

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 2195/H/2017 AY : 2013-14		
Ivy Comptech Pvt. Ltd., Hyderabad.  PAN - AAACI 8884K  (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 2(1) Hyderabad.  (Respondent)
Assessee by:		Shri Prashant Meharchandani
Revenue by:		Shri R. Dipak
Date of hearing:		27/04/2021
Date of pronouncement:		20/07/2021

**PER L.P. SAHU, A.M.:**

This appeal filed by the assessee is directed against the assessment order passed by the DCIT, Circle - 2(1), Hyderabad's order, dated 31/10/2017 involving proceedings u/s 143(3) rws 144C(5) and 144C(13) of the Income Tax Act, 1961 ; in short "the Act" on the following grounds of appeal:

*"Based on the facts and circumstances of the case and in law, the Appellant respectfully craves leave to prefer an appeal based on the following grounds of appeal against the Assessment Order passed by the Deputy*

*Commissioner of Income Tax, Circle 2(1), Hyderabad ("AO"), u/s 143(3) r.w.s 144C(5) and 144C(13) of the Income-tax Act, 1961 (" Act"), in pursuance of the directions issued by the Dispute Resolution Panel - 1, Bengaluru ("DRP"), on the following grounds:*

*On the facts and in the circumstances of the case and in law, the Learned AO/ learned Transfer Pricing Officer ("TPO") and the DRP has erred in:*

**TRANSFER PRICING MATTERS-**

*1. Imputing interest on outstanding receivables*

*a) Making TP adjustment amounting to Rs. 80,05,374, by imputing interest at rate charged by SBI on short term fixed deposits on outstanding receivables relating to sale of services to Associated Enterprise's (AE's) as on March 31st 2013.*

*(i) Not appreciating that the instant transaction is not covered in the definition of international transaction as defined u/ s 92B of the Act in the*

*facts and circumstances of the case.*

*(ii) Not appreciating the facts and circumstances surrounding the receivables and re-characterizing the outstanding receivables as unsecured loans advanced to AEs.*

*(iii) Not appreciating the fact that under TNMM, the impact of outstanding receivables on the working' capital adjustments have already been taken into account in determining the arm's length margin hence there is no need of imputing interest on outstanding receivables again.*

*(iv) Not appreciating the fact that the receivables are consequential! closely linked to the principal*

*transaction of provision of software development and information technology enabled services and hence have been aggregated for determination of ALP under TNMM.*

*b) Without prejudice to the above, not undertaking an objective economic analysis to determine the arm's length price of the outstanding receivables by*

*(i) Not appreciating that the receivables due from overseas AE's are in foreign currency and hence interest, if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans. (i.e. at USD "LIBOR plus").*

*(ii) Determining the arm's length credit period as 45 days without any basis and imputing interest on credit period provided for the invoices raised relating to provision of services.*

#### **CORPORATE TAX ISSUES-**

*2. Allowing the Advance Tax paid by the Appellant at Rs. 6,20,00,000 instead of Rs. 8,20,00,000.*

*3. Not considering the eligible brought forward MAT credit while computing the tax liability subsequent to Transfer Pricing adjustment.*

*4. Levying of interest u/ s 234C of the Act.*

*5. Initiating penalty proceedings u/ s 271AA and 271 BA of the Act.*

*The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal." Based on the facts and circumstances of the case and in Law.*

1.1 The assessee also filed the following additional grounds of appeal:

*“6. Ld. AOI Ld. TPO and the Hon'ble DRP erred in following an inconsistent approach in not undertaking working capital adjustment to the operating margin of the comparable companies selected for the IT enabled services segment whereas working capital adjustment has been allowed for IT segment.*

*7. Without prejudice to our grounds that no interest on receivables shall be levied, the Ld. AO/ Ld. TPO and Hon'ble DRP erred by not restricting the levy of interest till the end of the relevant financial year i.e. 31 March 2013.*

*8. Without prejudice to our grounds that no interest on receivables shall be levied, Ld. AOI Ld. TPO and Hon'ble DRP erred by not allowing credit period as per industry average.*

*The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing. Further, these grounds of appeal are independent of the grounds of appeal already filed by the Appellant.”*

2. Briefly the facts of the case are that the assessee, a company into the business of development of software and information technology enabled services (ITES), filed its return of income for the AY 2013-14 on 28/11/2013 admitting total income of Rs. 25,93,50,930/- under normal provisions and an amount of Rs. 31,10,16,555/- book profits u/s 115JB. Subsequently, the case was converted into scrutiny through CASS.

2.1 During the AY under consideration, the assessee had entered into international transactions with Associated enterprises (AEs) amounting to Rs. 2,11,56,89,,154/-. Therefore, the AO referred the case to TPO after obtaining approval from CIT-2, Hyderabad.

2.2 The TPO observed that the taxpayer had carried out economic analysis at pages 48 to 122 of the T.P. documentation and the taxpayer had used Prowess data base, Capitaline Plus data base and ACE TP data base in search for comparable companies.

2.3 He observed that with respect to provision of software development services, the taxpayer after applying certain filters, had short-listed 26 comparables for which the arithmetic mean PLI (OP/DC) was computed at 13.18% as against the PLI of the taxpayer at 17.55%. Accordingly, the taxpayer holds that the transactions were within the arm's length.

2.4 He observed that with respect to provision of IT enabled services, the taxpayer after applying certain filters, had short-listed 10 comparables, arithmetic mean PLI (OP/OC) was computed at 13.95% as against the P.L.I. of the taxpayer at 25.61 %. Accordingly, the taxpayer holds that the transactions were within the arm's length.

2.5 He observed that for the transaction relating to reimbursements towards ESOP by AR, no bench marking had been carried out by the taxpayer. But the taxpayer stated that the reimbursements are at cost. Therefore, the taxpayer holds its transactions are at arm's length.

2.6 Analysis of the transactions:

As per the audited statement of accounts the financials of the taxpayer are as under:

Description	IT (in Rs.)	IT enabled services (Rs.)
Operating revenue	1,94,31,79,505	18,05,80,028
Operating cost	1,65,30,41,577	14,37,47,396
Operating profit	29,01,37,928	3,68,32,632
OP/OR (%)	14.93%	20.40%
OP/OC(%)	17.55%	25.62%

2.7 The TPO has not proposed any adjustment with regard to the provision of IT services on the ground that the margin of taxpayer is within  $-/+3%$  of the average margin of the comparables (after allowing WCA).

2.8 The TPO has also not proposed any adjustment with regard to provision of IT enables services on the ground that the margin of the taxpayer for provision for IT enables

services is higher than the margin of the average margin of the comparables.

2.9 As regards outstanding receivables, the TPO observed that the taxpayer had receivables of Rs. 57,57,83,737/- at the end of the year. When the TPO proposed to charge interest @ 14.45% per annum vide show cause notice dated 26/09/2016, to which, the taxpayer replied vide letter dated 06/10/2016 that the outstanding receivables relates to sale of services and were not in the nature of any advance/loans. Further it was stated that the company is fully funded entity and the sales and receivables are running accounts as such it does not bear working capital risk, which may require charging of notional interest. The taxpayer relied upon the cases of Pegasystems Worldwide India Pvt. Ltd. for AY 2009-10 (ITA Nos. 1758 & 1936/Hyd/2014) Evonik Degussa India P. Ltd. (ITA No. 7653/Mum/2011) and Indo American Jewellery Ltd. (ITA No. 5872/Mum/2009).

2.10 After considering the submissions of the assessee, the TPO observed that once the transaction is an international transaction then the Arm's length price has to be determined as it is not the case of aggregation of transactions which the taxpayer is projecting when it says that the WCA takes into account the impact of outstanding receivables. After relying on some few case law, the TPO

determined the arm's length price of the interest on receivables at Rs. 1,77,96,564/- and shortfall of Rs. 1,77,96,564/- is treated as adjustment u/s 92CA of the Act, as under:

Nature of international transaction	Arm's length price	Adjustment
Provision of software development services	1,933,860,361	0
Provision of IT enables services	179,686,990	0
Reimbursements by AE	21,41,803	0
Receivables	1,77,96,564	1,77,96,564

3. Aggrieved by the order of TPO, the assessee raised objections before the DRP and the DRP directed the AO to recompute the adjustment as per the domestic term deposit rates of SBI (ranging form 6.5% - 7.25% instead of SBI's PLR i.e. 14.45% and also directed to restrict the adjustment till the end of FY and to net-off the trade payables while imputing interest on receivables.

4. As per the directions of the DRP, the AO the computed the ALP of the interest on receivables of Rs. 57,57,83,737/- at Rs. 80,05,374/-.

5. Still aggrieved, the assessee is in appeal before the ITAT.

6. Before us, the ld. AR of the assessee filed case synopsis in support of assessee's case, which are as under:

*“Without prejudice to our argument that outstanding receivables are not an international transaction and do not fall within the definition of capital financing as amended by Finance Act, 2012 we are putting forth the following submissions:*

*a. Working capital adjustment appropriately takes into account the outstanding receivable and separate TP adjustment is unwarranted (WCA has already been provided by Ld. TPO in IT segment. We request to follow consistent approach and grant WCA in ITeS segment as well);*

*b. Without prejudice, interest rates for foreign currency receivables must be LIBOR;*

*c. Without prejudice, industry average arm's length credit period has to be allowed;*

*a. Working capital adjustment appropriately takes into account the outstanding receivable and separate TP adjustment is unwarranted (WCA has already been provided by Ld. TPO in IT segment. We request to follow consistent approach and grant WCA in ITeS segment as well)*

*• It is submitted that the Appellant is a completely debt free company - fully funded by AE with no working capital risk and no interest costs and hence, no adjustment on outstanding receivables is tenable. Relevant extracts from the Annual Report (Refer pg. 61 of the paper book - 1) has been provided below wherein it can be observed that the Company has not incurred any Finance Cost for the subject A Y 2013-14.*

<i>Particulars</i>	<i>Year Ending</i>	
	<i>31<sup>st</sup> March, 2013</i>	<i>31<sup>st</sup> March, 2012</i>
<i>Interest on loan from banks</i>		<i>1,742</i>

Total		1,742
-------	--	-------

• Further, we submit that working capital adjustment takes into account delay on outstanding receivables, if any. Outstanding amount gets adjusted in working capital adjustments and another separate addition is not required under the TP provisions.

• The fact that the interest cost is embedded in the pricing of the services can be seen by way of a working capital adjustment to evaluate the return earned and working capital employed by the Appellant vis-a-vis the return earned and the working capital deployed by comparable companies. Hence, the appropriate barometer to make any adjustment of notional interest should be through a working capital adjustment which would take into account the differences in levels of accounts receivables and accounts payables in the books of the tested party (the Appellant) vis-a-vis the comparable companies.

"10B(1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction shall be determined by any of the following methods .. being the most appropriate method, in the following manner, namely :-

(e) transactional net margin method, by which, -

(i) the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

(li) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such

*transactions is computed having regard to the same base;*

*(iii) the net profit margin referred to in sub-clause (ii) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the /international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market; (emphasis supplied)*

*(iv) the net profit margin realised by the enterprise and referred to in sub-clause (i) is established to be the same as the net profit margin referred to in sub-clause (iii);*

*(v) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction. "*

*The above manner of computation under the TNMM clearly mandates comparison of the net margin (after adjustment, if any) between the comparable companies and the Appellant. Thus, in undertaking such a comparison, the difference, if any, between the comparable companies and the Appellant would necessarily have to be adjusted in the net margin of either the Appellant or the comparable companies i.e. the working capital adjustment cannot be made on a standalone basis.*

- In support of our contention, we wish to place reliance on Hon'ble Delhi Tribunal's ruling in case of Kusum Healthcare Pvt. Ltd. vs ACIT, Range 5 (ITA No.6814/Del/2014 dated 31 March 2015) (Refer pg 345 -357 of paper book-2) wherein the Hon'ble Tribunal held that there can be no separate adjustment on the pretext of outstanding receivables where working*

*capital adjustment has been carried. The relevant extract of the ruling is reproduced below:*

*"9. The Assessee had undertaken a working capital adjustment for the comparable companies selected in its transfer pricing report .... 10 ... the differential impact of working capital of the visa-vis its comparables has already been factored in the pricing/profitability of the Assessee which is more than that working capital adjusted margin of the comparables. Hence, any further adjustment to the margins of the Assessee on the pretext of outstanding receivables is unwarranted and wholly unjustified"*

*"Para 12. Accordingly, keeping in view the above factual position as well the judicial precedence, any separate adjustment on the pretext of outstanding receivables while accepting the comparables and transfer price of underlying transaction i.e. sale of goods by application of TNMM is unjustified "*

- The above decision is upheld by the Hon'ble Delhi High Court wherein the High Court has confirmed ITA T' s deletion of notional interest adjustment on delayed AE-receivables in hands of Kusum Health Care Pvt. Ltd. vide ITA No. 76512016 dated 25 April 2017 (Refer pg 340 \_ 344 of paper book - 2). The Hon'ble High Court rejected the Revenue's plea for considering "receivables" as an international transaction as per Explanation to Sec 928, mentioning that TP adjustment on receivables outstanding from AE beyond stipulated credit period of 180 days was unwarranted and wholly unjustified since assessee had earned significantly higher margin than comparables, thereby compensating for credit period extended to AE's.*

- Recently, Hon'ble Delhi Tribunal in the case of Kusum Health Care Pvt. Ltd (ITA No. 3717/ Del/2017 order dated 01 September 2020) (Refer pg 358 - 374 of paper book - 2) for the subsequent year A Y 2013-14 has once*

*again decided the matter in the favour of the assessee. The relevant extract of the ruling is reproduced below:*

*"The facts of the assessee's case are identical in the present year to that of A. Y 20/0-1/ which is already decided by the Hon'ble Delhi High Court in assessee's favour. No distinguishing facts were pointed out by the Ld. DR. Hence, Ground Nos. 2, 2.3, 2.4 and 3 are allowed. As regards Ground No.4, the same is consequential in nature."*

- Relying on above decision, even Jurisdictional Hyderabad Tribunal in the case of Hexagon Capability Center India Private Limited, Hyderabad for AY 2013-14 (ITA No. 2032/Hyd/2017) (Refer pg 375 -382 of paper book - 2) has held the Tribunal has held that where working capital adjustments is undertaken, there is no need to make separate adjustment towards outstanding receivables by imputation of notional interest. The relevant extract of the ruling is reproduced below:*

*"The Ld. AR further argued that in any case, the working capital adjustments were even submitted before this Tribunal and is part of the paper book, on which, no flaws were pointed out by the ld. DR. Considering the submissions of both the parties, we hold that outstanding receivable is a separate international transaction and requires to be benchmarked post amendment in Clause (c) of Explanation to Section 92B of the Act by the Finance Act, 20/2. However, since in the instant case, the working capital adjustments had been granted by the ld. TPO, on which fact there is absolutely no dispute, the outstanding receivables thereon gets subsumed thereon. Hence, there is no need to make separate adjustment towards outstanding receivables by imputation of interest on the same. This aspect has been considered in assessee "s own case for A. Y 2011-12 and 2012-13 vide order dated 08/06/20/8 .*

*... Respectfully following the same, we direct the Id. TPO not to make any adjustment by way of imputation of interest on outstanding receivables in the peculiar facts and circumstances of the instant case"*

- Relying on above decisions, Kolkata Tribunal in the case of Redtech Network India Private Limited (ITA No. 2378/kol/2017 dated 27 November 2019) for A Y 2013-14 (Refer Pg 383393 of Paper Book - 2) has upheld the contention of the Appellant. Relevant extract of the order has been provided below:*

*"12. Consistent with the view taken therein, we uphold the contention of the assessee that the working capital adjustment in this case, subsumes the adjustment that is required to be made on account of interest on outstanding receivables. Hence. this adjustment made by the TPO is hereby deleted and this Ground of the assessee is allowed. The other arguments raised by the assessee are left open for adjudication at the proper time"*

- In this regard, we wish to submit that the Appellant has conducted WCA to its comparable companies in the Transfer Pricing study and the mean of working capital adjustment margins of the comparable companies was arrived at 13.18% for IT segment and 13.95% for ITES segment. The price earned by the Appellant was concluded to be at arm's length as the margins earned by the Appellant of 17.55% from IT segment and 25.61% from ITES segment was higher than the working capital adjusted margins of the comparable companies. (Refer Pg, 171 & Pg. 204 of Paper Book - 1 )*

- Further, Ld. TPO has also carried working capital adjustment for IT segment and has concluded that the margins of the Appellant is within +/- 3% of the average margin of the comparables (after allowing WCA). Relevant extracts of the TPO order has been*

reproduced below: (Refer Pg. 4 para 6.1 of the TPO order).

- *"The taxpayer has used three year data to find comparables which is not as per the provision of section 10B. This has lead to the selection of 26 comparables out of which 13 comparables do not have the contemporaneous data. This renders the set proposed by the tax payer as invalid. An independent search for comparables was carried out using prowess and capitaline database and using contemporaneous data as provided in Rule 10B. After applying certain filters, a set of comparables have arrived at. It is seen that the margin of taxpayer is within -/+3% of the average margin of the comparables (after allowing WCA). Therefore, no adjustment is proposed." However, Ld. TPO had followed inconsistent approach by not allowing working capital adjustment to the ITES segment. (Refer Pg. 4 - para 6.2 of the TPO order)*

*"The taxpayer has used three year data to find comparables which is not as per the provision of section 10B. This has lead to the selection of 10 comparables out of which 13 comparables do not have the contemporaneous data. This renders the set proposed by the tax payer as invalid. An independent search for comparables was carried out using prowess and capitaline database and using contemporaneous data as provided in Rule 10B. After applying certain filters, a set of comparables have arrived at. It is seen that the margin of taxpayer for provision of IT enabled services is higher than the margin of the comparables. Therefore, no adjustment is proposed."*

- *There is no reason whatsoever for the Ld. TPO for not granting working capital adjustment for the ITES Segment. In case working capital adjusted margins are considered by the Ld. TPO for the ITES Segment, the Appellant will still be at arm's length and hence, no further adjustment on outstanding receivables will be*

*required. We request your Honours to kindly direct the Ld. TPO to allow Working capital adjustment for ITES segment as well.*

- In light of the above, we humbly submit that no separate adjustment by way of interest on receivables needs to be made as working capital adjustment (already carried in IT segment, requesting a direction to carry for ITES segment) already subsumes delay on collection of receivables. Therefore, the Appellant humbly prays before the Hon'ble Tribunal to delete the adjustment made by way of interest on outstanding trade receivables.*

*b. Without prejudice to the argument that no separate adjustment is required to be made on account of interest on outstanding, interest rates for foreign currency receivables must be LIBOR*

- Without prejudice to the above submissions, even if a notional interest is to be charged, the same cannot be arbitrary benchmarked with SBI term deposit rates. The appropriate rate to benchmark a foreign currency receivable in the international market has to be 'LIBOR'.*

- In the present case, the concerned receivables are from the Appellant's AE, i.e. Electra Games Limited, UK and the receivables are in Foreign currency.*

- The issue is no longer res integra and is squarely covered by plethora of rulings, including the rulings of this Hon'ble Tribunal and by rulings of various High Courts holding that the appropriate rate in case of a foreign loan has to be 'LIBOR'. In support of the above contention, we wish to rely on the following decisions:*

- Hon'ble Jurisdictional Hyderabad Tribunal for the AY 2013-14 in the case Open Text Technologies Limited vs*

*DCIT (ITA No 2071/Hyd/2017) (Refer pg. 394 - 404 of paper book -2) held that:*

*"9 In a number of cases, we have held that where the export turnover was brought in foreign exchange then international transaction should be considered n LIBOR + 200 points rate and after expiry of credit period. Therefore, we agree with the Learned Counsel for the Assessee has argued that the 'LIBOR plus' rate should be considered as an interest on outstanding receivables. In a number of cases, we have held that where the export turnover was brought in foreign exchange then international transaction should be considered in LIBOR + 200 points rate and after expiry of credit period. Therefore, we agree with the Learned Counsel for the Assessee that since the payments are to be made in foreign exchange, the interest should be charged at LIBOR plus (+) 200 basis points"*

*• Hon'ble Bombay High Court in ITA No 1320 of20]2 dated 03 February 2015 (Refer Pg. 405 - 408 of Paper Book - 2) has upheld the view of the Mumbai ITAT in the case of Tata Autocomp Systems Ltd v ACIT (I.T.A. No. 7354/Mum/2011 dated 30 April 2012) (Refer Pg. 409 - 417 of Paper Book -2):*

*Relevant extracts of the Hon'ble Tribunal order is provided below:*

*"19 The interest rates do provide the basis for the price and interest rates of all kinds of financial products like interest rate swaps, interest rate futures. saving account and mortgages. We find that the RBI in respect of export credit to exporters at internationally competitive rates under the scheme of pre-shipment credit in foreign currency (PCFC) and Rediscounting of Export Bills abroad (EBR), has permitted banks to fix the rates of interest with reference to ruling LIBOR. EURO LIBOR or EURIBOR, wherever applicable and thereto appropriate percentage ranging from 1% to*

*2%. The reference to the said circular is at page -80 of the Assessee's paper book. In 0111' view the claim of the Assessee to adopt EURIBOR rate as stated before the TPO is reasonable and deserves to be accepted. Following the ruling of the tribunal in the aforesaid cases, we are of the view that the claim made by the Assessee in this regard has to be accepted. ..*

*Relevant extracts of the Hon'ble High Court order is provided below:*

*"7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of VVF Ltd. v. Dy. CIT /IT Appeal No. 673 (Mum.) of 2006/ and Dy. CIT v. Tech Mahindra Ltd./2011/12 taxmann.com 132/46 SOT 141 (Mum.) (URO) to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr. Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra) on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra).*

*8. in view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law."*

- Delhi High Court in the case of CIT vis Cotton Naturals (India) Pvt Ltd (ITA No 233/2014 dated 27 March*

2015) (Refer Pg. 418 - 438 of Paper Book - 2) held the following view-

*Para 39 We have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid "*

- Hon'ble Supreme Court of India has dismissed SLP (CIVIL) Diary No(s). 30849/2018 (Refer pg. 439 of paper book -2) filed by the Department against Hon'ble Rajasthan High Court's order in the case of Vaibhav Gems Ltd (D.S. IT APPEAL NOS. 14,149 & 150 OF 2015 & D.S. CROSS OBJECTION NO. 31 OF 2016 dated 30 October 2016) (Refer Pg.440 446 of Paper Book - 2) where it has been directed to adopt LIBOR rate of interest as benchmark rate for loans to AEs relying upon Delhi High Court in Ruling in Cotton Naturals.*

*"10. Regarding LIBOR rate plus 2% on account of interest free loans provided by the appellant to its associated enterprises, in the view of the observations made by the Delhi High Court in para no.14 as reproduced above, the same is required to be answered in favour of the assessee.*

*11. Regarding ITA no. 149/2015 preferred by the assessee in view of the Delhi High Court judgment (para no. 14), the international transaction is required to be accepted, therefore, tribunal has committed serious error. The assessee will be entitled for the benefit of average LIBOR rate existing at that time which was 0.79% and addition of adhoc 2% is not proper. In that view of the matter, the addition of 2% interest in the income is required to be quashed and set aside."*

- Similar view has been upheld by a plethora of tribunal rulings inter-alia as under:*

- *BS Limited (ITA No. 287/Hyd/2017 dated 29 November 2018) (Refer pg. 447 - 492 of paper book - 2)*

- *GSS Infotech Ltd. for AY 2013-14 & AY 2014-15 (ITA No. 2255/Hyd/2017 and 2367/Hyd/2018 dated 23 January 2020) (Refer pg. 493 - 525 of paper book - 2)*

- *OSI Systems Private Limited (ITA No 2228/Hyd/2017 dated 18 November 2020) (Refer*

*Pg. 537 - 549 of Paper Book - 2)*

*Hence, in view of the above facts and settled legal position, we humbly request your Honours that since the receivables are in foreign currency, the Ld. TPO/AO be directed to apply LIBOR as interest rate on outstanding AE receivables.*

*c. Without prejudice, Industry average credit period must be considered and not 45 days*

- Ld. TPO has provided credit period of 45 days without any basis and no benchmarking study has been provided in the notice to substantiate that the arm's length interest free credit period should be 45 days. Hence, the 45 days period determined by Ld. TPO is arbitrary and without any basis.*

- Without prejudice to our above contention that no interest on outstanding receivables has to be levied, we wish to submit credit period must be allowed to the Appellant as per industry average.*

- In support of our contention, we wish to place reliance in Rulings passed by Hon'ble jurisdictional Hyderabad Tribunal wherein it has held that an industry average credit period of 90 to 120 days must be allowed for the software industry. Extracts from some of these ruling is summarized below:*

• *In the case of Mis ValueLabs LLP (ITA 1909/Hyd/2017 dated 09 July 2020) for A Y 2013-14 (Refer pg. 526 - 536 to of paper book - 2), the Hon'ble Tribunal has considered 90-120 days to be an average industry acceptable credit period for the Software Development Industry and allowed the same to the assessee therein. Relevant findings are reproduced hereunder:*

*"11. The assessee during the year under consideration had not availed any loan from AEs or unrelated third parties and was not incurring any interest cost. The agreement between the assessee and its AE vis-it-vis terms of payment within stipulated period of 90 days cannot form basis for holding the existence of international transaction between assessee and its AE, where outstanding is not received within stipulated period. Such is the proposition laid down by Hon'ble Delhi High Court in Pr. CIT- V vs Kusum Health Care Pvt. Ltd. (supra) especially where working capital adjustment has been allowed to assessee. In any case, the credit period of 90 days is less than credit period of 90 to 120 days of comparables and no adjustment is warranted".*

• *Similar view has been upheld by a plethora of tribunal rulings inter-alia as under:*

- *BS Limited (ITA No. 287/Hyd/2017 dated 29 November 2018) (Refer pg. 447 - 492 of paper book - 2)*

- *GSS Infotech Ltd. for AY 2013-14 & AY 2014-15 (ITA No. 2255/Hyd/2017 and 2367/Hyd/2018 dated 23 January 2020) (Refer pg. 493 - 525 of paper book - 2)*

- *OSI Systems Private Limited (IT A No 2228/Hyd/2017 dated 18 November 2020) (Refer Pg. 537 - 549 of Paper Book - 2)"*

7. On the other hand, the ld. DR relied on the order of DRP.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Similar issue came up for consideration before the coordinate bench of this Tribunal in the case of ITO Vs. Pegasystems Worldwide India Pvt Ltd., in ITA No. 451/Hyd/2016 and others for AYs 2011-12, 2012-13 and 2013-14 vide order dated 09/06/2021, wherein the coordinate bench held as under:

*"5. We notice at the outset that the DRP's directions in Revenue's Appeal (ITA 451/H/2016) have placed reliance on the tribunal's Order in assessee's appeal itself ITA No.1758 & 1936 /H/2014 deleting identical adjustment that there is no material on record about the impugned receivables to have arisen as a consequence to sales made to the AE(s) thereby forming an independent transaction u/s. 92B of the Act. We are further informed that the learned lower authorities have adopted State Bank of India's Short Term Deposit Rates between 4.7% and 7.25% in AY 2012-13 and 2013-14 whilst making the impugned adjustment.*

*6. The first and foremost argument raised at both the party's behest is as to whether interest on receivables forms an international transaction or not u/s.92B of the Act. Suffice to say, this tribunal's co- ordinate bench decision "Bechtel India Pvt Ltd" (2017) 85 taxmann.com 121 (Delhi) holds that interest on receivables indeed comes within the purview of section 92B Explanation (c) inserted vide [Finance Act 2012](#) as applicable with retrospective effect from 1/4/2002. Hon'ble Madras high court's recent judgment in PCIT Vs*

*Reddington India dated 10/12/2020 in Tax Appeals 590-591/2019 also holds the same view. We thus, accept the Revenue's arguments in principle that interest on receivables is indeed an international transaction U/s.92B of the Act.*

*7. Next comes the adjudication of the impugned issue on merits. We notice with the able assistance of both the parties that neither of the TPO in these three assessment years has given any comparable instance in the very segment whilst charging the impugned interest on the assessee's receivables since he had adopted the SBI's term deposit rates only in benchmarking the same.*

*8. The Revenue's endeavor before us supports the lower authorities' action on the pretext that such receivables are very much akin to a financial transaction to be benchmarked as per the SBI's short term lending or deposit rates. We find no merit in the Revenue's instant argument since Chapter -X of the Act is a special provision wherein each and every adjustment could only be made going by the uncontrolled market price of the transactions in the very segment; followed by benchmarking thereof as per the international currency "LIBOR" rates only. We, therefore, reverse the TPO's identical action in all these Assessment Years in view of the foregoing twin reasons regarding non-quantification of the impugned adjustment(s) segment wise and as per the LIBOR rates. Coupled with this, the fact also remains that the Assessee has already succeeded on the very issue in AY 2009-2010. We, thus, follow judicial consistency as whilst confirming the DRP's directions in A.Y: 2011-2012 to the Assessing Officer to delete the impugned interest adjustments on receivables of Rs.2,30,25,260/- and further delete similar adjustments of Rs.12,12,62,138/- and Rs.12,71,68,334/- in assessee's appeals ITA No.131 & 2196/H/2017 in AYs 2012-13 and 2013-14 (supra); respectively.*

8.1 As the issue in the case under consideration is similar, as stated in the facts of the case on hand to the above decision, following the same, the addition of Rs. 80,05,374/- made by the AO on account of interest on outstanding receivables is hereby deleted and the grounds raised on this issue is allowed.

9. As regards ground No. 2 that the AO erred in allowing the advance tax paid by the Appellant at Rs. 6,20,00,000 instead of Rs. 8,20,00,000, the assessee filed Form 26AS for payment of advance taxes amounting to INR 8,20,00,000. Therefore, we remit the issue to the file of the AO to examine and allow the correct figure after verification of the records. Therefore, this ground is allowed for statistical purposes.

10. As regards ground No. 3 that not considering the eligible brought forward MAT credit while computing the tax liability subsequent to transfer pricing adjustment, the DRP directed the AO to examine this claim and allow credit, if found eligible, while giving effect to this direction. We uphold the direction of DRP with regard to this ground. The AO is directed accordingly. This ground is allowed for statistical purposes.

11. As regards ground No. 4 levying interest u/s 234C of the Act, charging of interest under this section is

consequential in nature, the AO, therefore, directed accordingly.

12. As regards ground No. 5 initiating penalty proceedings u/s 271AA and 271BA of the Act, this ground is premature in nature, hence, need no adjudication.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 20<sup>th</sup> July, 2021.

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

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 20<sup>th</sup> July, 2021.

*kv*

*Copy to :*

1	<i>IVY Comptech Pvt. Ltd., 5<sup>th</sup> floor, Divyasree Omega, Block - B, Plot No. 13/E, Survey No. 13(part), Kondapur, Hyderabad - 81</i>
2	<i>DCIT, Circle - 2(1), Room No. 514, 5<sup>th</sup> Floor, Signature Towers, Survey No. 32/A, 32/P, Kondapur, Serilingampally Mandal, Hyderabad - 84.</i>
3	<i>DRP - 1, Bengaluru</i>
4	<i>Pr. CIT - 2, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	