

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

BEFORE SHRI R.S. SYAL, AM AND SHRI A.T. VARKEY, JM

ITA No.2010/Del/2014
Assessment Year : 2009-10

Ameriprise India Pvt. Ltd., Plot No.14, Sector-18, Udyog Vihar, Gurgaon. PAN: AAFCA3489B	Vs. ACIT, Circle 1(1), New Delhi.
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ITA No.2575/Del/2014
Assessment Year : 2009-10

ACIT, Circle 1(1), New Delhi.	Vs. Ameriprise India Pvt. Ltd., Plot No.14, Sector-18, Udyog Vihar, Gurgaon. PAN: AAFCA3489B
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(Appellant)

(Respondent)

Assessee By	:	Shri Deepak Chopra, Shri Harpreet Ajmani & Ms Ananya Kapoor, Advocates
Department By	:	Shri Amrendra Kumar, CIT, DR & Ms Y. Kakkar, Sr.DR

Date of Hearing : 12.08.2015
Date of Pronouncement : .08.2015

ORDER

PER R.S. SYAL, AM:

These two cross appeals – one by the assessee and the other by the Revenue – arise out of the final order dated 28.2.2014 passed by the Assessing Officer (AO) u/s 143(3) read with section 144C of the Income-tax Act, 1961 (hereinafter also called ‘the Act’) in relation to the assessment year 2009-10.

2. Only two issues were pressed before us. First is a challenge to the inclusion/exclusion of certain companies in/from the list of comparables, and second is treatment of foreign exchange gain/loss as an item of non-operating nature. No other issue projected through various grounds, was pressed. As such, the grounds dealing with such other issues stand dismissed.

3. Briefly stated, the facts of the case are that the assessee is a wholly owned subsidiary of Ameriprise, US, which parent company is engaged in the business of insurance, annuities, asset management and brokerage.

The primary object of Ameriprise US is to provide services towards financial planning and other areas like institutional asset management and advisory, pension fund management, the management and administration of certain plans. The assessee was incorporated in August, 2005 and started operations in October, 2005. It is engaged in providing Information Technology (IT) enabled services to Ameriprise US. The assessee reported two international transactions, including remuneration from the 'Provision of IT-enabled back office services' with transacted value of Rs.41,78,36,037/-. The assessee applied the Transactional Net Margin Method (TNMM) as the most appropriate method for benchmarking the international transaction of provision of IT enabled back office support services. Profit level indicator (PLI) of Operating Profit/Total Cost (OP/TC) was computed by the assessee at 14.66%. Six companies were considered as comparable which have been listed on page 10 of the Transfer Pricing Officer's (TPO) order. It was shown that their arithmetic mean of operating profits compared favourably with assessee's profit rate and, hence, the international transaction of 'Provision of IT enabled back office services' was at

arm's length price (ALP). On a reference made by the AO for determining the ALP of the international transactions, the TPO treated only three companies as comparable from the assessee's list. He added four new companies, thereby making a total of seven companies, considered comparable, as under :-

S.No.	Name	OP/TC (%)
1.	Vishal Information Technology Limited	36.93
2.	Cosmic Global Ltd.	50.7
3.	Informed Technologies India Ltd.	23.16
4.	Accentia	52
5.	Crossdomain Solution P. Ltd.	29.4
6.	Genesys International Corpn. Ltd.	84.12
7.	Eclerx	50.3
Average		46.66

4. The assessee's point of view in using multiple-year data of comparables, was rejected. On the basis of the above average operating profit margin of the comparable companies at 46.66%, computed on the basis of only the current year's data, the TPO proposed transfer pricing adjustment, which has been assailed in the instant appeal.

5. The first issue pressed before us is against the inclusion/exclusion of certain companies in/from the list of comparables. In this regard, the

assessee is aggrieved against the inclusion of the following three companies, viz.,

- i. Cosmic Global Ltd.;
- ii. Accentia Technologies Ltd; and
- iii. eClerx Services Ltd.

6. The assessee is also aggrieved against the non-inclusion of (i) CG Vak Software & Exports Ltd., and (ii) R. Systems International Ltd.

7. In order to decide as to whether the above five companies are comparables or not, it is *sine qua non* to consider the functional profile of the assessee in respect of the international transaction of 'Provision of IT-enabled back office services'. Page 2 onwards of the TPO's order enlists the functions performed by the assessee, which have been classified broadly into certain categories. The first category is 'Financial services' which includes Accounting support, Mutual fund accounting, Sales and use tech support. Under this category, the assessee provides services to Ameriprise US in the nature of Credit purchasing cards, Bank reconciliation, Inter-company reconciliations, Maintenance of fixed

asset registers and Payroll, etc. The second category is 'Financial planning services', which refers to the assessee providing support in client data entry for assistance in preparation of draft reports for customers. The third broad category is 'General counsel office' services, which includes E-discovery, Compliance, Profit and loss relations, Intellectual property claims and contracts drafting. This category refers to the assistance provided by the assessee in sorting legal cases and classifying them on the basis of reasons entailed therein and also assistance in drafting contracts for intellectual property claims. The next broad category is 'Data analytics services', which involves scrambling and assembling of data into a more meaningful form to enable Ameriprise, US to review the performance of various products offered to its customers and other related activities. The next broad category is 'Vendor management services' which means performing data processing services in respect of call centres and back office operations of certain companies, outsourced by Ameriprise US. The assessee is required to convert the data into presentable form to enable Ameriprise, US to evaluate the performance of its outsourced call

centres and back office operations. Next category is 'Procurement services'. Under this category, the assessee conducts basic analytics for better understanding of the 'spend' and determines how to optimize such spend across commodities. The next broader category is 'Human resources shared services' under which the assessee helps manage some human resources processes for the US employees including processing payroll, calculating benefits, managing leave of absence, etc.

8. A narration of the above nature of services depicts that the conceptualization of the services is primarily done by Ameriprise US which collects data and sends the same in raw form to the assessee or the other relevant data is procured by the assessee directly from the sources referred by the Ameriprise US. The assessee compiles such raw data in desired format/sequence and undertakes processes, such as, merging of data, sequencing, etc. This is an in-house function performed by the assessee for further actions to be taken by Ameriprise US.

9. At this juncture, we deem it expedient to take note of the contents of Agreement between the assessee and Ameriprise US, a copy of which is

available on page 244 of the paper book, under which the assessee undertook to provide services to its AE. Clause 3 of the Agreement discusses the nature of services to be provided by the assessee to Ameriprise US, as under :-

**“3. PRODUCTS AND SERVICES TO BE SUPPLIED BY
AIPL**

AIPL shall, at the request of Ameriprise, USA, supply to Ameriprise, USA or its Designated Offices, the specified products and services as follows:

- a. AIPL shall process the raw data received/sourced from or on directions of Ameriprise USA and, as applicable, its Designated Offices.
- b. AIPL shall present the customized/processed data in the form of reports/graphs/diagrams as the final output.
- c. AIPL shall use the IT infrastructure in the form of computers, leased lines, etc., to process/customize the data and supply it to Ameriprise USA and, as applicable, its Designated Offices.
- d. AIPL shall also render/undertake other Information Technology enabled activities of Back Office operations including Data Management, Information processing, Revenue

accounting, Support Centre, Design or Implementation of Management Information Systems and Decision Support System, Financial Control Accounting Systems, Back Office/Remote Data Entry and any other similar activities.

e. AIPL shall also analyse the performance data of third party vendors appointed by Ameriprise USA in India for rendering of outsourced call centre and back office services.

This would include:

i. Collection of data on performance of back office operations in India;

ii. Analyse, evaluate and process such data into specified formats by applying information technology tools and provide suitable observations thereof.

f. To the extent necessary or desirable, the Parties shall be free to add one or more schedules to this Agreement to describe in greater detail the Specified Products and Services.”

10. A perusal of the clause 3 of the Agreement between the assessee and Ameriprise, US reveals that the assessee is to collect and then process the data received/sourced from Ameriprise US and thereafter send the reports to Ameriprise US in the desired form. The other services referred to in this Agreement also are essentially in the nature of

collection of data in one form or the other and then, sending reports to Ameriprise US. In other words, the assessee is involved in providing back office support services to Ameriprise US without any direct involvement in the conduct of business of Ameriprise US. With the above background of the assessee's nature of work done for its AE, which is primarily in the nature of rendering IT enabled services, which position has also been admitted by the TPO as well, we proceed to determine the comparability or otherwise of the companies challenged before us.

i) Cosmic Global Limited (Seg.)

11.1. This company was initially included by the assessee in its list of comparables. However, during the course of proceedings before the TPO, it was urged that the same was not comparable as it was engaged in the business of providing services and solutions in the nature of Translation, localization, voiceovers; Accounts processing; and Transcription. The TPO refused to accept the assessee's contention and

treated the same as comparable. No relief was allowed by the Dispute Resolution Panel (DRP).

11.2. After considering the rival submissions and perusing the relevant material on record, it is observed that the TPO has taken only Accounts BPO segment of Cosmic Global Ltd., as comparable. The argument of the Id. AR for the exclusion of this company is that the Accounts BPO segment of this company, though comparable with the assessee's nature of activity, has a small turnover of less than Rs.1 crore as against the assessee's whopping turnover of several crore. It is observed that the Tribunal in the case of *Mercer Consulting (India) Pvt. Ltd. vs. DCIT* (ITA No.966/Del/2014) vide its order dated 6.6.2014, has held the Accounts BPO segment of Cosmic Global Limited as incomparable on account of a very low turnover. However, we find that it is not the end of the matter. Much water has flown since then. The Hon'ble jurisdictional High Court in *ChrysCapital Investment Advisors (I) Pvt. Ltd. vs. DCIT*, vide its recent judgment dated 27.4.2015 has held that high profit or high turnover cannot be a criteria to exclude an

otherwise comparable company. In view of this later development, being the advent of the judgment of the Hon'ble jurisdictional High Court in the current year itself, the view taken in the case of *Mercer Consulting (supra)*, being the exclusion of Cosmic Global due to low turnover, does not stand any more. Here, it is pertinent to mention that there was a controversy about the exclusion or inclusion of the otherwise comparable companies on the basis of high or low turnover. Even a special bench was also proposed to consider this issue. By virtue of the judgment in the case of *ChrysCapital (supra)*, this issue has now shed the character of controversy insofar as the jurisdiction of the authorities under the Hon'ble Delhi High Court is concerned. Now, an otherwise comparable company cannot be excluded on the strength of high or low turnover. It is significant to note that the Tribunal in its later order dated 6.7.2015 in *Techbooks International Pvt. Ltd. vs. DCIT* (ITA No.240/Del/2015) has simultaneously considered the impact of the judgments of the Hon'ble Delhi High Court in *CIT vs. Agnity India Technologies Pvt. Ltd. (2013) 219 Taxman 26 (Del)* and later case of *ChrysCapital Investment Advisors (I) Pvt. Ltd. (supra)*. After making a

comparative study, the Bench has held that a company with a high turnover cannot be excluded on this criteria, if it is functionally similar. In the light of the judgment of the Hon'ble jurisdictional High Court in the case of *ChrysCapital Investment Advisors (I) Pvt. Ltd.*, it becomes clear that the view taken in the case of *Mercer (supra)*, on the exclusion of Cosmic Global on the consideration of low turnover, can no more be treated as a precedent. Law is not a static phenomenon. It keeps on evolving over a period with the arrival of the judgments of the higher judicial forums, till the matter is set to rest by the Hon'ble Supreme Court. A particular view taken by the tribunal, becoming contrary to the later view of the jurisdictional High Court on the same issue, cannot be impressed for adoption. Coming back to the facts of the instant case, we find that the functional comparability of the Accounts BPO segment of Cosmic Global has been accepted by the Id. AR. In that view of the matter and respectfully following the judgment of the Hon'ble High Court in the case of *ChrysCapital Investment Advisors (I) Pvt. Ltd. (supra)*, we hold that Cosmic Global Ltd. (Seg.) cannot be excluded from the list of comparables.

ii) CG-VAK Software and Exports Ltd. (Seg.)

12.1. The assessee included the segmental figures of this company in the list of comparables. The TPO eliminated it on the ground that it was providing software services and ITES and its turnover from ITES was only 0.86 crore, which was less than the requisite filter of turnover.

12.2. Having heard both the sides on this issue, we find that the TPO has accepted the functional comparability of this company on segmental level. The Id. DR was also fair enough to candidly accept the functional similarity of the relevant segment of this company. In such circumstances, the question arises as to whether this company on segmental level, can be excluded from the list of comparables merely on the ground that the revenue from this segment was only Rs.86 lacs? In our considered opinion, the quantum of turnover can be no reason for the exclusion of a company which is otherwise comparable. We have noticed above the judgment of the Hon'ble jurisdictional High Court in the case of *ChrysCapital Investment Advisors (India) P. Ltd (supra)* in which it has been held that high turnover or high profit can be no reason

to eliminate an otherwise comparable company. The same applies with full force in the converse manner as well to a low turnover/low profit company. In principle, we direct the inclusion of the relevant segment of this company in the list of comparables. The TPO is directed to include the operating profit/operating costs of the ITES segment of this company in the list of comparables, after due verification of the necessary figures for the purposes of determination of the operating profit margin etc.

iii) Accentia Technologies Ltd.

13.1. The TPO considered this company as comparable. The assessee's objections about the functional dissimilarity were brushed aside. Now, the assessee challenges the inclusion of this company in the final set of comparables.

13.2. After considering the rival submissions and perusing the Annual accounts of this company for the year in question, it is observed that apart from rendering IT enabled services, this company is also having software products and the revenue from both these streams has been

merged. As the segmental figures in relation to the business of rendering ITES are not available and the TPO has taken its entity level figures, it ceases to be comparable. The obvious reason for the exclusion of this company is the pooling of income from software products in its overall profitability, which cannot be separated with precision, thereby rendering it incomparable. We, therefore, direct to remove this company from the list of comparables.

iv) e- Clerx Services Ltd.

14.1. The TPO treated this company as comparable and the assessee's objections about the functional dissimilarity were ignored.

14.2. After considering the rival submissions and perusing the relevant material on record, we find that it is a Knowledge Process Outsourcing (KPO) company providing data analytics and data process solutions to global clients. This company provides end to end support through trade life cycle including trade confirmations and settlements etc. It also provides sales and marketing support services to leading global manufacturing, retail, travel and leisure companies through its pricing

and profitability services. From the above narration of the nature of business carried on by e-Clerx Services Ltd., it is manifest that the same being a KPO company, is quite different from the assessee, providing only IT enabled services to its AE. Apart from that, it is further observed that this company has significant intangibles which it uses in rendering KPO services, against which the assessee does not have any intangibles. As such, e-Clerx Services Ltd. cannot be considered as comparable. The same is directed to be eliminated.

v) R. Systems International Ltd. (Seg.);

15.1. The assessee included this company in its list of comparables. However, the TPO eliminated the same on the ground that it was following different year ending, namely, 31st December and, hence, was not comparable. The Id. AR fairly accepted that the above company was following calendar year for maintaining its accounts in contrast to the assessee following financial year ending 31st March. It was, however, submitted that this company should not have been excluded for this reason alone when it was otherwise functionally similar, a fact which

has not been disputed by the TPO. The Id. DR opposed this contention by submitting that the data for the year ending of this company was not similar to that of assessee company and hence it was rightly excluded.

15.2. After considering the rival submissions and perusing the relevant material, it is noticed that the assessee company is having financial year covering the period 1.4.2008 to 31.3.2009. In that view of the matter, a valid comparison can be made only if the potential comparable company has also the same financial year. In this regard, we consider it appropriate to note the relevant part of sub-rule (4) of Rule 10B which provides that: “the data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction had been entered into.” It is obvious from the language of sub-rule (4) that the comparability of an uncontrolled transaction can be analyzed only with the “data relating to the financial year” in which the international transaction has been entered into. In other words, if the tested party has March year ending, then, the comparables must also

have the data relating to the financial year ending 31st March itself. If such a data is not available, then, a company albeit functionally comparable, disqualifies. Espousing the facts of the extant case, we find that insofar as the functional comparability of this company is concerned, the TPO has not disputed the same. The only reason given for its exclusion is the non-availability of data for the relevant financial year. The Id. AR contended that though the year ending of the above company was different, yet, the assessee was in a position to put forward the data of this company for the financial year 1.4.2008 to 31.3.2009 from their Annual reports only. It was so stated on the basis of the availability of the quarterly data from the Annual reports of this company, which could be adjusted for the financial year ending 31.3.2009. If the contention of the assessee is correct, that the relevant data for the concerned financial year can be deduced from the information available from its annual report, then, there can be no objection to its inclusion in the list of comparables with the adjusted data for the relevant financial year itself. Under such circumstances, we set aside the impugned order and remit the matter to the file of TPO/AO for

examining this aspect of the matter. It is clarified that only if the assessee succeeds in providing the relevant data of this company for the concerned financial year on the basis of the information available from the Annual reports only, the TPO should include this company in the list of comparables by considering its OP/TC on the basis of the financial year ending 31.3.2009. If however, even though its quarterly data is available and can be compiled for the relevant financial year, but the amounts of operating profit or operating cost etc. for the relevant financial year are not directly available without any apportionment or truncation, then this company should not be considered as comparable.

16.1. The second issue taken up before us is against treating foreign exchange difference as non-operating as against the assessee's treatment of operating cost. On a pertinent query, it was stated by the Id. AR that the foreign exchange loss relates to its transactions from operations by which the revenue has been earned and offered for taxation.

16.2. We find merit in the contention raised on behalf of the assessee about the inclusion of foreign exchange gain/loss in the operating

revenue/costs of the assessee as well as that of the comparables. When we advert to the nature of such foreign exchange gain earned by the assessee, it has also been admitted by the Id. DR that the same is in relation to the trading items emanating from the international transactions. When the foreign exchange loss directly results from the trading items, we fail to appreciate as to how such foreign exchange fluctuation loss can be considered as non-operating.

16.3. The Special Bench of the Tribunal in *ACIT Vs Prakash I. Shah (2008) 115 ITD 167 (Mum)(SB)* has held that the gain due to fluctuations in the foreign exchange rate emanating from export is its integral part and cannot be differentiated from the export proceeds simply on the ground that the foreign currency rate has increased subsequent to sale but prior to realization. It went on to add that when goods are exported and invoice is raised in currency of the country where such goods are sold and subsequently when the amount is realized in that foreign currency and then converted into Indian rupees, the entire amount is relatable to the exports. In fact, it is only the translation of invoice value

from the foreign currency to the Indian rupees. The Special bench held that the exchange rate gain or loss cannot have a different character from the transaction to which it pertains. The Bench found fallacy in the submission made on behalf of the Revenue that the exchange rate difference should be detached from the exports and be considered as an independent transaction. Eventually, the Special Bench held that such exchange rate fluctuation gain/loss arising from exports cannot be viewed differently from sale proceeds.

16.4. In the context of transfer pricing, the Bangalore Bench of the Tribunal in *SAP Labs India Pvt. Ltd. Vs ACIT (2011) 44 SOT 156 (Bangalore)* has held that foreign exchange fluctuation gain is part of operating profit of the company and should be included in the operating revenue. Similar view has been taken in *Trilogy E Business Software India (P) Ltd. Vs DCIT (2011) 47 SOT 45 (URO) (Bangalore)*. The Mumbai Bench of the Tribunal in *S. Narendra Vs Addtl. CIT (2013) 32 taxman.com 196* has also laid down to this extent. In view of the foregoing discussion, we are of the considered opinion that the amount

of foreign exchange gain/loss arising out of revenue transactions is required to be considered as an item of operating revenue/cost, both of the assessee as well as comparables. We, therefore, hold that the AO was not justified in considering forex loss as non-operating cost as against the assessee's claim of operating cost.

17. With the above remarks, we set aside the impugned order and send the matter back to the file of TPO/AO for determining the ALP of the international transaction afresh in conformity with our above observations. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh proceedings.

18. The only ground raised by the Revenue in its appeal reads as under:-

“Whether on the facts and in the circumstances of the case, the Id. DRP is not justified in directing that no separate adjustment was called for under the head interest as interest on receivables was subsumed in the working capital adjustment allowed.”

19. Succinctly, the factual matrix concerning this ground is that the assessee had shown certain receivables from its AE. On examination of the assessee's balance sheet, it was noticed by the TPO that payments against the invoices raised by the assessee were not received within the stipulated time as provided in the Agreement. On being called upon to furnish the time period for payment as per Service agreement and why the delayed payments be not treated as unsecured loans advanced to the AEs, the assessee submitted vide its reply dated 24.12.2012 that: *'receivables was not an international transaction which warranted benchmarking.'* The TPO rejected this contention and held that interest at the rate of 15.77% was chargeable at arm's length level in respect of delayed receipt of invoice values. He tabulated on page 83 of his order the date of invoices, the date of receipt of payments and days for which the invoices remained outstanding. Considering the period of delay beyond 30 days as chargeable to interest, he proposed TP adjustment of Rs.5,98,083/-. The DRP has discussed this aspect on page 26 of its direction. It was held that since direction for allowing of working capital adjustment was given by it, the issue of any interest element

pertaining to the receivables would be subsumed in the same. It was accordingly held that no separate transfer pricing adjustment was called for. The Revenue is aggrieved against this direction given by the DRP.

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.

26. Now, we come to the computation of the ALP of the international transaction of debt arising during the course of business. The TPO has calculated TP adjustment on account of interest on outstanding debts beyond a period of 30 days by noting the number of days after which the relevant invoice was realized. From this Table given on page 83 of the TPO's order, it can be seen that the days of realization range from the

lowest of two days to the highest of 59 days from the date of the respective invoice. The TPO has considered interest of a period of 30 days as a part of invoice value and computed this TP adjustment only where the realization has been made beyond 30 days. A reading of the Agreement dated 1.10.2005 between the assessee and Ameriprise US manifests that clause 6 deals with 'Price and payment.' Para 6.5 of the Agreement provides as under:-

“6.5 All payments shall be made on the basis of the invoices raised by AIPL and shall be cleared *within thirty days* from the date of the invoice. *Under no circumstances shall the payment be delayed for more than sixty days* from the date of the invoice. Any revision to the credit period may be agreed by parties by exchanging e-mails or other forms of correspondence without requiring any change or modification to this Agreement.”

27. Above para of the Agreement divulges that all the payments are required to be made by the AE within 30 days from the date of invoice and latest by 60 days from the date of invoice. It transpires that the maximum period allowed by the assessee to its AE for payment of

invoice is 60 days. This indicates that interest for the period up to 60 days from the date of invoice is factored in the price charged for the rendering of the services, which means that no interest can be separately charged in case of realization of invoices up to a period of 60 days from the date of invoice. As we have noticed above that all the invoices stood realized within a period of 60 days, there can be no question of charging any interest as a separate transfer pricing adjustment.

28. We do not approve the reasoning given by the DRP about the subsuming of such interest in the working capital adjustment. It is axiomatic 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. *Au contraire*, 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 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 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 the Agreement. The amendment made by the Finance Act, 2012 in terms of insertion of Explanation to section 92B with retrospective effect from 1.4.2002 by considering 'any other debt arising during the course of business' as a separate international transaction, impliedly disapproves the view canvassed by the DRP in obliterating the determination of the ALP of the separate international transaction of interest on allowing the working capital adjustment in the international transaction of rendering of services. In our considered opinion, both the transactions are separate and distinct from each other. Whereas the international transaction of rendering services contemplates comparison of the price charged for rendering services 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 rendering of services. There is one more fallacy in the reasoning given by the DRP 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. The TP 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 1st May; period allowed for realization is two months; and the invoice is actually realized on 31st December. Notwithstanding the fact that interest on such late realization would become chargeable for a period of 6 months (from 1st July to 31st December), but the amount of invoice will not be receivable as at the end of the financial year on 31st 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. We, therefore, reject the reasoning given by the DRP in deleting the addition. However, in view of the fact that all the invoices were realized within the maximum period of 60 days allowed as per the Agreement, we hold that the charging of interest on receivables is not sustainable on the extant facts.

29. In the result, the appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is dismissed.

The order pronounced in the open court on 14.08.2015.

Sd/-

[A.T. VARKEY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 14th August, 2015.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.