

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH
HYDERABAD (VIRTUAL COURT)**

BEFORE SHRI C.N. PRASAD, JM

&

SHRI M.BALAGANESH, AM

**ITA No.2032/Hyd/2017
(Assessment Year :2013-14)**

M/s. Hexagon Capability Center India Private Limited Plot-5, Ground 9 th , 10 th and 11 th Floors, Divya Sree Trinity Campus, Near Lemon Tree Hotel, Madhapur Hyderabad Telangana – 500 081	Vs.	The Asst. Commissioner of Income Tax, Circle 2(2), Hyderabad
PAN/GIR No. AAACI7746L		
(Appellant)	..	(Respondent)

Assessee by	Shri Ajit Tolani, Shri Darpan Kirpalani & Ms. Bhavya Bansal Goyal (AR)
Revenue by	Shri Y V S T Sai, CIT DR
Date of Hearing	04/09/2020
Date of Pronouncement	26/11/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.2032/Hyd/2017 for A.Y.2013-14 preferred by the order against the final assessment order passed by the Assessing Officer dated 04/10/2017 u/s.143(3) r.w.s. 144C(5) r.w.s. 144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions

of the Id. Dispute Resolution Panel (DRP in short) u/s.144C(5) of the Act dated 21/08/2017 for the A.Y.2013-14.

2. Though the assessee has raised several issues vide ground Nos.1 & 2 in its appeal, we find that the effective issue to be decided in the instant appeal are as under:-

- (a) Whether outstanding receivables could be considered as a separate international transaction and imputation of interest thereon could be made?
- (b) Whether separate adjustment to arm's length price of outstanding receivables could be made, if working capital adjustment is granted to the assessee ?

3. We have heard rival submissions and perused the materials available on record. Hexagon Capability Center India Private Limited ("Hexagon India" or "the Assessee") was incorporated on 8 June 1987, and is a subsidiary of Intergraph Corporation, USA which is further held by Hexagon AB, Sweden. Hexagon India provides engineering and geospatial software development services to its Group companies. For the AY 2013-14, the assessee filed its return of income on November 28, 2013 disclosing a total income of Rs. 25,00,95,470/- under normal provisions of the Act and paid tax amounting to Rs.9,35,52,142.

3.1. Hexagon India has international transactions pertaining to provision of software development and support services and distribution of software products. The operating margins earned by Hexagon India for these international transactions falls within the +/- 3% of the arm's length margin of the comparables determined by the TPO [after allowing Working capital adjustments (WCA)] and no adjustments were proposed by the Id. TPO.

3.2. During the course of the TP proceedings, the Ld. TPO proposed to charge interest @ 14.45%. The assessee contended that outstanding receivables related to sale of services and are not in the nature of any advance/loans. Hexagon India is a fully funded entity and the sales and receivables are running accounts. As such it does not bear working capital risk, which may require charging of notional interest. The Assessee also contended that the outstanding receivables are forming part of the Working Capital Adjustment (WCA) computation and as such the interest is already impacted therein.

3.3. However, the Id. TPO rejected the contentions of the Assessee and proposed to charge interest @ 14.45% pa towards the interest on the receivables for the delayed period to arrive at the arm's length price amounting to INR 5,48,42,358.

3.4. Before the Ld. DRP, the assessee filed the following objections:

Making TP adjustment by imputing interest on outstanding receivables as on March 31st 2013 relating to sales of services to AE's:

- Not appreciating the fact that under TNMM, the impact of outstanding receivables on the working capital adjustments have already been taken into account in determining the arm's length margin hence there is no need of imputing interest on outstanding receivables again;
- Not appreciating the fact that the receivables are consequential/closely linked and have been aggregated for determination of ALP under TNMM of the principle transaction of provision of software services wherein the Company's margin of 23% is higher than the margin of the TPO's comparables and hence have been determined to be within arm's length by TPO.
- Not appreciating the facts and circumstances surrounding the receivables and re-characterizing the outstanding receivables as unsecured loans advanced to AEs;
- Not appreciating that retrospective amendment to the definition of 'international transaction' does not apply to the facts and circumstances of the Assessee.

3.5. The Id. DRP held that "deferred receivables" would constitute an international transaction and has to be benchmarked in regard to delay beyond the reasonable credit period. With respect to the interest rate to be considered, the Id. DRP provided the following directions:-

“In our view, the short-term fixed deposit rates are appropriate ALP interest rates to be considered for ALP adjustment with regard to the interest to be charged on receivables from the AE. Accordingly, we direct the Assessing Officer to apply the applicable interest rates given above instead of 14.45% applied by the TPO according to the number of days delay.”

3.6. The Id. DRP further directed the AO to restrict the adjustment for delay in payment till the end of the financial year.

3.7. In light of the directions of the Id. DRP on the issue of outstanding receivables, Ld. AO passed the final assessment order after considering the short term deposit rates. The revised transfer pricing adjustment was computed at Rs.2,36,29,848.

4. Aggrieved by the above directions, the assessee has preferred an appeal before us.

5. We find at the outset that the Id. AR submitted that this issue is covered by the order of this Tribunal dated 08/06/2018 for A.Yrs. 2011-12 and 2012-13 in ITA No.251/Hyd/2016 and 84/Hyd/2017 respectively.

5.1. Per contra, the Id. DR submitted that the assessee had not submitted working capital adjustment workings before the Id. TPO. In defence, the Id. AR submitted that the Id. TPO had substituted his fresh set of comparables and in turn had granted working capital adjustment for those comparables and further, held that assessee is well within +/- 5% tolerance limit. The Id. AR further argued that in any case, the working capital adjustments were even submitted before this Tribunal and is part of the paper book, on which, no flaws were pointed out by the Id.

DR. Considering the submissions of both the parties, we hold that outstanding receivable is a separate international transaction and requires to be benchmarked post amendment in Clause (c) of Explanation to Section 92B of the Act by the Finance Act, 2012. However, since in the instant case, the working capital adjustments had been granted by the Id. TPO, on which fact there is absolutely no dispute, the outstanding receivables thereon gets subsumed thereon. Hence, there is no need to make separate adjustment towards outstanding receivables by imputation of interest on the same. This aspect has been considered in assessee's own case for A.Yrs. 2011-12 and 2012-13 vide order dated 08/06/2018 referred to supra wherein it was held as under:-

“11. As regards the other contentions, we find that where the working capital adjustment is considered by the A.O, it takes care of the interest on receivables as well. This aspect has been considered by the Tribunal at Delhi in the case of Kusum Healthcare Pvt Ltd., in ITA No. 6814/Del/2014 dated 31.03.2015 which has been confirmed by the Hon'ble High Court of Delhi and at para 14 of its order has held as under:

“14. As mentioned earlier, the differential impact of working capital of the assessee vis-à-vis its comparables has already been factored in the pricing/profitability of the assessee and therefore, any further adjustment to the margins of the assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified.”

12. We find that the Hon'ble High Court of Delhi has confirmed the decision of the ITAT and the SLP filed by the Revenue is pending before the Hon'ble Supreme Court. We find that in the case of EPAM Systems India Pvt Ltd in ITA No. 192/Hyd/2017 dated 24.10.2017, Coordinate Bench of this Tribunal has followed the decision of the Hon'ble Delhi High Court in the case of Kusum Healthcare Pvt Ltd., to hold that working capital adjustment takes into consideration the interest on the receivables as well. Therefore, on this reason also, no TP adjustment is required.”

13. In view of the above, we allow the grounds raised by the Assessee in both the assessment years and delete the additions so made.”

5.2. Respectfully following the same, we direct the Id. TPO not to make any adjustment by way of imputation of interest on outstanding receivables in the peculiar facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed in this regard.

6. Ground No.3 raised by the assessee is with regard to charging of interest u/s.234D which would be consequential in nature.

7. Ground No.4 is with regard to initiation of penalty proceedings u/s.271(1)(c) and 271AA of the Act which would be premature for adjudication at this stage.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 26/11/2020 by way of proper mentioning in notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/11/2020
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Hyderabad.
4. CIT
5. DR, ITAT, Hyderabad
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Hyderabad