

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.2271/Hyd/2017		
Assessment Year: 2013-14		
Progress Software Development Private Limited, 4 th Floor, No.18, I Labs Centre, #8, Software Unit Layout, Madhapur, Hyderabad – 500 081. PAN : AADCP4833A.	Vs.	The Deputy Commissioner of Income Tax, Circle 16(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri Mahaveer Jain - AR	
Revenue by:	Sri Danda Srinivas - DR	
Date of hearing:	19/07/2021	
Date of pronouncement:	23/09/2021	

ORDER

Per S. S. Godara, J.M.

This assessee’s appeal for A.Y. 2013-14 arises against the DCIT, Circle – 16(2), Hyderabad’s assessment dated 23.10.2017 framed in furtherance to Dispute Resolution Panel – ‘DRP’-1, Bangalore’s directions dt.02.09.2017 in F.No.388/DRP-1/BNG/2016-17 involving proceedings under section 143(3) r.w.s. 144C(5) of the Income Tax Act, 1961(in short “the Act”).

Heard both the parties. Case file perused.

2. We come to the former issue of correctness of arm's length price adjustment to the tune of Rs.22,12,752/- pertaining to interest paid to overseas Associated Enterprises on external commercial borrowings "ECBs" and trade credits.

Relevant facts qua the instant former issue are in a very brief compass.

3. There is no dispute that assessee had paid interest on the foregoing loans to its overseas "AE" @ 5.14% whereas the lower learned authorities have applied Libor + 2% thereby treating the remaining component as an excessive payment liable for ALP adjustment. Needless to say, the Transfer Pricing Officer (TPO) made his adjustment to this effect in sec.92CA(3) order dt.31.10.2016 followed by Assessing Officer's draft assessment order dated 30.12.2016 as upheld in the DRP's direction thereby culminating in the impugned addition in Assessing Officer's assessment order. The assessee has filed a detailed note to the effect that the TPO has himself accepted the very interest rate @ 5.14% in assessment years 2008-09, 2009-10 and 2012-13. Learned counsel's case therefore is that the impugned assessment year is nowhere any exception on facts or law. The Revenue's case on the other hand is that although the assessee's written submissions have extracted the TPO's orders to this effect along with the claim that it had followed RBI approved interest rate only, the same requires afresh factual verification at the TPO's end since the DRP prima facie could not verify the corresponding facts.

4. Faced with this situation, we deem it appropriate to restore the instant former issue back to the TPO for his afresh examination of the assessee's interest rate in light of his preceding assessment and succeeding years orders and all other facts as per law within three effective opportunities of hearing. We make it clear that the assessee shall be at liberty to raise all the factual as well as legal pleas in consequential proceedings. The former substantive ground is accepted for statistical purposes.

5. Next comes the latter issue of interest on receivables involving ALP's adjustment of Rs.1,94,49,839/-. There is hardly any dispute that such an interest on receivables comes under sec 92B Explanation (c) (iii) (c) of the Act. And that the TPO's order in Para 7.2 more particularly appears to have taken note of the clinching fact that the assessee had itself filed copies of intercompany agreements with regard to outstanding receivables having 30 days credit period. We next hold that there is no clarity as to whether the said inter-company agreements pertain to the assessee's associated enterprises only which could not be taken as independent comparable(s) in light of Technimont ICB Private Limited Vs. Addl. CIT 138 ITD 23 (TM) (Mum) or independent parties having comparable controlled transactions; as the case may. And also more particularly, the TPO has charged interest @ 14.5% than proceeding in light of market comparables in the very segment followed by the DRP's directions adopting SBI domestic term deposit rates not pertaining to the assessee's line of business. We thus restore the second ground back to the TPO for his afresh adjudication as per law within three effective opportunities of hearing. Ordered accordingly. It is further made abundantly clear that of the foregoing inter-company agreements and found

pertaining to AEs only, the impugned adjustment shall stand deleted.

6. This assessee's appeal is allowed for statistical purposes in the above terms.

Order pronounced in the Open Court on 23rd September, 2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 23rd September, 2021.

TYNM/sps

Copy to:

S.No	Addresses
1	Progress Software Development Private Limited, 4 th Floor, No.18, Labs Centre, #8, Software Unit Layout, Madhapur, Hyderabad - 500 081.
2	The DCIT, Circle 16(2), Hyderabad.
3	ITO (OSD) & Secretary, DRP-1, Bengaluru
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order