

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'K' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),
and Ravish Sood (Judicial Member)]**

ITA No. 4740/Mum/2017
Assessment year: 2011-12

**Deputy Commissioner of Income Tax- 9(2)(1)
Central Circle 8(2), Mumbai**

..... Appellant

Vs

M/s. Baker Hughes Oilfield Services India P. Ltd.,
*Unit No. 203, 2nd Floor, Reliable Tech Park, Survey No. 31,
Mauje Mouaheelan Airoli, Navi Mumbai 4000708
[PAN: AADCB1622K]*

.....Respondent

Appearances by

Anand Mohan *for the appellant*

Madhur Agarwal *along with Neeraj Agarwal for the respondent*

Date of concluding the hearing : June 3, 2021
Date of pronouncing the order : September 1, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 28th February 2017, passed by the learned CIT(A) in the matter of assessment under section 143(3)/144C of the Income Tax Act, 1961, for the assessment year 2010-11.

2. In the first ground of appeal, the Assessing Officer has raised the following grievances:-

(i) "Whether on the facts and in the circumstances of the case the CIT(A) was right in holding that the ALP of the land should be Rs.2400/- per Sq.mt. as against Rs.3000/- as determined by the TPO."

3. To adjudicate on this appeal, only a few material facts need to be taken note of. During the relevant previous year, the assessee sold a piece of land to its AE at a consideration of Rs. 2,200 per sq meter. The only comparable instance of sale of land in the same area was at Rs. 3,000 per sq meter. Accordingly, the TPO adopted the CUP at Rs. 3,000 p.s.m. and computed arm's length price adjustment of Rs. 2,28,11,070/-. The related facts, as noted by the CIT(A), are as follows:-

3.2: It appears from the records that the AO referred the issue of determination of arm's length price in respect of international transactions to the TPO and the TPO took up the issue of international taxation of the transfer of immovable property by assignment of transfer of land in industrial park at Kakinada along with land and buildings and structure thereon by the assessee—Baker Hughes Oilfield Services India Pvt Ltd,- (BHOSI) to its AE- Baker Hughes Singapore Pte. (BHS) and subjected it to deep scrutiny. BHOSI entered into an agreement effective from 26th June 2010 for the assignment of land and structures thereon for a consideration of Rs.42,77,42,799/- included value for sale of land at Rs.627,30,000/-@RS2200 for 28513.69 square meters at Kakinada, During the TP proceedings assessee filed a letter dated 13/10/2011 of APIIC—an undertaking by the Govt of Andhra Pradesh, Kakinada mentioning the rates of land adopted in the Industrial Park at Vekalapudi, Kakinada as follows:

**From 1/4/2007 to 30/4/2008-----Rs.2000 Per Square Meter
From 1/5/2008 to 30/6/2010-----Rs.2400 Per Square Meter
From 1/7/2010 to till date----- Rs.3000 Per Square Meter**

The TPO disregarded the letter dated 13/10/2011 of the Zonal Manager of the A.P Govt undertaking, APIIC, Kakinada, A.P, and wrote a separate letter to the Zonal Manager, APIIC Kakinada to give instances of sale during the A.Y. 2011-12 and the APIIC Kakinada, manager forwarded the information as follows:

Allotment date	land in sqm.	Plot number	Rate of land	Business of the allottee
29/3/2011	31639 sqm.	31	Rs.3000 per sqm	Repairing and Servicing

The TPO doubted the genuineness of the letter dated 13/10/2011 and held that even if the letter were genuine, rates are variable and despite the rate being Rs.2400 per sqm, assessee had adopted the rate of Rs.2200 per sqm and the assessee had not provided any example of sale of land and the only available instance of land was that on 29/3/2011 of Rs.3000 per sqm and hence adopted the same for valuation of land and worked out the value of land at Rs.855,41,070/- by applying the rate of Rs.3000 per sqm to the area of the land of 28513.69 sqm and difference in value of land at Rs.228,11,070/-based on the letter dated 22/1/2015 received from the Zonal Manager of APIIC as follows:

		Amount fRs.)
1.	Value of sale of land in transaction using assessee's valuation [Rs.2,200 x 28513.69 sq.mtrs.)	6,27,30,000
2.	Value of sale of land applying CUP method (Rs. 3,000 x 28513.69 sq. mtrs.)	8,55,410,070
	Adjustment on sale of immovable property	2,28,11,070

4. When the matter was carried in appeal, however, the learned CIT(A) scaled down the arm's length price by adopting Rs. 2,400 as comparable uncontrolled transaction. His reasons as follows:-

3.4: I have considered and examined all the submissions and am of the view that the TPO erred in adopting the market value of land at Rs.3000 per square meter as of 29/3/2011 instead of the rate of Rs.2400 per square meter as of 30/6/2010 for the rate of valuation of land in respect of transfer of land, that is assignment of rights in plot of land with structures in plot number 28 and 34 admeasuring 28513.69 sqm and therefore the decision of the TPO to the extent of Rs.600 per sqm. (3000—2400) while valuing the plot of land admeasuring 28513.69 sqm was unjustified and unreasonable. However, the rate of valuation of land increase to the extent of Rs.200 per square meter (3000—2200—600) was reasonable and fully justified since the rate of Rs.2400 per square meter was fair and reasonable and fully justified. In nutshell, adoption of rate of valuation of land at the rate of Rs.2400 per square meter in respect of land admeasuring 28513.69 square meters of land in industrial park , Kakinada, AP was justified and the AO is directed to work out the value of land @ Rs.2400 per square meter for land admeasuring 28513.69 sqm and work out the adjustments accordingly. Assessee's ground of appeal is partly allowed.

5. The Assessing Officer is aggrieved and is in appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. What can be adopted as a comparable under the CUP method is an actual transaction and not a hypothetical price list. In any event, the actual transaction is in the area where property in question was located whereas the range of rates, relied upon by the learned CIT(A), are rates fixed by a State Government agency which may or may not be the same as open market rates. In this view of the matter, the relief granted by the learned CIT(A) was unjustified and we vacate the same.

8. Ground no 1 is this allowed.

9. In ground no 2 the Assessing Officer has raised the following grievances:-

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the AE's should be allowed grace period of '90' days before interest can be levied on the outstanding amount payable to the assessee."

10. The short point requiring our adjudication in this ground is whether or not learned CIT(A) was justified in allowing grace period for AE's making payment to the assessee. The

fact that commercial terms of 90 days time being allowed to make such payment is not even in dispute and learned CIT(A) has set out his detailed reasons for the same as follows:-

4.5 Crux of the submissions is that there is no policy of charging interest on outstanding amount from an independent party which happens to be an AE and the outstanding amount cannot be treated as a short term loan and the AO has not applied any of the methodologies prescribed under section 92C of the I.T.Act, 1961 to determine the arm's length price. First of all, whether the assessee had any policy of charging of interest on outstanding or not is irrelevant since assessee had invested its own funds while purchasing the immoveable property and now that the property had been sold to the AE and AE had started using the property for its own business requirements, it was incumbent upon the assessee to either recover the sale price within reasonable period of time and if not done so, charge interest on the outstanding amount after the expiry of reasonable period of time since its own funds were blocked in the immoveable property and if these funds had been realized and used in India, it would have yielded income by way of interest to the assessee. Moreover, assessee has not taken any advance either from the AE and simply assigned the rights in the plot of land at Kakinada to the AE without bothering about the financial implications to itself because the purchaser happened to be an AE. Assessee would not have done so if it were an outsider and would have recovered the full amount before assigning the rights in the plot of land and parting with the possession of the property. Thus action of the assessee in not charging any interest on the outstanding amount even after the lapse of reasonable period of say 90 days of date of sale, clearly amounts to granting benefit and advantage to the assessee and hence needs to be taken into account. Moreover this non recovery of interest on the outstanding amount springs from the main transaction of sale of immoveable property to the AE and hence it is also covered by the provisions of section 92C of the I.T.Act, 1961 as amended up-to-date and squarely falls within the realm of section 92C of the I.T.Act,1961 . Moreover whether the assessee had policy of charging interest on outstanding from the AE is irrelevant since assessee is in the business of earning profits and not in the activity of giving interest free loans and advances and extending credit to its debtor. Hence it is held that the charging of interest on the outstanding amount was fully justified in light of the facts of the case. However, the issue regarding rate of interest, period and the amount on which interest should be charged is discussed in following paragraphs:

TPO has charged interest on the amount of the transaction of Rs.40,49,31,730/- plus the transfer pricing adjustment of Rs.2,28,11,070/-, that is, Rs.42,77,42,709 @9%, that is base rate of 7.5% plus 150 basis points (1.5%) for a period of 274 days starting from 1/7/2010 to 31/3/2011 of Rs.2,88,99,006/- and proposed the same as adjustment to the total income in respect of the outstanding amount of debt from the AE. First of all, safe harbor rules which have come into effect from 1/7/2010 under the I.T.Rules, 1962 read with section 92C and 92CA of the I.T.Act, 1961 are squarely applicable and hence, charging of rate of 9.5 % (7.5% SBI Base Rate plus 1.5% mark up rate) as per rules, which are mandatory, was fair and reasonable and as per rules and law and hence it is upheld. However, the charging of interest @9% on the amount of Rs.42,77,42,709/- for a period of 274 days appears to be unreasonable since interest is charged on the amount after adding the transfer pricing adjustment of Rs.228,11,070/- to the value of transaction of

Rs.40,49,31,730/-for a period of 274 days , immediately beginning from 1/7/2010 after the effective date of 26/6/2010, up to 31/3/2011 without giving any grace period of 30 or 60 or 90 days as it happens in normal business transactions and when this international transaction is being considered from the business perspectives, it is incumbent that normal business practices and norms and business standards are also taken into consideration while taking into consideration the international transaction of value Rs.40,49,31,730/- for a period after giving grace period of time in such matters. First of all, the addition of Rs.228,11,070/-, which has been reduced substantially while deciding the ground number 4, is not justified at all since what is being considered is the commercial value of international transaction and not the value after adding the transfer pricing component which is already being added by way of transfer pricing adjustment and hence it will amount to double additions and hence it is held that inclusion of transfer pricing adjustment of Rs.228,11,070/- or lesser figure as decided in the ground of appeal number 4 in this appellate order, is not at all justified and hence it is held to be unfair and unreasonable and hence it is held that the action of the TPO/AO in including the amount of transfer pricing adjustment of Rs.228,11,070/-was not justified at all and hence the same is ordered to be deleted while calculating the interest chargeable which will be computed only on the value of international transaction outstanding of Rs.40,49,31,730/- only. Last part of the ground of appeal relates to the period for which interest should be charged. Prima facie as it happens in all business transactions, the purchaser of immovable property gets some time to pay the full consideration from the date of agreement, here in this case being effective date of 26/6/2010, and keeping in view the entirety of the international transaction, it is held that it would have been reasonable if assessee had given grace period 90 days to the purchaser of the property, the AE, and not 274 days as done by the assessee which appears to be beyond normal limits of such transactions relating to transfer of immovable properties in India. Hence it is held that it will be reasonable if interest were to be charged for a period of 184 (274 minus 90) days only. In nutshell, it is held that it will be fair and reasonable if interest @9% is charged on the transaction value of Rs.40,49,31,730/- at the rate of 9% for a period of 184 days and -adjustment made on this count accordingly, Assessee's appeal is partly allowed.

11. Having heard the rival contentions and having perused the material on record, we are not inclined to disturb well reasoned finding of the learned CIT(A) and decline to interfere in the matter.
12. Ground no 2 is thus dismissed.
13. In the result the appeal is partly allowed as indicated above. Pronounced in the open court today on the 01st day of September, 2021.

Sd/-
Ravish Sood
(Judicial Member)
Mumbai, dated the 01st day of September, 2021

Sd/-
Pramod Kumar
(Vice President)

Copies to:

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

By order

Assistant Registra/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai