

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2 ": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 161/Del/2017
(Assessment Year: 2011-12)

Bharti Airtel Services Ltd, Airtel Centre, Plot No. 16, Udyog Vihar, Phase-IV, Gurgaon PAN: AAACB8917G	Vs.	DCIT, Circle-4(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Alok Vasant, CA
Revenue by:	Shri H. K. Choudhary, CIT DR
Date of Hearing	07/08/2020
Date of pronouncement	06/10/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by Bharti Airtel services Ltd (the appellant/assessee) against the order of the learned Commissioner Of Income Tax (Appeals) – 44, New Delhi dated 10 August 2016 for assessment year 2011 – 12.
2. The assessee has raised the following grounds of appeal:-
 - “1. That the learned Commissioner of Income tax (Appeals) [“CIT (A)”] has erred both on facts and in law in partly allowing the addition/adjustment made by the Assessing Officer (AO)/Transfer Pricing Officer (TPO) of Rs. 446,726/- to the arm’s length price of the ‘international transactions’ on account of notional interest on outstanding balance of receivables from Associated Enterprises (‘AE’).
 2. That the learned CIT(A) and the learned AO/TPO has erred in not appreciating that outstanding balance of receivables from the AE is not an international transaction as it does not impact the profits, incomes, losses or assets of the appellant.
 3. That the learned CIT(A) further erred in law in concluding that characterizing of outstanding account receivables as loan is permitted under section 92B.
 - 3.1 That the learned CIT(A) erred in law in treating the account receivables at par with unsecured loan by making reference to clause (c) of section 92B(1).
 - 3.2 That the learned CIT(A) and the learned AO/TPO erred on facts and in law in recharacterizing the account receivables as unsecured loan advanced to AEs without appreciating the commercial distinction between a transaction of loan and account receivable.

4. *Without prejudice, that the learned CIT(A) and the learned AO/TPO erred on facts and in law in rejecting the working capital adjustment profitability results submitted by the Applicant on the amount of account receivables.*
 5. *Without prejudice, that the learned CIT(A) and the learned AO/TPO erred on facts and in law in confirming the transfer pricing adjustment by not appreciating the fact that charging or non-charging of interest on outstanding account receivables is a matter of the commercial and business policy of an enterprise and that tax authorities have no power to step into the shoes of businessman and judge business strategies.*
 6. *Without prejudice, that the learned CIT(A) and the learned AO/TPO erred on facts and in law in not accepting the internal CUP in the form of contracts between the Airtel Group and third parties for staffing services (which do not stipulate a separate interest charge for delayed payments) for benchmarking the alleged international transaction on account of outstanding receivables.*
 7. *That the Ld. CIT(A) acted arbitrarily and erred on facts and in law in directing the AO to benchmark notional interest on account receivables at the rate of LIBOR plus 300 basis points without giving any basis of adding 300 bps to the LIBOR rate.”*
3. The brief facts of the case show that Assessee Company is engaged in the business of selling of hardware for Internet and satellite business and also in the field of providing training. During the year the assessee has reported three international transactions. The transaction of manpower recruitment related services and manpower related services provided to its associated enterprise was benchmarked adopting cost plus method and stated that transactions are at arm's-length. With respect to the employee -related transactions no specified method was adopted. However that is not the dispute between the TPO and the assessee.
 4. The learned transfer pricing officer examined the balance sheet which revealed that the receivables have not been received within the stipulated time (15 days) as provided in the service agreement with the associated enterprise. Invoice wise details were called for and delay beyond the dates specified in the agreement were considered as an outstanding overdue from associated enterprise. Therefore the learned assessing officer proceeded to compute the interest on the outstanding holding that outstanding beyond a specified period of 15 days in the agreement results into a separate international transaction which requires to be benchmarked and assessee needs to be compensated for that and therefore he adopted interest rate at the rate of 11.69% adopting SBI rate + 300 BPS and computed the interest of ₹ 4,46,726/-. Before him, assessee argued that working capital adjustment margin of the taxpayer is higher than the working capital adjusted margin of the comparables and thereby demonstrating that the overall profitability of the taxpayer adequately compensates for outstanding receivable. The learned TPO did not accept this argument of the assessee stating that even otherwise working capital adjustment submitted by the taxpayer are not acceptable in absence of any reliable data. Accordingly order u/s 92CA (3) was passed on 15/1/2015.

- Consequently assessment order u/s 143 (3) read with Section 144C of the income tax act was passed on eighth of April 2015 determining total loss of the assessee at ₹ 79,604,067/- again the returned income of the assessee of loss of ₹ 8,00,50,793 as per return filed on 29/11/2011.
5. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A wherein the outstanding overdue receivable from associated enterprise Leon 15 days agreed was held to be a international transaction. However the learned CIT A agreed that for benchmarking such loan only LIBOR should be applied as the outstanding receivable is in US dollars. He directed the TPO/AO to apply LIBOR Rate + 300 base points on outstanding loan instead of SBI base rate +300 base points applied by the learned TPO.
 6. Thus assessee aggrieved with the order of the learned CIT A has preferred this appeal raising seven different grounds of appeal. The learned authorised representative submitted the business and facts of the case and dealt with the transfer pricing addition/adjustment proposed by the learned TPO confirmed by the learned CIT – A to the extent of relief granted. He submitted that the learned transfer pricing officer has imputed the interest on account of outstanding receivable considering the same to be an international transaction which is not correct. He relied upon the decision of
 - a. Bechtel India Pvt Ltd TS 591 SC 2017 TP
 - b. Principal Commissioner Of Income Tax Versus Kusum Healthcare Private Limited [2017 TII 28 HC Del
 - c. AVL India Pvt Ltd
 - d. Motherson sumi Infotech & Design Limited V DCIt 91 Taxmann.com 443
 - e. Blackroacjk Services India P Ltd V ITO 107 taxmann.com 93
 7. The learned departmental representative, who also happens to be the ld CIT A vehemently supported the order of the learned learned CIT – A. He submitted that all the decisions cited by the learned authorised representative does not apply to the facts of the case as there is no working capital adjustment granted or it is not shown that these sale price included the outstanding beyond a specified period. He submitted that had the sales price included the outstanding receivable beyond specified period for payment, there was no need to mention 15 days in the agreement. He also submitted that assessee is charging Cost Plus margin, had the interest cost been on assessee, then it would have been chargeable to AE even if outstanding is received within agreed period. He submitted that therefore it is irrelevant here wither the assessee pays interest or is a debt free company. He submitted that the facts of the case are quite different then the decision cited by the learned that AR.
 8. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case the service agreement clearly says that the amount of payment

is to be made by the associated enterprises to the assessee within 15 days. Such payment was not made within that period but beyond that. The learned assessing officer held that the amount of outstanding bills beyond a specified period of 15 days is a separate international transaction giving certain benefit of extended credit to the associated enterprise. Such is the finding of the learned CIT – A also. We have carefully gone through the service agreement produced before us at page number 335 of the paper book. According to that, clause 3 shows services charge and payments as well as the method of providing invoices in making payment. It provides that the company shall raise invoices on the recipient on the first day of every subsequent month for the services fee, and the recipient shall pay the services for within 15 days of receipt of the invoice by the company. It further provides that the service costs shall constitute full consideration for the company for the providing of services to the recipient. This agreement clause clearly shows that if the payment is beyond 15 days, it does not include the cost of service for withholding the payment beyond 15 days by the associated enterprises. This shows that in the service cost, the cost of outstanding which remains overdue is not factored. Hence, We do not find any infirmity in the order of the Id CIT A. The working capital adjustment was denied to the assessee in absence of any reliable data provided by the assessee. Even before us same is not provided. Therefore it is apparent that in the present case working capital adjustment was not factored into by determining the arm's-length price of the international transaction of provision of the services. Therefore, outstanding debtors beyond an agreed period is a separate international transaction of providing funds to its associated enterprise for which the assessee must have been compensated in the form of interest at LIBOR + 300 BPS as held by CIT (A) .

9. Coming to the various decisions relied upon by the learned authorised representative we find that they are on different facts. The decision of the honourable Delhi High Court in ITA number 765/2016 dated 24th appeal 2017 in case of Kusum healthcare private limited (supra), para number eight clearly shows that assessee has undertaken working capital adjustment for the comparable companies selected in its transfer pricing report which has not been disputed by the learned transfer pricing officer and therefore the differential impact of working capital of the assessee vis-à-vis is comparable had already been factored in pricing profitability and therefore the honourable High Court held that adjustment proposed by the learned TPO deleted by the ITAT is proper. In the present case there is no working capital adjustment made by the assessee as well as granted by the learned TPO. The facts in the present case are distinguishable. Further same are the facts in case of Bechtel India where working capital adjustment was already granted. In case of 91 taxmann.com 443 Motherson Sumi Infotech and design Limited non charging of interest was due to business and commercial reasons and

no interest was also charged against outstanding beyond a specified period from non-related parties. No such commercial or business reasons were shown before us. The facts of the other decisions cited before us are also distinguishable. Therefore, reliance on them is rejected.

10. In the result order of the learned CIT – A confirmed and all the grounds of appeal are dismissed.

11. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 06/10/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 06/10/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi