IN THE INCOME TAX APPELLATE TRIBUNAL
"B'' BENCH: BANGALORE

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.2612/Bang/2019
Assessment Year:2015-16

M/s. Biocon Biologics Limited (Formerly known as Biocon Biologics India Limited) (Successor to Biocon Research Limited) Biocon House, Ground Floor, Tower 3, Semicon Park Electronic City Phase-II Hosur Road Bengaluru **PAN NO : AADCB4910A**	**Vs.**	Deputy Commissioner of Income-tax Circle 1(1)(2) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Padamchand Khincha, A.R.
Respondent by	:	Sri Manjunath Karkihalli, DR

Date of Hearing	:	11.04.2022
Date of Pronouncement	:	11.04.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the final assessment order dated 30-10-2019 passed by the assessing officer for assessment year 2015-16 u/s 143(3) r.w.s 144C(13) of the Income-tax Act,1961 ['the Act' for short] in pursuance of directions given by Ld Dispute Resolution Panel (DRP).

2. The grounds urged by the assessee give rise to the following issues:-

(a) Transfer pricing adjustment made on account of notional interest on outstanding receivables.

(b) Addition on account of reimbursements receivable from M/s Mylan.

(c) Alternative contention for enhanced deduction u/s 10AA of the Act, if any of the addition is sustained.

(d) Correctness of computation of deduction u/s 10AA after setting off of brought forward losses.

3. The assessee is engaged in the business of undertaking research and development activities in drugs, drugs delivery systems and out licensing of products, processes, patents and technology that is found out from aforementioned research and development activities. The assessee company is a wholly owned subsidiary of M/s Biocon Ltd.

4. The first issue relates to the transfer pricing adjustment made in respect of outstanding receivables. The TPO noticed that the amount due from its AE named M/s Biocon SA has been received by the assessee belatedly. The TPO also noticed that the assessee has borrowed about 650 crores and is paying interest thereon @ 9% p.a. Accordingly, the TPO took the view that the credit given by the assessee to its AE is a separate international transaction and the notional interest computed thereon should be made as transfer pricing adjustment. Accordingly he computed interest of Rs.1,14,29,580/- as transfer pricing adjustment in respect of delayed receipt of outstanding amount due from its AE. For computing interest, the TPO adopted following methodology:-

(i) The TPO first computed average of opening balance and closing balance of amounts due from M/s Biocon SA.

(ii) The TPO adopted interest rate of LIBOR – 6 months + 400 basis points, which worked out to 4.3836%.

The TPO has specifically observed that the assessee has not furnished invoice wise details of outstanding amounts and hence he has taken average of opening and closing balances of outstanding and computed interest thereon.

4.1 The Ld DRP upheld the view of the TPO that the extended credit period given to the AE is a separate international transaction. However, the Ld DRP did not agree with the methodology adopted by the TPO to compute the notional interest on receivables. Accordingly, the Ld DRP directed the TPO to adopt the reasonable credit period as "30 days" and also directed him to compute interest with reference to each of the invoices, which has exceeded the credit period of 30 days.

4.2 The Ld. A.R. submitted that the assessee had followed TNM method for bench marking its international transactions, which, inter alia, consisted of fees received from its AE. The TPO has accepted the same to be at Arm's length. However, he has considered year end receivables due from AE as separate international transaction and carried out transfer pricing adjustment by imputing notional interest on the said receivables. The Ld. A.R. submitted that the TNMM method adopted by the assessee combined with working capital adjustment would take care of loss, if any arising from extended credit given to the A.E. Accordingly, he contended that the credit given to the AE cannot be considered as separate international transaction.

4.3 The Ld. D.R. on the contrary submitted that the TPO has not disturbed the margin declared by the assessee and hence he did not carry out comparison of PLI (Profit level indicator) with any comparable company. He submitted that the working capital adjustment is made to the margins of comparable companies only. However, in the instant case, the assessee has given extended credit to its AE and hence the TPO was justified in treating the same as separate international transaction.

4.4 We heard the parties on this issue and perused the record. On a perusal of order passed by the TPO, we notice that the TPO did not disturb the financial results furnished by the assessee, meaning thereby, he has accepted the transactions relating to receipt of fees from its AE to be at arm's length. Since the TPO has accepted the financial results, the Ld A.R is contending that the TNM method and the working capital adjustment, would subsume the loss, if any arising to the assessee from giving extended credit to AE. However, we are unable to agree with the above said contentions of Ld A.R for the following reasons:-

(a) The working capital adjustment is made to the working results of the comparable companies. The reason is that the transaction between the assessee and its AE is risk free and further the price of transaction is determined in advance, while the comparable companies carrying on uncontrolled transactions would have the leverage to increase the price of product/services depending upon the credit period granted to its customers. Such kind of higher pricing would result in higher profit margin. Hence, the working capital adjustment is made to the margins of comparable companies to eliminate this difference.

(b) Thus, it can be seen that the working capital adjustment is not made to the working result of the assessee company. Further, generally the price that will be received by the assessee from its AE is determined in advance. Hence the extended credit period given to the AE will not result in increase in the price, which would compel the TPO to treat the extended credit period as a separate international transaction.

(c) Further, the working capital adjustment is computed on the basis of "yearend" balances and hence it will not take into account the extended credit given to the A.E. during the course of the year. For example, if an invoice raised on 2nd of April of a financial year is realized on 30th March of the very same financial year, the same would result in a credit period of almost 12 months, but it would not get reflected in the "yearend" balances. As a result, it will not make any impact on the working capital adjustment computed.

Hence, the contention that the working capital adjustment and the margin computed under TNM method would subsume the loss, if any arising from giving extended credit to AE is fallacious. Accordingly, we uphold the view of tax authorities that extended credit period given to the A.E. is a separate international transaction.

4.5 The Ld. A.R. submitted that the assessee has actually furnished the invoice wise details at page 165 of the paper book. He submitted that the assessee has actually received advance payment in respect of 4 invoices. The Ld. A.R. further submitted that the Ld. DRP has held that the reasonable credit period is 30 days and the assessee does not want to dispute the same. He submitted that the 4 invoices have been realized after the period of 30 days and hence the notional interest may be imputed in respect of the 4 invoices. The

details of 4 invoices mentioned in the table given in page 165 of the paper book are extracted below:-

(a) Invoice raised in the earlier year and realized on 14th July, 2014 (105 days delay)

(b) Invoice raised in the earlier year and realised on 30th September, 2014 (183 days delay)

(c) Invoice raised on 30th June, 2014 and realized on 30th September, 2014 (92 days delay)

(d) Invoice raised on 30th June, 2014 and realized on 30th September, 2014 (92 days delay).

4.6 We notice that the Ld DRP has already given direction to the TPO to impute interest on each of the invoices, which have been realised beyond the credit period of 30 days. Hence, we are of the view that no further direction to TPO is called for. The TPO may examine the break-up details of invoices, dates of realisation, the time taken in realisation etc., given in the table given in page 165 of the paper book and carry out the directions given by Ld DRP accordingly.

5. The next issue urged by the assessee relates to the addition made by the assessing officer on account of "reimbursement receivable" from M/s Mylon. The A.O. noticed the assessee was receiving reimbursements from M/s. Mylon GMBH on research and development cost incurred on Transtuzumab (T-MAB) development. The A.O. noticed that the R & D activities have been carried out by the assessee on cost sharing basis along with M/s Mylan. However, he noticed that the percentage of cost shared by M/s. Mylan was 100% in the assessment year 2010-11 and it has come down to 10% in the current assessment year. The average amount of cost shared by M/s Mylan during the period covering assessment year 2010-11 to 2014-15 was around 53%. Accordingly, the A.O. took the view

that the assessee should receive 50% of the R&D expenditure as share from Mylan. Accordingly, the AO disallowed a sum of Rs.48,05,80,000/- from out of R&D expenditure claimed by the assessee.

5.1 The Ld. A.R. submitted that the assessee has carried out various types of research and development activity for different type of products along with Mylan. The assessee enters into agreement with Mylan for each of the activity and the cost sharing ratio would also differ from agreement to agreement. Accordingly, he submitted that the A.O. was not right in presuming that sharing of cost should be at a constant level of 50%. The Ld. A.R. submitted that the assessee has furnished the details of cost sharing for each of the project by way of additional evidence. Accordingly he submitted that this matter may be restored to the file of the A.O. for examining the issue afresh.

5.2 The Ld. D.R., in principle, agreed with the prayer put forth by the Ld. A.R. He submitted that the assessee may be directed to furnish relevant agreements also to support the claim of variation in cost sharing in each of the contract.

5.3 We heard the parties on this issue and perused the record. A perusal of the statement of cost sharing given by way of additional evidences by the assessee would show that the cost sharing ratio varies with each of the agreement. Accordingly, in view of the submissions made by both parties, we are of the opinion that this issue requires fresh examination at the end of the A.O. by duly considering the additional evidences furnished by the assessee and also the copy of agreements entered between the assessee and M/s. Mylan. Accordingly, we set aside the order passed by the A.O. on this

issue and restore the same to his file for examining it afresh. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

6. The next two issues relate to the deduction claimed u/s 10AA of the Act, viz.,

(a) Alternative contention for enhanced deduction u/s 10AA of the Act, if any of the addition is sustained.

(b) Correctness of computation of deduction u/s 10AA after setting off of brought forward losses.

However, we notice from the assessment order that the AO has not computed any deduction u/s 10AA of the Act. From the copy of computation of income furnished at page 37 of the paper book, we notice that the assessee is eligible to claim u/s 10AA of the Act in this year (5th year of claim), but the assessee could not claim the same in view of the loss incurred in business. Hence, it appears that the assessee has raised these grounds out of abundant caution. Since, there was no occasion for the AO to examine the issue of computing deduction u/s 10AA of the Act, we restore all the contentions relating to the deduction, if any, allowable u/s 10AA of the Act to the file of the AO, who may examine the claim, if the computation of deduction u/s 10AA becomes necessary.

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

Order pronounced in the open court on 11th Apr, 2022

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

Bangalore,
Dated 11th Apr, 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.