

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

**BEFORE C.M. GARG, JUDICIAL MEMBER
AND
SH. N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.6013/Del/2019
Assessment Year: 2014-15

ACIT Special Range-05 New Delhi	Vs	M/s. Kusum Healthcare Pvt. Ltd. D-158A, Phase-I, Okhla Industrial Area, New Delhi-44 PAN No.AABCK7043B
(APPELLANT)		(RESPONDENT)

Appellant	Mrinal Kumar Das, Sr. DR
Respondent	Sh. Vlshal Kalra, Advocate Ms. Reema Jain, CA

Date of hearing:	11/10/2022
Date of Pronouncement:	14/10/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-44, New Delhi dated 22.04.2019 pertaining to A.Y. 2014-15.

2. The grievance of the assessee read as under :-

1. *In the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the Transfer Pricing adjustment*

amounting to Rs.2,66,13,334/- u/s. 92CA(3) on account of interest chargeable on delayed receivables.

2. Whether in the fat of the circumstances of the case, Ld. CIT(A) was justified in relying upon the judgment of Hon'ble Delhi High Court in assessee's own case for A.Y.2010-11, ignoring the fact that the above decision of Hon'ble High Court was not accepted by Revenue and SLP is pending for adjudication before Hon'ble Supreme Court of India.

Total tax effect Rs.86,34,696/-

3. At the very outset the Counsel for the assessee stated that the impugned quarrel has been settled by the Hon'ble Jurisdictional High Court of Delhi in assessee's own case in A.Y.2010-11 which decision was subsequently followed by this Tribunal in A.Y.2012-13 and 2013-14.

4. Per contra the DR though agreed that in earlier assessment years there are decisions in favour of the assessee by the Hon'ble High Court and by the Tribunal, but strongly stated that the working capital adjustment does not take into account the impact of outstanding receivables on the profitability. It is the say of the DR, therefore, the facts of the appeal under consideration are different from the facts of earlier assessment years.

5. We have carefully considered the orders of the authorities below and have perused the decisions relied upon.

6. Facts on record show that the assessee is engaged in export of Pharmaceuticals Products to its overseas associates Enterprises as well as non group companies, the assessee had under taken the international transaction pertaining to export of pharmaceuticals products and the said international transaction has been accepted by the TPO to be at arms length.

7. However, the TPO re-characterised receivables outstanding from AE as unsecured loans advanced by the assessee to its AE and imputed a notional interest based on LIBOR + 400 basis points and by taking interest rate 4.683 percent an adjustment of Rs.2,66,13,334/- was made by the TPO.

8. The adjustment was agitated before the CIT(A) who deleted the TP adjustment following the decision by the Hon'ble Delhi High Court in assessee's own case in 398 ITR 66 for A.Y.2010-11.

9. The contention of the DR that facts of the year under consideration are different from the facts of earlier assessment years is without any basis as we find that the working capital adjustment is based on the same lines as was done in earlier assessment years, therefore, the decision of the Hon'ble Delhi High Court (supra) and the decision of this Tribunal in A.Y.2012-

13 and 2013-14 squarely apply on the facts of the case. The relevant findings of the Hon'ble High Court in ITA No.765/2016 dated 25.04.2017 read as under :-

10. The Court is unable to agree with the above submissions. 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 characterised as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the Assessee will have to be studied. In other words, 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 reflects an international transaction intended to benefit the AE in some way.

11. The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO concluding that the figure of receivables beyond 180 days constitutes an international transaction by itself. With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterised the transaction. This was clearly impermissible in law as explained by this Court in *CIT v. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi)*.

12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed.

10. The same view was taken by this Tribunal in ITA No.3717/Del/2017 for A.Y. 2013-14 and in ITA No.84/Del/2017 for A.Y. 2012-13.

11. Respectfully following the decision of the Hon'ble High Court (supra) we do not find any reason to interfere with the findings of the CIT(A). The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 14.10.2022.

Sd/-

(C.M. GARG)

JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- 14.10.2022

Copy forwarded to:

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

Sd/-

(N. K. BILLAIYA)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	12.10.2022
Date on which the typed draft is placed before the dictating Member	14.10.2022
Date on which the typed draft is placed before the Other member	14.10.2022
Date on which the approved draft comes to the Sr.PS/PS	14.10.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	14.10.2022
Date on which the fair order comes back to the Sr. PS/ PS	14.10.2022
Date on which the final order is uploaded on the website of ITAT	17.10.2022
Date on which the file goes to the Bench Clerk	17.10.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	