

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
MISS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER

ITA No.1516/Ahd/2019  
Assessment Year :2015-16

Toshiba Technical Services International Corporation (India Project Office) B-/ 12 Vijay Wadi Niwas CHS Ltd. Lokmanya Tilak Road Mulund East, Mumbai PAN : AABCT 9577 D	Vs.	ACIT, International Taxation-2 Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assessee by :	Shri Yogesh Shah, AR
Revenue by :	Shri Atul Pandey, SR-DR

सुनवाई की तारीख/Date of Hearing : 19/07/2022  
घोषणा की तारीख /Date of Pronouncement: 12/10/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order passed by the ld.Assistant Commissioner of Income-Tax, International Taxation-2, Ahmedabad [hereinafter referred to as "Ld.ACIT(IT) under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 ("the Act" for short) dated 9.8.2019 pertaining to the Asst.Year 2015-16.

2. The grounds raised by the assessee are as under:

“1. Under the facts and circumstances of the case and in law, the Ld AO erred in assessing the income of the Appellant under the normal provisions of the Act at Rs.7,31,10,000 against returned income of Rs.6,92,02,240 based on the directions received from Hon'ble DRP upholding the adjustment to the transfer price proposed by the learned Transfer Pricing Officer ("TPO").

2. Transfer Pricing:-

2.1 Under the facts and circumstances of the case and in law, the Ld AO/ TPO erred in proposing and the Hon'ble DRP further erred in upholding an adjustment of Rs. 39,07,760 pertaining to notional interest on outstanding receivables as on 31 March 2015, alleging that the same to be not at arm's length in terms of the provisions of Sections 92C(1) and 92C(2) of the Act read with Rule 10D of the Income-tax Rules, 1962 ("Rules").

2.2 Under the facts and circumstances of the case and in law, the Ld TPO/ DRP/ AO erred in disregarding the detailed arguments/ submissions put forth by the Appellant during the course of the DRP/ assessment proceedings while passing its direction under section 144C of the Act.

2.3 Under the facts and circumstances of the case and in law, the Ld TPO/ DRP/ AO erred in imputing interest on the outstanding receivables from the AEs ignoring the fact that the Appellant followed the same policy of not charging any interest on trade receivables from both AEs as well as Non-AEs.

Under the facts and circumstances of the case and in law, the Ld TPO/ DRP/ AO erred in ignoring the fact that the Appellant has done a business transaction (rendering of technical advisory services) with its AE. To benchmark the said transaction, the Appellant has applied Transactional Net Margin Method ("TNMM") as Most Appropriate Method ("MAM"). Accordingly, once the Ld TPO/ DRP/ AO has accepted the TNMM as MAM, the consequential outstanding receivable is covered in the arm's length pricing. Therefore, no separate adjustment for notional interest on delayed payment is required to be adjusted.

2.5 Under the facts and circumstances of the case and in law, the Ld TPO/ DRP/ AO erred in re-characterizing the outstanding receivables/ unbilled revenue from Associated Enterprises ("AEs") of the Appellant as unsecured loan and computing notional interest on delays in realization of payment from the AEs.

2.6 Under the facts and circumstances of the case and in law, the Ld TPO/ DRP/ AO erred in computing interest on unbilled revenue which is the amount accrued to the Appellant and credited to the profit and loss account as income. However, since the services are ongoing as on 31 March, invoice in relation to the same is not raised on the customers. Therefore, in the absence of the actual invoicing to the respective customer, the Ld TPO/ DRP/ AO has erred in characterizing unbilled revenue as 'debtor/accounts receivables'.

2.7 Without prejudice to the above, under the facts and circumstances of the case and in law, the Ld DRP/ AO erred in computing notional interest on unbilled revenue from Toshiba JSW Power Systems Private Limited as on 31 March 2015 for invoice numbers E04443 and E04445 which were received 85 days before the due date.

3. Levy of surcharge and education cess

The learned AO erred in incorrectly levying surcharge at the rate of 5% instead of levying surcharge at the rate of 2%.

The learned AO erred in levying surcharge and education cess on the tax payable on income chargeable to tax at the rate of 10% as per Article 12(2) of the India-Japan Tax Treaty.

4. Short grant of tax deducted at source

The learned AO erred in granting the credit for tax deducted at source [TDS] amounting to Rs. 4,40,56,666 as against the TDS credit of Rs. 6,69,64,143 claimed by the appellant. Therefore, the learned AO has not granted credit for TDS to the extent of Rs. 2,29,07,477.

5. Interest under section 234D

The learned AO erred in levying interest under section 234D of the Act.

6. Interest under section 244A

The learned AO erred in not correctly granting the interest under section 244A of the Act.

7. Levy of penalty under section 271(l)(c)

That on facts and circumstances of the case and in law the learned AO erred in proposing the initiation of the penalty proceedings under section 271(1) (c) of the Act.

8. Each of the above grounds is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

9. The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal.”

3. Ground Nos.1, 8 and 9 are general in nature; and ground no.7 raised by the assessee against initiation of penalty proceedings is premature. The same are therefore not being dealt with by us.

4. Ground No.2, it was stated by the Id.counsel for the assessee, related to the issue of transfer pricing adjustment to the outstanding receivables of the assessee by charging interest thereon. The assessee, i.e. Toshiba Technical Services International Corporation is the project office of Toshiba Corporation, Japan and is engaged in various services having specialization *interalia* in supervision of erection and commissioning of Toshiba hardware in power generating facilities, plants of various manufacturing industries and electronic communication facilities. During the impugned year, the assessee had reported international transaction of account receivable with respect to its Associate Enterprise ("AE") amounting to Rs.57,17,385/-. The AO/TPO noted however that total outstanding receivables amounted to Rs.12,28,85,552/- and proposed Transfer Pricing adjustment to the same on account of notional interest earned thereon by applying rate of interest of 10.24% p.a. thus proposing upward adjustment of Rs.1,25,83,481/- towards notional interest and net receivable from the AE. The assessee objected to the same before the Id.DRP who in turn held that adjustment on account of notional interest was warranted, but directed application of LIBOR rate of 3% to the outstanding receivables. Accordingly, addition of Rs.39,07,760/- was directed by the Id.DRP to be made on account of notional interest on the outstanding receivables of the assessee relating to its AE. It is this adjustment, which is challenged before us.

5. Contentions raised by the Id.counsel for the assessee against the proposed adjustment were two folds viz. –

- i) That the actual outstanding receivables amounted to only Rs.57,17,385/- and the balance of Rs.11,71,68,167/- were outstanding on account of unbilled revenues.

Therefore, the amount on account of unbilled revenues having not accrued to the assessee itself, there was no question of charging notional interest on the outstanding amount on account of unbilled revenue;

- ii) That the assessee had not been identically charging interest with its unrelated parties also, and therefore, non-charging of interest from the AE outstanding receivables was justified to be at arm's length with internal comparison made by the assessee.

6. With regard to its first contention that outstanding receivables as at the end of the year amounted to only Rs.57,17,385/- and not Rs.12,28,85,552/- as held by the authorities below, and that balance of Rs.11,71,68,167/- pertained to unbilled revenues, the ld.counsel for the assessee contended that it had consistently been following accounting policy of accounting for certain incomes of the year without raising bills on the basis of work completed on the projects undertaken, since corresponding expenditure in relation to the same had also been booked; the bills in relation to these unbilled revenues were subsequently raised. The ld.counsel for the assessee contended that this system of accounting had been followed by the assessee consistently from year to year and no adjustment on account of notional interest of unbilled amount ever made in the past or future in the case of the assessee. He contended that same policy was followed by the assessee in the case of unrelated parties also. The ld.counsel for the assessee, therefore, contended that amounts outstanding for which the assessee had not even raised the bills, and thus, was not entitled to be recovered from the debtors could not be termed as outstanding receivables so as to charge notional interest on the same. In this regard he drew our attention

to the contentions made before the Id.DRP which were summarized at page no.5.2.3 as under:

*“5.2.3 In this relation, the assessee stated that the outstanding receivables refer to the amounts which have accrued to the assessee and invoice has been raised by assessee, but not received at the end of the year. Whereas, unbilled revenue is the amount which is accrued to the assessee and credited to the profit and loss account as income: however, invoice in relation to the same is not raised on the customers. Further, the assessee submitted follows mercantile system of accounting. As per this, revenue is recognized when it is accrued. Accordingly, the assessee recognized the income accrued to it in a particular year based on services rendered during that year. There may be cases wherein the services are on-going as on 31 March but invoice has not been raised for such services. However during the process of audit, income from the said services are accrued in the books of account and recognized as revenue from operations and unbilled revenue as an asset as per the relevant accounting standard and accounting principal. Further, in the absence of the actual invoicing to the respective customer, the same is not characterized as 'debtor/accounts receivables'. Accordingly, the same is disclosed as unbilled revenue and has been recognised in revenue from operations and shown as an asset in financial statement. Also, the amount of unbilled revenue is duly offered to tax in return of income filed for FY 2014-15.”*

7. He also drew our attention to the details of unbilled revenue during the year showing the date on which invoices in relation to the same were actually raised by the assessee, and remittance thereof received, as also reflecting fact that identical accounting system was followed in the case of unrelated party i.e. Tata Steel Ltd., also. The detail is reproduced as under:

**TOSHIBA TECHNICAL SERVICES INTERNATIONAL CORPORATION**  
Assessment Year 2015-16

**Details of unbilled revenue**

**Related Party**

Sr.No.	Invoice No.	Name of Party	Invoice Amount	Invoice Amount	Invoice Date	Allowed credit period (in days)	Due date (A)	Date of Remittance (B)	Receipt Days (B-A)
			(in JPY)	(in Rs.)					
1	E04396(Rev.1)	Toshiba JSW Power Systems Pvt.Ltd.	81,488,000	42,463,397	18-Sep-15	30	18-Oct-15	2-Aug-16	289
2	E04443		20,694,450	10,783,878	25-Sep-15	90	24-Dec-15	30-Sep-15	-85
3	E04445		87,503,220	45,597,928	25-Sep-15	90	24-Dec-15	30-Sep-15	-85
4	E04406(Rev.1)		35,162,087	18,322,964	22-Jul-15	30	21-Aug-15	16-Sep-15	26
<b>Total (a)</b>				<b>117,168,167</b>					
<b>Unrelated Party</b>									
13	E04420	TATA Steel Limited	10,800,000	5,627,880	5-Aug-15	30	4-Sep-15		
<b>Total (b)</b>				<b>5,627,880</b>					
<b>Total (a) + (b)</b>				<b>122,796,047</b>					

8. The ld.counsel for the assessee therefore contended that adjustment made on the unbilled revenue portion of the accounts receivable was not justified.

9. The ld.DR, on the other hand, relied on the order of the ld.DRP at para 5.8 as under:

*“5.8. As to the contention of the assessee raised vide Ground No. (iii) that interest should not be imputed in respect of unbilled amount, we observe that it is an admitted position that the assessee follows the Mercantile system of accounting. It has been stated that the outstanding receivables refer to the amounts which have accrued to the assessee and invoice has been raised by assessee. but not received at the end of the year. On the other hand, unbilled revenue is the amount which has accrued to the assessee and credited to the profit and loss account as income; however, invoice in relation to the same is not raised on the customers. We fail to understand how the amount which is admittedly accrued to the assessee and credited to the profit and loss account could not be considered as "outstanding" when the assessee is following mercantile system of accounting. The contention of the assessee that the same should be considered as outstanding only when the invoice is raised to the customers is ex facie contrary to the principles of mercantile system of accounting. Moreover, since we are looking into transactions with AE, it is immaterial when the invoice is raised as the same could easily be arranged and managed between the AEs. The contention of the assessee in this regard is not acceptable. Ground No(iii) is, accordingly, rejected.”*

10. We have heard both the parties. The issue before us is, whether amount receivables admittedly outstanding on account of unbilled revenues can be considered as outstanding debts for the purpose of making adjustment of notional interest thereon under the TP provision of the Act.

It is an admitted fact that Rs.11,71,68,167/- of the outstanding receivables relate to unbilled amounts; that the bills in relation to these amounts were raised by the assessee on its AE in the subsequent year. The Revenue does not dispute this position.



Having said so, until bill is raised the assessee has no right to recover any amount from the other party, because it is the bill which notifies the other party of fixing liability on it to pay certain amounts. Until then, the assessee has no right to recover any amount. Therefore, with no right of recovery with the assessee, the amounts outstanding on account of unbilled amounts cannot be said to be outstanding “debtors” since no debt has accrued on the other party on account of these amounts. The other party having neither received the bill and as a consequence not accepted the same also, therefore, there is no debt which is accrued on the other party. In view of the same, these outstanding amounts on account of unbilled revenues cannot be termed as outstanding debtors and there is no question of charging any interest for the delayed recovery of the same. The unbilled revenue amounting to Rs. 11,71,68,167/- is therefore, we hold not to be treated as accounts receivable for the purposes of making any adjustment on account of notional interest earned thereon.

11. Coming to the next point raised by the assessee that no adjustment on account of notional interest was warranted since it had been demonstrated that even vis-à-vis non-AE the assessee was not charging any interest, the ld.counsel for the assessee placed before us another details to this effect as under:

**TOSHIBA TECHNICAL SERVICES INTERNATIONAL CORPORATION**

Assessment Year 2015-16

Details of Debtors outstanding as on 31/3/2015

Related party

Sr.No.	Invoice No.	Name of Party	Invoice Amount	Invoice Amount	Invoice Date	Allowed credit period (in /in	Due date (A)	Date of Remittance (B)	Receipt Days (B-A)
			(in JPY)	(in Rs.)					
1	E04178(Rev1)		43,90,000	2,287,629	19-Dec-14	30	18-Jan-15	26-Jan-16	373
2	E04275		20,77,075	1,082,364	5-Jan-15	30	4-Feb-15	26-Jan-16	356
3	E04276	Toshiba JSW Power Systems Pvt.Ltd.	21,01,815	1,095,256	5-Jan-15	30	4-Feb-15	26-Jan-16	356
4	E04059		24,02,870	1,252,136	4-Apr-14	30	4-May-14	25-Oct-16	905
5	E04320 (Rev.1)	Toshiba India Private Limited	32,83,738	1,711,156					
		<b>Total (a)</b>		<b>5,717,385</b>					
9	E04359	The Tata Power Company Limited	1,260,000	5,647,682	24-Mar-15				
10	E04284(Rev.1)	TATA Steel Limited	49,800,000	26,433,840	14-Jan-15	30	16-Feb-15	25-Jan-16	343
11	E04286	TATA Steel Limited	11,100,000	5,891,880	14-Jan-15	30	13-Feb-15	25-Jan-16	346
12	E04289	TATA Steel Limited	2,653,344	1,408,395	16-Jan-15	30	16-Feb-15	21-Sep-15	217
14	E04294	Bharat Heavy Electricals Limited	3,370,000	1,869,440	20-Jan-15	60	21-Mar-15	18-Jun-15	89
		<b>Total (b)</b>		<b>41,251,237</b>					
		<b>Total (a) + (b)</b>		<b>46,968,622</b>					

1,094,690

48063312

difference

outstanding per Balance Sheet

12. Referring to the same, he pointed out that it is evident that the assessee has not charged any interest on its outstanding receivables from non-AE i.e. Tata Steel Ltd., BHEL and Tata Power Company, and therefore, the ALP of the outstanding receivable in respect of AE was justified with non-charging interest by the assessee on the outstanding receivables relating to the AE.

13. The ld.DR however drew our attention to the order of the ld.DRP that such internal CUP was justifiable only when the quantum of transaction between AE and non-AE was uniform. In this regard, he drew our attention to para-5.6 of the order of the ld.DRP.

*“5.6 We have gone through the details filed in this regard vide letter dated 06.06.2019 and 28.06.2019. It is evident from the details tiled vide idler dated 06.06.2019 that the AE transactions of the assessee for the year under reference is Rs. 27.76 crores whereas. Non-AE transaction for the same period is Rs. 4.17 crores only. Hence, there is no complete uniformity in terms of the volume of transactions between the AK and Non-AK. Furthermore, during the course of hearing on 26.06.2019. it was brought to the notice of the ARs that the credit period for the AK- and the Non-AE has not been furnished in the submissions of the assessee. The hearing was adjourned at their request and they were provided further period of time for filing of the same as requested. However, it is found that vide the letter filed subsequently on 28.06.2019 the assessee has provided the credit period of the AE only. The requisite details of credit period for Non-AE, has not been provided. Hence, since the assessee failed to provide the credit period for the non-AE., the same is rendered incapable of comparison with the credit period of the AE. As such the assessee failed to demonstrate complete uniformity in terms of credit period for AE and Non-AE.”*

14. The ld.counsel for the assessee countered by saying that in truth the transaction with AE amounted to only Rs.57,17,385/- while that with the non-AE was Rs.4,12,51,237/-, and therefore, considering the volume of transaction also internal comparison was comparable.

15. We have heard both the parties. We have already held above that as far as outstanding receivables are concerned, in the case of

the amount outstanding with respect to AE it is only an amount of Rs.57,17,385/- which is to be considered, being the amount actually billed to the AE and outstanding as at the end of the year. It is a fact on record that with respect to non-AE also the assessee has not charged any interest on the outstanding balance, and again it is a fact that on record that the amount invoiced to non-AE is to the tune of Rs.4.12 crores. Therefore, even going by volume, the billed revenue with non-AE is much more than the AE and the outstanding receivable from AE and non-AE can be reasonably compared, even as per the reasoning of the Id.DRP. In the present case, no interest having been charged by the assessee to the non-AE outstandings, its transaction of outstanding receivables with AE without charging any interest on the same is therefore held to be justified to be at arm's length. No adjustment, we hold therefore, is to be made on account of non charging of interest on outstanding receivables of AE. And the adjustment made of Rs.39,07,760/- on account of the same is therefore directed to be deleted.

Ground of appeal No.2 is allowed

16. Ground no.4: The grievance of the assessee raised in this ground (reproduced above in para-2 of this order) is with respect to denial of grant of credit of TDS to the extent of Rs.2,29,07,477/-.

17. Solitary plea of the assessee in this regard was that the said TDS credit pertained to income booked by the assessee during the impugned year, but TDS on which was deducted by the payer in the subsequent year when the bills were received and passed by it. He pointed out that the AO had granted credit of TDS as per Form 26AS, being the form reflecting the TDS deducted with respect to

various incomes earned by the assessee which did not reflect the impugned TDS but the assessee was entitled to claim credit of this TDS of Rs.2.29 crores as per provisions of section 199 of the Act read with Rule 37BA of the Income Tax Rules, 1962 which entitled the assessee to credit for TDS on all incomes assessable during the impugned year. He stated that since the assessee had returned income to which the impugned TDS related in the impugned year itself, the assessee was entitled to credit of TDS deducted on the same even though deducted in the subsequent year.

18. In this regard, he drew our attention first to original return filed by the assessee on 30.11.2015 claiming TDS of Rs.4,04,56,666/- (placed before in paper book page no.82 and 83), and then to revised return filed by the assessee for the impugned year on 31.3.2017 and claiming TDS at Rs.5,63,89,321/-. He pointed out therefrom that the assessee had claimed the impugned TDS in the revised return filed for the year. He thereafter drew our attention to the TDS certificate furnished by the party, which had deducted the impugned TDS i.e. Toshiba JSW Power Systems P.Ltd. (placed before in PB page nos.86 to 97) along with copy of invoices to which TDS related, demonstrating the fact that they related to bills raised by the assessee on the said party during the impugned year itself. The ld.counsel for the assessee, therefore, stated that the AO be directed to give credit of TDS to the assessee.

19. We have considered the contentions of the assessee, and since the assessee has raised this issue for the first time before us after noting the fact of short credit of TDS given in the demand notice issued to the assessee after passing of the assessment order, We consider it fit to restore the issue back to the AO to consider the

contentions of the assessee, verify all the documents placed by the assessee in support of its contention and thereafter allow the credit of TDS to the assessee in accordance with law.

Ground of appeal No.4 of the assessee is allowed for statistical purpose.

20. Vis-à-vis ground no.3, 5 and 6 no arguments were made by the ld.counsel for the assessee before us. The same are therefore dismissed for want of prosecution.

21. In the result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Court on 12<sup>th</sup> October, 2022 at Ahmedabad.**

Sd/-  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 12/10/2022