

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

IT(TP)A No. 290/Bang/2022
Assessment Year : 2017-18

<p>M/s. AB INBEV GCC Services India Pvt. Ltd., (earlier known as GCC Services India Pvt. Ltd.), 12th and 13th Floor, Peridot Block, Bagmane World Technology Centre SEZ, Marthalli Road, KR Puram, Bangalore – 560 048. PAN: AAFCG8223M</p> <p style="text-align: center;">APPELLANT</p>	Vs.	<p>The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.</p> <p style="text-align: center;">RESPONDENT</p>
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Assessee by	:	Shri Chavali Narayan, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT-DR

Date of Hearing	:	20-09-2022
Date of Pronouncement	:	14-11-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the final assessment order passed by the NFAC, Delhi dated 21/02/2022 for A.Y. 2017-18 on following grounds of appeal:

<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal</i>
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<p>Based on the facts and circumstances of the case and in law, the Ld. Assessing Officer (“Ld. AO”)/ Ld. Transfer Pricing Officer (“Ld. TPO”)/ Hon’ble Dispute Resolution Panel (‘Hon’ble DRP’) grossly erred in –</p> <p>1. General Ground for TP adjustments</p> <p><i>By not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 (‘Rules’) and modifying/ undertaking fresh analysis while determining the arm’s length price and in doing so making an adjustment of INR 41,71,929 to the international transaction</i></p>	<p><i>Included in Ground No. 2</i></p>
<p>2. Grounds against imputing interest on outstanding receivables due from AEs – Adjustment of INR 41,71,929</p> <p><i>a) Not appreciating that outstanding receivables is not covered in the definition of international transaction as defined u/s 92B of the Act in the facts and circumstances of the case;</i></p> <p><i>b) Not appreciating that the receivables are consequential/ closely linked to the principal transaction of provision of services and hence have been aggregated for determination of ALP under TNMM;</i></p>	
<p><i>c) Not appreciating the fact that the working capital adjustments undertaken take into account the impact of outstanding receivables of the controlled transactions vis-à-vis the uncontrolled transactions in determining the arm’s length margin and no separate benchmarking is required;</i></p> <p><i>d) Not appreciating the facts and circumstances surrounding the receivables and re-characterising the outstanding receivables as unsecured loans advanced to AEs;</i></p> <p><i>e) Not following any statutorily prescribed method and without doing any comparability benchmarking as prescribed under Chapter X of the Act.</i></p> <p><u>Without prejudice to the above</u></p> <p><i>f) Not considering netting off of outstanding receivables and payables from/ to AEs;</i></p> <p><i>g) Considering SBI short-term deposit rates for imputing notional interest instead of LIBOR; and</i></p>	<p><i>31.9609% of adjustment amount of INR 41,71,929 = INR 13,33,386</i></p>

<p>3. Ground on erroneous initiation of penalty under section 270A of the Act</p> <p><i>Ld. AO was not justified and rather grossly erred in law and in facts by initiating penalty proceedings under section 270A of the Act by falsely stating that the Assessee has under-reported the income.</i></p>	NA
<p>4. Increase in book profits u/s 115JB and computation of tax liability u/s 115JB of the Act – Adjustment of INR 13,27,364</p> <p><i>That on the facts and in law, Ld. AO was not justified and has erred in considering the book profit at INR 36,97,81,854 while computing tax liability in computation sheet, instead of book profit as per return of income of INR 36,84,54,490, where there is no adjustment being proposed to book profit in final assessment order and thereby leading to erroneous addition of INR 13,27,364 to the book profit returned by the Appellant.</i></p>	21.3416% of adjustment amount of INR 13,27,364 = INR 283,281
<p>5. Erroneous computation of total income</p> <p><i>The Ld. AO has erred in facts and in law by considering incorrect total income as per Intimation u/s 143(1) of the Act, which consists of arithmetical error, thereby leading to adjustment of INR 1,84,174 while computing assessed income of the Appellant.</i></p>	31.9609% of adjustment amount of INR 1,84,174 = INR 58,864
<p>6. Shortfall in computation of interest u/s 244A of the Act</p> <p><i>That on the facts and in law, Ld. AO was not justified and has erroneously computed interest u/s 244A at INR 3,30,884, thereby resulting in short grant of interest. Necessary directions may please be given to the Ld. AO in this regard.</i></p>	NA
<p><i>The Appellant craves leave to add, alter, amend, vary, omit, or substitute any of the aforesaid grounds of appeal at any time before, or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.</i></p>	

2. Brief facts of the case are as under:

2.1 The assessee was incorporated to provide a range of centralized back office services in the nature of finance, accounting, administration, human resources, etc. in support of

its Group entities' business. The assessee is a wholly owned subsidiary of Interbrew International B.V.. Netherlands which is ultimately held by AB InBev.

2.2 The Assessee filed its return of income for the year under consideration on 29/11/2017 declaring its total income under the normal provisions of the Act at INR 7,26,32,430/- and under section 115JB (MAT) at INR 36,84,54,490/-.

2.3 The case was selected for scrutiny assessment by the Ld.AO and also referred assessee's case to the Ld.TPO for determination of Arm's Length Price of the international transactions entered by the assessee with the AEs.

2.4 The Assessee made time to time submissions in response to the notices issued by the Ld. TPO. During the FY 2016-17, the Assessee had entered into the international transactions of provision of back office support services in the nature of IT enabled services. The Assessee applied TNMM as the most appropriate method and computed its margin that was within the range of the adjusted PLI (OP/OC) (i.e. after undertaking working capital adjustment to adjust for differences in receivables and payables) of the comparables selected by the Assessee in its TP study report. Accordingly, the transaction of provision of IT enabled services was concluded by the Assessee to be at arm's length. Ld.TPO after considering the submissions by the assessee proposed adjustment in relation to interest on delayed collection of receivables by applying the 6 months LIBOR plus 400 basis points after granting credit period of 30 days.

2.5 Subsequently, the draft assessment order dated 06/04/2021 was passed by the National Faceless Assessment Centre (**NFAC**). In the said order the NFAC proposed to make the following variations to the returned income of the Assessee:

Particulars		Amount (in INR)
Returned Business Income		7,28,16,601
Add:	Disallowance of arm's length price	25,19,50,424
Add:	Disallowance u/s 37	3,29,629
Total Assessed income		32,50,96,654

2.6 DRP vide its directions dated 24/01/2022 provided partial relief to the Assessee by directing the Ld.AO/TPO to include 5 companies and exclude 1 company from the final set of comparables, re-compute the interest on delayed receivables by taking credit period of 45 days or as per agreement or as per invoices at SBI short term deposit rates. The DRP rejected the interest rate of LIBOR + 400 basis points used by the Ld.TPO to benchmark the interest on delayed receivables and directed the Ld.TPO to adopt the SBI short term deposit interest rate for the subject year as the ALP interest rate on delayed receivables and re-compute the adjustment to be made to the total income invoice wise after allowing credit period of 45 days or as per agreement or as per invoices.

2.7 On receipt of DRP direction, the Ld.AO passed the final assessment order by making addition in the hands of the assessee as directed by DRP.

Aggrieved by the order of Ld.AO, the assessee filed appeal before this *Tribunal*.

2.8 The Ld.AR submitted that the delayed/ outstanding receivables should not be considered as a separate international transaction. It was further submitted that determination of ALP in respect of delayed receivables from inter-company transactions is not required since ALP of inter-company transactions of provision of services has been already determined and no separate adjustment is necessary in this regard.

2.9 The Ld.AR alternatively submitted that, the assessee had trade payables amounting to Rs. 46,83,18,399 to its AE and invoices during the year amounting to Rs.1,71,05,79,298 to the AE in relation to the receipt of business support services availed for provision of services.

The Ld.AR submitted that the AE provided the assessee with a credit period of 150 days from date of raising of invoice for making payments against the services rendered. (*Refer page 181 of Item 5 of the appeal set*). Further, it was submitted that the weighted average credit period by the Assessee to AEs -49.32 days is less than the credit period extended to Assessee by third parties. Therefore, the credit period provided by the Assessee is less than the credit period received from third parties. Hence, no adjustment is warranted on outstanding receivables from AEs.

2.10 It was argued by Ld.AR that, the authorities below disregarded business/commercial arrangement between the assessee and its AE's, by holding outstanding receivables to be an independent international transaction. The Ld.AR placed reliance on decision of *Hon'ble Delhi Tribunal in Kusum Healthcare Pvt. Ltd. vs. ACIT* reported in (2015) 62 [Taxmann.com](#)

79, deleted addition by considering the above principle, and subsequently *Hon'ble Delhi High Court* in *Pr. CIT vs. Kusum Health Care Pvt. Ltd.* reported in (2017) 398 ITR 66, held that no interest could have been charged as it cannot be considered as international transaction. Reliance was also placed on the decision of *Hon'ble Delhi Tribunal* in case of *Bechtel India vs DCIT* reported in (2016) 66 taxman.com 6 which was subsequently upheld by *Hon'ble Delhi High Court* vide order dated 21/07/16 in *ITA No. 379/2016*, also upheld by *Hon'ble Supreme Court* vide order dated 21/07/17, in *CC No. 4956/2017*.

2.11 It was submitted by the 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 when the company agree to provide for extending credit period with mutual consent and it does not provide any interest clause in case of delay there cannot be any chargeability of interest. He alternatively argued that the working capital adjustment takes into account the factors related to delayed receivables and no separate adjustment is required in such circumstances.

Without prejudice to the above contention, it was submitted that the outstanding receivables need not be treated as a separate international transaction as if same could be benchmarked using a combined transaction approach, by combining the outstanding receivables with the main international transaction of provision of services due to the

fact that receivables are a result of the international transactions of the Assessee.

3. 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 *Hon'ble Delhi Tribunal* order in *Ameriprise India Pvt. Ltd. vs. ACIT* reported in 2015- TII-347-ITAT-DEL-TP 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;....'.*

3.1 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 *Hon'ble 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 vs. Patni Computer Systems Ltd.*, reported in (2013) 215 Taxmann 108, dealt with question of law as under:

“(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?”

3.2 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.

3.3 In so far as charging of rate of interest is concerned, he relied on decision of the *Hon'ble Delhi High Court* in *CIT vs. Cotton Naturals (I) Pvt. Ltd.* reported in (2015) 276 CTR 445 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.

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

4. This Bench referred to decision of *Special Bench of this Tribunal* 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 by the Ld.AR 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.”

4.1 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. We also direct the Ld.TPO that in the event the WCA subsumes the outstanding receivables, no separate characterisation is to be made. However for those receivables that fall out of the WCA pertaining to year under consideration, then, the rate of interest to be charged must LIBOR + 300 basis points in accordance with the principles laid down by *Hon'ble Delhi High Court* in case of *CIT vs. Cotton Naturals (I) Pvt. Ltd.*, reported in (2015) 276 CTR 445 by considering a credit of 90 days.

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

5. **Ground No. 4:** This ground is raised due to increase in book profit u/s 115JB and computation of tax liability u/s 115JB of

the Act. It was submitted that following are the computational errors that needs to be considered.

The Ld.AR submitted that the Ld. AO was not justified and in considering the book profit at INR 36,97,81,854 while computing tax liability in computation sheet, instead of book profit as per return of income of INR 36,84,54,490, where there is no adjustment being proposed to book profit in final assessment order and thereby leading to erroneous addition of INR 13,27,364 to the book profit returned by the Assessee.

5.1 The Ld.AR submitted that as per ROI filed, the deemed total income under the MAT provisions is

INR 36,84,54,490. However, vide the Final Assessment Order, the same has been arrived at INR 36,97.81,854. In this regard, the adjustment of INR 13,27,364 made is already considered in the ROI filed by the Assessee as discussed below.

The Ld.AR relied on following table in support of the computation error by Ld.AO/TPO.

Sn	Description	As per ROI filed & Final Order	As per Computation sheet to Final Order
1.	Profit as per Statement of Profit & Loss account	34,62,30,361	34,62,30,361
2.	Add/ Less: Adjustments		
	-Provision for current tax	2,35,51,493	2,35,51,493
	-Interest on delay in remittance of TDS u/s 201(1A) of the Act	3,29,679	-
	-Deferred Tax	(16,57,043)	-
	Book profits u/s 115JB of the Act	36,84,54,490	36,97,81,854

5.2 In this regard, with respect to adjustment on account of deferred tax, we humbly submit that as per Section 115JB of the Act:

Explanation 1.—For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by—

if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss. and as reduced by. —

(viii) the amount of deferred tax, if any such amount is credited to the statement of profit and loss.

5.3 In light of the above, as per explanation to Section 115JB(2) of the Act, the amount of deferred tax, if any, credited to statement of profit and loss is to be reduced while calculating the amount of book profits as per MAT provisions.

5.4 Accordingly, in the instant case, the deferred tax which has been credited to statement of profit and loss account amounting to INR 16,57,043 was reduced while computing the book profits in the return of income filed by the Assessee. However, the same is not considered in the computation sheet annexed to the Order passed by the Ld. AO.

6. The Ld.AR submitted that with respect to interest u/s 201(1A) of the Act, explanation to Section 115JB states as under:

"Explanation 1.—For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by—

(a) the amount of income-tax paid or payable, and the provision therefor;

or

.....

Explanation 2.—For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-0 or on distributed income under section 115R:

(ii) any interest charged under this Act;

6.1 It was submitted that as per the above provisions, the amount of income tax paid or payable and provision are to be increased while calculating the amount of book profits as per

MAT provisions. It was also submitted that as per explanation 2(ii), any interest charged under the provisions of the Act, shall be considered as income tax for purpose of Clause (a) to Explanation 1 to Section 115JB(2).

7. The Ld.AR further submitted that the interest on delay in remittance of TDS as per Section 201(1A) of the Act amounting to INR 3,29,679 gets covered under Clause (a) to Explanation 1 of Section 115JB(2) of the Act and accordingly the same is to be added back while calculating the book profits as per MAT provisions. However, in the computation sheet annexed to the Final order, the Ld. AO has not considered such adjustment while calculating book profits.

7.1 In light of above, the Assessee requests before the Hon'ble Bench to issue directions to the Ld. AO to deleting such erroneous addition of INR 13,27,364 to book profits of the Assessee.

8. It is also submitted that while passing the Final Assessment Order, the Ld. AO has considered an incorrect total income as per Intimation u/s 143(1) of the Act, which consists of an arithmetical error, thereby leading to adjustment of INR 1,84,174 while computing assessed income of the assessee. Screenshot of the same is mentioned below.

Sl.No.	Particulars	As Provided by Taxpayer in Return of Income	As Computed Under Section 143(1)	Variance
A	From business or profession other than speculative business or specified business			
1	Profit before tax as per profit and loss account (Item 45 of Part A-P&L)	36,81,24,811	36,81,24,811	0
2a	Net profit or loss from speculative business included in 1 (Enter -ve sign in case of loss)	0	0	0
2b	Net profit or loss from specified Business u/s 35AD included in 1 (Enter -ve sign in case of loss)	0	0	0
3	Income/ receipts credited to profit and loss account considered under other heads of income/chargeable u/s 115BBF			
3(a)	House Property	0	0	0
3(b)	Capital Gains	0	0	0
3(c)	Other Sources	5,72,00,818	5,72,00,818	0
3(d)	u/s 115BBF	0	0	0
4	Profit or loss included in 1, which is referred to in S. 44AD/44AE/44B/44BB/44BBA/44BBB/44D/44DA Chapter-XB-G/ First Schedule of Income tax Act	0	0	0
5	Income credited to Profit and Loss account (included in 1) which is exempt			
5(a)	Share of income from firm(s)	0	0	0
5(b)	Share of income from AOP/BOI	0	0	0
5(c)	Any other exempt income, In case of variance, please check the details in the Table 'Any other exempt income' given at the end.	1,04,174	1,04,174	0
5(d)	Total exempt income (5a+5b+5c)	1,04,174	0	-1,04,174

8.1 Further it was submitted that on the facts and in law, the Ld.AO was not justified and has erroneously computed interest u/s. 244A at INR 3,30,884/-, thereby resulting in short grant of interest. Necessary directions may please be given to the Ld.AO in this regard.

On the contrary, the Ld.DR submitted that these issues do not arise out of the orders passed by the authorities below and therefore are to be rejected.

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

9. We note that the above alleged mistakes are to be looked into in accordance with law by the Ld.AO in order to compute the correct taxable income in the hands of the assessee. The

objection of the Ld.DR that these issues do not arise out of the orders passed by authorities below do not have any merit as in a 144C proceedings, the final computation of taxable income is computed by the Ld.AO while passing the final assessment order in the present case, the appeal filed by assessee arises out of an order passed u/s. 144(3) r.w.s. 144C(13) of the Act.

10. Even in any other circumstances, where an appeal is filed against an order passed by the Ld.CIT(A), any mistake that arises in the computation of income could be rectified only in an order passed by this *Tribunal* as the principle merger would be applicable. We therefore reject the argument advanced by Ld.DR. We direct the Ld.AO to compute the taxable income in the hands of the assessee in accordance with law by considering the objections raised by the assessee hereinabove in **Grounds 3-6**.

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

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

Order pronounced in the open court on 14th November, 2022.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 14th November, 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