

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.436/Hyd/2016
(Assessment Year : 2011-12)**

M/s. Oakton Global Technology
Services Centre (Inia) Pvt. Ltd.,
Hyderabad-500 033
PAN AAACO4424HAppellant.

Vs.

Asst. Commissioner of Income Tax,
Circle 16(2), Hyderabad. ..Respondent.

Appellant By : Shri Ravi Bharadwaj (A.R.)
Respondent By : Shri YVST Sai. (D.R)

Date of Hearing : 07.10.2021.
Date of Pronouncement :16.11.2021.

O R D E R

Per S.S. Godara, J.M. :

This assessee's appeal for Asst. Year 2011-12 arises from the Assessment Order of ACIT, Circle 16(2), Hyderabad's order dt.28.01.2016 in proceedings under Section 143(3) r.w.s. 92CA(3) r.w.s. 144C(5) of the Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. Learned authorized representative stated at the outset that the assessee only wishes to press for its ground Nos.4(a) and (b) inter alia seeking to exclude M/s. Persistent Systems Limited and Sasken Communication Technologies Limited from the array of comparables in software development services segment followed by ground No.5(c) that M/s. Evoke Technologies Pvt. Ltd. has to be included in the list of comparables along with its ground No.9 that the lower authorities have erred in law and on facts in making arm's length price (ALP) adjustment pertaining to interest on outstanding receivables of Rs.21,84,124 calculated @ 5% in DRP's directions as against 12% taken by the TPO in his order dt.31.10.2014; respectively.

3. Coming to the assessee's twin arguments regarding M/s. Persistent Systems Ltd. and Sasken Communication Technologies Limited, we note that

this tribunal's co-ordinate bench order in ITA 464/Hyd/2016 Conexant Systems Pvt. Ltd. Vs. DCIT decided on 24.01.2018 has already held to be not functionally similar as follows :

" 9. We have considered the rival contentions. As seen from the orders placed on record and also consistent stand taken by the Tribunal in various such cases, we have no hesitation in excluding two companies, Persistent Systems Ltd., and Sasken Communication Technologies Ltd on functionality basis. As far as Evoke Technologies Pvt. Ltd., is concerned, this company was also argued to be included in the case of Electronic Arts Games (India) Private Ltd., Vs. Dy.CIT (supra). But the Bench did not accept on the reason that assessee has accepted the exclusion in a later year. However, as pointed out by the Ld. Counsel, this company is functionally similar to assessee-company and the annual report does not disclose any peculiar economic circumstances as stated by the DRP. Moreover, the said consultancy charges were shown under the head administrative expenditure and the increase in administrative expenditure is proportionate to increase in turnover. Therefore, we are of the opinion that Evoke Technologies Pvt. Ltd., can be included as a comparable company."

4. The factual position is no different qua the issue of inclusion of M/s. Evoke Technologies Pvt. Ltd. as well wherein the very learned co-ordinate bench has accepted the corresponding assessee's plea seeking it to be treated as a functionally similar comparable. Learned CIT-DR at this stage quoted tribunal's co-ordinate bench order in (2018) 94 taxman.com 179 (Bangalore Trib.) Advice America Software

Development Centre (P) Ltd. Vs. ITO that development of software products for clients is in the nature of software development services only. We find no merit in Revenue's instant argument as the jurisdictional bench has already held the said twin entities to be not performing similar functions.

5. Mr. Sai's next argument is that M/s. Evoke Technologies Limited has been rightly excluded since having performed variety of activities. Be that as it may, we direct the TPO qua M/s. Evoke Technologies Pvt. Ltd. that he shall go by segmental details only; if any after including it in the array of comparables. The assessee's grounds No.4(a) and (b) along with 5(c) are accepted in above terms.

6. We now advert to the assessee's 9th substantive ground challenging the correctness of the TPO's action proposing interest on receivables adjustment @ 12% as reduced to 5% in the DRP's directions. We find no reason to sustain the same for the precise reason that the learned lower authorities have not

gone by any segmental comparables internal or external, as the case may be, before arriving at the grace period wherein either of the party would have charged interest on outstanding receipts. This is coupled with the fact that the learned lower authorities have not adopted any method as well which can justify the blanket charging of interest @ 12% in the TPO's order and 5% in DRP directions; respectively. We thus reject the learned CIT-DR's vehement contentions supporting the impugned ALP adjustment of Rs.21,84,124 pertaining to interest on outstanding receivables.

7. All other grounds are treated as consequential in nature at this stage as per the assessee's submission (supra).

8. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 16th Nov.,2021.

Sd/-

(L.P. SAHU)

Accountant Member
Hyderabad, Dt.16.11.2021.

Sd/-

(S.S. GODARA)

Judicial Member

* Reddy gp

Copy to :

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2.	ACIT, Circle 16(2), Hyderabad.
3.	Jurisdictional CIT - Pr. C I T-4, Hyderabad.
4.	DRP-1, Bengaluru.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.