

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : I-2 : NEW DELHI

BEFORE SHRI S.V. MEHROTRA, VICE PRESIDENT  
AND  
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.6530/Del/2016  
Assessment Year : 2012-13

Bechtel India Pvt. Ltd.,  
418, Naurang House,  
21, K.G. Marg,  
New Delhi.  
PAN: AAACB0298A

Vs. ACIT,  
Circle-4(2), Room  
No.398D,  
CR Building, IP Estate,  
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri Nishant Saini, Advocate &  
Shri Ankit Bhatia, CA

Department By : Shri T.M. Shivakumar, CIT, DR &  
Shri Amrinder Kumar, CIT, DR

Date of Hearing : 03.04.2017

Date of Pronouncement : 16.05.2017

ORDER

PER S.V. MEHROTRA, VP:

This appeal filed by the assessee is directed against the final assessment order passed by the AO u/s 143(3) read with section 144C of

the Income-tax Act, 1961 (hereinafter also called 'the Act') on 24.11.2016 in relation to the assessment year 2012-13.

2. Brief facts of the case are that Bachtel, USA had set up a subsidiary company in India viz., the assessee, Bechtel India Pvt. Ltd. (BIPL) in April, 1994 to render engineering support service in respect of engineering designs and drawings. The assessee executes engineering design and drawing for various overseas AEs to support the overseas offices' turnkey project executions. The assessee has filed return of income declaring an income of Rs.56,76,79,230/- under the normal provisions of the Income-tax Act at adjusted book profit of Rs.5,34,52,420/- u/s 115JB of the Income-tax Act. During the year, the assessee had reported the following international transactions in Form 3CEB:-

Nature of transaction	Method	Value of transportation
Provision of engineering design related services	TNMM	2,41,35,50,058
Provision of financial and accounting support services	TNMM	58,819,101
Provision of IT infrastructure support services	TNMM	185,065,757
Reimbursement of expenses (paid)	TNMM	53,087,566
Reimbursement of expenses (received)	CUP	178,315,111

3. Accordingly, the reference was made to Id. TPO for determining the arm's length price (ALP). The Id. TPO issued a show cause notice dated 1<sup>st</sup> May, 2016 to the assessee as detailed below:-

“Examination of the balance sheet reveals receivables thereby implying that the payment for the invoices raised by you have not been received within the stipulated time as provided in your service agreement with your AE. In this regard, you are requested to furnish the time period for payment as per your service agreement with your AE. However, to be reasonable and fair to the assessee, instead of charging penal interest, the delayed payments are being treated as unsecured loans advanced to the AEs and it is proposed to charge a normal rate as per the annual average yield of corporate bonds pertaining to credit rating of your AE for the period of delay in receipt of payment beyond the time stipulated in the services agreement. The interest rate has been charged on the basis of prevailing average SBI base rate during the year. You are requested to furnish credit rating of all the AEs for the F.Y. 2010-11 with whom you have under taken aforesaid transactions. You are requested to furnish AE wise and invoice wise details along with the period of delay in receipt of payment as per details below:

S.No.	Invoice No.	Date of nvoice	Amount (INR)	Date of receipt/ payment (INR)	Period of delay	Interest @11.69% p.a. for the delay period

You are also requested to give similar details of receivables outstanding as on 01.04.2010. In case no payment terms is specified in the service agreement/invoice raised to the AE, you are requested to give average receivable period for third party transactions. In case there are no such third party transactions, the details of average payable period for AE transactions should be mentioned.”

4. The assessee, in its reply, vide letter dated 12<sup>th</sup> December, 2014, raised the following objection to the benchmarking of the receivables:-

- a) Receivables were not separate international transactions;
- b) Re-characterisation of receivables was not permitted; and
- c) Non-application of SBI base rate for benchmarking.

5. The assessee also furnished the following information:-

- i. Time period of payment as per service agreement with AE –  
Time period of payment as per service agreement with AE is 60 days.
- ii. Credit rating for all AEs for FY 2011-12.
- iii. Invoice wise details of outstanding receivables as per specified format.

6. The ld. TPO, referring to Amendment of section 92CA(2A) introduced by the Finance Act, 2011 w.e.f. 01.06.2011 and prospective amendment of Section 92CA(2B) introduced by Finance Act, 2012 w.e.f. 01.06.2012, pointed out that TPO should determine ALP of

international transactions which comes to his notice during the course of proceedings pending before him. He further examined the assessee's objection that receivables was not an international transaction and, in this regard, referred to the amendment being Explanation (1) (c) to the section 92 to be inserted by Finance Act, 2012 w.e.f. 01.04.2002 amending the term 'International taxation' by including therein the following:-

“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.”

7. From this, he concluded that any type of advance, payments or deferred payments are receivable or any other debt during the course of business advancement is covered under the definition of 'International transaction.' The ld. TPO further pointed out that in this case, admittedly, the tax payer had provided benefit to its AE by way of advancement of interest free loan in the garb of delayed receipt of receivables. He observed that these funds could have been otherwise deployed for at least earning interest income. Therefore, the tax payer

had incurred cost in connection with a benefit and services provided to the AE by way of delayed receipt of receivable. He pointed out that no payment terms have been specified as per service agreement or the invoice and, therefore, as per prudent estimate payment period of 30 days shall be allowed for payment of sales/service. Any delay beyond the aforesaid period would be benchmarked accordingly. The Id. TPO did not accept the assessee's contention that receivable transaction should be benchmarked using a combined transaction approach. He referred to a plethora of decisions on the issue that transaction by transaction approach has to be adopted and, therefore, transaction relating to receivables needs to be benchmarked separately. In order to find out cost of funds blocked in intra group loans, he adopted CUP as the prime lending rate of SBI to which 300 basis points was being added to take into account the various factors of the risks. In support of his contention, he relied on the decision in the case of *Cheil India Pvt. Ltd.* (ITA No.1230/Del/2014) for assessment year 2009-10, wherein it has been upheld that for benchmarking of interest chargeable on delayed receivables based on SBI base rate was proper. He, after considering all

these aspects, interest rate of 12.60% was adopted for charging of deemed loan advanced for the period of receivables outstanding beyond the period stipulated in the service agreement/invoice. Ld. TPO has, accordingly, directed for adjustment on account of ALP of the receivables at Rs.1,28,97,839/-. Before the Id. DRP, the assessee had raised various objections which have been meticulously dealt with by the Id. DRP. The first objection was in regard to treating the receivables as a separate international transaction which objection was rejected in view of the insertion of Explanation 1(c) to section 92B following the decision of the *Hon'ble High Court in CIT vs. Cotton Naturals Pvt. Ltd., 2015-TII-09-HC-DEL-TP*. The second objection was in regard to separate benchmarking of the transactions relating to receivables. In regard to the assessee's objection for re-characterization of transaction, Id. DRP pointed out that re-characterization of transactions was possible only when the underlying international transactions are continuous and closely linked. The burden of proving that the transactions are closely linked are on the assessee. However, the assessee had failed to discharge its burden of proof. The Id. DRP further observed that even if

the transactions were to be aggregated and only entity level profits considered, it was essential for the assessee to have shown that the comparable selected by the assessee, were also comparable from the perspective of having receivables on which no interest had been charged. The assessee had failed to demonstrate that selected comparables had similar overdue receivables and no separate adjustment was required on interest of overdue receivables. The Id. DRP further observed that the assessee failed to show that the delay in payment of receivables was compensated by the AE through a set off in any other transaction. He further pointed out that any set off requires that both the transactions which set off each other should be benchmarked separately and the ALP must, firstly, be determined separately for these transactions. He referred to OECD guidelines and pointed out that the same recognizes that a set off does not mean that both the transactions should not be at arm's length. The guidelines also say that the onus of demonstrating the existence of a set off built into two transactions was on the assessee. It was for the assessee to establish set off which require supporting evidence. The Id. DRP further pointed out that the assessee's contention

that no separate adjustment can be made towards interest on overdue receivables as the entity level results had already been considered by the TPO was not acceptable because consideration of entity level results does not preclude examination of individual transactions to see whether they are at arm's length. He pointed out that TNMM, as its very name suggests, is the Transactional Net Margin Method. It cannot be interpreted as the overall net profit method. An aggregate approach does not mean that if an assessee receives less than the ALP on transactions and more than the ALP in another transaction, then, both transactions are to be automatically aggregated and no TP adjustment made. He pointed out that, in fact, in such a case, TP adjustment is still required to be made in respect of the transactions where the price received was less than the ALP. The Id. DRP, accordingly, upheld the TPO's action in benchmarking this transaction using CUP as the most appropriate method. One of the major contentions of the assessee was that since working capital adjustment has been made, therefore, no separate adjustment in regard to receivables be made because the adjustment relating to receivables has already got subsumed in the working capital

adjustment. The Id. DRP pointed out that working capital adjustment takes into account only trade creditors and not credits received towards capital items and from various group concerns or loans, etc. Only opening and closing balance of trade debtors/creditors and inventory are considered for this purpose. The Id. DRP further observed as under:-

“2. These facts show that the working capital adjustment does not cover the entire outstanding amounts, since it is restricted to certain amounts only, and is computed on the basis of amounts at the beginning and the end of the year. On the other hand, the computation of interest on receivables is based on a day wise analysis which is much more detailed, compared to the opening and the closing balances only taken for computing working capital adjustment. Such detailed analysis of working capital adjustment is not possible because the publicly available data for comparables is limited to opening and closing balances appearing in the balance sheets. In view of these facts, the working capital adjustment does not entirely cover the adjustment toward interest on receivables. To illustrate, if receivables though outstanding throughout the year, were reduced to nil at the end of the year, this would not have any impact on the working capital adjustment, since that depends on the closing balance which is nil. However, the computation of interest on receivables would take this into account as it considers the outstanding balance throughout the year.”

8. The ld. DRP relying on the decision of ITAT in Ameriprise India Pvt. Ltd. vs. ACIT, 2015-TII-347-ITAT-DEL-TP, rejected the assessee's contention that this adjustment is not required as working capital adjustment takes into account the delay. The next objection of the assessee was that the adjustment towards interest on delayed receivables was not warranted as the assessee was a zero debt company. This plea was rejected observing that ALP is the price which could have been paid in an uncontrolled transaction. The ld. DRP demonstrated that even though marginal cost is zero, still the goods will command price. The ld. DRP further observed in para 2 as under:-

“Further, the assessee's balance sheet shows substantial current liabilities and also loans and advances. The P&L A/c shows significant income from interest and the assessee has also debited interest of Rs.64,79,897/-. It is apparent that if the assessee had received its receivables from its AE within time, it could have reduced its interest payment, or increased the interest income. The assessee has also failed to demonstrate that interest bearing funds were not utilized for extending this special facility to its AE. The burden of proving any such claim was on the assessee however, the assessee has failed to substantiate this claim.”

9. In view of the above discussion, the ld. DRP rejected the assessee's claim that no separate adjustment was warranted in regard to

receivables. The assessee is in appeal before us raising the following grounds:-

1. That on facts and circumstances of the case and in law, the Ld. AO/Ld. Transfer Pricing Officer ("TPO")/ Ld. Dispute Resolution Panel ("DRP") erred in making an addition of INR 46,88,262/- to the returned income of the Appellant by imputing interest on receivables from the Associated Enterprises beyond the credit period of the Appellant on an ad hoc basis, under section 92 of the Act. Thus, in passing the order, the Ld. AO/Ld. TPO/Ld. DRP grossly erred in:

1.1. Re-characterizing the receivables due after a certain credit period as unsecured loans advanced by the Appellant to its Associated Enterprises;

1.2. not appreciating that working capital adjustment has been carried out and accepted by the Ld. DRP and that the arm's length price determination for outstanding receivables is subsumed within the arm's length price determination of the principal international transaction itself;

1.3. selecting an ad hoc interest rate of LIBOR Plus 400 bps while computing the addition; and

1.4. completely disregarding the order passed by Hon'ble Income Tax Appellate Tribunal in the Appellant's own case for Assessment Years 2010-11 and 2011-12 which is squarely applicable in the instant case as well, thus violating the principal of judicial discipline.

1.5. completely disregarding the order passed by the Hon'ble Delhi High Court in the Appellant's own case for Assessment Year 2010-11 which is squarely applicable in the instant case as well, thus violating the principal of judicial discipline.

3. That the Ld. AO has erred in charging interest under section 234B and 234C of the Act amounting to INR 990,007 and 160,583 respectively.

4. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act.”

10. The ld. counsel submitted that the ld. DRP has provided working capital adjustment in its directions which takes into account the impact of outstanding receivables on the profitability. Therefore, no separate adjustment is warranted on account of outstanding receivables. The ld. counsel referred to the decision of the Tribunal in the assessee’s own case for assessment year 2010-11 contained at pages 196 to 218 of the paper book and pointed out that the Tribunal has held that the assessee is a debt free company and, therefore, it was not justifiable to presume that borrowed funds had been utilized to pass on the facility to its AEs. The Tribunal, relied on the decision of *Kusum Healthcare Pvt. Ltd., TS/129/ITAT/2015/Del/TP* for holding that no separate adjustment was warranted on account of interest on receivables. The ld. counsel further

pointed out that Hon'ble Delhi High Court while dismissing the appeal of the Revenue, has held as under:-

“4. As far as question (B) concerning the adjustment for interest no receivables, the Court finds that the ITAT has returned a detailed finding of fact that the Assessee is a debt free company and the question of receiving any interest on receivables did not arise. Consequently, no substantial question of law arises for consideration as far as this issue is concerned.”

11. The Id. counsel further referred to the decision of the Tribunal in the case of *Actis Global Services Pvt. Ltd. (ITA No.30/Del/2015)* dated 10<sup>th</sup> December, 2015, wherein in para 59, the Tribunal, inter alia, has observed as under:-

“59. We have considered the submissions of both the parties and have perused the record of the case. As far as Id. counsel's plea based on the directions of DRP for AY 2009-10 is concerned, we find that in the said assessment year the assessee had objected to the TPO not allowing working capital adjustment and since this adjustment was directed to be allowed by Id. DRP, therefore, a separate addition on this ground was not required. However, in the present assessment year, Id. TPO had denied the working capital adjustment and the same has not been assailed before us. Under such circumstances, the matter needs to be restored back to the Id. TPO to verify the assessee's contention regarding all the invoices outstanding being for less than six months and, if, the same is found to be correct, then no addition is called for in view of the ITAT decision in the case of *M/s Logix Micro Systems Ltd. (supra)*. One of the plea of Id. counsel for the assessee was that the entire funds are

received from parent company. However, this plea has been taken for the first time and was not taken before lower revenue authorities. Therefore, this aspect also needs to be considered by Id. TPO while deciding this issue de novo. In the result, ground no. 9 is allowed for statistical purposes. “

12. The Id. counsel pointed out that in the year under consideration also the assessee continued to be debt free company and facts being identical the decision for earlier year should be followed. The Id. counsel further referred to Tribunal's order in the assessee's own case for assessment year 2011-12 contained at pages 219 to 268 of the paper book and referring to para 26, pointed out that the issue has been restored to the TPO for examining the similarity of facts for both the years, inter alia, holding as under:-

“..... In view of the same, the issue is restored to the TPO to consider the same and the facts as argued by the assessee before the ITAT in 2010-11 assessment year may be demonstrated to be in existence in the year under consideration also before the TPO as reliance placed on Kusum Healthcare Pvt. Ltd. qua the facts in the year under consideration also needs to be established. Accordingly the issue is restored back with the above direction.”

13. The Id. counsel further relied on the decision of ITAT in the case of Kusum Healthcare Pvt. Ltd. (supra), wherein it was held that if the

impact of the credit period was duly factored as in a working capital adjustment while determining the ALP, then, no separate adjustment for interest on receivables was warranted in the hands of the tested party. The ld. counsel pointed out that the decision in Kusum Healthcare Pvt. Ltd. has been followed in the following cases:-

- i) Information Systems Resource Centre Pvt. Ltd. (TS-252-ITAT-2015-MUM); and
- ii) Gold Star Jewellery Ltd. vs. JCIT (ITA No.6520/Mum/2012).

14. The assessee further placed reliance on the ITAT Delhi in the case of Indo German Jewellery Ltd. (ITA No.587/Mum/2009), wherein it has been held that the transaction of sale and lending are distinctly set out as per section 92 of the Act and it was held that interest income is associated more with lending or borrowing of money and not with sale. It was further held that while determining the ALP of the sale transaction, all relevant aspects including credit period allowed are taken into consideration and that interest aspect is embedded in the sale price. It was further held that there can be no separate international transaction

of interest, outstanding receivables and that early or late realization of sales proceeds is incidental to transaction of sale.

15. The ld. DR submitted that for the proposition that non-charging or under charging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction, reliance was placed on Techbooks International Pvt. Ltd. vs. DCIT (2015) 63 taxmann.com 114 (Del Tribunal). The ld. DR further referred to the assessee's written submissions, wherein the assessee has given a table in respect of number of days for which the amount remained outstanding. He pointed out that if the party raises its invoices at the fag end of the year, the ratios will be totally different from the cases where the invoices were raised in the beginning of the year and duly collected before the end of the year (Even if collected after 6-8 months). He referred to the decision of ITAT in the case of Mckinsey Knowledge Centre Pvt. Ltd. vs. DCIT, wherein in para 63 it has been clearly demonstrated that the averaging of opening and closing balance and using the ratio of sales to average written has inherent fallacy.

Further, it has been held that working capital adjustment will not take care of the benchmarking of interest on receivables. The same is reproduced for ready reference:-

“63. The Delhi Bench in *Ameriprise (supra)* and *Techbooks (supra)* did not approve the reasoning about such interest subsuming in working capital adjustment. It found that the working capital adjustment is in respect of international transaction of rendering services to the AE. Interest for the credit period allowed as per the Agreement is factored in the price charged for the rendering of services. In the oppugnation, the non-realization of invoice value beyond the stipulated period is a separate international transaction, whose ALP is required to be determined. Granting of working capital adjustment has been held to be confined to the international transaction of rendering of services, whose ALP is separately determinable. On the other hand, the international transaction of interest receivable from its AEs for late realization of invoices beyond such stipulated period is a separate international transaction. Allowing working capital adjustment in the international transaction of rendering services has been held to have no impact on the determination of ALP of the international transaction of interest on receivables from AEs beyond the stipulated period allowed as per the Agreement. In our considered opinion, whereas, the international transaction of purchase/sale of goods from/to AE contemplates comparison of the price charged/paid for such goods by impliedly including the interest for the period allowed for realization of invoices as per the terms of the agreement, the international transaction of charging interest on late recovery of trade receivable covers the period which starts with the termination of the period of credit allowed under the agreement, which is subject matter of the international transaction of purchase/sale of goods. There is one more fallacy in the argument about the subsuming of interest income in the working capital adjustment. It is simple that working capital adjustment is ordinarily computed by considering the average of the opening and closing values of inventories, receivables and payables. A transfer pricing adjustment on account of interest on delayed realization of invoice value has nothing to do with the closing or opening values. It depends on the period of realization on

transaction to transaction basis. To put it differently, suppose an invoice is raised on 1<sup>st</sup> May; period allowed for realization is two months; and the invoice is actually realized on 31<sup>st</sup> December. Notwithstanding the fact that interest on such late realization would become chargeable for a period of 6 months (from 1<sup>st</sup> July to 31<sup>st</sup> December), but the amount of invoice will not be receivable as at the end of the financial year on 31<sup>st</sup> March. As such, this receivable would not have an impact on the working capital adjustment in any manner, but would call for addition on account of the late realization of invoice value for a period of six months. Following the orders in *Ameriprise (supra)* and *Techbooks (supra)*, we uphold the view taken by the TPO on this issue. Interest on late realization of invoices is directed to be charged in line with the directions given in the above orders of the Delhi Bench of the tribunal.”

16. The Id. DR also filed a copy of the decision of the Tribunal in *Ameriprise India Pvt. Ltd.*, wherein the Tribunal has rejected the Id. DRP’s reasoning about the subsuming of interest on receivables in the working capital adjustment. He pointed out that this decision also considers the decision in the case of *Kusum Healthcare Pvt. Ltd.* and the same has not been followed observing that the same was passed without considering the amendment to section 92B carried out by the Finance Act, 2012 with retrospective effect from 01.04.2002 which has been duly taken into ITA Nos.2010 and 2757/Del/2014 by the Tribunal in its later order in *Techbook International Pvt. Ltd. (supra)*. The Id. DR further submitted that by not charging interest on the overdue amount

from its foreign parent, there is profit shifting from India to abroad. He referred to Schedule 15 (paper book 128) and pointed out that the assessee has earned Rs.1.87 crore interest on 'demand deposits. He submitted that instead of earning interest in India and paying taxes in India, the funds have been utilized by its AE and thus there is resultant avoidance of tax in India. As regards the assessee's plea that it has debt free funds, he submitted that the same is of little consideration in transfer pricing because benchmarking is to be done in respect of separate international transaction involving non-charging and under charging of interest on delayed receivables. This plea is relevant only when the issue regarding disallowance of interest u/s 37(1) is under consideration.

17. We have considered the submissions of both the parties and perused the record of the case. The assessee's grievance is two-fold. Firstly, when working capital adjustment has been made, then, no separate adjustment is required to be made in respect of accounts receivables because the same gets subsumed in the working capital adjustment. The second plea of the assessee is that since its funds are

entirely debt free, therefore, no adjustment is warranted in regard to late realisation of proceedings from receivables. The assessee's reliance as noted earlier, is on the decisions in its own cases for assessment year 2010-11 and 2011-12. The issue has been elaborately considered in the case of Ameriprise India Pvt. Ltd. (supra) and, again, in the case of Mckinsey Knowledge Centre Pvt. Ltd. (supra). In the case of Techbooks India International Pvt. Ltd. vs. DCIT (supra), taking note of the Explanation inserted by the Finance Act, 2012 to Section 92B, it was observed that there remained no doubt that apart from any short-term or long-term borrowing, etc., or even advance payments or deferred payments, 'any other debt arising during the course of business' had also been expressly recognized as an international transaction. In the said decision, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Patni Computer Systems was also considered, wherein Hon'ble Bombay High Court set aside the view taken by the Tribunal in view of amendment to section 92B. The decision in the case of Kusum Healthcare Pvt. Ltd. was duly considered in the case of Ameriprise India Pvt. Ltd. and it was observed from para 20 to 23 as under:-

“20. The ld. AR supported the impugned order by relying on a Tribunal order dated 31.3.2015 passed in *Kusum Healthcare Pvt. Ltd. vs. ACIT* (ITA No.6814/Del/2014) in which it has been held that no additional imputation of interest on the outstanding receivables is warranted if the pricing/profitability is more than the working capital adjusted margin of the comparables. In the opposition, the ld. DR relied on a later order dated 6.7.2015 passed by the Tribunal in the case of *Techbooks International Pvt. Ltd. (supra)*, in which the transfer pricing adjustment on account of the delayed realization of invoices from AEs has been upheld. The ld. DR contended that the order in the case of *Kusum Healthcare Pvt. Ltd. (supra)*, has been passed without considering the amendment to section 92B carried out by the Finance Act, 2012 with retrospective effect from 1.4.2002, which has been duly taken into account by the Tribunal in its later order in *Techbooks International Pvt. Ltd. (supra)*.

21. After considering the rival submissions and perusing the relevant material on record, it is noticed as highlighted above, that the assessee argued before the TPO that interest on receivables is not an international transaction. At this stage, it would be apposite to note that the Finance Act, 2012 has inserted Explanation to section 92B with retrospective effect from 1.4.2002. Clause (i) of this Explanation, which is otherwise also for removal of doubts, gives meaning to the expression ‘international transaction’ in an inclusive manner. Sub-clause (c) of clause (i) of this Explanation, which is relevant for our purpose, provides as under:-

Explanation.—For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

(a) .....

(b) .....

(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;....’*

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.

23. The Hon’ble Bombay High Court in the case of *CIT vs. Patni Computer Systems Ltd., (2013) 215 Taxmann 108 (Bom.)* dealt, *inter alia*, with the following question of law:-

“(c) Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that *the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?*”

24. While answering the above question, the Hon’ble High Court noticed that an amendment to section 92B has been carried out by the Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside the view taken by the Tribunal, the Hon’ble High Court restored this

issue to the file of the Tribunal for fresh decision in the light of the legislative amendment.

25. The foregoing discussion discloses that non-charging or under-charging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the ALP of such an international transaction is required to be determined.”

18. In view of the above observations, the reliance placed by the ld. counsel for the assessee on earlier decisions cannot be accepted.

19. In the case of Ameriprise (supra), it has been observed that the working capital adjustment is in respect of international transaction of rendering services to the AE. Interest for credit period allowed as per the agreement is given in the price charged for rendering of services. Whereas the non-realisation of invoice value beyond the stipulated period is a separate international transaction whose ALP is required to be determined. Granting of working capital adjustment is confined to the international transaction of rendering of services, whose ALP is separately determinable. On the other hand, the international transaction of interest receivable from its AEs for late realization of invoices beyond such stipulated period is a separate international transaction. Allowing

working capital adjustment in the international transaction of rendering of services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs beyond the stipulated period allowed as per agreement. In the case of Mckinsey Knowledge Centre Pvt. Ltd. (supra), again, the Tribunal reiterated this reasoning and, inter alia, observed that:

“..... In our considered opinion, whereas, the international transaction of purchase/sale of goods from/to AE contemplates comparison of the price charged/paid for such goods by impliedly including the interest for the period allowed for realization of invoices as per the terms of the agreement, the international transaction of charging interest on late recovery of trade receivable covers the period which starts with the termination of the period of credit allowed under the agreement, which is subject matter of the international transaction of purchase/sale of goods.”

20. The Tribunal also explained that if an invoice is raised during the year and the proceeds are realized within the year, but, beyond the stipulated period of agreement, then, the same will not come within the working capital adjustment because working capital adjustment is made with reference to the opening and closing balances as on 1<sup>st</sup> April and 31<sup>st</sup> March. Therefore, respectfully following the decision of the Tribunal noted above, we reject the assessee's contention that the

interest on delayed payment of receivables get subsumed in the working capital adjustment allowed to the assessee. The ld. counsel has also advanced an argument that since it was debt free fund company, which finding is not disputed, therefore, no interest could be attributable on the late realization of receivables. In our opinion, this plea is to be rejected at the threshold because, as noted earlier, interest on delayed realization of receivables is a separate international transaction and, therefore, requires separate benchmarking. It has nothing to do with the operations of the assessee company being with the debt free funds only.

21. As far as the assessee's plea regarding selecting of ad hoc interest rate of LIBOR+400 bps while computing the addition is concerned, we find that the ld. DRP has directed to compute the adjustment using the rates of six months LIBOR + 400 bps on receivables which are to be paid to the assessee in US \$ in accordance with the decision in Cotton Naturals (supra) of Hon'ble Delhi High Court, wherein it has been held that it is the current year in which the loan is to be repaid which determines the rate of interest and, hence, the prime lending rate should

not be considered for determining the interest rate. We, therefore, do not find any reason to take a different view on this issue.

22. Ground No.2 is consequential

23. Ground No.3 is premature.

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

The order pronounced in the open court on 16.05.2017.

Sd/-

[C.M. GARG]  
JUDICIAL MEMBER

Sd/-

[S.V. MEHROTRA]  
VICE PRESIDENT

Dated, 16<sup>th</sup> May, 2017.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.