

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.785/DEL/2022
[Assessment Year: 2017-18]**

Kronos Solutions India Private Limited, Office No.243, C-09, 2F Regus Elegance, Jasola District Centre, Old Mathura Road, New Delhi-110025	Vs	Deputy Commissioner of Income Tax, Circle-13(1), New Delhi
PAN-AACCD4922B		
Assessee		Revenue

Assessee by	Mr. Nishant Saini, AR
Revenue by	Sh. Rajesh Kumar, CIT(DR)

Date of Hearing	07.12.2022
Date of Pronouncement	23.01.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of ld. Assessing Officer, New Delhi, dated 29.03.2021 passed u/s143(3) for the Assessment Year 2017-18 pursuant to direction of Dispute Resolution Panel(in short 'the DRP') u/s 144(13) of the Act.

2. The grounds of appeal read as under:-

"1. That on the facts and circumstances of the case and in law, the order passed by the Ld. AO under Section 143(3) read with section 144C(13) read with section 144B of the Act is bad in law and liable to be quashed to the extent it confirms the additions/disallowances made in the assessment order.

2. That the Ld. AO/Ld.TPO/ Ld. DRP erred in enhancing the income of the Appellant by INR 78,42,899/- considering debit

*balance of receivables from Associated Enterprise (" AE") as a separate international transaction that do not satisfy the arm's length principle envisaged under the Income-tax Act, 1961 (*the Act") In doing so, the Ld. AO/Ld. TPO/ Ld. DRP have grossly erred in:*

2.1. re-characterizing overdue receivable amount as a deemed loan and treating it as a separate international transaction;

2.2. not appreciating that working capital adjustment appropriately takes into account the arm's length determination of outstanding receivable. Accordingly, the Ld. AO/ Ld. TPO/ Ld. DR erred in not appreciating that outstanding receivables does not require a separate determination of arm's length standard;

2.3. not appreciating that once the primary transactions are held to be at arm's length price, then the inter-company receivables arising therefrom (being consequential and closely linked to the primary transaction) also conform to the arm's length principle. Accordingly, the Ld. AO/ Ld. TPO/ Ld. DRP have grossly erred in not appreciating the fact that arm's length price determination for outstanding receivables is subsumed within the arm's length price determination of the principal international transactions;

2.4. selecting an ad ho credit period of 30 days while computing the adjustment;

2.5. selecting an ad ho interest rate of 6 months LIBOR plus 400 basis points while computing the adjustment; and

2.6. in disregarding the various judicial pronouncements in India while proceedings to enhance the income of the Appellant including the order passed by the Hon'ble Delhi High Court in the case of Kusum Healthcare Private Limited (ITA No.765/HC/Del/2016).

3. That on facts and circumstances of the case and in law, the Ld. AO has erred in considering the assessed income at INR 42,00,78,120 for computing the impugned tax demand as against the assessed income of INR 38,12,62,658 determined in

the assessment order without assigning any reasons. The Ld. AO has grossly erred in:

3.1. considering adjustment of INR 3,88,15,462 (pertaining to the adjustment made while issuing the intimation under section 143(1) of the Act). The Ld. AO erred in mechanically making this adjustment without any independent application of mind and/ or providing any reference in the assessment order.

3.2. facts and circumstances of the case and in law by not affording an adequate opportunity of being heard to the Appellant, thus violating the principles of natural justice.

4. Without prejudice to the above, that on facts and circumstances of the case and in law, the Ld. AO has erred in computing tax demand by incorrectly making the following disallowances aggregating to INR 38,815,462:

4.1. INR 2,97,22,970 disallowed under section 40A(7) of the Act pertaining to provision for gratuity, as the required disallowance (net of payment made during AY 2017-18) was already made in the return of income and this position was also brought to the notice to the Ld. AO;

4.2. INR 90,92,490 disallowed under section 36(1) (va) of the Act, relating to employees' contribution to provident fund which was duly paid before the extended due date prescribed vide notification number WSU/9(1)2013/Settlement of Claims/26308 dated 12 January 2017.

5. That the Ld. AO has erred in charging interest under section 234B and 234C of the Act. Even otherwise, the interest charged is excessive.

6. That the Ld. AO also erred in proposing to initiate penalty proceedings under section 270A of the Act mechanically on the additions made.”

3. At the outset, the Ld. Counsel for the assessee contended that he will be pressing only ground no.2.2 of the above, which is relating to Transfer pricing adjustment with respect to arm's length price

determination of outstanding receivables. Hence, other grounds are dismissed as not pressed.

4. Brief facts of the case are that Kronos Solutions India Private Limited Company, incorporated on 5th December 2006, as a subsidiary of Kronos Inc. It is classified as non-govt company and is registered at Registrar of Companies Delhi. It is engaged in providing software services/solutions, provision of back-office support services, which involves application support services, technical service and hosting support. In the case of the assessee, through the current assessment year, the TPO made transfer pricing adjustment with respect to software development services rendered by the assessee. In addition, an adjustment on account of delay in collection of receivables has also been made. The summary of transfer pricing adjustments made as under:-

S. No.	Nature of International transactions	Method period	PLI	Tested party margin	Arm's length margin as per Ld. TPO	Adjustment in INR
1	Provision of software development services	TNMM	OP/OC	12.71%	14.18% to 19.32%	8,69,89,343
2	Interest on outstanding receivables	NA	NA	NA	NA	81,16,336
Total adjustment in draft assessment order						9,51,05,679

4.1. The TPO characterized overdue receivables from the AEs as a deemed loan stating that it constitutes a separate international

transaction. The TPO considered an interest rate of LIBOR(6 months average for FY 2016-17 = 1.475%) plus 400 basis points and credit period of 30 days to compute. The TPO relied upon the amendment by Explanation (1)(c) to section 92B inserted by Finance Act 2012 w.e.f. 01.04.2002 and proceeded to compute the arm's length determination of outstanding receivables.

5. Upon assessee's objection, the DRP deleted the adjustment on account of software development services. However, the DRP dismissed the objections relating to interest on outstanding receivables.

6. Against this order, the assessee is in appeal before us.

7. We have heard both the parties and perused the records. The Ld. Counsel for the assessee summarized his contention as follows:-

“The Appellant does not agree with the approach adopted by the La. AO/Ld.TPO/Ld. DRP and humbly submits that the Ld. AO/Ld. TPO/ Ld. DRP have erred in re-characterizing receivables due after a credit period of 30 days as unsecured loans advanced by Appellant to its AEs. The Appellant's contentions before the Hon'ble ITAT are as follows:

The Appellant humbly submits that the arm's length price determination for the said consequential receivables is subsumed within the arm's length price determination of the principal international transaction itself and therefore no separate arm's length price determination is required once the principal international transactions are tested.

In this regard, it is submitted that the Ld. DRP has provided working capital adjustment in its directions (refer page 23 of appeal set for Ld. DRP's direction of AY 2017-18 and page 155 & 156 of paperbook for La. DRP's direction of AY 2016-17). The Appellant submits that working capital adjustment takes into account the impact of outstanding receivables on the

profitability. Since working capital adjustment is provided by the Ld. DR itself, no separate adjustment is warranted on account of outstanding receivables.

In this regard, the Hon'ble Tribunal's kind attention is drawn to the order passed by the Ld. TPO to give effect to the directions passed by the Ld. DR wherein it is amply evident that the principal international transaction of provision of software development services taking into account working capital adjustment has been undertaken on arm's length basis. Thus, the adjustment proposed in draft assessment order with respect to software development services has been deleted (please refer page 172 and 173 of paperbook for order passed by the Ld. TO for giving effect to the Ld. DRP's directions). Consequently, it is submitted that the consequential receivables arising out of principal international transaction of provision of software development services too satisfies arm's length standard and thus separate arm's length determination is not required. In this context, the Appellant places reliance on:

- Hon'ble ITAT ruling in the case of Kusum Healthcare Pvt. Ltd (ITA No. 6814/Del/2014) which is also affirmed by the Hon' ble Delhi High Court (Hon'ble HC") (ITA NO. 765/2016). The relevant extract from the Hon'ble HC ruling is reproduced below for the Hon'ble Tribunal's ready reference:

“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 characterized 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-a-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 A Y 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-@-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)."

(Emphasis supplied)

- Further, Hon'ble Delhi ITAT, in case of GE India Business Services Pvt Ltd ITA 283/Del/20221 also placed reliance on the Delhi High Court Judgement in case of Kusum Healthcare (Supra) has held the following:

"10. The Grounds of appeal No. 5 1o 5.4 are in respect of working capital adjustment. The Ld. AR submitted that allowing working capital adjustment which has been already allowed by the Hon'ble DRP demonstrates that differential impact of working capital of the assessee vis-a-vis its comparable has already been factored in the price/profitability of assessee which is in line with Arm's Length principle when compared to comparable companies. Therefore, any further adjustment to the income of the assessee on the pretext of outstanding receivables is unwarranted to substantiate the contention. The Ld. AR has relied on the decision of Hon'ble High Court in the case of Kusum Healthcare Pvt. Ltd. in ITA No. 6814/Del/2014 wherein it is held as follows:-

"11.... With the Appellant having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction

By respectfully following the above ratio, we also of the view that, once the impact of receivable on working capital

is evaluated and the consequent profitability/pricing is compared vis-a-vis the draft comparables, there is no requirement of any further adjustment.

[Emphasis Supplied]

- Further, Hon'ble Delhi ITAT, in case of Orange Business Services India Solutions Pvt Ltd ITA 252/Del/2022] also placed reliance on the Delhi High Court Judgement in case of Kusum Healthcare (Supra) has held the following:

"19. In view of the aforesaid sequence of events, it would be noted that the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare is still the binding precedent on the issue of interest on outstanding receivables. Needless to mention that the law laid down by the Hon'ble High Court in the case of Kusum Healthcare was followed by the ITAT in case of Global Logic India Lid. for the assessment year 2010-11 (ITA No. 1104/Del/2015), A. Y. 2012-13 (ITA No.1115/Del/2017), A. Y. 2013-14 /ITA No. 7621/Del/2017), A. Y. 2015-16 /ITA No. 8726/Del/20191 and A. Y. 2016-17 JITA No. 868/Del/2021). Hence, keeping in view, the established position, we hereby deleted the addition made by the Assessing Officer.

(Emphasis Supplied)

- Further, Hon'ble Delhi ITAT, in case of Optum Global Solutions (India) Pvt. Ltd. [ITA 6665/Del/2017] also placed reliance on the Delhi High Court Judgement in case of Kusum Healthcare (Supra) has held the following:

"8. Perusal of TP study of the taxpayer available at page 404 of the paper book working capital adjustment has been granted to the taxpayer in the year under assessment as well as in the earlier years. Furthermore when undisputedly impact of working capital of tested party vis-a-vis its comparables has been factored in the profitability of the taxpayer while benchmarking international transaction qua IT and ITES segments have been held to be at arm's length, then there is no need to impute the interest on outstanding receivables from associated enterprises (AF).

10. So in view of what has been discussed above, we are of the considered view that addition made by TPO/DRP on account of interest on outstanding receivable from AE is not sustainable, hence, order to be deleted."

[Emphasis Supplied]

In addition, the Appellant would further like to rely upon the recent ruling of Hon'ble Delhi ITAT in the case of Bharti Airtel Services Limited [ITA 161/Del/2017), wherein the Hon'ble Bench has placed reliance on the Delhi High Court Judgement in case of Kusum Healthcare (Supra) and has ruled that since working capital adjustment is already factored in the profitability, separate adjustment on account of receivables is not warranted. The relevant extract from the order has been reproduced below:

"9.....The decision of the honourable Delhi High Court in ITA number 765/2016 dated 24th appeal 2017 in case of Kusum healthcare private limited (supra), para number eight clearly shows that assessee has undertaken working capital adjustment for the comparable companies selected in its transfer pricing report which has not been disputed by the learned transfer pricing officer and therefore the differential impact of working capital of the assessee vis-à-vis is comparable had already been factored in pricing profitability and therefore the honourable High Court held that adjustment proposed by the learned TPO deleted by the ITAT is proper. In the present case there is no working capital adjustment made by the assessee as well as granted by the learned TPO. The facts in the present case are distinguishable. Further same are the facts in case of Bechtel India where working capital adjustment was already granted."

[Emphasis Supplied]

• Furthermore, it is noteworthy that in Bechtel India Pvt. Ltd., the Delhi High Court (ITA 379/2016) while placing reliance upon the order passed by the Hon' ble Delhi High court in the case of Kusum Healthcare (Supra) has affirmed the following findings of Hon'ble ITAT (ITA1478/Del/2015):-

"16. In lieu of the discussions and the ratio laid down in the case of Kusum Healthcare Pw. Lid., we direct that no

separate adjustment for interest on receivables are warranted in the hands of the assessee."

Based on the above, the overdue receivables resulting from the above transaction also get benchmarked and do not warrant any further adjustment.

The Appellant would also like to submit that the payments from its AE were received within the stipulated time period (i.e. within 90 days being the credit period agreed in intercompany agreement) in relation to the invoices raised during the FY 2016-17. Further, the Appellant humbly submits that the weighted average period of realization is 54.94 days whereas the period of delay (considering the agreement) is negative 35.06 days. In other words, the payments were received 35 days before the due date as per agreement. Based on the above contentions, the Appellant humbly submits that the adjustment made by the Ld. TPO/ Ld. DRP on account of overdue receivables ought to be deleted in lieu of the order pronounced by the Hon'ble ITAT and Hon'ble High Court."

8. Per Contra, the ld. DR relied upon the orders of the authorities below and also on the decision of the Tribunal in the case of McKinsey Knowledge Centre India Ltd. in ITA No.6648/Del/2016 for AY 2012-13, vide order dated 11.05.2017.

9. Upon careful consideration, we note that we are under the jurisdiction of Hon'ble Delhi High Court. The ITAT in several recent decisions has found that the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs Kusum Health Care (P.) Ltd. [2018] 99 taxmann.com 431 (Del.) continuous to be a binding precedent. We may gainfully refer to the decision of Delhi ITAT, in the case of Orange Business Services India Solutions Pvt Ltd ITA 252/Del/2022] which also placed reliance on the Delhi High Court Judgement in the case of Kusum Healthcare (Supra) has held the following:

"19. In view of the aforesaid sequence of events, it would be noted that the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare is still the binding precedent on the issue of interest on outstanding receivables. Needless to mention that the law laid down by the Hon'ble High Court in the case of Kusum Healthcare was followed by the ITAT in case of Global Logic India Lid. for the assessment year 2010-11 (ITA No. 1104/Del/2015), A. Y. 2012-13 (ITA No.1115/Del/2017), A. Y. 2013-14 /ITA No. 7621/Del/2017), A. Y. 2015-16 /ITA No. 8726/Del/20191 and A. Y. 2016-17 JITA No. 868/Del/2021). Hence, keeping in view, the established position, we hereby deleted the addition made by the Assessing Officer.

10. We find that the ITAT in the above order has duly considered the issue and has found that Kusum Health Care (P) Ltd. rendered by the Hon'ble Delhi High Court still continues to hold the field as precedent. In fact, Hon'ble Delhi High Court in the said case has observed 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 characterized 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-a-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 A Y 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-a-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)."

11. From the above, it is amply clear that the above decision of the Hon'ble Delhi High Court was rendered keeping in mind the inclusion of Explanation to section 92B of the Act. It is also abundantly clear that the adjustment done in this case does not satisfy the ratio laid down by the Hon'ble Court for making adjustment in this regard. Thus, following the aforesaid precedent, we set-aside the orders of the authorities below and delete the transfer pricing adjustment in respect of arm's length price determination of outstanding receivables.

.12. In the result, this appeal by the assessee stands partly allowed.

Order pronounced in the open court on 23rd January, 2023

Sd/-
[CHANDRA MOHAN GARG]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; Dated: 23.01.2023.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi