

IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1565/Mum/2017

(A.Y: 2012-13)

Hilti Manufacturing India Pvt Ltd. Shop No. 5 & 6 Plot No. 11, Sec. 24 (Turbhe), Sion Panvel Expressway, Navi Mumbai – 400705.	Vs.	ACIT, Cir -10(1)(1) Aayakar Bhavan, 2 nd Floor, R.No. 209, MK Marg, Mumbai – 400020.
PAN/GIR No. : AADCB2566L		
Appellant	..	Respondent

Appellant by :	Shri Ajit Kumar Jain, AR & Shri Siddhesh Chaugule, AR
Respondent by :	Shri Sushil Kumar Mishra, DR & Shri Sunil Deshpande, DR

Date of Hearing	21.06.2021
Date of Pronouncement	12.07.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Assessing Officer passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 passed in pursuance to the directions of the Dispute Resolution Panel (DRP) u/s 144C(5) of the Act.

‘1. On the facts and in the circumstances of the case and in

law, the order passed by the Ld. AO the directions issued by the DRP and the order passed by the TPO are bad in law and liable to be quashed as they are not in accordance with law.

2. On the facts and circumstances of the case and in law, the AO pursuant to the directions of the DRP has erred in determining total income of the appellant of Rs. 8,80,19,200/-.

3. On the facts and circumstances of the case and in law, the AO, DRP and TPO have erred in not considering the evidences and submissions filed by the appellant.

4. On the facts and circumstances of the case and in law, the AO pursuant to the directions of the DRP confirming the action of the TPO has erred in making an adjustment towards notional interest on loan and advances given by the Appellant in AE.

5. On the facts and circumstances of the case and in law, the AO pursuant to the directions of the DRP confirming the action of the TPO has erred in considering outstanding debit balance of AE as international transaction and making an adjustment towards notional interest on outstanding AE debtors.

6. On the facts and in circumstances of the case and in law, the AO pursuant to the directions of the DRP has erred in not allowing claim on account of advances written off during the year under consideration.

7. On the facts and circumstances of the case and in law, the AO pursuant to the directions of the DRP has erred in disallowing a claim of brought forward business losses and unabsorbed depreciation.

8. On the facts and circumstances of the case and in law, the AO has erred in not granting credit of TDS amounting of Rs. 1,11,460/-.

9. On the facts and circumstances of the case and in law, the AO has erred in levying interest u/s 234B of the Act.

2. The Brief facts of the case are that, the assessee company is engaged in the business of manufacturing and sale of Diamond Saw Blades, segments, grinding tools and core drills. The assessee has filed the return of income electronically on 30.11.2012 declaring a total loss of Rs.15,40,66,832/-. The assessee also filed the revised return of income on 06.09.2013 with a total loss of Rs.15,40,66,833/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and the notice u/s 143(2) and 142(1) of the Act was issued along with questionnaire. In compliance the Ld. AR of the assessee appeared from time to time and filed the submissions. The Assessing officer (A.O) on perusal of the financial statements found that the assessee has international transactions with its Associate Enterprises(AE) and therefore the matter was referred to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP). The TPO on receipt of the directions of the A.O. has called for the information in support of ALP computed as per Form.no.-3CEB. Whereas, the assessee has submitted the details and documents relating to the international transactions with its Associate Enterprises(AE) and the basis of computation of ALP. In the financial year (F.Y) 2011-12

the assessee company has international transactions as per Form no.3CEB as under:

<i>Sr. No</i>	<i>Transactions</i>	<i>Amount</i>	<i>Most appropriate Method</i>
1	<i>Purchase of Goods</i>	<i>1,719,840</i>	<i>TNMM</i>
2	<i>Sale of goods</i>	<i>822,321,453</i>	
3	<i>Services charges received</i>	<i>62,825,000</i>	
4	<i>Trade advance received</i>	<i>20,980,000</i>	
5	<i>Issue of equity shares</i>	<i>657,450,000/-</i>	<i>Other Method</i>

2.1 The assessee has applied the Transactional Net Margin Method (TNMM) as Most Appropriate Method and adopted Net cost plus margin(NCP) as a profit level indicator(PLI). The assessee company as per TP Study report has selected 9 comparables for a single year and the Arithmetic mean (AM) was worked out to 10.18%. Whereas, the TPO has excluded two comparables and included one new comparable in the final set of comparables. The TPO observed that the assessee's PLI is worked out @ 27.27%, which is more than the margin of comparables selected and finally TPO has treated the transactions of assessee company at ALP . Whereas, On the disputed issue in respect of charging of interest on loans and advances and interest on Ageing Debtors the TPO found as per Form no.3CEB that the assessee has advanced loans, some business advances and there was a

delay in debtors collections and are outstanding. Since the assessee has not bench marked the same in TP report, the TPO has issued show cause notice. The assessee was called for the explanations for the delayed debtors and advances provided to Associate enterprises (AE) and why the same should not be treated as loan and accordingly interest should be charged. The assessee has filed a detailed reply on 25.01.2015 in respect of outstanding advances and debtor's receivable from Associate Enterprises as under:

<i>Particulars</i>	<i>Peacock Diamond Systems Inc (Rs.)</i>	<i>Peacock Diamond Systems B.V. (Rs.)</i>	<i>Hilti Corporation (Rs.)</i>
<i>Loans and Advances</i>	2,95,56,854	-	-
<i>Reimbursements from group companies</i>	6,78,501	65,07,387	-
<i>Intrest of BDS Loan</i>	7,84,248	-	-
<i>Debtors</i>	5,00,82,882	235,18,070	340,20,787

2.2. The explanations of the assessee in respect of Peacock Diamond Systems Inc USA that the said company has went in to liquidation on 23 December 2011 and in computing the total income, the provisions has been disallowed. Whereas the TPO having considered these facts found that there are also outstanding debtors

of the assessee from the Associate Enterprise(AE) as under

<i>Particulars</i>	<i>Peacock Diamond Systems (Rs.)</i>	<i>Peacock Diamond Systems (Rs.)</i>	<i>Hilti Corporation (Rs.)</i>
<i>Trade Receivables</i>	5,00,82,882	8,61,85,505	3,40,20,787
<i>Less Provision for bad and doubtful debts</i>	5,00,82,882	2,35,18,070	Nil
<i>Total</i>	Nil	6,26,67,436	3,40,20,787

2.3 The TPO has not accepted the assessee's contentions of non charging of interest on outstanding advances and receivables. Finally the interest rate extracted from Bloomberg i.e 5.84% is charged on the outstanding loans and advances provided to the AE and similarly in the case of ageing debtors, which are outstanding for a period of more than 60 days. Accordingly the TPO has made ALP adjustment of international transactions with interest on loans, advances and receivables of Rs.87,11,627/- and passed the order u/s 92CA(3) of the Act dated 29.01.2016.

3. The A.O. after the receipt of the TPO order, has passed a draft assessment order on 28.03.2016 u/s 143(3) r.w.s 144C(1) of the Act with (i) rejection of additional claim of Bad Debts written off (ii) restricting the set off of brought

forward business loss and unabsorbed depreciation to Rs.7,47,59,260/- and (iii) the Transfer pricing adjustment of Rs.87,11,627/- and assessed the total income of Rs.8,80,19,200/-. The assessee aggrieved with the draft assessment order has filed the objections in Formno-35A with the Dispute Resolution Panel (DRP). The DRP has passed the directions u/s 144C(5) of the Act dated 04.11.2016. Subsequently, the A.O. after the receipt of the orders of the DRP has passed the final assessment order with ALP of interest in respect of international transactions with its AE's of Rs. 87,11,627/- and the observations of DRP rejecting the additional claim of bad debts in the year. Further the A.O has not allowed the total set off of brought forward business loss and unabsorbed depreciation. The A.O as per the DRP directions found that the assessee has claimed excess set off of business loss and unabsorbed depreciation and hence restricted the claim to the extent of Rs. 7,47,59,260/-. Finally the A.O. has assessed the total income of Rs.8,80,19,200/-and passed the order u/s143(3) r.w.s 144C(13) of the Act on 13-01-2017. Aggrieved by the order of the AO, the assessee has filed an appeal before Honble Tribunal.

4. At the time of hearing the Ld.AR submitted that the Grounds of appeal No.1 to 3 are general in nature. And

the transfer pricing grounds of appeal are no 4 & 5. The Ld. AR submitted that the DRP has erred in confirming the action of the TPO in making the adjustment of notional interest on loans and advances though provided by the assessee company to its AE in the ordinary course of business. Further Interest is also charged on the outstanding debit balance of debtors with AE. The Ld.AR emphasized that the one of the Associated Enterprise (AE) M/s Peacock Diamond System Inc. USA were advance is provided by the assessee. The AE was incorporated under the laws of Delaware and authorize to transact the business in Georgia USA and it's a wholly owned subsidiary of the assessee company. During the financial year 2011-12, the AE has incurred heavy losses and went into liquidation on 23.12.2011 and was dissolved w.e.f 05.10.2012. The contention of the Ld.AR that the AE was dissolved and recovery of advances itself is doubtful. Further charging of interest on the outstanding advances and debtors is not financially feasible and the same cannot be treated as international transaction and prayed for the deletion. Contra, the Ld.DR supported the orders of the TPO and DRP.

5. We heard the rival submissions and perused the material on record. On the first issue of the Associated Enterprise (AE) M/s Peacock Diamond System Inc. USA

were advances are provided by the assessee, it is borne out on the record and not disputed that the AE company went into liquidation due to heavy losses and was dissolved as per the Governing Laws of the USA. The explanations were filed with documentary evidence in respect of liquidation of the company in USA at Para 7.4 of the TPO order. We are of the view that in such circumstances, the recovery of the amount due is doubtful and the TPO charging interest on such outstanding balances and advances cannot be treated as prudent practice. Therefore we considering the overall facts and the circumstances direct the TPO not to charge interest in respect of balance of advances and outstanding receivables of Peacock Diamond System Inc.USA and partly allow the grounds of appeal of the assessee .

6. In respect of additional claim of bad debts written off during the year. The AO has not granted the deduction of bad debts written off as it is a fresh claim made in the assessee proceedings without following proper remedy. We find as per the explanations submitted, the assessee should not be denied legitimate claim if supported with proper evidences and has to follow due process of Law. Therefore we considering the facts direct the Assessing officer to verify the claim and examine the

evidences. Accordingly, we restore this issue to the file of the A.O. with the above directions and to adjudicate on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitted the information.

7. Whereas, in respect of setoff of brought forward losses and unabsorbed depreciation. We find there are conflicting calculations of the assessee which goes back to A.Y. 2008-09 and accumulated business losses and depreciation in the subsequent years which requires proper verification of facts and figures carried forwarded. Accordingly, we remit this disputed issue to the file of the Assessing officer to check and verify the accumulated brought forward claims and grant the setoff in the current year and allow the ground of appeal for statistical purpose.

8. On the disputed issue, that the A.O. has not granted TDS credit to the extent of Rs. 1,11,460/-. We direct the A.O. to consider the information of tax credit as reflected in Form no 26AS and grant the TDS credit as per the law. Whereas, the charging of interest u/s 234B of the Act is consequential and requires no adjudication.

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

Order pronounced in the open court on 12.07.2021

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.07.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)

ITAT, Mumbai