

**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. 1559/HYD/2019

Assessment Year: 2015-16

S&P Capital IQ (India) Private Limited, HYDERABAD [PAN: AACCS8657G]	Vs	Deputy Commissioner of Income Tax, Circle-3(1), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri K.C.Devdas, AR

For Revenue : Shri P.Chandra Sekhar, DR

Date of Hearing : 21-06-2021

Date of Pronouncement : 24-08-2021

ORDER

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

This assessee's appeal for AY.2015-16 arises against the DCIT, Circle-3(1), Hyderabad's assessment dated 28-08-2019 framed in furtherance to the Dispute Resolution Panel ('DRP')-1, Bengaluru's directions dt.28-06-2019 in F.No.16/DRP-1/BNG/2019-20, 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 substantive grievance pleaded in the instant appeal challenges correctness of the lower authorities' action making arm's length price 'ALP' adjustment of

Rs.4,93,85,837/- regarding interest on receivables involving its overseas Associated Enterprises 'AEs'.

Suffice to say, it transpires at the outset that we need not delve much deeper *qua* the relevant facts pertaining to the instant issue. We find that assuming but not accepting that the learner 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 not only been made as per 'LIBOR' rate applicable in case of international transactions but after taking State Bank of India's term deposit(s) rate only but also no comparable to this effect has been focused so as to form the necessary benchmarking in uncontrolled circumstances. The assessee has also placed reliance on the following case law to the very effect:

- i. Progress Software Development Private Limited, ITA Nos.347 & 391/Hyd/2015, dt.15-03-2021;
- ii. Valuemomentum Software Services Private Limited, ITA No.2197/Hyd/2017, dt.19-05-2021;
- iii. Open Text Corporation India Private Limited, ITA No.152/Hyd/2017, dt.19-05-2021;
- iv. Hexagon Capability Center India Private Limited, ITA No.2032/Hyd/2017, dt.26-11-2020;

We keep in mind all these clinching aspects in light of the foregoing judicial precedents and direct the TPO to delete the impugned 'ALP' adjustment of Rs.4,93,85,837/- in issue. The

assessee's sole substantive ground to this effect stands accepted in the above terms.

3. Next comes assessee's petition dt.07-06-2021 seeking for admission of additional ground(s). The Revenue's case is that the assessee's instant petition gives altogether a new texture to already raised pleadings which is not permissible in law.

3.1. We have given our thoughtful consideration to rival pleadings. Suffice to say, hon'ble apex court's landmark decision in National Thermal Power Co. Ltd., Vs., CIT [229 ITR 383] (SC); as considered in tribunal's Special Bench's decision All Cargo Global Logistics Ltd., Vs. DCIT (2012) [137 ITD 217](SB) (Mumbai), holds that *the tribunal can very well entertain a new ground going to root of the matter so as to determine correct tax liability of a taxpayer provided all the relevant facts are already on record.* We go by the very analogy and accept that the assessee's foregoing petition seeks to raise its additional substantive ground. We now advert to the assessee's additional ground seeking to claim secondary and higher education cess amount of Rs.90,32,079/- u/s.37 of the Act. The Revenue's case relies on Section 40(a)(ii) that the statutory expression "tax" also includes a "cess" as well. We find that the instant issue is no more *res integra* as case law Sesa Goa Ltd. Vs. JCIT (2020) 117 taxmann.com 96 (Bom) and Chambal Fertilizers and Chemicals Ltd. 102 CCH 202 (Raj. HC) consider CBDT's circular dt.18-05-1967 to hold that Section 40(a)(ii)'s term used "tax" does not include a cess and therefore, it is allowable u/s.37(1) of the Act. We therefore accept the assessee's instant additional ground in principle

and direct the Assessing Officer to frame consequential computation.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 24th August, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 24-08-2021

TNMM

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

Copy to :

*1.S&P Capital IQ (India) Private Limited, Survey No.12P,
Kondapur Village, Serilingampally Mandal, Hyderabad.*

*2.The Deputy Commissioner of Income Tax, Circle-3(1),
Hyderabad.*

3.Dispute Resolution Panel (DRP)-1, 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.