

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, AM AND SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 4608/Mum/2019

(Assessment Year 2012-13)

Peri (India) Pvt. Ltd. 1406 DLH Park S V. Road, Goregaon West, Mumbai-400 062	Vs.	The Jt. Commissioner of Income Tax (OSD), Circle- 13(1)(2), Room No. 218, 2 nd Floor, Aayakar Bhavan, Mumbai-400 020
(Appellant)		(Respondent)
PAN No. AAACP4115E		

Assessee by	:	Shri M.P. Lohia, AR
Revenue by	:	Ms. Vatsalaa Jha, CIT DR

Date of hearing:	02.02.2022
Date of pronouncement :	21.03.2022

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal in ITA No. 4608/Mum/2019 originally decided on 05.03.2021 but by order dated 15.09.2021 in MA No. 132/Mum/2021 it was recalled for limited purposes of adjudicating ground Nos. 6 to 11 of the appeal.

2. The co-ordinate Bench recalled the above order for the reason that learned Authorised Representative of the assessee though filed a circular issued by the parent company of the assessee but did not place any reliance on that. Thus, the grounds No. 6 to 11 of the above appeal are required to be adjudicated.

3. These grounds of appeal are as under:-

"Adjustment on account of payment of interest on trade credits of INR 29,79,359/-

On facts and circumstances of the case, the learned CIT(A):

6. erred in confirming the action of TPO/AO in making transfer pricing adjustment on the international transaction of payment of interest on trade credits to its AE and computing the ALP at NIL by adopting Internal CUP method;

7. erred in ignoring the contractual terms of the Appellant with its AE in respect of charge of interest post availing interest period of 90 days;

8. failed to appreciate the fact that the credit period allowed by non-AE (30 days) is less than the credit period allowed by AE (90 days);

9. failed to appreciate the commercial and business realities of the industry in which the Appellant operates and business decision of the appellant of not charging interest from customers;

10. Without prejudice to above, erred in not relying on external comparable data for determining the arm's length interest rate for the said transaction:

11. failed to appreciate that payment of interest on trade credits is linked to the transaction of import of



goods and hence should be aggregated with the said transaction."

4. These grounds are related to determination of Arms length price of and international transaction of payment of interest on trade credits of ₹29,79,359/- to Its AE, Alp of which is determined by Id TPO at Rs Nil.
5. Brief fact of the issue shows that assessee is purchasing goods from AE as well as Non AE. On the outstanding of AE beyond a trade credit period of 90 days, assessee pays interest @ 5.50 % P.a. to its AE. To Non AEs, generally, credit period is of 30 days and even if payment is made beyond 30 days to those parties, no interest is paid. Assessee submits it to be an international transaction but has aggregated with other transactions, adopted TNMM as Most Appropriate method and as its margins were comparable with other comparable companies, Stated this transitions also at arms' length. It is claim of the assessee that neither the assessee nor the Associated Enterprises performed any significance function or carried any significance risk. Before LD TPO, assessee explained that benchmarking as stated above. The learned Transfer Pricing Officer noted that assessee has paid interest to Associated Enterprises but has not paid any interest to non Associated Enterprises on outstanding balances. The assessee could not submit any document in support of the claim that the credit allowed to non Associated Enterprises was less than the credit period

allowed to associated enterprises. He further noted that the charts submitted by the assessee with respect to the interest paid shows the period of credit of less than 30 days. He further noted that assessee gets credit from non Associated Enterprises of 92 to 180 days and does not pay any interest from them. The facts also noted that assessee entered into similar transaction with associated enterprises on similar terms of payments but Associated Enterprises has not charged any interest thereon. Therefore, the payment made by the assessee being interest on trade credit was not justified. The learned Transfer Pricing Officer held that this internal CUP available in the case of assessee and therefore arm's length price of this transaction is Nil. Accordingly, the above adjustment was made which was also incorporated as disallowance / addition in the assessment order dated 27.04.2016.

6. The assessee preferred the appeal before the learned CIT (A), who upheld the above addition. Therefore, assessee has challenged the same before us.
7. The learned Authorised Representative after referring to the order of the learned Transfer Pricing Officer and learned CIT (A) referred to page No. 156 of the original paper book that is the submission made before the learned Transfer Pricing Officer. He also referred to the chart, wherein the interest amount working is given. He



also referred to the submission before the learned CIT (A) and countered the claim that learned Assessing Officer has wrongly concluded that no interest was paid to the associated enterprises in earlier years. He also referred to the fact that assessee has paid interest to associated enterprises for Assessment Years 2010-11 to 2013-14 on identical basis. He also referred to invoices placed in the paper book where the specific terms of payments were mentioned of 90 days due with respect to associated enterprises. He therefore submitted that up to 90 days the credit was allowed by associated enterprises. He similarly referred to paper book submitted on 20 January 2022, wherein the invoices with associated enterprises were placed showing that there is credit period of 90 days. He further referred to some invoices with non-associated enterprises where the terms of payments are 30 days. The learned Authorised Representative therefore stated that the learned Transfer Pricing Officer has erroneously held that there is an internal CUP available despite there being significant difference between credit period allowed to assessee by Non AEs [30 days] and AE [90 days]. He further stated that the assessee has benchmarked the above transaction by aggregating it with other international transactions using Transactional Net Margin Method correctly. He further referred to the decision of Hon'ble Bombay High Court in the case of Kodak India Limited and submitted that addition made by

the learned Transfer Pricing Officer and confirmed by the learned CIT(A) is deserves to be deleted here only and no second innings should be allowed to Revenue for benchmarking of the above transaction.

8. The learned DR vehemently supported the orders of the lower authorities and submitted that in the present case when non Associated Enterprises are not paid any interest the payment of interest to Associated Enterprises has been correctly disallowed in the hands of the assessee. He submitted that different credit period by AE or NON AE can be a matter of consideration for benchmarking purchase transactions but once when the amount becomes outstanding whether at the end of 30 days or 90 days, it becomes a separate international transaction and Id TPO has correctly held that there is an internal CUP available, which the best method, so order of Id TPO and CIT (A) deserves to be upheld.
9. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts stated above clearly shows assessee purchases material from its AE and Non AE. NON-AEs allow payment credit to assessee of 30 days whereas the credit period allowed by AE is 90 days. Assessee pays interest @ 5.50 % p.a. that assessee is paying interest to its Associated Enterprises for payment beyond 90 days of the invoices value at the rate of 5.5% p.a. The above international transaction



amounting to ₹29 lacs was aggregate with other transactions and benchmarked adopting the Transactional Net Margin Method as the most appropriate method and found that the profit level of the assessee which was better than comparable companies it was held to be at arm's length. The learned Transfer Pricing Officer held that assessee has not paid any interest to non Associated Enterprises, therefore internal CUP is available, and therefore he held that the arms length price of such interest payment is nil. The learned CIT (A) without giving any reasons has confirmed the action of the learned Transfer Pricing Officer. We find that the transaction of outstanding payable by the assessee to non- AE is a separate international transaction in terms of provisions of explanation [1] [c] of section 92 B of the Act. There are no reasons to hold that above transaction is interlinked with other transactions and therefore should be aggregated. The LD TPO holding so found that there is an internal CUP available as for capital-financing assessee is paying interest to AE and not paying any interest to NON AE. Mostly, Internal CUP would provide highly accurate results. In this case, the difference in credit period is a differentiating factor only for the purposes of purchase transaction. For capital financing, the moment the credit period is over, both the outstanding of AE as well as NON AE stands at Par. However, we note that assessee has submitted before the learned CIT (A) that

the facts noted by the learned Transfer Pricing Officer that in past also the assessee has not paid any interest is incorrect. In fact the submission made before him clearly shows that for Assessment Year 2010-11, the assessee has paid ₹1,92,146/-, for Assessment Year 2011-12 ₹15,02,059/- for Assessment Year 2012-13 ₹29,79,359/- and for Assessment Year 2013-14 ₹27,82,845/-. However, that does not make any difference in benchmarking international transaction of current AY. Further, also, benchmarking of Payment of interest on outstanding beyond credit period to AE is also not impacted by the margins earned by the assessee or consideration of working capital adjustment. In view of the above facts, we uphold benchmarking made by the learned Transfer Pricing Officer of the above payment interest at Rs. Nil. Accordingly, the grounds Nos. 6 to 11 of the appeal assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21.03.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.03.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT



5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai