IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND MS. S. PADMAVATHY, ACCOUNTANT MEMBER

IT(TP)A No.389/Bang/2021
Assessment Year : 2016-17

Galax E Solutions India Pvt.Ltd. Unit No.4, 8th Floor, Innovator Block, ITPL, Whitefield Road, Bangalore 560 066. **PAN : AABCG 9007 F**	Vs.	The Deputy Commissioner of Income Tax, Circle -3(1)(1), Bangalore,
APPELLANT		RESPONDENT

Appellant by	:	Shri. C. J. Brito, CA
Respondent by	:	Shri. Sumeer Singh Meena, CIT, DR.

Date of hearing	:	23.05.2022
Date of Pronouncement	:	25.05.2022

O R D E R

Per N. V. Vasudevan, Vice President:

This appeal by the Assessee is directed against the order dated 26.5.2021 of the Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore, (hereinafter referred to as the Assessing Officer, "AO" in short) passed u/s.143(3) read with Section 144C(13) of the Income Tax Act, 1961 (Act) in relation to AY 2016-2017.

2. The first issue to be decided in this appeal is with regard to the correctness of determination of Arm's Length Price in respect of an international transaction u/s.92 of the Act. The Assessee in engaged in the business of provision of Software Development Services (SWD services), to it's wholly owned subsidiary company in USA. In terms of the provisions

of Sec.92-A of the Act, the Assessee and its wholly owned holding company and its subsidiary were Associated Enterprises ("AEs"). In terms of Sec.92B(1) of the Act, the transaction of providing SWD Services was an “international transaction” i.e., a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises. In terms of Sec.92(1) of the Act, the any income arising from an international transaction shall be computed having regard to the arm’s length price. In this appeal by the Assessee, the first dispute is with regard to determination of Arms’ Length Price (ALP) in respect of the international transaction of rendering SWD services to the AE.

3. As far as the provision of Software Development services are concerned, the Assessee filed a Transfer Pricing Study (TP Study) to justify the price paid in the international Transaction as at ALP by adopting the Transaction Net Margin Method (TNMM) as the Most Appropriate Method (MAM) of determining ALP. The Assessee selected Operating Profit/Operating Cost (OP/OC) as the Profit Level Indicator (PLI) for the purpose of comparison of the Assessee’s profit margin with that of the comparable companies. The Assessee is a captive service provider and does not bear any cost of software development and support services. The entire

cost of operations is passed on to the AE as cost incurred by the Assessee and is reimbursed by the AE along with mark-up. The OP/OC of the Assessee was arrived at 15.45 % by the Assessee in its TP study. The operating income was Rs.97,81,14,574/- (including forex gain of Rs.55,03,874) and the Operating Cost was Rs.84,72,03,052. The Operating profit (Operating income – Operating cost was Rs.13,09,11,522/-. Thus the OP/TC was arrived at 15.45%. The Assessee chose companies who are engaged in providing similar services such as the Assessee. The Assessee identified companies whose average arithmetic mean of profit margin was comparable with the Operating margin of the Assessee. The Assessee therefore claimed that the price it charged in the international transaction should be considered as at Arm's Length.

4. The Transfer Pricing Officer (TPO) to whom the determination of ALP was referred to by the AO, accepted TNMM as the MAM and also used the same PLI for comparison i.e., OP/OC. He also selected comparable companies from database. The TPO on his own identified some other companies as comparable with the Assessee company and arrived at a set of 14 comparable companies. The median margin of comparable set was reworked by the TPO at 27.28% as follows:

Sl. No.	Company Name	Financial Year wise OP/OC (%)			
		2015-16	2014-15	2013-14	Average
1 & 2	Kals Information Systems Pvt. Ltd. E-Zest Solutions Ltd.	3.97% 7.65%	5.77% 11.80%	16.94% 14.88%	8.60% 10.87%
3.	Rheal Software Pvt. Ltd.	3.20%	2.76%	36.64%	14.50%
4.	C G-V A K Software &	19.60%	19.87%	13.81%	18.50%

	Exports Ltd.				
5	R S Software (India) Ltd.	-2.09%	32.75%	24.14%	20.87%
6.	Larsen & Toubro Infotech Ltd.	26.29%	24.22%	23.54%	24.83%
7	Nihilent Ltd.	15.94%	29.19%	35.72%	26.36%
8	Inteq Software Pvt. Ltd.	7.53%	32.14%	45.00% -	28.20%
9	Persistent Systems Ltd.	26.92%	31.34%	35.64%	30.89%
10.	Infobeans Technologies Ltd.	34.98%	20.78%	41.95%	32.42%
11.	Thirdware Solution Ltd.	23.89%	44.39%	44.68%	36.90%
12	Infosys Ltd.	38.22%	41.30%	36.28%	38.61%
13	Aspire Systems (India) Pvt. Ltd.	34.26%	47.56%	38.04%	39.28%
14.	Cybage Software Pvt. Ltd.	62.90%	68.68%	68.82%	66.45%
	35th Percentile				20.87%
	Median				27.28%
	65%th Percentile				32.42%

5. The TPO computed the Addition to total income on account of adjustment to ALP as follows:

> "21.4.1The median of the weighted average Profit Level indicators is taken as the Arm's Length margin. Please see Annexure A for details of computation of PLI of comparables. Based on this, the Arm's length price of the services rendered by the taxpayer to its AE(s) is computed as under:

SWD SEGMENT		
Particulars	**Formula**	Amount (in Rs.)
Taxpayers Operating Revenue	OR	97,81,14,574
Taxpayers Operating Cost	OC	84,72,03,052
Taxpayers Operating	OP	13,09,11,522

Profit		
Taxpayers PLI	PLI=OP/OC	15.45%
35th Percentile Margin of comaparable set		20.87%
Adjustment Required (if PLI< 35th Percentile)		Yes
Median Margin of comparable set	M	27.28%
Arm's Length Price	ALP=(1+M)*OC	107,83,20,045
Price Received	OR	97,81,14,574
Shortfall being adjustment	ALP-OR	10,02,05,471

*21.4.2 The above shortfall of **Rs. 10,02,05,471/-** is treated as Transfer Pricing adjustment u/s 92CA in respect of software development segment of the Taxpayer's International Transactions."*

Thus a sum of Rs.10,02,05,471/- was added to the total income of the Assessee on account of determination of ALP for provision of SWD services by the Assessee to its AE.

6. The Assessee filed objections before the Disputes Resolution Panel (DRP) against the draft assessment order passed by the AO wherein the addition suggested by the TPO as adjustment consequent to determination of ALP was added to the total income of the Assessee by the AO. The DRP gave certain directions. Based on the directions of the DRP, the AO passed the final order of assessment. To the extent the Assessee did not get relief from the DRP, the Assessee has preferred appeal before the Tribunal.

7. The main grievance of the Assessee projected in ground No.3 of the concise grounds of appeal which alone was pressed for adjudication with

regard to determination of ALP of the international transaction of rendering of SWD services to AE, is with regard to choice of comparable companies by the TPO in disregard to the Assessee's claim that the companies chosen had high turnover and hence should not be considered as comparable with the Assessee. The stand of the TPO was affirmed by the DRP. The Assessee is appeal against the order of the AO incorporating the directions of the DRP. The main grievance of the in this appeal is reflected in Ground No.3 of concise grounds of appeal, which reads as follows:

> "3. The lower authorities erred including the following companies, even though they fail the higher threshold limit of INR 200 Crores for turnover filter:
>
> *(a) Larsen & Toubro Infotech Ltd*
> *(b) Nihilent Ltd.*
> *(c) Persistent Systems Ltd*
> *(d) Aspire Systems (India) Pvt Ltd*
> *(e) Infosys Ltd.*
> *(f) Thirdware Solution Ltd.*
> *(g) Cybage Software Pvt Ltd."*

8. As far as the aforesaid ground of appeal is concerned, the relevant provisions of the Act in so far as comparability of international transaction with a transaction of similar nature entered into between unrelated parties, provides as follows:

> **Determination of arm's length price under section 92C .**
>
> **10B .** (1) For the purposes of sub-section (2) of section 92C, the arm's length price in relation to an international transaction **[***or a specified domestic transaction***]** shall be determined by any of the following

methods, being the most appropriate method, in the following manner, namely :—

(a) to (d)......

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

(*i*) the net profit margin realised by the enterprise from an international transaction **[***or a specified domestic 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;

(*ii*) 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 **[***or the specified domestic 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;

(*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 **[***or the specified domestic transaction***]**;

(f).....

(2) For the purposes of sub-rule (1), the comparability of an international transaction **[***or a specified domestic transaction***]** with an uncontrolled transaction shall be judged with reference to the following, namely:—

(*a*) the specific characteristics of the property transferred or services provided in either transaction;

(*b*) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;

(*c*) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

(*d*) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

(3) An uncontrolled transaction shall be comparable to an international transaction **[***or a specified domestic transaction***]** if—

(*i*) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or

(*ii*) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

9. A reading of Rule 10B(1)(e)(iii) of the Rules read with Sec.92CA of the Act, would clearly shows that the net profit margin arising in comparable

uncontrolled transactions has to be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, which could materially affect the amount of net profit margin in the open market.

10. Chapters I and III of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (hereafter the "TPG") contain extensive guidance on comparability analyses for transfer pricing purposes. Guidance on comparability adjustments is found in paragraphs 3.47-3.54 and in the Annex to Chapter III of the TPG. A revised version of this guidance was approved by the Council of the OECD on 22 July 2010. In paragraph 2 of these guidelines it has been explained as to what is comparability adjustment. The guideline explains that when applying the arm's length principle, the conditions of a controlled transaction (i.e. a transaction between a taxpayer and an associated enterprise) are generally compared to the conditions of comparable uncontrolled transactions. In this context, to be comparable means that:

- None of the differences (if any) between the situations being compared could materially affect the condition being examined in the methodology (e.g. price or margin), or
- Reasonably accurate adjustments can be made to eliminate the effect of any such differences. These are called "comparability adjustments.

11. As far as comparability of companies listed as (a) to (g) in Grd.No.3 raised by the Assessee is concerned, the admitted factual position is that the turnover of these companies is more than Rs.200 Crores and the Assessee's turnover is only Rs. 97,81,14,574/-. The TPO excluded from the list of comparable companies chosen by the Assessee in its TP study companies

whose turnover was less than Rs.1 Crore. The contention of the Assessee before the DRP was that while the TPO excluded companies with low turnover, he failed to apply the same yardstick to exclude companies with high turnover compared to the Assessee. The reason for excluding companies with low turnover was that such companies do not reflect the industry trend as their low cost to sales ratio made their results less reliable. The contention of the Assessee was that there would be effect on profitability wherever there is high or low turnover and therefore companies with high turnover should also be excluded from the list of comparable companies. The DRP primarily relied on the decision rendered by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors India Pvt.Ltd Vs. DCIT 82 Taxmann.com 167(Del), wherein it was held that high turnover ipso facto does not lead to the conclusion that a company which is otherwise comparable on FAR analysis can be excluded and that the effect of such high turnover on the margin should be seen. The DRP therefore held that a company which is otherwise functionally comparable cannot be excluded only on the basis of high turnover. The Assessee has raised Grd.No.4 before the Tribunal challenging the aforesaid view of the DRP.

12. On the issue of application of turnover filter, we have heard the rival submissions. The parties relied on several decisions rendered on the above issue by the various decisions of the ITAT Bangalore Benches in favour of the Assessee and in favour of the Revenue, respectively. The ITAT Bangalore Bench in the case of Dell International Services India (P) Ltd. Vs. DCIT (2018) 89 Taxmann.com 44 (Bang-Trib) order dated 13.10.2017, took note of the decision of the ITAT Bangalore Bench in the case of

Sysarris Software Pvt.Ltd. Vs. DCIT (2016) 67 Taxmann.com 243 (Bangalore-Trib) wherein the Tribunal after noticing the decision of the Hon'ble Delhi High Court in the case of Chryscapital (supra) and the decision to the contrary in the case of CIT Vs. Pentair Water India Pvt.Ltd., Tax Appeal No.18 of 2015 dated 16.9.2015 wherein it was held that high turnover is a ground to exclude a company from the list of comparable companies in determining ALP, held that there were contrary views on the issue and hence the view favourable to the Assessee laid down in the case of Pentair Water (supra) should be adopted. The following were the conclusions of the Tribunal in the case of Dell International (supra):

> "41. We have given a very careful consideration to the rival submissions. ITAT Bangalore Bench in the case of *Genesis Integrating Systems (India) Pvt. Ltd. v. DCIT, ITA No.1231/Bang/2010*, relying on Dun and Bradstreet's analysis, held grouping of companies having turnover of Rs. 1 crore to Rs.200 crores as comparable with each other was held to be proper. The following relevant observations were brought to our notice:-
>
> > "9. Having heard both the parties and having considered the rival contentions and also the judicial precedents on the issue, we find that the TPO himself has rejected the companies which .ire (sic) making losses as comparables. This shows that there is a limit for the lower end for identifying the comparables. In such a situation, we are unable to understand as to why there should not be an upper limit also. What should be upper limit is another factor to be considered. We agree with the contention of the learned counsel for the assessee that the size matters in business. A big company would be in a position to bargain the price and also attract more customers. It would also have a broad base of skilled employees who are able to give better output. A small company may not have these benefits and therefore, the turnover also would come down reducing profit margin. Thus, as held by the various

> benches of the Tribunal, when companies which arc loss making are excluded from comparables, then the super profit making companies should also be excluded. For the purpose of classification of companies on the basis of net sales or turnover, we find that a reasonable classification has to be made. Dun & Bradstreet & Bradstreet and NASSCOM have given different ranges. Taking the Indian scenario into consideration, we feel that the classification made by Dun & Bradstreet is more suitable and reasonable. In view of the same, we hold that the turnover filter is very important and the companies having a turnover of Rs.1.00 crore to 200 crores have to be taken as a particular range and the assessee being in that range having turnover of 8.15 crores, the companies which also have turnover of 1.00 to 200.00 crores only should be taken into consideration for the purpose of making TP study."

42. The Assessee's turnover was around Rs.110 Crores. Therefore the action of the CIT(A) in directing TPO to exclude companies having turnover of more than Rs.200 crores as not comparable with the Assessee was justified. As rightly pointed out by the learned counsel for the Assessee, there are two views expressed by two Hon'ble High Courts of Bombay and Delhi and both are non-jurisdictional High Courts. The view expressed by the Bombay High Court is in favour of the Assessee and therefore following the said view, the action of the CIT(A) excluding companies with turnover of above Rs.200 crores from the list of comparable companies is held to correct and such action does not call for any interference."

13. The Tribunal in the case of Autodesk India Pvt.Ltd. Vs. DCIT (2018) 96 Taxmann.com 263 (Banglore-Tribunal), took note of all the conflicting decision on the issue and rendered its decision and in paragraph 17.7. of the decision held as that high turnover is a ground for excluding companies as not comparable with a company that has low turnover. The following were the relevant observations:

17.7. We have considered the rival submissions. The substantial question of law (Question No.1 to 3) which was framed by the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) Pvt.Ltd., (supra) was as to whether comparable can be rejected on the ground that they have exceptionally high profit margins or fluctuation profit margins, as compared to the Assessee in transfer pricing analysis. Therefore as rightly submitted by the learned counsel for the Assessee the observations of the Hon'ble High Court, in so far as it refers to turnover, were in the nature of *obiter dictum*. Judicial discipline requires that the Tribunal should follow the decision of a non-jurisdiction High Court, even though the said decision is of a non-jurisdictional High Court. We however find that the Hon'ble Bombay High Court in the case of *CIT Vs. Pentair Water India Pvt.Ltd. Tax Appeal No.18 of 2015* judgment dated 16.9.2015 has taken the view that turnover is a relevant criterion for choosing companies as comparable companies in determination of ALP in transfer pricing cases. There is no decision of the jurisdictional High Court on this issue. In the circumstances, following the principle that where two views are available on an issue, the view favourable to the Assessee has to be adopted, we respectfully follow the view of the Hon'ble Bombay High Court on the issue. Respectfully following the aforesaid decision, we uphold the order of the DRP excluding 5 companies from the list of comparable companies chosen by the TPO on the basis that the 5 companies turnover was much higher compared to that the Assessee.

17.8. In view of the above conclusion, there may not be any necessity to examine as to whether the decision rendered in the case of Genisys Integrating (supra) by the ITAT Bangalore Bench should continue to be followed. Since arguments were advanced on the correctness of the decisions rendered by the ITAT Mumbai and Bangalore Benches taking a view contrary to that taken in the case of Genisys Integrating (supra), we proceed to examine the said issue also. On this issue, the first aspect which we notice is that the decision rendered in the case of Genisys Integrating (supra) was the earliest decision rendered on the issue of comparability of companies on the basis of turnover in Transfer Pricing cases. The decision was rendered as early as 5.8.2011. The decisions rendered by the ITAT Mumbai Benches cited by the learned DR before us in the case of Willis Processing Services (supra) and Capegemini India Pvt.Ltd. (supra) are to be regarded as

> per incurium as these decisions ignore a binding co-ordinate bench decision. In this regard the decisions referred to by the learned counsel for the Assessee supports the plea of the learned counsel for the Assessee. The decisions rendered in the case of M/S.NTT Data (supra), Societe Generale Global Solutions (supra) and LSI Technologies (supra) were rendered later in point of time. Those decisions follow the ratio laid down in Willis Processing Services (supra) and have to be regarded as per incurium. These three decisions also place reliance on the decision of the Hon'ble Delhi High Court in the case of Chriscapital Investment (supra). We have already held that the decision rendered in the case of Chriscapital Investment (supra) is obiter dicta and that the ratio decidendi laid down by the Hon'ble Bombay High Court in the case of Pentair (supra) which is favourable to the Assessee has to be followed. Therefore, the decisions cited by the learned DR before us cannot be the basis to hold that high turnover is not relevant criteria for deciding on comparability of companies in determination of ALP under the Transfer Pricing regulations under the Act. For the reasons given above, we uphold the order of the CIT(A) on the issue of application of turnover filter and his action in excluding companies by following the ratio laid down in the case of Genisys Integrating (supra).

14. In view of the aforesaid decision, we hold that companies listed in Sl.No.(a) to (g) of Grd.No.3 raised by the Assessee whose turnover in the current year is more than Rs.200 Crores should be excluded from the list of comparable companies.

15. The learned DR however submitted that the Assessee in its transfer pricing study had applied the filter of 10 times turnover of the Assessee as a criteria for comparing the Assessee company with a comparable company. He pointed out that the Tribunal in some cases has applied the filter of 10 times the turnover as criteria for choosing comparable companies and

therefore not all companies listed in Ground No.3 will have turnover 10 times more than that of the Assessee.

16. As we have already noticed the first decision on the issue of application of turnover filter was rendered by the ITAT Bangalore Bench in the case of *Genesis Integrating Systems (India) Pvt. Ltd. v. DCIT, ITA No.1231/Bang/2010,* relying on Dun and Bradstreet's analysis, held grouping of companies having turnover of Rs. 1 crore to Rs.200 crores as comparable with each other was held to be proper. The Tribunal held that size matters in business. A big company would be in a position to bargain the price and also attract more customers. It would also have a broad base of skilled employees who are able to give better output. A small company may not have these benefits and therefore, the turnover also would come down reducing profit margin. The Tribunal held for the purpose of classification of companies on the basis of net sales or turnover, a reasonable classification has to be made and in this regard relied on classification by Dun & Bradstreet & Bradstreet and NASSCOM and approved the classification made by Dun & Bradstreet as more suitable and reasonable. Therefore companies who fall within the group of Rs.1 crore to Rs.200 Crores cannot be compared with companies whose turnover fall in the range of Rs.200 to Rs.500 Crores and above. It was also held in the case of Autodesk (supra) that the decisions rendered later on the point of turnover at 10 times that of the Assessee have to be regarded as per incurium the law laid down in the case of Genisys Integrating Systems (supra). The argument that the Assessee himself chose 10 times turnover as criteria in its TP study is no ground to reject the plea of the Assessee, as it is well settled that tax liability has to be determined in accordance with law and not on admission of parties.

There is no principle of estoppel that applies in determining tax liability. Therefore, we are of the view that the argument of the learned DR that the criteria of 10 times the turnover of the Assessee has to be applied in the present case, cannot be accepted.

17. The TPO/AO is directed to compute the ALP of the international transaction of rendering of SWD services by the Assessee to AE in the light of the directions given above, after affording Assessee opportunity of being heard.

18. The next issue to be dealt with in this appeal is Ground No.5 to 8 of the concise grounds of appeal with regard to determination of ALP by construing the delayed realization of receivable by the Assessee from its AE as a separate international transaction and determining ALP of such delayed receivables. These grounds read as follows:

> *5. The TPO, AO and DRP have erred in law and on facts in computing notional interest on alleged delay in collecting trade receivables amounting to Rs. 1,18.23.644 from its AE. As per the TPO order, the average of opening and closing receivable balances has been treated as unsecured loan for a period of 365 days and after allowing a credit period of 180 days, the AO/TPO has arrived at a delay of 185 days on the deemed loan amount. This is factually incorrect, since the appellant has received all the receivables in respect of invoices raised in FY 2015-16 from its AE within the agreed credit period of 180 days. Thus, as all the receivables are collected within due date, no interest on delay in collection of trade receivable should arise.*
>
> *6. The TPO/A0 erred in law as well on facts by not following the direction of the DRP to recompute the interest on the delayed receivables after obtaining invoice wise details from the assessee.*
>
> *7. The DRP erred in law while giving direction to the TPO/A0 to consider the credit at 60 days as against the 180 days which is as per*

the Master Service Agreement and which the TPO has correctly considered.

8. Notwithstanding the ground no 5,6 and 7 above and without prejudice. the TPO/AO and DRP erred in law and on facts in arbitrarily adopting the notional interest rate based on 6 months LIBOR plus 450 basis point to compute the notional interest on the trade receivables.

19. The facts in this regard are that in the order passed under Section 92CA of the Act, the TPO determined a TP adjustment of Rs.1,18,23,644/- in respect of delayed receivables on a notional manner. The TPO has observed in this regard in his order that the Assessee was asked to furnish details of trade receivable and details of realization and in the absence of such details, he has no other option but to determine the interest attributable to delayed realization of trade receivables by applying 6 months LIBOR plus 450 basis points with a mark-up of 100 basis points (which works out to 4.985%) on the average of opening and closing receivable. The computation done by the TPO in this regard was as follows:

Amounts in Rs	*31.03.2016*	*31.03.2015*
Receivables from AEs (A)	541123292	424388892
Payable due to AEs (B)	17952878	11642378
Net receivables (C=A-B)	523170414	412746514
Average Net receivables		467958464
Interest Rate		4.985%
Period of delay (days)		185
Interest Amount		**1,18,23,644**

**Period of delay is 365 — allowed period of 180 days.*

Thus, arm's length interest amount to be charged works out to be ***Rs.1,18,23,644*** *.The same is treated as adjustment u/s 92CA for interest on delayed receivables.*

20. The DRP firstly held that realizing receivables beyond the agreed credit period was a separate international transaction and the ALP of such transaction has to be determined separately. Thereafter the DRP held that the TPO should have applied SBI Short term deposit rate of interest and not LIBOR and doing so resulted in an enhancement of the addition made by the TPO. The observations of the DRP in this regard were as follows:

"2.9.18 As regards adoption of ALP interest rate, the approach of the TPO in adopting LIBOR rate is incorrect. In the facts of the case, we consider that, it is pertinent to look into the opportunity costs i.e. the income that the assessee would have earned, had the assessee received the amounts in time. This has to be determined taking into account the Indian market conditions, the assessee being taken as the tested party Factoring these aspects, we are of the view, that the SBI short term fixed deposit interest rate may be the appropriate ALP rate to measure the interest compensation in these type of transactions. In this regard, we place reliance on the principle held by the Honourable Bangalore ITAT in the case of LogixMicrosystems Ltd (ITA No. 423/Bang/2019 dated 07.10.2010) (2010-TI 1-30-ITAT Bang-TP), under similar factual circumstances, wherein it was observed, "While adopting the Indian rate, it is not proper to rely on PLR of the State Bank of India. This is because if the funds were brought in time and those funds were properly deployed, the assessee company may earn an income at the maximum rate applicable to deposits and not at the rate applicable to loans. We find-it-appropriate to adopt a reasonable rate that would be available to the assessee on 'short-term deposits". This, Panel has been consistently applying this principle. Accordingly, the TPO is directed to adopt the SBI short term deposit interest rate for the subject year as the ALP interest rate and re-compute the adjustment to be made to the total income.

2.9.19 The SBI short term deposit interest rate is as under:

'DOMESTIC TERM DEPOSIT RATES OF SB1 AS ON:

Duration	18.02.2014	18.07.2014	18.09.2014	07.10.2014	01.11.2014	08.12.2014	Revised for Public w.e.f. 10.04.2015	Revised for Public w.e.f. 11.05.2015	Revised for Public w.e.f.08.06. 2015
7 days to 45 days	7.5	7	7	6.00	5.00	5.00	6.00	6.00	5.5
46 day to 90 days	7.5	7	7	7.00	7.00	7.00	6.00	6.00	5.5
91 days to 179 days	7.5	7	7	7.00	7.00	7.00	7.00	7.00	6.75
180 days to 210 days	7	7	7.25	7.25	7.25	7.25	7.25	7.25	7.25
211 days to less than 1 year	7.5	7.5	7.5	7.50	7.50	7.50	7.50	7.50	7.50
1 year to 455 days	9	9	8.75	8.75	8.75	8.50	8.25	8.00	8.00
456 days to less than 2 years	9	9	8.75	8.75	8.75	8.50	8.50	8.25	8.25
2 years to less than 3 years	9	9	8.75	8.75	8.75	8.50	8.50	8.25	8.25
3 years to iess than 5 years	8.75	8.75	8.75	8.75	8.75	8.50	8.50	8.25	8.25
5 years and upto 10 years	8.5	8.5	8.5	8.50	8.50	8.25	8.25	8.00	8.00

ALM Department, Corporate Centre, Mumbai
(Source SB1.Co.in.- rate history.xls)

2.9.20 The TPO is therefore directed to obtain the invoice wise details from the assessee and compute the interest on delayed receivabls by adopting SB1 short term deposit rate taking credit period of 60 days. The assessee shall co-operate with the TPO in furnishing of all the invoice wise details and other information as required in this regard."

21. Aggrieved by the order of the DRP which was incorporated in the final order of assessment, the Assessee is in appeal before the Tribunal. We have heard the rival submissions. The learned counsel for Assessee pointed out that the DRP in its direction dated 04.03.2021 in **para 2.9.20** ***(Internal page 38 – Appeal Memo Page No 166)*** directed the TPO to obtain invoice wise details from the assessee and compute the interest on delayed receivables by adopting SBI short term deposit rate taking credit period of 60 days. It was submitted by him that all these details were provided to the TPO through online submission on 13.04.2021 **(Paper Book No.1 - Page No 458 to 470)** . **The summary of the submission made before the TPO consequent to DRP order is as follows:**

1. The entire Debtors both opening balance as at 01.04.2015 as well as closing balance as at 31.03.2016 were received within the stipulated time. Hence computation of notional interest does not arise

2. A tabulation of the debtors as at the Opening date 01.04.2015 and closing date 31.03.2016 with date, invoice wise details of receipt of payment, which reveal that the entire debtors were realized within a period of 180 days except for the opening debtors amounting to Rs. 3.97 Crores which were realized within a period of 200 days ie., delay of about 20 days. (average) was also given, which is as follows:

Debtors as at March 31, 2015

Name of the Party (Debtors)	**Date of the Bill**	**Amount Due in Rs.**	**Date of receipt**	**Amount Received in Rs.**
Aditya Birla Minacs IT – Domestic Billing	Billed in 2013-14 (4 Bills)	2,96,140	Amount not received and written off as bad debts in FY 2015-16	2,96,140

Fire Eye Cybersecurity Pvt Ltd – Domestic Billing	31.03.2015	5,88,491	05.05.2015	5,88,491
Galaxe Inc. USA – Export Invoice	31.03.2015	42,43,88,892	16.04.2015	46,52,198
			21.04.2015	6,25,17,499
			25.05.2015	5,33,77,488
			25.06.2015	6,26,47,494
			14.07.2015	1,25,18,122
			21.07.2015	5,35,89,978
			07.08.2015	94,63,107
			21.08.2015	6,11,91,396
			09.09.2015	65,63,702
			22.09.2015	5,81,01,095
			08.10.2015	1,03,81,729
			20.10.2015	2,93,85,084
	Total	**42,52,73,523**		**42,52,73,523**

Debtors as at March 31, 2016

Name of the Party (Debtors)	**Date of the Bill**	**Amount Due**	**Date of receipt**	**Amount Received**
Fire Eye Cybersecurity Pvt Ltd – Domestic Billing	03.03.2016	2,93,910	06.04.2016	2,93,910
	31.03.2016	2,93,910	27.04.2016	2,93,910
United Health Group Information Services P Ltd – Domestic Billing	21.01.2016	8,55,780	14.04.2016	8,55,780
	15.03.2016	4,55,672	31.05.2016	4,55,672
	31.03.2016	5,77,468	31.05.2016	5,77,468
			12.04.2016	1,45,35,287
			22.04.2016	8,54,20,043
			06.05.2016	1,55,80,529
			24.05.2016	8,06,96,974

Galaxe Inc. USA – Export Invoice	31.03.2016	54,11,23,293	10.06.2016	1,85,56,752
			21.06.2016	8,71,61,983
			08.07.2016	1,54,21,453
			20.07.2016	8,68,99,986
			09.08.2016	2,26,62,800
			25.08.2016	9,33,05,001
			08.09.2016	1,73,92,489
			22.09.2016	34,89,996
	Total	54,36,00,033		54,36,00,033

It was submitted that since the debtors were realized within the allowed credit period, computation of notional interest on the outstanding does not arise.

22. The learned counsel also invited our attention to the master service agreement, para 5.2 (in page 5 of the agreement under the heading 'Invoicing and Payments') wherein the credit period allowed to the holding company is 180 days or such other time as may be prescribed by the Reserve Bank of India from time to time. It was argued that since the computation of notional interest did not arise, the TPO was requested to kindly delete the notional interest from the Draft TP order passed on 30.10.2019 and provide a copy of the Order Giving Effect to the direction of the DRP order dated 04.03.2021. It was submitted that the above submission made before the TPO was not considered by the TPO and therefore no relief arising from DRP direction was received. The learned DR relied on the order of the DRP/TPO.

23. After considering the rival submissions, we are of the view that the TPO/AO have erred in not giving effect to the direction of the DRP based on invoice wise delay in receipt of outstanding. Instead the TPO/AO proceeded on estimation basis by considering the average of opening and closing debtors balances and computed

interest for the whole year on this average balance receivable after treating it as a loan, after reducing the allowed credit period of 180 days from 365 days and has charged interest on the estimated average balance as explained above for an assumed delay of 185 days. In our view that as per contract with the holding company for providing software development services the credit period agreed is 180 days. And thus interest on delay if any, may be charged on invoice wise receipt exceeding the agreed credit period of 180 days. Since there is no delay whatsoever in realization of receivables, there was no question of attributing notion interest on delayed receivables and making any addition.

24. Since the above facts with regard to realization of receivables from the AE not having been considered despite the details having been furnished to the TPO, we deem it fit and proper to verify the details by the TPO/AO. In the light of the above submissions, we set aside the order of the AO and the directions of the DRP and remand the issue to the TPO/AO for consideration afresh to decide whether there was at all delay in realizing receivables from the AE over and above the credit period of 180 days and if there was no such delay then there can be no international transaction at all in this regard and consequently there cannot be any determination of ALP. The TPO/AO will afford opportunity of being heard to the Assessee before deciding the issue.

25. In the result, the appeal by the Assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(S. PADMAVATHY)	**(N. V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore, Dated : 25.05.2022.
/NS/*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.