

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Mahavir Singh, Vice President**  
**And**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No.2261/Hyd/2017**  
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Kantar GDC India (P) Ltd (formerly TNS India (P) Ltd, Hyderabad PAN:AABCN2278F	Vs.	Dy. C. I. T. Circle 2(2) Hyderabad
(Appellant)		(Respondent)
निर्धारित द्वारा/Assessee by:	Advocate Harpreet Singh Ajmani	
राजस्व द्वारा/Revenue by:	Shri Shiva Sewak, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	15/05/2024	
घोषणा की तारीख/Pronouncement:	03/06/2024	

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal filed by the assessee is directed against the final assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 144(5) r.w.s. 144(13) of the I.T. Act, 1961 in pursuant to Dispute Resolution Panel-1 direction issued u/s 144C(5) of the I.T. Act, 1961 dated 14.9.2017 and pertains to A.Y 2013-14.

2. The assessee has raised the following grounds:

*Based on the facts and circumstances of the case and in law, the learned Assessing Officer ("AO")/ Learned Transfer Pricing Officer (TPO) and the Hon'ble Dispute Resolution Panel ('DRP') erred in:*

**TRANSFER PRICING MATTERS:**

***ALP for management fees***

1. *Determining the arm's length price in respect of payment towards management services paid to AE as 'Nil':*
2. *Determining the ALP as NIL, without appreciating that the cost towards management fees is already considered as part of the operating cost in respect of the services transactions, which have been determined to be at arm's length.*

***Interest on Receivables***

3. *Making TP adjustment by imputing interest on outstanding receivables relating to provision of services to AE's :*

a) *Not appreciating the fact that the receivables are consequential/ closely linked to the principal transactions;*

b) *Under TNMM, the working capital adjustments undertaken take into account the impact of outstanding receivables of the controlled transactions vis-à-vis the uncontrolled transactions in determining the arm's length margin;*

c) *Not appreciating the facts and circumstances surrounding the receivables and re characterising the outstanding receivables as unsecured loans advanced to AEs:*

d) *Not appreciating that the company has receivables from third parties and no interest is charged in relation to the same.*

4. *Without prejudice, not undertaking an objective economic analysis to determine the arm's length price of the outstanding receivables by:*

a) *Not appreciating that the receivables due from overseas AE's are in foreign currency and hence interest, if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans. (i.e. at USD "LIBOR plus"):*

*b) Not determining the arm's length credit period and imputing interest after allowing a credit period of 30 days without any basis, for the invoices raised relating to the services.*

**CORPORATE TAX MATTERS:**

***Disallowing management fees and trademark license fees***

5. *Without prejudice to ground no 1, the Ld. AO erred in:*

*a) TDS Credit 6. Not allowing the expenditure incurred towards management service fees and trademark license fees even though supporting documentation were provided for verification at the time of assessment proceedings;*

*b) Not appreciating the fact that Taylor Nelson Sofres Mode Private Limited, the entity which has entered into trademark license fees agreement with Taylor Nelson Sofres Plc, had merged with the Appellant and for which the trademark license fees is being paid by the Appellant,*

*c) Not appreciating the requirement to incur the management fees and trademark license fees disregarding the principles of commercial expediency.*

***TDS Credit***

*6. Allowing credit of TDS of Rs. 12,24,29,606 instead of Rs. 12,25,25,224 as claimed in the Return of income*

***Penalty:***

*7. Initiating penalty proceedings u/s 271(1)(c), 271AA, 271BA of the Act.*

*The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”*

3. Facts of the case, in brief, are that the assessee company is engaged in the business of conducting quantitative and qualitative market research and related services. The company also provides related back-office data processing

services for domestic and international clients . The appellant has filed its return of income for the A.Y 2013-14 on 29.11.2013 declaring total income at Rs.41,85,38,780/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee had entered into international transaction with its AEs and thus to determine the Arm's Length Price (ALP) of international transactions of the assessee with its AEs a reference was made to the TPO.

4. During the course of assessment proceedings, the TPO noticed that the assessee has entered into various international transactions including provisions for market research services, global/regional management allocation overhead fee, payment of trade mark license fee and provisions of I.T. enabled services & reimbursement to AEs. The assessee has benchmarked different services under different methods like TNMM. For global/regional management allocation fee and payment of trade mark, the appellant had adopted CUP method and claimed that the transaction with its AEs are at ALP. The learned TPO after considering the relevant international transactions and also taking note of various submissions made by the assessee had made TP adjustment in respect of provision of ITE services and interest on receivable from its AEs. The TPO had also made adjustment towards payment of management service fees to its AEs, however, not made any adjustment since an adjustment was

already made on aggregate basis including management fee paid to AE under TNMM method.

5. The Assessing Officer has passed the draft assessment order u/s 143(3) r.w.s. 92CA of the I.T. Act on 26.12.2016 in pursuant to TP adjustment as suggested by the TPO and has proposed TP adjustment in respect of provision for ITES Services and management fees paid to AE. The learned Assessing Officer had also proposed addition towards trade mark license fee paid by the assessee amounting to Rs.2,49,14,250/- on the ground that the assessee could not justify payment of trade mark license fee with any agreement and other evidences.

6. Being aggrieved by the draft assessment order, the assessee has filed an objection before the DRP-1 Bengaluru.

7. The learned DRP-1 vide directions issued u/s 144C(5) of the I.T. Act has upheld the TP adjustment as suggested by the TPO in respect of provision of ITES services and also management fees paid to AEs. The learned DRP had also upheld the addition proposed by the Assessing Officer towards trade mark license fees on the ground that the assessee has failed to furnish the relevant documents before the Assessing Officer and thereby failed to discharge its onus. Thereafter, the Assessing Officer has passed the final assessment order u/s 143(3) r.w.s. 144C(13) of the Act on 30.10.2017 and determined the total income of

Rs.49,50,61,867/- by making additions towards TP adjustment as suggested by the TPO and also disallowance of trade mark license fees.

8. Aggrieved by the final assessment order, the assessee is in appeal before the Tribunal.

9. The first issue that came up for our consideration from Ground No.1 & 2 of assessee's appeal is TP adjustment in respect of payment of management fees of Rs.6,81,87,820/-. The learned Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the Coordinate Bench of the Tribunal in assessee's own case for the A.Y 2018-19 where an identical issue in light of identical agreement between the assessee and its AEs has been examined and after considering the relevant facts, the issue has been set aside to the file of the Assessing Officer for fresh factual verification to ascertain the nature of services rendered by the AE and management fees paid to the AE. Therefore, he submitted that the issue may be set aside to the file of the Assessing Officer with a direction to reconsider in light of the decision of the Tribunal given for the earlier A.Ys.

10. The learned DR, on the other hand, supporting the order of the Assessing Officer and the DRP submitted that the assessee could not establish nexus between the payment of management fees and services rendered by the AE. The assessee

had also failed to prove the cost benefit analysis by filing necessary evidences and also failed to explain how management fees paid by the assessee to its AE is beneficial to its business. Since the assessee could not establish payment of management fees with necessary evidences, the TPO has rightly made adjustment and their order should be upheld.

11. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. The appellant had entered into a global/regional management service agreement with AEs for providing various services. The appellant had paid management service fee to its AE on the basis of agreement entered into by the parties and claimed that the fee has been paid for rendering various services. The TPO had made adjustment towards management fee on the ground that the assessee could not establish cost benefit from fee paid to AE and also failed to furnish necessary evidence to establish rendering of services by the AE. We find that an identical issue has been considered by the Tribunal in assessee's own case for the earlier A.Y and by considering the relevant facts, the ITAT in appellant's own case in ITA No.484/Hyd/2022 for A.Y 2018-19 has set aside the issue to the file of the Assessing Officer with a direction to re-examine the claim of the assessee in light of agreement between the parties and any other evidences that may be filed by the assessee to prove its claim. The relevant findings of the Tribunal order are as under:

*“4. Coming to the first adjustment on account of payment for global/regional management overhead allocation fee, learned AR submitted that this issue has arisen on earlier occasions also and by order dated 04/10/2021 in ITA Nos. 627/Hyd/2016 & 636/Hyd/2016 for the assessment year 2011-12 and by order dated 22/09/2022 in ITA No. 573/Hyd/2017, for the assessment year 2012-13, Co-ordinate Benches of this Tribunal considered this issue and held that the matter requires factual verification at the end of the learned Assessing Officer/learned TPO in view of the need for the assessee to file the additional documentary evidence in support of their claim. Learned AR submitted that for this year also, the same situation prevails and, therefore, this issue may be restored to the file of learned Assessing Officer/learned TPO for considering the documentary evidence to be filed by the assessee in line with the orders for the earlier assessment years. Learned DR does not dispute for this issue, to be sent to the learned Assessing Officer/learned TPO for factual verification as claimed by the assessee. Copies of the orders stated above are filed and they form part of record.*

*5. Considering the similarity of the issue and view taken in the earlier assessment years by a Co-ordinate Bench, we are of the considered opinion that the interest of justice would be met by restoring this issue to the file of the learned Assessing Officer for fresh factual verification as per law by directing the assessee to submit all the relevant material before the learned Assessing Officer. Grounds No. 4 to 12 are accordingly treated as allowed for statistical purposes.”*

12. In this view of the matter and consistent with the view taken by the Coordinate Bench in appellant's own case for the A.Y 2018-19, we are of the considered opinion that the issue needs to go back to the file of the Assessing Officer/TPO for fresh examination of the facts in light of agreement between the parties and any other evidence that may be filed by the assessee to justify payment of management fees. Thus, we set aside the order of the Assessing Officer and restore the issue to the file of the Assessing Officer/TPO.

13. The next issue that came up for our consideration from Ground Nos.3 & 4 of assessee's appeal is TP adjustment by imputing the interest on outstanding receivables relating to provision of services to its AEs. The learned Assessing Officer has made TP adjustment in respect of receivable from its AE on the ground that the assessee has allowed abnormal credit period when compared to normal credit period allowed to third parties. According to the learned TPO the argument of the assessee that once the adjustment is made towards working capital, then there is no separate adjustment is required for trade receivables is incorrect because when the appellant has provided longer credit period to its AEs when compared to 3<sup>rd</sup> parties, the same need to be benchmarked. Therefore, the learned TPO has benchmarked trade receivable by adopting 14.45% rate of interest per annum after allowing normal credit period which is on par with the credit periods allowed to 3<sup>rd</sup> party and has suggested TP adjustment of Rs.2,48,39,209/-.

14. The learned Counsel for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT Hyderabad Benches in appellant's own case for the A.Y 2018-19 in ITA No.484/Hyd/2022 for the A.Y 2018-19, wherein under identical set of facts and also by following certain judicial precedents has directed the learned Assessing Officer/TPO to adopt LIBOR+200 basis for benchmarking interest receivable on outstanding receivables from AEs. Therefore, he submitted that

the matter may be set aside to the file of the Assessing Officer/TPO with a direction to recompute the interest receivable on outstanding receivable from AE by considering the decision rendered by the Tribunal in appellant's own case for the A.Y 2018-19.

15. The learned DR, on the other hand, supporting the orders of the Assessing Officer/DRP submitted that when the appellant is providing excess credit period to its AE when compared to the credit period provided to 3<sup>rd</sup> parties, definitely the appellant is allowing benefit to AE and the same needs to be benchmarked by considering relevant parameters. The TPO and the DRP after considering the relevant facts has rightly benchmarked trade receivable from AE by adopting 14.45% rate of interest per annum and therefore, the order should be upheld.

16. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. This issue is no longer res-integra. The Coordinate Bench of the Tribunal in appellant's own case in ITA No.484/Hyd/2022 for A.Y 2018-19 has considered an identical issue and after considering the relevant facts and also by following certain judicial precedents including the decision of the Hon'ble Bombay High Court in the case of CIT vs. Cotton Naturals India (P) Ltd reported in (2015) 55 Taxmann.com 523 held that for the purpose of bench marketing the interest receivable on outstanding

receivable from AE, the LIBOR+200 basis points is the appropriate rate of interest to be considered by the Assessing Officer. The relevant findings of the Tribunal are as under:

*“9. We have considered the submissions on either side. In view of the view taken by the Hon'ble Bombay High Court in Patni Computer Systems (supra), on the amendment to Section 92B of the Act by way of Finance Act, 2012 with retrospective effect from 01/04/2002, it is not open for the assessee to agitate the question as to whether or not the interest on outstanding receivables is an international transaction requiring separate benchmarking. Only issue remains to be considered is 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. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi). Assessee prayed that LIBOR+200 basis points may be adopted. This aspect is 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. Cotton Naturals (I) (P.) Ltd. (supra) is also on the same aspect.*

*10. Insofar as the interest on receivable is concerned, Mumbai Bench of the Tribunal, vs. DCIT [2015] 60 taxmann.com 143 (Mumbai - Trib.) 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 Everest 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 than 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. Cotton Naturals (I) (P.) Ltd. [2015] 55 taxmann.com 523 (Delhi) the Hon'ble Delhi High Court considered the question - 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. We direct the learned Assessing Officer / learned TPO to adopt the same. Grounds are partly allowed accordingly."*

17. In view of the matter and by respectfully following the decision of the Coordinate Bench of the Tribunal in assessee's

own case for the A.Y 2018-19, we direct the Assessing Officer to recompute the interest receivable on outstanding trade receivable from AE by adopting LIBOR + 200 basis points as appropriate rate of interest in place of 14.45% rate adopted by the Assessing Officer.

18. The next issue that came up for our consideration from Ground No.5 of assessee's appeal is disallowance of trade mark license fee amounting to Rs.2,49,14,250/-. The learned Counsel for the assessee submitted that the learned Assessing Officer has disallowed the trade mark license fee on the ground that the appellant could not file any trade mark license agreement entered with the owner of the trade mark. But, the fact remains that the assessee has entered into an agreement with the owner of trade mark *and has* paid owner of trade mark Taylor Nelson Sofres Mode Private Limited and the said agreement was entered into for earlier A.Ys also. The learned Counsel for the assessee further submitted that an identical issue has been considered by the Tribunal for the earlier A.Y and after considering the relevant agreement between the parties has directed the Assessing Officer to verify the issue and decide the allowability of payment of trade mark license fee. Therefore, he submitted that for this A.Y also, similar direction may be given to the Assessing Officer.

19. The learned DR, on the other hand, fairly agreed that the matter may be set aside to the file of the Assessing Officer for

further verification and decide the issue in accordance with the law.

20. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee has paid the trade mark license fees in pursuant to an agreement with licensor Taylor Nelson Sofres Mode Private Limited, UK. The Assessing Officer has disallowed the trade mark license fee on the ground that the assessee could not file necessary agreement to prove the payment. We find the assessee has entered into agreement with the Licensor of trade mark and also paid similar payment for earlier A.Ys. The Tribunal has considered the issue for earlier A.Y 2011-12 in ITA No.627/Hyd/2016 and after considering the relevant agreement between the parties has set aside the issue to the file of the Assessing Officer for fresh verification of the fact. The appellant claims that the appellant for this A.Y had also paid trade mark license fee in pursuant to same agreement between the same parties. Therefore, we are of the considered opinion that the matter needs to go back to the file of the Assessing Officer for further verification in the light of the agreement between the parties and also any other evidences that may be filed by the assessee to prove and justify the payment of trademark license fees. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to re-examine the issue in the light of our discussion given herein above.

21. The next issue that came up for our consideration from Ground No.6 of the assessee's appeal is allowing short credit for TDS. The learned Counsel for the assessee submitted that the assessee has claimed TDS of Rs.12,25,25,224/- whereas the Assessing Officer has allowed TDS credit of Rs.12,24,29,606/-. We find that the credit for TDS needs to be allowed on the basis of evidences filed by the assessee including the relevant TDS certificate and credits appearing in relevant Form 26AS etc., Therefore, we direct the Assessing Officer to verify the claim of the assessee in the light of the evidences if any that may be filed by the assessee to prove its claim and allow the credit for TDS in accordance with law.

22. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 3<sup>rd</sup> June, 2024.

Sd/- <b>(MAHAVIR SINGH)</b> <b>VICE PRESIDENT</b>	Sd/- <b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 3<sup>rd</sup> June, 2024

*Vinodan/sps*

Copy to:

S.No	Addresses
1	M/s. Kantar GDC India (P) Ltd (formerly TNS India (P) Ltd, 7 <sup>th</sup> Floor, Orion Block, The V-Ascendas IT Park, Plot No.17, Software Units Layout, Madhapur, Hyderabad 500081, Telangana
2	Dy.CIT, Circle 2(2) Room No.513, 5 <sup>th</sup> Floor, Signature Towers, Kondapur, Hyderabad
3	DRP-1, Kendriya Sadan, 4 <sup>th</sup> Floor, B & C Wing, Bengaluru 560034
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*