

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.817/Del/2022
(Assessment Year: 2017-18)**

Stryker India Private Limited,
C-5, SDA Commercial Complex,
Delhi – 110 016.

vs.

DCIT, Circle 22 (2),
Delhi.

(PAN : AAEC2513F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ravi Sharma, Advocate
Ms. Shruti Khimta, AR

REVENUE BY : Shri Zafrul Haque Tanweer, CIT DR

Date of Hearing : 08.07.2024

Date of Order : 11.07.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of the Assessing Officer dated 28.01.2022 pursuant to the directions issued by the ld. DRP for the Assessment Year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. The Learned Assessing Officer 1 Transfer Pricing Officer ("Ld. AO / Ld. TPO") (following the directions of the Hon'ble DRP), erred on facts and in law, in enhancing the income of the Appellant by Rs. INR 2,85,99,447/-, on account of the Transfer Pricing ("TP") adjustment u/s 92CA(3) of the Income-tax Act, 1961 ("the Act") made by the Ld. Transfer Pricing Officer ('TPO').

In doing so, the Hon'ble DRP, Ld. AO and Ld. TPO (following the directions of Hon'ble DRP), grossly erred on facts and in law, by:-

- 1.1 enhancing the income of the Assessee by INR 2,85,99,447 on account of charging of interest on outstanding trade receivables of the Assessee and in doing so grossly erred in:
 - (a) treating the outstanding receivables from Associated Enterprises (AEs) as a separate international transaction and re-characterising the outstanding receivables as loan advanced to AE by the Assessee;
- 1.2 disregarding judicial pronouncements in India in undertaking the TP adjustments.
2. Without prejudice to the above grounds of appeal, the Ld. AO has erred in not giving effect to the directions of Hon'ble DRP by not considering "net receivables" for the purposes of computing transfer pricing adjustment in the final assessment order dated January 28, 2022.
3. That on the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under Section 270A and Section 271 B of the Act
4. That on the facts and circumstances of the case and in law, the Ld. AO erred in levying interest u/s 234B and 234C of the Act

That the above grounds of appeal are without prejudice to each other.”

3. Brief facts on the impugned issue are that the assessee, M/s. Stryker India Pvt. Ltd., is engaged in the import of medical/surgical products manufactured by its group companies and marketing and distribution of the same in India. On the impugned issue, during TP proceedings, the TPO noted that the assessee had outstanding trade receivables amounting to INR 50,34,22,761 from its AEs and that the same had not been mentioned in Form 3CEB and had also not been benchmarked in the TP study. As no

reply was received from the assessee on the above in TP proceedings, the TPO treated the delayed payments as unsecured loans advanced to the AEs and proposed to charge interest rate of 9.175% on the basis of prevailing average SBI Base Rate during the year. Further, as no details were provided by the assessee on the date of payment received, the entire amount of INR 50,34,22,761 was treated as loan advanced to the AEs.

4. Upon assessee's objection, ld. DRP gave the following objections :-

“4.4 As regards the adoption of the SBI Base Rate by the TPO, it is well settled that LIBOR being an internationally recognized rate is the appropriate benchmark interest rate which conforms to the arm's length standard under the CUP method for benchmarking receivables/loans denominated in foreign currency. The LIBOR rate is therefore the appropriate uncontrolled comparable to be applied to the assessee's transactions for the relevant period. The TPO is directed to verify the claim of the assessee that the said outstanding receivables are denominated in foreign currency. If it is found that the invoices are raised in foreign currency, the applicable rate shall be LIBOR plus as per the credit rate of the ASSESSEE, in line with judgment of the Hon'ble Delhi High Court in the case of M/s. Cotton Naturals.

4.5 As regards the period of the delay to be considered for charging interest on receivables, DRP has held in various cases that considering normal trade practices, a delay of 60 days is reasonable for receipt of payments against invoices/transactions. The AO/TPO shall net off the payables and charge interest on net receivables. The AO/TPO is directed to recomputed the interest chargeable on outstanding net receivables accordingly.”

5. Against the assessment order passed in this case, assessee has filed this appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel for the assessee prayed that DRP has clearly directed the AO/TPO to net off the payables and charge interest on net receivables. AO/TPO was directed to recompute the interest chargeable accordingly. But ld. Counsel for the assessee submitted that this has not been done by the AO/TPO. As per the exercise to be done, no adjustment is required.

7. Upon careful consideration, we find considerable cogency in the submissions of the ld. counsel for the assessee. Accordingly, we remit the issue to the file of AO/TPO to properly apply the DRP's directions on this issue and decide as per law after giving the assessee an opportunity of being heard.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 11th day of July, 2024.

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 11th day of July, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**