

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

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

IT(TP)A No.290/Bang/2021
Assessment Year: 2016-17

Verifone India Technology Pvt. Ltd. A 101, Cyber Park, Plot No.76,77 & 78 Doddathogur Village Hobli Bengaluru PAN NO :AACCV1683K	Vs.	ACIT Circle-7(1)(2) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	25.04.2022
Date of Pronouncement	:	25.04.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the assessment order dated 30.4.2021 passed by the A.O. for assessment year 2016-17 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”). The only issue urged in this appeal relates to transfer pricing adjustment made in respect of interest on delayed receivables.

2. The assessee company renders software development services to its parent company M/s. Verifone Singapore Pte Limited and also to its Associated Enterprise (“A.E.”) M/s. Verifone Malaysia. During the year under consideration, the assessee received payments from its A.E. for software development services, information technology enabled services and technical software support services. Those transactions were accepted to be at arm’s length by the TPO. However, the TPO noticed that there was delay in receiving payment from its A.E. Accordingly, he took the view that delayed receivables is an international transaction and interest has to be imputed on its by way of transfer pricing adjustment. For this purpose, the TPO adopted interest rate at LIBOR-6Months+450 basis points applicable for financial year 2015-16, which worked out to 4.985%. Accordingly, he computed the interest on delayed receivables at Rs.1,17,60,075/- and proposed it as transfer pricing adjustment. The Ld. DRP also held that the delayed receivable is a separate international transaction. However, the Ld. DRP directed the AO/TPO to adopt short term deposit interest rate prescribed by State Bank of India for computing the interest. According to the direction of Ld. DRP, interest on delayed receivables worked out to Rs.1,91,11,071/-, which was added by the A.O. in the final assessment order. Aggrieved, the assessee has filed this appeal before us.

3. The Ld A.R submitted that the assessee is not disputing the view taken by the AO/TPO that the delayed receivables is an international transaction. He submitted that, once it is considered to be an international transaction, then it is imperative for the TPO to determine the Arm’s Length Price under any one of the prescribed methods. He submitted that the TPO has not carried out any bench marking analysis as per the Rules, but simply adopted LIBOR – 6 months + 450 basis points, which is against the

transfer pricing provisions. He further submitted that the Ld DRP has directed the TPO to adopt short term lending rate prescribed by State Bank of India and accordingly Ld DRP has also not followed the rules. In effect, both the tax authorities have not bench marked the transaction in accordance with the Rules. He further submitted that the assessee has received advances from the AE in some cases, which should have been netted off. Further the TPO has ignored the fact that the assessee did not charge interest on the delayed receivables from non-AEs. The Ld A.R also submitted that interest should have been charged on actual period of delay in excess of the grace period. In view of all these deficiencies, the Ld A.R submitted that this issue requires fresh examination at the end of AO/TPO with liberty to raise all contentions before AO/TPO.

4. We heard Ld D.R and perused the record. Having regard to the submissions made by Ld A.R, we are of the view that there is merit in his contentions. As rightly submitted by Ld A.R, the Arm's Length Price of transactions have to be determined by following any one of the methods prescribed under the Income tax Rules. Admittedly, the TPO/DRP, in the instant case, has not followed the same. Accordingly, we deem it proper to restore this issue to the file of AO/TPO for determining the ALP, i.e., interest on delayed receivables by following the rules. The assessee is free to raise all the contentions before the AO/TPO.

5. Other grounds urged by the assessee are only consequential in nature.

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

Order pronounced in the open court on 25th Apr, 2022

Sd/-
(Beena Pillai)
Judicial Member

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

Bangalore,
Dated 25th 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.