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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 845/2018

PR. COMMISSIONER OF INCOME TAX-4, NEW
DELHI

.....Appellant

Through: Mr. Vipul Agrawal, SSC with
Mr. Gibran Naushad & Ms.
Sakashi Shairwal, JSCs.

versus

GLOBAL LOGIC INDIA LTD.

.....Respondent

Through: Mr. Neeraj Jain, Mr. Aniket D.
Agrawal & Mr. Abhishek
Singhvi, Advs.

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+ ITA 846/2018

PR. COMMISSIONER OF INCOME TAX-4, NEW
DELHI

.....Appellant

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Agrawal & Mr. Abhishek
Singhvi, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

21.08.2024

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1. After hearing learned counsels for parties, we had on 18 March 2024 flagged the following issues which appeared to arise for our consideration: -

“1. Having heard learned counsels for the parties we note that



one of the principal issues which would arise for consideration would be whether the asserted deferral of payments would fall within the ambit of clause (c) of Explanation (i) placed at the end of Section 92B of the Income Tax Act, 1961 [**“Act”**]. The appellants seek to draw support from the following observations as rendered by the Court in **PCIT vs Kusum Health Care Pvt. Ltd.** [(2017 SCC OnLine Del 12956)]:

“**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 associated enterprises 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 Transfer Pricing Officer 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 associated enterprise, the arrangement reflects an international transaction intended to benefit the associated enterprise in some way.

11. The Court finds that the entire focus of the Assessing Officer was on just one assessment year and the figure of receivables in relation to that assessment year can hardly reflect a pattern that would justify a Transfer Pricing Officer 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).”

2. Mr. Agarwal, learned counsel for the appellants, has additionally submitted that the practice of deferred payment is one which is being continuously replicated and provided by the assessee right from Assessment Years [**“AYs”**] 2010-11 to 2017-18. According to learned counsel the aforesaid conduct would itself



be indicative of a practice adopted by the assessee and consequently the payments being liable to be viewed as an international transaction.

3. We, however, note that the instant appeals pertain to the first year of operation and consequently the pattern as is alluded to would have to be examined not merely on the basis of the orders passed for subsequent AYs' but also in light of the data which was available with the Assessing Officer ["AO"] for the AY in question and whether that would indicate a practice of deferred payment and consequently placing the transactions in clause (c) of Explanation(i) to Section 92B of the Act.

4. We also take note of the submission addressed on behalf of the respondent/assessee when it was contended that merely providing a short-term deferral of payment would not fall within clause (c) bearing in mind the following principles enunciated by the Supreme Court in **Bombay Steam Navigation Co. Ltd. vs CIT** [AIR 1965 SC 1201]:

"In our judgment this is not a permissible approach in ascertaining the true nature of the transaction. The parties had agreed that assets of the value of Rs.81,55,000 be taken over by the assessee-company from the Scindias. Out of that consideration Rs.29,99,000 were paid by the assessee-company and the balance remained unpaid. For agreeing to deferred payment of a part of the consideration, the Scindias were to be paid interest. An agreement to pay the balance of consideration due by the purchaser does not in truth give rise to a loan. A loan of money undoubtedly results in a debt, but every debt does not involve a loan. Liability to pay a debt may arise from diverse sources, and a loan is only one of such sources. Every creditor who is entitled to receive a debt cannot be regarded as a lender. If the requisite amount of consideration had been borrowed from a stranger, interest paid thereon for the purpose of carrying on the business would have been regarded as a permissible allowance; but that is wholly irrelevant in considering the applicability of clause (iii) of sub-section (2) to the problem arising in this case. The legislature has under clause (iii) permitted as an allowance interest paid on *capital borrowed for the purposes of the business*; if interest be paid, but not on capital borrowed, clause (iii) will have no application."

5. It was further submitted that the words '*deferred payment*' or '*receivable*' would have to be interpreted *ejusdem generis* with the other services and lending facilities which are spoken of.



6. In order to enable Mr. Agarwal, learned counsel to address further submissions, let the appeals be re-notified for 03.05.2024.

7. We also accord liberty to the appellants to place such additional material as may be chosen and advised within four weeks from today.”

2. Pursuant to what transpired in the course of that hearing, Mr. Aggarwal had also placed for our consideration a chart from which it is sought to be contended that the deferred payment system which was followed by the respondent-assessee clearly amounted to a pattern which was spoken of in **PCIT v. Kusum Health Care Pvt. Ltd.**¹. The details which stand encapsulated in that chart are reproduced hereinbelow: -

Sl. No.	AY	ITAT APPEAL No.	DATE OF ORDER	Adjustment Amount (Rs.)
1	2010-11	1104/Del/2015	12.12.2017	4,00,31,234/-
2.	2012-13	1115/Del/2017	12.12.2017	4,86,19,810/-
3.	2013-14	7621/Del/2017	07.09.2020	4,71,35,199/-
4.	2014-15	4740/Del/2018	16.03.2022	4,75,27,934/-
5.	2015-16	8726/Del/2019	29.06.2020	6,01,18,689/-
6.	2016-17	868/Del/2021	12.11.2021	5,30,71,340/-
7.	2017-18	370/Del/2022	23.11.2022	7,12,59,891/-

3. We however note that insofar as the present appeals are concerned and which are confined to **Assessment Years**² 2010-2011 and 2012-2013, the **Income Tax Appellate Tribunal**³ quite apart from resting its decision on *Kusum Health Care* had also rendered the following findings: -

“17. Furthermore when the taxpayer is undisputedly a debt free company, as it is not the case of the Id. 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

¹ [(2017) SCC OnLine Del 12956]

² A.Y.

³ Tribunal



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.”

4. We note that in *Kusum Health Care* apart from the aspect of deferred payments ultimately transforming into a pattern, the Court had also taken a note of those deferred payments having an impact on the working capital of the assessee. As we go through the order framed by **Transfer Pricing Officer**⁴ in these two appeals, the authority has clearly failed to examine or answer the issue of international transactions bearing in mind Explanation (i)(c) of Section 92B of the **Income Tax Act, 1961**⁵ in the aforesaid light. In any case and in light of the factual findings which stand mirrored in paragraphs 17 and 18, we find no justification to interfere with the ultimate view expressed by the Tribunal.

5. Accordingly, while we dismiss these two appeals, we leave the question of law which was posited for consideration open to be addressed in appropriate proceedings.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 21, 2024/sk

⁴ TPO

⁵ Act