

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

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

Ms. Astha Chandra, Judicial Member

ITA No. 4740/Del/2018 : Asstt. Year : 2014-15

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| Global Logic India Ltd., 207, Gupta Arcade, Circle-12(1), LSC Plot No. 5, Mayur Vihar, Phase-I Extension, New Delhi-110034 | Vs | DCIT, Circle-10(1), New Delhi |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AABCI2526F | | |

Assessee by : Sh. Neeraj Kumar Jain, Adv.

Revenue by : Sh. Surender Pal, CIT DR

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| Date of Hearing: 02.03.2022 | Date of Pronouncement: 16.03.2022 |
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ORDER

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

The present appeal has been filed by the assessee against the order dated 25.05.2018 passed by the AO u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. That the impugned order of assessment framed by the assessing officer in pursuance of the directions of the Dispute Resolution Panel (hereinafter referred to as 'DRP') under Section 143(3) read with Section 144C of the Income-tax Act, 1961 ('Act'), is bad in law, violative of principles of natural justice and void ab- initio.

1.1 That the assessing officer erred on facts and in law in passing order under section 143(3) read with Section 144C of the Act at an income of Rs. 57,96,95,314 as against returned income of Rs. 35,04,84,700.

2. That the assessing officer erred on facts and in law in making an adjustment of Rs. 18,16,82,680 to the arm's length price of the 'international transactions' of provision of software development services undertaken with the associated enterprise on the basis of order passed by the Transfer Pricing Officer ('TPO')/ Dispute Resolution Panel ('DRP').

2.1 That while giving effect to the direction of DRP, the AO/ TPO erred on facts and in law in computing the operating profit to cost ratio of the appellant at 9.61% as against 15.20% (13.17% in AE segment) computed by the appellant, by erroneously considering foreign exchange fluctuation income of Rs. 10,51,15,282 as non-operating item of income.

2.2 That the AO/ TPO erred on facts and in law in passing order under section 143(3) read with section 144C of the Act in gross violation of section 144C(10) of the Act, by not considering the specific direction of the DRP to consider foreign exchange fluctuation income as operating item of income.

2.3 That the DRP/ TPO erred on facts and in law in considering following companies in the final set of comparable companies allegedly holding them to be functionally comparable to the assessee:

- (i) E-Zest Solutions
- (ii) Infobeans Technologies Limited
- (iii) Larsen & Tubro Info tech Limited
- (iv) Mindtree Limited
- (v) Persistent Systems Limited
- (vi) Tata Elxsi Limited
- (vii) Thirdware Solutions Limited

2.4 That the DRP/ TPO erred on facts and in law in considering following companies in the final set of comparable companies merely for the reason that the said companies were considered by the assessee itself, at the time of preparation of transfer pricing document:

- (i) Larsen & Tubro Info tech Limited
- (ii) Mindtree Limited
- (iii) Persistent Systems Limited

2.5 That while giving effect to the direction of DRP, the AO/ TPO erred on facts and in law in considering Thirdware Solutions Limited in the final set of comparable companies, without considering the specific direction of the DRP to retain the company only if segmental profitability of company with respect to software development services (IT segment) is available.

2.6 Without prejudice, that the TPO while giving effect to the direction of DRP, erred on facts in considering incorrect operating profit margin of following companies:

- (i) Persistent Systems Limited*
- (ii) Tata ELXSI Limited*
- (iii) Thirdware Solution Limited*

2.7 That the assessing officer/TPO erred on facts and in law in not allowing appropriate risk adjustment to establish comparability on account of the assessee being a low- risk-bearing captive service provider as opposed to the comparable companies who were independent software development service provider.

2.8 That on the facts and in the circumstances of the case and in law, the TPO erred in rejecting the contention of the assessee regarding risk adjustment, holding that in absence of robust and reliable data, both for the assessee and for the comparables, risk adjustment cannot be considered for enhancing comparability.

3. That the assessing officer erred on facts and in law in making an adjustment of Rs.4,75,27,934 to the arm's length price of alleged 'international transactions' of delay in receipt of outstanding receivables, on the basis of order passed by the Transfer Pricing Officer ('TPO')/ Dispute Resolution Panel ('DRP').

3.1 That the DRP/ TPO erred on facts and in law in re-characterizing the alleged transaction of delay in receipts of receivables as unsecured loans advanced to the associated enterprises.

3.2 That the DRP/ TPO erred on facts and in law in not appreciating that delay in receipt of receivable is not an 'international transaction', per se, under section 92B of the Act but is a consequence of an 'international transaction' undertaken in the form of services rendered to the associated enterprise.

3.3 That the DRP erred on facts and in law in holding that the non-realization of invoice value beyond the stipulated period (as per contract) is a separate international transaction, whose arm's length price is required to be determined separately.

3.4 Without prejudice, that the DRP/ TPO erred on facts and in law in not accepting that in any case the transaction of delay in respect of receivables was closely linked to the 'international transaction' of export and since the profit earned by the assessee as a percentage of cost is higher than the profit earned by comparable companies, no transfer pricing adjustment was even otherwise required to be made in this regard.

3.5 That the DRP erred on facts and in law in holding that working capital adjustment does not address the mispricing in the case of taxpayer where interest free receivables were outstanding beyond the average period.

3.6 That the DRP/TPO erred on facts and in law in not appreciating that working capital adjustment is more appropriate measure to benchmark the realisation of trade receivables of the appellant instead of application of an interest rate.

3.7 That the DRP/ TPO erred on facts and in law in not appreciating that the Hon'ble Tribunal in the appellant's own case for assessment year 2010-11 and 12-13 in ITA No. 1104/Del/2015 and 1115/Del/2017, respectively, has deleted such adjustment made in relation to delay in receipt of receivables.

3.8 Without prejudice, that the DRP/TPO erred on facts and in law in not appreciating that the appellant has received receivables from unrelated parties with similar delay of period and accordingly the delay in

receipt of receivables from unrelated parties should be considered as a valid internal CUP for the purpose of benchmarking.

3.9 Without prejudice, that the DRP/ TPO erred on facts and in law in adding an adhoc mark-up of 400 points on the Libor rate of interest, arbitrarily on account of credit rating risk, security risk, transaction cost etc.

3.10 Without prejudice, that on the facts and in the circumstances of the case and in law, the DRP/TPO erred on facts and in law in not appreciating that the in terms of Master Circular No. 10/2011-12, Reserve Bank of India allows a period of 12 months to all companies for receiving repatriation of export sales proceeds, and therefore, interest if any, ought to be imputed on the period of delay beyond 12 months."

3. The only issue contested during the hearing pertains to "adjustment of interest on receivables". At the outset, it was brought to our notice that the issue of interest on receivables stands adjudicated by the orders of the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 8726/Del/2019 for A.Y. 2015-16 vide order dated 29.06.2020 and in ITA No. 868/Del/2021 for A.Y. 2016-17. For the sake of ready reference, the relevant part of the order is reproduced as under:

ITA No. 8726/Del/2019 for A.Y. 2015-16

"32. Now coming to the next issue raised in the present appeal against the transfer pricing adjustment made on account of interest due on receivables outstanding. The said issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for Assessment Year 2010-11 in ITA No.1104/Del/2015 and for Assessment Year 2012-13 in ITA No.1115/Del/2017 vide order dated 12.12.2017. The

Tribunal has relied on the decision of Hon'ble Delhi High Court in Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. in ITA No.765/2016, judgment dated 25.04.2017 and held that no adjustment is to be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Hon'ble Delhi high Court in case of Pr.CIT-1 vs. M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 order dated 21.07.2016. The relevant findings of the order of the Tribunal in assessee's own case (supra) in paras 14 to 18 which are being reference but not being reproduced for the sake of brevity.

33. The assessee during the year under consideration had not avail any loan from AEs or unrelated third party and was not incurring any interest cost. Further, there was similar delay in receipt of receivables from others and the assessee was not charging any interest on delay in receipt of receivables against services rendered to unrelated third party.

34. In such facts and circumstances and following the ratio laid down by the Hon'ble Delhi High Court in Kusum Healthcare Ltd. (supra) and also in line with the findings of the Tribunal in Assessment years 2010-11 & 2012-13, we find no merit in making any adjustment on account of interest due on receivable from its AE. Ground of appeal Nos. 2 to 2.6 raised by the assessee are thus allowed."

ITA No. 868/Del/2021 for A.Y. 2016-17:

"49. Ld. TPO noticed from the perusal of invoice qua rendering services to the Associated Enterprises (AE) that remittance were received by the taxpayer after a considerable delay. Ld. TPO also noticed delay in receipt of the receivables qua transactions undertaken with unrelated parties during the year under consideration.

50. Declining the contentions raised by the taxpayer, Id. TPO re-characterized the delay in receipt of receivables as unsecured loans advanced to the AE and attributed a notional interest @ 4.485% being Libor + 400 BPS on the period of delay exceeding 30 days and thereby proposed the adjustment of Rs.5,30,71,340/- on account of outstanding receivables.

51. At the very outset, Id. AR for the taxpayer contended that this issue is already covered in favour of the taxpayer by the coordinate Bench of the Tribunal in its own case for Assessment Year 2010-11 in ITA No.1104/Del/2015 order dated 12.12.2017, available at pages 97 to 115 of the case laws paper book, which is on identical facts and operative part thereof is extracted for ready perusal as under:-

"14. Provisions contained under Explanation (i), (a) & (c) of section 92B have been analyzed by Hon'ble Delhi High Court in case cited as Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 order dated 25.04.2017, wherein it is held that the expression added in Explanation to section 92B does not mean that de hors the context, every item of receivables appearing in the accounts of an entity, which may have dealing with foreign AE, would automatically be characterized as an

international transaction and decided the issue in favour of the taxpayer by returning following findings:-

"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 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. Importantly, the impact this would have on the working capital of the Assessee will have to be studied. In other words, there has to be a proper inquiry by the TPO by analyzing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way.

11. 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 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-characterized the transaction. This was clearly impermissible in law as explained by this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).

12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed."

15. So, in view of the law laid down by Hon'ble High Court in Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. (supra), we are of the considered view that no adjustment can be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Hon'ble Delhi High Court in case of Pr. CIT-1 vs. M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 order dated 21.07.2016.

16. Furthermore when we examine the entity level margin of the taxpayer vis-à-vis comparable companies, the taxpayer has earned higher margin i.e. taxpayer earned 38.39% OP/OC margin vis-à-vis margin of comparable companies at 11.43%. In such circumstances, no separate adjustment on account of interest can be made. Because the credit period extended to AE cannot be considered as a standalone

transaction without considering the main transaction of the sale.

17. Furthermore when the taxpayer is undisputedly a debt free company, as it is not the case of the Id. TPO that borrowed funds have been appropriated enabling the AE to make the delayed payment on receivables. So when outstanding receivables is not a separate international transaction, the delay in realization of the sale proceeds is incidental to the transaction of sale and as such no notional interest can be levied by treating the same as unsecured loan.

18. Furthermore it is the case of the taxpayer that when the taxpayer is not charging interest from unrelated third party / non-AE, in case of such delay, no adjustment on interest in case of AE can be made and drew our attention towards the details of invoices raised qua unrelated parties available at page 183A of the paper book wherein delay in realization of the receivables is also up to 218 days for AY 2010-11 and up to 417 days qua AY 2012-13 as per detail of invoices raised on unrelated parties qua AY 2012-13, available at page 236 of the paper book.”

52. Moreover, the interest can be charged only on loan and borrowing of money and not in case of sale, particularly when there is no penal provision in the agreement entered into between the taxpayer and its AE/non-AE to charge the interest on delayed receivables. Even otherwise, a transaction cannot be re-characterized merely on ground of delay in payment of receivables.

53. Following the order passed by the coordinate Bench of the Tribunal in taxpayer's own case (supra), we are of the considered view that since the taxpayer has not incurred any interest cost nor has availed of any loan from AE or unrelated third parties, as is evident from audited financials at pages 57 & 66 of the paper book, proposed adjustment on account of delay in receipt of receivables by the TPO/DRP is not sustainable, hence ordered to be deleted. Consequently, grounds no.2 to 2.8 are determined in favour of the taxpayer."

4. Decided cases must be put to rest, unless otherwise. In the absence of any material change in the factual matrix and the legal proposition, we direct that the addition made of "adjustment on interest due receivables" be deleted.

5. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 16/03/2022.

Sd/

(Astha Chandra)
Judicial Member

Dated: 16/03/2022

Subodh Kumar, Sr. PS

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