanates from principle international transaction of provision of IT enabled services to its associated enterprise.*

3) *Not appreciating the fact that working capital adjustment carried out is an economic adjustment made under Rule 10B(e)(iii) of the Income Tax Rules,1962 which takes care of the differences in receivables outstanding period of the appellant vis-a-vis the companies selected as comparables.*

4) *Re-characterizing outstanding receivables as an unsecured loan advanced by the Appellant to its AH, which is not permissible under the Act*

5) *Not considering the fact that period of collection of receivables is reasonable and in line with the circular issued under Foreign Exchange Management Act ("FEMA")*

All the above grounds are without prejudice to each other.

The appellant carves leave to add to and / or to alter, amend, rescind, modify, the grounds herein above or

produce further documents before or at the time of hearing of the appeal.

2. Briefly stated facts of the case are that the assessee company was engaged in providing information technology enabled services to its associated enterprises from hundred percent export-oriented units in software technology Park under the scheme of Ministry of Information Technology, Government of India. For the year under consideration, scrutiny assessment was completed after taking into account, the benchmarking of the International Transaction by the learned Transfer Pricing Officer. The assessee entered into an international transaction of provision of information technology enabled services amounting to ₹ 58,60,16,727/-. The assessee used Transactional Net Margin Method (TNMM) as most appropriate method and taken Operating Profit/Operating Cost (OP/OC) as Profit Level Indicator (PLI). The PLI of the assessee has been worked out at 23.17% as against average PLI of seven comparables at 11.65%. In view of the PLI of the assessee being higher than comparables, the assessee

concluded that its international transaction is at arm's length. The learned TPO accepted analysis of the assessee regarding the transaction of information technology enabled services, however he proposed adjustment on account receivables from its associated enterprises, which were not paid for substantial period. The TPO treated the receivables as unsecured loan and applied arm's-length interest rate of 10.84% for receivable beyond 30 days under Comparable Uncontrolled Price (CUP) method taking average SBI prime lending rate (which was 7.84%) and added 300 bps. In this manner, he proposed adjustment of ₹ 2,38,38,278/-. On further appeal, the learned CIT(A) directed to apply LIBOR rate + 300 bps on the outstanding loan. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the representative of the parties appeared through videoconferencing. The learned counsel of the assessee filed a paper-book containing pages 1-446 along with other documents filed electronically.

4. The learned counsel did not press ground No. 1 and 2 of the appeal, according ground No. 1 & 2 are dismissed as withdrawn.

5. As regard to ground Nos. 3 to 5 of the appeal, the learned counsel submitted that during the transfer pricing proceeding the assessee submitted PLI of the comparables after carrying out working capital adjustment, which is much less than the PLI the assessee. He submitted that working capital adjustment is an economic adjustment made under rule 10BE(iii) of the Income-tax Rules, 1962 and which takes care of the difference in the receivables outstanding of the assessee vis-à-vis the companies

selected as comparable. According to him, the working capital adjustment subsumes any effect of outstanding receivables and therefore no separate adjustment on account of the outstanding receivables is required in the case of the assessee. He referred to working capital adjusted margin of the assessee and comparable available on page 43 to 54 of the paper book, which according to him, were submitted before the TPO. In support of his contention, relied on the decision of the Delhi High Court in the case of Kusum Healthcare Private Limited in ITA 765/2016. The Ld. counsel also submitted that this issue was raised before the Ld. CIT(A) by way of a specific ground No. 1.3 of the appeal before him.

6. On the contrary, the learned DR submitted that the facts in the case of the assessee are distinguishable and the case of the assessee is squarely covered by a recent decision of Hon'ble ITAT, Delhi in the case of Techbooks International Pvt. Ltd., ITA No.6102/Del/2016, order dt.06.07.2020, wherein the case of Kusum Healthcare was also considered in addition to some other case-laws.

7. We have heard rival submission of the parties advanced through videoconferencing facility. We find that though the assessee submitted working capital adjusted PLI of the comparables before the learned Transfer Pricing Officer but same was not considered because unadjusted PLI of the assessee was higher than the average marginal comparables and resultantly, no adjustment was proposed to the international transaction of provision of information technology enabled services reported by the assessee. As the effect of the working capital adjustment has

not been considered or examined by the lower authorities, we feel it appropriate to restore this limited issue whether the adjustment for delayed receivables from associated enterprises get subsumed in working capital adjustment, to the file of the learned Assessing Officer/Transfer Pricing Officer for adjudicating in accordance with law. It is needless to mention that assessee shall be afforded adequate opportunity of being heard. The ground No. 3 of the appeal is accordingly allowed for statistical purposes. The ground Nos. 4 and 5 are rendered merely academic, as both the parties agreed for restoring the matter back to the learned AO/TPO on ground No. 3. Thus, the ground Nos. 4 and 5 are dismissed as infructuous.

8. In the result, the appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 23rd July, 2020.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 23rd July, 2020.

RK/-(D.T.D.S.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi