

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I-2": NEW DELHI**

**BEFORE  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7289/Del/2018  
Asstt. Year : 2014-15

Trend Micro India Pvt. Ltd. Eros Corporate Tower, 10 <sup>th</sup> Floor, Nehru Place, New Delhi – 110 019 PAN AACCT2082Q (Appellant)	Vs.	DCIT Circle-25(2) New Delhi.  (Respondent)
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Assessee by:	Shri Vishal Kalra, Advocate
Department by :	Shri Mahesh Shah, CIT- DR
Date of Hearing	22.02.2022
Date of pronouncement	11.04.2022

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is against the order dated 10.04.2018 passed by the Deputy Commissioner of Income Tax, Circle-25(2), New Delhi ("**AO**") under section 143(3) r.w.s.

144C(13) of the Income Tax Act, 1961 (the **“Act”**) pertaining to assessment year (**“AY”**) 2014-15.

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

*“1. That on the facts and in the circumstances of the case and in law, the order passed by the Ld. Assessing Officer (“AO”) is bad in law.*

*2. That on facts and circumstances of the case and in law, the Ld. AO/ Ld. TPO/ Ld. Dispute Resolution Panel (“DRP”) erred in making an adjustment to the arm’s length price (“ALP”) of the Appellant’s international transactions with associated enterprises (“AEs”) amounting to INR 9,378,115 by:*

*2.1. aggregating the “business support services” and “research and development” services as one segment and modifying the comparability’ analysis conducted in the Transfer Pricing Documentation of the Appellant on inappropriate and inadequate grounds;*

*2.2. accepting companies that were functionally not comparable to the appellant in terms of functions, assets and risk profile.*

*2.3. rejecting the comparable companies which were comparable to the Appellant, on ground of functional dissimilarity.*

*3. That on the facts and circumstances of the case, the Ld. AO/Ld.TPO/ Ld. DRP erred in denying the adjustment for working capital position of the Appellant vis-a-vis the comparable companies.*

*4. That on the facts and circumstances of the case and in law the Ld. AO Ld. TPO/Ld. DRP erred in treating delay in receipt of payment from the AE's, as unsecured loans advanced to the AE's and applying a rate of interest @ 4.3311 % (LIBOR plus 400 basis points).*

*5. That on the facts and circumstances of the case and in law, the Ld. AO erred in charging and computing interest under section 234A, 234B, 234C and 234D of the Act.”*

3. The only issue contested before us pertains to “adjustment on account of interest on receivables”. The other issues stand settled in favour of the assessee vide rectification order dated

5.2.2019 passed by the Ld. AO in view of the directions given by the Hon'ble Dispute Resolution Panel ("**DRP**") dated 3.12.2018.

4. Briefly stated, the assessee is a subsidiary of Trend Micro Taiwan and was incorporated on 11.2.2005. The assessee is engaged in providing pre-sales and post-sales marketing support services and research and development support services to its Associated Enterprises ("**AEs**"). The services provided by the assessee is classified into two segments i.e. (i) business support service; and (ii) research and development support service. AEs enter into a direct contract with third party distributors for distribution of its products in India. The assessee liaises between its AEs and third party distributors in India. For the provision of these services, the assessee is compensated by its AEs on cost plus mark up. Trend Micro Group has call centre in Phillipines, which provides technical assistance to Trend Micro Group customers globally including India. The cost of this call centre is allocated to various Trend Micro Group companies one of which is the assessee, on the basis of the number of calls attended, e-mails received by it for each of the respective location. This cost allocation forms part of the cost base on which mark up is

received by the assessee. At the end of the year the assessee had outstanding payables as well as receivables.

5. During the course of transfer pricing proceedings, the Ld. Transfer Pricing Officer (“**TPO**”) treated delay in receipt of payment from the AEs as unsecured loans advanced to the AEs and imputed interest by applying a rate of interest @ 4.3311% (mark up of 400 basis points on LIBOR thereby making an addition of Rs. 5,29,694/-). The amount of adjustment was revised to Rs. 2534/- pursuant to the directions of the Hon’ble DRP. The Ld. TPO re-classified the outstanding receivables beyond the credit period of 30 days as unsecured loans to the AEs and treated them as separate international transactions. The Hon’ble DRP directed the Ld. AO/TPO to apply the credit period of 60 days and to recalculate the adjustment accordingly.

6. Aggrieved, the assessee is before us.

7. At the outset, the Ld. AR brought to our notice Annexure 1 to the TPO’s order (pages 43 and 44 of TPO’s order) wherein the party-wise AE details alongwith the amount of outstanding payables, outstanding receivables and interest calculated thereon has been provided which is reproduced below :-

Annexure -1

Name of the AE	Voucher No.	Date of Invoice	Payables	Receivables	Date of Receipt/ Payment	Due Date	Period outstanding above 30 days	Interest @ 4.3311% (LIBOR plus 400 basis points)
Trend Micro EMEA (GB) Ltd	IND-20130901	9/30/2013		79,801	6/20/2013	11/15/2013		
	IND-20131002	10/31/2013		79,800	2/24/2014	2/15/2014	116	1,098.4144
	IND-20131102	11/30/2013		79,801	2/24/2014	2/15/2014	86	814.3519
	IND-20131203	12/31/2013		82,430	2/24/2014	2/15/2014	55	537.9642
	IND-20140228	2/28/2014		122,152	2/24/2014	5/15/2014		
Trend Micro Australia Pty Ltd	IND-20130501	5/27/2013		136,278	8/20/2013	8/15/2013	85	1,374.5167
	IND-20130601	6/25/2013		99,268	8/20/2013	8/15/2013	56	659.6345
	IND-20130603	6/30/2013		83,785	8/20/2013	8/15/2013	51	507.0414
	IND-20130801	8/30/2013		112,340	6/20/2013	11/15/2013		
	IND-20130901	9/30/2013		405,408	6/20/2013	11/15/2013		
	IND-20130901-2	9/30/2013		83,786	6/20/2013	11/15/2013		
	IND-20131001	10/31/2013		132,352	3/3/2014	2/15/2014	123	1,931.7044
	IND-20131101	11/30/2013		85,813	3/3/2014	2/15/2014	93	946.9813
	IND-20131202	12/31/2013		117,776	3/3/2014	2/15/2014	62	866.4706
	IND-20130402	4/30/2013		8,058,138	5/20/2013	8/15/2013	20	19,123.6175
	IND-20130503	5/31/2013		27,241,946	6/12/2013	8/15/2013	12	38,790.4408
	IND-20130604	6/30/2013		38,584,297	7/11/2013	8/15/2013	11	50,362.6561
	IND-20130701	7/31/2013		6,019,361	8/12/2013	11/15/2013	12	8,571.1079
	IND-20130802	8/31/2013		12,775,640	9/12/2013	11/15/2013	12	18,191.5312
	IND-20130902	9/30/2013		33,130,175	10/15/2013	11/15/2013	15	58,968.5341
	IND-20131003	10/31/2013		7,507,783	11/18/2013	2/15/2014	18	15,035.7616
	IND-20131103	11/30/2013		16,559,687	12/10/2013	2/15/2014	10	19,649.7698
	IND-20131205	12/31/2013		41,713,993	1/22/2014	2/15/2014	22	108,895.4636
	IND-20140105	1/31/2014		8,391,192	2/18/2014	5/15/2014	18	17,922.6199
	IND-20140201	2/28/2014		14,059,809	3/27/2014	5/15/2014	27	45,045.1998
Trend Micro Singapore Pte Ltd.	AUS-138401	4/25/2013	6,869		9/11/2013	8/15/2013		
	AUS-130701	7/25/2013	22,387		9/11/2013	11/15/2013		
	AUS-131001	10/25/2013	25,950		12/17/2013	2/15/2014		
	SG-130504	8/30/2013	2,743		12/17/2013	11/15/2013		
Trend Micro Phils - Philippines	SG-130904	9/30/2013	52,784		12/17/2013	11/15/2013		
	SG-131007	10/31/2013	11,714		12/17/2013	11/15/2013		
	IND-05.13	5/25/2013	51,162		9/11/2013	8/15/2013		
	IND-06.13B	6/28/2013	65,334		9/11/2013	8/15/2013		
	IND-06.13	6/25/2013	145,858		9/11/2013	8/15/2013		
Trend Micro Japan	IND-07.13	7/25/2013	60,787		9/11/2013	11/15/2013		
	IND-08.13	8/27/2013	87,964		12/17/2013	11/15/2013		
	IND-09.13	9/30/2013	30,003		12/17/2013	11/15/2013		
Trend Micro Japan	IND-20130403	4/30/2013		4,510,938	6/20/2013	8/15/2013	51	27,298.7266
	IND-20130502	5/31/2013		3,495,855	6/20/2013	8/15/2013	20	8,296.3826
	IND-20130605	6/30/2013		4,910,356	8/20/2013	8/15/2013	51	29,715.8728

	IND-20130702	7/31/2013		3,451,810	6/20/2013	11/15/2013		
	IND-20130803	8/31/2013		4,735,740	6/20/2013	11/15/2013		
	IND-20130903	9/30/2013		5,888,787	6/20/2013	11/15/2013		
	IND-20131004	10/31/2013		3,006,826	6/20/2013	2/15/2014		
	IND-20131104	11/30/2013		3,262,568	11/27/2013	2/15/2014		
	IND-20131206	12/31/2013		5,279,763	11/27/2013	2/15/2014		
	IND-20140106	1/31/2014		3,587,874	11/27/2013	5/15/2014		
Trend Micro Incorporated (Taiwan)	F131006	10/25/2013	- 23,961		12/17/2013	2/15/2014		
	F130404	4/25/2013	- 349,773		9/11/2013	8/15/2013		
	F130704	7/31/2013	- 71,531		12/17/2013	11/15/2013		
	F130506	5/27/2013	- 104,860		9/11/2013	8/15/2013		
	F130610	6/25/2013	- 35,336		9/11/2013	8/15/2013		
	F130806	8/26/2013	- 34,129		12/17/2013	11/15/2013		
	F130910	9/30/2013	- 96,180		12/17/2013	11/15/2013		
	F131007	10/25/2013	- 82,034		12/17/2013	2/15/2014		
	IND-20130401	4/25/2013		1,139,067	5/27/2013	8/15/2013	32	4,325,1841
	IND-20130602	6/25/2013		4,832,044	8/20/2013	8/15/2013	56	32,108,8132
IND-20131201	12/31/2013		2,705,228	2/24/2014	2/15/2014	55	17,655,1703	
	<b>Total</b>			<b>266,549,667</b>				<b>5,29,694</b>

7.1 The Ld. AR submitted that during the assessment year 2014-15, the assessee also has “payables” in respect of some of its AEs. This is on account of advance payments received by the assessee. As the assessee is a captive service provider and does not provide services to third parties, netting off of receivables and payables should be allowed to the assessee. The Ld. AR submitted that the Ld. TPO while making the adjustment has only considered receivable paid beyond 60 days for making a notional

interest adjustment ignoring payments/ receivables made in advance. In support the Ld. AR relied upon the recent judgement of the Delhi High Court in PCIT vs. Mckinsey Knowledge Centre India (P.) Ltd. (ITA No. 146/2020) dated 12.10.2021. The Ld. AR further submitted that as the working capital adjustment subsumes the adjustment on account of receivables no separate adjustment of outstanding receivable is required.

7.2 The Ld. DR relied on the order of the Hon'ble DRP and the Ld. TPO. He submitted that the findings of the Hon'ble Delhi High Court in Mckinsey's case (supra) is distinguishable on facts as in Mckinsey's case (supra) there were no outstanding receivables itself and the taxpayer received advance payments from its AE's. Ld. DR further submitted that the parties for outstanding receivables and outstanding payables are different. As far as the payables are concerned, the same has not been examined by the Ld. AO/TPO and hence the matter may be remanded back to the file of the Ld. AO/TPO.

8. We have heard the Ld. Representatives of the parties and perused the material available on record.

8.1 The assessee entered into various international transactions with its AEs resulting in outstanding receivables as per the payment terms stipulated in the inter company policy entered into with the AEs. The assessee being a captive unit has received advances from some of its AEs for services to be provided in future. The Delhi High Court in case of Mckinsey (supra) has held as under :-

*“12. This Court is also of the opinion that under no transfer pricing norm, principle or evaluation of any “benefit” can there be a one-sided adjustment taking into account delayed invoices while at the same time ignoring Invoices/ payment received in advance. Consequently, factually there can be no notional computation of ‘delayed receivables’ only ignoring the receivables received in advance.*

*13. A perusal of paper book reveals that most of the invoices/receivables had been paid significantly in advance. When the period for which the amounts of receivables received in advanced enjoyed by the respondent is seen vis-a-vis the amount receivable beyond sixty days, it is apparent that the respondent has received significantly more advance rather than outstanding receivable beyond sixty days.*

*14. Consequently, on the facts and circumstances of the case, the notional interest relating to alleged delayed payments in collecting receivables from the AEs is uncalled for as in fact, there are no outstanding receivables as the amount received in advance far outweigh the amount received late.”*

Respectfully following the principle laid down by the Delhi High Court in light of the factual matrix of the instant case we are of the view that the Ld. AO/TPO is not justified in charging interest on receivables without factoring in the payables to the AEs.

8.2 Before the Ld. TPO/DRP the assessee submitted that during assessment year 2013-14 there were delayed payments by the assessee to the third party vendors also, for which no interest was charged by them. Thus, the same ought not to be benchmarked in the absence of any interest charged in unrelated party scenario. It is settled principle that there is no need to benchmark the interest on receivables wherein the interest has not been charged from either of the parties i.e. payables and receivables. In the absence of any fact to prove that the assessee is liable to payment of interest, no adjustment is warranted.

8.3 Admittedly, the assessee is a debt free company. It has neither received any interest from any creditors nor paid interest to debtors. It has not borrowed any funds for extending loan to the AEs. The Hon'ble Delhi High Court in case of PCIT vs. Bechtel India Pvt. Ltd. (ITA No. 379 of 2016) held that as the assessee is a debt free company there is no question of charging any interest on receivables. SLP filed by the Revenue against the judgment of

Hon'ble High Court has been dismissed by the Hon'ble Supreme Court.

8.4 The assessee has followed TNMM to benchmark its international transactions with AE's. Hence, any adjustment on account of outstanding receivables/payables has been subsumed in the working capital adjustment. The debit balance per se in the account of AEs, does not amount to an international transaction under section 92B in respect of which arms length price adjustment can be made. An outstanding balance unlike a loan or borrowing is not an independent transaction which can be viewed on stand alone basis. Reliance is placed on the case of PCIT vs. Kusum Health Care Pvt. Ltd. (ITA No. 765 of 2016) wherein the Hon'ble Delhi High Court held that 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. The Hon'ble Court further went on to hold that there can be a delay in collection of monies for supplies made, even beyond the agreed limit, due to various factors which would be investigated on a case to case

basis. This view has also been followed by the Hon'ble Rajasthan High Court in the case of Gillette India Ltd. ITA No. 40/2017 wherein the Hon'ble High Court affirmed the order of the ITAT holding that the transaction of allowing credit period to the AE for realisation of its sale proceeds is not an independent international transaction but is closely linked with the sale transaction of the AE.

8.5 The Hon'ble Delhi ITAT in Kusum Health Care Pvt. Ltd. vs. ACIT (ITA No. 6814/Del/2014) held that in case the differential impact of working capital of the assessee vis a vis its comparables has already been factored in the pricing/ profitability of the assessee, further adjustment to the margin of the assessee on the pretext of outstanding receivable is unwarranted and wholly unjustified. Also the Hon'ble Delhi ITAT in case of Ameriprise India P. Ltd. vs. ACIT (ITA No. 2010/Del/2014) considered the decision of Coordinate Bench in the case of Kusum Health Care and held that allowing working capital adjustment in the international transaction of rendering services have no impact on the determination of ALP of the international transaction of interest on receivables from AEs.

8.6 Having regard to the legal position set out above, we hold that the Ld. AO was not justified in making adjustment on account of interest on receivables in the facts and circumstances of the assessee's case. Accordingly, the assessee succeeds.

9. Charging of interest under section 234A, 234B, 234C and 234D of the Act is consequential.

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

The order was pronounced in the open court on 11<sup>th</sup> April, 2022.

sd/-

sd/-

**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 11 /04/2022

***Veena***

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ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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