

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6806/Del/2018 : Asstt. Year : 2014-15

Rockwell Automation India Pvt. Ltd., A-66, Sector-64, Noida, U.P.-201301	Vs	ACIT, Circle-21(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCR3791A		

Assessee by : Sh. Ravi Sharma, Adv.

Revenue by : Sh. M. R. Shah, CIT DR

Date of Hearing: 14.02.2022

Date of Pronouncement: 05.05.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order passed by the AO dated 24.08.2018 u/s 144C/143(3) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"3. On the facts and circumstances of the case and in law, the Id. TPO/Id. AO and Hon'ble DRP erred in making an adjustment of INR 19,08,408/- by imputing interest on outstanding inter-company receivables and in doing so have grossly erred in:

3.1 The facts and in law, in treating outstanding receivables from AEs as a separate international transaction requiring separate compensation.

3.2 The facts and in law, in arbitrarily without applying any method specified under transfer pricing regulations.

3.3 Without prejudice, not considering the effect of outstanding payables for the purpose of the adjustment.

3.4 Disregarding the fact that the appellant has not charged interest on receivables both from AEs and non AEs which establishes that the appellant is acting under arm's length conditions."

3. The assessee company is a Pvt. Ltd. company and is primarily engaged in assembling and selling automation and industrial control products/systems. The product range of the Group includes condition monitoring switches, condition sensing switches and controls, connection system, control circuits and load protections, industrial computers and monitors, lighting control, limit switches, push buttons, sensors etc.

4. Apart from manufacturing/assembling, the assessee is also engaged in trading related products. Rockwell India also provides services like information technology and engineering based consultancy services, training etc.

5. At the outset, the Id. AR taken up the Ground No. 3 pertaining to interest on outstanding inter-company receivables.

6. The TPO estimated the delay on estimated average of outstanding receivables of 6 months and calculated interest for 182 days @ 4.31% (LIBOR + 400 basic points). The Id. DRP following the order for the A.Y. 2013-14 directed the TPO to make adjustment on net receivables only after netting the payables entry wise. The assessee before us submitted that the receivables and payables are intricately linked to the transactions of import of capital assets, components and export of finished goods and provision of services and hence cannot be

bench marked separately. It was also argued that the company had more of net payables with its AEs at the end of the year and yearly net closing balances are as under:

S.No	Name of the AE	Relationship with AE	Receivable Balance (A)	Payable Balance (B)	Difference Amount (A-B)
1	Rockwell Automation Inc, USA	Ultimate Holding Company	44,541,345	376,160,226	(331,618,881)
2	Rockwell Automation Asia Pacific Ltd, Hong Kong	Fellow Subsidiary	10,357,533	-	10,357,533
3	Rockwell Automation BV Netherlands	Fellow Subsidiary	45,271,184	-	45,271,184
4	Rockwell Automation, Pty Ltd, South Africa	Fellow Subsidiary	5,145,938	-	5,145,938
5	Rockwell Samsung Automation Ltd. Korea	Fellow Subsidiary	9,206,873	-	9,206,873
6	Rockwell Automation Australia Ltd.	Fellow Subsidiary	340,682	-	340,682
7	Others	Fellow Subsidiary	11,108,465	-	11,108,465
8	Rockwell Automation Inc, Canada	Fellow Subsidiary	6,937,229	-	6,937,229
9	Rockwell Automation Southeast Asia Pte. Ltd. Singapore	Fellow Subsidiary	-	2,640,880	(2,640,880)
	Net Receivable / (Payable) balance			378,801,106	(245,891,857)

7. Based on the above, it was argued that the amount of outstanding payables by the company towards its AEs was over 2.8 times than the amount of outstanding receivables from the AEs. It was also argued that the AEs did not charge any interest from the assessee as well as on the outstanding payables. The Id. AR relied on the decision of the Co-ordinate Bench of ITAT in the case of AVL India P. Ltd. Vs. DCIT 88 taxmann 11 wherein it has been held that in order to determine ALP. Benefit of netting of interest has to be allowed on aggregate amounts receivable and payable from all AEs and not on transaction by transaction basis. The Id. DR relied on the order of the Id. DRP.

8. Heard the arguments of both the parties and perused the material available on record.

9. The issue has been deliberated in a number of cases by the Tribunal. The Delhi Tribunal in case of Kusum Healthcare Pvt. Ltd. vs. ACIT (ITA No. 6814/Del/2014) order dated 31.03.2015 held that the working capital adjustment takes into account impact of outstanding receivables and no further adjustment required if the margin of the assessee is higher than working capital adjusted margin of comparable.

10. The Hon'ble Delhi Tribunal in case of Ameriprise India P. Ltd. vs. ACIT (ITA No. 2010/Del/2014) [order dated 14.08.2015] considered the decision of coordinate bench in the case of Kusum Healthcare and held that the allowing working capital adjustment in the international transaction of rendering services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs.

The Delhi Tribunal in the case of McKinsey Knowledge Centre Pvt. Ltd. Vs. DCIT [ITA No. 154/Del/2016] (order dated 15.12.2016) followed their finding in the case of Ameriprise India (supra).

11. In the meanwhile, the Hon'ble Delhi High Court, vide order dated 25.04.2017 in the case of Kusum Healthcare, dismissed the appeal of the revenue against the decision of Hon'ble Tribunal and that (i) 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 characterized as an international transaction and (ii) With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction.

12. In the appeal filed by the assessee in the case of Mckinsey Knowledge, the Hon'ble High Court vide order dated 07.02.2018, while admitting the appeal on the other issue, remitted the issue of interest charged on outstanding receivables to ITAT, following their decision in the case of Kusum Healthcare.

13. However, vide order dated 09.08.2018, the Hon'ble High Court in the case of Mckinsey Knowledge, while deciding the appeal of the assessee on other issue, also referred to the decision of the Hon'ble Delhi Tribunal in case of Ameriprise

India P. Ltd. vs. ACIT (ITA No. 2010/Del/2014) on issue of interest charged on outstanding receivable and concluded that the assessee's contention that the ITAT erred in concluding that charging of interest on delayed receipt, of receivables is a separate international transaction which requires to be benchmarked independently, is incorrect.

14. Aggrieved, the taxpayer (Mckinsey Knowledge) filed Review Petition before the Hon'ble High Court against the order dated 09.08.2018 and the Hon'ble High Court, vide order dated 16.04.2019 in Review Pet. No. 360/2018, was pleased to recall/correct their order dated 09.08.2018, holding as under:

"9. As far as the first argument by the review petitioner, i.e., the answer to the question of bringing to tax the interest amounts goes, this Court is of the opinion that the fact that the order of 07.02.2018 referred to Kusum Health Care had expressly remitted the matter for consideration to the ITAT supports the assessee's submission. All that the court had stated on 07.02.2018 was that the matter required re-examination by the ITAT in the light of the Kusum Health Care (supra). For these reasons, the judgment to the extent it deals with adjustments made by the TPO, and regarding interest on delayed receipt of receivables, is a clear error. The court also furthermore notes the submissions made with respect to inapplicability to Explanation of Section 92B and its prospective operation. As the order of 07.02.2018 reserved by contentions, this Court does not propose to disturb the effect of that matter. The matter will be considered by the ITAT on its own merits.

15. In view of the aforesaid sequence of events, it would be noted that the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare is still the binding precedent on the issue of interest on outstanding receivables. Needless to mention that the law laid down by the Hon'ble High Court in the case of Kusum Healthcare was followed by the Co-ordinate Benches of the ITAT. There is complete uniformity in the act of the assessee in not charging interest from both the AE and Non AE debtors and the delay in realization of the export proceeds in both the cases is same. Reliance is being placed on the decision of Hon'ble Bombay High Court in the case of CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L) No. 1053 of 2012 order dated 08.01.2013. Keeping in view the various judicial pronouncements and the facts of the case that neither interest has been charged nor paid, we hereby allow the appeal of the assessee on this ground.

16. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 05/05/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 05/05/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR