

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.7621/Del/2017
Assessment Year: 2013-14

Global Logic India Ltd.,
207, Gupta Arcade,
Circle-12(1), LSC Plot No.5,
Mayur Vihar, Phase-I Extension,
New Delhi.

Vs DCIT,
Circle-10(1),
New Delhi.

PAN: AABCI2526F

(Appellant)

(Respondent)

Assessee by	:	Shri Neeraj Jain & Shri Abhishek Aggarwal, Adv.
Revenue by	:	Shri Surenderpal, CIT, DR
Date of Hearing	:	01.09.2020
Date of Pronouncement	:	.09.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 31st March, 2013 of the AO passed u/s 144C(1) r.w. section 143(3) of the IT Act, 1961, relating to assessment year 2013-14.

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

01.1 That the impugned order of assessment framed by the assessing officer in pursuance of the directions of the Dispute Resolution Panel

(hereinafter referred to as 'DRP') under Section 143(3) read with Section 144C of the Income-tax Act, 1961 ('Act'), is bad in law, violative of principles of natural justice and void ab-initio.

2.1 That the assessing officer erred on facts and in law in making an adjustment of Rs. 4,71,35,199 to the arm's length price of the international transactions of accounts receivable undertaken with the associated enterprise on the basis of order passed by the Transfer Pricing Officer ('TPO')/ Dispute Resolution Panel ('DRP').

2.2 That the DRP/ TPO erred on facts and in law in re-characterizing the alleged transaction of delay in receipts of receivables as unsecured loans advanced to the associated enterprises.

2.3 That the DRP/ TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an international transaction per se, under section 92B of the Act but is a consequence of an international transaction undertaken in the form of services rendered to the associated enterprise.

2.4 That the DRP erred on facts and in law in holding that the non-realization of invoice value beyond the stipulated period (as per contract) is a separate international transaction, whose arm's length price is required to be determined separately.

2.5 Without prejudice, that the DRP/ TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked to the international transaction of export and since the profit earned by the assessee as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.

2.6 That the DRP erred on facts and in law in holding that working capital adjustment does not address the mispricing in the case of taxpayer where interest free receivables were outstanding beyond the average period.

2.7 That the DRP/TPO erred on facts and in law in not appreciating that working capital adjustment is more appropriate measure to benchmark the realisation of trade receivables of the appellant instead of application of an interest rate.

2.8 Without prejudice, that the DRP/TPO erred on facts and in law in not appreciating that the appellant has received receivables from unrelated parties with similar delay of period and accordingly the delay

in receipt of receivables from unrelated parties should be considered as a valid internal CUP for the purpose of benchmarking.

2.9 Without prejudice, that the DRP/ TPO erred on facts and in law in adding an adhoc mark-up of 400 points on the Libor rate of interest, arbitrarily on account of credit rating risk, security risk, transaction cost etc.

2.10 Without prejudice, that the DRP erred on facts and in law in enhancing the adhoc mark-up of 300 points to 400 bps on the Libor rate of interest, without providing any cogent reasons and without provide reasonable opportunity to the appellant thereby violating the natural principles of justice.

2.11 Without prejudice, that on the facts and in the circumstances of the case and in law, the DRP/TPO erred on facts and in law in not appreciating that the in terms of Master Circular No. 10/2011-12, Reserve Bank of India allows a period of 12 months to all companies for receiving repatriation of export sales proceeds, and therefore, interest if any, ought to be imputed on the period of delay beyond 12 months.

3 That the assessing officer erred on facts and in law in not allowing foreign tax credit of Rs.14,08,409 while computing tax liability of the appellant.

4 That the assessing officer erred on facts and in law in levying interest under Section 234B and Section 234C of the Act.

The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal.ö

3. Ground of appeal No.1.1 being general in nature is dismissed. Grounds of appeal No.2.1 to 2.11 relate to the order of the AO in making transfer pricing addition of Rs.4,71,35,199/- being interest on receivables.

4. Facts of the case, in brief, are that the assessee company is engaged in the provision of software development services to GlobalLogic Inc. and other GlobalLogic group companies. It filed its return of income on 27.11.2013

declaring the total income at Rs.33,89,27,640/-. Since the assessee has entered into certain international transactions, the AO referred the matter to the TPO for determination of the ALP of the international transaction. The TPO, during the course of TP assessment proceedings, observed that the assessee has entered into the following international transactions with its AEs:-

S. No.	International Transaction	Amount [In Rs.]
1.	Provision of Software Development Services	1,88,69,99,823
2.	Purchase of equipment	92,645
3.	Reimbursement of expenses	11,86,07,516
4.	Amount received on behalf of AE	65,61,799
	Total	201,22,61,783

5. The TPO, rejecting the various explanations given by the assessee, held that the overdue receivables constitute separate international transaction and the working capital adjustment does not subsume interest on overdue receivables. Relying on various decisions, the TPO made an upward adjustment of Rs.3,70,63,575/-. The assessee approached the DRP, who, vide order dated 22nd September, 2017, directed the TPO to adopt a LABOR + 400 basis points CUP to determine the arm's length price of interest to be charged.

The relevant observation of the DRP reads as under:-

"The taxpayer has not furnished data relating to any other comparable uncontrolled transaction and no such data is available in the orders of the AO and the TPO. Thus the rate CUP will have to be marked up. Even the RBI Master Circular on External Commercial Borrowings and Trade Credits (no.8/2010-11 dated 1.7.10), specifies a cost ceiling of 6 month LIBOR plus 300 basis points for cases where the average maturity period is between 3 and 5 years. In view of these facts, it would be appropriate to take the ceiling rate of 6 month LIBOR plus 300 basis points as the most suitable CUP and then adjust it for other risks and

costs. Considering the facts, a mark-up of 100 basis points is appropriate towards the additional risks. This must be added to the interest rate plus 300 basis points discussed above. The AO/TPO is thus directed to compute the adjustment using a CUP based on the 6 month LIBOR rate for currency in which invoicing of receivables has been done, in accordance with the decision in Cotton Naturals plus 400 basis points to cover additional risks, transaction costs, security, credit rating, arising from these transactions in light of discussions supra. TPO is thus directed to adopt a Libor+400 basis points CUP."

6. The TPO accordingly made an upward adjustment of Rs.4,71,35,199/-, the details of which are as under:-

S.No	Nature of international transaction	ALP determined by taxpayer (Rs.)	ALP determined by this office (Rs.)	Adjustment u/s 92CA (Rs.)
1.	Receivables- During the year	NIL	90,48,241	90,48,241
2.	Receivables- Opening	NIL	3,80,86,958	3,80,86,958
			Total	4,71,35,199

7. The AO finally made the addition, vide order passed u/s 144C r.w.s. 143(3) of the Act, on 31st March, 2013.

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

9. The Id. Counsel for the assessee, at the outset, referred to page 100 and 101 of the paper book and submitted that the margin declared by the assessee was at 28.22% as against 14.50% declared by the comparables. Further, the assessee has not charged any interest on receivables from unrelated parties. Referring to the decision of the Tribunal in assessee's own case for A.Ys

2010-11 and 2012-13 in ITA No.1104/Del/2015 and 1115/Del/2017, order dated 12th December, 2017, he submitted that the Tribunal, following the decision of the Honøble Delhi High Court in the case of PCIT vs. Kusum Healthcare Pvt. Ltd., in ITA No.765/2016, order dated 25th April, 2017, has held that no adjustment on account of interest on receivables can be made. Referring to the decision of the Tribunal in assessee's own case vide ITA No.8726/Del/2019, order dated 29th June, 2020 for A.Y. 2015-16, he submitted that the Tribunal, following the decision in assessee's own case for A.Y. 2010-11 and 2012-13, has deleted the addition holding that no adjustment has to be made on account of notional interest on receivables. He accordingly submitted that this being a covered matter in favour of the assessee, the adjustment made by the AO on account of interest due on receivables from its AE has to be deleted.

10. The ld. DR, on the other hand, heavily relied on the orders of the AO/TPO/DRP and submitted that as per Explanation 1(c) to section 92B(1) inserted by the Finance Act, 2012 with retrospective effect from 01.04.2001, payment or deferred payment or receivables or any other debt arising during the course of business is an international transaction.

11. 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.

We find, identical issue had come up before the Tribunal in assessee's own case in ITA No.1104/Del/2015 and 1115/Del/2017 for A.Y. 2010-11 and 2012-13. The Tribunal, relying on various decisions including the decision of the Hon'ble Delhi High Court in the case of Kusum Healthcare Pvt. Ltd. (supra), has deleted the addition on account of interest on receivables by observing as under:-

¶14. Provisions contained under Explanation (i), (a) & (c) of section 92B have been analyzed by Hon'ble Delhi High Court in case cited as Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 order dated 25.04.2017, wherein it is held that the expression added in Explanation to section 92B does not mean that de hors the context, every item of receivables appearing in the accounts of an entity, which may have dealing with foreign AE, would automatically be characterized as an international transaction and decided the issue in favour of the taxpayer by returning following findings :-

¶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.

¶11. The Court finds that the entire focus of the AO was on just one AY and the figure 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-à-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 this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).

12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed.ö

15. So, in view of the law laid down by Honøble High Court in Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. (supra), we are of the considered view that no adjustment can be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Honøble Delhi High Court in case of Pr. CIT-1 vs. M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 order dated 21.07.2016.

16. Furthermore when we examine the entity level margin of the taxpayer vis-à-vis comparable companies, the taxpayer has earned higher margin i.e. taxpayer earned 38.39% OP/OC margin vis-à-vis margin of comparable companies at 11.43%. In such circumstances, no separate adjustment on account of interest can be made. Because the credit period extended to AE cannot be considered as a standalone transaction without considering the main transaction of the sale.

17. Furthermore when the taxpayer is undisputedly a debt free company, as it is not the case of the Id. TPO that borrowed funds have been appropriated enabling the AE to make the delayed payment on receivables. So when outstanding receivables is not a separate international transaction, the delay in realization of the sale proceeds is incidental to the transaction of sale and as such no notional interest can be levied by treating the same as unsecured loan.

18. Furthermore it is the case of the taxpayer that when the taxpayer is not charging interest from unrelated third party / non-AE, in case of such delay, no adjustment on interest in case of AE can be made and drew our attention towards the details of invoices raised qua unrelated parties available at page 183A of the paper book wherein delay in realization of the receivables is also up to 218 days for AY 2010-11 and up to 417 days qua AY 2012-13 as per detail of invoices raised on unrelated parties qua AY 2012-13, available at page 236 of the paper book.

19. This issue has been dealt with by Honøble Bombay High Court in case cited as CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L)

No.1053 of 2012 order dated 08.01.2013 wherein following question was framed :-

öB. Whether on the facts and in the circumstances of the case and in law the ITAT was justified in deleting the addition of Rs.87,66,641/- being internet receivable on outstanding amount due to the Assessee Company from the Associated Enterprises?

20. Aforesaid question was decided in favour of the taxpayer by upholding the order rendered by the Tribunal by making following observations :-

ö5. On appeal filed by the Revenue, the ITAT upheld the order of CIT (A). While, upholding the order of CIT (A), the ITAT held that interest income is associated only with the lending or borrowing of money and not in case of sale. We express no opinion on the above reasoning of the ITAT and keep that reasoning open for debate in an appropriate case. However, in the facts of the present case, the specific finding of the ITAT is that there is complete uniformity in the act of the assessee in not charging interest from both the Associated Enterprises and Non Associated Enterprises-debtors and the delay in realization of the export proceeds in both the cases is same. In these circumstances, the decision of the Tribunal in deleting the notional interest on outstanding amount of export proceeds realized belatedly cannot be faulted.ö

21. So, when the taxpayer has not been making any distinction between AE and non-AE in charging any interest on outstanding receivables, the adjustment made by the TPO/DRP/AO on account of armö length interest is not sustainable. Moreover the interest can be charged only on loaning or borrowing of money and not in case of sale. Particularly when there is no penal clause in the agreement entered into between the taxpayer and its AE/non-AE to charge the interest on delayed receivables. Even otherwise, a transaction cannot be recharacterized merely on ground of delay in payment of receivables.

22. Identical issue has also been examined by coordinate Bench of the Tribunal in Kadimi Tool Manufacturing Co. Pvt. Ltd. vs. DCIT in ITA No.7068/Del/2014 order dated 25.09.2017 and has been decided in favour of the taxpayer by relying upon Kusum Healthcare Pvt. Ltd. vs. ACIT ö 170 TTJ 411 and Bechtel India Pvt. Ltd. (supra) wherein SLP filed in the Honöble Supreme Court has been dismissed.

23. In view of what has been discussed above, TPO/DRP/AO have erred in making adjustment on account of armö length interest which is not sustainable in the eyes of law, hence no adjustment on account of interest

on receivables can be made. So, Grounds No.2 to 2.9 are determined in favour of the taxpayer.ö

12. We find, following the above decision, the Tribunal in assessee's own case, vide ITA No.8726/Del/2019, order dated 29th June, 2020 for A.Y., 2015-16, has deleted the addition on account of notional interest on receivables by observing as under:-

ö32. Now coming to the next issue raised in the present appeal against the transfer pricing adjustment made on account of interest due on receivables outstanding. The said issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for Assessment Year 2010-11 in ITA No.1104/Del/2015 and for Assessment Year 2012-13 in ITA No.1115/Del/2017 vide order dated 12.12.2017. The Tribunal has relied on the decision of Honøble Delhi High Court in Pr. CIT-V vs Kusum Health Care Pvt.Ltd. in ITA No.765/2016, judgement dated 25.04.2017 and held that no adjustment is to be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Honøble Delhi high Court in case of Pr.CIT-1 vs M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 order dated 21.07.2016. The relevant findings of the order of the Tribunal in assessee's own case (supra) in paras 14 to 18 which are being reference but not being reproduced for the sake of brevity.

33. The assessee during the year under consideration had not avail any loan from AEs or unrelated third party and was not incurring any interest cost. Further, there was similar delay in receipt of receivables from others and the assessee was not charging any interest on delay in receipt of receivables against services rendered to unrelated third party.

34. In such facts and circumstances and following the ratio laid down by the Honøble Delhi High Court in Kusum Healthcare Ltd. (supra) and also in line with the findings of the Tribunal in Assessment years 2010-11 & 2012-13, we find no merit in making any adjustment on account of interest due on receivable from its AE. Ground of appeal Nos. 2 to 2.6 raised by the assessee are thus allowed.ö

13. In view of the above discussion and following the consistent decisions of the Tribunal in assessee's own case for the preceding as well as the succeeding assessment years, we hold that no adjustment on account of interest due on receivables from its AE can be made. Accordingly, the grounds raised by the assessee are allowed.

14. Ground of appeal No.3 relates to denial of benefit of foreign tax credit of Rs.14,08,409/- while computing tax liability of the assessee.

15. After hearing both the sides, we deem it proper to restore this issue to the file of the AO with a direction to verify and allow the foreign tax credit of Rs.14,08,409/- in accordance with the law. Needless to say, the AO shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. This ground raised by the assessee is allowed for statistical purposes.

16. Ground of appeal No.4 relates to levy of interest u/s 234B and 234C which, in our opinion, is mandatory and consequential in nature. Accordingly, the same is dismissed.

17. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 07.09.2020.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 7th September, 2020.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi