

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

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 497/DEL/2022 (A.Y 2017-18)**

Fare Portal India Pvt. Ltd., Registered address: G-56, 03 <sup>rd</sup> Floor, Green Park Main, New Delhi – 110 017. Communication address: 3 NPL Apartments, Vikas Puri, New Delhi – 110 018. <b>PAN No. AAACF8769L</b> <b>(APPELLANT)</b>	Vs.	DCIT,  Circle : 7 (1)  New Delhi.  <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Shri Himanshu S. Sinha, Adv</b>
<b>Department by:</b>	<b>Shri Mahesh Shah, CIT (DR) &amp; Sh. Kanv Bali, Sr. DR</b>

<b>Date of Hearing</b>	<b>03.05.2024</b>
<b>Date of Pronouncement</b>	<b>26.07 .2024</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee for Assessment Year 2017-18 against the assessment order dated 26/02/2022 u/s 143(3) r/w Section 143(3) of the Income tax Act, 1961, passed by the Additional/Joint/Deputy/Assistant Commissioner, New Delhi.

2. The assessee has raised the following ground of appeal:-

*“1. On the facts and in law, the Honourable Dispute Resolution Panel (‘Hon’ble DRP), the Learned Transfer Pricing Officer (‘Ld. TPO’) and the Ld. AO (hereinafter collectively to be referred as “Revenue”) erred in making an adjustment of INR 107,291,139 to the total income of the Appellant on account of the difference in the arm’s length price (‘ALP’) of its international related party transactions under the provisions of Section 92CA(4) of the Act.*

***Adjustment of INR 107,009,251 relating to international transaction pertaining to rendering back-end web based travel and ticketing services using information technology***

*2. On facts and in law, the Revenue erred in rejecting the economic analysis carried out by the Appellant in the Transfer Pricing (‘TP’) documentation, modifying the same with his own analysis and in doing so:*

*2.1 erred in not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case.*

*2.2 contravened section 92C of the Act read with Rule 10B(2) of the Income Tax Rules, 1962 (‘the Rules’) by selecting companies that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed.*

2.3 *contravened section 92C of the Act read with Rule 10B(2) of the Rules, by rejecting the comparable companies selected by the Appellant in the economic analysis undertaken in the TP documentation which was prepared and maintained in compliance with section 92D of the Act read with Rule 10D of the Rules.*

3. *On facts and in law, the Revenue erred selecting companies (Akbar Travels Of India Pvt. Ltd., TC Tours Ltd. and Hind Musafir Agency Ltd.) with existence of related party transactions which is in violation of section 92C of the Act read with rule 10B(2) of the Rules.*

4. *On facts and in law, the Revenue erred in not considering data relating to FY 2016-17 (i.e. current year data) in addition to prior two years' data of comparable companies thereby grossly violating the provisions of Rule 10B(5)(f) of the Rules.*

5. *On facts and in law, the Revenue erred in incorrectly computing the net cost-plus margins including the working capital adjusted margins of the comparable companies selected by the Ld. TPO and not even sharing back-up calculations with the Appellant.*

6. *On facts and in law, the Revenue erred in not allowing a risk adjustment under Rule 10B(l)(e) of the Rules for determination of the ALP to account for differences in the risk profile of the Appellant, a limited risk service provider vis-a-vis the comparable companies, that are full-fledged risk*

*bearing entrepreneurs.*

***Adjustment of INR 281,888 relating to treatment of outstanding receivables from AE as “unsecured loans” and imputing interest thereon***

7. *On facts and in law, the Revenue erred in making an adjustment of INR 281,888 by treating delayed payments towards outstanding receivables from the AEs as unsecured loans and imputing interest thereon.*

8. *On facts and in law, the Revenue erred in disregarding the fact that outstanding receivables from the AEs is not a separate transaction but a consequence of international transactions.*

9. *On facts and in law, the Hon’ble DRP erred in not appreciating that the working capital adjustment allowed to the Appellant subsumes the impact of any additional return on account receivables.*

10. *On facts and in law, the Revenue erred in arbitrarily applying a markup of 400 basis points on LIBOR for the purpose of computing notional interest on outstanding receivables.*

11. *On facts and in law, the Revenue erred in ignoring that the Appellant is a debt-free company, has no interest liability towards external borrowings and thereby no undercharging of real income.*

12. *On facts and in law, the Revenue erred in selectively picking up case with collection of debts beyond 30 days without appreciating that in a number of cases the Appellant either received funds in advance or collected invoices much before expiry of 30 days period leading to an average collection period of 17.16 days overall.*

**General Grounds**

13. *On facts and in law, the Ld. AO has erred in initiating penalty proceedings under section 274 read with section 270A of the Act.*

*The Appellant prays for leave to add, alter, rescind from or withdraw any of the above grounds of appeal at or before the time of hearing of the appeal.*

3. Brief facts of the case are that the assessee, Fare Portal India Private Limited (“FPIPL” or “The Assessee”) is a wholly owned subsidiary of Fare Portal Inc., USA and provides support services including call center, ticketing, queue, priority customer services and SAT. For the Assessment Year 2017-18, the assessee filed its return on income on 30.11.2017 reporting a total income of Rs.30,82,77,100/-. During the Financial Year 2016-17, the assessee had entered into the following international transactions:

<b>S.No</b>	<b>Type of International Transaction</b>	<b>Amount (Rs.)</b>
1	Rendering Back End Web Based Travel and Ticketing Services From India using	276,40,59,346

	Information Technology	
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4. The Transfer Pricing Officer (TPO) proposed adjustments of Rs.11,80,17,182/- on account of provision of back-end web-based travel and ticketing services and Rs.2,81,888/- on account of interest on delayed collection of receivables. The Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/Income-tax Officer, National e-Assessment Centre, Delhi ("AO") passed a draft assessment order on 20-04-2021 making a total addition of Rs.11,82,99,070/-.

5. Against the draft assessment order dated 20-04-2021, the assessee filed objections before the DRP. The Ld. DRP confirmed the order of the TPO/AO but granted benefit of working capital adjustment to the assessee vide order dated 19-01-2022. Consequently, the Ld. AO gave effect to the directions of the Ld.DRP, reducing the adjustment on account of provision of back-end web-based travel and ticketing services to Rs.10,70,09,251/- and retaining the adjustment of Rs.2,81,888/- on account of interest on delayed collection of receivables vide order dated 26/02/2022.

6. Aggrieved by the final Assessment Order dated 26/02/2022 the assessee has preferred the present Appeal on grounds mentioned above.

7. The Ground No. 1 of the Assessee is general in nature, which requires separate adjudication.

8. The Grounds of Appeal No. 2 to 4 regarding adjustment of Rs. 10,70,09,251/- relating to international transaction pertaining to rendering back-end web-based travel and ticketing services using

information technology.

9. Facts in brief are that, the assessee is a captive service provider to Fare Portal USA and rendered Information Technology enabled web-based travel and ticketing services during the year. For provision of this service, the assessee earned net cost plus margin (NCPM) of 10.48%. This transaction was benchmarked by the assessee using TNMM and determined to be at arm's length.

10. The Ld. TPO rejected two comparable companies (Make My Trip India Pvt. Ltd and PL World ways Ltd.) out of 7 companies selected by the assessee on grounds of functional dissimilarity and introduced 4 new comparables (Hello Information Services Pvt. Ltd., 24/7 Customer Pvt. Ltd., TC Tours Ltd., Kerala Travels Inter Serve Ltd.). The TPO determined the arm's length profit margin at 15.20% and proposed an adjustment of Rs.11,80,17,182/- on this account. After the directions of the Ld.DRP, working capital adjustment was allowed and the arm's length profit margin was recomputed at 14.76% and adjustment on this account was reduced to Rs.10,70,09,251/-.

11. The Ld. Counsel for the Assessee argued for exclusion of 4 comparables ie: TC Tours Ltd., Hind Musafir Agency Ltd., Akbar Travels of India Pvt. Ltd. and Kerala Travels Inter Serve Ltd., which are adjudicated hereunder:

**TC Tours Ltd.**

12. The Ld. TPO had included the TC Tours Ltd. as the same is functionally comparable and clears all the filters set by him. The assessee objected to the inclusion of the said comparable as it fails the Related Party Transactions ("RPT") filter of 25% and it is functionally dissimilar. The Ld. DRP upheld the inclusion of the comparable.

13. Before us, the Ld. AR submitted that the company is also in the business of travel talent management and has a Centre of Learning unlike the assessee which is a back-office service provider. Further submitted that, the said company made payments of Rs.4.47 Crore to outsourced staff and has a different business model from the assessee.

14. The Ld. DR placed reliance on the orders of the TPO and DRP and submitted that the RPT calculations provided by the assessee are incorrect and drew our attention to Page numbers 326 of the paper book in support of his argument. The Ld. DR submitted also that the main source of revenue of the company is from tour operations and ticketing which is also the business of the assessee. Our attention was also drawn to the TP Study Report in which it was claimed by the assessee that it is also running a web-portal for ticketing. The Ld. DR also stressed that the expenses incurred for outsourcing is quite insignificant looking at the total expenses incurred by the assessee.

15. We have heard the rival contentions, perused the material on record and we find merit in the arguments of the Ld. CIT(DR) that the company is engaged in a similar business as the assessee. The expenses incurred for outsourcing are quite insignificant as compared to the total expenses of the company. Further, these services being rendered are routine in nature and do not require any high technical/professional competency. Therefore, would not have significant impact on the business model of the comparable company.

**Hind Musafir Agency Ltd and Akbar Travels of India Pvt. Ltd.**

16. The assessee included both these comparables in its TP Study Report, but later in the TP proceedings, objected to their inclusion as they fail the RPT filter. The TPO held that these comparables satisfy the

RPT filter and that they are functionally comparable. The Ld. DRP upheld the inclusion of the comparables.

17. Before us, the ld. AR submitted that the Assessee's RPT calculations were wrongfully rejected by the TPO and DRP. The ld. DR submitted that the assessee has computed the RPT erroneously.

18. We have heard the rival arguments. The RPT calculations shown by the comparable companies in its annual accounts are unreliable as the RPT revenue disclosed is more than 100% of the total revenue shown by the company in its P&L Account, which is not possible. The issue of calculation of RPT was clarified by a coordinate bench in the case of M/s Nokia India Pvt. Ltd [2014] 52 taxmann.com 492 Delhi-Trib. Wherein it is held as under:

*"17. Now, we take up the second argument of the composition of numerator and denominator. Ratio of the RPTs represents the proportion of transactions with the associated enterprises (numerator) vis-a-vis the total of transactions (denominator). In order to decide that what should constitute the contents of numerator and denominator for the purposes of finding out the percentage of RPTs, it is relevant to note the logic behind applying this filter. It is manifest that the aim of the transfer pricing regime is to ensure that the international transactions are recorded at arm's length price. This is done under the TNMM by comparing the profit earned from the international transaction with that earned by the comparable independent parties in an uncontrolled situation. Thus, while choosing comparables, it must be ensured that the profit earned by them correctly reflects true profit as is earned by an enterprise from an independent third party. If such a chosen*

*company, though functionally comparable, has also entered into international transactions beyond a particular percentage with the related parties, it is quite possible that its overall profit may have been distorted due to such transactions rendering it as incomparable. That is why, this filter is applied to make certain that a company sought to be considered as comparable should have its profit uninfluenced by the impact of the related party transactions.*

*18. In view of the foregoing discussion, it is manifest that the transactions which do not impact the profitability, such as loan given or taken or other items finding place in the balance sheet, can have no place either in the numerator or the denominator of this formula. However, any income or expenditure resulting/relating from/to or likely to result/relate from/to such items of assets or liabilities, should not be confused with the per se international transactions finding place in the balance sheet of the company calling for exclusion.*

*19. The numerator of this formula consists of all the related party transactions of a company sought to be chosen as comparable which affect the profit earned directly from operations. If, however a related party transaction is of such a nature which does not directly affect or insignificantly affects the profit earned from the bare profit producing activity, then it should not be taken into consideration. The reason for the exclusion of such related party transactions from the numerator is that they have not at all or very insignificantly affected the operating profit of such a company, which is the driving force for the purposes of making a comparison under the TNMM. To cite an example,*

*the RPT of rent paid by a company which is engaged in the business of trading or manufacturing cannot constitute a part of the numerator, because transaction of rent payment has no direct bearing on the trading or manufacturing activity.*

*20. Now, we take up the contents of the denominator of this formula. The percentage of numerator to denominator can be calculated only when the contents of a part representing the RPT of a particular nature is seen with reference to the contents of whole of that nature. Both the numerator and denominator have to have the same nature of contents. This can be done by segregating transactions of one nature, like, comparing RPT of purchase with the total purchases or RPT of sales with the total amount of sales of the company. It is also possible to club small transactions of a distinct but related income producing activity with a large transactions of major income producing activity as one unit, both in the numerator as well as in the denominator. For example, RPT of major sale transaction and minor job income can be combined to find out the percentage of RPTs with the total of sales and job income taken together. In a given case, similar to what is prevailing before us, where the RPTs comprise of purchase, sales, small non-operating expenses and service income, we can preferably find out two percentages of RPTs by ignoring the RPT of payment of non-operating expense of rent, which does not directly affect the profit earned from trading activity. First percentage of RPT purchases with total purchases and second of RPT sales and service income as one unit with the total of sales and service income again as one unit. The decision as to whether such a company be included in the list of comparables by applying the filter of*

*more than 25% RPT, would depend on the outcome of two such percentages of RPTs. If either of the two breaches the 25% threshold, then the company will cease to be comparable. If however, both the percentages are less than 25%, then the company would be liable for inclusion in the list of comparables. We want to make it clear that the above discussion about the components of RPT formula is relevant only in the case of an assessee who is a Trader/Distributor and not a Service provider/receiver or a Manufacturer. Since we are concerned in the extant case with the application of RPT filter in the case of a Trader, we have restricted ourselves only to a trader and have thus desisted from examining the contents and other relevant considerations in the application of this filter to a Service provider/receiver or a Manufacturer.”*

19. Considering the above ratio and in the facts and circumstances of the case, we remand back all these three comparables -TC Tours Ltd., Hind Musafir Agency Ltd and Akbar Travels of India Pvt. Ltd - to the AO/TPO with a direction to call for information from these companies and recalculate the RPT following the guidelines of the coordinate bench. The assessee shall provide due information necessary for the correct calculations.

**Kerala Travels Inter Serve Ltd.**

20. The TPO included Kerala Travels Inter Serve Ltd as it is functionally comparable and clears all the filters set by him. The assessee objected to the inclusion of this comparable as it is functionally dissimilar and has no segmental data for various services. The Ld. DRP upheld the inclusion of the comparable.

21. Before us, the ld. AR submitted that the company has incurred marketing and advertisement expenses, while the assessee is a captive service provider which does not incur such expenses. The ld. AR also argued that the TPO has failed to follow a consistent approach for selection of comparables as the TPO rejected MakeMyTrip India Pvt. Ltd., which, is similar to Kerala Travels Inter Serve Ltd. and also engaged in offering package tours. The ld. DR placed reliance on the orders of the TPO and DRP.

22. We have heard the rival submissions and the perused the materials on record. The Kerala Travels Inter Serve Ltd. earns 55% of its revenue from airlines commission and 25% from tour operations, while the assessee earns revenue from provision of IT Services. Further, the company has incurred advertising and marketing expenses unlike the assessee. Hence, it cannot be held as a good comparable. We therefore direct the TPO/AO to exclude Kerala Travels Inter Serve Ltd. from the list of comparables. **Accordingly the Ground 2 to 4 are partly allowed in favour of the assessee.**

23. Ground 5 is regarding correction of Net Profit Margin on Cost ('NCP') and working capital adjusted NCP of the Companies.

24. The Assessee has raised the ground that Revenue has incorrectly computed the margins including the working-capital adjusted margins of the comparable companies. On this, the Ld. DR pointed to Page 35 of the TPO's order wherein the same objection was raised by the assessee and discussed by the TPO. The TPO did not accept the Assessee's objections as no detailed calculations with supporting documents such as Annual Report and Financials were furnished by

the assessee.

25. We therefore deem it appropriate to remand the said issue to the file of AO/TPO with a direction to recalculate margins of the comparable companies after providing an opportunity to the assessee to provide necessary evidence. **Accordingly Ground No. 5 of the Assessee is allowed for statistical purposes.**

26. The Ground 6 is against not allowing the benefit of Risk adjustment by the Ld.TPO.

27. The Assessee raised the above ground that Revenue has not allowed risk adjustment under Rule 10B(1)(e) of the Income Tax Rules. The Ld. AR has submitted that risk adjustment has to be provided as the assessee is a limited risk service provider unlike the comparables which take on entrepreneurial risk.

28. We find that the TPO has rejected the Assessee's submissions on risk adjustment considering the same is highly subjective. However, we note that the TPO has not specifically dealt with the three approaches proposed by the assessee for providing risk adjustment. Therefore, we deem it appropriate to remand the issue of allowing risk adjustment to the file of TPO with a direction to pass a speaking order after allowing the assessee due opportunity of hearing. **Accordingly we allow the Ground No. 6 of the Assessee for statistical purposes.**

29. The Ground 7 to 12 are relate to the adjustment of Rs.2,81,888/- made by the TPO on account of outstanding receivables.

30. The brief facts are that, the TPO allowed a credit period of 30 days for receivables and imputed interest at a rate of LIBOR+300 bps beyond this time period. The adjustment worked out to be

Rs.2,81,888/-. The Ld. DRP upheld the adjustment.

31. Before us, the Ld.AR has objected the said adjustment on the grounds that outstanding receivables are not an international transaction and that the working capital adjustment subsumes the impact of any return on outstanding receivables. The Ld.AR submitted that the assessee is a debt-free company and thereby there is no under-charging of real income. The Ld. AR took support from the judgments of Hon'ble High Court of Delhi in *Pr.CIT vs. Kusum Healthcare Pvt Ltd. (ITA No. 765/2016)* and *Bechtel India Pvt Ltd. vs. DCIT.*

32. The Ld. DR submitted that after the Finance Act 2012 inserted Explanation to Section 92B of the Act, outstanding receivables are an international transaction. Further Ld. DR relied on orders of the Coordinate Benches in *Techbooks International Pvt.Ltd vs. DCIT (ITA 240/Del/2015)* and *Ameriprise India Pvt. Ltd. vs. ACIT(ITA 2010/Del/2014).*

33. We have heard the rival submissions and also verified the materials on record. After insertion of Explanation to Section 92B of the Act vide Finance Act 2012 with retrospective effect from 2002, the outstanding receivables is an international transaction that needs to be benchmarked separately. The Coordinate Bench in the case of *Ameriprise India (supra)* held as under:

*“22. On going through the relevant part of the Explanation inserted with retrospective effect from 1.4.2002, thereby also covering the assessment year under consideration, there remains no doubt that apart from any long-term or short-term lending or borrowing, etc., or any type of advance payments or deferred payments, ‘any other debt arising during the course of business’ has also been expressly*

*recognized as an international transaction. That being so, the payment/non-payment of interest or receipt/non-receipt of interest on the loans accepted or allowed in the circumstances as mentioned in this clause of the Explanation, also become international transactions, requiring the determination of their ALP. If the payment of interest is excessive or there is no or low receipt of interest, then such interest expense/income need to be brought to its ALP. The expression 'debt arising during the course of business' in common parlance encompasses, inter alia, any trading debt arising from the sale of goods or services rendered in the course of carrying on the business. Once any debt arising during the course of business has been ordained by the legislature as an international transaction, it is, but, natural that if there is any delay in the realization of such debt arising during the course of business, it is liable to be visited with the TP adjustment on account of interest income short charged or uncharged. Under such circumstances, the contention taken by the assessee before the TPO that it is not an international transaction, turns out to be bereft of any force."*

34. The Hon'ble High Court in *Kusum Healthcare (supra)* has qualified the said ratio by holding that not every receivable appearing in accounts is an international transaction and that there has to be a proper enquiry by the TPO to discern a pattern intended to benefit the AE. The Hon'ble High Court held as under:

*"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. In other words, there has to be a proper inquiry by the TPO by analyzing the statistics over a period of time to discern a pattern which would indicate that vis-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way. 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-characterised the transaction. This was clearly impermissible in law as explained by this Court in CIT v. EKL Appliances Ltd. (2012) 345 ITR 241(Delhi).”*

35. The Order of Coordinate Bench in *Bechtel India Pvt. Ltd. vs DCIT* (ITA No. 1478/Del/2015) (“*Bechtel India*”) has been upheld by the Hon’ble High Court of Delhi. In *Bechtel India (supra)*, the TPO has imputed interest on receivables treating the delayed payments as loan facility advanced to the AEs., which is apparent from the order of the Coordinate Bench as under:

*“14.7 During the course of the proceedings before TPO, he observed that payments on account of sales to the AE, is realized after a significant time period. The ld.TPO ascertained that payment for invoices raised by the assessee has not been paid within the stipulated time as provided in the service agreement and **accordingly treated the delayed payments as loan facility advanced to the AE’s**. The ld.TPO charged 14.88% interest for the delayed period, beyond a period of 30 days. The ld. DRP upheld the adjustments made by the ld.TPO.”*

*(Emphasis added)*

36. In the instant case, the TPO has considered the outstanding receivables as an international transaction as per Section 92B of the Act and benchmarked the transaction at an interest rate of LIBOR+300 bps. The TPO, unlike in *Bechtel India (supra)* the revenue did not consider the outstanding receivables as a loan facility advanced to the AEs. Therefore, the fact that the assessee is a debt-free company has no relevance to the present facts of the case. In light of this, we are of the considered opinion that the orders of Coordinate Bench and Hon’ble High Court in *Bechtel India* are not applicable in the instant case.

37. The ld. AR has also submitted that the TPO erred in selectively picking up instances of credit period beyond 30 days without considering other instances where the assessee received funds in advance or much before expiry of 30 days. The ld. AR also provided calculations that show that the money received as advance from the AEs/payable to AEs is more than the receivables from the AEs. Since the payables are more than the receivables, there is no occasion for the TPO to charge interest. Therefore, the TPO/AO is directed to delete the adjustment made on account of outstanding receivables. **Accordingly, Grounds 7 to 12 are allowed.**

**38. The Ground No 13 being consequential in nature, the same is dismissed without adjudicating.**

**39. In the result, the appeal of the assessee in ITA No. 497/DEL/2022 is partly allowed for statistical purposes.**

Order pronounced in the open court on : 26<sup>th</sup> July, 2024.

**Sd/-**

**( G. S. PANNU )  
VICE PRESIDENT**

Dated : 26/07/2024

*\*R.N\* Sr. PS*

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI