IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.8275/DEL/2018
(Assessment Year: 2002-02)

DCIT, International Taxation, Gurgaon.	vs.	Coca Cola India Inc., 16th Floor, One Horizon Centre, DLF Golf Course Road, Sector 42, Gurgaon – 122 002 (Haryana).
		(PAN : AAACC2638K)

CO No.73/Del/2020
(in ITA No.8275 /DEL/2018)
(Assessment Year: 2002-02)

Coca Cola India Inc., 16th Floor, One Horizon Centre, DLF Golf Course Road, Sector 42, Gurgaon – 122 002 (Haryana).	vs.	DCIT, International Taxation, Gurgaon.
(PAN : AAACC2638K)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY :Shri Nitesh Joshi, Advocate
Shri Arun Siwach,Advocate
Shri Nikhil Garg, AR
Shri Ritik Rath, Advocate
REVENUE BY : Shri Rajesh Kumar, CIT DR

Date of Hearing : 30.04.2026
Date of Pronouncement : 08.07.2026

O R D E R

PER S.RIFAURRAHMAN,AM:

1. The Revenue has filed appeal against the order of the Learned Commissioner of Income-tax (Appeals)-44, New Delhi ["Ld. CIT(A)", for short]dated 28.09.2018 for the Assessment Year 2002-03. The assessee has also filed cross objections in support of the aforesaid impugned order dated 28.09.2018 passed by the ld. CIT (A).

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

> "1. Whether the Hon'ble CIT(A) has erred in deleting the adjustment made by the TPO by ignoring the fact the working capital adjustment irons out the differences between assessee and comparables and the facts of this case in different from the facts in the case of Bechtel India Private Limited vs DCIT where the issue was interest on receivable and not working capital adjustment.
>
> 2. Whether the Hon'ble CIT(A) was justified in directing the TPO to verify if assessee is debt Free company and therefore, setting aside the issue to TPO which is not working capital adjustment.
>
> 3. Whether the Hon'ble CIT(A) was justified in holding that interest u/s 234D of the Income Tax Act, 1961 is not applicable in present case considering the Explanation 2 to section 234 D of the Income Tax Act, 1961.
>
> 4. Whether the Hon'ble CIT(A) was justified in deleting interest u/s 234B of the IT Act, 1961."

3. With regard to above grounds ofappeal, the relevant facts are, the assessee filed its return of income declaring income of Rs.357,02,246/- on 30.10.2002 along with audit report in Form 3CD. The return was processed under section 143(1) of the Income-tax Act, 1961 (for short

'the Act') on 28.03.2003. The case was selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response, ld. AR of the assessee attended and submitted the relevant information as called for.

4. Since assessee has entered into an international transaction during the year under consideration, the case was referred to Ld.TPO. A notice was issued u/s 92CA of the Act and in response, ld. AR of the assessee attended and submitted the relevant information.

5. Brief background of the assessee are, Coca Cola Inc., a Corporation organized and existing under the laws of the state of Delaware, USA has established a Branch Office in India (CCI-India Branch). The legal status of CCI - India Branch is that of a foreign company. It provides services in India to the companies of Coca Cola Group. The Coca Cola Group in India is engaged in manufacturing and sale of soft drinks. The assessee (CCI-India Branch) provides consultancy services to the Group Companies, i.e. its Associated Enterprises (AEs) in India in the field of manufacturing, marketing and sale of products of the Coca Cola Company. The consultancy services provided by the assessee are broadly in the nature of:

- Accounting, budgeting and statutory compliance;
- Provision of technical know-how and assistance in technical matters;

- Marketing support;
- Business development and restructuring;
- Compliance with international standards; and
- Distribution activities.

6. In Return for advisory and support services rendered, the assessee receives consultancy fee at a mark-up of 5% of the cost incurred. The 5% markup is calculated on costs such as salaries and allowances, moving and relocation expenses and service charges for use of assets. In addition, the assessee has received a reimbursement of Rs.29,99,08,330/- as reimbursement of expenses incurred by it on which no markup has been charged.

7. During the year, assessee has entered into following international transactions :-

S.No.	Description	Method	Value (in Rs.)
1	Services Provided	TNMM	48,65,26,769/-*
2	Reimbursement of expenses as per Terms of Agreement	TNMM	29,99,08,330/-
	TOTAL		78,64,35,099/-

***This amount include Services Tax @ 5%.**

8. After considering the FAR analysis submitted by the assessee, Ld.TPO made TP adjustment. During assessment proceedings, the Ld.TPO observed that the third party vendors raised invoices upon the assessee and not upon the AE. Since the invoices were raised upon the assessee, any contractual obligation, deduction of TDS, making timely payment

etc. were borne by the assessee. The payment was first made by the assessee and then realized from the AE i.e. assessee's substantial funds were deployed for making such payment. He observed that assessee has recovered these payments from its AEs after substantial delays i.e. after 537 days. This fact is evident from the fact that closing balance of sundry debtors was Rs.115 crores as against total consultancy fees of Rs.46.33 crores. After analyzing the Balance Sheet of the assessee, he observed that the opening and closing of sundry debtors for the year under consideration is Rs.110.13 crores and Rs.115.7 crores respectively as against the total consultancy fees of Rs.46.33 crores during the year. During the course of proceedings, assessee was asked to explain why it has allowed long interest free credits to its group companies. In response, assessee submitted as under :-

> "Reasons for not charging interest from Associated Enterprises
>
> As per the arrangement between CCI and the Associated Enterprises, CCI incurs expenses and charges them back to the Associated Enterprises with or without markup depending on the nature of expense. CCI in turn, offers them a reasonable credit period and has been following this policy from the outset. CCI does not have any significant interest costs and is able to manage its cash flows effectively. The total receipts during the year usually mirror the quantum of receivables created during the year and hence, the Associated Enterprises enjoy a kind of rolling credit. Since CCI does not have any significant interest costs an extended credit term offered to the Associated Enterprises does not financially impact CCI.

> Without prejudice to the above, we would like to clarify that charging of interest by CCI from the Associated Enterprises would only reduce the overall tax incidence in India. Since CCI would be taxable at a rate of 20% on interest income while the Associated Enterprises would get a tax break of 35% (plus any applicable surcharge) for the Interest expense any interest expense would result in reduction in Income tax revenues for the Government of India. As per Section 92(3) of the Income Tax Act and Circular 14/2001 the transfer pricing principle are not to be applied in a situation where the overall tax incidence in India is reduced."

9. After considering the submissions of the assessee, TPO observed that section 92 provides that any income arising from an international transaction shall be computed having recourse to the arm's length price. If any person allows longer interest free credit to other persons which are more than the usual business practice, it is foregoing the opportunity cost of using such money or earning income by investing it in some other avenues. With the above observation, TPO proceeded to account for the differences in the net workingcapital requirement of the tested party (assessee) and the comparables, the operating profit of each of the comparable companies is required to be increased to reflect thesefunctional differences. Accordingly, he proceeded to make the adjustment by observing as under:-

- First, determining the difference between the tested party's (assessee) ratio of average net working capital to average total sales and the corresponding ratio of average net working capital to average total sales of each comparable. This difference represents the "excess" or "shortage" of net working capital used by the tested party, relative to comparable companies.

- Next discounting the above difference by an interest rate to derive a figure representing the implicit interest benefit/expense borne by comparable, due to different net working capital requirement. The Prime Lending Rate (PLR) for the financial year 2001-02 for major Banks was around 11.00 - 12.00% (source; CMIE Monthly review of Indian Economy, May 2002: Therefore, on a conservative basis a PLR of 11 % has been considered for carrying out the working capital adjustment. The formula for computing the adjustment to the operating profits of comparables companies is given below:

Adjustment to Profit of Comparable Companies	=	PLR x {Net Working Capital of comparable Companies - [(Sales of Comparable Companies/360) x Holding in days of tested party]}

  - The operating profits of the comparable companies are increased/decreased by the amount of adjustment computed above and finally Operating Profit/Total Cost margin of the comparable companies is computed on the basis of such adjusted operating profit.

10. And he proceeded to make following adjustment to the comparable companies and finally proceeded to make TP adjustment as under :-

"12. Accordingly, operating profit over the total cost margin of the comparable companies was adjusted to take into account the difference in the working capital. The adjusted operating margins of comparable companies as a result of above adjustment are given in the table below:

		Operating Profit/ Total Operating costs		
S.No.	Comparables	2000	2001	2000-2001
1	Kiteo Ltd.	17.67%	14.45%	15.91%
2	Gilcon Project Services Ltd.	19.27%	11.02%	14.72%
3	NIS Sparta Limited	21.40%	22.90%	21.88%
4	Water and Power Consultancy Services	23.82%	32.22%	28.20%
5	Vimta Laboratories Ltd.	24.44%	32.02%	28.95%
	Average	7.67%	9.07	21.83%

Detailed calculation of Working Capital of comparables and the assessee and Working Capital adjustment to operating profits of the comparables is given in Annexure-l. The formula used for carrying out working capital adjustment on the operating profits of com parables is given in para 11.2.

12.1 In the manner discussed above, the arithmetic mean of weighted average of operating profit over the total cost margins of the comparables for

the financial year 1999-2000 and 2000-01 works out to 21.83%. The arm's length price of the international transactions entered into by the assessee with its various AEs is worked out as under :-

Total Cost of provision of services by the assessee: (as per annexure -6 of the TP Report)	Rs.741,202,452
Margin @ 21 .83% of the above:	Rs.161,804,495
Arms length price to be charged from the AEs:	Rs.903,006,947

13. In the manner discussed above the arm's length price of the international transactions entered into by the assessee with its AEs is determined at Rs.903,006,947/- in place of Rs. 763,267,158/- (this figure does not tally with the figure provided in para 3 above because it does not include the amount of service tax). Accordingly, an adjustment of Rs.139,739,789/- is to be made to the income of the assessee, being the difference between the arm's length price and the price charged by the assessee from its AEs for rendering services to them, i.e., the Assessing Officer shall enhance the income of the assessee by an amount of Rs.139,739,789/- while computing the total income of the assessee."

11. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A)-44, New Delhi. With regard to the grounds raised by the Revenue, assessee has submitted chart showing issue of working capital adjustment as under :-

- Working capital adjustment not warranted in the instant case.

The Learned TPO has alleged that since the amount of reimbursement was locked up in sundry debtors and interest needs to be imputed on this amount. The Learned TPO has alleged that the funds of the Appellant is getting blocked as there is a gap 537 days from the day 0/ rendering the service and the day of receipt of payments against such services and therefore, proposed a working capital adjustment while computing the arm's length price of the Appellant.

In this regard. we wish to submit as follows:

- All working capital needs of the Appellant are met by the Head Office and therefore, the appellant is not required to borrow funds from outside parties/banks. Accordingly, there is no opportunity cost to the appellant on account of extended credit to the AEs and therefore, the need for a working capital adjustment does not arise.

In support of the above, reliance is placed on the decision of Delhi Tribunal in the case of Bechtel India (P.) Ltd. vs. DCIT [2016] 66 taxmann.com 6 (Delhi - Trib.), wherein it has held as under :

"15.1 It is brought to our notice that the assessee is a debt free company. In such circumstances it is not justifiable to presume that borrowed funds have been utilized to pass on the facility to its AE's. The revenue has also not brought on record that the assessee has been found paying interest to its creditors or suppliers on delayed payments.

16. In lieu of the discussions and the ratio laid down in the case of Kusum Healthcare Pvt. Ltd., we direct that no separate adjustment/or interest on receivables are warranted in the hands of the assessee."

This view is also affirmed by the Hon'ble Delhi High Court and Hon'ble Supreme Court in Bechtel India's case.

- Without prejudice, we wish to submit that while calculating the holding period of working capital of the tested party, the Learned TPO has only considered the average balance of the debtors for the year concerned and has totally ignored the balance of creditors. Here it is pertinent to note that the working capital adjustment needs to consider the amount of debtors, creditors and inventory.

- Without prejudice, fact that a working capital adjustment is not warranted in the present case, it is further submitted that an adjustment for working capital difference needs to take into account the average value debtors, creditors and inventory. The TPO however has erred in computing the working capital adjustment by taking the closing balance of debtors of CCII. Your appellants have requested the AO to have this apparent error rectified, however, as this request was not considered favorable your appellants have filed an application seeking rectification u/s 154 with the transfer pricing officer. Further it was pointed out that the computation of working capital adjustment provided in Annexure – 1 of the said order is not as per the formula provided in the main body of the order.

- Further, we wish to submit in paragraph 11.2 of order of TPO, the TPO has taken the Prime Lending Rate (PLR) for financial year 2001-02 around 11 percent-12 percent and following a conservative basis, have taken it to be 11 percent. It was submitted that while PLR may be suitable for working capital adjustment where an Indian company is taken as the tested party in cases where the tested party is a branch of a foreign company, the opportunity cost of holding working capital is not the PLR. As per the regulations in place during the year ended March 31, 2002, a branch/office in India of foreign firm/company may keep funds, which are rendered surplus temporarily, in term deposits

with a maturity not exceeding three months. The Rate of Interest for these term deposits the financial year 2001-02 was around 5.5 percent. Accordingly, the revised working capital adjustment is enclosed as Annexure – 2 for your Honour's kind reference."

12. After considering the above submissions, ld. CIT (A) held as under :-

"17.7 The appellant has submitted that as per the agreement under the Mutual Agreement Procedure for the year under reference, it had been held that income should be computed under normal provisions of the Act after deducting the expenses incurred and hence the above ground had been withdrawn vide letter dated 12.11.2009.

17.8 For statistical purpose, the Grounds of Appeal No. 10 & 19 are dismissed as the said grounds have been withdrawn by the appellant.

Grounds No. 11 to 14:

17.9 Grounds No.11 to 14 pertain to the contention of the appellant that the AO/TPO had erred in making a transfer pricing adjustment on account of international transactions undertaken by the appellant with its associated enterprises.

17.10 The appellant has stated that the AO and violated the principles of natural justice by not providing the appellant with opportunity of being heard before referring the matter to the TPO and making a transfer pricing adjustment on the basis of the TPO's report. The contention of the appellant is not accepted as the AO has made the reference to the TPO as per the provisions of the Act and the TPO has given adequate opportunity to the appellant to make its submissions. It is also seen that the AO has given adequate opportunity to the appellant as evident from perusal of paras 8-9 of the AO's Order. Para 9.1 of the order specifically mentions that the appellant was given opportunity to present its contention vide order sheet entry dated 09.03.2005 and had submitted its objections vide letters dated 23.03.2005 &24.03.2005. Perusal of the order of the AO shows that the AO has given adequate opportunity to the appellant. Hence no grievance has been caused to the appellant.

17.11 The appellant has also submitted that the TPO had erred in computing the arm's-length price and rejecting the transfer pricing study carried out by an independent external consultant on behalf of the appellant. The appellant has further stated that the circumstances enumerated in clauses (a) to (d) of section 92C(3) of the Act had not been satisfied. The contention of the appellant is not accepted as the TPO has discussed in detail the reasons for not accepting the arm's-length price determined by the appellant in his transfer pricing study. He has accepted TNMM as MAM, OP/OC as the PLI and also accepted all the com parables chosen by the appellant. He has not selected any new comparable on his own and has also accepted the contention of the appellant

that data for previous years should also be taken for computing the arm's length price. He has included the cost of reimbursements in the total cost while computing the profit margin of the appellant in view of the fact that the appellant has itself calculated the profit margin in the above mentioned manner in its own transfer pricing documentation as evident from Annexure 6 of the said document. The TPO has given a categorical finding regarding the same at para 9.5 of his impugned order. Hence, no grievance has been caused to the appellant. In view of the above, Grounds of Appeal No.11 to 14 are dismissed.

Ground No. 15

17.12 Ground No.15 pertains to the contention of the appellant that the AO had erred in including reimbursement of expenses to the cost base for the purpose of charging markup. The main contention of the appellant is that the payments made for salary paid to its employees, staff welfare expenses, moving and relocation of employees and service charges for the use of assets i.e. depreciation were charged back to the Indian group companies as service fees with a markup of 5% as agreed between the parties and as approved by the RBI. The appellant has stated that this is done because this is in view of the fact that the appellant provided services exclusively to its Indian group companies.

17.13 It has further been stated that during the course of providing business support services it had incurred some third party expenditure through "brought out" resources which are incidental in nature and if they had not been paid by the appellant and subsequently claimed as reimbursements then they said payments would have been made by the Indian group companies. The appellant has further stated that these expenses were the liability of the service recipients and hence would not have been incurred by the appellant if it had not provided the said services to the Indian group companies. The appellant has referred to such expenses as "variable" and "out of pocket" expenses incurred while providing business support services to the Indian group companies. The appellant has claimed that these were rechargeable expenses and are recovered from the entity is on cost to cost basis.

17.14 Hon'ble Income Tax Appellate Tribunal in its order in the case of the appellant for AY 2001-02 to in ITA No. 2179/Del/2006 in its order dated 09.10.2009 to referred to above, has deleted the amount of reimbursement of actual expenses incurred by the appellant. It has held that only Salaries and disallowances (including contribution to Provident and other funds); moving and relocation cost; service charges for use of assets and staff welfare expenses are to be taken in the cost base for the calculation of markup.

17.15 The Delhi High Court in the case of CPA Global Services Private Limited versus Pr. CIT in ITA No 266/2017 dated 02105/2017 had held as follows: -

"The question sought to be urged by the Revenue concerns the validity of the direction issued by the ITAT in the impugned order to the Transfer Pricing Officer ("TPO") to exclude the reimbursement cost while calculating the operating cost for determining the Arm's Length Price ("ALP") of the international transaction involving the Assessee during the AY in question.

3. The Assessee is a wholly-owned subsidiary of CPA Mauritius Ltd. which in turn is a subsidiary of CPA Jersey. It offers a comprehensive range of legal support services to its Associated Enterprises ("AEs") as well as to independent third party customers. During the AY in consideration, the Assessee earned a margin of 36.08% on cost.

4. The Assessee had undertaken the following international transactions during the AY in consideration:

(a) Provision of IT enabled services - TNMM was applied and the value of transaction was Rs.120,569,328/-;

(b) Reimbursement of expenses to AEs - TNMM was used and the value of the transaction was Rs.2,239,503/-;

(c) Reimbursement of expenses from AEs - CUP method was applied and the value of transaction was Rs.138,837/-.

5. During the AY in consideration, the Assessee received from its AEs Rs.13,67,95,7241- as "cost recharge on account of spare capacity ". The Assessee did not route this amount to its profit and loss account as it was only a reimbursement. The stand of the TPO, on the other hand, was that the Assessee had not placed any evidence in support of the claim that the expenditure was towards maintenance of spare capacity at the instance of the AEs. The Dispute Resolution Panel ("DRP") held that the ALP of the receipts from the AEs should include all the costs and that the Assessee did not give sufficient reasons for excluding certain costs for the purposes of computing the ALP.

6. An application for rectification was moved by the Assessee before the DRP under Section 154 of the Act but pending the said application, a draft assessment order was passed by the AO consistent with the decision of the DRP. The Assessee filed an appeal before the ITAT. The controversy before the ITAT concerned excluding from the operating cost, the cost that had been reimbursed by the AE.

7. It was demonstrated before the ITAT with reference to the agreement between the Assessee and the AE that there were two kinds of reimbursements. One was towards the cost of the service which had a mark-up and to that extent had been accounted for in working out the ALP in the transfer pricing study; the other was the reimbursement towards the cost of infrastructure on which there was no mark-up. It is this reimbursement

towards the cost of infrastructure on which there was no mark-up that was sought to be excluded by the Assessee from the operating costs while working out the ALP.

8. In the impugned order in para 7, the ITAT notes as under :-

"7. We have heard the rival submissions and perused the relevant records. As far as the issue of reimbursement is considered, it is the submission of the assessee that these amounts were adjusted without any mark up. Having perused the relevant clauses of the agreement, we do find that this contention of the assessee is correct and there is no mark-up in the reimbursements. Even though these transactions are considered as international transactions for the purposes of transfer pricing, since there is no mark lip on these reimbursements, it was the assessee's submission that these transactions are to be excluded for working out the operative margins. The assessee relied on the decision of the coordinate Hyderabad "B" Bench of the ITAT in HSBC Electronic Data Processing India Ltd. v. ACIT in ITA No.1624/Hyd./2010 for this proposition. After considering the rival submissions and following the principles laid down by the ITAT Delhi Branch in DCIT Vs. Cheil Communications India P. Ltd. (2010 TII-60-ITAT-Del-TP) by the Hyderabad Bench in Four Soft Limited Vs. DCIT in ITA No. 1495/Hyd./2010 we are of the opinion that reimbursement costs should be excluded as they do not involve any functions to be performed so as to consider it for profitability purposes."

9. Consequently, the ITAT directed the TPO to exclude the aforementioned reimbursement costs while working out the operating costs.

10. The central plank of the submission of Mr. Dileep Shivpuri, the learned Senior Standing Counsel for the Revenue is that the ITAT overlooked the binding precedent of this Court in Commissioner of Income Tax-I v. Cushman and Wakefield (India) (P.) Ltd. (2014) 367 ITR 730 (Del) where, in similar circumstances, this Court had agreed with the Revenue and remanded the matter to the TPO for re-determination of the transfer pricing adjustment.

11. This Court has examined carefully the aforementioned decision in Commissioner of Income Tax-I v. Cushman and Wakefield (India) (P.) Ltd. (supra). The Court finds, to begin with, that the said case was an instance of reimbursement by the Indian entity i.e., the Assessee of the costs incurred by the AE whereas the situation in the present case is the converse. Secondly, and more importantly, in the said case there was no categorisation of the reimbursement costs as cost of infrastructure and cost of services on which there was a mark-up. Ultimately, each case will have to turn on the peculiar facts considering the clauses of the agreement and the arrangement between the Indian entity and its AE. There can be no parallels drawn "where the terms of the agreement would by themselves be different.

12. In the present case, as is evident from the passage extracted hereinbefore from the impugned order of the ITAT, after the examination of the agreement the ITAT came to a definite factual conclusion as regards reimbursement of the infrastructure costs of the Assessee by the AE without any mark up. Thus the decision has fumed purely on facts.

13. Mr. Shivpuri then contended that the impugned order of the ITAT was perverse. When asked to point out if there is any pleading in the memorandum of appeal to the above effect, Mr. Shivpuri referred to Ground-D in which there is a general plea that the impugned order of the ITAT "is perverse and bad in law as it failed to consider the reasons provided for in the orders of Ld. TPO which were upheld by Ld. DRP while deciding the case."

14. The ground of perversity ought not to be casually pleaded. It requires a detailed study of the entire record by the Appellant. It would have to plead with specificity in the memorandum of appeal in what manner there is perversity in the factual finding by the ITAT supported by the relevant document. There is neither such plea nor any reference to any particular document that can support such plea.

15. In the present case, for instance, the ITAT after examining the agreement between the Assessee and its AE has agreed with the Assessee that the reimbursement of the infrastructure cost has no mark-up. Unless there is a specific plea to the effect that the said factual finding is perverse, the Court cannot, at the instance of a general plea of perversity, entertain such a ground of appeal by the Revenue. In other words, such a plea must be made responsibly after studying the entire record of the case and averred 'with specificity in relation to the facts of the case. Also, it should be accompanied by a reference to the relevant document which formed part of the record of the case before the ITAT. The Revenue has done neither in the present appeal.

16. Consequently, the Court finds that no substantial question law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed."

17.16 However, the TPO has specifically mentioned in para 9.5 of his impugned order that the appellant itself had considered such reimbursement as part of its total cost "as is evident from Annexure-6 to the Report and the result described at page 20 of the Report (kindly refer to para 6 and para 8 above). Therefore, in accordance with the assessee's own analysis, the amount of Rs.29,99,08,330 is being considered as part of the total cost for the purpose of transfer pricing analysis and computation of arm's length price". As the appellant itself has considered such reimbursement as part of its total cost in its transfer pricing documentation, hence, the contention of the appellant that such reimbursements should not form part of the total cost while calculating the arm’s length price, is not accepted. The contention of the appellant is dismissed.

17.17 The appellant has further stated that working capital adjustment was not warranted in its case. The TPO, in his impugned report, had held that the closing balance of Sundry Debtors was approximately 537 days of average daily receipts of the assessee during the year. The TPO held that the appellant was realizing its fee after a gap of 537 days. In view of the same, the TPO pointed out that substantial money was locked up in Sundry Debtors which in this case were associated enterprises and hence, the working capital requirement had increased by a corresponding amount. It was also pointed out that the entire amount of Sundry Debtors appearing in the balance sheet was due from group companies only. The main contention of the appellant is that all its capital needs were met by the Head Office and hence it was not required to borrow funds from outside banks. The appellant has also relied upon the order of the Hon'ble Delhi Tribunal in the case of Bechtel India Private Limited versus DCIT for AY 2010-11 In ITA No.1478/De1/2015 dated 21.12.2015 where the Hon'ble ITAT had observed as follows:-

"15.1 It is brought to our notice that the assessee is a debt Fee company in such circumstances it is not justifiable to presume that borrowed funds have been utilised to pass on the facility to its AEs. The Revenue has also not brought on record that the assessee has been found paying interest to its creditors or suppliers on delayed payments.

16. In view of the discussion and the ratio laid down in the case of Kusum Healthcare Private Limited, we direct that no separate adjustment for interest on receivables are warranted in the hands of the assessee."

17.18 The order of the Hon'ble Tribunal discussed above has been upheld by the Hon'ble jurisdictional High Court of Delhi vide its order in ITA 379/2060 dated 21.07.2016 where the Hon'ble court had observed as follows:-

"4 As far as question (B) concerning the adjustment for interest on receivables, the court finds that ITAT has returned a detailed finding of fact that the assessee is a debt Fee company and the question of receiving any interest on receivables did not arise. Consequently, no substantial question of law arises for consideration as far as this issue is concerned."

17.19 On appeal by the Revenue, the Hon'ble Supreme Court vide SLP(C)/2017 dated 21.07.2017 dismissed the Special Leave Petition by observing as follows:-

"We are in Agreement with the High Court that as far as question (B) concerning adjustment for interest on receivables is concerned, the Tribunal has returned a finding of fact. Consequently, no substantial question of law therefore, arises, on the facts of this case. The special leave petition is dismissed."

17.20 In accordance with the principle of consistency, the doctrine of judicial discipline, and respectfully following the order of the Bechtel India Private

> Limited versus DCIT for AY 2010-11 in ITA No. 1478/De1/2015 dated 21.12.2015 which has been upheld by the Hon'ble Delhi High Court and the Hon'ble Supreme Court referred to above, the AO/TPO is directed to delete transfer pricing adjustment after verifying that the appellant is a debt free company on the basis of the Audit Report of the appellant,. The contention of the appellant is accordingly dispose.

13. Aggrieved with the above order, Revenue is in appeal before us.

14. At the time of hearing, ld. DR of the Revenue brought to our notice detailed findings of the TPO and findings of the ld. CIT (A). He submitted that assessee is getting reimbursement from its head office as well as from its AEs. There is no change in terms of payment with its Head Office as well as AEs. He submitted that assessee has not charged any interest for such delay in settlement towards payment for services. Invariably, the delay is more than 530 days. In this regard, he relied on the decision of coordinate Bench in the case of Bechtel India (P.) Ltd. vs. ACIT (2017) 85 taxmann.com 121 (Delhi-Trib.).

15. Further he brought to our notice page 7 of the TP order and the relevant detailed findings. Further he brought to our notice page 49 of the paper book which is the TP analysis submitted by the assessee as per which assessee has earned revenue for provision of services to CCIPL and others with a mark-up of 5% on cost which is reported at Rs.46.33 crores and cost of provision of services was at Rs.44.13 crores. Reimbursement of the expense incurred were Rs.29.99 crores. The assessee has earned

only margin of 2.98%. At the same time, assessee claims that it has earned mark-up of 5%. He further brought to our notice page 11 of the TPO wherein he has adopted a reasonable method to make TP adjustment. In this regard, he relied on the decision of Bechtel India (P.) Ltd. (supra) and decision of ITAT, Hyderabad Bench in the case of Apache Footwear India (P.) Limited vs. ACIT (2023) 148 txmann.com 371 (Hyderabad-Trib.).

16. He also objected to the direction of ld. CIT (A) directing the TPO to verify if assessee is debt free company. It has no relevance with regard to section 234D issue. He submitted that it is consequential in nature.

17. On the other hand, ld. AR of the assessee submitted that assessee is a branch in India and it provides services to its AEs and whatever cost incurred by it towards providing the services, it adds 5% as margin on the direct cost incurred by it. With regard to third party cost, it only gets reimbursement without mark-up. He submitted that assessee has applied TNMM as MAM and he stressed the point that assessee is a debt free company and a branch. In this regard, he brought to our notice page 2 of the TPO order where TPO has recorded the same. In this regard, he brought to our notice detailed findings of the ld. CIT (A) and he heavily relied on the findings of the ld. CIT (A).

18. With regard to decisions relied upon by the ld. DR of the Revenue, he submitted that the decision of Bechtel India (P.) Ltd of ITAT (supra) stayed by the Hon'ble Delhi High Court. He further relied on the decision of Bechtel in the AY 2013-14. He further relied on the decision of Bechtel of ITAT in subsequent AY 2013-14 and the same was confirmed by Hon'ble Delhi High Court in PCIT vs. Bechtel India (P.) Ltd.

19. Ld. AR of the assessee also conceded that the issue of section 234D is consequential in nature, hence the same may be sent back to the AO/TPO.

20. Considered the rival submissions and material placed on record. We observed that the assessee being a branch office in India services to its group Companies let's say other AEs in India and also incurs expenditures on behalf of the AEs. The above expenses include expenses incurred by it and charges markup of 5% on the above reimbursement of expenses and third party expenses which are reimbursed, are not marked up. The issue under consideration is the assessee recovers the above reimbursement with abnormal delay like with the delay of about 530 days. The Ld TPO was of the view that the working capital of the assessee was locked up for such long period and it amounts to foregoing opportunity cost of using such money or could have deployed the same in other productive options and accordingly, he made the TP adjustment by

adopting the method of making adjustment to the operating profit of the comparable companies by the formula (as per the discussion at page 11 of the TPO order) and accordingly determined the TP adjustment of average of margin of comparables companies at 21.83%.

21. We observed from the submissions made before us that the assessee had extended the credit period to its own sister concerns and all the working capital requirement are met from the head office and there is no requirement as such to borrow funds from outside the present set up, also there is no cost of capital nor it has claimed any interest cost in its profit and loss statement. Therefore, in nutshell it is debt free entity. It was also brought to our notice the decision of Bechtel India (P) Ltd (supra), where the coordinate bench had decided the issue in favour of the assessee and it held that the assessee is a debt free company, in such circumstances it is not justifiable to presume that borrowed funds have been utilized to pass the facility to its AE's. The above decision of the coordinate Bench was delivered in the AY 2013-14 and the same was also upheld by the Hon'ble High Court of Delhi. At the same time, Ld DR relied on the decision of Bechtel India (P) Ltd decision for the AY 2012-13, wherein it was decided in favour of the revenue, however, it is noted that the decision for AY 2012-13 was stayed by the Hon'ble High Court of Delhi. Therefore, we are inclined not to follow the submissions of Ld DR. There

is merit in the submissions of the assessee and Ld CIT(A) had accepted the above facts on record and decided the issue in favour of the assessee.

22. Further we observed from the Balance Sheet of the assessee company, which was prepared by the assessee as branch office of the US Company and noticed that there are absolutely no borrowings and all the working capital requirements are met by the head office. The TPO could make working capital adjustment provided the assessee had borrowings and claimed huge borrowing cost. In absence of the same, the TPO cannot proceed to make working capital adjustments to all the comparables and proceeded to make ALP adjustment in the case of the assessee. The whole exercise is only based on presumptions without there being any substance. It is the policy of the US company to allow the credit facilities to its own sister concerns through its branch office, which will give benefit across the group companies. There is no opportunity loss to the overall group. Therefore, respectfully following the decision in the case of Bechtel India (supra) for the AY 2013-14 and detailed findings of Ld CIT(A), we do not see any reason to disturb the same. In the result, relevant ground raised by the revenue is accordingly dismissed.

23. With regard to the issue of interest u/s 234D, the Ld AR has already conceded that the issue is consequential in nature. Therefore, we are inclined to allow the ground no.3 raised by the Revenue.

24. In the result, the appeal filed by the Revenue is partly allowed.

25. The assessee has filed cross objection in support of the ld. CIT (A) order and we have already dismissed the appeal of the Revenue on the issue taken by the assessee in cross objections and upheld the order of the ld. CIT (A). Accordingly, the cross objections filed by the assessee have become infructuous, hence the same is dismissed as infructuous.

26. In the result, the appeal filed by the Revenue is partly allowed and the cross objections filed by the assessee is dismissed.

Order pronounced in the open court on this 8TH day of July, 2026

SD/-	SD/-
(VIMAL KUMAR)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 08.07.2026
TS

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI