

**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
(Through Video Conferencing)**

ITA. Nos. 3183 & 6272/Del/2018
(Assessment Year: 2013-14 & 2012-13)

M/s. Bharti Airtel Services Limited, Airtel Centre, Plot No.16, Udyog Vihar, Phase-IV, Gurgaon, Haryana-1. PAN: AAACB8917G	Vs.	DCIT, Circle : 4 (2), New Delhi.
(Appellant)		(Respondent)

Assessee by :	S/Shri Rahul Mitra, Ninin Narang & Amit Arora, C.A.;
Department by:	Shri Mrinal Kumar Das, Sr. D. R.;
Date of Hearing :	01/11/2021
Date of pronouncement :	31/01/2022

ORDER

PER AMIT SHUKLA, J. M.

The aforesaid appeals have been filed by the assessee against the separate impugned order, passed by the Commissioner of Income Tax (Appeals)-13, New Delhi (hereinafter referred to [CIT (Appeals)] for assessment year 2012-13 and order dated 31.01.2018 passed by the CIT (Appeals) – 34, New Delhi, for the assessment year 2013-14 for the

quantum of assessment under Section 143(3)/144C of the Income Tax Act, 1961 (the Act).

2. In both the appeals, common grounds are involved arising out of identical set of facts and issues, therefore, both the appeals are being disposed of, by this consolidated order.

3. In both the appeals the assessee has challenged the Transfer Pricing assessment on account of notional interest on outstanding payments of receivables from associated enterprises (AE). In assessment year 2012-13, adjustment of Rs.46,07,661/- was made by the TPO, whereas in assessment year 2013-14 the said adjustment was worked out at Rs.23,98,532/-.

4. The facts in brief are that Assessee Company is wholly own subsidiary and strategic partner of Bharti Airtel Ltd. The assessee provides man-power equipment and related to services to Bharti Airtel Ltd. and its foreign AEs. Though there were other primary international transactions, the TPO has not taken any adverse inference in respect of primary transactions with the AE. However, TPO held that outstanding receivable from AE is in the nature of unsecured loans advanced and there by imputing notional interest on the delayed payment beyond 15 days on the receivables from its AEs, at the average rate of LIBOR of 3 months plus 400 basis point, i.e. 4.375% in the assessment year 2013-14 and thereby making an adjustment of Rs.23,98,532/-; whereas in assessment year 2012-13 the TPO has applied rate of 12.60% of SBI PLR rate and thereby making adjustment of Rs.46,07,661/-. The Id. CIT (Appeals) has confirmed the adjustments proposed by the TPO.

5. Before us, the Id. Counsel for the assessee apart from making various submissions that, *firstly*, the said transaction cannot be treated separately as it was part of primary transaction; and *secondly*, if the TPO is separately bench marking transaction then it has to be benchmark using the aggregate approach with the principal international transaction entered with its AE and, in such scenario, the receivables are already factored in the price charged to the AE. Here in this case if the principal international transaction has been accepted at arm's length, then no separate addition can be made. Apart from that, another alternative contention has been raised vide ground No. 8 in assessment year 2012-13; and ground No. 4 in assessment year 2013-14, that working capital adjustment irons out the credit period extended to AEs and non AEs and hence no adjustment is called for on the facts of the case. It was submitted that the working capital adjustment based on the net margin profit of the comparables has been arrived at 4.50% as against the net profit margin earned by the assessee of 9.26% for the assessment year 2012-13 which is significantly higher than the adjustment margin earned by the comparable companies for which detail computation has been filed at page 178 of the Paper book for the assessment year 2012-13. Similarly, at page 124 of the paper book for the assessment year 2013-14, the working capital adjustment of the comparable companies has been arrived at net operating margin of 4% as against the net profit earned by the assessee at 9%. Thus, it has been submitted that no further adjustment is called for. In support of his contention Ld. Counsel relied upon the decision of Hon'ble jurisdictional High Court in the case of **Pr. CIT Vs. Kusum Healthcare Private Limited (2017) TII 28 HC (Del.) in ITA. 765/Del/2016** wherein the Hon'ble High Court held that adjustment on receivables outstanding from AE

beyond stipulated period is not justified since the assessee had earned significantly higher comparable and thereby business extended to the AEs.

6. However, Ld. Counsel fairly admitted that the ITAT in assessee's own case for assessment year 2011-12 has upheld the addition in respect of interest outstanding receivables, because there was no working capital adjustment computed by the assessee or given before the authorities below. However, in this case the assessee had given working capital adjustment before the TPO / AO himself which is evident from the comments submitted in the paper book at page 115 and 129. Thus, in this year direction should be given to give the working capital adjustment and in that case the interest receivables from the AE will get subsumed and no separate adjustment is required to be made, because admittedly the assessee's adjusted margin was far more than comparable companies.

7. On the other hand, the ld. DR strongly relied upon the order of the CIT (Appeals) and the order of the ITAT in assessment year 2011-12. On the issue of computation of working capital adjustment he submitted that the matter should be restored back to the TPO with computation submitted by the assessee as the same has not been examined by the AO / TPO.

8. We have heard the rival submissions and also perused the impugned orders as well as the material placed before us. Here in this case, admittedly no adjustments have been proposed by the TPO on the principal international transactions, with regard to man-power equipment related, employee related transactions, reimbursement of cost etc. The reason being the net operating margin of the assessee

from various services was arrived at 9.36% as against the adjusted margin of 2.70% earned by the comparable companies for assessment year 2012-13. Similarly in assessment year 2013-14 the assessee had shown net operating margin on total cost at 9% from the services rendered to AE as against the un-adjusted margin of 6.82% and working capital adjustment of 4.78% earned by the comparables. The sole adjustment proposed by the TPO is with regard to the outstanding receivables on the delayed payment beyond 15 days from its AE holding it to be in the nature of un-secured loan and thereby proposing adjustment of Rs.46,07,661/- for assessment year 2012-13, wherein the Assessing Officer has taken SBI PLR rate of 12.60%; whereas in assessment year 2013-14 the Assessing Officer has made adjustment of Rs.23,98,532/- by taking average LIBOR rate plus 400 basis point which was arrived at 4.37% treating it to be separate international transaction. It is also an un-disputed fact that before the authorities below the assessee had submitted the working capital adjustment vis-à-vis the comparable companies before the TPO / AO which if factored into then no adjustment on account of receivables from AE is required. This working capital adjustment has not been accepted. Now it is well settled law by the judgement of Hon'ble jurisdictional High Court in the case of **Pr. CIT Vs. Kusum Healthcare Private Limited (2017) TII 28 HC (Del.) in ITA. 765/Del/2016** wherein the Hon'ble High Court had observed and held as under:-

*"Aggrieved by the said order, the Assessee filed an appeal before the ITAT. By the impugned order dated 31st March 2015, the ITAT set aside the assessment order. The ITAT noted that the Assessee had undertaken working capital adjustment for the comparable companies selected in its transfer pricing report. It was further noted that **"the differential impact of working capital of the***

Assessee vis-à-vis its comparables had already been factored in the pricing/profitability” which was more than the working capital adjusted margin of the comparables and, therefore, “any further adjustment to the margins of the Assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified.”

10. 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 characterised 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. Importantly, **the impact this would have on the working capital of the Assessee will have to be studied.....**

.....The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO concluding that the figure of receivables beyond 180 days constitutes an international transaction by itself. With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterised the transaction. This was clearly impermissible in law as explained by this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).”

9. This judgement has also been followed in catena of judgements by the Tribunal, a compilation of which has been filed before us separately. If the working capital adjustment is accepted, then the differential impact of working capital of the Assessee vis-à-vis the comparables stands already factored in the pricing/profitability, which herein this appears to have been done and it has been stated that the

working capital adjusted margin of the comparables is around 4% whereas assessee's margin is around 9% and thus, no further adjustment is required. Before the Assessing Officer the assessee has up-dated the comparable companies and has filed the working capital adjustment margin which was in response to the show cause notice. From the perusal of the working it is seen that, in assessment year 2012-13 the working capital adjusted on the comparable company was arrived at 4.50% of net profit operating margin as against the net operating margin earned by the assessee at 9.36% and in the assessment year 2013-14, the working capital adjustment of the comparable companies was arrived at 4.02%, whereas the net operating margin earned by the assessee was at 9% which is much higher than adjusted margin earned by the comparable companies. Though we find that in the assessment year 2011-12 the Tribunal has confirmed the said adjustment due to lack of any such computation filed by the assessee at any stage. However, in this year it is already part of the record. Therefore, we direct the TPO to examine the working capital adjustment and if the working given by the assessee is found to be correct then in the light of the decision of the Hon'ble jurisdictional High Court in the case of Pr. CIT Vs. Kusum Healthcare Private Limited (supra) no adjustment should be made on the proposed notional interest on the outstanding receivables. With this direction the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on : **31/01/2022**.

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

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 31/01/2022

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	31.01.2022
Date on which the typed draft is placed before the dictating member	31.01.2022
Date on which the typed draft is placed before the other member	31.01.2022
Date on which the approved draft comes to the Sr. PS/ PS	31.01.2022
Date on which the fair order is placed before the dictating member for pronouncement	31.01.2022
Date on which the fair order comes back to the Sr. PS/ PS	31.01.2022
Date on which the final order is uploaded on the website of ITAT	31.01.2022
date on which the file goes to the Bench Clerk	31.01.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	