

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 2579/Bang/2019
Assessment Year : 2015-16

M/s. Subex Ltd., RMZ Ecoworld, Outer Ring Road, Devarabisanahalli, Bangalore – 560 103. PAN: AABCS9255R	Vs.	The Deputy Commissioner of Income Tax, Circle – 6(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajay Rotti, CA
Revenue by	:	Shri Sumer Singh Meena, CIT-DR

Date of Hearing	:	11-07-2022
Date of Pronouncement	:	11-07-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the final assessment order dated 23/10/2019 passed by Ld.DCIT, Circle – 6(1)(2), Bangalore for A.Y. 2015-16 on following grounds of appeal:

“The grounds stated hereunder are independent of and without prejudice to one another. The Appellant submits as under:

1. Erroneous transfer pricing adjustments arising from interest on trade receivables

1.1. The Deputy Commissioner of Income Tax, Circle - 6(1)(2), Bangalore (Learned Assessing Officer' or 'Ld. AO') / Assistant Commissioner of Income tax, Transfer Pricing Circle - 1(3)(1) ('Learned Transfer Pricing Officer' or 'Ld.

TPO) has erred in considering outstanding receivables from Associated Enterprises ('AEs') to be a separate international transaction and computing interest on the same. The Hon'ble DRP erred in upholding the action of the Ld. AO/ Ld. TPO.

1.2. The Ld. AO/ Ld. TPO erred in not appreciating that creation of trade receivables was a secondary transaction arising out of international transactions with AEs which has already been benchmarked at the time of income recognition. The Hon'ble DRP erred in upholding the action of the Ld. AO/ Ld. TPO.

1.3. The Ld. AO/ Ld. TPO erred in not appreciating that the underlying agreement does not have a clause for interest on outstanding receivable balance and hence no such interest is payable by AEs. The Hon'ble DRP erred in upholding the action of the Ld. AO/ Ld. TPO.

1.4. Without prejudice to above, the Hon'ble DRP erred in directing the Ld. TPO to recompute the interest on trade receivables taking an arbitrary credit period of 30 days.

1.5. Without further prejudice to the above, the Ld. AO/ Ld. TPO and Hon'ble DRP failed to appreciate that interest on trade receivables, to the extent prudently applicable, has been implicitly factored by the Appellant in pricing its transactions with its AEs and could be verified to be arm's length using a working capital adjustment even on the comparable companies purportedly selected by the TPO in the transfer pricing order.

1.6. Without prejudice to above, the Hon'ble DRP erred in not adjudicating the Appellant's contention against the comparable companies purportedly selected by the Ld. TPO as well as not adjudicating the Appellant's contention that the adjustment value on software development income, if any, ought to be restricted to the extent of the international transactions (i.e. proportionate adjustment) with the Associated Enterprises i.e., being 46.43% of the total software development income of the Appellant.

2. *Erroneous non-set-off of brought forward business losses and unabsorbed depreciation*

2.1. The Ld. AO has erred in not setting-off brought forward business losses and unabsorbed depreciation. The Hon'ble DRP has erred in not adjudicating this ground of objection raised by the Appellant before it.

3. *Erroneous non-set-off of MAT credit entitlement*

3.1. The Ld. AO has erred in law in not setting-off MAT credit entitlement pertaining to earlier AYs. The Hon'ble

DRP has erred in not adjudicating this ground of objection raised by the Appellant before it.

4. Erroneous non-grant of Foreign Tax Credit

4.1. The Ld. AO has erred in law in not granting Foreign Tax Credit. The Hon'ble DRP has erred in not adjudicating this ground of objection raised by the Appellant before it.

5. Erroneous levy of interest under section 234A and 234B

5.1. The Ld. AO has erred in levying interest of INR 96,733 under section 234A of the Act, despite the Appellant furnishing return of income on November 29, 2015 (i.e., within the prescribed due date). The Hon'ble DRP has erred in not adjudicating this ground of objection raised by the Appellant before it.

5.2. The Ld. AO has erred in levying interest of INR 53,20,315 under section 234B of the Act. The Hon'ble DRP has erred in not adjudicating this ground of objection raised by the Appellant before it.

6. Initiation of penalty proceedings under section 271(1)(c) of the Act

6.1 On the facts and in the circumstances of the case and in law. the Ld. AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act. The DRP has erred in dismissing the Appellant's objection against initiation of penalty proceedings.

7. Relief

7.1 The Appellant prays that directions be given to grant all such relief arising from the preceding grounds as also all reliefs consequential thereto.

The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.”

2. Brief facts of the case are as under:

2.1 Assessee is in the business of software development and filed its return of income on 29/11/2015 declaring Nil income under the normal provisions of the Act and book loss of Rs. 28,40,01,000/- under MAT provisions. The return was processed u/s. 143(1) of the Act and the case was selected for scrutiny and notice u/s. 143(2) of the Act and 142(1) was issued to

assessee. In response to the statutory notices, representative of assessee appeared before the Ld.AO and filed requisite details as called for. The Ld.AO noted that the assessee for the year under consideration entered into international transaction with its associated enterprise exceeding Rs. 15 crores, and accordingly reference was made to the transfer pricing officer under 92CA of the Act.

2.2 On receipt of reference under 92CA, the Ld.TPO called upon the assessee to file economic details of the international transaction, with the associated enterprise. Upon receipt of the details.

2.3 The Ld.TPO used weighted average method by adopting 6 months LIBOR + 400 basis @ 4.383%. The Ld.TPO computed the proposed adjustments as under:

S.No.	Description	Adjustment u/s. 92CA (In Rs.)
1	Software development segment	40,20,75,592
2	Interest on delayed receivables	23,78,93,911
	Total adjustment u/s 92CA	63,99,69,503

2.4 On receipt of the DRP directions, the Ld.AO passed the impugned assessment order, making addition in respect of interest on trade receivables computed at Rs. 23,78,93,911/-. In respect of the disallowance of the professional charges for non-deduction of TDS, the Ld.AO upheld the addition in the hands of the assessee as proposed in the draft assessment order.

2.5 Aggrieved by the order of Ld.AO, assessee is in appeal before this *Tribunal*.

3. At the outset, the Ld.AR submitted that the only issue alleged by assessee in the present appeal is in respect of notional interest computed on trade receivables that are due to the assessee.

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

We note that the only issue raised by the assessee before this *Tribunal* is in respect of computation of notional interest on trade receivables.

5. Ground no. 1 - 1.6 is in respect of interest on trade receivables.

5.1 The Ld.TPO proposed to compute the interest on delayed trade receivables by using weighted average method.

5.2 Assessee was called upon to furnish invoices, the date of receipt and delay in the number of days in such receipts that was due to assessee. Based on the details furnished, the Ld.TPO computed the interest by using LIBOR – six months + 400 basis points that worked out to 4.3836%. The Ld.TPO proposed an adjustment of Rs.23,78,93,911/- by computing as under:

Average delay period beyond due date	292
Invoice amount (INR)	680,69,45,661
Rate of interest per annum	4.3836%
Interest (INR)	23.78.93.911
Interest charged/collected	0
Difference being adjusted	23,78,93,911

5.3 On raising an objection before the DRP, it was observed that there was no specific terms that was agreed to the assessee and the AE for complying with the payment due to assessee and therefore the Ld.TPO computed interest by taking credit period of

30 days. The same the computation was made by the Ld.TPO was upheld by the DRP.

Before us the Ld.AR submitted that for A.Y. 2014-15, the DRP granted credit period of 90 days for computing the interest. He relied on various decisions passed by *Coordinate Bench of this Tribunal*, wherein, the same issue was remanded for computing the interest on receivables.

5.4 On the contrary, the Ld.DR relied on the orders passed by authorities below.

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

5.6 We note that similar issue has been decided by *Coordinate Bench of this Tribunal* in assessee's own case in *IT(TP)A No. 107/Bang/2019* for A.Y. 2014-15 by order dated 14/07/2022 by observing as under:

"10.6 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 in ITA No. 1548 and 1549 (Kol.) of 2009, dated 15-7-2016, 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 92 B of the Act. Alternatively, it also argued that in TNMM, working capital adjustment subsumes sundry creditors. In such situation computing interest on outstanding receivables as loans and advances to associated enterprise would amount to double taxation. Hon'ble Delhi Tribunal in case of Orange Business Services India Solutions Pvt. Ltd. vs. DCIT in ITA No. 6570/Del/2016 vide its order dated 15.2.2018 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-à-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. vs. 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 characterized as international transactions."

10.7 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."

5.7 Respectfully following the above, we direct the Ld.TPO to compute the interest on receivables based on the principle enunciated hereinabove. The directions of the DRP of granting credit period of 90 days is to be granted for year under consideration. In the event, it is found that the interest so computed stands subsumed in the Working Capital Adjustment, no further disallowance has to be made, as has been observed by Hon'ble Delhi High Court in case of Orange Business Services India Solutions Pvt. Ltd. vs. DCIT in ITA No. 6570/Del/2016 vide its order dated 15.2.2018.

Accordingly these grounds raised by assessee stands allowed for statistical purposes.

6. Ground nos. 2 – 4 are in respect of the claim of assessee in respect of set off of brought forward business losses and unabsorbed depreciation, set off of MAT credit, and non-granting of foreign tax credit. We direct the Ld.AO to consider the above claim in accordance with law. The assessee is directed to furnish relevant information / details in support of the claim.

Accordingly, these grounds filed by assessee stands allowed for statistical purposes.

7. Ground nos. 5-6 is in respect of levy of interest u/s. 234A & B and levy of penalty u/s. 271(1)(c). The Ld.AR submitted that 234A interest is not applicable as the assessee filed its return of income within the period of limitation for year under consideration. We direct the Ld.AO to verify the submission of assessee and to consider the claim in accordance with law. Interest u/s. 234B & 271(1)(c) penalty are consequential in nature and do not require adjudication.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in open court on 11th July, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 11th July, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore