

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

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

ITA.No.181/Hyd/2019		
Assessment Year: 2010-11		
Seaways Shipping & Logistics Limited Seaway Pride, Plot No.731 Road No.36, Jubilee Hills Hyderabad-500 034 PAN : AADCS0845B	Vs.	DCIT, Circle-3(1) Signature Towers Kondapur Hyderabad-500 084
(Appellant)		(Respondent)
Assessee by:		Shri Mithilesh Sai, CA
Revenue by:		Shri T.Vijay Bhaskar Reddy
Date of hearing:		15.05.2023
Date of pronouncement:		31.05.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal against the assessment order passed by the Deputy Commissioner of Income Tax, Circle – 3(1), Hyderabad u/s 143(3) r.w.s. 147 r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as “the Act”) dated 30.11.2018, in pursuance to the directions of the Dispute Resolution Panel – “DRP”, Bangalore-1’s for the A.Y. 2010-11 on the following grounds :

1) The order of the Assessing Officer is erroneous both on facts and in law.

2) The Assessing Officer erred in initiating proceedings u/ s 147 of the I.T.Act and the Hon'ble DRP is not justified in holding that the reassessment proceedings are valid in law as the notice was issued after a period of 4 years without any fresh material on record.

3) It is not correct for the Assessing Officer to apply the provisions of Sec.92 of the I.T.Act when the net result of the business activity for the year under consideration is a loss and the appellant did not derive any income from the transaction.

4) The Assessing Officer erred in arriving at the adjustment on account of arms length price at Rs.6,68,92,985/-

5(i) The learned DRP erred in confirming the action of the Assessing Officer and the TPO in holding that the provisions of Sec.92CA(3) are applicable to the facts of the case.

5(ii) The learned DRP erred in holding that the margin of profit with non AE was 18.22% and that the profit from AE segment was only 8.5%

5(iii) The learned DRP erred in holding that the difference worked out to Rs.6,27,51,897 I - and further erred in directing the Assessing Officer to make the adjustment of the income.

6) The learned DRP is not justified in holding that the deferred receivables would constitute international transaction.

7) The learned DRP erred in holding that adjustment can be made for non charging of interest in spite of the fact that the arms length price was determined based on ALP

8) The learned DRP erred in accepting the reasoning given by the TPO and rejecting the plea of the appellant that there is no need to impute any interest on the receivables.

9) The learned DRP erred in not considering the plea that the appellant is not paying any interest on the outstandings to the AEs and that, therefore, no interest can accrue to the appellant.

10) The learned DRP erred in directing the TPO and the Assessing Officer to work out the rate of interest applicable to the short term deposits. The learned DRP ought to have held that no interest is chargeable.

11) The learned DRP erred in holding that the credit period of 30 days is reasonable and that the interest is chargeable if the credit is allowed for more than 30 days.

12) Any other ground or grounds that may be urged at the time of hearing.

2. **Brief facts of the case :**

The brief facts of the case are that assessee company engaged in the business of Shipping & Intermediary services, filed its return of income on 14.10.2010 declaring loss of Rs. 46,80,71,728/-. Later, the revised return was filed declaring a loss of Rs. 55,45,32,778/-. The case was taken up for scrutiny under CASS and assessment was completed u/s. 143(3) determining the loss at Rs.54,03,36,593/-. Subsequently, a notice u/s. 148 was issued on 10.12.2015. In response to the

notice, assessee submitted that the return filed on 14.10.2010 may be considered as the return filed in response to the notice issued u/s. 148. Copy of reasons for reopening the assessment was provided to the assessee. Notices u/s. 143(2) and 142(1) dated 07.12.2017 were issued and served on the assessee.

Assessee company furnished a report in Form 3CEB in accordance with the provisions of sec. 92E. The case was referred to the Transfer Pricing Officer on 15.11.2016 for determination of arms length price. The TPO, Hyderabad vide order dated 31.10.2017 u/s 92CA(3) of the Income-tax Act, 1961, computed the adjustment for the purpose of arms length price at Rs.9,44,43,459/-. Accordingly, the total adjustments amounting to Rs. 9,44,43,459/- was added to the income of the assessee. Beside that additions were made on account of trade receivable by the TPO.

Aggrieved to the above addition, the assessee company filed objections before the Hon'ble Dispute Resolution Panel, Bangalore. The Hon'ble ORP vide its order in F.No. 56/DRP-1/BNG/2018-19 dated 24.09.2018 gave certain reliefs to the assessee and directed to recompute the adjustments.

Accordingly, as per the directions of the Hon'ble DRP, the OCIT (TPO)-2, Hyderabad vide order dated 26.11.2018 has re-computed the adjustment for the purpose of arms length price at Rs.6,68,92,985/- and the same is added to the income of the assessee.

3. Feeling aggrieved, the assessee is before us for the grounds mentioned hereinabove.

4. The assessee has drawn our attention to Paras 2 to 11 of the order of TPO wherein the TPO has recorded the following finding :

2. As per 3CEB report/TP document, the International transactions reflected areas under (Table 1):

A.E	Nature of transaction	Amount (in Rs.)
Maxicon Container Line Pte Limited	Liner agency services	5,48,75,630
Seaways Shipping Line Pte Limited	Container Line Income	2,41,35,243
	Container Line Expenses	3,14,59,961
	Slot Hire Income	5,38,495
Maxicon Shipping Agencies Sdn bhd	Slot Hire Income	26,15,701
	Slot Expenses	27,03,287
Seaways Shipping Line Pte Limited	Reimbursement by AE	18,14,006
Maxicon Shipping Agencies Sdn Bhd	Reimbursement by AE	3,93,978

3. The taxpayer has carried out the economic out the economic analysis in the TP report and has summarized the International transactions as under (Table 2):

Nature of International transaction	Amount (Rs.)	MAM	PLI	Margin of taxpayer	Margin of comparables
Liner agency services	5,48,75,630	TNMM	NA	NA	NA
Container Line Income	2,41,35,243	CUP	NA	NA	NA
Container Line Expenses	3,14,59,961	CUP	NA	NA	NA
Slot Hire Income	5,38,495	CUP	NA	NA	NA
Slot Hire Income	26,15,701	CUP	NA	NA	NA
Slot Expenses	27,03,287	CUP	NA	NA	NA
Reimbursement by AE	18,14,006	Other Method	NA	NA	NA
Reimbursement by AE	3,93,978	Other Method	NA	NA	NA

4. Non-reporting of transactions by the taxpayer.

It is noticed that the company had the following transaction, which was not reported in Form 3CEB and no bench marking analysis has been done in the TP study:

Nature of transaction	Amount(Rs.)
Receivables	5,59,37,618

5. The taxpayer has carried out economic analysis in the T.P. documentation. For the transaction relating to provision of shipping I liner agency services, it is stated that as per the agreement in case of inbound impact collection amounts

form consignee agency commission at the rate of 10.50% shall be paid by principal to agent. In case of outbound transactions, the agency commission at the rate of 10.50% shall be paid on amounts collected from shipper. Accordingly, the taxpayer holds that the transactions are within the arm's length.

6. In the TP document, for the transaction relating to provision of shipping / liner agency services, it is stated that as per the agreement in case of Inbound impact collection amounts form consignee agency commission at the rate of 10.50% shall be paid by principal to agent. In case of outbound transactions, the agency commission at the rate of 10.50% shall be paid on amounts collected from shipper.

The taxpayer did not provide any documentary evidence on which the analysis under TNMM or CUP has been provided. The company apparently relied upon the agency agreement which which cannot be accepted as CUP. This is for the reason that the agreement is bilateral and Is between related parties. For comparability one has to rely on uncontrolled transactions which are not case here. From the data filed, it is seen that the taxpayer has compared the prices charged by them to the AE with the prices charged by independent third parties to the AEs. The data has been perused. The taxpayer has given the list of AE transactions and the non-AE transaction, however, it Is not known how the prices have been compared. What is the break-up of the cost which is sought to be compared. For example the first entry for the month of April, 2011 with the AE Mexican Container Line pte. Ltd., Singapore states that amount of Rs.54,85,923 being credited towards F&F @ 10.5% of 5,48,75,630. It is not known how this has been compared with the non- AE transaction whose list running into 242 items.

7. Thus as the taxpayer failed to provide the CUP data or the TNMM data, which would enable the TPO to verify the transaction, it was proposed to reject the TP document and compute the Arm's Length Price applying PSM. The taxpayer was show caused vide letter dated 15-10-2017. The taxpayer has filed its reply which has again enclosed the copy of TP document which is the same as that which was filed earlier. It is also stated that they earn agency commission on the inbound and outbound transactions @ 10.5% as per the agency agreement. This rate of commission is quite high as compared to the going rate of other companies who earn around 2% to 4% on the basic freight. Other than this no factual data has been provided to substantiate the claim . In view of the above the contention of the taxpayer is rejected as it lacks the supporting document and details and the Arm's Length Price is computed as proposed in the show cause notice.

Reliance is also placed on the Delhi ITAT's decision in the case of Toll Global Forwarding India Pvt. Ltd. [TS-442-ITAT(Delhi)-TPJ. The relevant extract is as under:

"..... 28. In view of the above discussions, the conclusion arrived at by the coordinate benches meets our considered approval not only because of our respect for the pioneering work done by the coordinate benches but also because of our analysis elsewhere in the order and the subsequent developments, in jurisprudence as also in legislative field, supporting the conclusions arrived at by the coordinate benches. The business model of 50:50, as was admittedly prevalent in the line of business activity of the assessee and as is followed by the assessee, thus indeed satisfies the test for determination of arm's length price.

29. For the reasons set out above, as also respectfully following the esteemed views of the coordinate benches, we uphold the grievance of the assessee. We hold that the assessee's contention to the effect that the arm's length price of services rendered to, or received from, the associated enterprises, which was computed on the basis of the same 50:50 model as is the industry norm and as has been employed by the assessee for computing similar services to the independent enterprises, was at arm's length. Accordingly, the impugned arm's length price adjustment of Rs 2,09,00,179 stands deleted."

8. Accordingly the computation is as under:-

8.1 Liner Agency Services:-

As per the RPT disclosure the following are the details:

Gross revenue earned on agency	=Rs.64,55,95,652
Cost of operation	=Rs.35,52,39,650
Balance	=Rs..29,03,56,002
50% of Rs.29.03.56,002/-	=Rs.14,51,78,001
Less: Retained by the taxpayer	= Rs. 5,48,75,630
Short fall proposed as adjustment	= Rs. 9,03,02.371

Thus the arm's length price of international transaction Liner Agency Services is computed as above and the sum of Rs. 9,03,02,371/- is treated as adjustment u/s. 92CA of LT. Act and the total income of the taxpayer will be enhanced accordingly u/s 92CA(3) of the LT. Act.

8.2 Slot Hire Income:

As per the RPT disclosure the following are the details:

Sales =Rs.31,54,196
Expenses =Rs.27,03,287
Balance =Rs4,50,909
50% of Rs.4,50,909= Rs.2,25,455
Less: Retained by the taxpayer = Rs.NIL
Short fall proposed as adjustment=Rs/2,25,455

Thus the arm's length price of international transaction Slot Hire Income is computed as above and the sum of Rs. 2,25A55/- is treated as adjustment u/s. 92 CA of LT. Act and the total income of the taxpayer will be enhanced accordingly u/s 92CA(3) of the LT. Act.

9. Interest on delayed trade receivables:

It is observed from Notes to Audited financial statements for the year that an amount of Rs.5,59,37,618/- of trade receivables are outstanding from related parties. Therefore vide this office's questionnaire tax-payer was asked to furnish details of outstanding receivables like date on which invoice is raised, amount, date of actual receipt, amount received, credit period allowed, amount outstanding etc which were asked to be produced even by questionnaire dated 02-06-2017. The tax-payer company was asked to explain why interest should not be levied on outstanding receivables as it is an International Transaction u/s 92B of IT Act. In response to the same tax-payer furnished party wise break up of 'outstanding receivables' from Associated Enterprises. The tax-payer failed to explain why interest should not be levied. Therefore, respectfully following the rationale levied in that case SBI Term deposit rates is considered as appropriate CUP to determine ALP of 'Outstanding receivables'. SBI Term deposit rates available on SBI Website for the period under consideration is as follows.

Duration	1.03.2013	19.09.2013	20.09.2013	01.11.2013	18.02.2014
7 days to 90 days	6.5	7.5	7.5	7.5	7.5
91 days to 179 days	6.5	7.5	7.5	7.5	7.5
180 days to 210 days	6.5	6.5	6.8	7	7
211 days to less than 1 year	6.5	6.5	7.5	7.5	7.5
1 year to less than 2 years	8.75	9	9	9	9
2 years to less than 3 years	8.75	9	9	9	9
3 years to less than 5 years	8.75	9	9	9	8.75
5 years and up to 10 years	8.75	9	9	9	8

The taxpayer was asked to submit the details of raising the invoice and subsequent receipt. The taxpayer has furnished the details called for vide submissions dated 25.10.2017. Interest is calculated after giving a credit period of 30 days on the outstanding receivables based on SBI term deposit rates. So, applying above interest rates, Arm's length price of transaction is determined at Rs.23,025,211. As tax-payer has taken value of transaction to be 'Nil', adjustment u/s 92CA of Rs. 23,025,211 'is to be made for assessment year 2014-15 on account of this transaction.

The Arm's Length Price and the adjustment of international transaction is as under:-

S.No.	International transaction	Arm's Length Price (Rs)	Adjustment(Rs.)
1	Receivables	39,15,633	39,15,633
			39,15,633

10. Summary of adjustments

S.No.	Description	Amount
1	Liner Agency Services	9,03,02,371
2	Slot Hire Income	2,25,455
3	Receivables	39,15,633
	Total	9,44,43,459

Thus, the total TP adjustment on international transactions is computed. at Rs. 9,44,43,459. The Assessing Officer is required to enhance the total income of the taxpayer by Rs. 9,44,43,459 /- u/s 92CA of the IT Act.

11. As seen from Para. No.3, the taxpayer did not report the transaction of receivables either in Form 3CEB or in TP document. Therefore, penalty u/s. 271BA needs to be initiated. Similarly, the taxpayer was required to report this transaction u/s.92D of ;0~ the Act, which he has failed to do so and for which penalty u/s. 271AA may be initiated. The Assessing Officer is requested to initiate penalties u/s.271BA and 271AA accordingly.

This order is applicable only to the International transactions entered into by and between the taxpayer and its AE for FY 2009-10. The AO has to mandatorily follow provisions of section 144C of IT Act before passing the final order in the case for the year under consideration. ~

5. The assessee had filed the petition before the DRP and the DRP vide Para Paras 2.4.15 to 2.4.18 had partly granted relief to the assessee. The relevant finding of the Ld.DRP are as under:

2.5 Ground of Object No.5

Objection NO.5.1: The TPO and the Assessing Officer are not justified in adopting PSM method and in arriving at the sharing of Profit @50% on. The TPO erred in arriving at the profit at Res. 4,50,909/-

2.3.1 the assessee has contended that the PSM is not the most appropriate method; and that even if PSM is considered, the computation made by the TPO was erroneous as it had not considered the various expenses incurred by the Singapore AE, and if those expenses are taken into account, the income admitted by the assessee is at ALP. The assessee further contended that if 'Other Method' is considered, as done by DRP in the case of MIs. Seaways Liner Agencies Pvt Ltd for the Asst. year 2014-15, the

assessee's transactions would be at ALP, and in support of such plea, a computation was filed.

2.3.2 Having considered the submissions. and on perusal of the details filed, we note that the TPO's computation of adjustment under PSM is erroneous as it had taken into account only the expenses incurred by the Indian entity in arriving at the profit. The assessee had given a computation in Annexure-I, wherein the expenses incurred by the Singapore AE was also taken into account, and it was contended with reference to such computation that the agency income earned by the assessee is at ALP. On perusal of such information, it is seen that the assessee had not furnished the profit earned by the Singapore AE in regard to the India based operations. The revenue of the AE taken for comparison related to its global operations and in view of the geographical differences, it cannot be taken for comparison. Further the assessee had not filed any information or documentation as to the nature of revenue earned by the AE from its global operations. Therefore the computation given by the assessee is not reliable.

2.3.3 It was further submitted that assessee had gross revenue of Rs.41.52,12,647/- from Liner Agency income done for non-AEs and in respect of which it had earned commission income of Rs.71.16,560/- which constituted 1.71% of the revenue and in comparison the income earned from AE at 8.50% is

higher and at ALP. The assessee sought to accept this under 'Other Method'. However, the assessee has not furnished any basis for the said commission income of Rs.71,16,560/-. There is no information available in its financial statement. The assessee also did not file any documentation or agreement in support of such plea. Hence this analysis is also not acceptable.

2.3.4 In this factual scenario, we note on perusal of the annual report. that the assessee has categorized its revenue into Logistics division and shipping division and the revenue from logistic division is broadly comparable to the agency functions performed to the AE. At page 1 of the Director's report the profit from Logistic business was given to be at Rs. 34.89 crore, with reference to revenue of Rs.183.48 crore and expenses of Rs.148.59 crore. The other expenses debited towards 'Personnel Expenses' and 'Administration Expenses', in the P&L do not pertain to these divisions, as the employee expenditure relating to this division are already considered, as could be seen from the information given at Note 17 to the Financial Statement. In regard to depreciation, it could be seen that out of Rs.12.35 crore, the depreciation relating to vessels and heavy equipment do not pertain to this division. After excluding the same, the depreciation allowance proportionately relatable to this division would be RS.1.46 Crore. (Rs.12.35 - RS.8.11 - RS.2.31 = Rs..93@75.77%), If this is considered, the profit margin comes to Rs.33.43 Crore. Thus it can be seen that in the non AE segment the assessee had earned a margin of nearly 18.22% over revenue of 183.48 crore, as against which in the AF segment the profit earned was only 8.5%, Hence, the TPO is directed to take this 18.22% as ALP margin. Accordingly, the assessee ought to have earned income of Rs.11,76,27,527/(64/55,95,652 @ 18.22%) as against which the

income earned was only Rs,5,48,75,630/ and hence the difference of Rs.6,27,51,897/- may be taken as the adjustment by way of ALP determination of its agency income. The TPO/AO may accordingly make the said adjustment/addition to total income.

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2.4.15 A plea was raised that the assessee is not charging interest on non AE and therefore interest cannot be imputed from AEs. However the assessee failed to furnish details of receivables outstanding from non-AEs, the credit period agreed, the delay in realisation etc. for comparison. As this plea was not demonstrated with evidence, the same is rejected.

2.4.16 As regards ALP interest rate, we note that the Hon'ble (TAT, Bangalore, in the case of Logix Micro System cited (supra) in similar circumstances, while upholding the Indian rate of interest, in paragraph 23 of its order, held that "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. Therefore, we vacate the direction of the TPO to adopt the PLR rate of 10.25%. Instead we find it appropriate to adopt a reasonable rate that would be available to the assessee on short-term deposits". Accordingly, we are of the view that short term deposit rates of interest of State Bank of India, prevailing for the financial year 2013-2014, as applied by the TPO as the ALP interest rate is in order.

2.4.17 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 30 days is justified, Accordingly, we do not find any infirmity in the TPO's action in allowing reasonable credit period of 30 days.

2.4.18 It is seen that the assessee has not furnished the details of realization of the outstanding receivables invoice wise. The assessee is directed to furnish these information, including those relating to the opening balance, and the TPO is directed to adopt the ALP interest rate, invoice wise till the date of realization, and it shall not be beyond the end of the financial year. The TPO is directed to recompute interest adjustment accordingly."

6. The Ld. AR for the assessee has submitted that the finding of the DRP mentioned in paragraph 2.3.4, is contrary to the ALP determination in respect of the international transactions between the assessee and its AE. It was submitted that the Ld. DRP had taken into account the annual report wherein the assessee has categorised the revenue from logistic division shipping division.

Whereas the issue before the DRP was whether the prices charged by the assessee from its AE for linear agency services are at arm length or not. The assessee in the 3CB report had mentioned the revenue from linear agency services at Rs.5,48,75,630/- The Ld. Assessing Officer/TPO had made the added Rs. 9,03,02,371/- to the income of the assessee on account of ALP adjustment. It was submitted that the whole premises of order passed by the DRP was that the Ld. DRP had compared the two segments of the assessee which are not comparable with each other for the purpose of benchmarking the transaction under the residual method. It was submitted that it would be in the interest of justice, if the matter is remanded back to the file of the TPO for a fresh adjudication keeping in mind the earlier order passed by the Tribunal for the Assessment Year 11 – 12 while which order dated 8/2/2021.

7. With respect to the outstanding receivable it was submitted that the issue may kindly be remitted back to the office TPO for fresh examination

8. Per contra, ld. DR had submitted that that the DRP had wrongly applied the any other method(residential method) for benchmarking the transaction which is in accordance with law. It was further contended by the Ld.dR that the Tribunal, had consistently direct the TPO to apply the SBI rate of 6% with the credit. 60 days in respect of trade receivable. He relied upon the decision of the Tribunal in the case of Apache Footwear India Pvt.Ltd. ITA 568/HYd/2022 in support of its contention.

9. We have heard the rival submissions and perused the material on record. Undoubtedly while deciding the ground, the Ld. DRP had compared the revenue earned by the logistic division

with the agency functions performed by the assessee . Admittedly the linear agency business carried out by the assessee cannot be compared with the agency functions performed by the assessee. For both the activities, the FAR are different and therefore both cannot be compared for the purpose of benchmarking the linear agency functions. In the opinion of the bench, the residual method applied by the Ld. DRP, was without any basis and therefore the same is required to be quashed. In the present case the international transaction referred by the assessee in form 3CB was only linear agency services with Maxicon containers line Pte Ltd for which the assessee had shown the revenue of Rs. 5,48,75,630/-. The Ld. TPO after applying the Profit Split Method had made the upward addition of Rs. 9,03,02,371/-to the income of the assessee. In our view when though the assessee was carrying the composite business and the profit of the linear agency services and the corresponding expenditure can be worked out with precision , then it is easy for the lower authority to compare the prices charged by the assessee from its AE, with the other comparable company carrying the same/similarly situated activities with the unrelated parties. The above-mentioned aspect has not been considered by both the lower authorities. In the light of the above we are of the considered opinion that the matter is required to be sent back to the file of the Ld. TPO for fresh adjudication after affording opportunity of hearing to the assessee. While exercising the de novo assessment, the Ld. TPO shall keep in mind the profile and business activities of the assessee, the international transaction entered into by the assessee as mentioned in form 3CB. Needless to say that the above said exercise shall be carried out by the Ld. TPO, after following the due process of law and after affording opportunity of hearing to the assessee. The Ld. TPO may apply any method as may be applicable in the facts of the present case after affording

opportunity of hearing to the assessee as provided under Rule 10B of Income Tax Rules .

10. As we are remanding back the TP adjustment to the file of the Ld. transfer pricing officer, we also deem it appropriate to remand back the addition on account of trade receivable to the file of the Ld. transfer of pricing Officer, with the direction to recompute the trade receivables in the light of our decision in the case of Apache Footwear India Pvt.Ltd. ITA 568/HYd/2022 wherein we have held as under

“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

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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 it's 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."*

Considering the totality of facts and circumstances and in view of the decisions cited supra, we direct the Assessing Officer to determine the ALP and compute the same by adding notional interest @ 6% on the receivable beyond a period of 60 days. This ground is partly allowed.

In the result, the appeal of assessee is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 31st May, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st May, 2023
Thirumalesh/PVV Sr.PS

Copy to:

S.No	Addresses
1	Seaways Shipping & Logistics Limited Seaway Pride, Plot No.731 Road No.36, Jubilee Hills Hyderabad-500 034
2	DCIT, Circle-3(1),Signature Towers Kondapur,Hyderabad-500 084
3	CIT(IT & SZ), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order