

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

**BEFORE, SH. KUL BHARAT, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2333/Del/2022
(Assessment Year : 2017-18)

Egis International S.A.S (earlier known as Egis International S.A.) Pocket – 4, Plot No.11, Dwarka Sector – XI, South West Delhi, New Delhi – 110 075	Vs.	ACIT Circle – 1(2)(2), International Taxation New Delhi
PAN No. AABCB 7760 L		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Mohnish Saini, A.R.
Revenue by	Shri Rajesh Kumar, CIT(D.R.)

Date of hearing:	19.12.2023
Date of Pronouncement:	29.12.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee is challenging the final assessment order passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 pertaining to Assessment Year 2017-18, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. As per the multiple grounds of appeal together with categorical assertions made on behalf of assessee in the open court, the challenge of the assessee in the captioned appeal is restricted to upward transfer pricing adjustments of Rs.6,63,370/- made by the AO read with the directions issued by DRP and order passed by TPO.

3. The assessee is stated to be a foreign entity located in France. The overseas assessee inter-alia entered into international transactions with AE in India. As pointed out on behalf of the Assessee, the learned DRP proposed to benchmark the outstanding receivable from associate enterprises as separate transaction in the light of s. 92E of the Act and directed the AO for appropriate transfer pricing adjustment towards interest on delayed payments from its AE's consistent with arm's length principles. In terms of the DRP direction, the matter was referred to the Transfer Pricing Officer (TPO). Based on the order of TPO, the Assessing Officer embarked upon transfer pricing adjustment to the tune of Rs.6,63,370/- being interest on delayed payments from its AE's adopting SBI base rate plus 300 basis points. The transfer pricing adjustment was thus worked out to the impugned amount of Rs. 6,63,370/-.

4. In the course of hearing, learned Counsel for the assessee submitted at the outset that from Indian Transfer Pricing Regulations perspective, there was no loss to the exchequer *per se* since purported delay in repatriation of outstanding receivable has occurred on the part of Indian entity to the assessee. The assessee in the instant case being a foreign entity incorporated in France, such imputations of notional interest for purported delay is not triggered as the impact of extension of

credit period does not adversely affect the determination of arm's length price. The adjustments in question made on account of notional interest computed on outstanding receivable by a foreign entity from an Indian entity thus does not prejudice the cause of the Revenue. On this ground alone, the impugned adjustment requires to be cancelled. The Id. Counsel thereafter submitted that similar credit policies have been extended to unconnected entities. No interest has been charged to third party customers. Further, such impact of overdue receivables has already been factored and is already subsumed in the working capital adjustment. To support such proposition, the learned Counsel referred to the judgment rendered by the Delhi High Court in the case of *Pr. CIT vs. Kusum Healthcare Pvt. Ltd.* 398 ITR 66. The learned Counsel thus submitted that no transfer pricing adjustment on account of overdue receivable by the foreign assessee is called for.

5. Learned DR for the Revenue, on the other hand, relied upon the orders of the lower authorities.

6. On careful consideration of the rival submissions, we find merit in the plea of the assessee that the assessee being a foreign entity, the overdue receivables do not act detrimental to the Indian Transfer Pricing regulations and determination of ALP in the instant case. The delay in payment of such receivables if any, do not appear to operate to the prejudice of the revenue. Secondly, the issue is also covered in favour of the assessee by the observations in *Kusum Healthcare* (supra) that once the working capital adjustment is given on account dues receivables, it ordinarily subsumes the interest on receivables and no

separate benchmarking for it is needed. We thus direct the Assessing Officer to reverse and cancel the adjustment in question.

7. In the result, appeal of the assessee is allowed.

Order was pronounced in the open court on 29.12.2023

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 29.12.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI