

(2024) 06 ITAT CK 0008

Income Tax Appellate Tribunal (Delhi I Bench)

Case No: Income Tax Appeal No. 6950/DEL/2018

ACIT

APPELLANT

Vs

Knowledge Infrastructure Systems
Pvt. Ltd.

RESPONDENT

Date of Decision: June 4, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 92CA(3), 143(1), 143(2), 143(3)

Hon'ble Judges: Shamim Yahya, (AM); Sudhir Kumar, J

Bench: Division Bench

Advocate: Amit Kumar Jain, R. S. Singhvi, Satyajeet Goel

Final Decision: Dismissed

Judgement

1. This appeal by the Revenue is directed against the order dated 29.08.2018 of the Commissioner of Income Tax (Appeals)-44, New Delhi [hereinafter referred as 'CIT(A)'] in Appeal No. 48/2018-19/CIT(A)-44 relating to the Assessment Year (A.Y.) 2014-15 and arises out of the assessment order passed by the Asst. Commissioner of Income Tax (ACIT) under section 143(3) read with section 92CA(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'] .

2. Revenue has filed the following ground of appeal:

(i) **"In the facts and circumstances of the case, the order of the Ld. CIT(A) is perverse in directing TPO to verify the claim of the appellant that interest is not charged or outstanding receivables either from AEs or Non- AEs and accordingly give relief to the appellant without appreciating the fact that the taxpayer was completely failed to furnish the breakup wise details of amount realized during the F.Y. 2013-14 from the both areas (AEs & Non-AEs).**

(ii) Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in relying upon the judgment of Hon'ble Bombay High Court in the case of Indo American Jewelry Ltd. in ITA No. 1053 of 2012, ignoring the fact that Hon'ble Court has also stated therein its order that the delay in realization of export proceeds in both the cases is the same and on the other hand, in the instant case the taxpayer did not submit such details of breakup-wise amount realized during the F.Y. 2013-14 from the both areas (AEs & Non-AEs).

(iii) Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in relying upon the judgment of Hon'ble Bombay High Court in the case of Indo American jewelry Ltd. in ITA No. 1053 of 2012, ignoring the fact that this judgment is quite contra with the facts of present case of the taxpayer.

(iv) That the appellant are craves to add, alter, amend or forego any ground(s) of the appeal raised above at the time of hearing.

(v) That the grounds of appeal are without prejudice to each other."

3. The brief facts are the assessee is a company engaged in business of import and delivery of coal to various PSUs, private sector/steel/cement and other utilities. Coal is being imported mainly from Indonesia/South Africa and small quantity of imported coal is procured locally in accordance with requirements of customers and Power trading division is involved in scanning the power market on continuous basis and obtaining surplus power and selling the same in deficit area by settling commercial terms on both buyers and sellers side and organizing and ensuring the physical delivery of contracted power. Power trading in India is regulated by CERC (Central Electricity Regulatory Commission) and trading is being carried out in accordance with the stipulated regulations. Assessee filed its return of income declaring income at Rs. 21,79,41,180/- on 29.11.2014 which was processed u/s 143(1) of the Act and the case was selected for complete scrutiny through CASS. Notice u/s 143(2) of the Act was issued and duly served upon the assessee. The Id. AO referred the case to Transfer Pricing Officer (hereinafter referred to as 'the TPO') for determination of 'Arm's Length Price' u/s 92CA(3) of the Act in respect of 'International Transaction' entered into by the assessee with its Associated Enterprises ('AEs') during the F.Y. 2013-14. The TPO vide its order dated 17.10.2017 has determined the difference of purchase price and ALP amounting to Rs.12,73,39,106/-, adjustment proposed on account of Corporate Guarantee commission amounting to Rs. 3,22,15,920/-, adjustment proposed on account of Remuneration paid to key management personnel amounting to Rs.6,33,01,989/- and adjustment proposed on account of Interest on trade receivables amounting to Rs.3,22,05,748/-.

4. The controversy in the present appeal is with regard to transfer pricing adjustment on account of trade receivables for which the Id TPO had made following observations:-

"8. Transfer Pricing Adjustment on account of trade receivables :-

Para 8.3.23. The details of invoices raised and payment received there upon and the resulting interest chargeable is given below :-

S. N	Date of invoice	Amount in USD	Equivalent Amount	Date of receipt	Differen ce of days	Differenc e of days- 30	Interest @ 12.83%
1.	Tuesday, December 31, 2013	150217	9028012	Monday, June 30, 2014	181.00	151.00	479184.6
2.	Tuesday, December 31, 2013	305430	18356282	Monday, June 30, 2014	181	151.00	974306.2
3.	Monday, March 31, 2014	9070872	545157593	Tuesday, July 15, 2014	106	76.00	14563624
4.	Monday, March 31, 2014	9070872	346429900	Monday, July 25, 2014	116	86.00	10472434
5.	Monday, March 31, 2014	2938714	17661612	Tuesday, June 30, 2014	91	61.00	3786988
6.	Monday, March 31, 2014	1156452.76	69502580	Tuesday, July 15, 2014	106	76.00	1856728
7.	Monday, March 31, 2014	41872	2516499	Tuesday, July 15, 2014	106	76.00	67227.06
8.	Monday, March 31, 2014	3274.18	196778	Tuesday, July 15, 2014	106	76.00	5256818

5. The Ld. First Appellate Authority had directed AO/ TPO to verify the claim of the appellant that interest is not charged on outstanding receivables either from AEs or Non AEs and accordingly has given relief to the appellant. The same has been challenged by the Revenue before this Tribunal.

6. This appeal was decided on 06.09.2022. The assessee has moved the miscellaneous application to recall the order dated 06.11.2020 passed by the Ld. ITAT. The miscellaneous application filed by the assessee was allowed on 15.01.2014 and appeal was restored on its original number for hearing.

7. We have heard both the parties and perused the material available on record. Ld. DR has submitted that the Ld. CIT(A) has relied upon the decision of the Hon'ble Bombay High Court passed in the case of M/s. Indo-American Jewellery Ltd. (2014) 44 tamxann.com 310/223 Taxmann 8 (Bom.) (Mag.). The judgment in above case is not applicable in the present case because the facts of the above both cases are different. He has also submitted that assessee has not provided the details of amount realized during the financial year 2013-14 from the both AE's or non AE's during the TPO proceedings.

8. The Ld. Senior Counsel for the assessee has submitted that the assessee company has not charged any interest from delayed receivables from non-AEs. It is a case of net payable instead of net receivable so transfer pricing adjustments is not sustainable. It is also submitted that this case is directly covered by the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Mckinsey Knowledge Centre India (P) Ltd. In this case the Hon'ble Delhi High Court in para-12 and 14 has held as under :-

"12. This Court is also of the opinion that under no transfer pricing norm, principle or evaluation of any "benefit" can there be a one-sided adjustment taking into account delayed invoices while at the same time ignoring invoices/ payment received in advance. Consequently, factually there can be no notional computation of 'delayed receivables' only ignoring the receivables received in advance.

14. Consequently, on the facts and circumstances of the case, the notional interest relating to alleged delayed payments in collecting receivables from the AEs is uncalled for as in fact, there are no outstanding receivables as the amount received in advance far outweigh the amount received late."

9. The Ld. CIT(A) in his order at para-5 has held as under :-

"5.7 Perusal of the impugned order of the TPO shows that the TPO has not taken the net payables into account while making the transfer pricing adjustment under consideration. Payables and receivables are two sides of the same point and hence, both have to be taken together and only the net amount can be adjusted as a separate transaction. In the instant case, as the situation at the end of the year is one of net payable. However, the contention of the appellant is not accepted as each payable / receivable has to be taken separately and the delay in payment worked out accordingly."

10. Perusal of the order of Ld. CIT(A) reveals that Ld. CIT(A) has directed the AO/ TPO to verify the claim of the assessee company and interest was not charged on the outstanding receivables either from AE's or non AE's. Assessee has stated that no delayed interest has been charged from the AE's which would be verified by the AO/ TPO, so we do not find any reason to interfere with the findings of the CIT(A) and the appeal is liable to be dismissed accordingly.

11. In the result, the appeal of the Revenue is dismissed.