

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA-TP.No.568/Hyd/2022		
Assessment Year: 2018-19		
Apache Footwear India Private Limited Apache SEZ, Mambattu Village, TADA, Nellore Andhra Pradesh-524 401. PAN : AAFCA6140B	Vs.	ACIT, Circle-1(1), Tirupati
(Appellant)		(Respondent)
Assessee by:		Shri Kuriachan, CA
Revenue by:		Shri Rajendra Kumar, CIT-DR
Date of hearing:		09.01.2023
Date of pronouncement:		16.01.2023

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 27.07.2022 for the A.Y 2018-19, on the following grounds :

"1. The order of the learned Assessing Officer making an addition of Rs.10,62,036/- towards interest on receivables is without considering the jurisdictional tribunal decision and other judicial precedence pleaded by the petitioner is bad in law.

2. The learned Assessing Officer erred in not considering the fact that the petitioner has not allowed any excess credit period to the Associate Enterprise (A.E.), rather the delay in the cases referred by the learned TPO was only due to technical reason or seeking clarifications by the A.E.

3. *The learned Assessing Officer erred in upholding adhoc credit period of 60 days for export realization when the foreign exchange regulator, Reserve Bank of India allows a period of 1 year for realization of export consideration.*

4. *The learned Assessing Officer failed to appreciate the fact that the assessee is a debt free company and has not incurred interest expenses and entire working capital requirements were made by internal accruals and capital contributions and hence, there is no justification for charging notional interest on delayed realization of receivables.*

5. *The learned Assessing Officer erred in not considering the plea of the appellant that no separate bench marking is required for export dues realized beyond 60 days period as receivables ingrained in the sale.*

6. *The learned Assessing Officer erred in not appreciating the fact that the assessee had not charged any interest for delayed realization on sales receivables from non-AE as well as from AE and hence, charging notional interest from AE is not justified.*

7. *The learned TPO failed to appreciate the fact that when TNMM method has been applied as the most appropriate method, it could take care of all notional interest costs wherever it could be applied and there could be no separate upwards adjustment for export receivables for delayed realization of bills.*

8. *The learned Assessing Officer erred in adopting SBI interest rate on short term deposit rate without separately benchmarking the transaction.*

9. *The learned Assessing Officer grossly erred in not comparing the transaction with similar comparable transactions.*

10. *The learned Assessing Officer failed to appreciate the fact that sales result in profit and that of lending money gives interest income and thus it is evident that interest income is associated only with lending or borrowing of money and not with sale."*

2. The brief facts of the case are that assessee is a company had declared its total income at Rs. Nil and subsequently, the case was selected for limited scrutiny under CASS. A notice u/s. 143(2) was issued to the assessee on 22.09.2019 which was duly served upon the assessee. Notices

u/s 142(1) along with questionnaire were issued on various dates for selection by CASS by AO, National Faceless Assessment Centre. In response thereto, the assessee filed e-submission(s) on 25.02.2021 and 03.09.2021. The information furnished from time to time by the assessee in response to statutory notices had been verified with the return of income and audit report filed by the assessee. Subsequent to issuing of Draft Assessment Order by AO, National Faceless Assessment Centre on 20.09.2021 u/s 143(3) r.w.s 144C(1) and 144B of the Act and conveyed that Penalty proceeding u/s 270A of Act for under reporting of income was being initiated. The assessee objected to the draft assessment order passed under section 144C for adding a notional interest of Rs.10,62,036/- to the total income and filed its objections before the Dispute Resolution Panel-1, Bengaluru. Subsequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru, the TPO, DCIT, Hyderabad issued order giving effect to directions u/s.144C of the Act.

3. During the course of assessment proceedings, it was found from the 3CEB report that the assessee-company had entered into international transactions with its Associated Enterprises. Hence, a reference was made to the TPO (Transfer Pricing Officer) by the Assessing Officer, on 06.02.2021 after obtaining the approval of the Pr. Commissioner of Income-Tax. Accordingly, the TPO passed an order u/s 92CA(3) of the Income-tax Act. 1961 determining no upward adjustment u/s.92CA of the Act. Further, the TPO passed an order dt.06.08.2021 u/s 154 of the Act for AY 2018-19 determining an upward adjustment of Rs.10,62,036/-u/s 92CA(3) of the Act on account of interest on receivable. Accordingly, the income returned was enhanced by the AO, National Faceless Assessment Centre as per the provisions of Sec.92CA(3) of the Act

by a sum of Rs. Rs.10,62,036/- towards arm's length price determined by the TPO u/s 92CA(3) of the Act.

4. Feeling aggrieved by the draft assessment order passed by the Assessing Officer, the assessee approached to the DRP for issuing appropriate directions to quash the interest notionally charged to assessee on account of delay in receivables. The DRP after considering the arguments of the assessee had upheld the draft assessment order. The reasoning of the DRP were mentioned in the directions in Para 2.2.16 to 2.2.22 to the following effect :

“2.2.16 The assessee contended that during the year out of total 3722 invoices raised on AE, only 697 invoices were delayed for realisation which is less than 10% of the total number of invoices raised during the assessment year. The assessee further argued that by no stretch of imagination it had extended the benefit to the AE by way of advancement of interest free loan. In the light of the various judicial decisions discussed above, wherein, it has been categorically held that the amount not realized beyond the agreed credit period would constitute a separate international transaction, and is in the nature of debt arising during the course of business, liable to be visited with TP adjustment on account of interest income short charged or uncharged. The contention of the assessee, that the delay in receivables constitutes less than 10% of the total receivables and hence no benefit extended to AE is not acceptable as the provisions of TP will not go by the number and also as discussed above there is no need to prove the profit shifting in determining the ALP rate of any international transaction.

2.2.17 We note that during the hearing before DRP the AR admitted that there is no information as to credit period in the Intercompany Agreement, entered with the AEs. Even the AR has not produced copy of the agreement in spite of specific query to produce the agreement, if any. The assessee simply relied on the RBI norms of allowing period of one year for realisation of export consideration. In the absence of specific information as to credit period, it is reasonable to allow credit period of 60 days. We also note that the Hon'ble Delhi ITAT in the case of BT e-serve India Private Limited held that where the agreement does not specify any credit period for payment, then adopting a reasonable credit period of 60 days is justified. The TPO proposed by show cause notice as to why interest should not be charged on the realizations received beyond the reasonable credit period of sixty days. The assessee submitted that most of the

receivables were received within sixty days and only in few cases the delay has occurred. This explanation of the assessee is not acceptable for the reason that as per the explanation to the section 928 any deferred payment of receivables or debt arising during the course of business constitutes international transaction. Further, as there is no agreement with the AEs as regards credit period, the TPO has gone by the delay of interest payment by invoice wise. Considering the facts of the case, the approach of the TPO is quite reasonable in computing the delay invoice wise and also adopting the credit period of sixty days. Accordingly, we consider it appropriate to direct the TPO to allow reasonable credit period of 60 days and compute the interest adjustment to be made to the total income.

2.2.18 The assessee has also raised the objection that the learned AO has erred in including a notional interest amount of Rs. 122007/- pertaining to the invoices of AY 2017-18 realised during the AY 2018-19 in the interest computation. On perusal of the annexure B to the TPO order, it is observed that the TPO has taken the number of days delayed during the FY 2017-18 in calculating the interest wherever the overall delay is more than 365 days. In view of the above, the TPO has computed the notional interest pertaining to all the invoices which were not realised within the credit period of 60 days adopted irrespective of the invoices pertaining to any financial year. Hence, the plea of the assessee is rejected.

2.2.19 A plea was raised that as RBI allows twelve months (one year) for realization of export proceeds; a period of twelve months should be allowed as the reasonable credit period. We do not find merit in the same, as the purpose of RBI regulations is entirely different, and the RBI regulations do not contemplate determination of arm's length price. Hence, this plea is rejected. Further, price is negotiated with reference to the agreed credit period, and the effect of extra credit is not factored in the price agreed and hence the entire issue of imputing interest arises when the amount is not realized within the agreed credit period. Therefore, there is no rationale in applying the period allowed by RBI for export realization as agreed credit period. Accordingly, this plea is rejected.

2.2.20 As regards adoption of ALP interest rate, the TPO proposed to charge interest for the delayed period by adopting SBI short term deposit rate. The assessee has not expressly opposed the above proposal of adoption of SBI short term deposit rate. The assessee during the course of hearing before the DRP, also could not substantiate as to why adoption of SBI prime rate is not correct. Further, in the facts of the case, we consider that, it is pertinent to look into the opportunity costs i.e., the income that the assessee would have earned, had the assessee received the amounts in time. This has to be determined taking into account the Indian market conditions, the assessee being taken as the tested party. Factoring these aspects, we are of the view, that the SBI short term fixed deposit interest rate may be the appropriate ALP rate to measure the interest compensation in these types of transactions. In this regard, we place reliance on the principle held by the Honourable Bangalore

ITAT in the case of Logix Microsystems Ltd (ITA No. 423/Bang/2019 dated 07.10.2010) (2010-TI 1-50-ITAT Bang-TP), under similar factual circumstances, wherein it was observed, "While adopting the Indian rate, it is not proper to rely on PLR of the State Bank of India. This is because if the funds were brought in time and those funds were properly deployed, the assessee company may earn an income at the maximum rate applicable to deposits and not at the rate applicable to loans. We find it appropriate to adopt a reasonable rate that would be available to the assessee on short-term deposits". This, Panel has been consistently applying this principle. Accordingly, the TPO is directed to adopt the SBI short term deposit interest rate for the subject year as the ALP interest rate and re-compute the adjustment to be made to the total income.

.....

2.2.22 Accordingly, the TPO is directed to adopt the SBI short term deposit interest rate for the subject year as the ALP interest rate and re-compute the adjustment to be made to the total income by applying credit period of 60 days or as per agreement or invoices."

5. Now the assessee is in appeal before us for the grounds mentioned hereinabove. The sum and substance of the grounds raised before us is ***whether the lower authorities had erred in making the addition of Rs.10,62,036/- towards the interest on receivables or not ?***

6. In support of his case, the ld.AR had submitted that the finding recorded by the lower authorities is without any basis as there was no substantial delay in receiving the outstanding amount by the assessee from it's A.E. He had further submitted that there was delay in respect to 519 invoices out of total 3520 invoices for a total consideration of the said invoices valuing at Rs.62,38,68,941/- as against an amount of Rs.6,48,15,77,864/- for the invoices of 3001 for which the payments were received within the credit period of 60 days. He had also submitted that the issue had been examined by the Hon'ble Delhi High Court and also by the jurisdictional Tribunal and thereafter, both the authorities had deleted the addition made on account of

receivables. It was submitted by the Id.AR that as the assessee company is a debt free company and there is only slight delay in recovering the receivables. Therefore, action on the part of the lower authority is not in accordance with law. He filed the following submission to buttress the claim of the assessee :

“1. The petitioner company is a sector specific Special Export Zone (SEZ) unit engaged in the manufacture and export of footwear and footwear components.

2. During the FY 2017-18 relevant to the AY 2018-19, the assessee returned a net loss as per the return of income filed on 29/11/2018 after claiming setoff of brought forward losses.

3. The learned Transfer Pricing Officer (TPO) while completing the assessment under section 92CA of the Income tax Act, 1961 made an addition of Rs. 10,62,036/- by way of notional interest on outstanding export receivables realized beyond 60 days.

4. The learned Assessing Officer passed a draft assessment order U/s 144C read with section 143(3) of the Income tax Act, 1961 on 20/09/2021 making an addition of Rs.10,62,036/- towards notional interest on outstanding export receivables realized beyond 60 days and initiated penalty U/s read with section 270A of the Act.

5. The petitioner filed objection before the learned Dispute Resolution Panel-1, Bengaluru (DRP) against the draft assessment order making an addition of national interest of Rs.10,62,036/- on outstanding export receivables realized beyond 60 days.

6. The learned DRP passed a direction by order dated 16/06/2022 No.ITBA/DRP/S/91/2022-23/1043464259(1) confirming a credit period of 60 days ted by the learned TPO and charging notional interest for the delay in realisation of export receivables and directed the TP to adopt interest rate charged by the State Bank of India for Short Term Deposit rate and dismissed all other submissions made by the petitioner.

7. The learned Assessing Officer (AO) passed a final order on 27/07/2022 as per the direction of the DRP under section 143(3) read with section 144C(13) of - the Income Tax Act, 1961.

8. The learned AO / DRP failed to appreciate the submission of the petitioner that the petitioner is a debt free company and has not paid any interest and the entire working capital requirements were made by internal accruals and capital contributions and hence there is no justification for charging notional interest on delayed realisation of receivables as decided by this Hon'ble Tribunal in the case of M/s Value Labs Vs. ACIT Circle 8(1), Hyderabad in ITA No.1921/HYD/

2018 (ITAT Hyderabad 'A' Bench) in order dated 04/09/2020 by following the ratio laid down by the Hon'ble Delhi High Court in the case of Pr. CIT -V Vs. Kusum Health Care Pvt Ltd in ITA No.765/2016 dated 25/04/2017.

9. Hon'ble Delhi High Court in the case of Pr. CIT Vs. Kusum Health Care Pvt Ltd [2017(4) TMI 1254, in ITA 765/2016 held that the inclusion in the Explanation to Section 92B of the expression 'receivables' does not mean that dehors the context every item of 'receivables', appearing in the accounts of an entity would automatically be characterized as an international transaction. The Hon'ble High Court held 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 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".

10. Hon'ble ITAT Delhi in the case of Bechtel India Pvt Ltd Vs. DCIT, Circle 4(2), New Delhi [2015(12) TMI 1560-ITAT Delhi] by following the ratio laid down in the case of Kusum Healthcare Pvt Ltd, supra, held that no separate adjustment of interest on receivables are warranted since the assessee is a debt free company and it cannot be presumed that borrowed funds have been utilized to pass on the facility to its AE. The Hon'ble Delhi High Court confirmed the order of the Hon'ble ITAT and dismissed the appeal filed by the Revenue. The Hon'ble Supreme Court dismissed the SLP filed by the department against the Hon'ble Delhi High Court order in Special Leave to Special Appeal (C) ... 2017, CC No.4956/2017 [2017(7) TMI 1058- SC Order.

11. The assessee had submitted before the learned DRP that the outstanding receivables in a sale transaction cannot be considered as a financial arrangement, and receivables in an export sale transaction is a part of the transaction of sales only.

12. The assessee most respectfully submits that export sales receivables cannot be presumed to finance the associated enterprise unless it is proved that the petitioner follows a pattern intend to benefit the AE by delaying realisation of export receivables.

13. The assessee further respectfully submits that the delay in realisation of invoices beyond 60 days credit period fixed by the learned TPO ranges from a period of one day to a maximum of 25 days. A delay in realisation of invoices from one day to 25 days, by no stretch of imagination can be construed that the assessee has intentionally followed a pattern intended to benefit the AE by delaying realisation of export dues and in that process extending monetary benefit to its AE.

14. The assessee most respectfully submits that there is no justification in treating a delay in realization of export receivables ranging from 1 day to 25 days over a period of 60 days as a capital financing arrangement as specified in Explanation (c) to section 92B (2) of the Income Tax Act, 1961, as the intention of the legislature would not have been to re-characterize every transaction of delayed sales receivables as a loan arrangement.

15. The Hon'ble ITAT, Visakhapatnam in the case of M/s Devi Sea Foods Ltd., Vishakhapatnam Vs. DCIT, Circle 3(1), Visakhapatnam [2022(9) TMI 587 held that the delay in the collection of receivables even beyond the agreed time limits may be due to a variety of factors which has to be decided on a case to case basis. The Hon'ble Tribunal further held that when TNMM method is considered as the most appropriate method, the net margin thereunder would take care of such notional interest cost.

16. The Hon'ble ITAT, Chandigarh Bench 'A', in the case of Glaxo Smithkline Asia Pvt Ltd [TS-543-ITAT-2021(Chandi)-TP] by following the latest judgement by the Delhi High Court in the case of Avenue Asia Pvt Ltd 398 ITR 120 (Delhi) held that for characterizing the receivables as international transactions, the same could not have been done automatically and the TPO ideally should have studied the pattern in the accounts of the assessee regarding recovery of the amounts receivables and determined from the same thereafter whether the same reflected a pattern indicating an arrangement enduring to the benefit of the AE.

17. The Hon'ble Jurisdictional ITAT in the case of M/s Value Labs Vs. ACIT Circle 8(1), Hyderabad in ITA No.1909/HYD/2017 (ITAT Hyderabad '13' Bench) in ;Atler dated 09/07/2020 and in ITA No.1921 / HYD/2018 date of order 04/09/2020 (ITAT Hyderabad 'A' Bench) by following the judgement by the Delhi High Court in the case of Bechtel India Pvt Ltd in ITA No. 379/2016 dated 21/07/2016 and in the case of Pr. CIT Vs. Kusum Health Care Pvt Ltd in ITA No.765/2016 order dated 25/04/2017 held that every item of receivables appearing in the accounts of the entity cannot be characterized as an International transaction and further held that there should 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 a supplies made to an AE, the arrangements reflects an international transaction intended to benefit the AE in some way.

18. It is most respectfully submits that the petitioner being a SEZ unit was permitted by the Reserve Bank of India a period of one year towards realisation of export bills, the learned DRP erred in upholding arbitrary fixation of a credit period of sixty days for realisation by the learned TPO. Hon'ble ITAT 'A' Bench of Hon'ble Jurisdictional Tribunal in the case of United States Pharmacopeia India Pvt Ltd Vs. Deputy Commissioner of Income Tax , Circle 17-2, Hyderabad in ITA No.1927/Hyd/2017 held that when RBI itself allows one year for realisation of export proceeds, putting a limit of

two months of credit period is arbitrary and deleted the interest charged for delayed realisation of export receivables.

19. The petitioner most respectfully prays that the above judgements rendered by this Hon'ble jurisdictional Tribunal squarely apply to the assessee's case and hence, addition of interest on outstanding receivables is liable to be deleted.

20. The Hon'ble DRP failed to appreciate the fact that the assessee had not charged any interest for delayed realisation on sales receivables from Non -AE as well as from AE and hence, charging notional interest from AE is not justified.

21. The Hon'ble DRP failed to appreciate the fact that sales result in profit and that of lending money gives interest income and thus it is evident that interest income is associated only with lending or borrowing of money and not with sale.

22. Hon'ble Delhi Tribunal in the case of M/s Corbus India Pvt Ltd Vs. DCIT, Circle 3(1), New Delhi ((3) (2020(3) TM11192-ITAT Delhi) (date of order 05th March, 2020) held that re-characterisation of outstanding receivables as loan is impermissible unless the transactions are found to be substantially at ,Spriance with the stated form. Hon'ble Mumbai Tribunal in M/s Indo American Jewellery Limited (ITA No.5872/Mum/2009) held that early or late realisation of sales proceeds is only incidental to sale transaction and not a separate transaction itself. If the ALP in respect of international transaction of sale is determined, then there can be no question of treating the non-receipt of interest in such transaction as a separate international transaction warranting any further adjustment.

23. The learned TPO failed to appreciate the fact that when TNMM method has been applied as the most appropriate method, it could take care of all notional interest costs wherever it could be applied and there could be no separate upwards adjustment for export receivables for delayed realisation of bills. In support the assessee place reliance on the decision of the Hon'ble Income Tax Appellate Tribunal, Chennai in the case of M/s Gimpex Pvt Ltd Vs. Assistant Commissioner of Income Tax, Central Circle 1(2), Chennai [IT(TP)A. No.57/Chny/2019] date of order 28/12/2020.

24 It is most respectfully submitted that the direction issued by the Hon'ble DRP was made without appreciating the above facts placed before it and the final assessment made by the learned AO as per the direction of the Hon'ble DRP is arbitrary, unjust and against the judicial precedents held as above.

25. The Petitioner prays that in the light of the submission made above and based on the facts furnished and judicial decisions, the confirmation of addition of interest on delayed realization of export receivables made by the Hon'ble DRP and assessment made by the learned AO be deleted and justice be rendered.”

7. In support of his case, ld.AR relied upon the following decisions :

- a) PCIT Vs. Boeing India Pvt. Ltd., reported in 2022 (10) TMI 498.
- b) PCIT Vs. Kusum Health Care Pvt. Ltd. reported in 2017(4) TMI 1254.
- c) M/s. Ominiglobe Information Technologies (India) Pvt. Ltd (Now known as M/s. Sequential Technology International (India) Pvt. Ltd. Vs. ACIT, Special Range – 7 reported in 2022(11) TMI 1104- ITAT Delhi.
- d) Open Text Corporation India Private Limited (Formerly known as Cordys Software India Private Limited) Vs. ITO, Ward – 16(3), Hyderabad – ITA No.152/Hyd/2017.
- e) PCIT Vs. M/s. Bechtel India Pvt. Ltd – ITA 379/ 2016 dt.21.07.2016.
- f) M/s. Adama India Pvt. Ltd. Hyderabad Vs. DCIT, Hyderabad – ITA No.934/Hyd/2019.

8. Per contra, the ld. DR had submitted that the issue has been settled by the Tribunal in the case of Zeta Infrastructure in ITA 1812/Hyd/2017 dt.07.06.2012 wherein the Co-ordinate Bench of the Tribunal has thoroughly examined the issue of receivables and decided the issue in favour of the Revenue by observing as under :

“FINDINGS OF BENCH

34. We have heard the rival contentions and perused the material available on record including the documents and submissions made before us. Before we deal with the issue, we would like to record the three judgments passed by High Courts on this.

35. In the case of *Kusum Health Care (P.) Ltd.* [2018] 99 taxmann.com 431 (Delhi)*, Delhi High court had held 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 dehors the context every item of "receivables" appearing in the accounts of an entity, which may have dealings with foreign associated enterprises 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 Transfer Pricing Officer 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 associated enterprise, the arrangement reflects an international transaction intended to benefit the associated enterprise in some way.

11. The court finds that the entire focus of the Assessing Officer was on just one assessment year and the figure of receivables in relation to that assessment year can hardly reflect a pattern that would justify a Transfer Pricing Officer 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] 209 Taxman 200/345 ITR 241/345 ITR 241(Delhi)*.

36. In another decision *Mckinsey Knowledge Centre India (P.) Ltd. [2018] 96 taxmann.com 237 (Delhi)*, HIGH COURT OF DELHI held as under :-

“ 33. It was similarly held in *BT e-Serv (India) (P.) Ltd. v. ITO [2017] 87 taxmann.com 251 (Delhi - Trib.)* as follows:

"22...The argument that assessee is an interest free entity and does not pay any interest and therefore no interest shall be imputed in the outstanding invoices is also devoid of merit because it is not a case of

allowance of interest expenditure in the hands of the assessee but an 'international transaction' to be benchmarked at arm's length. It is a case of determination of arm's length price of a transaction. Undoubtedly the receivable or any other debt arising during the course of the business is included in the definition of 'capital financing' as an 'international transaction' as per explanation 2 to section 92B of the Act w.e.f. 01.04.2002 inserted by the Finance Act, 2012. Therefore, even the outstanding receivable partake the character of capital financing and consequently, overdue outstanding is an 'international transaction'. The natural corollary would be of imputing interest on such 'capital financing', if same is not charged at arm's length. Therefore, we reject the contention of the assessee that outstanding receivable is not an 'international transaction' and therefore, hence, according to us, interest on it requires to be imputed."

Thus, this is a redundant contention, because as has been highlighted by the ITAT, by a plain reading of the (retrospectively applicable) amendment that introduced the Explanation to section 92B of the Act by Finance Act, 2012, it is determinable that if there is any delay in the realization of a trading debt arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with transfer pricing adjustment on account of interest income short charged/uncharged. Hence, the assessee's contention that the ITAT erred in concluding that charging of interest on delayed receipt of receivables is a separate international transaction which requires to be benchmarked independently, is incorrect."

37. In the case of The Pr Commissioner Of Income-Tax vs M/S. Amd India Pvt. Ltd. in I.T.A.No.274/2018 DATED THIS THE 31ST DAY OF AUGUST 2018 Karnatka High Court had held as under :-

11. Hence, we first decide this aspect as to whether this is an independent international transaction or not. In our considered opinion, in respect of agreed credit period which is 30 days in the present case, there is no independent international transaction because the effect of the credit to that extent is factored in the agreed prices. But for extra credit, the effect of the credit to that extent cannot be factored in the agreed prices because it is not even known at the stage as to how extra credit will be allowed and therefore, that is an independent international transaction and hence, separate bench making has to be done and TP adjustment is to be made as per law. This is worth noting that by allowing, extra credit in excess of agreed period of 30 days, profit shifting is there because if credit period is more, prices go up which is not done in the present case since, the prices are determined on the basis of 30 days credit period.

38. From the reading of these judgement and the explanation to section 92B, it is abundantly clear that the outstanding receivable by the assessee from its AE, is required to be benchmarked, so as to ensure that they should not be any shifting of profit from assessee to its AE.

39. In the present case, the total turnover of the assessee in respect of Software Development Services was Rs.9,86,90,620/- whereas the trade receivable during the present period was Rs.5,84,94,810/-. Thus, more than 60% of the total turnover is receivable from the AE by the assessee. If we apply the principles as submitted by the assessee that only the LIBOR+200 points are required to be charged, then the very purpose of benchmarking of the trade receivables would be lost and in fact, it will amount to shifting the profit of the assessee to its AE situated abroad. In fact the transactions of the assessee is required to be examined from the perspective of a prudent business man and required to be analyzed whether the assessee would give similar benefits to unrelated parties or not. In the present case, the trade receivables were 5.84 crores and if the assessee is required to bear the cost of Rs.5,84,94,810 without any carrying cost, then the assessee would be rendering the services at ALP at a lower rate than the comparable cases . undoubtedly the assessee would be incurring the infrastructure cost, manpower cost, raw material, bank financial charges for the purpose of manufacturing or delivering of the services/goods to its AE , failing to receive Rs.5.86 crores from AE in time had economic consequences , hence assessee is required to be compensated for delay in receiving its outstanding . It needs no business sense, if a person rendering services or supply the goods after making the upfront payment, then the services/goods would be available at a lower rate and in case of converse situation of delayed payment goods/services would be available at higher value , as the cost of delay/ upfront payment would be factored in the price . In the present case, TPO as well as the assessee have determined the ALP of the international transactions after considering the price charged by the assessee from its AE, albeit without factoring in interest to be chargeable on the delay in receiving the outstanding amount from the associated enterprises. Therefore, we do not find any error in bench marking the interest to be charged on delayed outstanding by the lower authority. In the present case, the learned CIT (A) in the facts of present case, noticed that 60% of the total turnover were receivables from the AE alone , CIT(A) had held that the interest rate at 8% was reasonable . In the present case, the assessee has not filed its transfer pricing study at the outset. However, the assessee has only filed TP study to benchmark the transaction in respect of two segments i.e. ITeS and SDW only after receipt of show cause notice and no separate study was filed with respect to interest chargeable from the AEs. Assessee has not submitted any details of raising of invoices and subsequent receipts of the receivables from the AE despite the receipt of the show cause notice before the TPO . The TPO, in the light of non cooperation of the assessee and also no objection of the taxpayer had computed the interest by applying interest @ 12%. However, the said rate of 12% was reduced as mentioned herein above to 8% by the learned CIT (A). In our considered opinion, the application of 8% interest, though in strict sense, would be contrary to the principles of TP analysis as the transfer pricing officer was required to bring the comparable either internal comparable or the external comparable by applying CUP method and then fix the rate of interest on the delayed

receivables from the AE. However, with a view to give a quietus to the issue, we are of the opinion that instead of 8% interest rate, rate of interest of 6% be applied on outstanding receivable at the year end.

40. In our considered opinion, the submission of the assessee that LIBOR+200 points require to be applied, cannot be upheld in these facts of the case, as it will amount to shifting of profit from assessee to its AE, which cannot be countenanced under Chapter X of the I.T. Act. Moreover, the rate of interest on loan transaction (LIBOR + points) cannot be equated with delayed receipt of the outstanding amount by assessee from its AE, as both stands on different premises having different purpose and nature. In fact if outstanding receivable are due for a longer period, then assessee would be required to deploy more resources either in the form of debt/equity to meet out the cash flow/working capital requirements.

41. The judgments relied upon by the assessee in support of its claim are not applicable to the facts of the present case.

The first judgment relied upon by the assessee at page 157 of the Paper Book is Pegasystems Worldwide India P Ltd (ITA No.1758/Hyd/2014) reported in (2015) 64 Taxmann.com 470 (Hyd-Trib). In paragraph 17.3, the Tribunal had not granted the notional interest on the outstanding receivables. As a matter of fact, the said judgment pertains to the A.Y 2010-11 and by the Finance Act 2012 (Expenditure. i(c) was inserted with retrospective effect from 1.4.2002 whereby the international transaction shall include receivables or any other debt arising during the course of business. In our view, the Tribunal was not having the benefit of the said change in law while deciding the issue. Therefore, the said decision of the Tribunal is not applicable to the facts of the present case.

The second judgment relied upon by the assessee is in the case of Bisazz India (P) Ltd vs. Dy.CIT by the ITAT Ahmedabad Bench on 8/8/2018, wherein the Tribunal in Para 9.1 has held that "such interest is includible in operating income and the operating income itself has been accepted as reasonable under the TNMM, there cannot be an occasion to make adjustment for notional interest on delayed realization of debtors". Admittedly, in the present case, it is not the case of the assessee before us that the delayed payment gets interest included in the operating income of the assessee or the price charged by the assessee had already factored in the interest, if any, on account of delayed payment. In the light of the above, the said judgment is also not applicable.

The 3rd judgment relied upon by the assessee is in the case of ERM India (P) Ltd vs. National E-assessment Centre, New Delhi reported in (2021) 132 taxmann.com 220 (Del.Trib) wherein in para 11, it is mentioned that once the working capital adjustment is given, then it subsumes the interest on receivables and no separate benchmark for it has to be made and for that purpose, the Tribunal had relied upon the judgment of the Hon'ble Delhi High Court in the case of Kusum Healthcare (P) Ltd. In the present case, it is not the case of the

assessee or the Assessing Officer that the working capital adjustment was given to the assessee or sought by the assessee. Therefore, the said judgment is not applicable.

The 4th judgment relied upon by the assessee is in the case of Ingersoll Rand (India) Ltd vs. Dy.CIT reported in (2016) 67 taxmann.com 328 (Bang.Trib). This judgement pertains to the A.Y 2010-11. This judgment is also not applicable for the simple reason, that there is a change in law which was brought into by the Finance Act, 2012 and therefore, the Tribunal did not have the benefit of examining the interest on the receivables.

The 5th judgment relied upon by the assessee is in the case of GSS Infotech Ltd vs. ACIT reported in (2016) 70 taxmann.com 356 (Hyd.Trib). This judgement pertains to the A.Y 2010-11. This judgment is also not applicable for the simple reason, that there is a change in law which was brought into by the Finance Act, 2012 and therefore, the Tribunal did not have the benefit of examining the interest on the receivables.

The 6th judgment relied upon by the assessee is in the case of CIT vs. Vaibhav Gems Ltd reported in (2017) 88 taxmann.com 12 (Raj.). In this case, the Hon'ble Rajasthan High Court after relying upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Cotton Naturals (I) Pvt. Ltd (2015)231 Taxmann.com 401 had allowed the applicability or LIBOR+200 points interest free loan provided by the appellant to its AEs. In the present case, admittedly, the case is not pertaining to the loan transactions given by the assessee to its AEs. However, in the present case, there is a delay of receiving consideration from the AEs and the total amount due to the assessee from the AEs is more than 60% of its total turnover. Therefore, the LIBOR+200 points rate cannot be applied to a transaction where the cases of delay in receivables from the AEs. Hence, the above judgment is also not applicable.

The 7th judgment relied upon by the assessee is in the case of Open Text Corporation India (P) Ltd vs. Income Tax Officer reported in (2021) 127 taxmann.com 399 (Hyd.Trib), In this judgment at Para 2.2 had held that the short term deposit cannot take part with an international transaction. In our view, the issue before us is not with respect to short term deposit but is of receivables from the AEs to the assessee.

Undoubtedly, the receivables from the AE have been held to be an international transaction in view of the decision of the Hon'ble Karnataka High Court in the case of CIT vs. AMD India (P) Ltd in ITA No.274/2018 decided on 31.8.2018 and also in the case of McKinsey Knowledge Centre India (P) Ltd vs. CIT in ITA No.461/2017 wherein the Hon'ble Delhi High Court has held that the delay in realization of payment due would constitute an international transaction and the transfer pricing adjustment on account of delayed receipt of payment is required to be made. Therefore, this judgement is also not applicable to the present case in hand.

Last judgment relied upon by the assessee is in the case of Axis Clinicals Ltd vs. ACIT in ITA No.436/Hyd/2021 dated 21.12.2021 wherein the Coordinate Bench of the Hyderabad Tribunal in Para 5 has held that the adjustment made as per the State Bank of India short term deposit are not applicable to international transaction.

In our view, the said judgment is also not applicable to the facts of the present case. The Hon'ble High Court in the case of AMD India Pvt. Ltd , McKinsey Knowledge Centre India)Pvt. Ltd had already held that the delay in receiving the payments from the AE by the assessee would constitute an international transaction and the same is required to be benchmark.

42. In the light of the above, the ground nos. 7 & 8 are partly allowed

43. To sum up, appeal of the assessee is partly allowed.”

8.1. The ld. DR further relied on the decision passed in the case of Satyam Ventures (ITA 362/Hyd/2021 dt.28.06.2012) wherein the Co-ordinate Bench of the Tribunal had decided the issue of receivables in favour of the Revenue by holding as under :

“8. We have heard the rival submissions and perused the material on record. Recently, the Tribunal in the case of Zeta Interactive Systems (India) Pvt. Ltd. had decided the issue of receivables and at para 39 and 40, it held as under :

“39. In the present case, the total turnover of the assessee in respect of Software Development Services was Rs.9,86,90,620/- whereas the trade receivable during the present period was Rs.5,84,94,810/-. Thus, more than 60% of the total turnover is receivable from the AE by the assessee. If we apply the principles as submitted by the assessee that only the LIBOR+200 points are required to be charged, then the very purpose of benchmarking of the trade receivables would be lost and in fact, it will amount to shifting the profit of the assessee to its AE situated abroad. In fact, the transactions of the assessee is required to be examined from the perspective of a prudent business man and required to be analyzed whether the assessee would give similar benefits to unrelated parties or not. In the present case, the trade receivables were 5.84 crores and if the assessee is required to bear the cost of Rs.5,84,94,810 without any carrying cost, then the assessee would be rendering the services at ALP at a lower rate than the comparable cases. undoubtedly the assessee would be incurring the infrastructure cost, manpower cost, raw material, bank financial charges for the purpose of manufacturing or delivering of the services/goods to its AE, failing to receive Rs.5.86 crores from AE in time had economic consequences, hence assessee is required to be compensated for delay in receiving its outstanding. It needs no business sense, if a person rendering

services or supply the goods after making the upfront payment, then the services/goods would be available at a lower rate and in case of converse situation of delayed payment goods/services would be available at higher value, as the cost of delay/ upfront payment would be factored in the price. In the present case, TPO as well as the assessee have determined the ALP of the international transactions after considering the price charged by the assessee from its AE, albeit without factoring in interest to be chargeable on the delay in receiving the outstanding amount from the associated enterprises. Therefore, we do not find any error in bench marking the interest to be charged on delayed outstanding by the lower authority. In the present case, the learned CIT (A) in the facts of present case, noticed that 60% of the total turnover were receivables from the AE alone, CIT(A) had held that the interest rate at 8% was reasonable . In the present case, the assessee has not filed its transfer pricing study at the outset. However, the assessee has only filed TP study to benchmark the transaction in respect of two segments i.e. ITeS and SDW only after receipt of show cause notice and no separate study was filed with respect to interest chargeable from the AEs. Assessee has not submitted any details of raising of invoices and subsequent receipts of the receivables from the AE despite the receipt of the show cause notice before the TPO. The TPO, in the light of non cooperation of the assessee and also no objection of the taxpayer had computed the interest by applying interest @ 12%. However, the said rate of 12% was reduced as mentioned herein above to 8% by the learned CIT (A). In our considered opinion, the application of 8% interest, though in strict sense, would be contrary to the principles of TP analysis as the transfer pricing officer was required to bring the comparable either internal comparable or the external comparable by applying CUP method and then fix the rate of interest on the delayed receivables from the AE. However, with a view to give a quietus to the issue, we are of the opinion that instead of 8% interest rate, rate of interest of 6% be applied on outstanding receivable at the year end.

40. In our considered opinion, the submission of the assessee that LIBOR+200 points require to be applied, cannot be upheld in these facts of the case, as it will amount to shifting of profit from assessee to its AE, which cannot be countenanced under Chapter X of the I.T. Act. Moreover, the rate of interest on loan transaction (LIBOR + points) cannot be equated with delayed receipt of the outstanding amount by assessee from its AE, as both stands on different premises having different purpose and nature. In fact, if outstanding receivable are due for a longer period, then assessee would be required to deploy more resources either in the form of debt/equity to meet out the cash flow/working capital requirements.”

9. In our view, in the present case, the outstanding receivables by the assessee are required to be benchmarked. It is an admitted fact that the outstanding receivable by the assessee are more than 30 days as held by the DRP in para 3.1.9. In the light of the above, respectfully, following the decision of co-ordinate Bench of the Tribunal in the case of Zeta Interactive Systems (India) Pvt. Ltd. (supra), we modify the order passed by the DRP and direct the TPO to

compute by applying 6% interest rate on outstanding receivable at the year end as against 14.75% on the analogy of Zeta Interactive Systems (supra) and recompute the adjustment to be made to the total income of the assessee.”

He accordingly submitted that the grounds raised by the assessee should be dismissed.

9. We have heard the rival submissions and perused the material on record. From the perusal of the order passed by the TPO, it is clear that both the lower authorities have given an elaborate reasoning for coming to the conclusion that the delay in receiving the receivables is an international transaction and is required to be bench marked in accordance with law. We are reproducing hereinbelow the chart filed by the assessee which is to the following effect :

APACHE FOOTWEAR INDIA PVT. LTD / AY 2018-19				
Export Receivables Realisation pattern during A.Y. 2018-19				
	Particulars	Total Number of Invoices during the A.Y. 2018-19	Amount Export Invoice value in Rs.	% of invoices realized to total invoices raised during the year
A)	Realised within credit period	3,001	6,48,15,77,864	91.22
B)	Realised beyond credit period of 60 days			
	<10 days	241	36,27,20,363	5.10
	10-20 days	204	18,88,04,889	2.66
	20-30 days	45	7,11,80,351	1.00
	30-45 days	--	--	--
	45-60 days	--	--	--
	>=60 days	29	11,63,338	0.02
	Sub total (B)	519	62,38,68,941	
	Total (A) + (B)	3520	7,10,54,46,805	

10. From the perusal of the Chart, it is absolutely clear that there were 519 invoices valued at Rs.62,38,68,941/- for which the payments were due beyond the credit period 60 days. In our view, the lower authorities have computed the Arm's Length Price and have mentioned that the same being international transaction, the same is required to be bench marked by considering the SBI short term deposit interest rate.

11. The above-said issue of delay in receivables is no more res integra. The co-ordinate Bench in the cases relied upon by the Revenue examined the issue and thereafter directed the TPO / Assessing Officer to apply rate of interest of 6% on outstanding receivable at the year end. The assessee had relied upon various judgements. All these judgments have been considered by the co-ordinate Bench and thereafter, the above said direction was issued by the Bench.

12. The reliance of the assessee on the decision of Hon'ble Delhi High Court in the case of PCIT Vs. Boeing India Pvt. Ltd., reported in 2022 (10) TMI 498 is of no use to the assessee as in the said judgement, the Hon'ble Delhi High Court in Para 15 had mentioned that the issue receivable is essentially a question of fact. As mentioned hereinabove, in the present case, there is a delay in receiving the outstanding of Rs.62,38,68,941/- in respect of 519 invoices as mentioned hereinabove and there is no explanation given by the assessee for such a delay in receiving the amount. The very purpose of benchmarking the transaction is to ascertain whether assessee, who is similarly situated, would render the same kind of services at the same or similar price to a third party or not. If we examine the issue in the above-said

context, it would be clear that the assessee would charge bank interest or any other interest with a view to compensate itself on account of delay in making the payment. Hence, we do not find any error in the same.

13. The reliance of the assessee in the case of Betchal India Pvt Ltd (supra) is also not correct as A.Y. in that case was 2010-11. By the Finance Act, 2012, the Explanation was inserted in Sec.92B of the Act and by virtue of which “payment or deferred payment or receivable or any other debt arising during the course of business” has been considered to be an international transaction which is required to be benchmarked. Following the above said Explanation, the co-ordinate Bench for the subsequent assessment years vide order dt.16.05.2017 in the case of Betchal India Pvt. Ltd ITA No.6530/Del/2016 (supra) had decided the issue against the assessee. In view of the above, the decision relied upon by the assessee is of no help to assessee.

14. So far as the argument of the assessee that the assessee is a debt free company and therefore, no borrowed fund was used for making supplies to it's A.E. and therefore, is not liable to be compensated for the delay in receiving the receivable is concerned, the same in our view, suffers from inherent flaw as in the T.P. analysis, the TPO is required to examine whether the assessee had supplied the product / services to it's A.E. at Arm's Length Price or not ? If by providing the services / goods at a discounted rate or permitting the assessee to receive the payment after a long period of 60 days or 90 days, then it will amount to permitting the A.E. to use the working capital of the assessee for the purposes of earning the profit. No prudent business man would venture into

this kind of activity and permit a third party to use the working capital of the assessee and earn profit thereon. In the present case, though the assessee was required to maintain the T.P. Study and file the same before the TPO to show that the assessee's transactions with its A.E. were at Arms Length however, nothing has been brought to our notice that the assessee has brought any comparable instance. In these circumstances, the TPO had applied the banking rate as applicable to short term loans. In our view, the same is required to be corrected and instead thereof, ALP is to be computed by adding notional interest @ 6% on the receivable. Considering the totality of facts and circumstances, in view of the decisions cited supra and in view of foregoing discussion, we dismiss the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 16th January, 2023

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 16th January, 2023

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Apache Footwear India Private Limited, Apache SEZ, Mambattu Village, TADA, Nellore, Andhra Pradesh-524 401
2	ACIT, Circle-1(1) Tirupati
3	CIT(A), National Faceless Appeal Centre (NFAC), Delhi.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order