

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

IT(TP)A No.2323/Bang/2016
Assessment Year: 2007-08

M/s. OPTO Circuits (India) Ltd. No.83, Electronic City Hosur Road Bangalore 560 100  <b>PAN NO :AAACO2165P</b>	<b>Vs.</b>	ACIT Circle-5(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Shivaprasad Reddy & Shri B.S. Balachandran, A.Rs
<b>Respondent by</b>	:	Shri Mudavathu Harish Chandra Naik, D.R.

Date of Hearing	:	21.03.2022
Date of Pronouncement	:	22.03.2022

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging assessment order dated 21.11.2016 passed by the A.O. u/s 143(3) r.w.s. 147 r.w.s. 144C of the Income-tax Act,1961 ['the Act' for short] in pursuance of directions given by Ld. DRP. The grounds urged by the assessee give rise to the following 3 issues:-

- a) Validity of reopening of assessment u/s 148 of the Act
- b) Transfer pricing adjustments relating to payment made for services received.

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- c) Transfer pricing adjustment made in respect of loans and advances given to A.E.

2. We heard the parties and perused the record. The assessee is manufacturer and sale of electronic medical equipment. The assessee is a subsidiary of M/s. Mediaid Inc., US. The associated Enterprises (AE) are above said holding company and also one more concern named M/s. Eurocore GMBH, Germany. The assessment of the year under consideration was originally completed u/s 143(3) of the Act on 23.12.2009. The assessment was reopened by the A.O. by issuing notice u/s 147 of the Act. Since the assessee had entered into international transactions with A.Es, the A.O. referred the matter to the Transfer Pricing Officer. The TPO suggested transfer pricing adjustment in respect of following transactions:-

- a) Payment made for receipt of services.
- b) Interest on loan given to A.E.

3. The facts relating to the first item mentioned above are that the assessee had received certain services paid from its AE M/s. Mediaid Inc. and accordingly paid Rs.3,48,17,228/- towards services so received. Since the assessee did not provide any document to prove receipt of services, the TPO determined the ALP at Nil and accordingly made transfer pricing adjustment of entire amount of Rs.3,48,17,228/-. The Ld DRP also confirmed the same.

4. The Ld. A.R. submitted that the assessee has capitalized the payment of Rs.3,48,17,228/- as its intangible asset in the books of accounts. Accordingly, he submitted that the above said amount was not claimed as expenditure. Accordingly he submitted that the above said payment will not affect the profits of the assessee and hence no TP adjustment is called.

5. On the contrary, the Ld. D.R. submitted that the TPO has determined the ALP of receipt of services as nil. Hence, even if the assessee has capitalized the payment as intangible asset, the depreciation claimed thereon is required to be disallowed.

6. The bench asked Ld. A.R. about the details of depreciation claimed by the assessee for income tax purposes. The Ld. A.R. submitted that the assessee company has closed its business, since it incurred heavy loss due to heavy damage caused to its Visakhapatnam plant by the Hud Hud Cyclone. He submitted that the financial statements show that the assessee has not charged depreciation on intangible asset in the books of accounts. However, the details of depreciation, if any, claimed for income tax purposes are not readily available.

7. We heard the parties on this issue and perused the record. From the financial statements furnished in the paper book, we notice that the payment of Rs.3,48,17,228/- towards receipt of services has been capitalized by the assessee as "intangible asset". The fixed asset schedule is available at page 74 of the paper book. On the perusal of the same, we notice that the assessee has not claimed depreciation on intangible assets, referred above, in books of account. However, it is not clear as to whether the assessee has claimed depreciation on the above said intangible asset for income tax purposes or not. If the assessee has claimed depreciation for income tax purposes then, as contended by Ld D.R, the same is required to be disallowed, since the ALP of the services received by the assessee has been determined as nil by the TPO. Since the relevant details are not readily available, we restore this issue to the file of AO with the direction to disallow the depreciation, if the

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assessee has claimed depreciation on the intangible asset of Rs.3,48,17,227/-.

8. The facts relating to the second item are that the assessee has given loan to its A.E named M/s. Eurocore. The assessee did not charge any interest on the above said loan given to its AE. Hence, the TPO adopted average of prime lending rate prescribed by the State Bank of India during the financial year under consideration, which worked out to 11.375%. Applying the said rate, the TPO made TP adjustment of Rs.94,27,093/-. The Ld. DRP also confirmed the same.

9. We heard the parties on this issue and perused the record. We noticed that the assessee has given loan to its A.E. and hence, the TPO has adopted prime lending rate prescribed by the State Bank of India. The average rate prevailing during the year under consideration was 11.375%. Applying the said rate, the TPO has made TP adjustment of Rs.94,27,093/-. Thus, we notice that the TPO has adopted external CUP for making this transfer pricing adjustment. Before us, the assessee could not furnish any material to controvert the reasoning given by the TPO.

10. However, the AO has computed interest on the closing balance of Rs.8,28,75,543/-. The ledger account of Eurocor is available at page 67 of the paper book. We notice that there was opening debit balance of Rs.1,66,99,605/- and during the year under consideration, the assessee has advanced further amounts on various dates. Hence, in our view, the TPO should have computed interest on time basis. Accordingly he was not justified in computing interest for the entire year on the closing balance. Accordingly, while upholding the view of TPO that transfer pricing

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adjustment is required to be made on the loan given to the AE, we restore this issue to the file of AO/TPO for re-computing interest on time basis.

11. At the time of hearing, the Ld. A.R. did not press other grounds. Accordingly, all other grounds are dismissed as not pressed.

12. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 22<sup>nd</sup> Mar, 2022.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 22<sup>nd</sup> Mar, 2022.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.