

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1', NEW DELHI**

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2148/Del/2018 : Asstt. Year: 2012-13

Barco Electronics Systems Pvt. Ltd., E-20, 1 st & 2 nd Floor, Hauz Khas, New Delhi-110016	Vs	DCIT, Central Circle-4(1), New Delhi
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB5865F		

ITA No. 2667/Del/2018 : Asstt. Year: 2012-13

Addl. CIT, Special Range-2, New Delhi	Vs	Barco Electronics Systems Pvt. Ltd., E-20, 1 st & 2 nd Floor, Hauz Khas, New Delhi-110016
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB5865F		

CO No. 117/Del/2018

(ITA No. 2667/Del/2018 : Asstt. Year: 2012-13)

Barco Electronics Systems Pvt. Ltd., E-20, 1 st & 2 nd Floor, Hauz Khas, New Delhi-110016	Vs	Addl. CIT, Special Range-2, New Delhi
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB5865F		

**Assessee by : Sh. Mukesh Gupta, CA
Revenue by : Sh. F. R. Meena, Sr. DR**

Date of Hearing: 16.08.2021	Date of Pronouncement: 18.08.2021
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ORDER

Per Bench:

The present appeals have been filed by the assessee and the revenue against the orders of Id. CIT (A)-44, New Delhi dated 31.01.2018 and Cross Objection filed by the assessee.

2. The Transfer Pricing issue raised by the assessee in the appeal pertains to the direction of the Id. CIT (A) for adjustment of **interest on receivables** by directing to apply LIBOR plus 300 basis points. The Id. AR relied on the judgments of the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs Kusum Healthcare (P) Ltd. in ITA No. 765/2016 and Pr. CIT Vs M/s Bechtel India (P) Ltd. in ITA No. 379/2016.

3. It was further argued that the matter stands covered by the earlier order of the Co-ordinate Bench of ITAT for assessment year 2010-11 in ITA No.1530/Del/2016 held as under:

"5. We have heard the rival submission and perused the relevant material on record. We have noted that the assessee is not charging interest on overdue debts from the third parties and also the assessee is a debt free company and not paying any interest on funds utilized in business. We have also noted that the assessee company has a margin of 23.3% on Software Development segment as compared to the margin of 11.42% of the comparable companies. The working capital adjusted margin of the assessee has already factored into account the delay in the receivables and therefore no separate adjustment on this account is required to be made. The

credit period of the comparable companies has been found to be 147 days as against the credit period allowed by the assessee of the 30 days. In view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs EKL Appliances Ltd (supra), we are of the opinion that impact of the delayed receivables has already been factored in the working capital adjustment and, therefore, any further adjustment on the outstanding receivables is not required separately in the instant case. Accordingly, we direct the Assessing Officer to delete the adjustment made on account of the outstanding receivables."

4. In addition, the Co-ordinate Bench of ITAT for assessment year 2011-12 in ITA No. 1531/Del/2016 held as under:

"9. Before us, no distinguishing feature in the facts of the present case as compared to assessee's own case in AY 2010-11 has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case for AY 2010-11 has been set aside/ stayed or over ruled by the higher judicial forum. We further find that the case law relied upon by the Learned DR is distinguishable on facts and are not applicable to the present facts of the case of the assessee. Considering the totality of the aforesaid facts and following the order of the Coordinate bench in the assessee's own case and for similar reasons we hold that the Revenue was not justified in making the addition. We therefore set aside the action of AO."

5. Since, there is no difference on factual and legal position in the instant year, we hereby direct that the addition made on this account be deleted.

6. With regard to the comparables raised in the CO, the assessee argued that the company "Zylog Systems Ltd." cannot

be considered as the said comparable is engaged in product development along with software development services wherein 38% of the revenue is derived from software Production Solution whereas the assessee company is not into development of any marketable software or software services. Further, it was argued that the comparable owns Rs.110 Crores of intangibles which form 49% of the net fixed assets.

7. We have considered the fact on record. The assessee is a captive unit for offshore development of products for its AE and the entire sales are to the AE only. There were no marketable software or services to any entity other than AE. Hence, on the aspect of functions, we hold that "Zylog Systems Ltd." cannot be considered as a comparable.

8. With regard to a comparable "Acropetal Technologies Ltd.", it was submitted that the assessee has considered same in their own TP study however it was brought to the notice to the TPO during the proceedings that the company has earned 43.6% of profit owing to the extraordinary event of acquisition of another company. The TPO has failed to consider this issue during his TP study. Since, the extraordinary event led to spike in the profits, we hold that the same cannot be considered as the comparable.

9. With regard to the appeal of the revenue in ITA No.2667/Del/2018 for AY 2012-13, it was undisputed by both the parties that the tax effect is less than monetary limit prescribed by the CBDT, hence dismissed.

10. In the result, the appeal of the assessee in ITA No.2148/Del/2018 is allowed and the appeal of the revenue in ITA No.2667/Del/2018 is dismissed. The CO No. 117/Del/2018 is allowed.

Order Pronounced in the Open Court on 18/08/2021.

Sd/-

(Suchitra Kamble)
Judicial Member

Dated: 18/08/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR