

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 152/HYD/2017

Assessment Year: 2012-13

Open Text Corporation India
Private Limited,
(formerly known as Cordys
Software India Private Limited),
HYDERABAD
[PAN: AAACB8264E]

(Appellant)

Income Tax Officer,
Vs Ward-16(3),
HYDERABAD

(Respondent)

For Assessee : Shri Prashant Meharchandani, AR
For Revenue : Shri R.Dipak, DR

Date of Hearing : 26-04-2021
Date of Pronouncement : 19-05-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2012-13 arises against the ITO, Ward-16(3), Hyderabad's assessment dated 20-12-2016 framed in furtherance to the Dispute Resolution Panel ('DRP')-1, Bengaluru's directions dt.25-10-2016 in F.No.148/DRP-1/BNG/2016-17, involving proceedings u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance pleads that the learned lower authorities have erred in law and on facts in making Arm's Length Price (ALP) adjustments of Rs.7,32,48,576/- pertaining to interest on receivables *qua* its international transactions with the overseas Associated Enterprise (AE). Suffice to say, it transpires at the outset that we need not dwell deeper *qua* the relevant facts pertaining to the instant issue. We find that assuming but not accepting the learned lower authorities have rightly found the assessee's interest receivables as beyond the period involving uncontrolled transactions, the impugned adjustment is not liable to be sustained for the sole reason that the same has been made not as per LIBOR rate applicable in case of international loans but after taking State Bank of India's prime lending rate @14.75% in the Transfer Pricing Officer's (TPO) order and upheld to that @ 4% to 9.25% as applicable in case of the very bank's domestic short term deposits involving 7 – 554 days; as the case may be.

2.1. Learned CIT-DR's vehement contention is that the TPO as well as the DRP have rightly taken the foregoing SBI rate's benchmark involving the short term deposits.

2.2. We find no merit in the instant argument as such a short term deposit cannot be taken at par with an international transaction u/s.92B of the Act since the latter involves foreign currency and overseas market conditions. In addition to this, learned lower authorities have also not adopted any uncontrolled party/comparable in the very segment as well so as to come to the conclusion that the assessee's receivables in

case of overseas AEs involved more than the market practice of reasonable time period. We keep in mind all these clinching aspects and direct the TPO to delete the impugned ALP adjustment in issue. The assessee's former substantive ground stands accepted in the above terms.

3. The assessee's next argument is that such interest on receivables ought not to have been treated as an international transaction covered under Explanation(c) to Section 92B of the Act, inserted in the Act vide Finance Act, 2012 w.e.f.01-04-2001 is rejected as per the hon'ble Madras high court's decision in Redington India Pvt. Ltd., Vs. DCIT, in Tax Appeal No.590 and 591 of 2019 dt.10-12-2020 holding that a corporate guarantee indeed forms an international transaction and covered by the explanation to section 92B with retrospective effect.

3.1. There is hardly any issue that the departmental authorities have applied the foregoing Explanation with retrospective effect *qua* issue of a corporate guarantee which also included the impugned interest on receivables. The assessee's legal argument is declined therefore. Necessary computation to follow as per law.

No other ground has been pressed before us.

4. This assessee's appeal is partly allowed.

Order pronounced in the open court on 19th May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER
Hyderabad, Dated: 19-05-2021
TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.Open Text Corporation India Private Limited (formerly known as Cordys Software India Private Limited), Building 'D', Plot No.17, Software Units Layout, Madhapur, Hyderabad.

2.The Income Tax Officer, Ward-16(3), Hyderabad.

3.Dispute Resolution Panel (DRP), Bengaluru.

4.Director of Income Tax (IT & TP), Hyderabad.

5.Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.