

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

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 526/Del/2022 : Asstt. Year: 2017-18

Jubilant Pharmova Ltd., Plot -1A, Sector 16A, Noida, District, G.B Nagar, Noida, Uttar Pradesh- 201301	Vs	ACIT-1, Moradabad, Uttar Pradesh- 201301
(ASSEESSEE)		(RESPONDENT)
PAN No. AABCV0200H		

Assessee by : Sh. K. M. Gupta, Adv.

Ms. Saloni Shital, AR

Revenue by : Sh. Rajesh Kumar, CIT- DR

Date of Hearing: 06.12.2023

Date of Pronouncement: 05.03.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 29.01.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the impugned order/directions passed/issued by Ld. Assessing Officer (AO)/Transfer Pricing Officer (TPO) and Hon'ble Dispute Resolution Panel (DRP) respectively is bad in law.

2. That on the facts and circumstances of the case and in law, the impugned assessment proceedings completed under section 143(3) read with section 144B of the Act are invalid and liable to be quashed due to violation of statutory procedure laid down under section 144B of the Act and principles of natural justice not being followed.

3. *Without prejudice to the above grounds, the Ld. AO/ Ld./ TPO/ Hon'ble DRP erred on facts and circumstances of the case and in law, in confirming the Transfer Pricing adjustment amounting to Rs. 5,36,99,972 in respect of alleged notional interest on outstanding receivables due from Associated Enterprises (AES).*

4. *Without prejudice to above grounds, that on the facts and circumstances of the case and in law, the Ld. AO/ Ld. TPO / Hon'ble DRP erred by treating receivables from AEs as international transaction separate and distinct from the international transaction of export of finished goods to AEs.*

5. *Without prejudice to above grounds, that on the facts and circumstances of the case and in law, the Ld. AO/ Ld. TPO exceeded his jurisdiction in re-characterizing the trade receivables of the Assessee from its AEs as unsecured loans advanced to AEs and Hon'ble DRP erred in confirming the same, thereby, penalizing the Assessee for not undertaking its business in a particular manner.*

6. *Without prejudice to above grounds, the Ld. AO/ Ld. TPO/Hon'ble DRP erred in ignoring that the Assessee had common policy of not charging interest on any "delay of payment from either AEs or third parties and had also not paid any interest to its AEs for outstanding payables.*

7. *Without prejudice to above grounds, the Ld. AO/ Ld. TPO / Hon'ble DRP erred in not giving set-off for receivables cleared by AEs in less than 30 days or received in advance.*

8. *Without prejudice to above grounds, that on the facts and circumstances of the case and in law, the Ld. AO/ Ld. TPO / Hon'ble DRP erred in determination of arm's length price based on inappropriate and unlawful application of the Comparable Uncontrolled Price ("CUP") method both while determining the arm's length credit period as well as the interest income.*

9. *Without prejudice to above grounds, that on the facts and circumstances of the case and in law, the Ld. AO/ Ld. TPO / Hon'ble DRP erred by considering on an adhoc basis, 60 days to be the arm's length credit period that the Assessee should extend to its AEs without giving any consideration to the Assessee's business circumstances, industry practice or commercial exigencies."*

3. The assessee is a public listed company domiciled in India and incorporated under the provisions of Companies Act, 1956. The assessee Company is a part of Jubilant Bhartia Group. The assessee Company, on a standalone basis, was engaged in manufacturing and sale of chemicals to its Associated Enterprises ('AEs') as well as independent parties.

4. The assessee filed its return of income on 16.11.2017 declaring total income of Rs.39,01,70,300/-. The case of the assessee was selected for scrutiny assessment wherein a reference was made to the Transfer Pricing Officer (TPO) for determining the arm's length price (ALP) of the below mentioned international transactions entered into with its Associated Enterprises.

S. No.	Nature of transaction	Method applied	Profit Level indicator ('PLI')	Amount (in INR)	TP Assessment Outcome
1	Export of manufactured chemical and pharmaceutical products	Transactional Net Margin Method ('TNMM')	OP/OR	618,06,25,091	TP assessment outcome
2	Provision of support service	TNMM	OP/OC	24,99,86,503	Accepted
3	Reimbursement of expenses by AEs	Other method	-	31,12,847	Accepted
4	Reimbursement of expenses by AEs	Other method	-	55,46,831	Accepted

Transfer Pricing (TP')/ Assessment Proceedings:

5. During the course of the TP proceedings, a show-cause notice ('SCN) was issued by the TPO thereby asking the Applicant, amongst other things, to show cause as to why the:

- Outstanding receivables of the Assessee from the AEs, be not re-characterized as deemed loan and an interest @months LIBOR plus 400 basis points, be not computed on it.

6. After receipt of the replies the AO treated interest on outstanding receivables as a separate international transaction and made addition.

7. Subsequently, the Assessing Officer passed the draft assessment order dated March 31, 2021, incorporating the adjustment as proposed by the TPO and accordingly, assessing the total income of the Assessee at Rs.86,01,50,040/- which was objected before the Id. DRP by the assessee.

Proceedings before the Ld. Dispute Resolution Panel ('DRP')

8. With respect to interest on outstanding receivables, the Panel upheld the action of the TPO/AO in treating outstanding receivables of the Assessee as an unsecured loan advanced to its AEs and in turn, a separate international transaction and further extended the credit period to 60 days as opposed to 30 days proposed by the TPO. Further, no relief was granted by the Ld. DRP on the interest rate charged on such outstanding

receivables as proposed by the TPO. However, with respect to the short credit period i.e., mere 30 days, granted by the TPO to the Assessee, the Ld. DRP directed the TPO to consider a credit period of 60 days while re-computing the interest on such receivables.

8. In line with the Id. DRP Directions and the Appeal Effect Order, the Assessing Officer thereafter passed the final assessment order, incorporating the revised TP adjustment and made addition to the Assessee's income of Rs.5,36,99,972/- on account of interest receivable.

9. Aggrieved by the final assessment order, the assessee is now in appeal before this Tribunal w.r.t. the solitary issue of Interest on Outstanding Receivables.

10. Before us, it was submitted that the Revenue has incorrectly re-characterized the outstanding receivables as an unsecured loan advanced to its AEs. It was submitted that these outstanding receivables from AEs are closely linked to the primary transaction of Export of manufactured chemical and pharmaceutical products' which has been held to be at arm's length by the Ld. DRP, while determining the ALP of the primary transaction i.e., Exports transaction, the Id. DRP had allowed working capital adjustment to the assessee which takes into account the outstanding receivables and payables of the assessee vis-à-vis the comparables for determination of ALP. Thus, the assessee's outstanding receivables cannot be treated as a separate international transaction.

11. It was submitted that the Ld. DRP has failed to appreciate that the working capital adjustment subsumes the adjustment on account of receivables and payables. Since the adjustment regarding outstanding receivables have already been accounted for under the working capital adjustment so granted by the Revenue, therefore, no re-characterization is required to be done.

12. The Id. AR relied on the order of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Kusum Health Care Pvt. Ltd. (ITA 765/2016) wherein while affirming the order of the Tribunal, it was noted that since the taxpayer had already factored in the impact of receivables while carrying out the working capital adjustment, no separate adjustment was required on account of outstanding receivables from AEs. The relevant extract of the order is reproduced below:

"10. The Court is unable to agree with the above submissions. The inclusion in the Explanation to Section 92B of the Act of the expression "receivables" does not mean that de hors the context every item of "receivables" appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterized as an international transaction. There may be a delay in collection of monies for supplies made, even beyond the agreed limit, due to a variety of factors which will have to be investigated on a case to case basis. Importantly, the impact this would have on the working capital of the Assessee will have to be studied.

11. The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO concluding that the figure

of receivables beyond 180 days constitutes an international transaction by itself. With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction. This was clearly impermissible in law as explained by this Court in CIT vs. EKL Appliances Ltd. (2012) 345 ITR 241 (Delhi).

12. *Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed."*

13. Further reliance is placed by the Id. AR on the following decisions wherein similar observations were made:

- *Convergys India Services Pvt. Ltd. vs. ACIT (ITA No. 4370/Del/2019)*
- *Target Sourcing Services India (P.) Ltd. vs. ACIT ([2020] 114 taxmann.com 701 (Delhi - Trib.))*
- *Redtech Network India (P.) Ltd. vs. ACIT ([2020] 113 taxmann.com 588 (Kolkata -Trib.))*

14. In the light of the above, it was argued that the addition of Rs.5,36,99,972/- be deleted on this account.

B. Treatment of outstanding receivables as a separate international transaction

15. The Id. AR further submitted that the Ld. DRP erred in treating the outstanding receivables as a separate international transaction.

16. It was submitted that these outstanding receivables are settled with the AEs on an ongoing basis, in the day-to-day business transactions, at an arm's length price having regard to the economic and commercial factors. It was submitted that an early or late realization of sale proceeds is incidental to the transaction of sale and is not a separate transaction itself. In other words, it was argued that outstanding receivables represent the consequence of an international transaction and not an independent international transaction per se.

17. On this issue the Id. AR placing reliance on the following decisions:

- *DCIT vs. Indo American Jewellery (ITA No. 5872/MUM/2009) wherein it was held as under:*

"8.....A close reading of section 92B transpires that the transactions of sale' and 'lendingmoney' have been distinctly set out. Transaction of sale' results into profit and that of 'lending money' gives interest income. Thus it is evident that interest income is associated only with the lending or borrowing of money and not with sale. So if the international transaction is that of sale, the arm's length price is determined qua the 'sale price'. Of course, while determining the ALP in a

sale transaction, all the relevant aspects including the credit period allowed are taken into view. On the other hand, if the international transaction is that of lending or borrowing money', the arm's length price is gauged qua the 'interest. When the international transaction is that of sale', the interest aspect is embedded in it. There can be no separate international transaction of interest' in the international transaction of sale'. Early or late realization of sale proceeds is only incidental to the transaction of sale, but not a separate transaction in itself. If the ALP in respect of an international transaction of sale' is determined, then there can be no question of treating the non-receipt of interest in such sale transaction as a separate international transaction warranting any further adjustment. One may also contend that the expression any other transaction having a bearing on the profits, income, losses.....' as employed in sec. 92B defining international transaction would encompass such interest from sale as the non-receipt of due interest would have the effect on profits or income. This contention also does not merit acceptance because when 'sale' and 'lending money' have been specifically included in definition of international transaction' u/s 92B, then the expression any other transaction' used in the later part of this provision will exclude all the items separately covered. In this view of the matter, it becomes manifest that there can be no separate international transaction of interest income which is part of the transaction of sale. Once ALP is determined in respect of the sale transaction, it would be deemed to be covering all the elements and consequences of the transaction of sale. Having determined ALP in a sale transaction, it cannot be accepted that separate adjustment de hors such determination is required in respect of interest."

- *PCIT vs. Gillette India Limited (ITA No. 40/2017) wherein the Hon'ble Rajasthan High Court has affirmed the order of the Tribunal wherein it was held that the transaction of allowing credit period to the AE for realization of its sale proceeds is not an independent international transaction but is closely linked with the sale transactions of the AE. (refer para 6.4, 6.5 and 7 on page no. 62 to 63 of CLC)*

18. The Id. AR relied on the following judicial precedents:

- PCIT vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 (Del. HC)
- Avnet India Private Limited vs. DCIT (TS-629-ITAT-2015 (Bang)-TP)
- Micro Inks Limited (ITA No. 1668/ AHD/2006)
- Open Text Corporation Indi Pvt. Ltd., Hyderabad (ITA No. 232/Hyd/2016)
- Pegasystems Worldwide India Pvt. Ltd. [I.T.A. No. 1758/HYD/2014]

C. Common policy of not charging interest on delayed payments from AEs and third parties

19. The Id. AR argued that as a policy, the assessee neither charges any interest on any delayed payments from the AEs nor does it pay any interest on delayed payments to its AEs. In fact, this policy is applicable not only for its international transactions (with its AEs) but also for its unrelated party transactions. The assessee's policy regarding receivables and

payables remains the same irrespective of whether it is dealing with its related party or with an unrelated/third party. It was argued that since the assessee does not charge any interest on delayed payments from its unrelated/third party customers, not charging any interest from its AEs is consistent with the arm's length principle if one were to apply the comparable uncontrolled price ('CUP') method.

D. Failure to give set off of receivables cleared in less than 30 days

20. It was argued that interest on receivables may be allowed to be computed only after allowing a set off/compensatory adjustment of receivables cleared by the AEs either before 30 days (or 60 days) or those received in advance. Details of the same have been furnished by the assessee at page 261 to 263 of the Paper Book.

E. Credit period restricted to 60 days on an ad-hoc basis

21. In this regard, it is submitted that the Id. DRP had granted an arm's length credit period of 60 days to the assessee which was, thereafter, taken into account by the TPO while making the impugned TP adjustment vide the Appeal Effect Order.

22. It was argued that the choice of 60 days being the arm's length credit period is on an ad hoc basis and not the result of any comparability analysis undertaken by the Ld. DRP or any industry benchmark. Further, no economic or commercial

rationale for using a credit period of 60 days has been provided by the Ld. DRP.

23. On the other hand, the Id. DR relied on the following cases:

- (a) Swiss Re Global Business Solutions India (P.) Ltd. vs. Addl./Jt./Dy./ Assistant Commissioner of Income-tax/Income-tax Officer, (NFAC) Delhi taxmann.com 417 (Bangalore - Trib.) [2022] 137
- (b) Maxim Integrated Products India Sales Pvt. Ltd. v. DCIT (2022) 140 taxmann.com 578 (Bangalore-Trib.).

24. The submission of the Id. DR is as under:

"The Id. DR argued that in both the above cases, the assessee have taken the ground that the interest on receivables is subsumed in the working capital adjustment and there is no requirement for separate adjustment. Further the assessee has also taken the ground that TPO/DRP allowed the working capital adjustment on other transactions and that adjustment subsumes the interest on receivables and there is no requirement for separate additions on account of interest on outstanding receivables. Further in all these cases, besides other cases, the assessee has relied on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Kusum Healthcare Pvt. Ltd. 398 ITR 66 (Delhi 2017. After considering the various grounds raised by the assessee in those cases, the Hon'ble Respective ITATs has rejected the assessee's contentions and considered the interest on outstanding receivables as separate international transactions which is required to be benchmarked

separately and assessee was found liable for separate adjustment on account of interest receivables. Also in all these cases the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare was duly considered and distinguished.

4. Reliance is also placed on the recent decision of the Hon'ble ITAT Hyderabad in the case of Apache Footwear India Pvt. Ltd. v. ACIT (2023) 148 taxmann.com 371 (Hyderabad-Trib.), wherein the Hon'ble Tribunal after considering the various decisions including the Hon'ble Delhi High Court decision in the case of Kusum Healthcare Pvt. Ltd. have come to conclusion that outstanding receivables by the assessee from AEs are required to be separately benchmarked and interest should be charged on the delayed period @ 6% on the receivables. Being very pertinent the relevant extract of the Hon'ble Tribunal order is reproduced below for ready reference:-

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 coordinate 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 Boeing India (P.) Ltd. (supra), 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 find any error in the same. 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 Betchel India (P.) 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.16-5-2017 in the case of Bechtel India (P.) Ltd. v. Asstt. CIT [2017] 85 taxmann.com 121 (Delhi - Trib.) 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 its 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 Arm's 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.

(viii) There are several other decisions by different Tribunals which have also taken the similar stand in favour of the department and for the sake of brevity, the same are not mentioned. Thus to summarize the following points are humbly submitted for the kind consideration of the Hon'ble Bench.

1. The issue of delay in receivables from AEs is no more res integra.

2. *After the amendment in explanation to section 92B, the outstanding receivables constitute a separate international transaction which is required to be bench marked separately.*

3. *The working capital adjustment does not subsume the invoices which are raised during the year and accordingly interest is to be separately computed for outstanding receivables.*

4. *Whether the assessee is a debt free company or not is immaterial as TPO is required to examine whether the Indian entity/assessee had supplied the products/ services to its AEs at ALP or not. Further being debt free does not mean that it can allow its funds to be utilized by AE for indefinite period of time.*

5. *As explained in above noted paras, the decision of the Hon'ble Delhi High Court in the case of Kusum Healthcare has been distinguished by several Tribunals including Delhi Tribunal."*

25. Heard the arguments of both the parties and perused the material available on record.

26. We have examined the provisions of the Act and judgments on this issue.

27. As per explanation (i)(c) of Section 92B of the Income Tax Act as amended by Finance Act, 2012 w.r.e.f. 01.04.2002, the interest receivables is an international transaction. Section 92B(i)(c) reads "*capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of*

marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business.”

28. In CIT Vs. EKL Appliances (209 Taxmann 200), it was held that the delay in receipt of the amounts has to be investigated on case to case basis and examination has to be conducted by the TPO/AO by analyzing the statistics over a period of time and to find out a pattern intended to benefit its AE. In Kusum Healthcare Pvt. Ltd. (ITA 6814/Del/2014), the Hon'ble Court held that the entire focus of the AO was on one Assessment Year and hence the pattern to justify undue benefit accorded could not be discerned.

29. In the case of Bechtel India Pvt. Ltd. Vs. ACIT (85 Taxman 121), after analyzing the case of Ameriprise India Pvt. Ltd (62 Taxman 237) and Mckinsey Knowledge Centre Pvt. Ltd. (77 Taxman 164) held that the interest on delayed payment of receivables cannot be subsumed in the working capital adjustment allowed to the assessee. In the case of Albany Molecular Research Hyderabad Research Center (P.) Ltd. vs. DCIT (126 taxmann.com 289), the Co-ordinate Bench of Hyderabad Tribunal held that interest on outstanding receivables is a separate international transaction and directed to charge interest by applying LIBOR + 200 Points. In the case of Apache Footwear India Pvt. Ltd. vs. ACIT (148 taxmann.com 371), the Co-ordinate Bench of Tribunal concluded that interest on outstanding receivables from the AE is required to be separately benchmarked and interest should be charged on the delayed period @ 6% on the receivables.

30. We also make it clear that interest cannot be charged on each and every receivable and has to be examined on case to case basis and the TPO has to enquire and analyze the statistics over a period of time to discern a pattern to come to a conclusion that the arrangement reflects an international transaction. The AO has to examine the transactions of similar in nature with non-AEs to come to a conclusion to charge interest and also to determine the basis of interest to be charged.

31. We have also examined the order in the case of Orange Business Services India Solutions (P.) Ltd. vs. DCIT (141 taxman 167) and Global Logic India Ltd [TS-810-ITAT-2022(DEL)-TP] and also the order of the Tribunal for the earlier years. Each year has to be looked into separately based on the facts of the each case. In this case, the inter company services agreement provides for charging of interest on delay of receivables after 60 days.

32. Hence, we direct that the adjustment on account of receivables be computed after following the directions of the Id. DRP. The AO has considered each and every transaction and arrived at right conclusion to determine the adjustment. While computing so, it is directed that the AO shall set off the receivables cleared by the AEs in less than 30 days or received in advance as ordered by the Id. DRP. These directions are applicable to the year in question as the chargeability on interest receivables varies from year to year. The LIBOR is an internationally recognized rate which is appropriate to

benchmark and to determine ALP on receivables. The mark-up decided by the Id. DRP is held to be reasonable. In the result, the appeal of the assessee on this ground is partly allowed.

33. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 05/03/2024.

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 05/03/2024

Subodh Kumar/NV, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR