आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.355/Ahd/2020
Assessment Year :2012-13

Effective Teleservices P. Ltd. 101-103, 1st Floor, IT Tower-4 Infocity Complex Airport Road Gandhinagar 382 009. PAN : AAACE 9318 E		DCIT, Gandhinagar Cir. Gandhinagar.

(Applicant)		**(Responent)**

Assessee by :	Shri Dhinal Shah, CA
Revenue by :	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 23/01/2023
घोषणा की तारीख /Date of Pronouncement: 17/04/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld. Commissioner of Income Tax (Appeals)-13, Ahmedabad[hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 6.2.2020pertaining to the Asst.Year 2012-13.

2. The summarized grounds raised in the appeal are as under:

"

1. *Ground no 1 - Addition on account of upward adjustment of Rs 40,93,878 in relation to outstanding receivables from AE*

1.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the decision of learned AO / TPO by confirming the addition on account of upward adjustment amounting to Rs 40,93,878 in relation to outstanding receivables from Etech Global Services LLC ('AE')

1.2 On the facts and in the circumstances of the case and in law, the learned CIT(A) has failed to appreciate the fact that outstanding receivables are incidental and inextricably linked to the transaction of provision of services and not a separate transaction; hence margins computed by Appellant after working capital adjustment should have been considered sufficient to capture the impact of credit period.

1.3 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the decision of learned AO / TPO to apply CUP method for determining arms length price with respect to outstanding receivables from AE.

1.4 Without prejudice, learned CIT(A) has grossly erred in accepting the interest rate adjustment as adhoc 100bps for risk adjustment without giving any proper justification.

Ground no 2 - Disallowance of employee's contribution to PF amounting to Rs.2,52,246 under section 36(1)(va) of the Act

2.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in upholding the decision of learned AO in disallowing the employees contribution to PF amounting to Rs 2,52,246 under section 36(1)(va) of the Act."

3. Ground No.2-2.1 raised by the assessee with respect to disallowance of employees contribution to PF amounting to Rs.2,52,246/- , it was conceded by the Ld.Counsel for the assessee to be covered against the assessee by the decision of the Hon'ble apex court in the case of Checkmate Services P.Ltd. Vs. CIT, 143 taxmann.com 178 (SC) dated 12.10.2022

Ground of appeal No.2-2.1 are accordingly dismissed.

4. The solitary issue remaining for adjudication in the present appeal relates to transfer pricing upward adjustment made on accountof notional interest on the excess credit period allowed to outstanding receivables of associate enterprise (AE) amounting to

Rs.40,93,878/-. The grounds raised with respect to the said addition are in Ground No.1-1.4.

5. The facts relating to the issue are that the assessee is engaged in the business of providing call centre services and business process outsourcing (BPO) services i.e. IT enabled services. During the impugned year, the assessee had international transactions with its Associate Enterprises (AEs) as under:

Name of AE	Nature of Transactions	Value of International Transactions (Rs.)
Etech Inc. USA	Provision for call business process services centre and outsourcing	7,85,69,615/-
Etech Global Services LLC USA	Provision for call business process services centre and outsourcing	12,45,73,956/-
Etech Global Services LLC USA	Reimbursement of chargesbroad band	1,83,40,275/-

6. From the perusal of the invoices raised by the assessee on its AE the Transfer Pricing Officer(TPO) noted that there was an excess delay beyond the credit period extended by the assessee in relation to payment made by the AE of the sale invoices. In 23 invoices, the TPO noted delay varying between 185 days to 366 days as at the end of the year i.e. 31.3.2012.At the same, the TPO noted delayin payment by the assessee to the AE of outstanding payables, in 10 invoices varying from 32 days to 303 days as on 31.3.2012 and in 7 invoices he noted a delay of more than 100 days. Thus, substantial delay was noted in the receipt of outstanding receivables of the AEas compared to delay in payment by the assessee to the AE of

outstanding payables and accordingly, the TPO held that by parking such fundsat the disposal of the AEs for extra period, the assessee had denied itself fundsavailable in its hand; that in an independent third party scenario, no third party would extend any such fund to any unrelated entity without expecting commensurate compensation for the same. Consequently, non-charging of commensurate compensation from AE in respect of such grant of funds by the assessee was not found to be at arm's length, and accordingly adjustment for interest to be charged on the outstanding receivables of AE was proposed, applying Arms Length Price (ALP) interest rate of 317.35, which was determined on the following basis:

Name of AE	*Base*	*Avg. Comparable Rate (spread)*	*Forex Risk*	*ALP Interest Rate*
Etech Inc., USA	*Avg. 12 month Libor- 90.00*	*127.35*	*100*	*317.35*

7. The TPO accordingly computed ALP interest at Rs.43,31,239/- on outstanding receivable and as the assesseewas required to pay outstanding payable beyond the credit period extended by the AE the ALP of the same was computed at Rs.2,37,361/-.Thus, net adjustment of interest receivable by the asseseeof Rs.40,93,878/- was proposed by the TPO as required to be made on account of the excess credit period allowed to the AE 's on outstanding receivables. The AO added the same to the income of the assessee which was upheld by the Ld.CIT(A).

8. Before us the contention of the Ld.Counsel for the assessee was that the Ld.CIT(A) had upheld the Transfer Pricing adjustment of interest on delayed realization of outstanding receivables of AE's following the decision of the ITAT in Ameriprise India P. Ltd. Vs

ACIT 62 taxmann.com 237 , which he contended has not found approval of the Hon'ble Delhi High Court, having restored the matter back to the ITAT to be reconsidered in the light of its decision in the case of ACIT vs. Kusum Healthcare P.Ltd. (2018) 99 taxmann.com 431 (Delhi). He pointed out that following the decision of the Hon'ble High Court in Kusum Health care (supra) ,the ITAT in several decisions had deleted identical adjustments made on account of interest on delayed outstanding receivables. The basis and reasoning leading to the deletion being that the assessees having demonstrated transactions with AE's to be at arms length benchmarking the transactions adopting the Transactional Net Margin Method (TNMM), calculating the margins of comparables by making working capital adjustment, the said adjustment takes care of delays in recoveries and payments of outstanding receivables and payables and therefore no further adjustment of interest is warranted on account of excessive credit period of outstanding receivables. Reliance was placed on the following case laws,copies of which were also placed before us.

i) Rockwell Automation India P.Ltd. Vs. ACIT, ITA No.6806/Del/2018 dated 5.5.2022;

ii) Ameriprise India P. Ltd. Vs. ACIT, 62 taxmann.com 237 (Delhi-Trib.)

iii) Order passed by Delhi High Court in IT APPEAL No. 765 QF 2016 in case of Kusum Health Care (P.) Ltd. vs Principal Commissioner of Income-tax.

iv) Order passed by Income Tax Appellate Tribunal in IT Appeal No. 6814 (DELHI) of 2014 in case of Kusum Healthcare (P.) Ltd. v. Assistant Commissioner of Income-tax, Range-5 New Delhi

iv) Order passed by Income Tax Appellate Tribunal (Ahmedabad D Bench) in IT Appeal No. 2873/Ahd/10 in case of Micro Ink Limited v. Additional Commissioner of Income-tax - Ahmedabad.

9. The Ld.Counsel for the assessee contended that the facts in the present case are identical, with the assesses transactions with its AE's being demonstrated to be at arms length using TNMM method, arriving at the margins after making working capital adjustment. Therefore, he contended that the Ld.CIT(A) had wrongly applied the decision of the ITAT in the case of Amiriprise India Pvt. Ltd(supra) ,and the judicial proposition on the issue in fact was in favour of the assessee in view of various decisions of the ITAT.

The Ld.DR however relied on the order of the Ld.CIT(A).

10. We have heard both the parties. The issue for consideration before us is whether any upward adjustment of interest on outstanding receivables of AE's exceeding their credit period is warranted in terms of section 92C of the Act.

11. It is an undisputed fact that the international transaction of the assessee with its AE with respect to the business of call centres, BPO services and reimbursement of broad-band charges, was bench-marked by the assessee adopting TNMM method which the TPO had accepted to be at ALP. In this regard, the assessee while computing TNMM method for determining the ALP of the transactions, had made working capital adjustment to the margin earned and the operating margin thereafter of the assessee was calculated at 10.75% as opposed to the mean of operating margin of comparables to 13.44%. The impact of thedifference in operating margin was calculated in absolute terms on the international transactions and was shown to be within thepermissible 5% range of comparable companies. The working inthis regard of the assessee of the operating margin in its transfer pricing report produced before us at page no.107 and 108 is as under:

Range Calculations

Amount in INR

Particulars	Reference	FY 2011-12
Tested Party		
Operating Revenue of ETPL	A	22,17,07,557
Operating Cost of ETPL	B	20,01,95,452
Operating profit of ETPL	C=A-B	2,15,12,105
Operating Margin of ETPL	D=C/B	10.75%
Arithmetic mean of Operating Margin of Comparable companies	E	13.44%
Difference in Arithmetic mean of Operating Margins of comparables and the	F=E-D	2.70%
Absolute value of difference in margins	G=F*B	53,99,984.40
Value of International transactions of tested party [Transfer Price]	H	22,16,69,487
Arithmetic mean of comparable prices	I=H+G	22,70,69,471
Permissible Range	J	5.00%
Ratio of difference between transfer price and arithmetic mean of	**K=[I-H]/H**	**2.44%**
ETPL margin are within 5% range of comparable companies		**At Arm's Length**

The ld.counsel for the assessee has pointed out that in various judicial decisions, including that of Hon'ble Delhi High Court, it has been held that working capital adjustment of net margins takes care of the impact of outstanding receivables, and no further adjustment on account of overdue receivables is required if the margins of the assessee is comparable with that of the adjusted margins of comparables after working capital adjustment.

12. Our attention was drawn first to the decisionof Hon'ble Delhi High Court in the case of ACIT vs. Kusum Healthcare P.Ltd. (2018) 99 taxmann.com 431 (Delhi) holding so at para 10 of its order as under:

> *"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 dehors 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-a-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.*

13. As is evident from the above, Hon'ble High Court has held that not every receivable would qualify as international transaction as per *Explanation* to section 92B of the Act. The Hon'ble High Court noted that there maybe delay in collection of money due to variety of factors. The impact that this would have on the working capital of the assessee will have to be studied and only after a proper inquiry by the TPO by analyzing statistics for a period to discern the pattern it should be arrived at, whether the outstanding receivables reflected a pattern intended to benefit the associated enterprise in some way.

Thereafter, it was pointed out that the ITAT Delhi Bench in the case of M/s.Bharti Airtel Services Ltd. Vs. DCIT in ITA No.3183 & 6272/Del-2018 dated 31.3.2022 dealt with an identical issue of the TPO treating the outstanding receivables of the AE as being in the nature of un-secured loans/advances thereby embedding notional interest thereon. The Tribunal, relying upon the decision of Hon'ble Delhi High in the case of Kusum Healthcare P.Ltd. (supra) held that if while doing comparability analysis adopting TNMM method the working capital adjustment is accepted then the differential impact of the working capital of the assessee vis-à-vis comparables stands factored in the pricing and profitability, and where the margin of the assessee and the comparables after making adjustment on account working capital are comparable, then no further adjustment is required. The relevant findings of the ITAT in this regard at para 8-9 of the order are as under:

> *"8. We have heard the rival submissions and also perused the impugned orders as well as the material placed before us. Here in this case, admittedly no adjustments have been proposed by the TPO on the principal international transactions, with regard to man-power equipment related, employee related transactions, reimbursement of cost etc. The reason being the net operating margin of the assessee 5 from various services was arrived at 9.36% as against the adjusted margin of 2.70% earned by the comparable companies for assessment year 2012-13. Similarly in assessment year 2013-14 the assessee had shown net operating margin on*

total cost at 9% from the services rendered to AE as against the un-adjusted margin of 6.82% and working capital adjustment of 4.78% earned by the comparables. The sole adjustment proposed by the TPO is with regard to the outstanding receivables on the delayed payment beyond 15 days from its AE holding it to be in the nature of un-secured loan and thereby proposing adjustment of Rs.46,07,661/- for assessment year 2012-13, wherein the Assessing Officer has taken SBI PLR rate of 12.60%; whereas in assessment year 2013-14 the Assessing Officer has made adjustment of Rs.23,98,532/- by taking average LIBOR rate plus 400 basis point which was arrived at 4.37% treating it to be separate international transaction. It is also an un-disputed fact that before the authorities below the assessee had submitted the working capital adjustment vis-à-vis the comparable companies before the TPO / AO which if factored into then no adjustment on account of receivables form AE is required. This working capital adjustment has not been accepted. Now it is well settled law by the judgement of Hon'ble jurisdictional High Court in the case of Pr. CIT Vs. Kusum Healthcare Private Limited (2017) TII 28 HC (Del.) in ITA. 765/Del/2016 wherein the Hon'ble High Court had observed and held as under:-

> *"Aggrieved by the said order, the Assessee filed an appeal before the ITAT. By the impugned order dated 31th March 2015, the ITAT set aside the assessment order. The ITAT noted that the Assessee had undertaken working capital adjustment for the comparable companies selected in its transfer pricing report. It was further noted that "the differential impact of working capital of the 6 Assessee vis-à-vis its comparables had already been factored in the pricing/profitability" which was more than the working capital adjusted margin of the comparables and, therefore, "any further adjustment to the margins of the Assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified." 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 AEs 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..... .....The Court finds that the entire focus of the AO was on just one AY and the figure of receivables in relation to that AY can hardly reflect a pattern that would justify a TPO 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-àvis 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)."*

> *9. This judgement has also been followed in catena of judgements by the Tribunal, a compilation of which has been filed before us separately. If the working capital adjustment is accepted, then the differential impact of working capital of the Assessee vis-à-vis the comparables stands already factored in the pricing/profitability, which herein this appears to have been done and it has been stated that the 7 working capital adjusted margin of the comparables is around 4% whereas assessee's margin is around 9% and thus, no further adjustment is required. Before the Assessing Officer the assessee has up-dated the comparable companies and has filed the working capital adjustment margin which was in response to the show cause notice. From the perusal of the working it is seen that, in assessment year 2012-13 the working capital adjusted on the comparable company was arrived at 4.50% of net profit operating margin as against the net operating margin earned by the assessee at 9.36% and in the assessment year 2013-14, the working capital adjustment of the comparable companies was arrived at 4.02%, whereas the net operating margin earned by the assessee was at 9% which is much higher than adjusted margin earned by the comparable companies. Though we find that in the assessment year 2011-12 the Tribunal has confirmed the said adjustment due to lack of any such computation filed by the assessee at any stage. However, in this year it is already part of the record. Therefore, we direct the TPO to examine the working capital adjustment and if the working given by the assessee is found to be correct then in the light of the decision of the Hon'ble jurisdictional High Court in the case of Pr. CIT Vs. Kusum Healthcare Private Limited (supra) no adjustment should be made on the proposed notional interest on the outstanding receivables. With this direction the appeal of the assessee is treated as partly allowed for statistical purposes."*

14. Our attention was also drawn to a very recent decision of the ITAT, Delhi Bench, in the case of Rockwell Automation India Pvt. Ltd. Vs ACIT in ITA No. 6806/Del/2018 dated 05-05-2022 ,wherein identical issue had been dealt with taking note of various conflicting decisions on the issue and also the final judicial position onthe same. The Tribunal noted in the said case the decision of the ITAT, Delhi Bench, in the case of Kusum Health P.Ltdin its order in ITA No.6814/Del/2014 dated 31.3.2015 holding that working capital adjustment takes into account the impact of outstanding receivables and no further adjustment is required if the margin of the assessee is higher than the working capital adjusted margin to the comparable. Thereafter, the Tribunal took note of two contrary decisions of the ITAT in the case of Ameriprise India P.Ltd vs ACIT ITA No. 2010/Del/2014 dated 14-08 15 ,followed in Mckinsey

Knowledge Centre P.Ltd. ITA No.154/Del/2016 . It thereafter noted that the decision of the Delhi Bench in the case of Kusum Health P.Ltd. (supra) was upheld by the Hon'ble High Court and furthernoted that in the case of Mckinsey Knowledge Centre P.Ltd. the Hon'ble HighCourt hadrestored the issue of interest adjustment on the outstanding receivables to the ITAT, following its decision in Kusum Health P.Ltd. (supra). It also noted that in another order of the Hon'ble High Court in the case of the same assessee, i.eMckinsey Knowledge Centre P.Ltd on other issues before it, the assesses contention of the decision of the ITAT in Ameriprise (supra) being erroneous was rejected as incorrect. That against this order the taxpayer filed aReview Petition and Hon'ble High Court corrected their order holding that the decision of Kusum Health P.Ltd. (supra) held fort. The Tribunal thereafter concluded at para-15 of its order that the decisionof Hon'ble Delhi High Court in the case of Kusum Health P.Ltd. (supra) was still binding precedent onthe issue of interest on outstanding receivables.The relevant portion of the order of the ITAT is as under:

> *"5. At the outset the ld. AR taken up the Ground No. 3 pertaining to interest on outstanding inter-company receivables. 6. The TPO estimated the delay on estimated average of outstanding receivables of 6 months and calculated interest for 182 days @ 4.31% (LIBOR + 400 basic points). The ld. DRP following the order for the A.Y. 2013-14 directed the TPO to make adjustment on net receivables only after netting the payables entry wise. The assessee before us submitted that the receivables and payables are intricately linked to the transactions of import of capital assets components and export of finished goods and provision of services and hence cannot be bench marked separately. It was also argued that the company had more of net payables with its AEs at the end of the year and yearly net closing balances are as under:*

S.No	*Name of the AE*	*Relationship with AE*	*Receivable Balance (A)*	*Payable Balance (B)*	*Difference Amount (A-B)*
1	*Rockwell Automation Inc, USA*	*Ultimate Holding Company*	*44,541,345*	*376,160,226*	*(331,618,881)*

2	Rockwell Automation Asia Pacific Ltd, Hong Kong	Fellow Subsidiary	10,357,533		10,357,533
3	Rockwell Automation BV Netherlands	Fellow Subsidiary	45,271,184		45,271,184
4	Rockwell Automation, Pty Ltd, South Africa	Fellow Subsidiary	5,145,938		5,145,938
5	Rockwell Samsung Automation Ltd. Korea	Fellow Subsidiary	9,206,873		9,206,873
6	Rockwell Automation Australia Ltd.	Fellow Subsidiary	340,682		340,682
7	Others	Fellow Subsidiary	11,108,465	-	11,108,465
8	Rockwell Automation Inc, Canada	Fellow Subsidiary	6,937,229		6,937,229
9	Rockwell Automation Southeast Asia Pte. Ltd. Singapore	Fellow Subsidiary		2,640,880	(2,640,880)
	Net Receivable / (Payable) Balance			378,801,106	(245,891,857)

7. Based on the above it was argued that the amount of outstanding payables by the company towards its AEs was over 2.8 times than the amount of outstanding receivables from the AEs. It was also argued that the AEs did not charge any interest from the assessee as well as on the outstanding payables. The ld. AR relied on the decision of the Co-ordinate Bench of ITAT in the case of AVL India P. Ltd. Vs. DCIT 88 taxmann 11 wherein it has been held that in order to determine ALP. Benefit of netting of interest has to be allowed on aggregate amounts receivable and payable from all AEs and not on transaction by transaction basis. The ld. DR relied on the order of the ld. DRP.

8. Heard the arguments of both the parties and perused the material available on record.

9. The issue has been deliberated in a number of cases by the Tribunal. The Delhi Tribunal in case of Kusum Healthcare Pvt. Ltd. vs. ACIT (ITA No. 6814/Del/2014) order dated 31.03.2015 held that the working capital adjustment takes into account impact of outstanding receivables and no further adjustment required if the margin of the assessee is higher than working capital adjusted margin of comparable.

10. The Hon'ble Delhi Tribunal in case of Ameriprise India P. Ltd. vs. ACIT (ITA No. 2010/Del/2014) [order dated 14.08.2015] considered the decision of coordinate bench in the case of Kusum Healthcare and held that the allowing working capital adjustment in the international transaction of rendering services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs. The Delhi Tribunal in the case of McKinsey Knowledge Centre Pvt. Ltd. Vs. DCIT [ITA No. 154/Del/2016] (order dated 15.12.2016) followed their finding in the case of Ameriprise India (supra).

11. In the meanwhile the Hon'ble Delhi High Court vide order dated 25.04.2017 in the case of Kusum Healthcare dismissed the appeal of the revenue against the decision of Hon'ble Tribunal and that (i) 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 AEs would automatically be characterized as an international transaction and (ii) 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-characterized the transaction.

12. In the appeal filed by the assessee in the case of Mckinsey Knowledge the Hon'ble High Court vide order dated 07.02.2018 while admitting the appeal on the other issue remitted the issue of interest charged on outstanding receivables to ITAT following their decision in the case of Kusum Healthcare.

13. However vide order dated 09.08.2018 the Hon'ble High Court in the case of Mckinsey Knowledge while deciding the appeal of the assessee on other issue also referred to the decision of the Hon'ble Delhi Tribunal in case of Ameriprise ITA No. 6806/Del/2018 Rockwell Automation India Pvt. Ltd. 6 India P. Ltd. vs. ACIT (ITA No. 2010/Del/2014) on issue of interest charged on outstanding receivable and concluded that the assessee's contention that the ITAT erred in concluding that charging of interest on delayed receipt of receivables is a separate international transaction which requires to be benchmarked independently is incorrect.

14. Aggrieved the taxpayer (Mckinsey Knowledge) filed Review Petition before the Hon'ble High Court against the order dated 09.08.2018 and the Hon'ble High Court vide order dated 16.04.2019 in Review Pet. No. 360/2018 was pleased to recall/correct their order dated 09.08.2018 *holding as under: 9. As far as the first argument by the review petitioner i.e. the answer to the question of bringing to tax the interest amounts goes this Court is of the opinion that the fact that the order of 07.02.2018 referred to Kusum Health Care had expressly remitted the matter for consideration to the ITAT supports the assessee's submission. All that the court had stated on 07.02.2018 was that the matter required re- examination by the ITAT in the light of the Kusum Health Care (supra). For these reasons the judgment to the extent it deals with adjustments made by the TPO and regarding interest on delayed receipt of receivables is a clear error. The court also furthermore notes the submissions made with respect to inapplicability to Explanation of Section 92B and its prospective operation. As the order of 07.02.2018 reserved by contentions this Court does not propose to disturb the effect of that matter. The matter will be considered by the ITAT on its own merits.*

15. In view of the aforesaid sequence of events it would be noted that the decision of Hon'ble Delhi High Court in the case of Kusum Healthcare is still the binding precedent on the issue of interest on outstanding receivables. Needless to mention that the law laid down by the Hon'ble High Court in the case of Kusum Healthcare was followed by the Co-ordinate Benches of the ITAT. There is complete uniformity in the act of the assessee in not charging interest from both the AE and Non AE debtors and the delay in realization of the export proceeds in both the cases is same. Reliance is being placed on the decision of Hon'ble Bombay High Court in the case of CIT-9 vs. M/s. Indo American Jewellery Ltd. in ITA (L) No. 1053 of 2012 order dated 08.01.2013. Keeping in view the various judicial pronouncements and the facts of the case that neither interest has been charged nor paid we hereby allow the appeal of the assessee on this ground.

16. In the result the appeal of the assessee is allowed."

Therefore, what can be derived from the above is that in view of Hon'ble Delhi High Court decision in the case of Kusum Health P.Ltd. (supra) and subsequent decisionsof the ITAT following the decision of the Hon'ble High Court, the position of law on the issue is that where working capital adjustment takes into account the impact of outstanding receivables no further adjustment is required of interest on outstanding receivables of AE's beyond the agreed credit period if the margin of the assessee is comparable to that of external comparables.

15. In the present case, the Ld.CIT(A) has dismissed this plea of the assessee relying on the decision of Delhi Bench in the case of Ameriprise India P.Ld. (supra) which as we have noted above, has

been held to be not good law by the Hon'ble Delhi High Court in its consistent decision in Kusum Health P.Ltd. (supra) and Mckinsey Knowledge Centre P.Ltd. (supra).

16. In the facts and circumstances of the present case, as we have noted above, since the assessee has demonstrated that its profitmargin calculated after working capital adjustment are within ± 5% range as compared to adjusted profits of the comparables, we hold that adjustment made on account of interest on outstanding receivables is unwarranted and unjustified. The same is, therefore, directed to be deleted.

Ground of appeal No.1 – 1.4 are allowed in above terms.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 17th April, 2023 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad,dated 17/04/2023