

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"K" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.713/Mum./2022**

**(Assessment Year : 2017-18)**

Aquity Solutions India Pvt. Ltd.  
(Formerly known as  
Mmodal Global Services Pvt. Ltd.)  
1<sup>st</sup> Floor, Unit no.103, Reliance Plaza  
Plot no.K-10, Kalwa Industrial Area  
Village Elthen, Taluka & Dist. Thane  
Airoli, Navi Mumbai 400 708  
PAN – AAACC9165F

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-15(1)(1), Mumbai

.....Respondent

Assessee by : Shri Harsh Shah  
Revenue by : Ms. Samruddhi D. Hande

Date of Hearing – 14/10/2022
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Date of Order – 02/11/2022
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**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the final assessment order dated 21/02/2022, passed under section 144C(3) r/w section 144C(13) r/w section 144B of the Income Tax Act, 1961 ("*the Act*") for the assessment year 2017-18, pursuant to the directions issued by the Dispute Resolution Panel (DRP)-1, Mumbai ("*learned DRP*"), under section 144C(5) of the Act.

2. In its appeal, the assessee has raised following grounds:-

*"1. On the facts and circumstances of the case and in law, the final assessment order dated 21 February 2022 is non-est, as the same has been passed beyond the time prescribed by Section 144C(13) of the Act, thus liable to be quashed in-limine.*

*2. On the facts and circumstances of the case and in law, the learned Transfer Pricing Officer (TPO)/ the learned Assessing Officer (AO) under directions of the Hon'ble Dispute Resolution Panel ('DRP') erred in making an addition of Rs. 1,26,43,352/- to the total income of the Appellant on account of interest chargeable on trade receivables in relation to the international transactions entered into by the Assessee with its AE.*

*3. On the facts and circumstances of the case and in law, the learned TPO / the learned AO under directions of the Hon'ble DRP erred in treating outstanding trade receivables as a separate international transaction undertaken by the Assessee without any material in support thereof. Trade receivables were incidental to the main sale transaction, which were held to be at arm's length, hence no separate benchmarking was required for benchmarking the trade receivables.*

*4. Without prejudice, on the facts and circumstances of the case and in law, the learned TPO / the learned AO under directions of the Hon'ble DRP erred in not appreciating that no addition was warranted on account of delay in realization of trade receivables as:*

*a. Once interest cost adjustment was made on comparable data for provision of Medical Transcription (MT) services, the Assessee's transactions were yet at arm's length.*

*b. Once working capital adjustment was made on comparable date for provision of IT and IT enabled services (IT & ITes), the Assessee's transactions were yet at arm's length.*

*5. Without prejudice, on the facts and circumstances of the case and in law, the learned TPO / the learned AQ under directions of the Hon'ble DRP erred in adopting average 6 months USD LIBOR + 450 Basis Points ("BPS") for calculating the interest on outstanding receivables."*

3. Ground No. 1, raised in present appeal, was not pressed during the course of hearing. Accordingly, the same is dismissed as not pressed.

4. The issue arising in grounds No. 2 – 5, raised in assessee's appeal, is pertaining to transfer pricing adjustment on account of outstanding receivables from its associated enterprise ("AE").

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in provision of medical transcription services, information technology and quality assurance/support services in the nature of back office support services (ITeS). The assessee e-filed its return of income, for the year under consideration, on 30/11/2017 declaring total income of Rs. 25,13,62,470. The assessee is a company of MModal Group which is provider of clinical documentation solutions providing clinical narrative capture services, speech and language understanding technology and clinical documentation workflow solutions for the healthcare industry. During the year under consideration, assessee entered into following international transactions with its AE:

Sl. No.	International Transaction	Amount (INR)	Method
1.	Provision of Medical Transcription Services	2,73,78,12,162	CUP
2.	Provision of IT and IT enabled services	65,06,86,946	TNMM

6. Under the medical transcription services segment, assessee renders medical transcription services as per the instructions provided by the US AE. For benchmarking this transaction, assessee adopted Comparable Uncontrolled Price ("CUP") method as the most appropriate method by considering itself as the tested party. For determination of arm's length price ("ALP"), assessee analysed service level agreement of AE with assessee and AE with Indian third-party service providers for medical transcription services. The assessee compared the price for the services as well as terms and conditions governing the services and came to the conclusion that weighted average per line rate

charged by the assessee to US AE is higher than the weighted average per line rate charged by independent 3<sup>rd</sup> parties (i.e. non-AEs) for the similar services rendered to US AE. Accordingly, assessee claimed that the international transaction pertaining to provision of medical transcription services is at ALP.

7. As regards IT and IT enabled services segment, the assessee used Transactional Net Margin Method ("TNMM") as the most appropriate method with Profit Level Indicator ("PLI") of Operating Profit to Total Operating Expenses, for benchmarking the transaction. By considering itself as the tested party, assessee identified 12 comparable companies with arithmetic mean of weighted adjusted net cost plus markup of 10.44%, with 35<sup>th</sup> and 65<sup>th</sup> percentile range between 7.40% to 9.47% and median of 8.31%. As the assessee has net cost plus margin of 19.62%, accordingly, it claimed the transaction pertaining to provision of IT and IT enabled services to be at ALP.

8. The Assessing Officer ("AO") made reference to Transfer Pricing Officer ("TPO") for determination of ALP of the aforesaid international transactions. The TPO vide order dated 20/01/2021 passed under section 92CA(3) of the Act accepted the benchmarking analysis conducted by the assessee in respect of international transaction pertaining to provision of medical transcription services and provision of IT and ITeS. However, the TPO noticed that the assessee has outstanding receivables from its AE which is pending for more than 45 days (i.e. the credit period as per the agreement). Accordingly, assessee was asked to show cause as to why interest be not computed regarding trade receivables due as on 31/03/2017 from AE, which are pending for more than 45 days. In reply, assessee submitted that outstanding

receivables represent a consequence of international transactions undertaken by the assessee and are not separate international transaction *per se*. Further, it was submitted that once ALP is determined in respect of main transaction, it would be deemed to be covering all the elements and consequences of such transaction. However, the TPO, vide order passed under section 92CA(3) of the Act, did not agree with the submissions of the assessee and computed adjustment by adopting average 6 months USD LIBOR plus 450 basis point (i.e. 5.97%) as the arm's length interest to the invoices that were outstanding for a period in excess of 90 days. As a result, in respect of outstanding receivables pertaining to provision of medical transcription services, TPO computed total interest of Rs. 1,01,12,204 and in respect of provision of IT and ITeS, TPO computed total interest of Rs. 25,31,148. Thus, TPO proposed total upward adjustment of Rs. 1,26,43,352 as ALP interest to be charged by assessee to AE on outstanding trade receivables. The AO passed the draft assessment order under section 143(3) of the Act after incorporating the adjustment proposed by the TPO.

9. The assessee filed detailed objections before the learned DRP against the adjustment proposed by the TPO. The learned DRP vide its directions dated 23/12/2021, issued under section 144C(5) of the Act, rejected the objections filed by the assessee and upheld the approach of TPO of separately benchmarking the alleged transaction of outstanding receivables from AE. The AO, in conformity, passed the final assessment order. Being aggrieved, the assessee is in appeal before us.

10. During the course of hearing, learned Authorised Representative ('learned AR') submitted that in respect of medical transcription services segment, weighted average per line rate charged by the assessee to the AE is higher than the weighted average per line rate charged by the independent 3<sup>rd</sup> parties after including interest cost, considering 45 days' credit period and interest rate of LIBOR plus 3.25%. The learned AR further submitted that even applying the interest rate adopted by the TPO, i.e. average 6 months LIBOR plus 450 basis points, weighted average per line rate charged by the assessee to the AE is higher than the interest cost adjusted per line rates charged by the independent 3<sup>rd</sup> party from the AE. In respect of provision of IT and IT enabled services segment, learned AR submitted that this transaction was benchmarking considering the working capital adjusted margins of the comparable companies and assessee was found to be at arm's length, therefore, impact of delayed receivables has already been factored in, requiring no further adjustment on account of outstanding receivables.

11. On the other hand learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

12. We have considered the rival submissions and perused the material available on record. In the present case, it is undisputed that international transactions undertaken by the assessee viz. provision of medical transcription services and provision of IT and IT enabled services are at arm's length as per the benchmarking analysis conducted by the assessee. The TPO proposed the impugned adjustment by calculating interest in respect of trade receivables outstanding from the AE. In this regard, the TPO considered 90 days as the

credit period beyond which interest was calculated by applying average 6 months USD LIBOR plus 450 basis points. As per the assessee, outstanding receivables are pertaining to provision of medical transcription services and provision of IT and IT enabled services to the AE and same are intrinsically linked to the main transaction, which have already been found to be at arm's length. Further, as per the assessee, early or late realisation of such proceeds was incidental to the main transaction. On a without prejudice basis, during the course of hearing, reference was made to page No. 392 and 440 of the paper book, wherein the assessee has conducted comparative analysis on interest cost adjustment on line rates charged by the independent 3<sup>rd</sup> parties to the AE with the line rates charged by the assessee to the AE in respect of provision of medical transcription services. We find that average line rate charged by the assessee to its AE is higher than the rate charged by the third-party vendors to the AE even after including the foreign currency loan interest of LIBOR + 3.25% to it and considering credit period of 45 days (as per its agreement with the AE). By applying the similar methodology and adopting the interest as calculated by the TPO, i.e. average 6 months USD LIBOR plus 450 basis points, we find that even in this scenario also average line rate charged by the assessee to its AE is higher than the rate charged by the third-party vendors to the AE even after including the imputed interest cost to it. Therefore, in view of above, we find merits in the submissions of the assessee and are of considered view that average line rate charged by the assessee to its AE in respect of provision of medical transcription services is at arm's length vis-à-vis comparable interest cost adjusted rate charged by the third-party vendors to the AE and thus no further adjustment, as made by TPO/AO

and upheld by the learned DRP, is warranted. Accordingly, we direct the TPO/AO to delete the adjustment on account of outstanding receivables in respect of provision of medical transcription services.

13. As noted above, the transaction pertaining to provision of IT and IT enabled services was benchmarked by the assessee by adopting TNMM and margin of the assessee was found to be at arm's length vis-à-vis working capital adjusted margins of the comparables. From the record, it is evident that the TPO has also, inter-alia, accepted the benchmarking analysis conducted by the assessee in respect of transaction pertaining to provision of IT and IT enabled services. The plea of the assessee is that aforesaid benchmarking has already considered the impact of delayed receivables and thus no further adjustment on account of outstanding receivables is required. In this regard, we find that Hon'ble Delhi High Court in PCIT vs Kusum Healthcare (P) Ltd., (2017) 398 ITR 66 (Delhi) observed as under:

*"With the assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-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] 209 Taxman 200/345 ITR 241/345 ITR 241(Delhi)."*

14. Thus, respectfully following the aforesaid decision of Hon'ble Delhi High Court in Kusum Healthcare (P) Ltd. (supra), we find no merit in the adjustment made by the TPO/AO on account of outstanding receivables in respect of transaction pertaining to provision of IT and IT enabled services, when margin of assessee was found to be at arm's length vis-à-vis working capital adjusted



margin of comparables. Accordingly, we direct the TPO/AO to delete the adjustment.

15. Consequently, in view of the above findings, the entire transfer pricing adjustment made by the TPO/AO is directed to be deleted. As a result, ground no. 4 raised in assessee's appeal is allowed.

16. Ground no.2 is general in nature and in view of our aforesaid findings need no separate adjudication.

17. Insofar as ground no.3 is considered, learned AR, during the course of hearing, fairly agreed to not press the same if relief is granted in respect of without prejudice ground no.4. Accordingly, in view of the aforesaid findings, ground no.3 is dismissed as not pressed. As regards ground no.5, same is rendered academic in nature in view of our aforesaid findings and thus need no separate adjudication.

18. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open Court on 02/11/2022

**Sd/-  
PRAMOD KUMAR  
VICE PRESIDENT**

**Sd/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 02/11/2022**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai