

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

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

आ.अपी.सं / **ITA No. 308/Hyd/2017**
(निर्धारण वर्ष / Assessment Year: 2012-13)

Macromill Research India LLP,
Hyderabad
[PAN No. ABFFM2557E]

Vs. Deputy Commissioner of
Income Tax,
Circle-16(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Darpan Kirpalani, AR

राजस्व द्वारा/Revenue by: Shri Kumar Pranav, CIT-DR
(appeared through virtual mode)

सुनवाई की तारीख/Date of hearing: 28/05/2024

घोषणा की तारीख/Pronouncement on: 28/06/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the final assessment order dated 30/01/2017 passed consequent to the directions of Hon'ble Dispute Resolution Panel, Bengaluru ("DRP"), for the assessment year 2012-13, 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. Facts of the case are that the assessee is engaged in providing information technology enabled services (ITeS) to its Associated Enterprise (AE). For the assessment year 2012-13, the assessee filed the return of income on 28/11/2012, declaring an income of Rs. 3,06,54,190/-. In view of the international transaction of provision of ITeS to the AEs, determination of Arm's Length Price (ALP) was referred to the learned Transfer Pricing Officer (learned TPO). Learned TPO by order dated 30/01/2016, suggested upward adjustment of Rs. 2,76,41,892/- in respect of ITeS and Rs. 2,18,42,606/- in respect of interest on receivables. Accordingly, the learned Assessing Officer passed the draft assessment order dated 24/03/2016. Aggrieved, assessee preferred objection before the learned DRP, and pursuant to the directions of the learned DRP dated 05/12/2016, learned Assessing Officer finalised the assessment, determining the ALP of both the transactions at Rs. 3,30,52,745/-. Hence, this appeal.

3. At the outset, learned AR submitted that the assessee is disputing the inclusion of four comparables, namely, Eclerx Services Limited, Infosys BPO Limited, TCS E-Serve Limited and Crossdomain Solutions Pvt. Ltd., on the grounds of functional dissimilarity and dis-proportionate turnover, which was in fact considered in assessee's own case in earlier assessment years and found to be not good comparables by the Co-ordinate Benches of the Tribunal. He prayed that the findings of the Co-ordinate Benches of the Tribunal are still relevant for this assessment year also and, therefore, these four comparables may be excluded from the list of comparables.

4. He also submitted that the assessee is praying for inclusion of three comparables, namely, R Systems International Limited (segmental), ACE

BPO Services Private Limited and Crystal Voxx Ltd., which was excluded by the Revenue authorities. Apart from these two issues, assessee is challenging the negative working capital adjustment and also the computation of interest on outstanding receivables.

5. Learned DR, heavily placed reliance on the orders of the Revenue authorities and submitted that in respect of the prayer of the learned AR to include three entities, the assessee failed to satisfy the Revenue authorities in respect of their functions and, therefore, they are justified in excluding the same. In respect of the interest on receivables, learned DR submitted that interest on receivables is certainly an international transaction and notional interest has to be computed.

6. We have gone through the record in the light of the submissions made on either side. As a matter of fact, the suitability of the entities, namely, Eclerx Services Limited, Infosys BPO Limited, and TCS E-Serve Limited to be compared with the assessee was considered in assessee's own case for the assessment year 2007-08 by the Co-ordinate Bench of the Tribunal and these three entities were rejected to be suitable comparables. For the assessment year 2008-09 also, E-clerx Services Ltd., and Infosys BPO Ltd., were excluded on the grounds of functional dissimilarity and huge turnover, in assessee's own case. Crossdomain Solutions Pvt. Ltd., was considered in the assessment year 2008-09 by a Co-ordinate Bench of the Tribunal and excluded on the ground of dissimilarity of the functions. So also the learned DRP excluded all the four entities for the assessment year 2010-11; whereas E-clerx Services Ltd., Infosys BPO Ltd. and TCS E-Serve Ltd., were excluded by the learned DRP for the assessment year 2011-12 also.

7. No change of facts and circumstances is either pleaded or proved to take a different view for this year and, therefore, while respectfully following the view taken for the earlier assessment years, we deem it just and proper to exclude these four comparables for this year also. Grounds are allowed accordingly.

8. Coming to the issue relating to the inclusion of the entities, R Systems International Limited (segmental) was rejected as it has different accounting year and in terms of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Mckinsey Knowledge Centre India Pvt. Ltd., in ITA No. 217/2024, decided on 27/03/2015, if the comparable is functionally same as that of tested party then same cannot be rejected merely on the ground that data for entire financial year is not available. If from the available data on record, the results for financial year can reasonably be extrapolated then the comparable cannot be excluded solely on the ground that the comparables have different financial year endings. Following this dictum respectfully, we direct the learned Assessing Officer to permit the assessee to extrapolate the results for the relevant financial year and consider the same as a good comparable.

9. Coming to ACE BPO Services Private Limited and Crystal Voxx Ltd., originally the assessee did not select these comparables. As could be seen from the order of the learned TPO at paragraph No. 3 and page No. 7. Learned DRP, however, considered these two entities and declined to include these two entities. According to the learned DRP, ACE BPO Services Private Limited was not found in the search process that was conducted and the assessee failed to substantiate that the annual report was available in the segment of ITeS. So also for Crystal Voxx Ltd., the P&L

Account shows the entire revenue under professional income and further stating that the company's operations predominantly relate to single segment, namely, BPO activity, without specifying the non-predominant segments to throw any light on the functional profile of this company.

10. Though the learned DR submitted that these two entities satisfy all the filters applied by the learned TPO and 100% of revenue is earned from BPO services, there is no material placed before us to dispel the obscurities found in the observations of the learned DRP. We, therefore, find it difficult to accept the prayer of the assessee to include these two entities. Grounds are accordingly allowed in part.

11. Now, coming to the issue relating to negative working capital adjustment covered by Ground No. 8, learned AR brought it to our notice that in assessee's own case for the assessment year 2010-11, learned DRP while following its decision in the case of Cordys Software India P. Ltd., directed that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made. On a perusal of the same, we do not find any reason not to apply the same for this assessment year also because there are no factors which suggest a contrary view for this year, are brought to our notice by the Revenue. We, therefore, direct that negative working capital adjustment to the arithmetic mean margin of the comparables shall not be made. Ground No. 8 is allowed accordingly.

12. Now coming to the issue relating to the interest on outstanding receivables, the assessee placed reliance on the decision of the Co-ordinate Benches of the Tribunal in the case of M/s. Albany Molecular Research Hyderabad Research Center Private Limited vs. DCIT in ITA No.

425/Hyd/2015 and batch, dated 26/11/2020, in support of its contention that prior to 2013-14, no TP adjustment could be made on outstanding receivables by way of imputation of notional interest as they do not fall under the category of international transaction for such year.

13. We have gone through the record and also the in the light of the submissions made on either side. In the case of PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) for the assessment year 2009-10, Hon'ble Bombay High Court held that interest chargeable on delayed recovery of export receivables from AEs should be taken at LIBOR rates for determining ALP of notional interest on delayed recovery. Respectfully following the same, we are of the considered opinion that the ends of justice would be met by accepting the interest rate at LIBOR+200 points. We direct the learned Assessing Officer / learned TPO to adopt the same. Ground is allowed in part.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this the 28th day of June, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 28/06/2024

TNMM

Copy forwarded to:

1. Macromill Research India LLP, 1st Floor, Phase 1A & 3rd Floor, Phase 1B, Cyber Pearl, Hitech City, Hyderabad.
2. The Deputy 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.

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD