

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

**Before Shri Manjunatha, G. Accountant Member and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.309/Hyd/2017**  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Oakton Global Technology Services Centre (India) (P) Ltd, Hyderabad PAN:AAACO8824H	Vs.	Income Tax Officer Ward 16(3) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Ravi Bhardwaj, CA	
राजस्व द्वारा / Revenue by:	Smt. TH Vijaya Lakshmi, DR	
सुनवाई की तारीख / Date of hearing:	10/06/2024	
घोषणा की तारीख / Pronouncement:	12/06/2024	

**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. 144C(13) of the I.T. Act, 1961, in pursuant to DRP-1 Bengaluru direction issued u/s 144(5) of the I.T. Act, dated 25.10.2016 and pertains to the A.Y 2012-13.

2. The assessee has raised the following grounds of appeal:

*“Based on the facts and in the circumstances of the case and in law, the Appellant respectfully Craves leave to prefer an appeal against the order passed by the Income Tax Officer, Ward 16(3), Hyderabad ("AO"), under Section 143(3) r.w.s 144C(13) of the Income-tax Act, 1961 (Act), in pursuance of the directions issued by the Dispute Resolution Panel - 1, Bengaluru (DRP), on the following grounds:*

*On the facts and in the circumstances of the case and in law, the Learned AO/ TPO/ DRP has:*

**GENERAL GROUND**

1. *Erred in assessing the total income of the Appellant at Rs 45,578,858 as against Rs 24,437,726 as computed by the Appellant in its return of income.*

**TRANSFER PRICING MATTERS**

*Rejection of transfer pricing documentation maintained and undertaking fresh search of comparables:*

- 1) *Rejection of the transfer pricing documentation maintained by the assessee in accordance with the provisions of the Act read with the Income Tax Rules, 1962 ("Rules") and undertaking a fresh economic analysis during the course of assessment proceedings and accordingly making an adjustment of Rs 77,411,952 to the international transactions of providing software services to its AE;*

**Rejection of use of multiple year data**

- 2) *Rejecting the use of multiple year data and using data for the FY 2011-12 only;*

**Use of additional filters**

- 3) *Inter-alia use of the following additional/modified filters in undertaking the comparative analysis and rejecting comparable companies having:*
  - (a) *Different financial year-end; and*

*(b) Export sales less than 75% of the sales*

**Selection of companies**

*4) Not undertaking an objective comparative analysis and inter-alia selecting the following companies without appreciating that the same are not functionally comparable to the Appellant:*

*a) Acropetal Technologies Limited (Information Technology Services Seg);*

*b) CTIL Ltd ("formerly known as Comp-U-Learn Tech India Ltd);*

*c) I-gate Global Solutions Ltd;*

*d) Larsen & Toubro Infotech Ltd;*

*e) Persistent Systems Ltd;*

*f) Thirdware Solutions Ltd; and*

*g) Zylog Systems Ltd*

**Rejection of comparables**

*5) Not undertaking an objective comparative analysis and inter-alia rejecting the following comparable companies identified by the Appellant:*

*a) CAT Technologies Ltd;*

*b) CG-VAK Software Exports Ltd (Software Services Seg); and*

*c) Thinksoft Global Services Ltd;.*

**Provision for doubtful debts**

*6) Considering the provision for doubtful debts in the comparable companies as non-operating in nature while computing the operating margins of comparables.*

**Error in margin computation**

7) Erred in not incorporating the Hon'ble DRP directions with regards to rectification of operating margins of the following companies:

- a) Larsen & Toubro Infotech Limited ("L&T");
- b) Persistent Systems Limited;
- c) RS Software (India) Ltd;
- d) Thirdware Solutions Ltd

**Adjustment for risk differences**

8) Not adjusting the net margins of the comparable companies selected taking into account the functional and risk differences between the international transaction of the Appellant and the comparable companies in accordance with the provisions of Rule 10B(1)(e) of the Rules;

**Imputing interest on outstanding receivables**

2. Erred in making TP adjustment amounting to Rs.19,53,369 by imputing interest at rate charged by SBI on short term fixed deposits on outstanding receivables relating to sale of services to Associated Enterprise's (AEs) as on March 31st 2012.

(i) Not appreciating the fact that the receivables are consequential/closely linked to the principal transaction of provision of software services and hence have been aggregated for determination of ALP under TNMM.

(ii) Not appreciating the fact that under TNMM, the impact of outstanding receivables on the working capital adjustments have already been taken into account in determining the arm's length margin hence there is no need of imputing interest on outstanding receivables again.

(iii) Not appreciating the facts and circumstances surrounding the receivables and re-characterising the outstanding receivables as unsecured loans advanced to AEs.

(iv) Not appreciating that the instant transaction is not covered in the definition of international transaction as defined u/s 92B of the Act in the facts and circumstances of the case.

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

*(i) 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").*

*(ii) Not following the directions of Hon'ble DRP to restrict the computation of notional interest till the end of financial year i.e. 31st March 2012 after allowing a credit period of 30 days.*

### **CORPORATE TAX ISSUES**

*1. Erred in not accepting the plea of the assessee that there has been no delay in remitting the employee contribution to Provident Fund before the due date of filing the income tax return and accordingly made adjustments of Rs 51,06,702.*

*2. Levy of interest u/s 234B on the TP adjustment. Levy of interest u/s 234C of the Act.*

*3. Levy of penalty under section 271AA and 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 M/s. Oakton Global Technology Services Centre (India) Pvt. Ltd is engaged in the business of software development and other related services. The assessee filed its return of income for the A.Y 2012-13 on 30.11.2012 admitting income of Rs.2,44,37,726/- under the normal provisions and book profit of Rs.2,62,49,919/- u/s 115JB of the I.T. Act, 1961. The case was selected for scrutiny and during the course of assesment proceedings, a

reference was made to the learned TPO to determine the Arms' Length Price (ALP) of international transaction of the assessee with its AEs in terms of section 92CA of the I.T. Act, 1961. During the course of TP proceedings, the learned TPO noticed that the assessee had entered into various international transactions with its AEs, including provision of software development services and reimbursement of expenses etc. The assessee has conducted TP study by adopting TNMM as the most appropriate method. The assessee has computed the OP/OC at 11.87% and claimed that the transactions with its AEs are at ALP. The TPO after considering the relevant TP documents submitted by the assessee and also taken note of various facts rejected the TP analysis and has conducted fresh TP study with final set of 13 comparables with average OP/OC of 20.05%. The assessee has objected for inclusion of certain companies including L&T Infotech Ltd and Persistent Systems Ltd on the ground that both the companies are functionally dissimilar to the assessee company and cannot be compared. The TPO ignored the objections raised by the assessee and has finally selected 13 comparables with average OP/OC of 20.05% and after allowing working capital adjustment, finally computed operating margin at 18.5%. Since the appellant margin was 11.87%, proposed TP adjustment of Rs.1,36,52,580/- to the provisions of software development services to the AEs.

4. The TPO further noted that the assessee has outstanding receivables of Rs.6,06,46,787/- from its AEs. After

considering the relevant objections raised by the assessee has treated the outstanding receivables as international transactions u/s 92B of the I.T. Act, 1961 and has computed the interest receivables on outstanding receivables from AE by adopting the SBI PLR at 14.75% and proposed addition of Rs.89,45,401/-. In pursuant to the TP adjustment as suggested by the Assessing Officer, the Assessing Officer has passed draft assessment order u/s 143(3) r.w.s. 92CA(3) on 29.02.2016 and made addition towards TP adjustment suggested by the TPO. The Assessing Officer had also made addition towards belated payment of employees contribution to PF and addition towards credit balance written back and disallowance of professional tax payable u/s 43B of the I.T. Act, 1961.

5. The assessee has filed its objection against the draft assessment order passed by the Assessing Officer before the DRP-Bengaluru. The DRP vide its direction issued u/s 144C(5) of the Act dated 25.10.2016 rejected the claim of the assessee and upheld the addition made by the Assessing Officer towards TP adjustment in respect of provision of software development services to the AE and interest receivable on receivables from AE. The DRP had also upheld the addition made towards disallowance of employee contribution to PF u/s 36(1)(va) of the I.T. Act, 1961 . Thereafter, the Assessing Officer has passed the final assessment order u/s 143(3) r.w.s. 144C(13) of the I.T. Act, 1961 on 20.12.2016 and determined the total income at Rs.4,55,78,858/-

and made addition towards transfer pricing adjustment on provision of software development services at Rs.1,36,52,580/- however, restricted the imputation of interest on receivables at Rs.19,53,369/- as per the directions of the DRP. The Assessing Officer had also made addition of Rs.51,06,702/- towards disallowance of employees contribution to PF u/s 36(1)(va) of the I.T. Act, 1961.

6. Aggrieved by the final assessment order, the assessee is in appeal before us.

7. The first issue that came up for our consideration from Ground Nos. 1 to 8 of the assessee's appeal is transfer pricing adjustment in respect of provision of software development services to AE amounting to Rs.1,36,52,580/-. Although the assessee has raised number of grounds in respect of incorrect rejection of transfer pricing study conducted by the assessee, use of additional filters, rejection of multiple year data, selection of comparables, rejection of comparable and error in margin computation, but the learned Counsel for the assessee restricted his argument in respect of Ground No.4 on exclusion of 2 comparables, namely L&T infotech Ltd and Persistent Systems Ltd. Therefore, we are proceeding to adjudicate Ground No.4 qua 2 comparables and dismiss all other grounds taken by the assessee relating to TP adjustment in respect of provision of software development services to AE.

8. The learned Counsel for the assessee submitted that the learned TPO/DRP has erred in including L&T Infotech Ltd as comparable without appreciating the fact that the above company is functionally different and also has significant intangible assets. He further submitted that L&T Infotech is engaged in development at software products as evident from the disclosures in the Annual Reports, whereas the appellant is a captive service provider to its AEs in respect of provision of software development services. He further submitted that L&T Infotech is a giant software company and its turnover is much higher than the turnover of the appellant company and on this filter itself, the L&T Infotech should be excluded. However, he fairly conceded when the Bench has posed a question whether L&T Infotech was considered by the appellant in their TP study, he has admitted that it was originally selected by the appellant as comparable to the appellant company.

9. The learned DR, on the other hand, supporting the order of the TPO/DRP submitted that it is not just proper and correct on the part of the appellant to seek exclusion of L&T Infotech Ltd, when the appellant itself has selected the said company as comparable in their TP study. Further, the assessee could not adduce any reason as to how L&T Infotech is functionally dissimilar from the assessee, except stating that its turnover is much higher than the appellant's turnover. Since it was part of TP study conducted by the assessee, the TPO/DRP

has rightly included the said company and their orders should be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, L&T Infotech Ltd is finding place in final list of comparables selected by the assessee in their TP study. Therefore, we cannot find fault with the reasons given by the TPO to include the above company in the list of final comparables. Coming back to the argument of the assessee that L&T Infotech is functionally dissimilar. In our considered opinion, the appellant is making a vague argument without assigning any reason as to how the above company is functionally different from the assessee company. Even otherwise on broad analysis of profile of the assessee company with that of L&T Infotech, in our considered opinion, both are engaged in software development services. Since the company is comparable with the assessee's profile, in our considered opinion, application of other filters are irrelevant, more so when the appellant itself has considered L&T Infotech as comparable to the assessee company. Therefore, we are of the considered opinion that there is no error in the reasons given by the learned TPO/DRP to include L&T Infotech in the final set of comparable. In so far as various case law relied upon by the assessee in support of the argument, we find that all those case laws are rendered under different context and further since the appellant itself has included the above company in their TP study,

in our considered opinion, in absence of any valid reason for exclusion, it should be treated that the assessee has taken 'U' turn, since inclusion of the said company does not suit to their convenience. Thus, we reject the argument of the learned Counsel for the assessee and upheld the reasons given by the TPO/DRP for inclusion of L&T Infotech Ltd.

11. In so far as the argument of the learned Counsel for the assessee for exclusion of Persistent Systems Ltd is concerned, once again we find that the said company is in the list of final comparable selected by the assessee in their TP study on the ground that the functions carried out by the Persistent Systems Ltd are similar to the appellant company. But, the appellant is now seeking exclusion of Persistent Systems Ltd on two grounds. First reasons given by the learned Counsel for the assessee is that the above company is functionally different and had insufficient segmental information. The argument of the learned Counsel for the assessee is fallacious for the simple reason that when the company is functionally different and insufficient information available in their annual report with regard to the comparison of data, then how and why the appellant company has selected the above company in the final list of comparable is not explained. Further, on broad analysis of the profile of the appellant company, on comparison with the Persistent Systems Ltd, in our considered opinion, both are functionally similar except for the reason that the Persistent Systems Ltd is having higher turnover

when compared to appellant company. Since the appellant itself has included the above company in the final set of comparables, the argument of the learned Counsel for the assessee that on turnover filter, this company should be excluded cannot be accepted. In so far as various case law relied upon by the assessee, although there are divergent views on this issue, but the fact remains that when the appellant is not able to offer any explanation for exclusion of Persistent Systems Ltd when it was part of their TP study and finds place in final set of comparables, in our considered opinion, the ratio relied upon by the assessee in support of their argument from certain decisions cannot be accepted. Thus, we reject the argument of the assessee and upheld the inclusion of Persistent Systems Ltd by the TPO/DRP.

12. The next issue that came up for our consideration from Ground No.2 & 3 of the assessee's appeal is imputing interest on outstanding receivables. The TPO has computed interest receivable on outstanding receivable from AE by adopting interest @ 14.75% per annum and proposed addition of Rs.89,45,401/-. The learned DRP has scaled down the interest receivable on outstanding receivables from AEs after allowing credit period of 30 days from the date of invoice and by adopting 14.75% on receivables outstanding.

13. The learned Counsel for the assessee submitted that when TNMM is adopted for benchmarking transaction of the AE,

the impact on outstanding receivables on the working capital adjustment have already been taken into account and hence, there is no need of imputing interest on outstanding receivables again. He further submitted that in case interest on receivables is held to be international transaction, then US LIBOR Plus appropriate mark up may be adopted for imputing interest on outstanding receivables.

14. The learned DR, on the other hand, supporting the order of the DRP submitted that after the amendment to section 92B, outstanding receivables from AE is treated as loan transaction and same needs to be benchmarked by adopting appropriate rate of interest. The TPO/DRP after considering the relevant facts has rightly adopted SBI PLR rate of interest for imputing the interest receivable from AE and this is further supported by the decision of the ITAT, Hyderabad Bench in the case of Aurobindo Pharma Ltd, wherein the Tribunal has adopted SBI short term deposit rate of 6% with credit period of 60 days.

15. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We find no merit in the argument of the assessee that any outstanding receivable from AEs is not an international transaction for the simple reason that after the amendment to section 92B of the Act, the definition of international transaction has been enlarged so as to include the loan transaction or any

receivables from AE. Therefore, we reject the argument of the assessee. In so far as imputing interest, in our considered opinion, the prevailing currency in which the outstanding receivable is denominated by the assessee and its AEs, is important criteria if receivable is denominated in foreign currency, then appropriate rate would be to adopt LIBOR and further a mark up for the risk and other parameters. In case the outstanding receivable is denominated and payable in Indian Rupee, then the prevailing rate of interest in India needs to be adopted for bench marking the outstanding receivables. This has been further strengthened by the safe harbor rules notified by the CBDT and as per the said rules the advance or intra group loan referred to item No.(iv) of Rule 10C, where the amount of loan is denominated in Indian rupee, then the SBI PLR rate should be adopted. Where advance or intra group loan referred to in item (iv) of Rule 10C where the amount of loan is denominated in foreign currency, then 6 months LIBOR rate with appropriate mark up should be considered. This is further fortified by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Cotton Naturals India (P) Ltd in ITA No.233/2014 dated 27<sup>th</sup> March, 2015 wherein in Para 39, the Hon'ble Delhi High Court has clearly explained the circumstances in which the different rates of interest should be adopted for bench marking receivable from AE. The Court further 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. Therefore, in our considered

opinion, the TPO/DRP is not correct in adopting SBI PLR for computing interest on interest receivables. However, the fact remains that the assessee could not furnish necessary evidence and also failed to explain these facts. Therefore, we are of the considered opinion that the matter should go back to the file of the TPO/Assessing Officer for further consideration. Thus, we set aside the issue to the file of TPO/Assessing Officer and direct the TPO to reconsider the issue in light of our discussion herein above and adopt appropriate rate of interest by considering the currency in which the outstanding receivable is denominated by the assessee and its AEs.

16. The next issue that came up for our consideration from the assessee's appeal is the addition towards disallowance of employee contribution to PF u/s 36(1)(va) r.w.s. 2(24)(x) of the I.T. Act. We find that this issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT vide civil appeal No.2833 of 2016 order dated 12th October 2022, where it has been clearly held that the belated remittance of employees contribution to PF & ESI is not deductible u/s 36(1)(va) r.w.s. 2(24)(x) of the I.T. Act, 1961 even if such contribution has been deposited on or before the due date for filing return of income u/s 139(1) of the I.T. Act, 1961. The learned DRP after considering the relevant facts has rightly disallowed the belated remittance of employees contribution and thus, we are inclined to uphold the orders of the learned

Assessing Officer/DRP and reject the grounds taken by the assessee.

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

Order pronounced in the Open Court on 12<sup>th</sup> June, 2024.

Sd/- <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 12<sup>th</sup> June, 2024

*Vinodan/sps*

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*By Order*