

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.6571/Del/2016
(ASSESSMENT YEAR: 2012-13)

Atotech India Private Limited, 66 KM Stone, NH-8, Delhi Jaipur Highway, Gurgaon.	Vs.	Dy. CIT, Circle-1(1), Gurgaon.
(Appellant)		(Respondent)

Assessee by	Shri S.S. Somar, Adv., and Shri Kashish Gupta, AR
Department by	Shri Saurabh Anand, Sr. DR
Date of Hearing	05/03/2025
Date of Pronouncement	02/05/2025

ORDER

PER MANISH AGARWAL, AM:

In this case this bench of Tribunal in ITA No. 6571/Del/16 in terms of the order passed on 11.05.2018 has allowed the appeal of the assessee for statistical purposes. Thereafter, the assessee filed a Miscellaneous Application (MA) seeking rectification of the said order. In the said MA, assessee has stated that grounds of appeal No. 4 and sub grounds taken in the appeal memo were not adjudicated. Accordingly, the MA filed by the assessee bearing No. 384/Del/2018 was allowed vide order dt. 27.04.2023, wherein the order in ITA No. 6571/Del/2016 is recalled for limited purpose of adjudicating Ground of appeal Nos. 4 and sub grounds.

2. In view of above facts, we proceed to decide grounds of appeal No. 4 and sub grounds taken by the assessee. Before us, vide letter dt. 28.02.2025, the assessee has raised certain additional grounds of appeal. The grounds of appeal originally taken and the additional grounds of appeal now raised are as under:

- “4. That the Id.AO pursuant to the directions of the Hon'ble DRP erred on facts and in law in making an addition of INR 319,174/- to the income of the Appellant by imputing interest on outstanding inter-company receivables (after revising the receivable adjustment from Rs. 7,27,737/- made by TPO initially) and in doing so have grossly erred in.
- 4.1 treating the outstanding receivables from AEs as a separate international transaction.
- 4.2 re-characterising the overdue amount on receivables from AEs as an unsecured interest-free loan.
- 4.3 Without prejudice, the Ld. AO/TPO erred on facts and in law in imputing interest on the overdue receivables on the basis of the benchmarking carried out for the purposes of external commercial loans obtained by the Appellant.
- 4.4 Without prejudice, the Ld. AO/TPO erred on facts and in law in ignoring the fact that the effect, if any, of outstanding inter-company receivables has to be considered by making a working capital adjustment.”

Additional Grounds of appeal

- 4.5 That on the facts and circumstances of the case and in law, DRA/TPO have erred in ignoring that the trade receivables ought to be netted off with trade payables.
- 4.6 That on the facts and circumstances of the case and in law, DRP/TPO have erred in ignoring that no interest is being charged on delayed receivables from third parties and hence, no adjustment was warranted on the outstanding receivables from the AEs.
- 4.7 That on the facts and circumstances of the case and in law, DRP/TPO have erred in ignoring that the associated enterprises ("AE") of the Appellant provide a longer credit period as compared to period allowed by Appellant.”

3. It is requested by the ld. AR that the additional grounds of appeal are purely legal in nature and requires no fresh investigation therefore, the same may kindly be admitted and adjudicated on merits. He further placed reliance on the judgements of Hon'ble Supreme court in the case of NTPC Ltd Vs. CIT, reported in (1998) 229 ITR 383 and Jute Corporation of India Vs. CIT (1990) 187 ITR 688.

4. After perusing the additional grounds of appeal, we find that these additional grounds are related to the issue challenged in ground of appeal No.4. Thus, by considering the decision of Hon'ble Apex court in the case of NTPC (supra), the additional grounds of appeal taken by the assessee are admitted for adjudication.

5. Since main ground of appeal No.4 and sub grounds including the additional grounds of appeal are in relation to the addition of Rs. 3,19,174/- made on account of Transfer price adjustment on outstanding receivable from AE thus they are taken together for consideration.

6. Brief facts leading to this issue are that the TPO had re-characterized the delay in receipt of receivables as interest free unsecured loans advanced to the AE and treated the receivables from AE as international transaction in the nature of capital funding. Accordingly, the TPO has used CUP being SBI based rate plus 300 basis points, and applied interest rate of 12.6% and computed adjustment of Rs. 7,27,737/- which was proposed by AO in draft assessment order. The ld. DRP directed the AO to apply 7.84% rate (Libor plus 300 basis points) and the final addition was reduced to Rs. 3,19,174/- in the final assessment order.

7. Before us, ld.AR of the assessee argued that the assessee being entrepreneur, assumes all entrepreneurial functions and risk and earns entrepreneurial returns and the receivables were arising from core transaction

entered with AEs and are not a separate international transaction. Ld. AR submitted that the assessee has not charged any interest on outstanding balances of receivables from both AEs and non-AE's. The learned counsel further submitted that value of outstanding receivables from AE's are less than the value of outstanding payable to AE and if the approach of charging interest on overdue receivables and paying interest on overdue payables is considered, the assessee would save interest on net outstanding balance towards its AEs. In last it is argued that assessee allowed 30 credit period to its AE's whereas the AE's allowed credit period of 45 days on the outstanding payables. He, therefore, prayed to delete the addition made on this account.

8. On the other hand, the ld. Sr. DR strongly supported the findings of the TPO and ld. DRP. It was the submission of the Ld. Sr. DR that the amendment brought in the Act with retrospective effect from 1-4-2002 and inception of *Explanation (i)(c)* of section 92B of the Act creating a deeming fiction treating the payments or deferred payment of receivables or any other debt arising during the course of business as a separate international transaction, therefore, notional interest on outstanding receivables is an international transaction. He further submitted that when there is an outstanding receivable from its associated enterprise, the interest cost is required to be imputed on outstanding receivable from those associated enterprises. He further submitted that ld. DRP has already considered all these arguments and give suitable relief to assessee. Therefore, there is no reason that such interest cannot be imputed. He thus prayed for the confirmation of the order of ld. DRP on this issue.

9. We have heard the rival submissions and perused the material. By way of Finance Act, 2012 an *Explanation* to Section 92B has been inserted to the Income Tax Act with retrospective effect from 1-4-2002, which clarifies the expression 'international transaction' as follows:

*Explanation.—For the removal of doubts, it is hereby clarified that—
(i) the expression "international transaction" shall include—*

- (a) *the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;*
- (b) *the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;*
- (c) *capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;*

10. The above explanation clarifies and justifies the adjustment made by the TPO towards interest on receivables, which is well within the definition of international transaction. Therefore, we are in agreement with the Id. Sr. DR to the extent that the interest on outstanding receivables to AE is an international transaction.

11. Now coming to the other arguments of the assessee. The assessee contended that it had not charged any interest on receivables from third parties. The assessee has not demonstrated whether similar services were provided to the other unrelated parties where no interest was charged. Thus this issue needs to be examined by the AO/TPO and if it is found that similar services were rendered to unrelated parties from whom no interest was charged on outstanding receivables, no notional interest is required to be imputed in the hands of the assessee on the outstanding receivable from AE's. With these directions, we deem it fit to restore this entire issue to the file of Id. AO/ TPO for de novo adjudication in accordance with law. Needless to mention that reasonable opportunity be given to the assessee of being heard with liberty given to the assessee to file additional evidences, if any, in support of its contentions.

Accordingly, ground Nos. 4 to 4.7 raised by the assessee are allowed for statistical purposes

12. In the result, the appeals filed by the assessee is partly allowed.

Order pronounced on 02/05/2025.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 02/05/2025

PK/Sr. Ps

Copy forwarded to:

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

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI