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

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
ITA No.3465/Del/2024, A.Y.2017-18

Avaya India Private Limited 202, Platina, 2nd Floor, Plot No. C-59, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai-51 PAN: AAECA3592N	Vs.	Assistant Commissioner of Income Tax, Circle-1(1), CR Building, New Delhi
(Appellant)		**(Respondent)**

Appellant by	Dr. Shashwat Bajpai, Advocate
Respondent by	Shri Dharamvir Singh, CIT(DR)

Date of Hearing	29/10/2024
Date of Pronouncement	26/11/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the assessee is directed against the order dated 30.06.2024 passed under section 264/143(3)/144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') by the Assistant Commissioner of Income Tax, Circle-1(1), Delhi (hereinafter, the 'AO').

2. Following grounds are taken in this appeal:

"***Order passed by the learned AO dated 30 June 2024 is bad in law***

1.1 That on the facts and circumstances of the case and in law, the assessment order framed by the Assistant Commissioner of Income Tax Circle 1(1), Delhi ("the learned AO") pursuant to the order passed by the Principal Commissioner of Income Tax ("learned PCIT") is barred by limitation and thus, void ab-initio.

1.2 That on the facts and circumstances of the case and in law, the time limit to pass order pursuant to directions of Dispute Resolution Panel ("Hon'ble DRP") has already lapsed.

Transfer pricing ("TP") adjustment in relation to notional interest on overdue receivables [INR 7,00,24,912]

2.1 That on the facts of the case and in law, the Transfer Pricing Officer ("learned TPO") / Hon'ble DRP have erred, in making an adjustment of INR 7,00,24,912 to the total income of the Appellant in respect of notional interest on overdue receivables.

2.2 That on the facts of the case and in law, the learned TPO/ Hon'ble DRP have erred in making the said adjustment despite Appellant being a debt free company and no TP adjustment can be made for overdue receivables as upheld by Hon'ble Income Tax Appellate Tribunal in Appellant's own case for AY 2014-15 (ITA No. 7290/Del/2018), AY 2015-16 (ITA No. 9131/Del/2019), AY 2016-17 (ITA No. 466/Del/2021) and AY 2018-19 (ITA No 702/Del/2022).

2.3 That on the facts of the case and in law, the learned TPO/Hon'ble DRP have erred in re- characterizing the inter-company receivables as a separate international transaction of an unsecured loan and imputing interest on such transaction.

2.4 That on the facts of the case and in law, the learned TPO/Hon'ble DRP have erred in not appreciating that inter-company receivables arising out of provision of services by the Appellant to its AE is closely linked to such transaction and no separate TP adjustment is warranted.

2.5 That on the facts of the case and in law, the learned PO/Hon'ble DRP have erred in not appreciating the fact that the Appellant has provided services to non-AEs wherein no interest is charged on overdue receivable by the Appellant.

2.6 That on the facts of the case and in law, the learned TPO / Hon'ble DRP have erred in determining the arm's length interest

rate for inter-company receivables at LIBOR plus 400 basis points on an arbitrary basis without any cogent reasons.

2.7 That on the facts of the case and in law the learned TPO/Hon'ble DRP have erred in granting the credit of period of 60 days instead of 90 days having regard to the provisions of Section 92CE of the Act.

2.8 That on the facts of the case and in law, the learned TPO/Hon'ble DRP have erred, by not appreciating that Appellant has earned more than arm's length return in its other segments, and such excess remuneration should be set off with the proposed adjustment.

Claim for refund of excess Dividend Distribution Tax ("DDT")

3.1 That on the facts and circumstances of the case and in law, the learned AO has erred in not allowing additional claim made by the assessee for refund of excess DDT, amounting to INR 15,17,84,747, paid by the assessee towards dividend distributed to Sierra Communication International LLC, USA ("Sierra US") and Avaya International Enterprises Limited ("Avaya International") for AY 2017-18.

The above grounds and/or sub-grounds are without prejudice to each other.

The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

The Appellant prays that appropriate relief be granted based on the above grounds of the facts and circumstances of the case."

2. The facts, in brief, relevant for deciding this appeal are that the appellant/assessee is engaged in the business of software services. It filed its original income tax return (hereinafter, the 'ITR') for the AY 2017-18 on 30.11.2017 declaring income of Rs.113,81,26,250/-. Later on, the said ITR was revised on 29/03/2018 at income of Rs.110,54,94,040/-. The case was picked up for scrutiny. The

International Transactions with Associated Enterprises (hereinafter, the 'AE') as mentioned in Form 3 CEB filed by the appellant/assessee were referred to the Transfer Pricing Officer (hereinafter, the 'TPO') as per the provisions of section 92CA (1) of the Act for determination of Arm's Length price in relation to the international transactions. Subsequently, the order under section 92CA(3) of the Act was passed by the TPO on 27.01.2021 attributing an adjustment of Rs.55,50,66,879/- as the difference in Arm's Length Price of international transactions. Consequentially, a draft order was passed determining income at Rs.156,05,60,919/- (Rs.55,50,66,879/- plus income of Rs.110,54,94,040/- as per the revised ITR) under section 143(3) r.w.s. 144C of the Act. Aggrieved, the appellant/assessee came before the DRP. The AO, after receipt of the DRP's order, passed the final order. Later, the Principal Commissioner of Income Tax, vide order passed under section 264 of the Act, directed the AO to pass the order incorporating TPO's amended order dated 23.11.2021. Therefore, the AO, in pursuance of the order under section 264 of the Act, passed the impugned order, dated 30.06.2024, under section 264/ 143(3) /144C (13) of the Act. Aggrieved, the assessee filed the present appeal.

3. At the outset, the Ld. Counsel submitted that the first issue; i.e. the impugned order is bad in law, is general in nature; hence the same

did not require specific adjudication. Hence, the ground no. 1.1 and 1.2 stand dismissed.

4. The Ld. Counsel further submitted that the third issue; i.e. the claim for refund of excess DDT, had been decided in favour of the Revenue by the ITAT (SB) in the case of Total Oil India Pvt. Ltd. in ITA NO.6997/MUM/2019 (A.Y.2016-17); therefore, this issue may be decided accordingly keeping in view of the material available on the record. In view of the finding of the ITAT (SB) in the case of Total Oil India Pvt. Ltd. (supra), we dismiss the ground no. 3.1.

5. The Ld. Counsel further submitted that the second issue; i.e. the transfer pricing adjustment of Rs.7,00,24,912/-, had been decided by the Tribunal in favour of the appellant/assessee in preceding years; AY: 2014-15 (ITA No.7290/Del/2018), AY: 2015-16 (ITA 9131/Del/2019), AY: 2016-17 (ITA 466/Del/2021) and AY: 2018-19 (ITA 702/ Del /2022); hence, it was a covered matter as there was no difference in facts of this year with facts of preceding years. He thus, prayed for the relief. He further put emphasis on the fact that the appellant/assessee was a debt free company; hence, no such pricing adjustment was called for. He also drew our attention to the fact that the appellant/assessee had never charged interest on trade receivables of third parties; other than AE. Hence, there was no need for any separate bench marking on

this score. He further contended that the inter-company receivables could not be termed as a separate international transaction for working out the notional interest thereon. He also raised the issue of interest rate @ LIBOR+400 basis point. The Ld. Counsel requested for specific adjudication of ground no. 2.3 to 2.8 in case the Bench was of different view. Further, the Ld. Counsel also requested for applying Rule 10CB of the Income Tax Rules in case the Bench held that the decisions of the Coordinate bench in the appellant/assessee's cases of preceding years were not applicable. He also requested for setting off of excess remuneration with the transfer pricing adjustment of Rs.7,00,24,912/- as the appellant/assessee had derived more income in other segments.

6. Further, the Ld. Counsel, placing reliance on the decision of the Hon'ble Delhi High Court in the case of Kusum Health Care Pvt. Ltd. in ITA 765/2016 (date of order: 25.04.2017), contended that the interest on trade receivables was not liable to any transfer pricing adjustment. Hence, he requested for deletion of the transfer pricing adjustment of Rs.7,00,24,912/-.

7. The Ld. CIT-DR submitted that the appellant/assessee's grievance relating to the transfer pricing adjustment of Rs.7,00,24,912/-.The Ld. CIT-DR submitted that the appellant /assessee was not a debt free company; therefore, the adjustment could

be made in this case on account of interest receivable on outstanding/overdue trade receivables from the AE. The argument of the Ld. Counsel that the appellant/assessee was a debt free company was contrary to the facts of the case. He further submitted that the argument of the Ld. Counsel had not have any merit in view of the order dated 16.05.2017 of the coordinate bench in the case of Bechtel India (P.) Ltd. [2017] 85 taxmann.com 121 (Delhi - Trib.) [16-05-2017]. He further, contended that the interest on delayed realization of receivables from AEs was in the nature of international transactions and therefore, it required separate benchmarking. To buttress his arguments, the Ld. CIT-DR placed reliance on the decision of the Hon'ble High Court of Bombay in the case of Patni Computer Systems Ltd.(2013) 33 Taxmann.com 3 and the order of the coordinate bench in the case of Techbooks International (P.) Ltd. [2015] 63 taxmann.com 114.

8. The Ld. CIT-DR drew our attentions to the Schedule No. 24 of Financial Statements (Page no. 28 of the Paper Book (PB) submitted by the appellant/assessee), which clearly showed that the finance cost borne by the appellant/assessee included the interest paid to trade creditors and interest on unearned revenue. Hence, he contended that the appellant/assessee was not a debt-free company as it had paid interest on trade creditors, etc. There were liabilities including trade

payables in the Balance Sheet as on 31.03.2017 (page number 2 of the PB). The Ld. CIT-DR further submitted that the Profit & Loss Account (Page no 1 of the PB) and Balance Sheet (Page no. 20 of the PB) of the appellant/assessee of the relevant year showed the operational revenue of Rs.802.47 Crores and Rs.761.59 Crores in FY 16-17 and FY 15-16 respectively, whereas the trade receivables were Rs.442.68 Crores and Rs.647.73 Crores as on 31.03.2017 and 31.03.2016 respectively. He further categorically submitted that the trade receivables from Avaya Inc (Ultimate Holding Company, AE) as on 31.03.2017 was at Rs.374.14 Crores (Out of trade receivables of Rs.802.47 Crores). He further emphasized on the fact that the trade receivables from the related parties were 55.16% and 85.04 % of aggregate operational revenue for FY 16–17 and FY 15–16 respectively. He further submitted that the trade receivables from the related party as on 01.04.2015 was at Rs.493.56 Crores. With the help of huge quantum of trade receivables of three years; FYs 2014-15, 2015-16 and 2016-17; the Ld. CIT-DR submitted that the quantum of funds stuck up with the AEs were very high, which could not put to use for business purposes of the appellant/assessee company. Hence, the appellant/assessee was burdened with the finance cost. In case the same would have been timely realized, the performance of the appellant/assessee company

would have been much better. No prudent business man would allow blocking of its huge fund with any independent party over the years.

9. The Ld. CIT-DR contended that the AO had not made any transfer pricing adjustment on any issue other than the interest on overdue receivables from the AEs; therefore, the facts of the case warranted the transfer pricing adjustment. It was further highlighted by the Ld. CIT-DR that the note below schedule 6 on trade receivables (Page No. 20 of the PB) revealed that the ultimate holding company of the appellant/assessee i.e. Avaya Inc, which was an AE having significant trade receivables outstanding, voluntarily filed a petition under Chapter XI of United States of America Bankruptcy Code on 19.01.2017. Keeping in view this fact, the appellant/assessee had mentioned in said note that there was uncertainty with regard to timing of recovery of the trade receivables from Avaya Inc as Avaya Inc was not legally permitted to remit balances lying with it to the appellant/assessee company until it remained under Chapter XI. This was a new development during the relevant year. Further, the CIT-DR drew our attention to the fact that the amount of trade receivables from Avaya Inc. kept increasing even after it filed petition for bankruptcy. This clearly established that the appellant/assessee was working for its holding company and was taking business decisions in favour of its holding company. The Ld.

CIT-DR, highlighting the above facts, submitted that the AO was fully justified in making transfer pricing adjustments in this case.

10. The Ld. CIT-DR submitted that the Tribunal's orders in the assessee's own case as mentioned above were not applicable in the present case as these were distinguishable on the facts. It was brought to our notice that the Tribunal, while adjudicating the issue in favour of the assessee, had relied upon decision dated 21.07.2016 of the Hon'ble High Court of Delhi in the case of M/s Bechtel India Pvt. Ltd. (BIPL) for AY 2010-11 (ITA 379/2016), whose facts showed that BIPL was a debt free company and it had not paid any interest to its creditors or suppliers on payables. Whereas the facts of the present case were contrary to those of Bechtel India Pvt. Ltd. for AY 2010-11 (ITA 1478/Del/2015). The Ld. CIT-DR further submitted that the facts of the instant case as mentioned above showed that the appellant/assessee had paid interest to its trade creditors over the years including relevant year and the trade receivables from Avaya Inc, AE were very high over the years.

11. The Ld. CIT-DR further drew our attention to the fact that the Coordinate bench, in its subsequent order dated 16.05.2017 for AY 2012-13 in the case of Bechtel India Private Limited, [2017] 85 taxmann.com 121 (Delhi - Trib.) had occasion to examine the same

issue again and after taking into consideration all contentions put forth by both the parties including earlier years' orders, judgment dated 21.07.2016 of the Hon'ble High court of Delhi in case of BIPL for AY2010-11 and Explanation inserted by the Finance Act, 2012 to Section 92B of the Act decided the issue in favour of Revenue.

12. In view of the above facts and submissions, the Ld. CIT-DR prayed for dismissal of the appeal and upholding the impugned order.

13. We have heard both the parties and have perused the material available on the record. We also perused the above referred case laws. The facts of the present case as mentioned above are held distinguishable from the facts of the appellant/assessee's cases of earlier years. The finance cost borne by the appellant/assessee over the years clearly establish that it is not a debt-free company. It is very surprising to note that why the appellant assessee did transactions, contrary to the decision of a prudent businessman, with its holding company when the holding company filed a petition under Chapter XI of United States of America Bankruptcy Code on 19.01.2017 and realization of debts were not taking place since years. Such transactions with holding company, prima-facie, is a burden on the appellant/assessee.

14. The Hon'ble Delhi High Court, in the case of Kusum Health Care Pvt. Ltd. (supra), has held that the delay in collection of money may be due to different reasons require investigation on a case-to-case basis. What needs to be analysed is the pattern that may emerge from the receivables over a period of time which indicate that the arrangement of parking huge receivables with the related parties reflects an international transaction with underlying intent to benefit the AE. Here, in the present case, facts highlighted by the Ld. CIT-DR clearly show that the appellant/assessee has benefitted its AE by not recovering its trade receivables. In the present case, since the assessee had not factored the impact of receivables on its profitability; therefore, further adjustment for outstanding receivables is held warranted. Thus, the reliance placed by the Ld. Counsel on the decision of the Hon'ble Delhi High Court in the case of Kusum Health Care Pvt. Ltd. (supra) is of no relevance in view of the facts and findings considered in totality.

15. We do not find any merit in the argument of the Ld. Counsel that the interest should not be computed on trade receivables from AE as it has not charged any interest on trade receivables from third parties as the facts of third parties are totally different and receivables were not for years.

16. The Hyderabad ITAT, in the case of Corteva Agriscience Services India Pvt. Ltd. [ITA-TP No 78/Hyd./2022], accepted the stand of the Revenue in holding overdue receivables from associated enterprises ('AEs') as an international transaction and computed notional interest at the rate of 6 percent on the amount of such outstanding receivable invoices. In general, the ruling has relied upon the decision of Higher Courts, wherein it has been held that the delay in receipt of receivables beyond a reasonable credit period partakes the character of an advance and therefore results in an international transaction in view of explanation to section 92B (2) of the Act, which can be then subjected to computing notional interest.

17. In view of the facts highlighted by the Ld. CIT-DR and following the reasonings of decisions of the Hon'ble High Court of Bombay in the case of Patni Computer Systems Ltd.(supra), the Coordinate bench in the case of Bechtel India (P.) Ltd. (supra) and the Hyderabad ITAT in the case of Corteva Agriscience Services India Pvt. Ltd. (supra), we are of the considered view that the AO is justified in holding trade receivables from AE since years are international transactions and it has to be benchmarked separately for computing notional interest thereon. Accordingly, we order so.

18. The Chenai ITAT, in the case of Plintron Global Technology Solutions Pvt. Ltd. TS-238-ITAT-2018(CHNY)-TP, has held that the LIBOR is more appropriate for computing interest on outstanding receivables from AEs. In arriving at its decision, the ITAT relied on the ruling of the Mumbai Bench of the ITAT in the case of Tecnimont ICB House ITA No.487/Mum/2014. Here, in the present case, the rate LIBOR + 400 applied by the AO is also under challenge. We have considered the facts and submission of both parties. The TPO; therefore, is directed to compute interest on outstanding receivable balances from the AE@ LIBOR+ markup in accordance with the Rule 10CB of the Income Tax Rules. Accordingly, the ground no. 2.6 and 2.7 are disposed of. The claim of set off of excess remuneration against the transfer pricing adjustment of Rs.7,00,24,912/- is not found genuine as these fall under different segment and not inter-related and inter-dependent to each other. Accordingly, the ground no. 2.8 is disposed of.

19. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 26th November, 2024

Sd/-	**Sd/-**
(SATBEER SINGH GODARA)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 26th/11/2024
Binita, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT-DR

ASSISTANT REGISTRAR
ITAT, NEW DELHI