

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'I-1', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.1531/Del/2016 (for Assessment Year 2011-12)

M/s. Barco Electronic Systems (P) Ltd., E-20, 1 st & 2 nd Floor, Hauz Khas New Delhi PAN No. AAACB 5865 F (APPELLANT)	Vs.	DCIT, Circle – 4(1), New Delhi (RESPONDENT)
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Assessee by	Shri Mukesh Gupta, C.A.
Revenue by	Shri Manoj Kumar Chopra, Sr. D.R.

Date of hearing:	05/11/2020
Date of Pronouncement:	11/11/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 25.01.2016 of the Commissioner of Income Tax (A)-42, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under:

3. The assessee is a company stated to be engaged in the business of manufacturing of projectors and parts and trading in visual display systems, projects and software and design operations. Assessee filed its return of income for A.Y. 2011-12 on 29.11.2011 declaring total income of Rs.31,67,00,693/-. The case was selected for scrutiny and thereafter notice u/s 143(2) of the Act was issued on 19.09.2012 and served on the assessee. During the course of assessment proceedings AO noticed that during the year under consideration, assessee has entered into International Transactions with 'Associated Enterprises' (AE) within the meaning of Section 92B of the Act. He accordingly referred the matter to TPO for determining the Arm's Length Price' (ALP) u/s 92CA(1) of the Act. The TPO vide order dated 15.01.2015 passed u/s 92CA(3) of the Act proposed an adjustment of Rs.39,55,013/- on account of difference in arm's length price of the international transactions entered by the assessee with associated enterprises. In view of the TPO order, AO passed draft assessment order u/s 144C r.w.s 143(3) of the I.T. Act vide order dated 02.02.2015 assessing the total income at Rs.32,06,55,710/-. Later on, the AO vide order dated 10.03.2015 passed u/s 143(3) r.w.s 144C of the Act assessed the total income at Rs.32,06,55,710/-. Aggrieved by the order of AO/TPO, assessee carried the matter before the CIT(A) who vide order dated 25.01.2016 in Appeal No.70/15-16/CIT(A)-42 granted partial relief to the assessee. Aggrieved

by the order of CIT(A), assessee is now before us and has raised the following grounds:

“1. That the Ld CIT(A) has erred both in law and on facts in upholding addition of Rs.17,97,481/- by bench marking the receivable on transactions of sales/ services of the appellant company by adopting the prime lending rate of SBI plus markup of 300 basis points.

1.1 That the Ld. CIT(A) has failed to appreciate that after having determined the ALP in a sale/ service transaction, it cannot be assumed that separate adjustment is required in respect of interest therefrom, since outstanding net receivables emanate from the service sale transaction itself.

1.2 That furthermore the Ld. CIT(A) has also failed to appreciate that since appellant is also not charging any interest on overdue debts from third parties, therefore notional interest on outstanding receivables with AE is neither factually and nor legally sustainable, particularly when appellant is a debt free company and is not paying interest on funds utilized in business activities or on credit from suppliers.

1.3 That the Ld CIT(A) has also failed to appreciate that while determining the margin appellant had not made any adjustment for working capital and since appellant had earned higher margin of 9.47% as compare to the margin of 5.78% of comparable companies, no further adjustment was warranted.

2. That in any case and without prejudice the Ld CIT(A) has also erred both in law and on facts in not applying the LIBOR rate for computation of interest in view of the judgment of jurisdictional High Court in the case of CIT Vs. Cotton Naturals (I) (P) Ltd. reported in 276 CTR 445.

It is therefore prayed that, adjustment and addition so upheld by the Ld CIT(A) be deleted and appeal of the appellant company be allowed.”

4. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but the sole issue for adjudication is with respect to the addition of Rs.17,97,481/- by bench marking the receivables on transactions of sales/ services of the assessee company by adopting the prime lending rate of SBI plus markup of 300 basis points.

5. The TPO on the examination of the Balance Sheet noticed that there were receivables shown in the balance sheet which according to him implied that the payment for the invoices raised by the assessee was not received by the assessee for the services provided to its AE. TPO asked the assessee to furnish the details of service agreement and other details. He noted that assessee did not furnish the necessary details. He therefore came to the conclusion that assessee has provided the benefits to its AE by way of advancement of interest free loan in the garb of delayed receipt of receivables which could have been otherwise deployed for at least earning interest income. He was further of the view that assessee has incurred cost in connection with a benefit and services provided to the AE by way of delay in receipt of receivables and the delay in receipt of receivables was an international transaction u/s 92B(1) read with clause (v) of Section 92F. He thereafter bench marked the interest from receivables on the basis of SBI Base Rate of 11.69% and

accordingly proposed an adjustment of Rs. 39,55,013/-. When the matter was carried before the CIT(A), CIT(A) granted partial relief by directing that the average PLR of SBI be considered @ 8.69% plus 150 basis at arm's length level of interest to be charged on the receivables. He also noted that while computing the interest on receivable, the AO had not reduced the interest on payables. He accordingly directed the AO to restrict the calculation of interest for the period of outstanding dues falling within the current year with respect to interest receivables and payables. He thus directed the AO to compute the interest by applying interest rate as per PLR of SBI of 8.69% + 150 basis points and re-compute the net amount of interest receivable after making adjustment in respect of interest payable to the AEs. Aggrieved by the order of CIT(A), assessee is now before us.

6. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that assessee has earned margin in software services of 22.85% as compared to the margin of 12.62% of the comparable companies. In the manufacturing segment Assessee's margin are 9.47% as compared to margin of 6.87% of the comparable companies. He further submitted that the working capital adjusted margin of assessee has already factored in the delay in receivables requiring no further adjustment on account of receivables. He further

submitted that no interest has been charged on overdue debts from the third parties and the interest received which is shown under other income includes the amount of interest earned from bank deposits only. He further submitted that assessee is also not paying any interest on the supply credit. He further pointing to the financial statement which is placed at Page 45 of the paper book submitted that assessee is a debt free company and the sources of funds are shareholders' funds and Reserves and Surplus and no interest has been paid for loan funds utilized to fund receivables. For the proposition that the margin of assessee is already been factored in to account for the impact of delay in receivables and no adjustment on account of outstanding receivable is called for, he relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. EKL Appliances Ltd reported in 345 ITR 241 and in the case of Pr. CIT vs. Kusum Healthcare (P) Ltd. (ITA No 765/2016) for the proposition that when the assessee is debt free company and no funds utilized in business therefore no adjustment of outstanding receivable is called for. He also relied on the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. Bechtel India (P) Ltd. (ITA No 379/2016). He further submitted that identical issue arose in assessee's own case in AY 2010-11 wherein the Co-ordinate Bench of Tribunal in ITA No.1530/Del/2016 order dated 28.06.2019 has decided the issue in favour of the Assessee. He pointed to the relevant order which is placed in the paper book. He therefore submitted that no

addition on account of interest receivable is called for in the present case.

7. Ld DR on the other hand supported the order of lower authorities and submitted that the statement of Ld AR that no interest has been earned is factually incorrect in view of the interest income reflected in the Profit and loss account. Ld AR in the rejoinder submitted that the interest income reflected in the Profit and loss account is on account of interest from bank and it is not on account of interest on receivables.

8. We have heard both the parties and perused all the materials available on record. The issue in the present appeal is w.r.t. adjustment made to international transactions on account of interest receivable from AE's. Before us, it is assessee's contention that assessee has margin of 23.3% on Software Development segment as compared to the margin of 11.42% of the comparable companies and the working capital adjustment margin has already been factored in the account and no separate adjudication is called for. The aforesaid contention of the assessee has not been controverted by the Revenue. Further the contention of the assessee of not charging interest on overdue debts from the third parties and not paying any interest to the creditors has also

not been controverted by the Revenue. We further find that identical issue arose in assessee's own case in A.Y. 2010-11, wherein the Co-ordinate Bench of Tribunal has decided the issue in favour of the assessee by observing as under:

“5. We have heard the rival submission and perused the relevant material on record. We have noted that the assessee is not charging interest on overdue debts from the third parties and also the assessee is a debt free company and not paying any interest on funds utilized in business. We have also noted that the assessee company has a margin of 23.3% on Software Development segment as compared to the margin of 11.42% of the comparable companies. The working capital adjusted margin of the assessee has already factored into account the delay in the receivables and therefore no separate adjustment on this account is required to be made. The credit period of the comparable companies has been found to be 147 days as against the credit period allowed by the assessee of the 30 days. In view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs EKL Appliances Ltd (supra), we are of the opinion that impact of the delayed receivables has already been factored in the working capital adjustment and, therefore, any further adjustment on the outstanding receivables is not required separately in the instant case. Accordingly, we direct the Assessing Officer to delete the adjustment made on account of the outstanding receivables. As we have already deleted the addition in question, we are not adjudicating the other arguments of the assessee, as same are rendered only academic. The grounds of the assessee are accordingly allowed.”

9. Before us, no distinguishing feature in the facts of the present case as compared to assessee's own case in AY 2010-11 has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the

Co-ordinate bench of the Tribunal in assessee's own case for AY 2010-11 has been set aside/ stayed or over ruled by the higher judicial forum. We further find that the case law relied upon by the Learned DR is distinguishable on facts and are not applicable to the present facts of the case of the assessee. Considering the totality of the aforesaid facts and following the order of the Co-ordinate bench in the assessee's own case and for similar reasons we hold that the Revenue was not justified in making the addition. We therefore set aside the action of AO. **Thus the ground of the assessee is allowed.**

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

Order pronounced in the open court on 11.11.2020

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Priti Yadav, Sr.PS

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 11.11.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI