

## Receipt of interest on delay realisation of funds from foreign AE was a separate international transaction

**Summary – The Delhi ITAT in a recent case of Bechtel India (P.) Ltd., (the Assessee) held that Interest on delayed realization of receivables is a separate international transaction and, therefore, requires separate benchmarking; it has nothing to do with operations of assessee-company involving debt free funds**

### Facts

- The assessee executed engineering design and drawing for various overseas AEs to support the overseas offices in executing turnkey projects. During the year, the assessee had shown certain receivables from its AE.
- The TPO noticed that payments against the invoices raised by the assessee were not received within the stipulated time. He further pointed out that, the assessee had provided benefit to its AE by way of advancement of interest free loan in the garb of delayed receipt of receivables. He observed that these funds could have been otherwise deployed for at least earning interest income. Therefore, the assessee had incurred cost in connection with a benefit and services provided to the AE by way of delayed receipt of receivable. He pointed out that no payment terms have been specified as per service agreement or the invoice and, therefore, as per prudent estimate payment period of 30 days shall be allowed for payment of sales/service and any delay beyond the aforesaid period would be benchmarked accordingly.
- On being called upon to furnish the time period for payment as per service agreement and why the delayed payments be not treated as unsecured loans advanced to the AEs, the assessee submitted that 'receivable was not an international transaction which warranted benchmarking.'
- The TPO rejected this contention and held that interest was chargeable at arm's length level in respect of delayed receipt of invoice values. Accordingly, interest rate of 12.60 per cent was adopted for charging of deemed loan advanced for the period of receivables outstanding beyond the period stipulated in the service agreement/invoice. He, accordingly, directed for adjustment on account of ALP of the receivables
- The DRP affirmed the order of the TPO.
- On appeal:

### Held

- It was observed in the case of *Ameriprise India (P.) Ltd. v. Asstt. CIT* [\[2015\] 62 taxmann.com 237 \(Delhi-Trib\)](#) that non-charging or under charging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the ALP of such an international transaction is required to be determined.
- Further, it has been observed in the above case that the working capital adjustment is in respect of international transaction of rendering services to the AE. Interest for credit period allowed as per

the agreement is given in the price charged for rendering of services. Whereas the non-realisation of invoice value beyond the stipulated period is a separate international transaction whose ALP is required to be determined. Granting of working capital adjustment is confined to the international transaction of rendering of services, whose ALP is separately determinable. On the other hand, the international transaction of interest receivable from its AEs for late realization of invoices beyond such stipulated period is a separate international transaction. Allowing working capital adjustment in the international transaction of rendering of services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs beyond the stipulated period allowed as per agreement.

- In the case of *Mckinsey Knowledge Centre (P.) Ltd. v. Dy. CIT* [\[2017\] 77 taxmann.com 164 \(Delhi-Trib\)](#) the Tribunal explained that if an invoice is raised during the year and the proceeds are realized within the year, but, beyond the stipulated period of agreement, then, the same will not come within the working capital adjustment because working capital adjustment is made with reference to the opening and closing balances as on 1st April and 31st March. Therefore, following the decision of the Tribunal in the said case the assessee's contention that the interest on delayed payment of receivables get subsumed in the working capital adjustment allowed to the assessee is to be rejected. The assessee has also advanced an argument that since it was debt free fund company, which finding is not disputed, no interest could be attributable on the late realization of receivables. This plea is to be rejected at the threshold because, as noted earlier, interest on delayed realization of receivables is a separate international transaction and, therefore, requires separate benchmarking. It has nothing to do with the operations of the assessee company being with the debt free funds only
- As far as the assessee's plea regarding selecting of *ad hoc* interest rate of LIBOR+400 bps while computing the addition is concerned, that the DRP has directed to compute the adjustment using the rates of six months LIBOR + 400 bps on receivables which are to be paid to the assessee in US \$ in accordance with the decision in *Cotton Naturals (I.)(P.) Ltd. (supra)* of the Delhi High Court, wherein it has been held that it is the current year 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. Therefore, there is no reason to take a different view on this issue.