

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

BEFORE
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / ITA-TP No. 497/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

ValueMomentum Software Vs. Asst. Commissioner of
Services Private Limited, Income Tax,
Hyderabad Circle-8(1),
[PAN No. AAACI7400H] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Ms. Tanmayee Rajkumar, AR
राजस्व द्वारा / Revenue by: Smt. L. Sunitha Rao, CIT-DR

सुनवाई की तारीख/Date of hearing: 08/05/2024
घोषणा की तारीख/Pronouncement on: 21/05/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the final assessment order dated 30/07/2022 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), in the case of ValueMomentum Software Services Private Limited, ("the assessee") for the assessment year 2018-19, under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short "the Act"), assessee filed this appeal.

2. Brief facts of the case are that the assessee is a software company. It filed its return of income for the assessment year 2018-19 on 29/11/2018, declaring total income of Rs. 12,62,08,530/-. In view of the international transactions conducted by the assessee with the Associated Enterprises (AEs), determination of Arm's Length Price (ALP) was referred to the learned Transfer Pricing Officer (learned TPO). Learned TPO proposed an adjustment in respect of software development segment to the tune of Rs. 7,55,37,404/- and also interest receivable on delayed payment at Rs. 2,06,79,781/-.

3. Aggrieved, assessee filed objections before the learned DRP. Learned DRP vide directions dated 08/06/2022 granted partial relief to the assessee reducing the adjustment on both the counts. Pursuant to the directions of the learned DRP, learned Assessing Officer passed final assessment order dated 30/07/2022, reflecting the adjustment of Rs. 5,73,28,728/- towards software development services and Rs. 1,89,57,412/- towards interest on trade receivables. Challenging both the adjustments in the final assessment order, pursuant to the directions of the learned DRP, assessee filed this appeal.

4. Subsequently, the assessee filed an application for rectification of certain mistakes and after such rectification, the Transfer Pricing adjustment in respect of SWD segment was deleted and Transfer Pricing adjustment with respect to interest on delayed receivables was re-worked out to Rs. 1,20,91,130/-. Hence, the assessee gave up the grounds relating to Software Development Segment. Therefore, what remains to be adjudicated in this appeal is only the issue relating to notional interest on delayed receivables. In this regard, learned TPO took the period of sixty

days as normal period of credit and for the subsequent period, he calculated the same at 6.90%. As a matter of fact, the learned DRP in their direction, directed the learned TPO to adopt SBI short term deposit interest rate as ALP interest rate and re-compute the adjustment to be made to the total income by applying credit period of thirty days or as per agreement or invoice. Post DRP's direction, the learned TPO/learned Assessing Officer computed the ALP interest rate by adopting SBI short term deposit interest rates.

5. Contention of the learned AR is threefold. Firstly, that outstanding receivables shall not be considered as a separate international transaction. Secondly, that since the AO is not charging interest on payables, by applying the internal CUP no interest be benchmarked in respect of interest on receivables. Thirdly, that the interest rate shall be adopted at LIBOR, since the transactions with AEs are undertaking in foreign currency and that too for the period beyond the agreed contractual period, which is 180 days. Learned AR placed reliance on the decisions of PCIT vs. Technimont (P.) Ltd., [2018] 96 taxmann.com 223, CIT vs. Cotton Naturals (I) (P.) Ltd., [2015] 55 taxmann.com 523 and CIT vs. Tata Autocomp Systems Ltd., [2015] 56 taxmann.com 206.

6. Learned DR submitted that the question as to whether or not the interest on outstanding receivables is no longer res integra. She further submitted that in the absence of any proof that the assessee allowed 180 days period for not referring to any interest, such a period cannot be taken as globally applicable. In respect of the rate of interest, she supported the orders of the authorities, stating that since the assessee is incurring such expenditure in India, the SBI short term deposit interest rate is proper.

7. We have gone through the record in the light of the submissions made on either side. Coming to the first question as to whether or not the outstanding receivables is an international transaction, it is no longer res integra. Hon'ble Bombay High Court took a view in the case of CIT Vs. Patni Computer Systems (2013) 215 Taxman 108 (Bom), on the amendment to Section 92B of the Act by way of Finance Act, 2012 with retrospective effect from 01/04/2002 that, the interest on outstanding receivables is an international transaction, and it certainly requires separate benchmarking.

8. There is no dispute that the learned DRP in the directions dated 08/06/2022 directed the learned Assessing Officer 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 by applying credit period of thirty days or as per the agreement or invoice. There is no appeal by the Revenue as to this direction in respect of application of credit period of thirty days or as per the agreement of invoices. Learned Assessing Officer, is, therefore, under the obligation to verify the invoices and apply the credit period of either thirty days or as per agreement or invoices, whichever is longer.

9. Now, coming to the issue in respect of the rate of interest, while placing reliance on the decisions reported in Tecnimont ICB House Vs. DCIT [2015] 60 taxmann.com 143 (Mumbai - Trib.), Hon'ble Bombay High Court in PCIT Vs. Tecnimont (P) Ltd., (supra) and CIT Vs. CottonNaturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi), assessee prayed that LIBOR+200 basis points may be adopted. This aspect is also no longer res integra and dealt with by the Mumbai Bench of the Tribunal in the case of Tecnimont

ICB House (supra) and confirmed by the Hon'ble Bombay High Court. CottonNaturals (I) (P.) Ltd. (supra) is also on the same aspect.

10. In the case of Tecnimont ICB House (supra), the Co-ordinate Bench of the Tribunal considered the view taken in Everst Kanto Cylinder Ltd. v. Asstt. CIT (LTU) [2014] 52 taxmann.com 395 (Mum.); PMP Auto Components (P.) Ltd. v. [IT Appeal No. 1484 (Mum.) of 2014, dated 22-8-2014]; Hinduja Global Solutions Ltd. v. Addl. CIT [2013] 145 ITD 361/35 taxmann.com 348 (Mum.); Tata Autocomp Systems Ltd. v. Asstt. CIT [2012] 52 SOT 48/21 taxmann.com 6 (Mum.); CIT v. Tata Autocomp Systems Ltd. [2015] 56 taxmann.com 206 (Bom.); Four Soft Ltd. v. Dy. CIT [2011] 142 TTJ 358 (Hyd.); and Everst Kanto Cylinder Ltd. v. Asstt. CIT (LTU) [2015] 56 taxmann.com 361 (Mum.) wherein the Hon'ble Tribunals has upheld use of LIBOR for the purpose of benchmarking loan/advance given to foreign AE's, and held that the notional interest has to be worked out for so called amount receivable from AE, by applying LIBOR interest rate for the purpose of computation of transfer pricing adjustment, if any. This view is affirmed by the Hon'ble Bombay High Court [2018] 96 taxmann.com 223 (Bombay) observing that in cases where any business enterprise is required to pay interest on delayed payment, it would examine the cost of interest and if the same is higher, then the amount of interest payable on funds obtained locally, it would take a loan from local sources and pay the amounts payable for exports and expenses within time. Therefore, extending of credit beyond the normal period of sixty days is in substance a granting of loan to an AE so as to enjoy the funds, which the AE would otherwise have to repay within the period of sixty days. On this premise the Hon'ble High Court upheld the Tribunal computing interest at LIBOR

rates as the rate prevailing in country where the loan is received/consumed by the AE by observing that the same cannot be faulted.

11. In the case of CIT Vs. CottonNaturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi) the Hon'ble Delhi High Court considered the question as to whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, observed that such a question must be answered by adopting and applying a commonsensical and pragmatic reasoning and held that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid; that the interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. It is further observed that the interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters; that the interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable; that the currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. While referring to the Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115, the Hon'ble High Court held that the PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate and the PLR rates are not

applicable to loans to be re-paid in foreign currency. Hon'ble Court accordingly held that whatever the principle that is applicable to the case of outbound loans, would be equally applicable to inbound loans given to Indian subsidiaries of foreign AEs, that the parameters cannot be different for outbound and inbound loans, and a similar reasoning applies to both inbound and outbound loans.

12. Respectfully following the judicial opinion stated supra, we are of the considered opinion that the ends of justice would be met by accepting the interest rate on similar foreign currency receivables/advances as LIBOR+200 points, by applying the credit period of thirty days or as per agreement or invoice. Accordingly, we direct the learned Assessing Officer/ learned TPO to re-compute the same. Grounds are allowed in part accordingly.

13. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this the 21st day of May, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 21/05/2024

TNMM

Copy forwarded to:

1. ValueMomentum Software Services Private Limited, Plot No. 36 & 37, ValueMomentum Towers, Financial District, Nanakramguda, Hyderabad.
2. The ACIT, Circle-8(1), 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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ASSISTANT REGISTRAR
ITAT, HYDERABAD