

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 280/Hyd/2016  
(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Ocimum Bio Solutions (I) Ltd., Hyderabad [PAN No. AAACO4095L]	Vs.	Asst. Commissioner of Income Tax, Circle- 16(2), Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR  
राजस्व द्वारा / Revenue by: Shri Jeevan Lal Lavidiya, CIT-DR

सुनवाई की तारीख/Date of hearing: 15/03/2023  
घोषणा की तारीख/Pronouncement on: 26/04/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the final assessment order dated 28/01/2016 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of M/s. Ocimum Biosolutions (India) Limited ("the assessee") for the assessment year 2011-12, under section 143(3) r.w.s. 92CA(3) r.w.s. 144C(5) of the Income Tax Act, 1961 (for short "the Act") assessee filed this appeal.

2. Briefly stated relevant facts are that the assessee is engaged in the business software development, lab services and sale of oligonucleotides and Microarray chips. For the assessment year 2011-12 it filed the return of income on 30/11/2011 declaring an income of Rs. 49,83,773/-. Since the assessee conducted certain international transactions with its Associated Enterprises (AEs), determination of the Arm's Length Price (ALP) of such transaction was referred to the learned Transfer Pricing Officer (TPO). By order dated 30/12/2014, learned TPO suggested upward adjustment of Rs. 14,10,56,081/- in respect of international transactions, which the learned Assessing Officer considered in the draft assessment order. Apart from this, learned Assessing Officer added a sum of Rs. 16,94,595/- on account of interest on TDS. Finally, learned Assessing Officer issued draft assessment order dated 16/03/2015, determining the income of the assessee at Rs. 14,77,34,449/-.

3. Assessee filed objections before the learned DRP and by order dated 14/12/2015, learned DRP issued certain directions to the learned Assessing Officer/ learned TPO pursuant to which, by way of final assessment order 28/01/2016, the income of the assessee was determined at Rs. 1,47,24,150/-.

4. Assessee filed this appeal aggrieved by certain additions sustained by the learned DRP in respect of the transfer pricing issues, namely, the reimbursement of expenditure, interest on advances and corporate guarantee, and also in respect of corporate issue on disallowance on TDS. We shall now deal with the same hereunder. Assessee also challenged the reference made by the learned Assessing Officer to the learned TPO vide grounds No. 1 to 6, but at the time of arguments, not pressed the same.

5. Coming to the reimbursement of expenditure, covered by grounds No. 7 to 13, according to the learned TPO, the assessee represented before him that the assessee recovered the salary and travel related expenses incurred on certain employees working for Ocimum

Biosolutions (Inc) which has been reimbursed on cost to cost basis. Learned TPO, however, opined that no independent party would render such services without any markup. On this assumption, learned TPO proceeded to make the addition of Rs. 27,38,773/- on an estimate of 10%.

6. Before the learned DRP, the assessee's case was same but the learned DRP, without going into the fact whether or not the assessee actually received any markup, followed the view taken by the Co-ordinate Bench of this Tribunal in the case of M/s. Kirbi Building Systems India Ltd., in ITA No. 1759/Hyd/2012 and ITA No. 262/Hyd/2014 for the assessment year 2008-09, upheld the levy of the reimbursement cost at 5%.

7. It is submitted before us that there is no dispute that the assessee and Ocimum Biosolutions (Inc) are AEs and it was for the business necessity of the assessee, the assessee initially met the travel and salary related expenses which were recovered subsequently, from the AE. It is also submitted that absolutely there is no evidence on record to show that any component of income is involved in this reimbursement transaction. According to the assessee, it is only a pass through entity without any revenue generation in the transaction. According to the assessee, the reimbursement of expense was not routed through P&L Account but it is only a balance sheet entry.

8. Assessee placed reliance on the decisions of the Co-ordinate Benches of the Tribunal in the cases of Cambridge Technologies Enterprises Ltd., in ITA No. 89/Hyd/2014, Mylan Laboratories Ltd. Vs. ACIT in ITA No. 66/Hyd/2013 and Avineon India (P) Ltd. Vs. DCIT in ITA No. 238/Hyd/2016 in support of their contentions.

9. On a careful consideration of the mater, we are of the considered opinion that in case of reimbursement at cost of the expenditure on behalf of the AE, which does not form part of the expenditure claim as

operating cost of the assessee, shall not be considered as assessee's business receipt. Whether or not this particular reimbursement amount was not routed through P&L Account, but it remained only a balance sheet entry is a verifiable fact. If it is so, no addition could be made on the assumption that generally, the AE will not undertake such an exercise without any markup.

10. We, therefore, direct the learned Assessing Officer to verify the facts and if this amount is not routed through the P&L Account, and remained only a balance sheet entry, then the addition shall be deleted. Grounds No. 7 to 13 are answered accordingly.

11. Now coming to grounds No. 14 to 23 relating to business advances, learned Assessing Officer referred the same as trade advances of Rs. 9,03,97,252/- and Rs. 40,61,921/- advanced to Ocimum Biosolutions B.V. and Ocimum Biosolutions (Inc) respectively. Assessee explained that the transactions are not in the nature of purchase, sale or lease of tangible or intangible property, or provision of sales, or lending or borrowing money, or any other transaction enumerated under section 92B of the Act, and, therefore, no Arm's Length Price (ALP) could be determined.

12. Learned TPO, however, observed that section 92B is retrospectively amended by insertion of explanation by Finance Act, 2012 and, therefore, lending and borrowing is also an international transaction for which ALP needs to be determined. Learned TPO accordingly proceeded and observed that since the taxpayer obtained loan from the directors, carrying 12% interest rate, ALP has to be determined at 12% by taking the internal CUP of such transaction of lending and borrowing.

13. Before the learned DRP, assessee argued that charging interest on trade advances given by the assessee to its subsidiaries is not justified, the assessee provided trade advances to AEs for administrative

convenience and for smooth functioning of business and, therefore, classified the same as such in the financial statements. Inasmuch as there is no income component and the transactions are not covered by section 92B of the Act as on such date no adjustment is warranted. It is further contended that the assessee has been declaring substantial profits from its subsidiary companies in its consolidated profits and, therefore, no separate benchmarking is warranted. Assessee further contended that the learned TPO did not take the date of advances made to the AEs, but calculated interest for the entire twelve months that too on the outstanding balances without considering the transactions entered during the year itself.

14. Learned DRP upheld the findings of the learned TPO that interest has to be calculated in respect of the receivables considering clause (c) of explanation to section 92B of the Act with retrospective effect. Following the decision of the Bangalore Bench of the Tribunal in the case of M/s. Logics Micro Systems Ltd., in ITA No. 524/Bang/2009, learned DRP examined the issue whether there was any potential loss due to receivables and held that if the amounts were collected in time, the assessee would have saved substantial financial cost and, therefore, the adjustment is justifiable. But learned DRP directed the learned Assessing Officer to compute ALP at 5% instead of 12%.

15. Learned AR contended that the transactions with Ocimum Biosolutions (Inc) and Ocimum Biosolutions BV are regular business transactions due to the business expediency and they are not advances as such without any business purpose and, therefore, without verifying such fact, the adjustment cannot be sustained. He prayed to delete this addition.

16. learned DR vehemently relied on the orders of the learned DRP and opposed the deletion of this addition at 5% as suggested by learned DRP. In the alternative, he further submitted that the learned Assessing

Officer may be directed to verify whether the trade advances resulted due to the regular business transactions of the assessee with its AEs on account of business expediency.

17. We agree with the learned DR and in the interest of justice, we set aside this issue to the file of the learned Assessing Officer/learned TPO for verification whether these trade advances are the result of the regular business transactions of the assessee with its AEs on account of any business expediency. We accordingly direct the learned Assessing Officer/learned TPO to cause such verification and if it is found to be so, then, no adjustment is warranted and the same has to be deleted. For this purpose, the issue under grounds No. 14 to 23 is restored to the file of the learned Assessing Officer/learned TPO.

18. Now coming to the corporate guarantee issue covered by grounds No. 24 to 42, it is vehemently argued by the learned AR that the transaction relating the issue of corporate guarantee does not involve any costs to the assessee and does not fall within the scope of the term 'international transaction' even after the insertion of explanation to section 92B of the Act by Finance Act, 2012 with effect from 01/04/2002, and, therefore, there is no requirement of such transaction to be reported in form No. 3CEB.

19. Learned DR, however, submitted that this issue is no longer available to be agitated by the assessee and it is descended by the Hon'ble Madras High Court in the case of PCIT Vs. Redington (India) Ltd., (2020) 122 taxmann.com 136 (MAD).

20. Learned AR in the alternative, pleaded that corporate guarantee at 1.75% determined by the learned DRP is too high and cannot be sustained. Basing on the view taken by the Co-ordinate Benches of this Tribunal in the cases of Aster Private Limited Vs. DCIT in ITA No. 220/Hyd/2015 and DCIT Vs. Lanco Infratech Limited, 81 taxmann.com 381

(Hyderabad Tribunal) he prayed that the ALP in respect of Corporate Guarantee fee may be determined at 0.25%. On this aspect, the learned DR submitted that the ALP at 0.25% is absurdly low and the learned DRP has rightly reduced it to 1.75%, which may be sustained. In the alternative he submitted that the view taken by the Hon'ble Bombay High Court in the case of GlenmarkPharmaceuticals Ltd. Vs. Addl. CIT [2014] 43 taxmann.com 191 (Mumbai - Trib.) may be followed.

21. On this aspect, in view of the decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd. (supra), we have no second thought and this decision is applicable to the facts of the case. Corporate guarantee is an international transaction, requiring benchmarking. Coming to the ALP, in GlenmarkPharmaceuticals Ltd. (supra), the Hon'ble Bombay High Court considered the issue in a wider canvass.

22. After considering the decisions in the cases of Reliance Industries Ltd. Vs. Addl. CIT [IT Appeal No. 4475 (Mum.) of 2011, dated 3-9-2013], ACIT v. Asian Paints Ltd. [IT Appeal No. 1937 (Mum.) of 2010, dated 31-10-2011], Everest Kanto Cylinder Ltd. Vs. Dy. CIT (LTU) [2013] 34 taxmann.com 19 (Bom.), ACIT v. Nimbus communication Ltd. [2013] 34 taxmann.com 298/145 ITD 552 (Mum.) for the AY 2005-06, and also for the AYs 2006-07 and 2007-08, wherein the ALP of corporate guarantee was considered in extenso, the Hon'ble Bombay High Court in the case of GlenmarkPharmaceuticals Ltd. (supra), held that ALP at 0.53% was reasonable.

23. Having considered the facts in their entirety, and while respectfully following the view taken by the Hon'ble Bombay High Court in the case of GlenmarkPharmaceuticals Ltd. (supra), we deem it just and proper to accept the ALP of corporate guarantee at 0.53%. we accordingly directing the learned Assessing Officer/learned TPO to adopt the same. Grounds No. 24 to 42 are answered accordingly.

24. Now coming to the last ground of disallowance of interest on TDS, it is brought to our notice that in the decision in Taksheel Solutions Ltd vs. ACIT in ITA 1768/Hyd/2012 a Co-ordinate Bench of this Tribunal has taken a view that interest on TDS is not interest paid on income tax per se, and the same cannot be disallowed. Respectfully following the same, we direct the learned Assessing Officer/learned TPO to delete the same. Grounds No. 43 to 45 are allowed accordingly.

25. In the result, appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on this the 26<sup>th</sup> day of April, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 26/04/2023

TNMM

Copy forwarded to:

1. M/s. Ocimum Bio Solutions (I) Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad.
2. Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.
3. The Dispute Resolution Panel (DRP), Bengaluru.
4. The Director of Income Tax (IT & TP), Hyderabad.
5. The Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.
6. DR, ITAT, Hyderabad.
7. GUARD FILE

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