

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /ITA No.893/Hyd/2024
(निर्धारण वर्ष/Assessment Year:2020-21)

Erstwhile Amalgamating Company – M/s. Aurobindo Pharma Limited PAN: AABCA7366H (Now amalgamated company – M/s. Auronext Pharma Private Limited, Hyderabad, Telangana. PAN:AAHCA7988H)	Vs.	Dy. Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		Shri B. G. Reddy, Advocate
राजस्व द्वारा/Revenue by::		Shri P.V. Pradeep Kumar, CIT-DR
सुनवाई की तारीख/Date of hearing:		18/11/2024
घोषणा की तारीख/Pronouncement:		26/11/2024

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by Erstwhile Amalgamating Company – M/s. Aurobindo Pharma Limited (Now amalgamated company – M/s. Auronext Pharma Private Limited (“the assessee”), feeling aggrieved by the final assessment order passed by the Learned Assessing Officer, Hyderabad (“Ld. AO”), dated 12.07.2024 as per the direction of Learned Dispute Resolution Panel (“Ld. DRP”)

for the A.Y. 2020-21 u/s. 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 (“the Act”).

2. The brief facts of the case are that the assessee was a wholly owned subsidiary of Aurobindo Pharma Limited. The assessee is merged with M/s. Aurobindo Pharma Limited by the order of the National Company Law Tribunal dated 29.04.2024 w.e.f. 01.04.2023. The assessee company was engaged in the business of manufacturing of antibiotics, bulk drugs, active pharmaceutical ingredients and formulation injection. The company filed its Return of Income for A.Y. 2020-21 on 12.02.2021 declaring a total income of Rs.445,34,10,070/-. The case of the assessee was selected for scrutiny under CASS and in view of the international transactions, for determination of Arm's Length Price (“ALP”) it was referred to Learned Transfer Pricing Officer (“Ld. TPO”). The Ld. TPO as per his order dated 23.07.2023 proposed upward adjustment of Rs,3,16,72,320/- in respect of interest on receivables. Accordingly, the Ld. AO passed draft assessment order dated 25.09.2023. Aggrieved, the assessee preferred objection before the Ld. DRP and pursuant to the directions of Ld. DRP dated 05.06.2024 the Ld. AO finalised

the assessment on 12.07.2024 determining the ALP on account of interest on receivables at Rs,3,16,72,320/-.

3. Aggrieved with the order of Ld. AO, the assessee is in appeal before us. The Learned Authorised Representative (“Ld. AR”) submitted that the solitary ground in the appeal is on account of adjustment of Rs,3,16,72,320/- in respect of interest on receivables. The first argument of the Ld. AR was that the trade receivables from Associated Enterprises (“AEs”) cannot be treated as a separate international transaction. The submissions of the assessee in this regard is reproduced as under :

“ 4.1 The first submission of the appellant in this regard is that extending credit for realization of revenue from the AEs is a closely linked transaction with the transaction of selling goods or products to the AES and therefore receivables from AEs cannot be treated as a separate international transaction of advance or loan. Early or late realisation of sale proceeds is only incidental to the transaction of sale, but not a separate transaction in itself. Further, when the principal transactions of sale of goods are found to be at arm's length (Para 6.1.4 of order of TPO), further adjustment by way of notional interest on alleged late realisation of sales of goods is unjustified. Once ALP is determined in respect of the sale transaction, it would be deemed to be covering all the elements and consequences of the transactions of sale. It is therefore our respectful submission at the threshold that having held margins on sale of goods fall within the range of comparable by the TPO, separate adjustment de

hors such determination is not required in respect of interest on receivables.

4.2 Further, the word 'capital financing' as contemplated in sec. 92B of the Act refers to loans and advances and in the present case outstanding receivables arose from sale transactions and not from capital financing. The words are to be interpreted invoking principles of ejusdem generis and the outstanding receivables cannot be equated to capital financing as amended by the Finance Act 2012. Thus, we respectfully submit that outstanding trade receivables do not fall within the meaning of 'international transaction' as contemplated in sec. 92B of the Act. In this context, we may refer to the decision of Hon'ble Delhi High court in the case of PCIT vs. Kusum Health Care (P.) Ltd. (398 ITR 66) (2017), wherein the Hon'ble High Court made the following observations:

"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 associated enterprises 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 Transfer Pricing Officer by analysing the statistics over a period of time to discern a pattern which would indicate that vis-a-vis the receivables for the supplies made to an associated enterprise, the arrangement reflects an international transaction intended to benefit the associated enterprise in some way.

11. The court finds that the entire focus of the Assessing Officer was on just one assessment year and the figure of receivables in relation to that

assessment year can hardly reflect a pattern that would justify a Transfer Pricing Officer 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-a-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] 209 Taxman 200/345 ITR 241/345 ITR 241 (Delhi)."

4.2.1 Similar view was taken by Hon'ble Delhi High Court in the case of PCIT vs. Qualcomm India (P.) Ltd. 156 taxmann.com 288) (Delhi) that once impact of receivable on working capital is evaluated and consequent profitability/pricing is compared vis-a-vis draft comparables, there is no requirement of any further adjustment only on basis of outstanding receivables

4.3 Based on the above pleadings, we urge the Hon'ble Bench not to consider trade receivables as a separate international transaction for TP analysis as the outstanding receivables represent the consequence of an international transaction of sale and not an international transaction per se.

4.4 Without prejudice to our submission that outstanding trade receivables is not an international transaction, we wish to submit that even if outstanding receivables is treated as a separate international transaction as argued by the Revenue, Assessee does not charge any interest on any delayed payments irrespective of whether other party is AE or not. Therefore, interest on receivables can be benchmarked under Internal CUP and no adjustment can be made when no interest is charged from non-AEs as well on similar receivables. For this

proposition, we refer to the following authorities of ITAT, Hyd., which are directly on the point:

i) Cura Technologies Ltd. vs. DCIT [2019] 101 taxmann.com 68 (ITAT, Hyd.)

"11. We have considered the issue and examined the contentions. As seen from assessee's contentions, assessee is neither charging interest on any of the receivables outstanding. There is also no basis for adopting only two months as credit period. RBI itself allows a year for the amounts to be realised, if they are in foreign exchange. Whether it is AE or non-AE, it is in the interest of business that assessee receives the foreign exchange early so that it can claim deduction u/s. 10A. Therefore, in our view, putting a limit of two months of credit period itself is arbitrary..... Accordingly, we cancel the interest levied and allow assessee's contentions. Grounds are considered allowed".

ii) GSS Infotech Ltd. v. Asst. CIT [2016] 70 taxmann.com 356 (ITAT, Hyd.)

4.5 We thus submit when the assessee is not recovering interest from third parties (non-AEs) as well on overdue receivables, it would be too much to expect the assessee to charge the interest from AES on such receivables. It may also be relevant to mention here that the delay, if any, in receiving the outstanding amount is compensated by gain in foreign exchange on the realization of invoices and no further imputation of interest is required on such receivables."

3.1 The next argument by the Ld. AR was that, even if the trade receivables from AEs are considered as separate international transaction, the benchmarking of interest should

be at LIBOR + 200 points. The submission of the assessee in this regard is reproduced as under :

“ 4.9 We further submit that if the Hon'ble Bench considers the trade receivables as a separate international transaction, we pray the Hon'ble Bench to consider LIBOR rate for calculation of interest since the adjustment is in respect of international trade receivables. For this proposition, Assessee is supported by the decision of Hon'ble Delhi High Court in the case of CIT vs. Cotton Naturals (I) (P.) Ltd (55 Taxmann.com 523) (Delhi), wherein it is held that Arm's length interest rate for loan advanced to foreign subsidiary by Indian company should be computed based on market determined interest rate applicable to currency in which loan has to be repaid. This submission of the appellant is further reinforced by Item (5) in the Table of Safe Harbor under Rule 10TD (3) of IT Rules. Further, in the aforesaid recent decision of Hon'ble ITAT rendered in the case of Aurobindo Pharma Limited in ITA No.352/HYD/2023 dated 25/07/2024, the Hon'ble ITAT directed the Assessing Officer to apply the interest rate on similar foreign currency receivables/advances as LIBOR+200 points. [Para-31 of order of Hon'ble ITAT].”

3.2 Another argument of the Ld. AR was that the assessee had extended credit period ranging between 60 days to 240 days for realisation of sale proceeds to all the debtors i.e. AEs as well as non-AEs. However, the Ld. DRP/Ld. AO/Ld. TPO have considered free credit period of 60 days without any supporting evidence. The Ld. AR prayed before the bench to allow free credit period as agreed between the parties and mentioned in the sale

invoices. The submission of the Ld. AR in this regard is reproduced as under :

“ 4.7 We further submit that the DRP in assessee's own case for AY 2018-19 directed the Assessing officer to charge interest wherever there is delay beyond the credit period mentioned in export invoices. Revenue did not file an appeal against such directions as no Revenue appeal lies against the orders of DRP. Thus, the ground attained finality in assessee's own case for Asst Year 2018-19. At this juncture, it may also be appropriate to refer to the recent decision of Hon'ble ITAT rendered in the case of Aurobindo Pharma Limited in ITA No.352/HYD/2023 dated 25/07/2024, wherein on identical facts, Hon'ble ITAT has endorsed the findings of the Ld. CIT(A) that the interest shall be record beyond the credit period as agreed between the parties. [Para-25 of order of Hon'ble ITAT].

4.8 Thus, we respectfully submit that the random free credit period of 60 days considered by DRO/AO/TPO for calculating notional interest on outstanding trade receivables is without any basis and against DRP's direction in appellant's own case for Asst Year 2018-19. We therefore plead the Hon'ble ITAT to direct the assessing Officer to allow free credit period as agreed between the parties and mentioned in sale invoices.”

4. Per contra, the Learned Department Representative (“Ld. DR”) relied on the orders of Ld. AO and reiterated to dismiss the appeal of the assessee.

5. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side.

As far as the first argument of the Ld. AR is concerned, that the trade receivables is not a separate international transaction, it is now settled that the trade receivables is the international transaction as per the provisions of section 92B of the Act and is liable for separate bench marking. In the similar issue, the co-ordinate bench of ITAT in the case of Aurobindo Pharma Ltd. Vs. ACIT (ITA No.352/Hyd/2023 dated 25.07.2024 relying on the decision of the Hon'ble Delhi High Court in the case of DCIT Vs. McKensey Knowledge Centre India Pvt. Ltd. (2018) 96 taxmann.com 237 (Delhi) and in the case of Bhatia Airtel Services Ltd. Vs. DCIT (2021) 126 taxmann.com 315 (Delhi-Trib.) held that with the introduction of Expln. to section 92B of the Act, by the Finance Act it is determinable that if there is any delay in the realisation of credit arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with the transfer pricing adjustment on account of interest income short charged / unchanged. It is, therefore, not open for the assessee to agitate this question as to whether the interest on outstanding receivables is an international transaction requiring separate benchmarking time and again. Therefore respectfully following the decision of co-

ordinate bench of ITAT in the case of Aurobindo Pharma Ltd. Vs. ACIT (supra), we hold that the trade receivables is the international transaction and is liable for separate bench marking. Accordingly, the argument of the assessee on this issue is dismissed.

5.2 So far as the issue relating to benchmarking of rate of interest on trade receivables are concerned, the co-ordinate bench of ITAT in the case of Aurobindo Pharma Ltd. Vs. ACIT (supra) relying on the decision of CIT Vs. Cotton Naturals (I) (P) Ltd. (2015) 55 taxmann.com 523 (Delhi) and PCIT Vs. Tecnimont (P.) Ltd (2018) 96 taxmann.com 223 (Bombay) bench marked the interest at LIBOR + 200 points on the trade receivables. Respectfully following the decision of co-ordinate bench of ITAT in the case of Aurobindo Pharma Ltd. Vs. ACIT (supra), we also hold that, the end of justice would be met by accepting the interest rate at LIBOR + 200 points. Therefore, we direct the Ld. AO/Ld. TPO to adopt the same.

5.3 The last issue is related to the credit period to be taken for calculation of interest on trade receivables. In an identical issue in the case of Aurobindo Pharma Ltd. Vs. ACIT (ITA No.352/Hyd/2023 dated 25.07.2024, the co-ordinate bench of

ITAT at para no.25 of its order held that the interest on trade receivables shall be recorded beyond the credit period as agreed between the parties. Therefore respectfully following the decision of co-ordinate bench in the case of Aurobindo Pharma Ltd. Vs. ACIT (supra), we direct the Ld. AO to allow free credit period as agreed between the parties and mentioned in the sale invoices which is extended to non-AEs.

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

Order pronounced in the open Court on 26th Nov., 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 26.11.2024.

* Reddy gp

Copy of the Order forwarded to :

1.	Erstwhile Amalgamating Company – M/s. Aurobindo Pharma Limited (Now amalgamated company – M/s. Auronext Pharma Private Limited, Plot No.2, Maitri Vihar, Sanjeev Reddy Nagar, S.O. Ameerpet, Hyderabad-500 038
2.	DCIT, Circle 1(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,

