

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

IT(TP)A No.3284/Bang/2018
Assessment year: 2014-15

ISG Novasoft Technologies Ltd., Maruthi Sapphire, 2 nd Floor, 128/9, HAL Airport Road, Murugeshpalya, Bangalore – 560 018. PAN: AABCI 24488Q	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri P.C. Khincha, CA
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.03.2021
Date of Pronouncement	:	18.03.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of DCIT, Circle 3(1)(2), Bangalore passed u/s. 143(3) r.w.s. 144C r.w.s. 92CA of the Income-tax Act, 1961 [the Act] dated 9.2.2018.

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

“1. The Orders passed by learned Deputy Commissioner of Income Tax, Circle-3(1)1) Bangalore (hereinafter referred to as AO for brevity), learned Assistant Commissioner of Income Tax, Transfer Pricing-1(3)(2), Bangalore (hereinafter referred to as "TPO" for brevity) and Honorable Dispute Resolution Panel-1 (hereinafter referred to as Honorable DRP) ("AO "TPO" and

DRP collectively referred as "lower authorities" for brevity) are bad in law and liable to be quashed;

GROUNDINGS RELATING TO TP ADJUSTMENT WITH RESPECT TO INTEREST ON DELAYED TRADE RECEIVABLES

1. The lower authorities have erred in:
 - (i) Computing a transfer pricing adjustment on account of notional interest on outstanding receivables amounting to Rs. 5,73,74,225/-.
 - (ii) Re-characterizing the outstanding trade receivables as on 31st March, 2014 as a loan transaction, without appreciating that the outstanding trade receivable from the AE is not an international transaction within the meaning of term as per section 92B of the Act;
 - (iii) Without prejudice, assuming that receivable is an international transaction, the lower authorities have erred in not appreciating that receivable is not separate transaction from the sale of services from which it is arising.
 - (iv) Not appreciating that the outstanding trade receivables from its AE is arising from the provision of IT enabled services to AE and it should not again be tested separately while computing arm's length price;
 - (v) Not appreciating that no separate adjustment of notional interest on receivables is warranted when after working capital adjustment the Appellant's operating margin are at arm's length;
 - (vi) Incorrectly computing the interest on outstanding trade receivables:
 - (vii) Computing interest from the date of invoice and not for the excess credit period only;
 - (viii) Without prejudice, the lower authorities have erred in adopting SBI interest rates on short term deposits for FY

2013-14, for computing notional interest on the outstanding trade receivables;

- (ix) Without prejudice, the lower authorities have erred in not adopting LIBOR as the basis for benchmarking.
- (x) Assuming without admitting that the adjustment is to be made, the lower income tax authorities have erred in not allowing the benefit of the +/-3% range prescribed in the proviso to section 92C(2).

GENERAL GROUNDS

3. The learned AO has erred in levying interest under section 234B of Rs. 1,17,51,297/-. On the facts and in the circumstances of the case, interest under section 234B is excessive. The Appellant denies its liability to pay interest under section 234B.

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

3. The assessee, ISG Novasoft Technologies Limited ("ISGN India"), a company incorporated under the Companies Act, 1956, is engaged in the business of providing IT Support and IT enabled services [ITeS] in the nature of mortgage processing support and technical support services [broadly classified as "ITeS] to its AE.

4. For AY 2014-15, the assessee filed a return of income on 30th March 2016, declaring taxable income of Rs. 16,82,41,890/-. During the year under consideration the assessee entered into international transaction with its AE of rendering ITeS services and receipt of

reimbursement. With respect to international transactions entered into with AE, the AO made a reference u/s 92CA of the Act to the TPO after getting the necessary approval from the PCIT. The TPO passed an Order on 25.10.2017 making an adjustment of Rs. 3,59,22,610/- in respect of ITeS segment and Rs. 3,27,21,491/- in respect of notional interest on outstanding receivables.

5. Thereafter, the AO passed the Draft Assessment Order on 26.12.2017 incorporating the TP adjustment. The AO further disallowed Rs. 5,28,888/- towards provision for rent. Aggrieved, by the Draft Assessment Order, the assessee filed objections before the DRP.

6. Before the DRP, with regard to ITeS segment, it was submitted that the TPO had selected four comparables viz. Infosys BPO Ltd., Microland Ltd., B N R Udyog Ltd. (Seg) and Crossdomain Solutions Pvt. Ltd. and arrived at the average margin of the comparables at 23.41%. The TPO computed the Appellant's margin at 19.47% and made an adjustment of Rs. 3,59,22,610/-.

7. The DRP in its order dated 05.09.2018 rejected B N R Udyog Ltd (seg) as a comparable to the assessee and held other three companies are comparable. Post exclusion of BNR Udyog, since the assessee's margin was within arm's length range, the TPO in the OGE Order to DRP Order dated 18.09.2018, deleted the entire TP adjustment with respect to ITES segment.

8. On the issue of Interest on trade receivables, the TPO treated the outstanding receivables from AE as advancement of loan and computed the arm's length interest adopting 6-month LIBOR plus 400 basis points at 4.3836%. TP Adjustment was computed at Rs. 3,27,21,491/- The DRP directed the TPO to adopt prevailing Short-term Deposit interest rate of SBI

as arm's length interest rate. Accordingly, the TPO has adopted the SBI interest rate and TP adjustment has been enhanced to Rs. 5,73,74,255/-.

9. Aggrieved by the above, the assessee is in appeal before us with respect to TP adjustment on notional interest on receivables. In this regard, the the Id. AR submitted that the assessee is a debt free company. It is a wholly owned subsidiary of CFCL Ventures Ltd, Cayman Islands. The assessee is fully funded by the parent company for its operations in India. The assessee has no borrowed funds. Therefore, the assessee does not bear any working capital risk since it has been fully funded by its AE and has no working capital contingencies.

10. It was further submitted that assessee is a zero debt company and it does not have any borrowings, except for meagre amount towards finance lease obligations on assets acquired on lease No borrowed funds are used to pass on any presumed benefit to AE. The assessee also does not pay any interest to its creditors or suppliers on delayed payments. Since, it is debt free company, no adjustment can be made towards notional interest on receivables.

11. In support of above contention, reliance was placed on the following decisions:

Case law	Page no. of PB II
Bechtel India Pvt. Ltd. v. DCIT I.T.A .No. 1478/Del/2015 [TS-638-ITAT-2015(DEL)-TP] (pages 365 to 387 of PB-II)	Findings at page 385, para 15.1
PCIT v. Bechtel India Pvt. Ltd. ITA 379/2016 [TS-508-HC-2016(DEL)-TP] (pages 388 to 389 of PB-II)	Findings at page 389, para 4
Inductis (India) (P.) Ltd. Vs. ITO [2018] 99 taxmann.com 167 (Delhi - Trib.)	Findings at page 393, para 11 and 12

12. The Id. AR submitted that as the assessee is a debt free company, and therefore following the ratio of above decisions, TP adjustment relating to notional interest on receivable should be deleted.

13. Without prejudice to above, the Id. AR submitted that LIBOR has to be adopted. In the Order u/s 92CA, the TPO has presumed that the assessee's average maturity period of receivables is between 3 to 5 years and added 300 basis points to LIBOR based on RBI Master Circular. The TPO further added 100 basis point for currency risk.

14. In this regard, it is submitted that weighted average maturity period of assessee's receivables from AE's is 167 days (page 107 of appeal papers). As per the RBI Master Circular no. 8/2010-11 dated 1.7.2010, for average maturity period upto 3 years, the maximum cost ceiling is LIBOR plus 200 basis points. The relevant extract from page 24 of the RBI Master Circular is given below:-

Average maturity period of the loan on invocation	All-in-cost ceilings over 6 month LIBOR*
Up to 3 years	200 basis points
Three years and up to five years	300 basis points
More than five years	500sis points

* for the respective currency of borrowing or applicable benchmark

15. It was therefore submitted that the TPO's approach of computing ALP for interest is not correct. The DRP rejected the approach of the TPO and directed to adopt Short-term Deposit interest rate of SBI. The assessee submits that the receivables from the AEs are denominated in US dollars. Therefore USD-LIBOR rate should be considered to benchmark the rate of interest in computation of arm's length rate. The Id. DR submitted that the

DRP's direction to adopt Short-term Deposit interest rate of SBI should be quashed. In support of the contention that LIBOR should be adopted and domestic interest rate cannot be adopted, he relied on the following decisions:-

- CIT Vs. Cotton Naturals (I) Pvt. Ltd ITA No. 233/2014 [TS-117-HC-2015(DEL)-TP1
- Indegene Lifesystems (P.) Ltd [2017185 taxmann.com 60 (Bangalore - Trib.),
- DCIT v Tech Mahindra Limited ITA No. 1176/Mum/2010;
- Tata Autocomp Systems Ltd [2012] 121 taxmann.com 6 (Mum)

16. With respect to interest rate to be adopted, the Appellant relies on the following decisions:-

Particulars	Case law	Page no. of PB II
Only LIBOR to be adopted without mark up	CIT Vs. COTTON NATURALS (I) PVT. LTD ITA No. 233/2014 [TS-117-HC-2015(DEL)-TP]	423 — 429
	Siva Industries & Holdings Ltd. Vs. ACIT [2012] 26 taxmann.com 96 (Chennai)	433 — 434
LIBOR + 100bps	KPIT Cummins Infosystems Limited. v. ITO ITA No. 1510/PN/2011 [TS-109-ITAT-2016(PUN)-TP]	Page 445, para 11
LIBOR +	ITO v Genpact Infrastructure (Hyderabad) Pvt. Ltd, ITA No. 2063/Del/2015	Page 462-463, para 11
LIBOR + 200bps	CIT v. Aurionpro Solutions Ltd. [TS-47/2017(BOM)-TP]	Page 456, para 8

17. The Id. AR submitted that varying rates have been adopted in various judicial decisions. It was submitted that the rate favourable to the assessee should be adopted. The prevailing LIBOR rate without any additional basis points should be considered for benchmarking the rate of

interest on the outstanding receivables especially in the light of the fact that the assessee is a debt free company, not subjected to any working capital risk.

18. As regards Reasonable Credit Period, the TPO has calculated interest from the date of invoice. The Id. AR submitted that in the commercial world, every person would give reasonable time to the debtor for payment. Therefore, interest cannot be charged from the date of invoice. The assessee has outstanding receivable only from its AE for the year under consideration. Therefore, there are no internal comparable and that reasonable period for receivable should be considered based on the decided judicial precedents and FEMA Regulations. The details are tabulated below:

Particulars	Case law	Page no. of PB II
9 — months credit period	As per FEMA notification number FEMA 23 (R)/2015- RB, dated 12-01-2016 [GSR 19(E), dated 12-01-2016	Page 517, para 9(1)
6 months / 180 days credit period	GSS Infotech Ltd. v. DCIT [2018] 89 taxmann.com 153 (Hyderabad - Trib.)	Page 479, para 45 to 48
	C3i Support Services Vs. DCIT I.T.A. 503/HYD/2017	Page 493

19. The Id. AR submitted that a view favourable to the assessee should be adopted and credit period of 9 months should be considered as reasonable credit period. Accordingly interest should be charged only for receivable beyond 9 months.

20. It was further submitted that interest should be computed only for the relevant year. In case of opening outstanding receivables from AE, the TPO has computed the interest from the date of invoice till the date of receipt of amount. The TPO has therefore computed interest for months falling before the beginning of the current previous year.

21. Similarly, for invoices raised during the year, the TPO has computed the interest from the date of invoice till the date of receipt of amount. The TPO has therefore computed interest for months falling beyond the end of the current previous year.

22. In this regard, the Id. AR submitted that only income of current year can be assessed by the AO/TPO. The methodology adopted by the TPO to compute the interest for months before the beginning of the current previous year and for months beyond the current previous year is not sustainable in law. The impugned assessment is for FY 2013-14. Therefore, interest, if at all, should only be computed for the period April 1, 2013 to March 31, 2014. It was prayed accordingly.

23. On the other hand, the Id. DR submitted that the issue is squarely covered by the decision of the Special Bench in the case of Instrumentation Corporation Ltd. in ITA Nos. 1548 & 1549/Kol/2009 dated 15.7.2016 wherein it was held that outstanding sum of invoices is akin to loan advanced by assessee to foreign AE, hence it is an international transaction as per Explanation to section 92B of the Act. Further, it was submitted that once it is an international transaction, TP adjustment is to be made on applying LIBOR rate as applicable to the country where the AE is situated and for the excess period of credit allowed to AE for realisation of invoices. For this purpose, she relied on the following case laws:-

1. Swiss Re Global Business Solutions India Pvt. Ltd. Vs DCIT IT(TP)A No.3181/Bang./2018 dated 21/05/2020 (Bang.Trib.) (Pg. 24-29, Para 23)

2. Arrow Electronics India Pvt. Ltd. Vs DCIT, IT(TP)A No.140/B/2014 dtd. 23.10.2019 (Bang.Trib.) (Page 16-19, Para 14 - 17)
3. The DCIT Vs M/s CGI Information Systems Management Consultation Pvt. Ltd., IT(TP)A No.505/B/16, IT(TP)A No.626/B/16 & CO No.146/B/18 dtd. 30.01.2020 (Bang.Trib.)(Page 27-32, Para 3.5.1 - 3.5.8).

24. We have heard both the parties and perused the material on record. The Id. AR fairly conceded that outstanding amount on account of sales/services billed to AE akin to loan advanced by assessee is an international transaction. As held by the Hon'ble Delhi High Court in the case of *Avenue Asia Business Advisors (P.) Ltd. v. DCIT [2017] 398 ITR 120 (Del)*, there should be TP adjustment on this count after making proper TP study by the TPO after considering the period of credit enjoyed by the comparables and also applicable LIBOR rate in the place of AEs for benchmarking the rate of interest to arrive at the ALP. With these observations, we remit the issue in dispute to the file of AO/TPO to benchmark the interest rate in the light of the decisions cited by Id. DR. Further, we make it clear that the TPO should compute the interest only for the relevant assessment year after going through the relevant agreements entered by the assessee with AEs while computing the ALP.

25. In the result, the assessee's appeal is partly allowed for statistical purposes.

Pronounced in the open court on this 18th day of March, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 18th March, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.