INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-2": NEW DELHI
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6102/Del/2016
(Assessment Year: 2012-13)

Techbooks International Pvt. Ltd, Plot No. 37, Block-A, Sector-60, Gautam Budh Nagar, Noida PAN: AABCT3774A	Vs.	ACIT, Circle-3, Noida
(Appellant)		(Respondent)

Assessee by :	Shri Manoneet Dalal, Adv Shri Yishu Goel, AR
Revenue by:	Shri Mritunjoy Baranwal, Sr. DR
Date of Hearing	12/03/2020
Date of pronouncement	06/07/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld AO dated 26.10.2016 for the Assessment Year 2012-13.

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

"1. That on the facts and in the circumstances of the case and in law, the Hon'ble Dispute Resolution Panel ("DRP")/ Learned Assessing Officer ("AO")/ Learned Transfer Pricing Officer ("TPO") erred in making an addition to the returned income of the Appellant by INR 1,64,05,578/- by re-computing the arm's length price of international transactions under section 92 of the Income Tax Act ("the Act") and the orders are bad in law and void-ab-initio.

2. That DRP/AO/TPO erred on the facts and in the circumstances of the case and in law by treating the outstanding receivables from the related parties as an "international transaction" within the meaning of section 92B(1) of the Act.

3. That DRP/AO/TPO erred on the facts and in the circumstances of the case and in law by re-characterizing the transaction of trade receivables as unsecured loans advanced to the AE's and charging interest on the same.

4. That DRP/AO/TPO erred on the facts and in the circumstances of the case and in law by not understanding the business model/contractual terms of the Appellant and erred in applying Comparable Uncontrolled Price ('CUP') Method without providing any comparables and charging interest rate @ Libor plus 300 bps (3.5335%).

5. That DRP/AO/TPO erred on the facts and in the circumstances of the case and in law by not making suitable adjustments to account for differences in the risk profile of the Appellant vis- a-vis the comparable companies.

6. *That AO/TPO erred on the facts and in the circumstances of the case and in law in:*

   - *not examining the validity of initiation of penalty proceedings u/s 271 (1) (c) of the Act and*
   - *computing interest under section 234B and 234C of the Act."*

3. Brief facts of the case shows that assessee is a wholly-owned subsidiary of Aptara Inc. USA. It offers its customers typeset pages for print coupled with XML files for electronic delivery. It is engaged in the development of customized electronic data. It converts that are from hard copy or files into XML/SGML/HTML, creating electronic style files and modifying the user interface for CD-ROM delivery. Assessee receives raw data from its customers in hard copy or in electronic form, which is then converted. Thereafter data is arranged and formatted. Thus, assessee is claimed to have been primarily engaged in the provision of IT enabled data conversion service to its associated enterprise.

4. Assessee filed its return of income on 9/10/2012 declaring income of ₹ 251,841,830/–. As assessee has entered into certain international transactions, the learned assessing officer referred the matter to The Deputy Commissioner Of Income Tax, Transfer Pricing Office - 3 (2) (2), New Delhi [The ld TPO] to determine the arms' Length price of the International Transactions[IT]. With respect to the international transactions, as per the transfer pricing document submitted by the assessee, it has entered into the international transaction of provision of IT enabled data conversion services with its associated enterprise Aptara inc. USA amounting to Rs. 1,680,845,212/– which has been benchmarked by adopting the Transactional Net Margin Method [TNMM] as mst appropriate method [MAM] by the assessee. With respect to the reimbursement of expenses by associated enterprises to the assessee amounting to Rs. 20,664,635/–, no benchmarking was done. Therefore the only international transaction reported by the assessee was of provision of IT enabled attackers and services. To benchmark the about transaction assessee adopted the transactional net margin method (TNMM) wherein the operating profit to total cost (OP/OC) ratio is taken as the profit level indicator (PLI) in the TNMM analysis. The PLI of the company was arrived at 15.54 percentage on cost. Assessee selected 10 comparables whose Arithmatic mean of the margin was 19.65 percentage taking three years average and therefore assessee submitted that its international transactions are at arms' length.

5. The learned TPO passed order u/s 92 CA (3) of The Income Tax Act 1961 on 24 January 2016 determining the arms' length price of the above transaction proposing the total adjustment of provision of IT enabled data conversion services

of Rs 143,627,996/–. As assessee selected three years weighted Average margin of the comparables, the learned transfer pricing officer asked assessee to update the margins for one year. Assessee further included three comparables as per submission dated 22 December 2015. The learned transfer pricing officer did not agree to the comparability analysis prepared by the assessee. He accepted 9 of the comparables selected by the assessee and also included Infosys BPO Ltd and e4 healthcare business services Ltd as comparables, computed the average profit level indicator of those company at 27.38%. After considering the reply of the assessee this adjusted margin was corrected to 25.27%. Thereafter same was applied to the international transaction of the assessee. The AO found that assessee has total operating cost of Rs 145,64,32,672 and 25.27% of the margin thereon is Rs 368,040,536. Therefore, he held that the arm's-length price of the international transaction is Rs. 182,44,73,208 against which amount received by the assessee of Rs 168,08,44,212/– and therefore he proposed an adjustment on that account of ₹ 14,36,27,996/- . This issue was challenged before the learned Dispute Resolution Panel [DRP] and ultimately the DRP directed the learned transfer pricing officer to include and to exclude certain comparables. Thereafter, pursuant to the direction of the learned dispute resolution panel, the learned transfer-pricing officer passed an order wherein no addition on this account was made. Therefore, this issue is not at all agitated before us in original grounds of appeal.

6. However, the learned transfer-pricing officer found that as per the financials of the assessee it was observed that the assessee is having total trade receivable of Rs. 1,324,807,379/- from its Associated Enterprise[AE] . The assessee was asked to provide the details with respect to the loan taken by the associated enterprises. Assessee was also asked to provide the details with regard to the credit spread given to the associated enterprise. On receipt of the information, it was found that there are inordinate delays in the recovery of outstanding dues from its associated enterprise. The assessee was asked to submit the details of receivable and 60 days credit period was allowed to the assessee for receiving the payment from associated enterprise. The learned transfer pricing officer held that the actual delay in receipt of payments by the assessee is much more than the stipulated delay without any cogent reason of business expediency. Therefore, he computed the interest amount on the outstanding receivable at Rs 104,576,291/-. The details were attached by him as per annexure 1 to the transfer pricing order. This issue was agitated by the assessee before the learned DRP. Assessee objected to the adjustment proposed by the learned TPO stating that characterising outstanding receivable as unsecured loan advanced to an associated enterprise ignoring the contractual arrangement of

the assessee for delay in export proceeds from its associated enterprise is not correct. It was further stated that the learned TPO applied the comparable uncontrolled price (CUP) method using illogical and the similar compliant comparables applying the state bank of India base rate +300 basic points as interest on the outstanding receivable allowing the credit period of only 60 days for receipt of services ignoring the contractual terms of the intercompany agreements. The learned DRP noted that outstanding receivable is an international transaction in terms of the provisions of Section 92B of the act and therefore the trade receivable beyond the specified time limit are required to be classified as a separate international transaction. It was further noted that there is delay in recovery of outstanding by the assessee and no interest was charged by the assessee on the outstanding amount. The DRP held that the learned TPO applied the interest rate at the rate of 12.65% on all the delay where recovery is beyond 60 days. It held that the TPO was fully justified in calculating interest on debt as recoverable beyond the period of 60 days. However, it noted that assessee was exposed to exchange risk on receipt of belated payment and the amount remained outstanding with the associated enterprise without any guarantee. Assessee also did not furnish any details of comparable group affiliates who had entered into transaction with the independent third parties or of independent third parties who has entered into similar transactions with the third parties in this fashion. However, the learned dispute resolution panel after considering the argument of the assessee held that interest shall be chargeable to the outstanding debt of the associated enterprise for a period beyond 150 days, as held by ITAT in assessee's own case in earlier years. It further stated that interest rate chargeable should be LIBOR + 300 points in view of the decision of the honourable Delhi High Court in case of cotton naturals. Based on this the learned transfer pricing officer passed order pursuant to the direction of the learned dispute resolution panel and calculated the interest on outstanding receivable at Rs. 1,64,05,578/- . Consequently, the final assessment order was passed by the learned assessing officer wherein total income declared by the assessee of ₹ 258,041,830 was assessed at Rs. 268,247,408. The only addition in dispute was addition on account of arm's-length price as referred to in the order of the learned transfer pricing officer amounting to Rs 164,05,578 on account of interest chargeable on outstanding receivable beyond a specified period of 150 days from associated enterprise.

7. Therefore from the above facts it is clear that the only dispute is with respect to the interest on outstanding receivable considered by the learned transfer pricing officer

as a separate international transaction and thereafter determining its arm's-length price of Rs. 1 6405578/– .

8. At the time of hearing of the appeal the assessee has preferred an application for admission of the additional ground as per letter dated 17 January 2020 wherein the assessee has raised following two grounds of appeal:-

> "5.1 that on the facts and circumstances of the case and in law, the learned AO/TPO/DRP erred in not considering the benchmarking of outstanding receivable by applying the aggregated approach thereby ignoring the fact that working capital adjustment takes into account the impact of outstanding receivables on the profitability.
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> Ground no 7 . That on the facts and circumstances of the case and in law, the learned AO/TPO/DRP order by selecting Eclrex services Ltd and Exle Infoways Limited in respect of provision of IT enabled data conversion services which are not comparable to the appellant in terms of functions, risks and assets.

9. The learned authorised representative submitted that the above grounds may be admitted as they are purely legal in nature and no further facts are required to be investigated. It was further stated that assessee can raise additional ground of appeal at any stage of the proceedings relying on the decision of the honourable Supreme Court in National thermal Power Co Ltd.

10. The learned departmental representative vehemently objected to the admission of the above grounds. It was further stated that examination of the working capital adjustment with respect to the addition made by the learned assessing officer requires the examination of the fresh facts. Therefore, it is not a legal ground. With respect to ground number seven, it was stated that whether a particular comparable is to be selected for the comparability analysis is necessarily an examination of the facts with respect to the functions of the assessee with the functions of comparable companies and therefore it requires the investigation of fresh facts. Therefore, this ground cannot be admitted.

11. We have carefully considered the rival contentions and find that ground number five raised by the assessee is a legal ground, that when there is a working capital adjustment granted to the assessee, it takes care of the outstanding debtors, therefore separate adjustment with respect to outstanding debtors of associated enterprise beyond specified period cannot be considered as a separate international transaction and ALP cannot be determined. We find that above ground is purely a legal ground which can be raised by the assessee and therefore same is admitted.

12. With respect to the ground number seven raised as an additional ground by the assessee, it definitely requires the investigation of the fresh facts of the functional

analysis of the comparables which are now being challenged by the assessee. Even otherwise the learned assessing officer has not made any adjustment with respect to the ITeS segment of the assessee. These international transaction is held to be at arm's-length by the learned assessing officer/transfer pricing officer pursuant to direction of the learned dispute resolution panel. Thus there is no addition/adjustment on account of same. As there is no adjustment made by the learned assessing officer, even otherwise, testing of the comparability of those two comparables mentioned in the ground number seven by the learned authorised representative/assessee is merely an academic exercise. Therefore same is not a legal ground but a ground requiring investigation of facts and therefore it cannot be admitted.

13. In view of the above facts, the two additional grounds raised by the assessee, ground related to the adjustment of arm's-length price with respect to the outstanding debtors is admitted and a fresh challenge of a comparable with respect to the ITES services provided by the assessee is not admitted.

14. Challenging the above adjustment the learned authorised representative vehemently stated that there is difference between the financial and operational creditors as held by the honourable Supreme Court in case of Swiss Ribbons private limited versus Union of India and others (W civil number 99 of 2018) while dealing with its applicability in Insolvency And Bankruptcy Code. The assessee further referred the decision of the coordinate bench in case of Nimbus communications limited versus Asst Commissioner of income tax [9 taxmann.com 26] and contended that the receivable/payable are the outcome of transaction of services provided, purchases made during the year, services received or goods sold. Hence trade receivable per se are not separate independent international transaction.. He further submitted that the characterization of transaction is not permissible. It is submitted that transaction of interest on receivable is occurring because of the main business transaction and hence it cannot be characterized as a separate independent transaction ignoring the actual transaction undertaken by the assessee. He further relied on the decision of the honourable Delhi High Court in CIT versus EKL appliances Ltd (ITA number 1068/2011). He further stated that the principle of aggregation is a well-established rule in the transfer pricing analysis. According to that principle all functionally similar transaction wherein arm's-length price can be determined for a number of transaction taken together cannot be separately benchmarked. He further referred to the decision of the honourable Delhi High Court in case of Sony Ericsson mobile communications India private limited (TS – 96 – HC – 2015 (Del) – TP). The assessee further argued that working capital adjustment was undertaken by the assessee for the

comparable companies selected in the transfer pricing documentation. Therefore working capital adjustment takes into account the impact of outstanding receivable and therefore no separate addition can be made. Assessee relied on the decision of the coordinate bench in case of Kusum healthcare private limited versus ACIT (ITA number 6814/del/2014] which has been upheld by the honourable Delhi High Court. He further submitted a chart of working capital adjustment of comparable companies and submitted that if the margins of the comparable companies are adjusted the AM of margins of comparable comes to 19.30%. He submitted that +5% -5% range with respect margin of the assessee. He submitted that the margin of the assessee is determined at 15.54% and +5% range is 21.32% and -5% range is 9.76% whereas the AM of the comparable companies is 19.30% and therefore no adjustment can be made. He therefore submitted that the adjustment made by the learned assessing officer/TPO is not sustainable with respect to the outstanding of associated enterprise. To support his contention the assessee submitted a convenience paper book also. In the convenience paper book he submitted the financial statements of the associated enterprise dated 31st of December 2008, 2009, 2010 and 2011. It further submitted the Ledger account of the associated enterprise in the books of the appellant for the financial year 2011 – 12. Referring to the financial statement of the associated enterprise, it was submitted that it has been incurring losses over the period for four years between 2008 and 2011. He submitted a table wherein the profit after tax [PAT] of the associated enterprise were shown to have incurred substantial losses in December 2008 – December 2010. It was stated that due to the accumulated losses incurred over past few years the associated enterprise and genuine cash crunch. Therefore, due to the financial hardship and limited cash position of the associated enterprise, it impaired its ability to timely remunerate the appellant in full. It was further stated that despite severe financial hardship, the appellant has constantly been remunerated on a cost +15.50 percentage markup. It stated that the associated enterprise has borne the actual consequences of the final sale and the appellant earns a fixed profit irrespective of the final sale. It was further stated that owing to the downward trend in the traditional publishing market, aggressive customer behaviour, higher transfer pricing cost and bad liquidity position, there was a delay in honouring the invoices of the assessee by the associated enterprise. It was further stated that in spite of having substantial outstanding receivables, the appellant has always been in compliance with the Reserve Bank Of India norms and always obtained unqualified audit opinions from its statutory auditors. In nutshell, he submitted that associated enterprise was facing genuine business downturn due to structural pressure faced by the traditional publishing industry,

the delay in recovery of the outstanding by the assessee from its associated enterprise is for the business reasons. Thus, he submitted that the adjustment cannot be made in the hands of the assessee.

15. The learned departmental representative submitted that the issue is squarely covered against the assessee by the decision of the coordinate bench in assessee's own case and in case of Samsung India Ltd in ITA number 6813/del/2012 decided on 7/4/2020.

16. We have carefully considered the rival contention and perused the orders of the lower authorities. Identical issue arose in the case of the assessee itself for assessment year 2010 – 11 **Techbooks International (P.) Ltd. *v.* Deputy Commissioner of Income-tax, Circle-3, Noida* [2015] 63 taxmann.com 114 (Delhi - Trib.)** wherein the coordinate bench decided it is Under:-

"VI. INTEREST ON DELAYED/NON-REALIZATION OF EXPORT PROCEEDS

13.1 On going through the Master Service Agreement between the assessee company and its AE, it was observed by the TPO that the AE was allowed much longer period for payment than was allowed normally in an uncontrolled situation. The TPO considered the prescription of clause 8.4 of the Agreement which provides that all amounts under this Agreement should be paid within 150 days from the date of invoice. In his opinion, 60 days credit facility is ordinarily given without any interest payment and any delay in payment thereafter was liable to be compensated with interest @ 1.5% to 2% per month on the outstanding amount. The assessee was required to give working of interest on late realization or non-realization of export proceeds during the financial year 2009-10. Such working given by the assessee has been made Annexure-1 to the order of the TPO. On a perusal of the statement of non/late realization of export invoices furnished by the assessee, the TPO held that the assessee ought to have charged @ 15% p.a. on receivables as on 1.4.2009 which were outstanding for more than 60 days; and export proceeds not realized within 60 days from the date of invoice during the year. These two amounts were calculated at Rs.3.16 crore and Rs.2.69 crore, making total TP adjustment for interest at Rs.5.86 crore. That is how, the TP adjustment on account of interest to be charged on non-realisation of export proceeds to the tune of Rs.5.86 crore and odd was proposed and added by the AO in the final assessment order. The assessee is aggrieved against this addition.

13.2 The ld. AR contended that the Agreement between the assessee and its AE does not provide for any charging of interest and, hence, there can be no question of any notional/hypothetical interest income as has been determined by the TPO. To support the non-charging of interest, he relied on the judgment of the Hon'ble Bombay High Court in the case of *Vodafone India Services (P.) Ltd.* v. *Union of India* [2014] 368 ITR 1/[2015] 228 Taxman 25/[2014] 50 taxmann.com 300. He buttressed the same argument by relying on the judgment of the Hon'ble jurisdictional High Court dated 27.3.2015 in *CIT* v. *Cotton Naturals (I) (P.) Ltd.* [2015] 55 taxmann.com 523/231 Taxman 401 (Delhi). The view canvassed by the ld. AR against the not making addition on account of interest was strongly countered by the ld. DR.

13.3 We are not persuaded to accept this argument. The argument that the Agreement does not provide for charging any interest on late realization of invoice value and hence no interest can be charged, deserves the fate of dismissal under the transfer pricing provisions. Chapter X of the Act has been enshrined to determine the income from an international

transaction at ALP, being in the same manner as is determined between two independent parties. It means that if an income is not charged or under charged by an Indian entity from its foreign AE, which ought to have been properly charged if the transaction had been between two independent parties, then such under charged or uncharged income needs to be brought to tax by determining the ALP of the international transaction giving rise to such income."

13.4. Coming to other argument that no interest is chargeable under the present circumstances on the strength of the judgment in the case of *Vodafone India Services (P.) Ltd.* (*supra*), we find that the point of controversy in that case was quite distinct. Addition on account of the excess share premium was made which, in the opinion of the TPO, should have been received by that assessee from the issuance of shares. It is on this excess share premium short received, that the amount of interest was also charged. The Hon'ble Bombay High Court overturned the opinion of the TPO by holding that the amount of less share premium received over and above the actual premium received cannot be added as TP adjustment because the receipt of premium itself, being a capital receipt, is not chargeable to tax. When the amount of premium is a capital receipt, the Hon'ble High Court held that the so called short premium charged also cannot assume the character of revenue. Apart from the deletion of addition on account of share premium, the Hon'ble Bombay High Court in *Vodafone India Services (P.) Ltd.* v. *Union of India* [2014] 369 ITR 511/[2015] 53 taxmann.com 286 and *Shell India Markets (P.) Ltd.* v. *Asstt. CIT* [2014] 369 ITR 516/[2015] 228 Taxman 94/[2014] 51 taxmann.com 519 (Bom) has held that interest on such short realized premium also cannot be construed as an item of transfer pricing adjustment. It is obvious that the facts of the instant case are absolutely different from those considered in the case of *Vodafone India Services (P.) Ltd.* (*supra*). The base amount on which interest was calculated by the TPO in the case of *Vodafone India Services (P.) Ltd.* (*supra*) was itself a capital receipt not chargeable to tax and not a trading debt arising during the course of business, which issue has been discussed in the immediately succeeding paras. Instantly, we are concerned with the late realization by the assessee of trading debt from its AE which is otherwise a revenue receipt and has also been offered for taxation.

13.5 At this juncture, it is 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*) to (*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;*….'

13.6 On circumspection of 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 of interest or 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 needs to be brought to 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.

13.7 The Hon'ble Bombay High Court in the case of *CIT* v. *Patni Computer Systems Ltd.* [2013] 215 Taxman 108/33 taxmann.com 3 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?"

13.8 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.

13.9 The foregoing discussion divulges that non-charging or undercharging 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.

13.10 In so far as the reliance of the ld. AR on the judgment in *Cotton Naturals (I) (P.) Ltd.* (*supra*) is concerned, we find the facts of that case to be distinguishable. In that case, a loan was advanced by that assessee to a wholly owned subsidiary in the USA. The assessee selected the Comparable Uncontrolled Price (CUP) method to benchmark the interest received on the loan and claimed that the interest received @ 4% was comparable. The TPO held that the arm's length interest rate should be taken at 14% per annum. This was reduced to 12.20% by the DRP by adopting the prime lending rate fixed by the RBI. The Tribunal relying on certain decisions upheld the assessee's claim. When the matter finally came up before the Hon'ble High Court, it held that the amount in question was given in foreign currency, i.e., in US Dollars and was also to be repaid in the same currency, i.e., US Dollars. In that view of the matter, it was held that the currency in which the loan is to be repaid normally determines the rate of return on the money lent and the interest rate applicable to loans granted and to be returned in Indian rupee would not be a relevant comparable. The prime lending rate was, therefore, held to be not applicable. From the above narration of facts, it is clear that, firstly, in the case of *Cotton Naturals (I) (P.) Ltd.* (*supra*), that assessee charged interest on loans given to its AE. The controversy was only about the rate of interest, which ought to have been charged. In the case under consideration, the assessee did not charge any interest on the amounts remaining parked with its foreign AE due to late or non-realization of invoices in time. As the assessee before us did not charge any interest, the judgment in *Cotton Naturals (I) (P.) Ltd.* (*supra*) rather supports the view canvassed by the Revenue on the basic issue of chargeability of interest. Be that as it may, the amendment to section 92B made with retrospective effect from 1.4.2002 sets the controversy to rest inasmuch as it provides in unambiguous terms that any

other debt arising during the course of business is an international transaction. *Ex consequenti*, transfer pricing adjustment on account of interest income is mandated in case of late/non realization of invoice value from AE. The view canvassed by the ld. AR on this issue is, therefore, found to be devoid of merit and hence jettisoned.

13.11 Now, we come to the computation of the ALP of the international transaction of 'debt arising during the course of business.' This has two ingredients, viz., the amount on which interest should be charged and the arm's length rate at which the interest should be charged.

13.12 In so far as the first aspect is concerned, we find that the TPO has taken normal credit period of 60 days and accordingly made addition on account of transfer pricing adjustment for the period in excess of 60 days. In our considered opinion, transfer pricing adjustment on account of interest for the entire period of delay beyond 60 days cannot be treated as a separate international transaction of trading debt arising during the course of business. It is noticed that the assessee entered into an agreement with its AE for realization of invoices within a period of 150 days. This implies that the interest amount on non-realization of invoices up to 150 days was factored in the price charged for the services rendered. Annexure-1 to the TPO's order gives details of the instances of late realization or non-realization of advances up to the year ending. First three and a half pages of this Annexure indicate number of days for which there was delayed realization. Such delay ranges from 175 days to 217 days. The remaining pages disclose no realization of invoices up to 31st March, 2010. When we consider the dates of invoices in the remaining pages, it is manifested that in certain cases these invoices have been raised on 31st August, 30th or September or 31st October, 2009. In all such cases, the period of 150 days already stood expired as on 31st March, 2010 and the assessee ought to have charged interest on the delay in realizing such invoices along with the first three and a half pages in which there is an absolute and identified delay in realization of invoices beyond the stipulated period. When the interest for realization of trade advances up to 150 days is part and parcel of the price charged from the AE, then the delay up to this extent cannot give rise to a separate international transaction of interest uncharged. Rather interest for the period in excess of normally realizable period in an uncontrolled situation upto 150 days needs to be considered in the determining the ALP of the international transaction of the 'Provision of IT Enabled data conversion services'. This can be done by increasing the revenue charged by the comparable companies with the amount of interest for the period between that allowed by them in realization of invoices and 150 days as allowed by the assessee, so as to bring such comparables at par with the assessee's international transaction of provision of the ITES. To illustrate, if the comparables have allowed credit period of, say, 60 days and the assessee has realized its invoices in 180 days, then interest for 90 days (150 days minus 60 days) should be added to the price charged by the comparables and the amount of their resultant adjusted operating profit be computed. Rule 10B permits making such an adjustment. Sub-rule (2) to rule 10B stipulates that for the purposes of sub-rule (1), the comparability of an international transaction with an uncontrolled transaction shall be judged, *inter alia,* with reference to the : '(c) the contractual terms (whether or not such terms are formal or in writing) of the transactions …' . Then sub-rule (3) mandates that an uncontrolled transaction shall be comparable to an international transaction if 'reasonably accurate adjustments can be made to eliminate the material effects of such differences'. Applying the prescription of rule 10, it becomes vivid that difference on account of the 'contractual terms of the transactions', which also include the credit period allowed, needs to be adjusted in the profit of comparables. As the TPO has taken the entire delay beyond that normally allowed as a separate international transaction, which position is not correct, we hold that the effect of delay on interest up to 150 days over and above the normal period of realization in an uncontrolled situation, should be considered in the determination of the ALP of the international transaction of 'Provision of IT Enabled data conversion services'

and the period of delay above 150 days, namely, 30 days in our above illustration (180 days minus 150 days) should be considered as a separate international transaction in terms of clause (c) of Explanation to section 92B.

13.13 In so far as the question of rate of interest is concerned, we find that this issue is no more *res integra* in view of the judgment of the Hon'ble jurisdictional High Court in the case of *Cotton Naturals (I) (P.) Ltd.* (*supra*), in which it has been held that it is the currency in which the loan is to be repaid which determines the rate of interest and hence the prime lending rate should not be considered for determining the interest rate. Under such circumstances, we set aside the impugned order and remit the matter to the file of TPO/AO for a fresh determination of addition on account of transfer pricing adjustment towards interest not realized from its AE on the debts arising during the course of business in line with our above observations."

17. Further, certain other peculiar facts of the case, over and above, what has been noted by the coordinate bench in its decision have come to our notice. We have carefully analysed annual accounts of the assessee for the year ended on 31st of March 2012. These are placed at page number 122 – 149 of the paper book. The assessee has a share capital as on 31st of March 2012 of Rs. 4,65,400/- and free reserve Under the head reserve and surplus of Rs 123,48,89,903/–. The assessee has provided services to its associated enterprise during the financial year ended on March 31, 2012 amounting to Rs 168,08,45,212/–. During the year the assessee has shown profit for the year of ₹ 12,15,16,517/–. The assessee has also shown outstanding receivable (trade receivable) amounting to Rs 1324807379/– as on 31st of March 2012 from its AE.

18. For the year ended on 31st of March 2011, the assessee has share capital of Rs 4,65,400/– and reserve and surplus of Rs 111,33,73,386/–. The assessee provided services to its associated enterprise of Rs 144,11,87,715/– and earned profit for the year of Rs 21,23,74,837/–. For that year the trade receivable from its associated enterprise was ₹ 102,73,60,940/–.

19. From the above analysis it appears that the assessee has share capital and free reserve as on 31st of March 2011, amounting to RS 111,38,38,786/– whereas the amount advanced as a trade receivable to its associated enterprise is ₹ 1 02,73,60,940/–. For the year ended on 31st of March 2012 the shareholders fund available in the books of the appellant was ₹ 1 235355303/– whereas outstanding receivable from its associated enterprise is Rs. 1324807379/–. Therefore in the current year the outstanding receivable from its associated enterprise is more than the shareholders funds available with the assessee. Thus it implies that the total profit earned by the assessee is enjoyed by is associated enterprise out of india fully. Further, opening outstanding receivable from the associated enterprise was ₹ 102.73 crores, assessee billed Rs. 168.08 crores during the year and at the end of the year ₹ 138.33 crores were outstanding from AE. On looking at the profit and

loss account the assessee has incurred the expenditure of ₹ 148.01 crores. Therefore, it is apparent that associated enterprise is only paying assessee the amount which is enough for defraying expenditure to keep it afloat and keeping all other sums in the form of outstanding trade receivable. In view of above peculiar facts, where total shareholders funds are available with its associated enterprise as an interest free trade receivable clearly shows that outstanding receivable from the associated enterprise is not at all the transaction of sale of goods/services to the assessee. In view of this, agreeing with the view of the coordinate bench in assessee's own case in earlier year, order of the learned transfer pricing officer cannot be found fault with in considering the overdue outstanding receivable from its associated enterprise as a separate international transaction.

20. With respect to the argument of the learned authorised representative, that if a working capital adjustment has been given to the assessee then there cannot be any addition/adjustment with respect to the outstanding receivable from its associated enterprise is devoid of any merit for the peculiar facts in this case wherein total shareholders funds are enjoyed by the associated enterprise as outstanding receivable. Further, the learned authorised representative could not show us any document whereby the assessee has made any request before the learned transfer pricing officer or before the learned dispute resolution panel with respect to granting of working capital adjustment. Even in the transfer pricing study report submitted by the assessee which is placed at page number 150 – 215 of the paper book, the learned authorised representative could not show us that assessee himself has claimed any working capital adjustment while preparing its comparability analysis. In para number 4.3 of the transfer pricing study report the assessee has stated what kind of assets it has employed and it has not stated that any working capital has been employed by the assessee. Even otherwise the assessee could not show us what is the difference in working capital of the assessee compared with comparable companies. Thus the adjustment of working capital was not at all there in case of assessee for this year. In view of this, we reject this argument.

21. We have also carefully perused the various judicial precedents relied upon by the learned authorised representative. However as the issue squarely covered against the assessee by the decision of the coordinate bench in assessee's own case as well as the peculiar facts noted by us, all those decisions do not apply in view of distinguishing features.

22. The decision of the coordinate bench in assessee's own case for earlier year has set aside the whole issue back to the file of the learned assessing officer with a

direction to grant credit for 150 days, which has already been granted by the learned dispute resolution panel and the learned transfer pricing officer has also rectified its addition from Rs 10,45,76,291/- to Rs 1,64,05,578/–, Therefore there is no need that this issue should go back to TPO /AO. Therefore, we confirm the finding of the learned dispute resolution panel and the learned TPO incorporated in the order of the learned assessing officer. Accordingly, ground number [1]- [5] of the appeal, along with the additional ground number 5.1 are dismissed.

23. Ground number six is against the initiation of penalty proceedings and charging of interest u/s 234B and 234C for which no arguments were advanced and even otherwise the initiation of penalty proceedings is premature and charging of interest is consequential in nature, same is dismissed.

24. Before parting, we are aware that this order is pronounced beyond 90 das form the date of hearing due to lockdown which extends the period of limitation. Thus relying on the decision of the coordinate bench in [2020] 116 taxmann.com 860 (Mumbai - Trib.), we pronounce this order.

25. In the result appeal of the assessee is dismissed

Order pronounced in the open court on 06/07/2020.

-Sd/-	-Sd/-
(SUCHITRA KAMBLE)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 06/07/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi