

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “आई-2”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘I-2’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SHRI PRASHANT MAHARISHI, AM

आयकर अपील सं. / ITA No.6757/Del/2015

निर्धारण वर्ष / Assessment Year 2011-12

M/s Motherson Sumi Infotech& Designs Ltd.,
F-7, Block-B-1, Mohan Cooperative Industrial
Estate, Mathura Road, New Delhi-110044.

PAN-AACCM3199B

.....अपीलार्थी/ Appellant

vs

The DCIT,
Circle-17(1), New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Shruti Khimta, Adv.

प्रत्यर्थी की ओर से / Respondent by : Ms. Nidhi Sharma, Sr.DR

सुनवाई की तारीख/ Date of Hearing : 12.03.2020	घोषणा की तारीख / Date of Pronouncement: 06.07.2020
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आदेश/ORDER

PER SUSHMA CHOWLA,VP

The present appeal filed by assessee is against order of DCIT, Circle-17(1), New Delhi dated 28.10.2015 relating to assessment year 2011-12 against the order passed under section 143(3) of the Income-tax Act, 1961 (in short ‘the Act’).

2. The assessee has raised following grounds of appeal:-

“That on the facts and circumstances of the case, and in law:

1. *The assessment order passed by the Learned Assessing Officer (Ld. AO) pursuant to the directions of Learned Dispute Resolution Panel (Ld. DRP) is bad in law and void ab-initio.*

2. *The Ld. AO / Learned Transfer Pricing Officer (Ld. TPO) (following the directions of the Ld. DRP, have erred on facts and in law in enhancing the income of the Appellant by Rs. 3,46,60,211/-.*

2.1. The Ld. TPO erred on the facts and in the circumstances of the case and in law in framing the order u/s 92CA of the Income Tax Act, 1961 (the Act) on findings which are erroneous in law, contrary to the facts and based on mere conjectures and surmises.

2.2. The Ld. TPO failed to appreciate the submissions made/ contentions raised by the Appellant and further erred in making several allegations, observations, assertions and inferences in the order, which were both factually incorrect as well as legally untenable.

3. *The Ld. AO (following the directions of the Ld. DRP), erred both on facts and in law in confirming the addition of Rs. 3,17,63,342/- to the income of the Appellant proposed by the Ld. TPO by holding that its international transactions pertaining to 'provision of software development services do not satisfy the arm's length principle envisaged under the Act and in doing so, the Ld. DRP and the Ld. AO has grossly erred in agreeing with and upholding the Ld. TPO's action of:*

3.1. not appreciating that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case;

3.2. disregarding the Arm's Length Price (ALP) as determined by the Appellant in the Transfer Pricing (TP) documentation maintained by it in terms of section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules') as well as fresh search; and in particular modifying/ rejecting the filters applied by the Appellant;

3.3. rejecting comparability analysis undertaken by the Appellant in the TP documentation/updated mark-up computations and conducting a fresh comparability analysis based on application of additional / revised filters, or disregarding Appellant's filters in determining the ALP for the international transactions;

- 3.4. *disregarding multiple year/ prior years' data as used by the Appellant in the TP documentation and holding that current year [i.e. Financial Year ('FY') 2010-11] data for comparable companies should be used;*
- 3.5. *including companies having high mark-ups / volatile operating profit mark-ups in the final comparables' set for benchmarking a low risk unit such as the Appellant;*
- 3.6. *including certain companies in the final set of comparables that are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;*
- 3.7. *resorting to arbitrary rejection of low-profit/ loss making companies and companies with diminished revenues based on erroneous and inconsistent reasons;*
- 3.8. *excluding certain companies on arbitrary/frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;*
- 3.9. *by committing a number of factual /computational errors in selection/ rejection of proposed comparables and/ or in the operating profit mark-ups of the comparables;*
- 3.10. *ignoring the business/ commercial reality that the Appellant undertakes limited business risks as against comparable companies that are full-fledged risk taking entrepreneurs, and by not allowing a risk adjustment to the Appellant on account of this fact;*
- 3.11. *by making the addition to the entire value of transactions entered into by the Appellant in its export segment and not only to the value of international transactions entered into by the Appellant (i.e. proportionate adjustment) and ignoring established jurisprudence in this regard;*
- 3.12. *disregarding the analysis and documentation submitted by the Appellant to benchmark the international transaction pertaining to provision of software development services by using internal Comparable Uncontrolled Price as the most appropriate method to determine the arm's length price;*
- 3.13. *disregarding the analysis and documentation submitted by the Appellant to benchmark the international transaction pertaining to provision of software development services by using internal Transactional Net Margin Method as the most appropriate method to determine the arm's length price;*

3.14. disregarding the fact that internal comparable analysis is preferable over external comparable analysis; and

3.15. disregarding judicial pronouncements in India in undertaking the TP adjustment.

4. The Ld. AO/Ld. TPO erred in facts and in law in enhancing the income of the Appellant by Rs. 28,96,869/- by treating the receivables outstanding beyond 30 days from associated enterprises as deemed loan and charging notional interest;

5. The Ld. DRP erred in disregarding the detailed arguments/submissions put forth by the Appellant during the course of the DRP 1 assessment proceedings while passing its direction section 144C of the Act;

6. The Ld. AO has grossly erred by proposing to compute interest under section 234A, 234B, 234C and 234D of the Act;

7. The Ld. AO has grossly erred in initiating penalty under section 271(1)(C) of the Act mechanically and without recording any satisfaction for its initiation.”

3. The only issue raised in the present appeal is against the transfer pricing adjustment made on account of international transaction of rendering Software Development Services to the AEs amounting to Rs.3,46,60,211/-.

4. Briefly in the facts of the case, the assessee was engaged in providing customized Software Development Services to the customer of its Associated Enterprises (in short AE). The assessee was compensated at cost plus markup of 10% for rendering the said Software Development Services. During the year under consideration, the assessee had undertaken few international transactions with its AE, which were reported in its TP study report. The assessee had selected TNMM method to benchmark its international transactions, with OP/TC as Profit Level Indicator (in short PLI) at 10.01%. The assessee selected 16 companies as functionally comparable, whose mean

margins worked to 13.08%. The assessee thus in the TP study report pointed out that its international transaction were at Arm's Length Price. The Assessing Officer made reference under section 92 CA(1) of the Act to the TPO to benchmark Arm's Length Price of the international transaction of provision of Software Development Services by the assessee to its AE. The TPO noted certain defects in the transfer pricing study report and also the application of average margin of three years by the assessee and proposed that only data for contemporaneous period had to be applied. He also revised the filters to be applied and show caused assessee with a fresh list of comparables of 18 companies, whose mean margin worked out to 22.32%. Admittedly there was no dispute on FAR analysis and the PLI to be adopted. The TPO in the order passed under section 92CA(3) of the Act also proposed an adjustment on account of interest on receivables from AE. The TPO thus proposed an upward adjustment of Rs. 05,01,36,985/-. The Assessing Officer in the draft assessment order show caused the assessee as to the upward adjustment to be made in its hand. The assessee filed objection before the DRP, which in turn directed exclusion of two concerns i.e. Infosys Ltd. and eZest Solutions Ltd. and inclusion of Think Soft Global Services Ltd. The DRP also directed that working capital adjustment is to be allowed. The DRP directed application of LIBOR rates instead of SBI PLR lending rates for the adjustment to be made on account of interest on Receivable. Consequent to the directions of DRP, the AO/TPO drew up final list of comparable totaling 17, whose mean margins worked to 19.04% and made upward adjustment of Rs.3,46,60,211/-. The

AO/TPO also reworked the adjustment to be made on account of interest on Receivables. The Assessing Officer passed the consequent order making upward adjustment of Rs. 3,46,60,211/- against which the assessee is in appeal before us.

5. The ground of appeal nos. 1 and 2 are general in nature and does not require any adjudication. The issue raised in ground of appeal no. 3 is against the transfer pricing adjustment made on account of provision of Software Development Services by the assessee to its AE totaling Rs. 3,17,63,342/- . By way of ground of appeal no. 4, the assessee is aggrieved by the adjustment of Rs. 28,96,869/- made on account of interest due on receivable from AE. The ground of appeal no. 5 raised by the assessee is general in nature and does not require any adjudication. The ground of appeal no. 6 raised by the assessee against charging of interest under section 234A, 234B and 234D of the Act, as per learned AR for the assessee is consequential. Hence the same is dismissed. The ground of appeal no. 7 raised by the assessee against the initiation of penalty proceedings is premature and the same is dismissed.

6. Now coming to the issue of adjustment of international transaction of provisions of Software Development Services by the assessee to its AE. The learned AR for the assessee brought to our notice that in case out of the total list of comparable finally selected by the AO/TPO, few concerns are excluded then the margins shown by the assessee would be within range and no

adjustment on account of transfer pricing issue related to provision of software development services need to be made in the hands of the assessee.

7. We shall deal with the arguments of the learned AR and learned DR for the Revenue in respect of the each of the comparables in the paras dealing with the same.

8. The assessee is engaged in provision of Software Development Services to its AE. For benchmarking aforesaid international transaction, Transactional Net Margin Method (in short TNMM) is applied. The list of finally selected comparables by the AO/DRP/TPO is as under:-

S.No.	Company name	OP/TC
1.	Acropetal Technologies Limited (Seg)	36.69%
2.	Akshay Software Technologies Limited	0.16%
3.	Celstream Technolgies Pvt.Ltd.	16.27%
4.	E-Infochips Limited	56.44%
5.	Evoke Technolgoies Pvt.Ltd.	8.11%
6.	CG Vak Software and Exports Ltd. (Segment-IT)	-4.63%
7.	Larsen & Toubro Infotech Ltd.	18.40%
8.	LGS Global Limited (Lanco Global Solutions Ltd.)	13.75%
9.	Mindtree Limited (Seg0	10.74%
10.	Persistent Systems & Solutions Limited (Merged)	22.12%
11.	Persistent Systems Limited	23.08%
12.	R S Software (India) Limited	16.20%
13.	Sasken Communication technologies Limited	24.36%
14.	Tata Elsi Limited (Seg)	13.00%
15.	Thirdware Solutions Ltd. (Seg)	14.64%
16.	Wipro Technolgy Services Ltd.	54.42%
17.	Thinksoft Global Services Ltd.	0.02%
	Mean	19.04%

9. The first concern which the assessee wants to be excluded is M/s. Acropetal Technologies Limited (Seg). The learned AR for the assessee pointed

out that the said concern fails employee cost/sale filter. The case of the assessee was that the said concern was providing the services onsite. Our attention was brought to the note at page 48 of the paper book wherein the expenditure on onsite development incurred on technical sub-contractor was debited. The learned AR further stated that the said technical sub-contractors cannot be the employees of the concern. He placed reliance on the decision of Delhi Tribunal in Bechtel India (P.) Ltd. vs. DCIT [2019] 101 taxmann.com 385 (Delhi-Trib). He also placed reliance on the decision of the Hon'ble Delhi High Court in Rampgreen Solutions vs. CIT [2015] 377 ITR 533 (Delhi) 2015.

10. The learned DR for the Revenue from the profile of the assessee in the TP study report placed at pages 36 & 37 of the Paperbook pointed out that the assessee was providing array of services, which included Software Development Services and Infra Management Services. He further stated that the assessee was delivering end to end solutions. The assessee was providing variety of services and there was whole range of services. His contention was that while applying TNMM method exact matching concerns would not be available and TPO selected companies keeping in mind comparability margin of 75%. As far as M/s. Acropetal Technologies Limited (supra) was concerned, he referred to the observations of the TPO for Assessment Year 2011-12 at pages 41-42 of the TPO's order.

11. After hearing both the parties, we are of the view that where TNMM method is applied, it takes care of certain marginal differences between the

functioning of the tested party and the finally selected comparables. However, if the module of working is different, then such a concern cannot be held to be functionally comparable and cannot be selected in the final list of comparables. The Hon'ble Delhi High Court in Rampgreen Solutions vs. CIT (supra) while adjudicating similar issue of application of TNMM method and whether functionality being same was sufficient held that the comparable transaction/entities must be selected on the basis of similarity with the control transaction/entity. The comparability of controlled and uncontrolled transactions had to be judged *inter alia*, with reference to comparability factors as indicated under Rule 10B(2) of I.T. Rules. The relevant findings of the Hon'ble Delhi High Court in Rampgreen Solutions vs. CIT (supra) in paras 42 to 44 of judgement reads as under:-

“42. Before concluding, there is yet another aspect of the matter that needs consideration. The Tribunal proceeded on the basis that while applying TNMM method, broad functionality is sufficient and it is not necessary that further effort be taken to find a comparable entity rendering services of similar characteristics as the tested entity. The DRP held that TNMM allows flexibility and tolerance in selection of comparables, as functional dissimilarities are subsumed at net margin levels, as compared to Resale Price Method or Comparable Uncontrolled Price Method and, therefore, the functional dissimilarities pointed out by the Assessee did not warrant rejection of eClerx and Vishal as comparables.

*43. In our view, the aforesaid approach would not be apposite. Insofar as identifying comparable transactions/entities is concerned, the same would not differ irrespective of the transfer pricing method adopted. In other words, the comparable transactions/entities must be selected on the basis of similarity with the controlled transaction/entity. Comparability of controlled and uncontrolled transactions has to be judged, *inter alia*, with reference to comparability factors as indicated under rule 10B(2) of the Income Tax Rules, 1962. Comparability analysis by TNMM method may be less sensitive to certain dissimilarities between the tested party and the*

comparables. However, that cannot be the consideration for diluting the standards of selecting comparable transactions/entities. A higher product and functional similarity would strengthen the efficacy of the method in ascertaining a reliable ALP. Therefore, as far as possible, the comparables must be selected keeping in view the comparability factors as specified. Wide deviations in PLI must trigger further investigations/analysis.

44. Consideration for a transaction would reflect the functions performed, the significant activities undertaken, the assets or resources used/consumed, the risks assumed. Thus, comparison of activities undertaken/functions performed is important for determining the comparability between controlled and uncontrolled transactions/entity. It would not be apposite to ignore functional dissimilarity only for the reason that its impact may be reduced on account of using arithmetical mean of the PLI. The DRP had noted that eClerx was functionally dissimilar, but ignored the same relying on an assumption that the functional dissimilarity would be subsumed in the profit margin. As noted, the content of services provided by the Assessee and the entities in question were not similar. In addition, there were also functional dissimilarities between the Assessee and the two entities in question. In our view, these comparability factors could not be ignored by the Tribunal. While using TNMM, the search for comparables may be broadened by including comparables offering services/products which are not entirely similar to the controlled transaction/entity. However, this can be done only if (a) the functions performed by the tested party and the selected comparable entity are similar including the assets used and the risks assumed; and (b) the difference in services/products offered has no material bearing on the profitability.”

12. The Hon'ble Delhi High Court while deciding the case of BPO company held that BPO services does not necessarily involve advanced skill and knowledge; and comparing it with KPO services, it was held that KPO would involve employment of advanced skill and knowledge for providing services. The Hon'ble High Court in Rampgreen Solutions vs. CIT (supra) categorically held that KPO service provider would indicate an I.T.E.S. provider providing completely different nature of services than any BPO service provider. It was thus held that functionality of BPO service provider would be functionally

different from KPO service provider. The Hon'ble Delhi High Court in Rampgreen Solutions vs. CIT (supra) thus held that the differences could not be undermined by using broad classification.

13. The assessee before us is engaged in provision of Software Development Services to its AE which is provided offsite; on the other hand M/s. Acropetal Technologies Limited (Seg) is providing onsite services and had booked the expenditure on account of technical sub-contractors under the head onsite development. It fails the employee/sales filter applied for benchmarking. Accordingly, we direct the AO/TPO to exclude the margins of M/s. Acropetal Technologies Limited (Seg) from the final list of comparables.

14. Now coming to the next concern i.e. E-Infochips Limited. The objection against its inclusion by the learned AR for the assessee is that the said concern fails services revenue filter. He pointed out that the said filter was 75%. Referring to the order of the TPO, the learned AR for the assessee pointed out that TPO himself had applied the filter of 75% and in case concern fails the said filter, then the same has to be excluded. The learned AR for the assessee referred to the order of TPO at page 42, para 11.3 and pointed out that the TPO had wrongly observed that services filter in case of the said concern was 74%.

15. The learned DR for the Revenue strongly objected to the submissions of the learned AR and pointed out that the same come to 84.93%. He pointed out that 74% is wrongly mentioned. The learned AR in re-joinder for the assessee

in rejoinder pointed out that the service revenue filter may be verified by the AO / TPO.

16. The limited issue raised before us is whether a concern which fails service revenue filter applied by the TPO, can this be excluded from final list of comparable. We find that the TPO at page 42 in para 11.3 had mentioned the same to be at 74% whereas the learned AR for the assessee claims that it is 75% and on the other hand the learned DR for the Revenue points out that the employee service revenue filter comes to 84.93%. In view of the dis-similarity in the figures proposed by the AO / TPO, the learned AR for the assessee and learned DR for the Revenue, we remit this issue to the file of AO / TPO to verify the stand of the assessee and in case it fails to service revenue filter, which is proposed by the TPO himself then the said concern is to be excluded from the final list of comparable. Accordingly we hold so.

17. The next concern which the assessee wants to be excluded is Persistent Systems Limited. The learned AR for the assessee elaborately pointed out that the said concern was functionally dis-similar to the assessee by referring to the nature of services provided by the said concern and also stated that the segmental were unavailable and even it owned IPFs. The learned DR for the Revenue however referred to the order of the Tribunal in assessee's own case, relating to assessment year 2007-08 and pointed out that the said concern was held to be functionally similar to the assessee. The learned AR for the assessee

fairly pointed out that the issue was decided against the assessee by the Tribunal. Accordingly, we find no merit in the plea of the assessee and the said concern i.e. Persistent Systems Limited is to be included in the final list of comparable.

18. The next concern which the assessee wants to be excluded Wipro Technology Services Limited. The learned AR for the assessee pointed out that it was a concern with huge brand value and also failed RPT filter. We find merit in the plea of the assessee that the concern having such huge brand value and owning intangibles cannot be compared with the concern providing BPO services. The Delhi Bench of the Tribunal in Bechtel India (P.) Ltd. (Supra) had excluded Wipro Technology Services Limited on the ground of high related party transaction. We further find that the said concern was also engaged in sale of software products. In these facts and circumstances, we direct the exclusion of Wipro Technology Services Ltd.,.

19. The assessee is also aggrieved by the inclusion of Sasken Communication Technologies Limited. The claim of the assessee is that the said concern is functionally dis-similar as it is developing mobile enterprise applications etc.,. It was further pointed out that the said concern was rendering variety of services; however, the segmental details were not available.

20. The learned DR for the Revenue said that the assessee was also providing whole range of services and the product revenue was 10%. Further TPO had applied filter of 75%.

21. On hearing the rival contentions, we are of the view that first step which has to be seen is functional comparability. The concerns are providing variety of services and application of service filter of 75% would come in the next rung of comparability. M/s Sasken Communication Technologies Limited was developing mobile enterprise applications and solutions across various mobile platforms including iOS, Android, Blackberry, RIM and Symbian platform; which are clearly mentioned in the annual report of the said concern. The assessee on the other hand was only providing Software Development Services to its AE. Hence the concern Sasken Communication Technologies Limited is not functionally comparables to the assessee and same needs to be excluded from the final list of comparable. Accordingly, we hold so.

22. The last concern which the assessee wants to exclude from the list of comparables is Thirdware Solutions Limited. The TPO had compared the margins of the assessee with segmental details of the said concern. The objection of the learned AR for the assessee is that the said concern was functionally different and it was engaged in various activities, which is clear from page 554 of the annual report of the said concern. Our attention was also drawn to page 564 of the paper book which gave quantitative details.

23. The learned DR for the Revenue on the other hand stressed that the segmental details of the said concern were being applied and hence no merit in the plea of the assessee.

24. After hearing both the learned counsels, we note that the assessee is engaged in the provisions of Software Development Services to its AE and hence the concern engaged in similar activity should be picked up for comparable. In case, we look at the annual report of the concern i.e. Thirdware Solutions Limited, we find that it was engaged in implementation and consulting services of software and business intelligence. It has also declared Revenue from sale of license, Software Services, export from SEZ and STPI. However, the segmental details are not available and the same is to be excluded from the final list of comparable. Accordingly, we hold so. The ground of appeal no. 3 raised by the assessee thus is allowed.

25. Now coming to the issue raised vide ground no. 4 which is against the adjustment made on account of receivables from AE. The case of the Revenue is that as the assessee has not received the amount due from the AEs, within the stipulated period then interest adjustment needs to be made on account of interest due on Receivables, as this was an International Transaction. The case of the assessee on the other hand is that on such outstandings from both AE and non AEs, no interest is charged by the assessee and this was not an international transaction and hence no adjustment is to be made.

26. We find that the next issue raised is against the transfer pricing adjustment made on account of interest due on receivables outstanding. The said issue stands covered in favour of the assessee by the decision of the Tribunal in M/s. Global Logic India Ltd. for Assessment Year 2010-11 in ITA

No.1104/Del/2015 and for Assessment Year 2012-13 in ITA No.1115/Del/2017 vide order dated 12.12.2017. The Tribunal has relied on the decision of Hon'ble Delhi High Court in Pr. CIT-V vs Kusum Health Care Pvt. Ltd. in ITA No.765/2016, judgement dated 25.04.2017 and held that no adjustment is to be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on Receivables. This issue has also been decided by Hon'ble Delhi high Court in case of Pr. CIT-1 vs M/s. Bechtel India Pvt. Ltd. in ITA 379/2016 (supra) order dated 21.07.2016. The relevant findings of the order of the Tribunal are in paras 14 to 18 which read as under:-

14. Provisions contained under Explanation (i), (a) & (c) of section 92B have been analyzed by Hon'ble Delhi High Court in case cited as Pr. CIT-V vs. Kusum Health Care Pvt. Ltd. in ITA 765/2016 order dated 25.04.2017, wherein it is held that the expression added in Explanation to section 92B does not mean that de hors the context, every item of receivables appearing in the accounts of an entity, which may have dealing with foreign AE, would automatically be characterized as an international transaction and decided the issue in favour of the taxpayer by returning following findings :-

"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-à-vis the receivables for the supplies made to an AE, the arrangement reflects an international transaction intended to benefit the AE in some way.

11. The Court finds that the entire focus of the Assessing Officer 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-à-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.”

15. So, in view of the law laid down by Hon'ble High Court in *Pr. CIT-V vs. Kusum Health Care Pvt. Ltd.* (supra), we are of the considered view that no adjustment can be made on account of notional interest on receivables by relying upon Explanation (i), (a) & (c) of section 92B by treating the continued debt balance as an international transaction. Moreover when the taxpayer is debt free company, there is no question of charging any interest on receivables. This issue has also been decided by Hon'ble Delhi High Court in case of *Pr. CIT-1 vs. M/s. Bechtel India Pvt. Ltd.* in ITA 379/2016 order dated 21.07.2016.

16. Furthermore when we examine the entity level margin of the taxpayer vis-à-vis comparable companies, the taxpayer has earned higher margin i.e. taxpayer earned 38.39% OP/OC margin vis-à-vis margin of comparable companies at 11.43%. In such circumstances, no separate adjustment on account of interest can be made. Because the credit period extended to AE cannot be considered as a standalone transaction without considering the main transaction of the sale.

17. Furthermore when the taxpayer is undisputedly a debt free company, as it is not the case of the ld. TPO that borrowed funds have been appropriated enabling the AE to make the delayed payment on receivables. So when outstanding receivables is not a separate international transaction, the delay in realization of the sale proceeds is

incidental to the transaction of sale and as such no notional interest can be levied by treating the same as unsecured loan.

18. Furthermore it is the case of the taxpayer that when the taxpayer is not charging interest from unrelated third party / non AE, in case of such delay, no adjustment on interest in case of AE can be made and drew our attention towards the details of invoices raised qua unrelated parties available at page 183A of the paper book wherein delay in realization of the receivables is also up to 218 days for AY 2010-11 and up to 417 days qua AY 2012-13 as per detail of invoices raised on unrelated parties qua AY 2012-13, available at page 236 of the paper book.”

27. The assessee during the year under consideration had not avail any loan from AEs or unrelated third parties and was not incurring any interest cost. Further, there was similar delay in receipt of receivables from others and the assessee was not charging any interest on delay in receipt of receivables against services rendered to unrelated third parties.

28. In such facts and circumstances and following the ratio laid down by the Hon'ble Delhi High Court in Kusum Healthcare Ltd. (supra) and also in line with the findings of the Tribunal in M/s. Global Logic India Ltd. (supra), we find no merit in making any adjustment on account of interest due on receivables from its AE. Ground of appeal raised by the assessee in this regard is thus allowed.

29. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06th July, 2020.

Sd/-
(PRASHANT MAHARISHI)
लेखासदस्य/ ACCOUNTANT MEMBER
दिल्ली / दिनांक Dated : 06th July, 2020
SH/Amit Kumar

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,दिल्ली/ DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति//True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली

Assistant Registrar, ITAT, Delhi