

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT  
AND  
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

IT(TP)A No.208/Bang/2022
Assessment year : 2017-18

Maxim Integrated Products India Sales Pvt. Ltd., 4 <sup>th</sup> Floor, Tower B Comercio, Mantri Survey No. 51/2/3/4, Devarabisanahalli, Survey No.39, Kariyammana Agrahar, Varthura Hobli, Bangalore – 560 103. <b>PAN: AAGCM 9439g</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 4(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Kumar Jain, Advocate
Respondent by	:	Shri Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.05.2022
Date of Pronouncement	:	30.05.2022

**ORDER**

*Per Padmavathy S., Accountant Member*

This appeal is at the instance of assessee directed against the order of the Assessing Officer, National Faceless Assessment Centre (NFAC), Delhi dated 31.1.2022 for the assessment year 2017-18.

2. Though various grounds are raised by the assessee, but the main issue relates to the notional interest adjustment with respect to outstanding

receivables of the assessee computed at 6 months LIBOR + 450 basis points i.e., effective rate of 5.875% by the revenue authorities.

3. The assessee is a subsidiary of Maxim Integrated Products Sales Ltd. Dublin, Ireland. It is primarily engaged in marketing of integrated circuits for semi-conductors and software in the domain to cater to the needs of its AE under which the company will provide marketing services on commission basis. The assessee rendered the following international transactions during the year under consideration:-

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount</i>
1	Provision of Marketing & Sales support services	44516132
2	Reimbursement of expenses paid	4610344
3	Recovery of expenses	275483
	Total	49401959

4. The financial results of the assessee in the TP study are as follows:-

<b>Particulars</b>	<b>Amount in Rs</b>
Revenue from operations (gross)	44516132
<b>Total revenue</b>	<b>44516132</b>
<b>Expenses</b>	
Employee Benefit Expenses	20817274
Other Expenses	12466568
<b>Total Expenses</b>	<b>33283842</b>
<b>PBT</b>	<b>11232290</b>
<b>OP/OC</b>	<b>33.75%</b>

5. The financials as worked out by the TPO are as under:-

<b>Particulars</b>	<b>Amount in Rs.</b>
Revenue	44516132
<b>Total operating revenue</b>	<b>44516132</b>
Total Expenses	33283842
<b>Total Operating Expenses</b>	<b>33283842</b>
<b>Operating income</b>	<b>11232290</b>
<b>OP/OC</b>	<b>33.75%</b>
<b>OP/OR</b>	<b>25.23%</b>

6. The assessee follows Transactional Net Margin Method [TNMM] as the Most Appropriate Method [MAM]. The TPO accepted the arm's length price [ALP] of the assessee and did not make any adjustments. However, the TPO computed the interest on delayed trade receivables and made a TP adjustment of Rs.36,93,339. On appeal, the DRP confirmed the action of the TPO and accordingly the final order of assessment was passed. Aggrieved, the assessee is in further appeal before the Tribunal.

7. The TPO during the proceedings u/s. 92CA of the Income-tax Act, 1961 [the Act] treated the receivables as a separate international transaction to be benchmarked separately. In this regard, the TPO relied on various judicial pronouncements to hold that the aggregation of transactions is possible only when the underlying international transactions are continuously and closely inter-linked. For this purpose, according to him, it was essential for the taxpayer to show that the comparables selected by it are also comparable from the perspective of having receivables on which no interest has been charged. He therefore considered the receivables as a separate international transaction and relying on various judicial precedents, chose CUP as the MAM for computing the ALP. He computed the interest at 6 months LIBOR + 450 basis points which worked out to 5.875%. While computing the adjustment,

the TPO considered the standard credit period at 120 days as per inter-company agreement entered into by the assessee with its Associated Enterprise [AE].

8. The assessee filed its objections before the DRP, which confirmed the computation of income and treatment of receivables as a separate international transaction done by the TPO. Aggrieved, the assessee is in appeal before the Tribunal.

9. Before us, the Id. AR submitted that the treatment of interest on outstanding receivables as a separate international transaction is not warranted as per the provisions of the Act. The assessee is having such profitability which is well within the ALP and hence no separate adjustment is required towards interest on trade receivables to treat it as a separate international transaction and benchmark it separately.

10. He further submitted that interest on receivables is subsumed in the working capital adjustment and hence there is no requirement for a separate adjustment. Alternatively, the Id. AR prayed for consideration of interest at LIBOR + 2% by placing reliance on the decision of this Tribunal in the case of *Swiss Re Global Business Solutions India Pvt. Ltd. in IT(TP)A No.397/Bang/2021, order dated 21.1.2022.*

11. The Id. DR supported the orders of the lower authorities.

12. We have considered the rival submissions and perused the material on record. In our opinion, the impugned issue is covered by the decision of the coordinate Bench of the Tribunal in the case of *Swiss Re Global Business Solutions India Pvt. Ltd. (supra)* wherein it was held as under:-

“35. The only other issue that remains for adjudication is ground No.15 with regard to re-characterizing certain trade

receivables as unsecured loans and computing notional interest on such trade receivables. The main contention of the Id. AR is that deferred receivables would not constitute a separate international transaction and need not be benchmarked while determining the ALP of the international transaction. In our opinion, this issue was considered by the Tribunal in assessee's own case for AY 2014-15 and in para 23 to 23.9 of the order dated 21.5.2020 this Tribunal held as under:-

“23. Ground No. 14-17 alleged by assessee against adjustment of notional interest on outstanding receivables.

From TP study, it is observed that payments to assessee are not contingent upon payment received by AEs from their respective customers. Further Ld.AR submitted that working capital adjustment undertaken by assessee includes the adjustment regarding the receivables and thus receivables arising out of such transaction have already been accounted for. Alternatively, he submitted that working capital subsumes sundry creditors and therefore separate addition is not called for.

23.1. Ld.TPO computed interest on outstanding receivables under weighted average method using LIBOR + 300 basis points applicable for year under consideration that worked out to 3.3758% on receivables that exceeded 30 days. It has been argued by Ld.AR that authorities below disregarded business/commercial arrangement between the assessee and its AE's, by holding outstanding receivables to be an independent international transaction.

23.2. Ld.AR placed reliance on decision of Delhi Tribunal in Kusum Healthcare (P.) Ltd. v. Asstt. CIT [2015] 62 taxmann.com 79, deleted addition by considering the above principle, and subsequently Hon'ble Delhi High Court in Pr. CIT v. Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431/[2017] 398 ITR 66, held that no interest could have been charged as it cannot be considered as international transaction. He also placed reliance upon decision of Delhi Tribunal in case of Bechtel India (P.) Ltd. v. Dy. CIT [2016] 66 taxman.com 6 which subsequently upheld by Hon'ble Delhi High Court vide

order in Pr. CIT v. Bechtel India (P.) Ltd. [IT Appeal No. 379 of 2016, dated 21-7-16] also upheld by Hon'ble Supreme Court vide order, in CC No. 4956/2017.

23.3. It has been submitted by Ld.AR that outstanding receivables are closely linked to main transaction and so the same cannot be considered as separate international transaction. He also submitted that into company agreements provides for extending credit period with mutual consent and it does not provide any interest clause in case of delay. He also argued that the working capital adjustment takes into account the factors related to delayed receivables and no separate adjustment is required in such circumstances.

23.4. On the contrary Ld.CIT.DR submitted that interest on receivables is an international transaction and Ld.TPO rightly determined its ALP. In support of the contentions, he placed reliance on decision of Delhi Tribunal order in Ameriprise India (P.) Ltd. v. Asstt. CIT [2015] 62 taxmann.com 237 wherein it is held that, interest on receivables is an international transaction and the transfer pricing adjustment is warranted. He stated that Finance Act, 2012 inserted Explanation to section 92B, with retrospective effect from 1.4.2002 and sub-clause (c) of clause (i) of this Explanation provides that:

(i) the expression "international transaction" shall include—

. . . . (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;. . . '

23.5. Ld.CIT.DR submitted that expression 'debt arising during the course of business' refers to trading debt arising from sale of goods or services rendered in course of carrying on business. Once any debt arising during course of business is an international transaction, he submitted that any delay in realization of same needs to be considered within transfer pricing adjustment, on account of interest income short charged or uncharged. It was argued that insertion of Explanation with

retrospective effect covers assessment year under consideration and hence under/non-payment of interest by AEs on debt arising during course of business becomes international transactions, calling for computing its ALP. He referred to decision of Delhi Tribunal in Ameriprise (supra), in which this issue has been discussed at length and eventually interest on trade receivables has been held to be an international transaction. Referring to discussion in said order, it was stated that Hon'ble Delhi Bench in this case noted a decision of the Hon'ble Bombay High Court in the case of CIT v. Patni Computer Systems Ltd. [2013] 33 taxmann.com 3/215 Taxman 108 (Bom.), which dealt with question of law:

"(c) 'Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?'"

23.6. Ld.CIT.DR submitted that, while answering above question, Hon'ble Bombay High Court referred to amendment to section 92B by Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside view taken by Tribunal, Hon'ble Bombay High Court restored the issue to file of Tribunal for fresh decision in light of legislative amendment. It was thus argued that non/under-charging of interest on excess period of credit allowed to AEs for realization of invoices, amounts to an international transaction and ALP of such international transaction has to be determined by Ld.TPO. Insofar as charging of rate of interest is concerned, he relied on decision of the Hon'ble Delhi High Court in CIT v. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523/231 Taxman 401 holding that currency in which such amount is to be re-paid, determines rate of interest. He, therefore, concluded by summing-up that interest on outstanding trade receivables is an international transaction and its ALP has been correctly determined.

23.7. We have perused the submissions advanced by both the sides in the light of the records placed before us.

This Bench referred to decision of Special Bench of this Tribunal in case of Special Bench of ITAT in case of Instrumentation Corpn. Ltd. v. Asstt. DIT (IT) [2016] 71 taxmann.com 193/160 ITD 1 (Kol. - Trib.), held that outstanding sum of invoices is akin to loan advanced by assessee to foreign AE., hence it is an international transaction as per Explanation to section 92B of the Act. We also perused decision relied upon by Ld.AR. In our considered opinion, these are factually distinguishable and thus, we reject argument advanced by Ld.AR.

23.8. Alternatively, it has been argued that in TNMM, working capital adjustment subsumes sundry creditors. In such situation computing interest on outstanding receivables and loans and advances to associated enterprise would amount to double taxation. Hon'ble Delhi Tribunal in case of Orange Business Services India Solutions (P.) Ltd. v. Dy. CIT [2018] 91 taxmann.com 286 has observed that:

"There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which would have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the assessee would have to be studied. It went on to hold that, there has to be a proper inquiry by the TPO by analysing the statistics over a period of time to discern a pattern which would indicate that vis-a-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE in some way. Similar matter once again came up for consideration before the Hon'ble Delhi High Court in Avenue Asia Advisors Pvt. Ltd v. DCIT [2017] 398 ITR 120 (Del). Following the earlier decision in Kusum Healthcare (supra), it was observed that there are several factors which need to be considered before holding that every receivable is an international transaction and it requires an assessment on the working capital

of the assessee. Applying the decision in *Kusum Health Care (supra)*, the Hon'ble High Court directed the TPO to study the impact of the receivables appearing in the accounts of the assessee; looking into the various factors as to the reasons why the same are shown as receivables and also as to whether the said transactions can be characterised as international transactions."

23.9. In view of the above, we deem it appropriate to set aside this issue to Ld.AO/TPO for deciding it in conformity with the above referred judgment. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in accordance with law."

36. Accordingly, we are of the opinion that deferred receivables would constitute an independent international transaction and the same is required to be benchmarked independently as held by the Hon'ble Karnataka High Court in *PCIT v. AMD (India) Pl. Ltd.*, ITA No.274/2018 dated 31.8.2018.

37. Once we have held that the transaction between the assessee and AE was in foreign currency with regard to receivables and transaction was international transaction, then transaction would have to be looked upon by applying the commercial principles with regard to international transactions and accordingly proceeded to take into account interest rate in terms of London Inter Bank Offer Rate [LIBOR] and it would be appropriate to take the LIBOR rate + 2%. For this purpose, we place reliance on the judgment of the Bombay High Court in the case of *CIT v. Aurionpro Solutions Ltd.*, 99 CCH 0070 (*Mum HC*). It is ordered accordingly"

13. Following the above order of the Tribunal and the judgment of the Hon'ble High Court of Karnataka in the case of *AMD (India) Pvt. Ltd. (supra)*, we hold that the treatment of interest on deferred receivables is rightly considered as an independent international transaction and benchmarked separately by the revenue authorities. However, we direct that the interest rate to be adopted is LIBOR rate + 2%, taking a consistent

view as held in the aforesaid order of the Tribunal, following the judgment of the Bombay High Court in the case of *CIT v. Aurionpro Solutions Ltd.*, 99 CCH 0070 (Mum). Ordered accordingly.

14. During the course of hearing, the Id. AR brought to our notice that there is an arithmetical error in the computation of interest by the TPO on delayed receivables. The Id. AR submitted that the TPO has correctly mentioned the way in which the interest is to be computed in page 19 para 5.26.(vi), however, while computing the interest, the TPO has taken the days beyond 31.3.2017 for calculating the number of days of delay. In this regard, reference was invited to page 236 of the assessee's PB. The relevant observations at para 5.26 (vi) are as follows:-

“(vi) The period for which interest has been calculated has been limited to the year under consideration as interest accrued in other years cannot be taxed this year. Similarly, interest accrued during the year under consideration, in respect of invoices raised in earlier years which remained unpaid has also been charged.”

15. The Id. AR therefore prayed for a direction to the revenue authorities with regard to the correct calculation of number of days of delay, to which the Id. DR had no objection.

16. We observe that the TPO himself in his order has mentioned that the number of days of delay in realizing the receivables shall be limited to the year under consideration i.e., upto 31.3.2017. It is noticed that from the chart showing the details of the column under the head 'Delay in number of days upto FY16-17' furnished by the assessee which is at page 236 of the assessee's PB, the TPO has taken into consideration the delay upto the actual date of realization, and not upto 31.3.2017. We therefore direct the TPO to consider the period of delay upto 31.3.2017 while recomputing the interest in accordance with the directions given in this order. It is ordered accordingly.

17. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 30<sup>th</sup> day of May, 2022..

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Sd/-  
( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 30<sup>th</sup> May, 2022.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.