

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'T': NEW DELHI)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.1638/Del/2022
(Assessment Year: 2017-18)**

Rockwell Automation India Private Limited, 131, Functional Industrial Area, Patparganj, New Delhi.	Vs.	ACIT, Circle 19(1), Delhi.
APPELLANT		RESPONDENT
PAN No: AACCR3791A		

Assessee By : Shri Ajit Jain, Advocate
Revenue By : Shri Bhaskar Goswami, CIT(DR)

Date of Hearing : 30.05.2023
Date of Pronouncement : 12.07.2023

ORDER

PER SHAMIM YAHYA, A.M.

ITA No.- 1638/Del/2022

This appeal by the assessee is directed against the order of the Assessing Officer pursuant to the direction by the Dispute Resolution Panel-2, New Delhi dated 29.04.2022. The Grounds of appeal are as under:-

“Pertaining to Transfer Pricing matters

Adjustment of INR 179,613,230 relating to manufacturing /assembly segment

1. *On facts and in law, the Ld. AO/Ld. TPO erred in disregarding the*

provisions of Rule 10C of the Income Tax Rules, 1962 ('the Rules') by aggregating the results of Distribution Segment (i.e., Class II transactions) with Assembly/ Manufacturing Segment (i.e., Class I transactions). In doing so, the Ld. AO/ Ld. TPO has erred in

- 1.1 *violating the provisions of Section 92CA read with section 143(1) of the Act and defying the principles of natural justice by not granting any opportunity of being heard to the Appellant;*
- 1.2 *not following the directions of Hon'ble DRP and violating the provisions of Section 144C(10) read with Section 144C(13) of the Act, thereby rendering the assessment proceedings bad and invalid in law.*
2. *On facts and in law, the Ld. AO/Ld. TPO erred in incorrectly computing the proportionate adjustment.*
3. *On facts and in law, the Ld. AO/Ld. TPO erred in selecting companies which are not comparable to the Appellant in terms of their functions performed, assets owned, risks assumed as well as excluding Kaycee Industries Limited from the comparables set that has similar functional profile as that of the Appellant.*
4. *Without prejudice to Ground 3 above, the Ld. AO/Ld. TPO erred in not considering G.G. Engineering Limited as a comparable as demonstrated by the Appellant during the proceedings before the Hon'ble DRP.*
5. *On facts and in law, the Ld. AO/Ld. TPO erred in incorrectly computing the net cost-plus margins of the comparable companies selected by the Ld. TPO and not sharing back-up calculations with the Appellant.*
6. *On facts and in law, the Ld. AO/Ld. TPO erred in not considering the corrected segmental financials submitted by the Appellant after rectifying the mistake apparent from record.*
7. *On facts and in law, the Ld. AO/Ld. TPO erred in not allowing working capital adjustment and risk adjustment under Rule 10B(1)(e) of the Rules for determination of the ALP to account for differences in working capital employed by the Appellant and risk profile of the Appellant vis-à-vis the comparable companies.*

Adjustment of INR 665,549 relating to treatment of outstanding receivables from AE as "unsecured loans" and imputing interest thereon

8. *Oil facts and in law, the Ld. AO/Ld. TPO erred in making an adjustment of INR 665,549 by treating delayed payments towards outstanding receivables from the AEs as unsecured loans and imputing interest thereon. In doing so, the Ld. AO/Ld. TPO erred in:-*
 - 8.1 *disregarding that outstanding receivable from the AEs is not a separate transaction but a consequence of international transactions.*
 - 8.2 *determining the arm's length price of the impugned international transaction without applying any method prescribed as per Section 92C of the Act.*
 - 8.3 *not appreciating that the Appellant did not charge any interest from third-party customers either on outstanding receivables, which represents an arm's length scenario. In doing so, the Ld. AO/ Ld.*

TPO erred in not taking cognizance of the order of the Tribunal in Appellant's own case for AY 2014-15.

- 8.4 *Not appreciating that the working capital adjustment subsumes the impact of any additional return on account receivables.*
- 8.5 *Arbitrarily applying a markup of 400 basis points on LIBOR for the purpose of computing national interest on outstanding receivables.*

Pertaining to corporate tax matters

9. *On the facts and in law, pursuant to the directions of the Hon'ble DRP the Ld. AO has grossly erred in making the impugned disallowance amounting to INR 1,53,359 with regard to the Loans & Advances writing off by the Appellant in its Profit & Loss account and in doing so it has erred in completely disregarding the explanation and information filed by the Appellant in respect of 'retention money written off' and that the said amount has been offered to tax in the previous year.*
10. *On the facts and in law, the Ld. AO has erred while computing the tax liability for the year by considering credit of tax deducted at source ('TDS') of INR 30,934,615 instead of INR 31,476,859.*

General Grounds

11. *On the facts and in law, the Ld. AO has erred in levying interest under section 234A, 234B, 234C and 234D of the Act in the assessment order of AY 2017-18*
12. *On facts and in law, the Ld. AO has erred in initiating penalty proceedings under section 274 read with section 270A of the Act."*

2. Ld. Counsel of the assessee submitted that he shall not be pressing grounds pertaining to Corporate Tax Matters mentioned in ground nos. 9 and 10. Hence, these grounds are dismissed as not pressed.

3. Brief facts of the case are that Rockwell Automation India Pvt. Ltd. was incorporated on June 29, 1983 to design, manufacture, install, maintain, repair and deal in industrial, electrical and electronic products such as ICAM Systems/PLC Systems, Static/Frequency Converters, Operator Interface, Terminal Blocks and Contactors. The Company also designs, develops and installs software for

operating ICAM Systems and also provides Engineering Services and CCS to the related parties. Rockwell India is engaged in manufacture and sale of products such ICAM, Static converters, Control board and panel, Sensing products, Logix, Control Platform, Distributed Input/output and small controllers, Industrial Motion controls, Electronic operator interface, industrial computers and Condition monitoring products/systems. Further, Rockwell India is also engaged, in trading of certain products (automation and industrial control products/ systems) some of which were purchased from Group Companies and some from local parties, and then resold. Rockwell Automation India is an automation vendor to many leading National, Multinationals and Transnational companies operating in India. It is involved in providing plant-floor automation. Its range of products and services offers End users, System Integrators, Panel Builders and OEMs a way to increase their competitive advantage while meeting their specific business objectives. As per Form No. 3 CEB filed along with the return, the assessee company had entered into international transaction with its associated enterprises / concerns during the year. Accordingly, reference was made to the Transfer Pricing Officer to determine the Arm's Length Price u/s 92CA(3) of the Act in respect of International Transaction entered into by the assessee company. Order u/s 92CA(3) of the Act was passed by the Dy. Commissioner of Income Tax. TPO-3(2)(1), New Delhi, on 29.01.2021. The TPO has made an upward adjustments regarding Arm's length price in Class -I and II transactions of Rs. 18,42,15,262/-, Engineering design services of Rs. 2,80,32,618/-, Customer support services of

Rs. 27,54,300/-, Business support service of Rs. 39,32,078/- and Interest on outstanding receivables of Rs. 3,60,38,910/- i.e. total adjustment of Rs. 25,49,73,168/-. Accordingly, the NaFAC, Delhi passed a draft order u/s 144C of the Income Tax Act, 1961 on 29.09.2021. Aggrieved with the draft order, the assessee filed objections before DRP-2, Delhi against draft order. DRP-2, Delhi after detailed hearing pronounced its judgement on 29.04.2022 and had issued certain direction in the case of the assessee company. Complying the same, the Ld. TPO -3(2)(2), Delhi vide DSN & Order No. ITBA/COM/F/17/2022-23/1043662323(1) dated 29.06.2022 has given appeal effect to order dated 29.04.2022 of DRP-2, New Delhi u/s 144C of the Act and have reduced the transfer pricing adjustment from Rs. 25,49,73,168/- to Rs. 18,02,78,879/- for AY 2017-18.

4. The first ground pressed by the Id. Counsel of the assessee is with regard to aggregation to distribution segment with that of assembly segment. Ld. Counsel has summarized his submissions as under :-

“Ld. TPO made an adjustment of INR 179,613,231 w.r.t. assembly and manufacturing segment by aggregating the results of distribution segment while carrying out such adjustment. While aggregating the transactions of two different class having different FAR, no opportunity was provided by the TPO.

Various instances cited in the table below clearly evidence the approach of Ld. TPO in aggregating distribution segment with assembly/ manufacturing segment to implement the adjustment.

<i>Inconsistent with TPO's own position in the previous year (AY 2016-17)</i>	<i>Adjustment carried out only in assembly/ manufacturing segment; no adverse inference drawn in the distribution segment (in fact never in the history of Appellant's</i>	<i>Refer page 693 of merit appeal</i>
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	<i>operations, any adverse inference has been drawn in distribution segment)</i>	
<i>Show Cause Notice AY 2017-18</i>	<i>Nowhere in the show cause notice when the adjustment was originally proposed, there was a discussion on aggregation of distribution segment profit & loss account.</i>	<i>Refer page 113 of merit appeal</i>
<i>Use of PLI</i>	<i>The TPO has considered the PLI of only assembly/manufacturing segment to make the adjustment.</i>	<i>Refer page 73 to 74 of merit appeal</i>
<i>Use of Comparable Companies</i>	<i>The Ld. TPO has considered/modified only assembly/manufacturing comparable companies.</i>	<i>Refer page 73 of merit appeal</i>

Ld. DR argument that the appellant's main business is to provide solution and whether it is import of components or import of finished products it forms part of the solution is completely devoid of legal and factual merits of the case. It rather grossly violates the provisions of Rule 10B(2) of the Income tax Rules 1962 which require the comparability analysis to be performed based on the functions performed, assets employed and risks assumed (FAR) by the parties to the transactions.

At various instances during the TP assessment proceedings, it has been brought to Ld. TPO's attention that the FAR of the appellant under assembly and distribution segment are absolutely distinct. For assembly, the appellant has set-up a full-scale assembly facility, imports components for further value addition and assembly, deploys plant & machinery, land, building and other tangible assets as well as assumes complete ownership and risk in respect of these products. Whereas, in case of import of finished products, products are sold to third party customers without making any value-addition, and the appellant primarily engages in activities of storage and distribution.

Such distinction between two segments is always reflected in the segment profit & loss account maintained by the appellant since inception of these activities and has never been challenged in the past. The Ld. DRP has also acknowledged this fact in their directions that the approach upheld by DRP in preceding A Ys shall apply in this A Y as well (Refer page 45 of merit appeal). It is the incorrect approach, rather a mistake committed by the TPO in his order that's now being endorsed through baseless arguments.”

5. We have heard both the parties and perused the record. We find in the submission of the Ld. Counsel for the assessee that the Ld. TPO has erred in

aggregating the result of distribution segment with assembly / manufacturing segments. This was inconsistent with TPO's own position in the previous year wherein adjustments was carried out in the assembly / manufacturing segments and no adverse inference has been drawn in distribution segment. Furthermore, in the TPO's show cause notice when the adjustment was proposed, there was no mention of such aggregation. Moreover, the TPO has considered the manufacturing segments to make the adjustments. Further, the assessee has submitted that it has brought to the TPO's attention that the FAR of the assessee under the assembly and distribution segments are totally justified. For assembly, the assessee has set up a full scale assembly facility, including, deployment in the plant & machinery, land, building and other tangible assets. Whereas in the case of import of finished products, products are sold to third party customers without making any value-addition and the assessee primarily engages in activities of storage and distribution.

5.1 In our considered opinion, the submission of the assessee is justified that the AO has wrongly aggregated the assembly segment with distribution segment. We direct that such aggregation is not permissible in the facts and circumstances of the case as discussed above. We direct accordingly.

6. Another ground pressed by the Id. Counsel of the assessee is with regard to treatment of outstanding receivables from AE as unsecured loans and imputing an interest thereon. In this regard, Id. Counsel summarized his submissions as under:-

“The Ld. TPO considered the delay in payment received by the Appellant from its AE as "unsecured loans" and proposed to charge a rate equal to LIBOR plus 400 basis points. i.e. 5.18% by considering delay to be beyond 6 months.

Basis the directions issued by Hon'ble DRP, the Ld. TPO reduced the adjustment to INR 6,65,649 by netting off the payables from receivable and charged the interest on net receivables on AE-wise basis.

The Appellant submits that it did not charge interest from its major third-party customers. Thus, this depicts an arm's length situation. In this regard, the Appellant would like to submit that the Hon'ble Income Tax Appellate Tribunal ("ITAT") in Appellant's own case for AY 2014-15 [ITA No. 6806/Del/2018] on the same issue has deleted the adjustment and held as under :- (Refer page no. 700 of merit application)

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 Co-ordinate Benches of the ITAT. There is complete uniformity in the act of the assessee in not charging interest from both the AE and Non AE debtors and the delay in realization of the export proceeds in both the cases is same. Reliance is being placed on the decision of Hon'ble Bombay High Court in the case of CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L) No.1053 of 2012 order dated 08.01.2013. Keeping in view the various judicial pronouncements and the facts of the case that neither interest has been charged nor paid, we hereby allow the appeal of the assessee on this ground.”

6.1 We have heard both parties and perused the materials available on record.

As pointed out by the Ld. Counsel for the assessee in assessee's own case for Assessment Year 2014-15 on the same issue ITAT has deleted the similar adjustments. The order of the ITAT in the concluding part has held as under:

“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 Co-ordinate Benches of the ITAT. There is complete uniformity in the act of the assessee in not charging interest from both the AE and Non AE debtors and the delay in realization of the export proceeds in both the cases is same. Reliance is being placed on the decision of Hon'ble Bombay High Court in the case of CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L) No.1053 of 2012 order dated 08.01.2013.

Keeping in view the various judicial pronouncements and the facts of the case that neither interest has been charged nor paid, we hereby allow the appeal of the assessee on this ground.”

Respectfully following the precedents as above, we allow the assessee’s appeal on this ground. It is not the case that the above ITAT order has been reversed by Hon’ble High Court.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 12 .7. 2023.

Sd/-

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 12/07/2023
Pooja/TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	30.05.2023
Date on which the typed draft is placed before the dictating Member	

Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	