

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1468/Del/2022
(Assessment Year: 2018-19)**

Ramboll India Pvt. Ltd, 30, Mohan Singh Palace, Connaught Place, New Delhi (Appellant)	Vs.	ACIT, Circle-19(1), Delhi (Respondent)
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PAN:AAHCP8488M

Assessee by :	Shri K. M. Gupta, Adv Ms. Kashish Gupta, CA
Revenue by:	Shri Zafarul Haque Tanveer, CIT DR
Date of Hearing	09/12/2024
Date of pronouncement	18/12/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1468/Del/2022 for AY 2018-19, arises out of the order of the Assessing Officer, New Delhi [hereinafter referred to as 'ld. AO', in short] in Appeal No. ITBA/AST/S/143(3)/2022- 23/1042877904(1) dated 27/04/2022.
2. The Ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.
3. The Ground No. 2 raised by the assessee is challenging the transfer pricing adjustment of Rs 10,34,642/- made on account of interest on outstanding receivables from the Associated Enterprises (AEs).
4. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in rendering design

engineering services in the areas of buildings, transport, environment, energy, oil and gas to customers which include AEs as well as third parties. The assessee also undertakes technical consultancy services in the telecom sector for domestic customers. The return of income for the Assessment Year 2018-19 was filed by the assessee on 29-03-2019 declaring total income of Rs. 39,82,35,350/-. The case of the assessee was selected for scrutiny and the Learned AO referred the matter to Learned Transfer Pricing Officer (TPO) in terms of section 92CA(1) of the Act for benchmarking the international transactions carried out by the assessee with its AEs. The Learned TPO vide his order dated 30-7-2021 proposed adjustments towards –

a) Provision of services

b) Notional interest on delayed receivables from its AEs

5. The Learned TPO proposed an upward adjustment relating to interest on outstanding receivables amounting to Rs. 16,24,690/- on the basis that trade receivables due from the foreign AEs have been delayed beyond the credit period allowed to non-AEs, for which appropriate compensation has not been received, thus concluding that the receivables have resulted in an interest-free loan being provided by the assessee to the foreign AEs. The Learned TPO calculated the transfer pricing adjustment using interest rate of LIBOR(6 months average for financial year 2017-18) plus 400 basis points for the period of receivables outstanding beyond the credit period of 30 days. The assessee filed objections before the Learned Dispute Resolution Panel (DRP). The Learned DRP vide its directions dated 9-3-22 upheld the action of the Learned TPO in principle, but directed the Learned TPO to calculate interest on outstanding receivables for delays beyond 60 days. The Learned TPO gave effect to the directions of the Learned DRP vide order dated 22-4-22, thereby reducing the impugned transfer

pricing adjustment to Rs. 10,34,642/- after considering the delay in receivables beyond 60 days from the AEs .

6. The Learned AR before us made a preliminary argument that interest on outstanding receivables per se could not be construed independently as a separate international transaction and hence no adjustment under chapter X of the Act could be made for the same. This argument of the Learned AR is flawed in view of the decision of Hon'ble Madras High Court in the case of Redington India Limited reported in 430 ITR 298 (Mad) wherein it was held specifically that interest on outstanding receivables would indeed constitute a separate international transaction. Hence the argument advanced by the Learned AR in this regard is hereby rejected .

7. The Learned AR before has submitted that in order to maintain a long term business relationship and the commercial considerations, such charging of interest is usually ignored by the businessman in a third party transaction. Moreover, the business and commercial considerations also have to be looked into and one cannot apply a straight jacket method to say that the assessee ought to have earned an interest compensation from the AEs. It was further submitted that interest income is associated with the borrowing or lending of money and not with sale. The Learned AR also observed that the Learned TPO did not grant working capital adjustment in the provision of services segment. Had the working capital adjustment been given, there would be no need to impute any interest on outstanding receivables as the same would get subsumed in the working capital adjustment itself. In fact, the Learned DRP had directed the Learned TPO to grant working capital adjustment, but the same was not given by the Learned TPO. He placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Kusum Health Care Private Limited in ITA No. 765 / 2016 dated 25-04-2017 in support of this proposition. Further, he also submitted that assessee is a debt free company and had not paid any

interest either to its AEs or to third parties. Accordingly, there is no requirement for the assessee to even charge interest on delayed receivables either from the AEs or from outsiders. In support of this proposition, he placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Boeing India Pvt limited reported in 457 ITR 84 (Del). Per Contra, the Learned DR vehemently relied on the order of the Learned TPO and the elaborate workings adopted by him for charging the interest invoice wise after allowing credit period of 90 days on delayed receivables from AEs.

8. We find that the decisions relied upon by the Learned AR squarely applies to the facts of the instant case before us. On perusal of financials of the assessee, it is seen that there is no interest expenditure expended by the assessee, which goes to prove that the assessee company is a debt free company. The reliance on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Boeing India Pvt limited reported in 457 ITR 84 (Del) is well placed wherein it was held that where Assessing Officer had made adjustment in hands of assessee-company on account of interest on outstanding receivables, since assessee-company was a debt free company and no interest was paid to creditor/supplier nor any interest had been earned from unrelated party, question of receiving any interest on receivables did not arise. Further we find that the Learned DRP had directed the Learned TPO to grant working capital adjustment on the provision of services segment, which was not given by the Learned TPO, which results in violation of provisions of section 144C(10) of the Act. In any event, once the same is granted, there is no need to separately impute interest on outstanding receivables as it would get subsumed in the working capital adjustment itself. This proposition has been accepted by the Hon'ble Jurisdictional High Court in the case of PCIT vs Kusum Health Care Private Limited in ITA No. 765 / 2016 dated 25-04-2017. Hence we hold that there

is no need to impute any interest on outstanding receivables separately in the peculiar facts and circumstances of the case of the assessee company herein. Accordingly, the Ground Nos. 1 & 2 raised by the assessee are allowed.

9. The Ground No. 3 raised by the assessee is challenging the rejection of claim made by the assessee towards deduction of expenditure under section 35DD of the Act based on the assessment order for Assessment Year 2017-18.

10. We have heard the rival submissions and peruse the materials available on record. The assessee vide letter dated 2-8-2021 filed for an additional claim for deduction under section 35DD of the Act of Rs 62,39,102/- being the 1/5th share of Rs 3,11,95,508/-, being the second year of deduction under section 35DD of the Act based on the assessment order passed under section 143(3) of the Act on 22-12-2019 for Assessment Year 2017-18. In Assessment Year 2017-18, the assessee claimed deduction of Rs 3,11,95,508/- towards the amalgamation expenditure which was disallowed by the Learned AO in the scrutiny assessment framed for Assessment Year 2017-18 and deduction under section 35DD of the Act was granted by the Learned AO for 1/5th of such expenditure. The assessee during the year under consideration based on the order of assessment for Assessment Year 2017-18 sought to claim one-fifth as eligible for deduction under section 35DD of the Act vide letter dated 2-8-2021 as time limit for filing revised return for Assessment Year 2018-19 had already expired. This was not appreciated by the Learned AO as well as by the Learned DRP. The authorities denied the claim by relying on the decision of Hon'ble Supreme Court in the case of Goetze India Limited reported in 284 ITR 323 (SC). We find that the last paragraph of the said Supreme Court decision clearly specifies that the restriction does not apply to appellate authorities especially the Tribunal. Hence, we direct the

Learned AO to grant deduction under section 35DD of the Act for 1/5th portion of amalgamation expenditure amounting to Rs 62,39,102/- while giving effect to this order. Accordingly, the Ground No. 3 raised by the assessee is hereby allowed.

11. The Ground No. 4 raised by the assessee was stated to be not pressed by the Learned AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly Ground No. 4 is hereby dismissed as not pressed.

12. The Ground No. 5 raised by the assessee is challenging the levy of interest under section 234B of the Act which would be consequential in nature. In respect of levy of interest under section 234C of the Act, we hold that the same should be charged only on the returned income and not on the assessed income. The ground number 5 is hereby disposed off accordingly.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 18/12/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 18/12/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi