

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

**BEFORE**

**SHRI LALIET KUMAR, HON’BLE JUDICIAL MEMBER  
AND  
SHRI MANJUNATHA, G. HON’BLE ACCOUNTANT MEMBER**

ITA No.252/Hyd/2021		
Assessment Year: 2016-17		
Key Point Technologies (India) Private Limited, Rajaprasadamu, Level 2, Wing 1B & 2, Botanical Gardens Road, Kondapur, Hyderabad – 500 084.  PAN : AADCK1115A	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Ravi Bharadawaj, C.A.	
Revenue by:	Shri Kumar Pranav, CIT-DR	
Date of hearing:	06.05.2024	
Date of pronouncement:	08.05.2024	

**ORDER**

**PER LALIET KUMAR, J.M.**

The appeal of the assessee for A.Y. 2016-17 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.23.04.2021 invoking proceedings under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short, “the Act”).

2. The brief facts of the case are that assessee is a company engaged in the development of mobile application software – user interface technology. The assessee company filed its return of income for A.Y. 2016-17 on 30.11.2016 admitting a loss of Rs.84,13,338/- and deemed total income u/s 115JB of the Act was admitted at (-) Rs.84,83,289/-. The return filed was taken up for limited scrutiny to verify whether value of international transactions is correctly shown in Form 3CEB and return of income. Accordingly, a notice u/s 143(2) of the Act was issued to the assessee on 17.07.2017. In response to the notices, assessee furnished information called for and the same was verified.

2.1. As per the audit report in Form 3CEB filed by the assessee, the aggregate value of the international transactions of the assessee with its Associated Enterprise are to the tune of Rs.19,43,33,857/-. As it was necessary to compute the arm's length price in relation to these international transactions, a reference was made to the Transfer Pricing Officer (TPO) u/s 92CA of the Act on 18.08.2018 with prior approval of the PCIT. Thereafter, the TPO, after considering the submissions of the assessee, passed an order u/s 92CA(3) of the Act on 26.10.2019 computing the total adjustments u/s 92CA at Rs.4,67,63,043/- and accordingly, a draft assessment order u/s 144C(1) of the Act dt.22.11.2019 was sent to the assessee, who filed objections before the DRP. Thereafter, DRP passed order u/s 144C(5) of the Act dt.01.03.2021 and directed the TPO to recompute the interest after verifying the details in respect of the invoices and other evidences. Accordingly, the TPO has given the effect as per the direction of DRP vide order dt.26.03.2021 and

revised the TP adjustment at Rs.4,67,63,043/-. In accordance with the adjustments suggested, final assessment order was passed on 23.04.2021 assessing the total income of the assessee company at Rs.4,62,99,077/-.

3. Feeling aggrieved with final assessment order, assessee preferred appeal before us.

4. At the outset, the ld. AR has drawn our attention to page 382 of the paper book wherein the assessee has submitted that the software development agreement was entered by the assessee with M/s.Keypoint Technologies (UK) Limited w.e.f. 01.09.2015. However, the TPO while making the adjustment has taken into account the whole one year starting from 01.04.2015 to 31.03.2016. It was contended by the ld. AR that the above said fact was brought to the notice of the TPO/DRP at the time of assessment and appellate proceedings. However, both the authorities have failed to consider the above said aspect and made the addition in the hands of the assessee for the whole period.

4.1. The ld. AR further submitted that if this issue is remanded back to the file of TPO for verification, with a direction to restrict the addition from the date of entering into agreement, then the other grounds raised by the assessee need not be adjudicated and the assessee will not press the same.

5. On the other hand, the ld. DR fairly submitted that in the TP Study Report of the assessee, this aspect has specifically been raised by the assessee. However, for the reasons best known to the DRP, the same has not been considered.

6. We have heard the rival submissions and perused the material on record. In the present case, from the TP Report of the assessee and the TP order, it is clear that the agreement was entered between the assessee and its Associated Enterprise w.e.f. 01.09.2015 and based on that the international transaction were required to benchmark in accordance with Chapter X of the Income Tax Act. Unfortunately, the lower authorities have not considered the above aspect and has rejected the TP study and made adjustments for the whole year. Having considered the above submissions of the assessee, we are of the view that the matter is required to remit back to the file of Assessing Officer for verification whether the assessee has entered into software development agreement with its A.E. from 01.09.2015 or not. In case, the Assessing Officer / TPO on verification concludes that the adjustment was arrived on 01.09.2015 then the corresponding TP Adjustment shall be carried by the TPO / Assessing Officer from 01.09.2015 to 31.03.2016 itself. With the above said observation, the main ground raised by the assessee is allowed for statistical purposes.

7. We have not adjudicated the other grounds raised by the assessee as we are remanding back the above noted issue to the file of the TPO. Accordingly, the other grounds raised by the assessee

are dismissed being infructuous. Thus, the appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 8<sup>th</sup> May, 2024.

<b>Sd/-</b> <b>(MANJUNATHA. G.)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
--	--

Hyderabad, dated 8<sup>th</sup> May, 2024.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Key Point Technologies (India) Private Limited, Rajaprasadamu, Level 2, Wing 1B & 2, Botanical Gardens Road, Kondapur, Hyderabad – 500 084.
2	The Assistant Commissioner of Income Tax, Circle – 2(1), Hyderabad.
3	Dispute Resolution Panel (DRP), Bengaluru.
4	Director of Income Tax (IT & TP), Hyderabad.
5	Pr.CIT(Central), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File