

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
And
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.1614/Del./2018
(ASSESSMENT YEAR : 2013-14)**

M/s. DHR Holding India Private Ltd.,
5th Floor, Aggarwal Corporate Tower 23,
Rajendra Place,
New Delhi – 110 008.

vs. Addl. CIT,
Special Range 3,
New Delhi.

(PAN : AACCD6672N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajit Jain, CA
Shri Siddesh Chaughle, Advocate
REVENUE BY : Shri Surender Pal, CIT DR

Date of Hearing : 01.11.2021
Date of Order : 21.01.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the assessee against the final assessment order dated 23.10.2017, passed under section 143(3)/144C of the Income-tax Act, 1961 (for short 'the Act') in pursuance of the directions given by the ld. DRP vide order dated 18.09.2017 for the assessment year 2013-14.

2. In the grounds of appeal, the assessee has raised the following grounds:-

“1. On facts and in law, the Learned Deputy Commissioner of Income Tax, Transfer Pricing Officer - 1(2)(1) and 1(2)(2) ("Ld. TPO") and Learned Additional Commissioner of Income Tax, Special Range-3, New Delhi / Learned Assessing Officer ("Ld. AO") erred in determining, and Hon'ble Dispute Resolution Panel - I, New Delhi ("Hon'ble DRP") erred in confirming additions amounting to INR 48,47,174 to the taxable income of the Appellant on account of Transfer Pricing ('TP') adjustments under section 92CA(3) of the Income-tax Act, 1961 ('the Act').

Purchase of Medical Equipment (adjustment of INR 43,98,435)

2. On facts and in law, the Hon'ble DRP/ Ld. AO and Ld. TPO erred in making an adjustment to the international transaction of purchase of medical equipment by:

2.1 Arriving at 'Nil' value of the imported goods not appreciating that the medical equipment could not have been imported at Nil price.

2.2 Arbitrarily rejecting the Transactional Net Margin Method ('TNMM') applied by the assessee and making an arbitrary adjustment without applying any of the specified methods, thereby disregarding Rule 10B and Rule 10C of the Rules.

2.3 Not appreciating that the depreciation charged by the Appellant with respect to the purchase of fixed assets was already included in the calculation of operating margin of the trading segment which has otherwise been considered as arm's length by the Ld. TPO himself.

Interest on Outstanding Receivables (adjustment of INR 4,48,739)

3. On facts and in law, the DRP/ Ld. TPO has erred in not appreciating that the outstanding receivables are a result/ consequence of the Appellant's international transactions with its AE and are not a separate international transaction per se; therefore, do not warrant determination of a separate ALP under section 92C of the Act owing to the following;

3.1 Treating the receivables as an "unsecured loan" and not appreciating that the outstanding receivables was not a separate international transaction as per provisions of section 92B of the Act;

3.2 Rejecting the assessee's plea that the issue of outstanding receivables is subsumed in the working capital adjustment granted to the assessee and no separate adjustment on account of outstanding receivables is called for and;

3.3 The principal transactions have already been considered to be arm's length by the TPO/AO.

3.4 That no interest was charged on outstanding receivables from third parties in an arm's length scenario from the non-AEs by the Appellant.

3.5 No interest is warranted to be paid by the Appellant for the outstanding receivables during the year.

3.6 That the Appellant had significant payables towards its AEs on which the Appellant has not paid any interest to its AEs and that the average collection period from AEs was much lower than 60 days.

4. On the facts and in the circumstances of the case, the Ld. AO erred in initiating penalty proceedings u/s 271 (1)(c) of the Act.”

3. The facts in brief are that DHR Holding India Private Limited ('DHR India', 'the assessee'), is Danaher Group Company set up in India in 2007. During the year it was engaged in the business of trading medical instruments and related consumables wherein it imported medical equipment from its Associated Enterprises ('AEs') for sale/business use. Further, DHR India is also engaged in providing business and technical support services and marketing support services to its AEs. The dispute during the year is confined to (i) Purchase of medical equipment and (ii) Interest on outstanding receivables.

4. At the outset the Ld. AR for the assessee pointed out that Ground No. 1 is general, and that Ground No. 2 is fully covered by the order of the earlier year in the case of the assessee passed by the **ITAT Delhi in ITA No.953/Delhi/2017**. A copy of the order has been placed in the paper book. The Ld. DR fairly admitted that the issue is fully covered in favor of the assessee.

5. Brief facts qua this issue are that, the assessee is engaged in the business of trading of medical equipment (blood gas analyzers) and consumables. The assessee follows a unique business model wherein:

- (i) The company buys analyzers and sells them to third parties (hospitals, medical institutions etc) books the revenue under the trading segment;
- (ii) On the other hand, if the customer is not willing to buy the analyzers, such instruments were installed at the customer's premises and the consumables required by the customer in using these instruments were provided by the assessee. The cost of such analyzers imported from the AEs, were capitalized in the books of accounts of the assessee and its related operating cost, i.e. depreciation, has been charged to the profit and loss account while computing the profitability of the trading segment of DHR India.

6. As the above international transaction was closely linked to the assessee's business of trading of medical equipment, the Transactional Net Margin Method ('TNMM') analysis was used to benchmark the arm's length nature of the international transaction of purchase of medical equipment. The Ld. TPO while accepting the purchase price of such analyzers for the trading segment as arm's length under the TNMM, determined the arm's length price of purchase of fixed assets as Nil. In the final AO order, the depreciation claimed on such capital goods was disallowed (considering the arm's length price to be Nil). The depreciation on custom duty paid and the transportation cost in relation to such capital assets was however allowed.

7. The assessee vide mail dated October 29, 2021 has furnished a synopsis on this issue. The relevant portion of the same is reproduced below-

- That the import of goods was substantiated by furnishing the custom documentation (sample invoices along with corresponding bill of entries). The customs duty paid and cost of transportation were considered as the arm's length price for computing the allowable depreciation. The equipment could not have been imported at NIL price in an independent scenario.
- That the Ld. TPO did not apply any method to benchmark the said transaction in violation of Rule 10B of the Income Tax Rules, 1952. He failed to provide any comparable data which would have suggested that the arm's length price for the purchase of capital goods can be Nil. No third party would have sold such goods free of cost. Arm's length price could be lower or higher but cannot be Nil as the goods have been imported.
- That the same products purchased from the same AE, for the same price, in the same year, cannot be held to be arm's length and non-arm's length at the same time just because of different accounting treatment. Evidence of the same can be shown from the below table, wherein certain quantity of the same product is being capitalized and certain quantity is directly sold to customers (relevant invoices, bill of entries forming part of paperbook separately attached as *Annexure A*)

- Reliance in this regard is placed on the Hon'ble ITAT's judgement in the assessee's own case in the immediately preceding year, i.e. AY 2012-13 as under:

“28. Facts on record show that the assessee is also engaged in the business of trading of medical equipment i.e. blood gas analyzers and consumables. We find that the assessee Appellant follows a unique business model wherein the assessee buys analyzers and sells them to third parties i.e. hospitals, medical institutions etc, books the revenue under the trading segment. On the other hand, if the customer is not willing to buy the analyzers, such instruments were installed at the customer's premises and the consumables required by the customer in using these instruments were provided by the assessee. We find that the cost of such analyzers imported from the AEs, were capitalized in the books of accounts of the assessee and its related operating cost, i.e. depreciation, has been charged to the profit and loss account while computing the profitability of the trading segment. We find that the assessee has used TNMM analysis to bench mark arm's length nature of international transaction of purchase of medical equipment.

29. We find that the TPO has accepted the purchase price of such analyzers for the trading segment as arm's length, but surprisingly, determined the arm's

length price of purchase of fixed assets at Nil. The Assessing Officer, while framing the final assessment order, even went ahead one step further and disallowed the claim of depreciation considering the arm's length price determined by the TPO as NIL.

30. The documents referred to by the ld. counsel for the assessee during the course of arguments were considered from which we find that the import of goods was substantiated by furnishing the custom documentation which includes sample invoices along with corresponding bill of entries. Interestingly, we find that the custom's duty paid and cost of transportation were considered as the arm's length price by the lower authorities for computing the allowable depreciation whereas the cost of equipment has been taken at NIL.

31. In our considered opinion, equipment would not have been imported at NIL price even in an independent scenario. Moreover, we do not find that the TPO has applied any method to benchmark the said transaction, which action of the TPO is in violation of Rule 10B of the Income Tax Rules. We find that while treating the purchase of capital goods as NIL, the TPO failed to provide any comparable data which would have suggested that the arm's length price for the purchase of capital goods can be NIL. In

our understanding, no third party would have sold such goods free of cost. In our considered opinion, arm's length price could be lower or higher but cannot be NIL, as the goods have been imported.

32. Incidentally, the same products purchased from the same AE, for the same price, in the same year, cannot be held to be at arm's length for trading goods and not at arm's length for capitalised goods at the same time and in the same breath. Considering the facts of the case in totality, we direct the Assessing Officer to allow the claim of depreciation on the purchase of fixed assets. Ground No. 6 with all its sub grounds is, accordingly, allowed."

8. Since similar facts are permeating in this year also, therefore, respectfully following the same decision of the Tribunal in **assessee's own case for AY 2012-13** (supra), this ground is decided in favour of the assessee and accordingly addition of Rs.43,98,435/- is deleted.

9. Regarding ground no.3, ld. counsel for the assessee pointed out that the Ld. TPO made an adjustment alleging that the payments for invoices raised by DHR India on its AEs were not received within the year. Thus, the said outstanding receivables were re-characterized as unsecured loan and interest be levied @ 14.55% using SBI PLR proposing an adjustment of INR 9,98,770/-. The Ld. DRP directed to use the 6-month LIBOR plus 400 basis points, reducing the adjustment to INR 4,48,739/-.

10. The Ld. AR submitted that working capital adjustment has been provided by the Ld. DRP for the services segment which already takes into account the impact of outstanding receivables, which is line with the **High Court ruling of Kusum Healthcare Private Limited [ITA No. 765/2016]** which has clearly upheld that once working capital adjustment has been accepted for the principal transaction, no further adjustment is required for outstanding receivables separately for the same transaction. It was further pointed out by the Ld. AR that DHR India does not charge any interest from third parties on delay in payment.

11. The Ld. AR further pointed out that the Average collection period from the Associate Enterprises for the outstanding receivables during the year is (-) 37.44 days which is less than the credit period as per normal business practices. He referred to page number 51-65 of the order passed by the Ld. TPO and pointed out that in most of the cases the payment was received from the AE in a period which is much less than the normal credit period of 60 days. He pointed out that, there are only couples of entries where the payment is received beyond the grace period of 60 days. Therefore, the average collection period works out to (-) 37.44 days. The AR relied upon the **judgment of Hon'ble Delhi High Court in the case of Mckinsey Knowledge Center India (P) Limited in ITA No. 146/2020 dated October 12, 2021** to buttress his point that the evaluation of any benefit cannot be one sided adjustment taking into account only delayed invoices and at the same time ignoring invoices/payment received at an early date/advance.

12. On the other hand, the Ld. DR relied upon the orders of lower authorities.

13. It is an admitted fact that working capital adjustment has been provided by the Id. DRP for the services rendered which was already taken into account the impact of outstanding receivables which is in line of the judgment of **Hon'ble Delhi High Court in case of Kusum Healthcare Private Limited** (supra). Another fact which has been brought on record is that, DHR India has not charged any interest from third parties on delay in payment and the average collection period of the receivables during the year was much less than credit period as per business practice and the average has been worked out (minus) 37.44 days which is much less than the trade practice of 60 days. Accordingly, we do not find any reason as to why any interest should be charged on the receivables and that to be on SBI PLR rate. Accordingly, adjustment made on account of interest on outstanding receivables is deleted.

14. Ground No.4 is premature, hence dismissed.

14. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in open court on 21ST day of January, 2022.

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 21.01.2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT

- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.