

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 495/Del/2021  
Assessment Year: 2016-17  
And  
S.A. No. 136/Del/2021  
(in ITA No.495/Del/2021)**

Coim India Private Limited, vs. Dy. Commissioner of income Tax  
Shop No. 4, Ground Floor, National e-assessment centre,  
Rajendra Bhawan, Patel Nagar East, Delhi.  
Central Delhi (Delhi)

**PAN : AABCC4026E**  
(Appellant)

(Respondent)

Appellant by : Sh. Nageshwar Rao, Adv. &  
Sh. Chakarborty, Advocate  
Respondent by: Sh. Surender Pal, CIT/DR &  
Sh. Bhagwati Charan, Sr. DR

Date of hearing: 03.08.2021

Date of order : 27.09.2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

This is an appeal by Coim India Private Limited (“the assessee”) being aggrieved by the Assessment Order dated 31/03/2021 pursuant to the directions dated 04/02/2021 of the Dispute Resolution Panel -I, New Delhi (for short hereinafter called “Ld. DRP”) for the assessment year

2016-17. By way of stay application, the assessee also seeks stay of the outstanding demand.

2. Brief facts of the case, as could be culled out from the orders of the authorities below, are that the assessee is a 100% subsidiary company of Coim S.P.A. Coim India was incorporated on 7th June 2000. The company is engaged in trading in polyadditions (polyurethanes) products and manufacture and trading of polycondensation (ester) products and laminating adhesives for packaging industry under the brand name 'Novacote' and IMUTHANE-Hot cast polyurethane elastomers. Coim Inida also provides customer support for the direct sales made by Coim Group to India for which the company earns a commission as a percentage of direct sales, based on a contractual agreement.

3. For the assessment year 2016-17, assessee filed the return of income on 30/11/2016 declaring an income of Rs.1,44,11,480/-, and during the course of assessment, learned Assessing Officer noticed that during the year under consideration, the assessee had undertaken transaction with its Associated Enterprises, and therefore, the International transactions entered into by the assessee with the Associates Enterprises (AEs) were referred to the Ld. Transfer Pricing Officer (Ld. TPO) for determining the Arm's length price. Subsequently, by order passed under section 92CA(3) of the Income Tax Act, 1961 (for short "the Act") Ld. TPO proposed an adjustment of Rs.5,41,06,552/- u/s 92CA of the Act, the details of which are as follows: –

- |                          |               |
|--------------------------|---------------|
| 1. Payment of royalty    | 9,17,045/-    |
| 2. Receipt of Commission | 5,21,98,254/- |

3. Interest on Receivables	9,91,253/-
<b>Total</b>	<b>5,41,06,552/-</b>

4. According to the learned Assessing Officer, this amount of Rs.5,41,06,552/- is being proposed as an adjustment to the price shown by the taxpayer in its books of account, and has to be treated as the cumulative adjustment u/s 92CA of the Act.

5. Assessee filed objections before the Id. DRP and submitted that in so far as the royalty is concerned, the assessee is engaged in the business of trading and manufacturing of chemicals; that the company pays royalty for the non-exclusive license to manufacture, sell and use the trademark 'Novacote' in India; and that since the profitability from payment of royalty is inter-linked with other transactions in its chemical business, the same was benchmarked within the business activities using Transaction Net Margin Method (TNMM). So also the assessee submitted that in respect of the commission, it constitutes around 0.42% of the total revenue of the assessee whereas 99.58% of the income is from the trading of chemicals, whereas a perusal of the quantum of such sales makes it clear that such sales are not undertaken as the principal business activity, but both the activities are part of the trading activities of the assessee. It was further submitted by the assessee that the same resources, namely, employees, admin resources, are interchangeably used for coordinating with the AEs in relation to business operation as well as for generating commission income; that bifurcation of cost for each activity is not feasible as no separate cost centre is maintained and no segmental reporting is presented in audited financial statements and accordingly separate profitability cannot be ascertained accurately; and that for day to day activities, the commission operation is carried only as

ancillary/supplementary activity and is closely linked with the business activities of the assessee.

6. Assessee also submitted before the authorities that benchmarking of the international transaction by applying TNMM as most appropriate method is upheld by the Tribunal in the assessment year 2013-14 in ITA No. 7260/Del/2017 in the case of assessee. Further in the same order, the Tribunal agreed with the assessee on the aspects of royalty and commission. Authorities below did not agree with the assessee on this aspect, stating that the order of the Tribunal for the assessment year 2013-14 has not been accepted by the department and a further appeal to the Hon'ble High Court has been filed and pending.

7. Final assessment order was passed by the Assessing Officer on 31.03.2021 in tune with the draft assessment order in so far as this particular addition to the tune of Rs.5,41,06,552/- is concerned. Hence, this appeal.

8. It is submitted by the learned AR that the Id. TPO made addition in respect of royalty on the ground that no benefit was accrued to the assessee by the use of the brand 'Novacote'; that so also in respect of the commission, the reduction of the same from 4% to 1% does not fit in the expenditure and income matrix of the assessee, in as much as, in the opinion of the TPO, any person at first makes efforts in developing the market even though it incurs losses or earns meagre net margin in the initial years so that in future years it can reap the benefit and equalize its effective return over a span of time. Ld. AR submits that this contention of the TPO is rejected by the Tribunal on the ground that if the Assessing Officer is of the opinion that the expenditure incurred by the assessee does not commensurate to the business of assessee then there are

separate and distinct provisions of the Act, under which the Assessing Officer can make appropriate disallowances; that the TPO cannot enter into the merits of the claim of the expenditure vis a vis the business needs of the assessee and his domain is restricted to the determination of Arm's Length Price only.

9. Learned DR places reliance on the orders of the authorities below and submitted that the contentions of the assessee are against the ordinary conduct of business and, therefore, authorities rightly rejected the same. Learned DR sought remand of this matter to the file of Id. TPO for verification of the facts and justification of the expenses or the reduction of the commission rate.

10. We have gone through the record in the light of submissions made on either side. In so far as the TP adjustments in respect of the royalty and commission are concerned, it remains an admitted fact that the issues are covered by the order dated 07.05.2018 in ITA No. 7260/Del/2017 in assessee's own case for the assessment year 2013-14 passed by a coordinate Bench of this Tribunal. As referred to earlier, the Tribunal held that it would be beyond the domain of the Id. TPO to test the claim of expenditure incurred by the assessee vis a vis the business needs of the assessee.

11. It is also an admitted fact that in the said order, the Tribunal in clear and unequivocal terms held that Bench-marking of the transaction by the assessee by using the combined transaction approach by applying TNMM as against the approach of TPO in bench marking the transaction separately, is a correct approach.

12. There is no dispute on the facts as to the assessee purchasing the material/traded goods from Coim Asia Pacific Pte Ltd. whereas the

royalty to Coim SPA. Relevant agreements were produced before the authorities below to show that the assessee imported certain chemicals under the Trademark 'Novacote' and paid the royalty for use of such trademark to a separate entity and since the license owner to whom royalty is paid, namely Coim SPA is different from the seller of the material/goods, namely Coim Asia Pacific Pte Ltd., it cannot be said that the royalty is ingrained in the purchase of goods. It is also not in dispute that the commission sales by the assessee constitutes only about 0.42% of the total revenue of the assessee whereas 99.58% of income is from trading of chemicals, as pleaded by the assessee. Further, the TPO compared the rate of commission charged by the assessee to one AE with the rate of commission charged by the assessee to other AEs. Such an exercise is not permissible under the provisions of section 92F(ii) read with section 92 of the Act, as has been held by the co-ordinate Bench in the case of assessee for the assessment year 2013-14 since the TPO was supposed to compare the controlled transaction with other uncontrolled transactions.

13. For these reasons, we are of the considered opinion that the orders of the authorities below do not stand the test of judicial scrutiny in so far as the adjustment on the aspect of royalty and commission are concerned and since there is no change in the facts and circumstances of the case from the assessment year 2013-14, while respectfully following the findings of the Tribunal in the order dated 07.05.2018 in ITA No. 7260/Del/2017, we hold that the adjustment in respect of royalty and commission cannot be sustained and the same shall be deleted. We direct so.

14. Now, coming to the interest on receivables, the Assessing Officer was of the opinion that any delay beyond the credit period shall be benchmarked as an international transaction and by applying the same, the Assessing Officer calculated the interest chargeable on receivables by taking the credit period as 30 days and the Id. TPO suggested adjustment of Rs.9,91,252/-.

15. On this aspect, the case of the assessee is that the assessee does not charge any interest receivable by them from the AEs and it is their policy not to charge so in respect of interest both payable and receivable. It is further submitted that the interest payable by the assessee is more than the interest receivable and such interest on receivables is ingrained in sales itself, and the Id. Assessing Officer took into consideration only the interest chargeable, but did not consider the interest payable and if both the interest chargeable and interest payable are taken into consideration and set off is allowed, that would lead to no adjustment at all.

16. Learned AR drew our attention to page No. 416 of the appeal set where the assessee demonstrated that the related party receivables of the assessee as on 31.03.2016 were Rs.4,79,88,545/-, whereas related party payable stood at Rs.1,60,23,22,774/- which establishes that the balance of payables to Coim Asia Pacific Pte Ltd. and Coim SPA as on 31.03.2016 is much higher than the receivables. Basing on this, he argued that the assessee is availing more credit period vis a vis credit period it grants to its AEs. It is further argued on behalf of the assessee that the outstanding receivable is not separate international transaction, inasmuch as, it is incidental to the transactions of sales/services and ingrained into the same. Id. AR places reliance on the decision dated

25/04/2017 of jurisdictional High Court in the case of CIT vs. Kusum Health Care Pvt. Ltd. in ITA No. 765 of 2016.

17. It is lastly contended that the assessee follows similar credit policy for both the AEs and non-AEs and since no interest is charged from uncontrolled transactions with non-AEs, the transaction disclosed by the assessee has to be held as at Arm's Length.

18. Learned DR invited our attention to the table regarding calculation of interest chargeable on receivables and submitted that in respect of certain entries, the payment took place more than 365 days after it had fallen payable and therefore, the authorities are justified in making adjustment.

19. In so far as the facts are concerned, the same are not disputed. It is not the case of Revenue that the assessee is charging interest from its AEs for any delay in payment for more than 30 days. For that matter, it is not the case of the Revenue that even in respect of non-AEs also, the assessee is charging any interest. It is the policy of the assessee, as submitted (supra) that the assessee does not charge interest either from AEs or non-AEs and accordingly does not pay interest from AEs. Further, the assessee demonstrated that as on 31.03.2016, a sum of Rs.4,79,88,545/- was receivable from AEs whereas the sum of Rs.1,65,03,11,319/- was payable by the assessee, resulting in net payable of Rs.1,60,23,22,774/- as per their books. There is nothing contrary to this averment made by the assessee with reference to the books. In Kusum Health Care Pvt. Ltd. (supra), Hon'ble High Court held that –

*“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 characterized 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.....”*

20. Having regard to this set of facts and circumstances, we are of the considered opinion that the authorities below are not justified in making adjustment on account of interest receivable and therefore, impugned adjustment of Rs.9,91,253/- on account of interest receivable is directed to be deleted. Consequently, the appeal of the assessee deserves to be allowed.

21. Since the appeal of the assessee stands disposed of, the stay petition filed by the assessee is dismissed.

22. In the result, the appeal of the assessee is allowed and stay application is dismissed.

Order pronounced in the open court on this the 27<sup>th</sup> day of September, 2021.

Sd/-

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Dated: 27/09/2021

‘aks’

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**