

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3714/Del./2018
(ASSESSMENT YEAR : 2013-14)**

DCIT, Circle 12 (2), New Delhi.	vs.	IQOR India Services Pvt. Ltd., P – 24, Green Park Extension, New Delhi – 110 016. (PAN : AABCI2835F)
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(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rishabh Malhotra, AR
REVENUE BY : Shri Mrinal Kumar Das, Senior DR

Date of Hearing :	31.05.2022
Date of Order :	22.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This is an appeal by the Revenue against the order of the Id. CIT (Appeals)-44, New Delhi pertaining to Assessment Year 2013-14.

2. The grounds of appeal read as under :-

“1. Whether the order of Ld. CIT (A) is contrary to the provisions of explanation (I) (c) to Sec. 92B, which says that outstanding receivables are in nature of capital financing and is an international transaction.

2. Whether on the facts and circumstance of the case and in law the Ld. CIT(A) was correct in holding that the amounts outstanding as receivable with foreign AE was not a separate international transaction, especially when about 65% of the sale of the assessee to its foreign AE is lying in debts and no such agreement of sale is furnished.”

3. Brief facts of the case are that during the year under consideration, assessee company is engaged in providing business process outsourcing services i.e. collection/account receivable management and customer retention services to its Associated Enterprises. The assessee in order to determine the arm's length price of the international transaction selected Transactional Net Margin Method ('TNMM') as the most appropriate method and full cost plus markup ('OP/TC') was selected as the Profit Level Indicator ('PLI'). The assessee selected 7 comparable companies using financial data available for current year (FY 2012- J 3) as well as previous two years i.e. FY 2010-11 and FY 2011-12. The arithmetic mean of the weighted average OP/TC of comparable companies was 11.93% as against 27.74% margin on operating cost of the assessee. Accordingly, the assessee claimed that its transaction was at arm's length.

4. The assessee argued that the notional costs of the receivables were subsumed in the pricing of the services rendered. Accordingly, a working capital adjustment was made in the margins of the comparables in its TP study. The weighted average OP/TC (adjusted) of comparable companies was determined to be 20.24% and the mark up earned by the assessee was 27.74%. The assessee therefore argued that transactions of provision of services and outstanding receivables were at arm's length.

5. Without prejudice to the above, the assessee submitted that it had carried out an updated search (vide submission dated 12th July 2016) wherein 6 comparables were selected and the latest year (i.e. FY 20] 2-13) weighted average OP/TC margin (working capital adjusted) of the said comparables was calculated at 15.12%.

6. The TPO accepted the above analysis of the assessee but held that receivables constitute separate international transactions under section 92 B read with section 92F of the Act and Rule 10B of the Rules.

7. The TPO in his impugned order dated 30/09/20] 6 has treated the delayed payments received by the assessee from its various AEs as unsecured loan advanced to the A Es and charged a rate of interest based Libor plus 300 bps i.e. 4.78% on receivables outstanding for more than 54 days.

8. The TPO has considered delay in payment for receivables as an international transaction in view of the amendment in section 92CA (2A) of the Act introduced by Finance Act 2011 wef 01.06.2011 and retrospective amendment to section 92 CA(2B) introduced by Finance Act 2012 wef 01.06.2002. The TPO has also relied upon amendment in explanation (1) (c) to section 92B of the Act which has been inserted by Finance Act 2012 w.e.f. 0110412002. As per the amendment, the term international transaction includes “capital financing, including any type

of long-term or short-term borrowings, lending all guarantee, purchase or sale of marketable securities or any type of advance, payments deferred payments or receivable or any other debt arising during the course of business". The TPO has also relied upon sections 92F (v) of the Act and rule 10B (2) (c) of the Rules to hold that the doctrine of "substance over form" indicates that transfer pricing regulations are to be applied keeping in mind the overall scheme of taxpayer's business arrangement.

9. The TPO in his impugned order has pointed out that the assessee provided benefit to its AE by way of advancement of interest-free loan in the garb of delay in receipt of receivables. A perusal of the receivables of the assessee from its AEs has been tabulated at para 6.5 of the impugned order of the TPO which shows that in many instances the amount outstanding with the AE's is more than hundred days also. The TPO has stated that the assessee has not put forth any cogent explanation why its receivables are not paid within time. These funds could have otherwise been deployed for at least earning interest income. The assessee has therefore incurred cost in connection with a benefit and service provided to the AEs by way of delay in receipt of receivables. In view of the same the TPO held that even otherwise delay in receipt of receivables is an international transaction under section 92B(1) read with clause (v) of section 92F of the Act. The TPO bench marked the interest rate based on

the Libor and added 300 basis points to take into account various factors/risks undertaken by the assessee.

10. Upon assessee's appeal, Id. CIT (A) found the issue covered in favour of the assessee as under :-

"11. The issue is covered in favour of the assessee by the order of the Delhi High Court in the case of Kusum Healthcare Pvt ltd vs ACIT ITA I 0 6814/Del12014 dated 26.03.2015 where it was held as follows:-

"8. Aggrieved by the said order, the Assessee filed an appeal before the ITAT. By the impugned order dated 31th March 2015, the ITAT set aside the assessment order. The ITAT noted that the Assessee had undertaken working capital adjustment for the comparable companies selected in its transfer pricing report. It was further noted that "the differential impact of working capital of the Assessee vis-a-vis its comparables had already been factored in the pricing/profitability" which was more than the working capital adjusted margin of the comparables and, therefore, "any further adjustment to the margins of the Assessee on the pretext of outstanding receivables is unwarranted and 'wholly unjustified.

9. Mr. Raghvendra Singh, learned counsel appearing for the Revenue submitted that the ITAT overlooked the fact that the expression "international transaction" as defined in Explanation (i)(c) to Section 92B of the Act included "payments or deferred payment or receivable or any other debt arising during the course of business ", and therefore, the outstanding receivables could by themselves constitute an international transaction. He further referred to the OCED Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Paras 3.48 & 3.49 under Chapter 111 para A.6.1 of the said Guidelines titled "Different types of comparability adjustments" spoke of the need to eliminate differences that may arise from different accounting practices between controlled and uncontrolled transactions. In particular, it was noted under para 3.49 that "a significantly different level of relative working capital between the controlled and uncontrolled parties may result in further investigation of the comparability characteristics of the potential comparable. " Mr. Singh submitted that the ITAT erred in disagreeing with the TPO, who had characterised the outstanding receivables as an international transaction by itself which required benchmarking.

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 AEs would automatically be characterised 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 TPO 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 AE, the arrangement rejects an international transaction intended to benefit the AE in some way.

11. The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO 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) 345 ITR 241 (Delhi). 12. Consequently, the Court is unable to find any error in the impugned order of the ITAT giving rise to any substantial question of law for determination. The appeal is, accordingly, dismissed."

5.12 The material facts of the case are the same in the instant year also. In accordance with the principle of consistency and respectfully following the order of the Hon'ble Delhi High Court in the case of Kusum healthcare Pvt. Ltd (supra) it is held that the appellant 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. In view of the same the transfer pricing adjustment made by the AO/TPO is deleted. The ground of appeal is decided in favour of the appellant.

11. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the record.

12. Ld. counsel of the assessee pleaded that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court as referred by ld. CIT (A).

13. Per contra, ld. DR of the Revenue could not dispute this proposition.

14. Respectfully following the precedent from Hon'ble jurisdictional High Court, we uphold the order of the ld. CIT (A).

15. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on this 22nd day of June, 2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 22nd day of June, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-1, Gurgaon
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.