

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

**BEFORE SH. G.S. PANNU, PRESIDENT  
AND  
SH. SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No.6011/DEL/2017  
Assessment Year: 2013-14**

<b>Veolia India Pvt Ltd. B-1, Marble Arch, 9, Prithvi raj Road, New Delhi PAN No. AABCV7389R (APPELLANT)</b>	<b>Vs</b>	<b>ACIT Circle – 26 (1) New Delhi (RESPONDENT)</b>
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Appellant by	Sh. R. Raghunath, CA
Respondent by	Sh. Mahesh Shah, CIT DR

Date of hearing:	21/10/2022
Date of Pronouncement:	19/01/2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

The present appeal has been filed by the assessee challenging the final assessment order dated 11.07.2017 passed under section 143 (3) r.w.s. 144 C of the Income Tax Act, 1961 (for short the 'Act) pertaining to assessment year 2013-14, in pursuance to directions of Learned Dispute Resolution Panel (DRP).

2. In ground No.1, the assessee has challenged the addition of Rs. 9,21,217/-, being interest imputed by the Transfer Pricing

Officer (for short TPO) on outstanding receivables from the Associated Enterprises (AE).

3. Briefly the facts relating to this issue are, the assessee is a non resident corporate entity engaged in the business of providing consultancy and advisory services (including project construction and execution thereof) in the field of water management industry. In the year under dispute, the assessee entered into various international transactions with its overseas Associated Enterprises (AE's). The assessee suo-motu undertook benchmarking of international transactions and reported the price charged for such transactions to be at arm's length. After verifying the TP study report of the assessee, though the TPO accepted most of the transactions with the AE to be at arm's length, however, on verifying details he found that in certain instances couple of AEs have not remitted the amount receivable by the assessee within the agreed credit period of 30 days. Therefore, he called upon the assessee to explain why the outstanding receivables over the credit period of 30 days should not be treated as loan facility extended to the AEs and interest should not be charged on such receivables. Though, in it's submission the assessee objected to the proposed action of the TPO, however, the TPO was not convinced with the submissions of the assessee. He observed, as per the terms of the agreement with the AEs 30 days credit period would be allowed for making payment. Referring to the definition of international transaction under section 92B of the Act the TPO observed that amount

withheld by the AEs beyond the credit period will be in the nature of loan, hence, will come within the definition of international transaction. In this regard he relied upon number of judicial precedents including the decision of the Jurisdictional High Court in case of Cotton Naturals.

4. Further, he observed, the assessee failed to demonstrate that the selected comparables had similar overdue receivables and no separate adjustment is required for interest on overdue receivables. Further, he observed that the assessee did not bring any material to demonstrate that interest on overdue receivable cannot be a separate adjustment as the entity level results have already been accepted. Thus, ultimately the TPO proceeded to determine the arm's length rate of interest on outstanding receivables by applying six month's LIBOR plus 400 basis points and accordingly suggested an adjustment of Rs.9,21,270/-. The adjustment so proposed was added to the income of the assessee in the draft assessment order. Against the draft assessment order the assessee raised objections before DRP. However, Learned DRP upheld the adjustment.

5. Before us, the Ld. Counsel appearing for the assessee, firstly, submitted that once the TPO had accepted the ALP of the international transactions with AE, he cannot consider the outstanding receivables on standalone basis and treat it as an international transactions u/s. 92 B of the Act. He submitted that as per rule 10A(d) outstanding receivables has to be

considered as a closely linked transaction with the main transactions. Further, he submitted, working capital adjustment has into account the impact of outstanding receivables on the profitability. He submitted that the assessee has carried out working capital adjustment for the comparable companies and the differential impact of working capital of the assessee vis a vis the comparables has already been factored in the pricing / profitability, which is more than the working capital adjusted margin of the comparables. Therefore, no further adjustment is required on account of outstanding receivables. Without prejudice, the learned Counsel submitted that since previous year relating to assessment year under dispute is 2012-13, interest must be calculated for delays relating to the said year i.e. for the period 1<sup>st</sup> April, 2012 till 31<sup>st</sup> March 2013 and not beyond that. Further, he submitted, 60 days credit period given to non AEs and customers should also apply to AE. In support of such contentions learned Counsel relied upon the following decisions :-

1. *Pr. Commissioner of I. Tax v Vs. Kusum Health Care Pvt. Ltd. (Delhi HC) ITA 765/2016 DOJ 25.04.17*
2. *Pr. Commissioner of I. Tax 2 vs Bechtel India Pvt. Ltd. (Delhi HC) ITA 379 /2016 DOJ 21.07.16*
3. *Global Logic India Ltd Vs. DCIT (ITAT Del) – ITA No.8726/Del/2019 DOJ 29.06.20 (AY 2015-16)*
4. *Global Logic India Ltd. Vs. DCIT (ITAT Del) ITA No.7621/Del/2017 DOJ 07.09.20 (AY 2013-14)*

*5. Sony Ericsson Mobile Communication India P. Ltd. – Delhi HC  
ITA No.16/2014; DOJ 16.03.2015*

6. The Ld. Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions in the light of the decisions relied upon and perused the material available on record. Undisputedly, as per the facts and material available on record, in respect of two AE's the assessee has received the outstanding amount against invoices raised beyond the agreed credit period of 30 days. The issue which arises for consideration is, whether the delay in outstanding receivables would result in granting any financial benefit to the AE and can be considered as an international transaction u/s. 92B of the Act. On perusing the said provision, we are of the view that the delay in receiving outstanding receivables is in the nature of credit facility allowed to the AE. Hence, would be covered under the definition of the international transaction. There are number of judicial precedents holding the aforesaid view. On carefully going through the decision of the Hon'ble Jurisdictional High Court in case of Pr. CIT Vs. Kusum Healthcare Pvt. Ltd. (supra), we are of the view that the decision cannot be interpreted in a manner to say that delay in receiving outstanding receivables under no circumstances can be consider to be an international transaction. The Hon'ble High Court has observed that the delay in receivables does not mean de hors the context every item of receivables in

respect of foreign AE's would automatically be characterized as an international transaction. Thus, whether delay in receivable would fall within definition of international transaction is purely fact based and depends upon facts of each case. In the facts of the present appeal, on perusal of material available on record it is evident, in a number of instances the delay in receiving outstanding amounts against the invoices raised varied between minimum of 17 days to maximum 334 days. Thus, in our view, by permitting the AE to hold on to the payments, the assessee has allowed the AE to reap financial benefit at the cost of assessee, as, the assessee is incurring interest cost. Therefore, interest cost has to be imputed on delay in receiving outstanding invoice amounts. Having held so, we must observe, we find merit in the alternative submissions made by the assessee as regards non charging of interest beyond 31.03.2013 and charging interest after allowing normal credit period of 60 days. This is so because, the assessee has demonstrated before us that it has allowed credit period of 60 days to non AE's and other customers.

8. Before us, the assessee has furnished the computation of interest charged for delays relating to the period 01.04.2010 to 31.03.2013 considering normal credit period of 60 days. As per the said computation, the total interest chargeable on six months LIBOR + 400 basis points works out to Rs.2,25,276/-. We direct the Assessing Officer to factually verify the aforesaid computation furnished by the assessee and restrict the addition to Rs.2,25,276/-. The ground is partly allowed.

9. In ground No.3, the assessee challenged addition of Rs.1,36,37,528/- to the contract revenue.

10. Briefly the facts are, by adopting accounting policy as per accounting standard (AS)-7 the assessee recognized contract revenue from construction contract on percentage of completion basis. As per the said method, the estimated contract cost is worked out by considering actual contract cost (both direct and other operating costs) incurred till the balance sheet date alongwith similar costs to complete the contract. The cost to complete is estimated by the assessee having regard to various factors such as activities already completed, activity remaining to be completed, time required to complete, past experience of costs already incurred, customer expectations, scope changes and other relevant factors. While framing the draft assessment order the AO rejected the accounting method of the assessee and proceeded to determine the revenue from contract by reducing the gross profit based on the company's gross margin of 6.97% from the contract revenue. While doing so the Assessing Officer followed the approach adopted while completing assessment for assessment year 2011-12. In other words, the Assessing officer estimated the budgeted contract cost in an indirect manner by adopting gross margin of 6.9% with regard to all activities of the assessee including all contracts. While deciding the objections on the issue Ld. DRP directed the Assessing Officer to adopt the budgeted contract costs by reducing from the contract the gross

profit based on the gross margin of 6.9% alongwith other operating expenses.

10. Before us, it is a common point between the parties that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment year 2011-12. Having considered rival submissions we find, while deciding identical issue in assessee's case in assessment year 2011-12 the Tribunal vide order dated 11.10.2019 in ITA No.6770/Del/2015 has held as under :-

*“17. We have considered the order of the co-ordinate bench in ITA No.4027/DEL/2013 and have also the benefit of the directions u/s. 144A of the Act given by the Additional Commissioner for A.Y.2015-16. We have also considered the assessment order for A.Y.2015-16 which has been framed pursuant to the directions of the Additional CIT u/s. 144 of the Act. We have also the benefit of the assessment order for A.Y.2016-17 in which year also the Assessing Officer has considered the directions of the DRP for A.Y.2011-12 [year under appeal] and the directions of the Additional CIT u/s. 144 of the Act for A.Y.2015-16.*

*18. Considering the order of the co-ordinate bench and the assessment orders of subsequent years, we find that the Assessing Officer has been consistent in accepting the methodology of the assessee adopted consistently following AS-7. Considering the facts of the case in totality*

*in the light of the orders mentioned hereinabove, we do not find any merit in the appeal filed by the Revenue. We also do not find any merit in the methodology adopted by the DRP while dismissing the appeal of the revenue. We direct the Assessing Officer to delete the addition of Rs.21,70,079/- for Project Kanhan and Rs.4,051/- for project Demo Zone. Accordingly, Ground No.3 with all its sub grounds of the assessee's appeal is allowed and Ground No1. of the Revenue is dismissed.”*

11. Respectfully following the decision of the Coordinate Bench on the issue, we direct the Assessing Officer to delete the addition.

12. In the result, ground No.3 is allowed.

13. In ground No.4, the assessee has challenged the disallowance of Rs.15,61,108/- under section 43B of the Act representing leave encashment benefit paid to employees during the previous year relevant to assessment year under dispute.

14. Before us, Ld. Counsel appearing for the assessee submitted that the deduction was not claimed by the assessee in the return of income. He submitted, in course of assessment proceedings the assessee had claimed the deduction, which was not accepted by Assessing Officer as it was not claimed through revised return under section 139 (5) of the Act. He submitted, the reasoning of

the Assessing Officer was also upheld by DRP while deciding the issue. Ld. Counsel submitted, a deduction, which the assessee is legally entitled to, if not claimed in the return of income by inadvertence, the same can be claimed even at the appellate stage. Thus, he submitted, since the departmental authorities have not examined the issue on merits, let it be restored back to the Assessing Officer for deciding the issue on merits.

15. Ld. Departmental Representative agreed for restoration of the issue to the Assessing Officer.

16. Having considered rival submissions and perused the material on record, we find, the departmental authorities have refused to entertain assessee's claim simply on the ground that the assessee had not claimed the deduction by way of a revised return of income. Now, it is fairly well settled that a claim not made by the assessee in the return of income due to inadvertence can be claimed at appellate stage. In view of the aforesaid, we are inclined to restore the issue to the Assessing Officer for examining the claim on merits and decide it in accordance with law. We make it clear, we have not expressed any opinion in so far as the merit of the issue is concerned. Needless to mention, the Assessing Officer must afford a reasonable opportunity of being heard to the assessee while deciding the issue. This ground is allowed for statistical purpose.

17. Ground No.1 and 5, being general grounds, do not require specific adjudication.

18. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 19.01.2023.

Sd/-  
**(G.S. PANNU)**  
**PRESIDENT**

\*NEHA\*

Date:-19.01.2023

Copy forwarded to:

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

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI