

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

**(Through Video Conference)**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1308/Hyd./2018  
A.Y : 2008-09**

M/s Capgemini Technology Services India Ltd. vs. ITO, Ward 2(1)  
Hyderabad Hyderabad

[PAN: AACCA4255G]

**(Appellant)**

**(Respondent)**

For Assessee: Shri A.V. Raghuram, AR  
For Revenue: Sri Rohit Mujumdar, DR

Date of Hearing : 30/06/2021  
Date of Pronouncement : 27/08/2021

**ORDER**

**PER S.S. GODARA, J.M.**

This assessee's appeal arises against the CIT(A)-1, Hyderabad's order dated 26.02.2018 in case no. 0209/2015-16 for AY 2008-09, involving proceedings u/s 154 of the Income Tax Act, 1961 [in short 'the Act'].

Heard both the parties. Case file perused.

2. The assessee has pleaded the following substantive grounds in the instant appeal.

*1. On the facts and in the circumstances of the case, the order of the Commissioner of Income Tax (Appeals)-1, Guntur, is erroneous, illegal and unsustainable in law.*

*2. The Commissioner (Appeals) erred in sustaining the action of the AO in*

*determining the transfer pricing adjustment u/s 92CA of the Act at Rs. 4,21,74,122 and in determining the total income of the Appellant at Rs. 4,33,98,267 under normal provisions of the Act. (Tax effect - 1,30,31,804)*

*3. The authorities below failed to appreciate that no adjustment was called for under section 92CA of the Act as the ALP determined by the assessee and the ALP arrived at by the AO is within 5% permissible range.*

*4. The Authorities below erred in not allowing the Appellant to carry forward the MAT credit available based on the taxes paid under section 115JB of the Act to the extent of Rs.1,47,25,878.*

*5. On the facts and in the circumstances of the case, the finding of the Commissioner (Appeals) in respect of the above issues are factually and legally incorrect.*

*For these and other grounds that may be urged, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal.*

3. Ld.counsel states very fairly at the outset that the above latter issue of sec. 115 JB computation does not arise from the impugned sec.154 proceedings. The same stands rejected therefore.

4. Next comes the sole surviving issue of assessee's sec.154 plea pertaining to the computation of its arm's length price [ALP]. There is hardly any dispute that this is the second round of proceedings between the parties qua the impugned transfer pricing issue under chapter X of the Act. This tribunal's earlier order in second appellate proceedings dated 25.4.2013 had directed to compute the assessee's ALP @ 21.62% as it emanates from a perusal of Assessing officer's giving effect order dated 22.10.2013. The assessee thereafter filed its rectification petition dated 23.8.2014 only to the effect that its operating profit ought to be taken as Rs. 14.88 crores than Rs.10,33,73,048/-. Suffice to say the Assessing officer as well as the CIT(A) have declined the said relief as is the case before us from assessee's side through its learned counsel Sri AV Raghuram, Advocate.

5. We have given our thoughtful consideration to rival pleadings against and in support of learned lower authorities' action declining assessee's rectification petition. We sought to know the correct figure of the assessee's operating profits taken as into Rs. 10,33,73,048/- as against operating cost of Rs.86,57,70,927/- first of all. The Revenue is fair enough in placing all the

relevant orders as well as the records before us. We come to the TPO's order dated 25.10.2011 before us that in para 4 that the assessee had IIPBIT of Rs. 14,88,32,257/- against cost of Rs.86,57,70,927/-. It emerges that the Assessing officer's consequential order dated 22.10.2013 had adopted the assessee's operating cost of Rs. 86.57 crores followed by operating profits of Rs. 10.33 crores than Rs. 14.88 crores. This, in our considered opinion has given the assessee a valid locus standii to invoke the impugned rectification jurisdiction.

6. Ld.DR vehemently contended that the impugned computation would not result in any way beneficial to the assessee even in third round of proceedings. More so due to the fact that the learned TPO as well as Assessing officer appear to have gone by assessee's total cost of Rs. 86.57 crores as against the correct method of considering only its international transactions with the "AEs" followed by ALP adjustment thereupon at the rate determined in the tribunal's order coming to 21.62 in view of hon'ble Bombay High Court in CIT vs Firestone International P Ltd. (2015) 378 ITR 558 (Bom.). Their lordships held that an "ALP" adjustment under chapter X of the Act is to be computed not at entity level but only qua on assessee's international transactions with the "AEs". We therefore direct the Assessing officer to frame his consequential computation afresh in light of assessee's international transactions with its associated enterprises only at the foregoing rate of 21.62%. Ordered accordingly.

6.1. Delay of 37 days in the instant appeal stands condoned.

7. This assessee's appeal is partly allowed for statistical purposes in above terms.

Pronounced in Open Court on 27<sup>th</sup> August, 2021.

**Sd/-**

**(L.P. SAHU)  
ACCOUNTANT MEMBER**

**Sd/-**

**(S.S. GODARA)  
JUDICIAL MEMBER**

Dated: the 27<sup>th</sup> August, 2021.

\* gmv

Copy of the Order forwarded to:

1. M/s Capgemini Technology Services India Ltd (formerly known as M/s IGATE Global Solutions Ltd.)  
M/s IGATE Information Services Private Limited merged with IGATE Global Solutions Limited  
Flat no.610, 6<sup>th</sup> floor, Babukhan Estate, Basheerbagh, Hyderabad - 500 001, Telangana.
2. ITO, Ward 2(1), Hyderabad
3. CIT(A)-1, Guntur
4. Pr.CIT -2, Hyderabad
5. DR, ITAT, Hyderabad.
6. Guard File.