आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha G. Accountant Member

आ.अपी.सं /**ITA No.487/Hyd/2022**
(निर्धारण वर्ष/Assessment Year: 2018-19)

TEK Systems Global Services (P) Ltd, Hyderabad PAN:AABCF1518Q	Vs.	Dy. C. I. T. Circle 2(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Ms. K. Amulya, CA	
राजस्व द्वारा/Revenue by::	Shri Jeevan Lal Lavidiya, CIT-DR	
सुनवाई की तारीख/Date of hearing:	29/05/2024	
घोषणा की तारीख/Pronouncement:	05/07/2024	

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 2.12.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. The Assessee raised the following grounds:

"*1. On the facts and circumstances of the case and in law, the assessment order issued under section 143(3) read with section 144C(13) read with section 144B of the Income-tax Act dated 29 July 2022 passed by the Assessment Unit, Income Tax Department (the Ld. AO) is perverse, erroneous on facts and bad in law to the extent detrimental to the Appellant.*

2. On the facts and in the circumstances of the case and in law, the Learned Dispute Resolution Panel (Ld. DRP)/ NeAC erred in upholding the action of the Learned Transfer Pricing Officer (Ld. TPO) in making an adjustment of INR 32,12,006 by levying notional interest on trade receivables arising out of provision of software consultancy and support services.

3. On the facts and in the circumstances of the case and in law, the Ld. DRP/NeAC/Ld. TPO have erred in treating the receivables due from the AE, as a separate international transaction and benchmarking the same separately.

4. On the facts and circumstances of the case and in law, Ld. DRP/NeAC/Ld. TPO have erred in re characterizing the overdue amount on receivables due from the AE as an unsecured interest-free loan.

5. On the facts and circumstances of the case and in law, Ld. DRP/NeAC/Ld. TPO failed to appreciate that cost considered for pricing the international transactions is subsumed in the credit period extended to the AE.

6. On the facts and circumstances of the case and in law, Ld. DRP/NeAC/Ld. TPO erred in disregarding the aggregation approach adopted by the Appellant wherein, the outstanding receivables have been aggregated with the primary transaction of rendering services by claiming an adjustment for differences in working capital levels between the Appellant and the comparable companies.

7. On the facts and circumstances of the case and in law, Ld. DRP/NeAC/Ld. TPO while making an adjustment towards notional interest on trade receivables have erred in considering SBI short term deposit rate for calculating the interest on foreign currency outstanding receivables.

8. Without prejudice to the above grounds, the lower authorities erred in adopting SBI prime lending rate for computing notional interest instead of applying LIBOR.

9. On the facts and in circumstances of the case and in law, the Ld. AO has erred in treating the Business Transfer Agreement (BTA') dated March 28, 2017 entered between the Appellant and Allegis Services India Private Limited as a colourable device without appreciating the fact that the Seller, i.e., Allegis Services India Private Limited has offered the consideration pursuant to the BTA to taxes.

10. On the facts and in circumstances of the case and in law, the Ld. AO has erred in treating the BTA dated March 28, 2017 entered between the Appellant and Allegis Services India Private Limited as a colourable device and thereby disallowing the depreciation on Goodwill claimed by the Appellant which arose pursuant to the BTA.

11. On the facts and in circumstances of the case and in law, the Ld. AO ignored the fact that depreciation on goodwill forms part of the operating cost while computing the operating profit of the Appellant which has been billed and recovered from its Parent company in relation to provision of software consultancy and support services.

12. On the facts and in circumstances of the case and in law, in the Computation sheet annexed to the assessment order, the Ld. AO erred in not granting the credit of tax on regular assessment paid by the Appellant amounting to INR 17,040 and appearing in Form 26AS for AY 2018-19.

13. On the facts and in the circumstances of the case and in law, the Id. AO erred in computing the interest amount of INR 470,169 as per the provision of 234C of the Act instead of INR 469,720.

14. On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying penalty under section 270A of the Act by wrongly alleging that there is under reporting of income by the Appellant.

15. The appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra and all consequential efforts relief thereto.

16. The appellant craves leave to alter, amend, rescind, modify or withdraw all or any of the grounds of appeal contained herein or add any further grounds as may be discussed necessary either before or during the hearing of the appeal".

2.1. The assessee has raised the following additional grounds :

> "*1. On the facts and circumstances of the case and in law, the ld.DRP erred in issuing DRP directions under section 144C(5) of the Act dated 14 June 2022, without a valid Documentation Identification Number ("DIN") and in contravention of the CBDT Circular No.19/2019 dated August 14, 2019.*
>
> *2. On the facts and circumstances of the case and in law, the final assessment order datd 29 July 2022 under Section 143(3) read with section 144C(13) and section 144B of the Act passed by the Assessing Officer, pursuant to the invalid directions passed by the ld.DRP under section 144C(5) of the Act, is illegal, thus, making the final assessment order bad in law, null and void and thus, liable to be quashed."*

3. Facts of the case, in brief, are that the assessee TES Systems Global Services (P) Ltd (formerly Frontline Consulting Services P Ltd) was incorporated on Nov. 23, 2007 as per the provisions of software consultancy and support services. The return of income in this case was filed on 29.11.2018 declaring an income of Rs. 24,42,26,420/-. A revised return was filed at an income of Rs. 24,18,41,090/-. The case was selected for scrutiny under CASS and notice u/s 143(2) dated 22.09.2019 was issued and served electronically to the assessee. Notice u/s 142(1) dated 09.02.2021 was also issued and served electronically. Reply to the same has been filed on 24.02.2021. As per the reason for selection under CASS there was an international transaction us 92B(2) involving T.P. Risk Parameter and hence the case was referred to the Transfer Pricing Officer by following the due

procedure, to determine the Arm's Length Price of the transactions involved. The Transfer Pricing Officer DCIACIT TP-3, Hyderabad has submitted his report and hence the assessment proceedings are now being finalised.

4. As per letter dated 22.04.2021 the assessee has desired to know whether the reference made to the TPO in its case is in conformity with the instruction No. 3 of 2016. As per this instruction the cases selected under CASS on TP Risk Parameter are to be referred to the TPO, TP Risk Parameter is the only reason of selection under CASS in this case. as is duly mentioned on the notice u/s 143(2) dated 20.09.2019 issued to the assessee. Thus, there should be no doubt in the mind of the assessee about the legitimacy of the reference made to the TPO. The TPO vide his order u/s 92CA(3) dated 31.07.2021 has determined a Transfer Pricing Adjustment of Rs. 5,82,22,320/- to arrive at Arm's Length Price of the International transactions reported by the assessee. Accordingly, this amount is being added to the returned income of the assessee. The order of the TPO is made an annexure A to this Assessment Order. Penalty proceedings u/s 270A are initiated for under reporting of income.

5. The assessee has reduced his income in the revised return by Rs. income. 23,85,335/- by reducing the education cess paid out of the business. As per reply dated 24.02.2021 the assessee has filed a very detailed explanation for the claim of

education cess as business expense. It is claimed that u/s 40(a)(i) it is only the income tax which is to be added back and cess is nowhere mentioned in it. Reliance has also been placed on some very old circulars and judgments to stress that cess is not part of tax and hence there is no reason why the same be not allowed. However, it is to be noted that all the business expenses are to be allowed only as per the provisions of the Income Tax Act contained in section 28 to 43. The assessee has not clarified under which provision this deduction is being claimed. It cannot be denied that it is not an expenditure incurred for the carrying out of the business and it is only an obligation on the part of the assesssee to be paid to the government just like the tax paid by the assessee. Hence, this expenditure of Rs. 23,85,335/- is being disallowed and penalty proceedings u/s 270A were initiated for under reporting of income.

6. As per assessment order for the A.Y. 2017-18 it is noticed that the assessee had entered into a business purchase agreement with M/s Allegis Services India Pvt. Ltd., which is a part of the same group as the assessee. In the purchase agreement a goodwill of Rs. 2,63,50,570/- was created and depreciation of Rs. 33,46,509/- was claimed on it. As per detailed discussions made in the assessment order, the Assessing Officer held that such an agreement was a colourable device to avoid the payment of taxes. As such the depreciation of Rs. 33,46,509/- claimed it on such intangible assets was disallowed. During the

current year again is noticed that the assessee has claimed a depreciation of Rs. 44,13,774|- on intangible assets of Rs. 1,76,55,094/. For the reasons as discussed above this depreciation of Rs. 44,13,774/- was being disallowed.

5. Penalty proceedings u/s 270A are initiated for under reporting of income. Accordingly, the income is computed as under:

Returned income as per revised return	-	Rs.24,18,41,090/-
Add. TPO Adjustment	-	Rs.5,88,22,320/-
Education Cess disallowed	-	Rs. 23,85,335/-
Depreciation disallowed	-	Rs. 33,46,509/-
Total	-	Rs.30,57,95,254/-

7. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

7.1 With respect to the grounds related to Document Identification Number (DIN) issue, raised by way of additional grounds, i.e., learned counsel for the assessee submitted that they wish to not press the same. On the other hand, ld. DR reported no objection. Heard. As there is no objection from the ld. DR, the grounds related to DIN issue is hereby dismissed as not pressed.

Ground nos.9 to 11

8. The learned Counsel for the assessee drew our attention to the order passed in the case of the assessee for the A.Y 2017-18 where the Tribunal after considering the written submission of the contemporaneous laws on the subject has allowed depreciation on the goodwill. In this regard, the learned AR had filed the following written submission:

> *"5.15 Without prejudice, the Appellant submits that the position of law that is more favourable to the taxpayer ought to be followed in respect of an issue having conflicting views based on the judicial precedents. The Appellant relies on the decision of the Hon'ble Supreme Court in the case of Vegetable Products Limited (88 ITR 192). Hence, it is humbly prayed that decisions of the coordinate benches of this Hon'ble Tribunal upholding the position that LIBOR + 200 bps ought to be applied, instead of the SBI deposit rates be followed, without prejudice to the above arguments.*
>
> *III. SUBMISSIONS OF THE APPELLANT - DEPRECLATION ON GOODWILL :*
> *A. Summary of the arguments presented before the Hon'ble Bench.*
> *1.The Appellant claimed depreciation on the Opening Written Down Value ("WDV") of its block of intangible assets, comprising of Goodwill recorded in its books in the preceding AY, i.e., AY 2017-18, pursuant to the acquisition of the IT Service division from Allegis Services India Private Limited ("Allegis India"/ "the Seller") in a slump sale, on a going concern basis, in terms of the business transfer agreement ("BTA") dated 28.03.2017.*
>
> *2. In the assessment proceeding concluded in the case of the Appellant for the said preceding AY, the lower authorities disallowed the depreciation claimed on the said Goodwill as a consequence of disregarding the said Goodwill.*
>
> *3. In light of the above, the disallowed the depreciation claimed in the Impugned AY, on the opening WDV of the block of intangible assets comprising of the said Goodwill. In this back around, the key submissions made during the hearing before Your Honours is summarized below:*

4. The disallowance of the said depreciation for the Impugned AY merely stems from and is consequential to the disregarding of the Goodwill in AY 2017-18. The Appellant challenged the assessment order for AY 2017-18 before this Hon'ble Tribunal, and the said issue was held in favour of the Appellant by the coordinate bench of this Hon'ble Tribunal vide order dated February 09, 2024, in ITA No. 290/HYD/2023. A copy of the said order was placed on record before Your Honours during the hearing, and the relevant paragraphs, i.e., para 11 to 14 in page 77 of the order, were read out for the consideration of the Hon'ble Bench.

5. In light of the above, it was submitted that the claim of depreciation on Goodwill for the Impugned AY is squarely covered by the said order which upheld the Goodwill recorded by the Appellant in the preceding year, pursuant to which the same was added and formed a part of Block of Intangible Assets' in AY 2017-18.
6. Hence, the depreciation claimed under section g2() of the Act, for the Impugned AY on the Opening WDV of the said block of assets, is consequential and mandatory under the provisions of the Act.

7. Reliance in this regard is placed on the following binding judicial precedents wherein it was held that, once an asset has entered into block of assets' and depreciation thereon has been allowed in the year in it which it was recorded, the WDV of such asset is to be accepted as sacrosanct in the succeeding years and depreciation must be allowed on the same:

Case law	*Citation*	*Judicial Forum*
a. HSBC Asset Management (I) (P.) Ltd	*47 taxmann.com 286*	*Bombay High Court*
b. Oswal Agro Mills Ltd	*197 Taxman 25*	*Delhi High Court*
c. Mylan Laboratories Ltd	*W.P.No.262729 of 2021*	*Telangana High Court*
d. Mylan Laboratories Ltd	*ITA-TP No.1897/Hyd/2019*	*ITAT Hyderabad*
e.Bodal Chemicals Ltd	*112 Taxmann.com 217*	*ITAT Ahmedabad*
f. Johnson Matthey Chemicals India P Ltd	*ITA No.1507/PUN/2012*	*ITAT Pune*
g. Kontoor Brands India P Ltd	*IT(TP)A 287/Bang/2021*	*ITAT Bangalore*
h. Surzlon Global Services Ltd	*ITA Nos. 67-68/AHD/2021*	*ITAT Ahmedabad*

8. In light of the above, it was humbly prayed before Your Honours that the disallowance in this regard, for the Impugned AY, be deleted. The Hon'ble Bench took note of the above submissions. The Ld. Department Representative ("Ld. DR") did not put forth any arguments against the above-discussed submissions made for the Appellant."

9. Per contra, the ld.DR relied upon the orders passed by the lower authorities.

10. We have heard the rival arguments and perused the available material on record. The Coordinate Bench in the case of the assessee in Para 13 & 14 for the A.Y 2017-18 had held as under:

> *"13. It remains an undisputed fact that the seller company is assessed to tax and the capital gains offered by it are accepted without any adjustment. Assessee placed reliance on the decision of the Hon'ble High Court of Delhi in the case of Triune Projects Private Limited 77 taxmann.com 40 and the view taken by the Co-ordinate Bench of the Bangalore Tribunal in the case of I&B Seeds Pvt. Limited., 142 taxmann.com 274 for the principle that once the department accepted the capital gains in the hands of the seller, the said transaction cannot be doubted in the hands of the purchaser. These decisions bind us.*
>
> *14. Viewing from any angle, the circumstances cited by the authorities to hold that the BTA is a colourable device created only to reduce the tax, does not hold water. We, therefore, while disagreeing with the authorities, return a finding that it is legitimate for the assessee to go for acquisition of IT services division of Allegis India and there is no material to make it a colourable device in the shape of any undue advantage derived by the assessee. We, accordingly, direct the learned Assessing Officer to allow the depreciation on goodwill".*

11. Respectfully following the decision of the Coordinate Bench, we hereby allow the grounds of appeal Nos.9 to 11 raised by the assessee.

12. Grounds of appeal 2 to 8 pertains to the notional interest on overdue receivable. In this regard the learned AR had made the following submissions:

5.2. Without prejudice, even if the said receivables are held to be an international transaction, it was submitted that the ***effect of same has already been factored and is subsumed in the entity-level benchmarking*** analysis undertaken by the Appellant under the ***TNMM Method***.

a. In other words, ***the impact of the same is already considered*** as a part of the comparison of the differences between the working-capital levels of the Appellant vis-à-vis the comparable companies, as furnished in the Appellant's TP documentation *(Refer Pg. 48 of the Paperbook)* and the response to the Ld. TPO's show-cause notice dated July 16, 2021.

b. This also shows that the Applicant's collection period of the Applicant's receivables is similar to or even better than that of most of the comparable companies, and its margin is held to be at arms' length. ***In light of this, no further adjustment is warranted.***

5.3. ***Further, the Appellant's margin from the main transaction of rendering services was held to be at arms' length and is sufficiently higher than that of the comparable companies*** *(i.e., the Appellant earned a margin of 15.33% on cost, as against the arms' length range of 9.74% to 17.77% - Refer Pg. 137 of the Paperbook)*, ***no further adjustment ought to be made*** towards delay in realization of dues arising from the said transaction.

5.4. In light of the above, ***it was submitted that no further adjustment is warranted for imputing interest on its overdue receivables in the case of the Appellant.*** *The Appellant relies on the following judicial precedents in support of above position:*

Case Law	Judicial Forum	Reference
a. Kusum Healthcare Pvt. Ltd. *[398 ITR 66]*	**Delhi HC**	*Pg. 6 of the case law compendium – Para 11 & 12*
b. Avenue Asia Advisors (P.) Ltd. [398 ITR 120]	**Delhi HC**	*Pg. 52 of the case law compendium – Para 28 & 29*
c. Hackett Group (India) Ltd. *[I.T.A NO. 2039/Hyd/2017]*	**ITAT, Hyderabad**	*Annexure 1 – Para 15 to 17*
d. Devi Sea Foods Limited *[I.T.A.No.156/ Viz/2022]*	**ITAT, Vishakapatnam**	*Annexure 1 to this synopsis – Para 5 to 7*
e. Gimpex Pvt. Ltd. *[IT(TP)A. No. 57/ Chny/2019]*	**ITAT, Chennai**	*Annexure 2 to this synopsis – Para 7 & 8*
f. Avnet India (P.) Ltd [65 taxmann.com 187]	**ITAT – Bangalore**	*Pg. 36 of the case law compendium – Para 8 & 9*
g. Goldstar Jewellery Ltd. [42 ITR(T) 112]	**ITAT – Mumbai**	*Pg. 42 of the case law compendium – Para 8*

5.5. Without prejudice, even if such addition is to be made, the said notional interest ***shall be computed by considering the 'average collection period'*** which is reflective of the position of the overall collections *(i.e., collections in advance as well as deferred)*, ***as against the selective invoice-wise approach adopted by the Ld. TPO*** where only the selective invoices where the realization

was delayed, resulting in a ***skewed position***.

5.6. In the case of the Appellant, the average receivable days in respect of its AE's invoices is 41 days *(as per the invoice listing furnished to and used by the Ld. TPO for computing the said addition, as evident from Pg. 126 to 143 of the Ld. TPO's Order dated July 27, 2022) – enclosed as Annexure 1 (Pg. no 9) to this synopsis, for ease of reference.*

5.7. In light of this, the TP addition towards interest, if any, shall be determined for the period of excess over 30 days, i.e., 11 days. *The Appellant relies on the following judicial precedents in support of above position:*

Case Law	Judicial Forum	Reference
a. Mckinsey Knowledge Centre India (P) Ltd. *[131 taxmann.com 253]*	**Delhi HC**	*Pg. 67 of the case law compendium – Para 12 to 14*
b. Adama India Private Limited [2019 (7) TMI 1316]	**ITAT, Hyderabad**	*Pg. 81 of the case law compendium – Para 8 (8.1 to 8.6)*
c. Hackett Group (India) Ltd. *[I.T.A NO. 2039/Hyd/2017]*	**ITAT, Hyderabad**	*Annexure 1 – Para 15 to 17*
d. Avnet India (P.) Ltd [65 taxmann.com 187]	**ITAT – Bangalore**	*Pg. 36 of the case law compendium – Para 8 & 9*
e. Goldstar Jewellery Ltd. [42 ITR(T) 112]	**ITAT – Mumbai**	*Pg. 42 of the case law compendium – Para 8*

5.8. Without prejudice to the above submissions that no further adjustment is warranted in this regard, the benchmarking of the said interest shall be determined based on the Comparable Uncontrolled Price Method *("CUP")*, considering the internal CUP of the Appellant's receivables from non-AEs. It is not under dispute that the Appellant provides services to non-AEs, while the major portion of its service income arises from its services rendered to the AE. This fact is evidenced from the documents available on record, *i.e., as provided in the Appellant's TP documentation, in Pg. 39, 43 & 44 of the Paperbook, and the above-mentioned response to the Ld. TPO's show-cause notice.*

5.9. In this regard, it is submitted that the Appellant submits that it does not charge any interest from its non-AEs for the delays in realization beyond a period of 30 days *(a sample copy of the statement of work is enclosed as Annexure 2 (pg.no 14) to this synopsis, for reference to the payment terms).* In light of this, considering the Appellant's non-AEs transactions as the closest uncontrolled CUP in this scenario, the Appellant submits the arms' length rate of interest in respect of the AE receivables shall also be considered at NIL.

5.10. Without prejudice to the above, the Appellant submits that the said benchmark rate ought to be pegged to the average LIBOR rate, being the commercial borrowing rate in the country where the alleged loan is availed/ consumed, as against the SBI short-term deposit rates adopted by the Ld. TPO.

5.11. It is a well-settled position of law that the arms' length price in relation to a loan availed by a foreign AE shall be benchmarked against the borrowing rates prevalent in the market of the country of the foreign AE where the loan is consumed. In light of this, the Appellant submitted that the said interest, if applicable, ***ought to be computed using the average yield of the 12-month LIBOR applicable for the Impugned AY plus 200 basis points (i.e., Avg. LIBOR + 200 bps), being the appropriate spread to cover the risks involved in an unsecured loan.***

5.12. *The Appellant relies on the following judicial precedents in support of above position:*

Case Law	Judicial Forum	Reference
a. Cotton Naturals (I) (P.) Ltd. *[55 taxmann.com 523] – while this decision was rendered in respect of a loan advanced to a foreign AE, the principal position upheld by the Hon'ble HC is squarely applicable to the present case, since the interest adjustment made by the Ld. TPO is by treating the overdue receivables akin to a loan.*	**Delhi HC**	*Pg. 95 of the case law compendium – Para 34 to 40*
b. Tecnimont Pvt. Ltd. *[96 taxmann.com 223]*	**Bombay HC**	*Pg. 99 & 100 of the case law compendium*
c. Kantar GDC India (P.) Ltd. *[152 taxmann.com 89] – this decision also forms part of the Ld. DR's submission filed on May 25, 2023*	**ITAT, Hyderabad**	*Pg. 105 of the case law compendium – Para 12*
d. iMedx Information Services (P.) Ltd. *[150 taxmann.com 217]*		*Pg. 115 of the case law compendium – Para 24*
e. GKC Projects Limited *[ITA 552/Hyd/21 & 421/Hyd/22]*		*Pg. 123 of the case law compendium – Para 20*
f. Serviont Global Solutions Ltd. *[2021 (1) TMI 124]*	**ITAT, Chennai**	*Annexure 3 (Pg. no 22) to this synopsis –Para 12 & 13*

5.13. In light of the above submissions, the Appellant humbly submits that the annual LIBOR rates are issued based on the calendar year. Hence, the rate applicable for the Impugned AY shall be determined based on the weighted average rates for the years 2017 and 2018 *(source: https://www.macrotrends.net/2515/1-year-libor-rate-historical-chart - Refer Annexure 4 (Pg. 30) to this synopsis)* as provided below:

Year	LIBOR – Average Yield [A]	Weights assigned based on the no. of months [B]	Weighted Average Rate for AY 2017-18 [C] = [A]*[B]
2017	1.79%	0.75 *(i.e., 9/12)*	1.34%
2018	2.76%	0.25 *(i.e., 3/12)*	0.69%
Weighted Average Rate for AY 2017-18			**2.03%**
Add: Interest-rate spread of 200 Bps			**2%**
LIBOR + 200 Bps			**4.03%**

5.14. ***The Ld. DR supported the orders of the lower authorities, placing reliance 'on the following decisions of the coordinate bench of this Hon'ble Tribunal,*** *all of which are factually distinguishable from the case of the Appellant and are therefore not applicable, as summarized below*:

a. **Zeta Interactive Systems (India) (P.) Ltd.** *[142 taxmann.com 202]* - This decision is ***factually distinguishable*** from that of the Appellant and is therefore not applicable to its case. *(Refer para 39 to 41)*

i. In the case of Zeta Interactive Systems, the TPO, in the light of non-cooperation of the Assessee and also no objection of the taxpayer, had computed the interest by applying interest at 12%. The said rate of 12% was reduced to 8% by the Ld. CIT (A).

ii. The Hon'ble Tribunal remarked **that the application of 8% interest, *though in strict sense, would be contrary to the principles of TP analysis as the transfer pricing officer was required to bring the comparable either internal comparable or the external comparable by applying CUP method and then fix the rate of interest on the delayed receivables from the AE.***

iii. However, it was opined that 6% shall be applied instead of the 8% interest rate with a view to give a quietus to the issue.

iv. ***In such peculiar facts,*** the applicability of LIBOR + 200 bps, as upheld by a plethora of judicial precedents, was distinguished and held as not applicable.

b. **Satyam Venture Engineering Services Private Limited** *[ITA No. 222 & 250/Hyd/2016]* - The Ld. DR's reliance on this decision is misplaced, as the same does not deal with the applicable rate of interest – the adjustment was set-aside back to the file of the Ld. TPO to consider the amounts realized in advance as well as the delayed collections for computing the adjustment *[Para 5 & 6]*.

c. **Apache Footwear India Private Limited** *[ITA-TP.No.568/Hyd/2022]* – This decision is ***factually distinguishable*** from that of the Appellant and is therefore not applicable to its case *(Refer para 14)*:

i. It was held that the Assessee was required to maintain the T.P. Study and file the same before the TPO to show that the Assessee's transactions with its A.E. were at Arms' Length, however, nothing has been brought to our notice that the Assessee has brought any comparable instance.

ii. It is in the above circumstances, the TPO had applied the banking rate as applicable to short term loans. It was opined by the Hon'ble Bench that the same is required to be corrected and instead thereof, ALP is to be computed by adding notional interest @ 6% on the receivable.

iii. The basis for the said rate of 6% is not detailed in the order. Hence, the said decision in the specific facts, cannot directly be applied to all cases.

d. **Aurobindo Pharma Limited** *[ITA No. 485/Hyd/2022]* ***and Hetero Labs Limited*** *[ITA 313/Hyd/2024]* – Both these decisions were rendered ***based on the decision in the case of Apache (Supra)***. As submitted above, the same was ***rendered in the peculiar facts of the said case,*** and the basis and rationale for the said rate of 6% is not evident from the order. Hence this decision is ***not applicable to the case of the Appellant.***

5.15. Without prejudice, the Appellant submits that the position of law that is ***more favourable to the taxpayer ought to be followed*** in respect of an issue having conflicting views based on the judicial precedents. The Appellant relies on the decision of the ***Hon'ble Supreme Court*** in the case of ***Vegetable Products Limited (88 ITR 192)***. Hence, it is humbly prayed that decisions of the coordinate benches of this Hon'ble Tribunal upholding the position that LIBOR + 200 bps ought to be applied, instead of the SBI deposit rates be followed, without prejudice to the above arguments.

13. Per contra, the learned DR relied upon the orders passed by the lower authorities and also on following decisions :

i) Infor (India) (P) Ltd vs. ACIT (ITA-TP No.228/Hyd/2022)

ii) ACIT vs. Quislex Legal Services (P) Ltd Hyderabad (ITA No.6/Hyd/2022

iii) Apache Footwear India (P) Ltd vs. ACIT (ITA-TP No.568/ Hyd/2022)

iv) Vivimed Labs Ltd vs. ACIT (ITA No.428/Hyd/2022)

v) Kantar GDC India (P) Ltd vs. DCIT (ITA No.484/Hyd/2022)

vi) Cotiviti India P Ltd vs. DCIT (ITA No.2117/Hyd/2017)

14. We have heard the rival arguments and perused the material available on recording including the written submission filed before us. At page 87 of the order passed by the TPO, the TPO has mentioned as under:

> *"2.6 Ground of objection No. 6:*
>
> *Objection No. 6(a): On the facts and circumstances of the case, and in law, learned TPO/learned AO erred in not granting working capital adjustment.*
>
> *2.6.1 Having considered the submissions, we note that Rule 10B provides for making reasonably accurate adjustment to the uncontrolled comparable transaction to eliminate the material effects of differences on the price, cost or profits. The assessee has argued for working capital adjustment contending that there exist differences in the payable and receivable position between the assessee and the comparables. However, it was not demonstrated with any data or information as to the impact of such difference on the price, cost or profits, and as to whether such difference materially affect the price, cost or profits. The 'Accounts payables' and 'Receivables' shown in the balance sheet only reflects the position as at the end of the financial year, and as such it would not enable to measure the impact of working capital on the costs, price or profits. The working capital requirements and impact depends on various factors such as business cycle, the nature of business activity with its correlation on the general economic trends, the fund and capital position of the company, its marketing strategies, its market share etc. all of which cannot be captured in the year end Receivable or Payable position. Besides, the 'Payable' and 'Receivable' position stated in the Balance Sheet may not exactly reflect as to whether it arises from*

transaction relating to Revenue Account or Capital Account as there is no uniformity in the accounting or reporting requirements, and an intermixing is generally possible. The cost ascribable to the working capital would be different to different enterprises depending on the cost of fund to the enterprise, the cost of money in the economy it operates etc. In view of these, a reasonable accurate adjustment is not possible, as the differences in working capital requirements itself is based on various assumptions. Besides, we also note that the assessee had failed to demonstrate Such material differences so as to warrant an adjustment. In these circumstances, we are inclined to uphold the TPO's reasoning and reject the assessee's claim for working capital adjustment.

Objection No. 6(b): On the facts and circumstances of the case, and in law, learned TPO / learned AO erred in not granting risk adjustment.

2.6.2 Having considered the submissions, we do not agree with the assessee's plea that it does not bear any significant risk. We are of the view that the assessee bears single customer risk, as its entire business activity and survival depends on the AEs. As per the agreement, the AE can refuse to make payment if the work delivery is not on the expected requirement. If the technology and the products developed, for which the taxpayer provides services, fails in the market, it would also directly impact the assessee as it would not get further contract. lt was argued, that as the taxpayer is remunerated at cost, it does not bear any of these risks, we do not find merit in the same, as the taxpayer also to an extent bear credit and collection risk. If the AE fails to make the payment within the credit period it will have a direct and heavy impact on the sustenance of the assessee. If the employees were not paid in time, it will affect the existence of the taxpayer itself, and its performance in the long run. In addition to the reasons given by the TPO, in the order passed under section 92CA(3) of the Act, we are of the view that as the three-year weighted average margin of the various comparables and the defined median was only considered for ALP determination, such differences on account of risks, if any gets evened out. Further, no such adjustment is permissible unless the assessee establishes that such difference has a material effect on the margin of the comparable companies and such computation could be made based on reliable data, in view

of sub-rule 10B of Income Tax Rules. In view of these, we reject the pleas raised.

2.6.3 In this regard, it is relevant to refer to para 218 of the judgment in case of Alberta Printed Circuits Ltd V Queen (2011 TCC 232) (Tax Court of Canada), wherein it was held that the fact that the sub-contractor entity is guaranteed business does not necessarily mean that the sub-contracting entity bears lesser risk because if the entity has only one customer and the customer is lost, there is a market risk. For proper appreciation, para 218 of the judgment is reproduced below:

"218. Thirdly, when one evaluates the market risks both sides were exposed to, there is no doubt both bore risks. However, Dr. Wright's Suggestion that, since the annual contracts did not address the question of who was liable for potentially poor set-up work or the warranty for such work, the Assessee took on that warranty risk is inconsistent with the evidence that adjustments were made each month for any work that had to be redone; it seems APCI's payments were reduced as a result. In addition, the evidence was that the Assessee collected its fees in advance from its customers while APCI was paid 30 or more days later, so it would seem APCI may technically have been at greater credit risk due to delay in payment, although, practically speaking, when the party that makes the payment also benefits from two-thirds of the profit from it, it becomes rather hard to suggest that there was much risk of non-payment. On the other hand, I agree with Mr. Wall's assertion that since APCI had only one customer, namely the Assessee, if APCI lost that customer, it would have been for all intents and purposes finished in business and hence bore the biggest market risk. This is what in fact happened. To suggest, as Dr. Wright did, that since APCI was handed a guaranteed market by the Assessee, resulting in high profitability from day one, seems to ignore the reality that having one's eggs all in one basket means you can be out of business at the whim of that sole customer as well. "

15. Feeling aggrieved by the draft order of the Assessing Officer/TPO, the assessee has filed its objections before the DRP and the DRP at page 51 to 63 of its order has held as under:

2.7.1 Having considered the submissions, on the issue of whether the interest on delayed receivables constitute a separate international transaction, we find that in view of the amendment inserted by way of Explanation to sec.92B, with retrospective effect from l-4-2002; the term "international transaction"' would specifically include within its ambit., "deferred payment or receivable or any other debt arising during the course of business.." and hence non-charging or under-charging of interest on the excess period of credit allowed to the AE for the realization of invoices would amount to an international transaction. This view finds support in various judicial decisions, including that of many High courts.

2.7.2 The Honourable ITAT Delhi in the case of Bechtel India Pvt Ltd (in ITA No.6530/Del/2011l6 dated 16 May 2017), deviating from its earlier order in the same case, held that deferred receivables would constitute an 'international transaction'. The relevant discussion holding 'deferred receivables' would constitute international transaction' is as under:

"21. After considering the rival submissions and perusing the relevant material on record, it is noticed as highlighted above, that the assessee argued before the TPO that interest on receivables is not an international transaction. At this stage, it to would be apposite to note that the Finance Act, 2012 has inserted Explanation section 92B with retrospective effect from 1.4.2002. Clause (i) of this Explanation, which is otherwise also for removal of doubts, gives meaning to the expression 'international transaction' in an inclusive manner. Sub-clause (c) of clause () of this Explanation, which is relevant for our purpose, provides as under:

Explanation.--For the removal of doubts, it is hereby clarified that-(i) the expression "international transaction" shall include
(a)……..
(b)……
(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;...'

22. On going through the relevant part of the Explanation inserted with retrospective effect froml.4.2002, thereby also covering the assessment year under consideration, there remains no doubt that apart from any long-term or short-term lending or borrowing. etc., or any type of advance payments or deferred payments, 'any other debt arising during the course of business' has also been expressly recognized as an international transaction. That being so, the payment/non-payment of interest or receipt/non-receipt of interest on the loans accepted or allowed in the circumstances as mentioned in this clause of the Explanation, also become international transactions, requiring the determination of their ALP. If the payment of interest is excessive or there is no or low receipt of interest, then such interest expense/income need to be brought to its ALP. The expression 'debt arising during the course of business' in common parlance encompasses, inter alia, any trading debt arising from the sale of goods or services rendered in the course of carrying on the business. Once any debt arising during the course of business has been ordained by the legislature as an international transaction, it is, but, natural that if there is any delay in the realization of such debt arising during the course of business, it is liable to be visited with the TP adjustment on account of interest income short charged or uncharged. Under such circumstances, the contention taken by the assessee before the TPO that it is not an international transaction, turns out to be bereft of any force.

23. The Hon'ble Bombay High Court in the case of CIT VS. Patni Computer Systems Ltd., (2013) 215 Taxmann 108 (Bom.) dealt, inter alia, with the following question of law:

"(c) Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?"

24. While answering the above question, the Hon'ble High Court noticed that an amendment to section 92B has been carried out by the Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside the view taken by the Tribunal, the Hon'ble High Court restored this ITA No.6530/Del/2016

issue to the file of the Tribunal for fresh decision in the light of the legislative amendment.

25. The foregoing discussion discloses that non-charging or under- charging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the ALP of such an international transaction is required to be determined."

2.7.3 We also note that even prior to the said amendment to the Finance Act 2012, the Bangalore ITAT in the case Logix Microsystems Ltd (TA No. 423/Bang/2019 dated 07.10.2010) (2010-TI -50-ITAT Bang-TP). held deferred receivables to be an international transaction. The Hon'ble ITAT also rejected the plea that the issue of deferred receivables cannot be looked into once the pricing of the service transaction have been accepted to be at ALP. The relevant observation is as under:

"As a general Rule, we agree with the learned Chartered Accountant that what is to be assessed as income is the income earned by an assessee and not the income that could have been earned by the assessee. Thus, there is a real difference between the actual and the probable. But that general rule of taxation is not as such directly applicable to the present case as the TPO was really examining the financial impact of an international transaction. What is made in an analysis of ALP is the evaluation of the said financial impact. On one side the pricing adopted by the assessee for all its international transactions with its AE is comparable and the ALP test is satisfied. To that extent in the present case, the TPO has accepted the position reported by the assessee company. But in spite of the fact that on one aspect of the transaction, the assessee has complied with the ALP parameters, on another side the assessee has parked huge amount of funds for long period with its AE in USA. Only for the reason that the pricing of international transactions has been accepted for ALP test, it is not possible to hold that the TPO should not go into this question of parking of funds with its AE in USA. If the funds are repatriated into India on ordinary within the normal period, the assessee would have been in a position to pay all its working capital loan or other loans, if any, and/or earning some income from an appropriate investment of those repatriated funds. This potential loss is definitely a factor to be considered while evaluating the financial impact of the international transactions concluded by the assessee with its

AE in USA. Therefore, we agree with the arguments of the Revenue and uphold the finding of the TPO that an additional income is to be added in the present case as part of ALP analysis."

2.7.4 The Hon'ble ITAT Delhi in the case of BT e-serve (India) Private Limited (dated 30.10.2017) (87 taxmann.com 251) held that "receivable or any other debt arising during the course of business is included in the definition of 'capital financing' as an international transaction' as per Explanation 2 to section 92B w.e.f 2002 inserted by Finance Act 2012. Even outstanding receivable partake the character of capital financing and consequently overdue outstanding is an international transaction".

2.7.5 We further note that the Hon'ble Karnataka High Court in the case of DCIT Vs. AMD India Private Limited in ITA No. 274/2018 dated 31.08.2018 (TS-993-HC 2018-Kar-TP) held that the transaction of extending extra credit period would constitute an independent international transaction. The relevant extract is as under:

"We first decide this aspect as to whether this is an independent international transaction or not. In our considered opinion, in respect of agreed credit period which is 30 days in the present case, there is no independent international transaction because the effect of the credit to that extent is factored in the agreed prices. But for extra credit, the effect of the credit to that extent cannot be factored in the agreed prices because it is not even known at the stage as to how extra credit will be allowed and therefore, that is an independent international transaction and hence, separate bench making has to be done and TP adjustment is to be made as per law. This is worth noting that by allowing extra credit in excess of agreed period of 30 days, profit shifting is there because if credit period is more, prices go up which is not done in the present case since, the prices are determined on the basis of 30 days credit period.

2.7.6 The Hon'ble Mumbai High Court in the case of Technimont Private Limited in ITA No. 487/MUM/2017 (TS-880-HC-2018-Borm-TP), held that extending credit period beyond normal period of 60 days is in substance granting of loan to an AE so as to enjoy the funds, which the AE Would otherwise have to repay within the period of 60 days. Thus, extending credit period beyond normal credit or agreed credit

period would constitute a separate international transaction. The relevant observation is as under:

"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 60 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 60 days".
2.7.7 The Hon'ble ITAT Delhi, in the case of Bridal Jewellery Mfg Co., (TS-252 ITAT-2019-Del-TP) following the decision of the Delhi High court in the case of Cotton Naturals held that the transaction of deferred receivables would constitute separate international transaction. The Tribunal rejected the plea that the interest gets subsumed in the price charged. The Hon'ble ITAT Hyderabad in the case of Open Text Technologies (TS-380-ITAT-2019-Hyd-TP) held that in view of Explanation to section 92B, the transaction of deferred receivables would constitute separate international transaction.

2.7.8 In the case of Pr. Commissioner Of Income Tax-6 Vs Mckinsev Knowledge Centre India Pvt. Ltd.(TA 82/2018) Hon'ble Delhi High court held as under:

"32. Further, to address the contention of the Assessee that early or late realization of sale/ service proceeds is incidental to the transaction of sale/ service, and that there can be no question to benchmark the interest separately, in calculating the ALP in an international transaction, we refer to the amendment brought under Explanation to section 92B of the Act vide Finance Act, 2012, w.e.f. 01.04.2012. Clause (i) of this Explanation, gives www.taxguru.in ITA 461/2017 & connected matters Page 26 of 38 meaning to the expression international transaction" in an inclusive manner. Sub-clause (c) of clause (i) of this Explanation, states as follows:

"Explanation,--For the removal of doubts, it is hereby clarified that- (i) the expression "international transaction" shall include (a)…… (b)…….(c) capital financing, including any type of long-term or short term borrowing, lending or guarantee, purchase or sale of marketable securities or any

type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;.... "

This explanation was explained in Ameriprise India Pvt. Ltd. V. ACIT (supra)as follows:

"22. On going through the relevant part of the Explanation inserted with retrospective effect from 1.4.2002, thereby also covering the assessment year under consideration, there remains no doubt that apart from any long-term or short-term lending or borrowing, etc., or any type of advance payments or deferred payments, 'any other debt arising during the course of business' has also been expressly recognized as an international transaction. Thal being so, the payment/nonpayment of interest or receipt/non-receipt of interest on the loans accepted or allowed in the circumstances as mentioned in this clause of the Explanation, also become international transactions, requiring the determination of their ALP. If the payment of interest is excessive or there is no or low receipt of interest, then such interest expense/income need to be brought to its ALP. The expression 'debt arising during the course of business' in common parlance encompasses, inter alia, any trading debt arising from the sale of goods or services rendered in the course of carrying on the business. Once any debt arising during the course of business has been ordained by the legislature as an international transaction, it is, but, natural that if there is any delay in the realization of such debt arising during the course of business, it is liable to be visited with the TP adjustment on account of interest income short charged or uncharged. Under such circumstances, the contention taken by the assessee before the TPO that it is not an international transaction, turns out to be bereft of any force.

25. The foregoing discussion discloses that non-charging or undercharging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the ALP of such an international transaction is required to be determined."

33. It was similarly held in BT e-Serv (India) Pvt. Ltd. v. ITO, Ward- 5(2) 2017(60)|TR(Trib)618(Delhi) as follows: "22...The argument that assessee is an interest free entity and does not pay any interest and therefore no interest shall be imputed in the outstanding invoices is also devoid of merit because it is not a case of allowance of interest expenditure

in the hands of the assessee but an "international transaction' to be benchmarked at arm's length. It is a case of determination of arm's length price of a transaction. Undoubtedly the receivable or any other debt arising during the course of the business is included in the definition of 'capital financing' as an 'international transaction' as per explanation 2 to section 92B of the Act w.e.f. 01.04.2002 inserted by the Finance Act 2012. Therefore, even the outstanding receivable partake the character of capital financing and consequently, overdue outstanding is an 'international transaction', The natural corollary would be of imputing interest on such 'capital financing', if same is not charged at arm's length, Therefore, we reject the contention of the assessee that outstanding receivable is not an 'international transaction' and therefore, hence, according to us, interest on it requires to be imputed."

Thus, this is a redundant contention, because as has been highlighted by the ITAT, by a plain reading of the (retrospectively applicable) amendment that introduced the Explanation to section 92B of the Act by Finance Act, 2012, it/is determinable that if there is any delay in the realization of a trading debt arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with transfer pricing adjustment on account of interest income short charged/uncharged. Hence, the assessee"s contention that the ITAT erred in concluding that charging of interest on delayed receipt of receivables is a separate international transaction which requires to benchmarked independently, is incorrect".

2.7.9 The Supreme Court of India (the Apex Court) dismissed the special leave petition (SLP) filed by McKinsey India (appellant, company) against the above Delhi High Court order in its own case.

2.7.10 in case of Bharti Airtel Services Ltd Vs. DCIT Circle-4(2) in ITA No. 161/Del/2017 Assessment Year: 2011-12 dated 06/10/2020 Hon'ble TAT, New Delhi held that outstanding debtors beyond an agreed period is a separate international transaction of providing funds to its associated enterprise for which the assessee must have been compensated in the form of interest.

2.7.11 From the above discussion, it could be seen that the deferred receivables constitute a separate international transaction and has to be benchmarked in regard to delay

beyond the reasonable credit period as per TP regulations. We also reject the plea that as the primary transaction relating to provision of services has been already benchmarked, the transaction relating to deferred receivables cannot be analysed and benchmarked separately. Given the nature of transaction, that the interest cost pertaining to the excess credit period has to be ascertained and benchmarked, we are of the view that the transaction, 'deferred receivable' cannot be benchmarked in a combined approach along with the primary transaction. Thus, the TPO has correctly treated deferred receivables beyond credit period as international transaction as per the TP regulations and has not in any manner re-characterized the transaction. Therefore, the contention that the TPO has re-characterized the transaction as loan transaction is liable to be rejected.

2.7.12 On the issue of imputing hypothetical or notional interest, it is relevant to refer to the discussion of Honourable ITAT Delhi in the case of Techbooks International Pvt Ltd, (ITA no.240/Del/2015/ AY 2010-1l/ dated 6 July 2015) which is as under:

The ld. AR Contended that the Agreement between the assessee and its AE does not provide for any charging of interest and, hence, there can be no question of any notional/hypothetical interest income as has been determined by the TPO. To support the non-charging of interest, he relied on the judgment of the Hon'ble Bombay High Court in the case of Vodafone India Services Pvt. Ltd. Vs. Union of India and Others (2014) 368 1ITR 1 (Bom.). He buttressed the same argument by relying on the judgment of the Hon'ble jurisdictional High Court dated 27.3.2015 in CIT Vs. Cotton Naturals Pvt. Ltd. (Del.).

13.3. We are not persuaded to accept this argument. The argument that the Agreement does not provide for charging. any. interest on late realization of invoice value and hence no interest can be charged, deserves the fate of dismissal under the transfer pricing provisions. Chapter X of the Act has been enshrined to determine the income from an international transaction at ALP, being in the same manner as is determined between two independent parties. It means that if an income i not charged or under charged by an Indian entity from its foreign AE, which ought to have been properly charged if the transaction had been between two independent parties, then such under charged or uncharged

income needs to be brought to tax by determining the ALP of the international transaction giving rise to such income.

13.4. Coming to other argument that no interest is chargeable under the present circumstances on the strength of the judgment in the case of Vodafone India Services Pvt. Ltd. (supra), we find that the point of controversy in that case was quite distinct. Addition on account of the excess share premium was made which, in the opinion of the TPO, should have been received by that assessee from the issuance of shares. It is on this excess share premium short received, that the amount of interest was also charged. ....The base amount on which interest was calculated by the TPO in the case of Vodafone India (supra) was itself a capital receipt not chargeable to tax and not a trading debt arising during the course of business, which issue has been discussed in the immediately succeeding paras. Instantly, we are concerned with the late realization by the assessee of trading debt from its AE which is otherwise a revenue receipt and has also been offered for taxation.

13.5. At this juncture, it is apposite to note that the Finance Act, 2012 has inserted Explanation to section 92B with retrospective effect from 1.4.2002. Clause (i) of this Explanation, which is otherwise also for removal of doubts, gives meaning to the expression 'international transaction' in an inclusive manner. Sub clause (c) of clause (i) of this Explanation, which is relevant for our purpose, provides as under:- Z Explanation.--For the removal of doubts, it is hereby clarified that:
(i) the expression "international transaction" shall include-.
(a).....
(b).....
(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;....!

13.6. On circumspection of the relevant part of the Explanation inserted with retrospective effect from 1.4.2002, thereby also covering the assessment year
under consideration, there remains no doubt that apart from any long-term or short-term lending or borrowing, etc.., or any type of advance payments or deferred payments, 'any other debt arising during the course of business' has also been expressly recognized as an international transaction.

That being so, the payment of interest or receipt of interest on the loans accepted or allowed in the circumstances as mentioned in this clause of the Explanation, also become international transactions, requiring the determination of their ALP. If the payment of interest is excessive or there is no or low receipt of interest, then Such interest expense/income needs to be brought to ALP. The expression 'debt arising during the course of business' in common parlance encompasses, inter alia, any trading debt arising from the sale of goods or services rendered in the course of carrying on the business. Once any debt arising during the course of business has been ordained by the legislature as an international transaction, it is, but, natural that if there is any delay in the realization of such debt arising during the course of business, it is liable to be visited with the TP adjustment on account of interest income short charged or uncharged.

2.7.13 Further, it is trite law that the real income theory is not applicable in the context of chapter X of the | T Act, 1961 which relates to special provision relating to arm's length price. In this regard, the Hon'ble Special Bench Kolkata in the case of Instruentarium Corporation Limited, Finland vs. Assistant Director of Income Tax, International Taxation, I, Kolkata (I.T.A. Nos.1548 and 1549/Kol/2009, Dated 15.07.2016/[20l6] 71 Taxmann.com 193 (Kol SB)) held that transfer pricing provisions, being anti-abuse provisions with the sanction of the statute, come into play in the specific situation of certain transactions with the associated enterprise. The general provisions of the law have to give way to these specific anti abuse provisions. While a notional interest income cannot indeed be brought to tax in general, the arm's length principle requires that income is computed, in certain situations, on the basis of certain assumptions which are inherently notional in nature. The relevant portion of the judgement is extracted as under:

"37. In our considered view, the commercial expediency of a loan to subsidiary is wholly irrelevant in ascertaining arm's length interest on such a loan. There is indeed no bar on anyone advancing interest free loans to anyone but when such transactions are covered by the international transactions between the associated enterprise, Section 92 of the Act mandates that the income from Such transactions is to be computed on the basis of arm's length price. The judicial precedents relied by the assessee, such as in the case of SA Builders (supra), in support of the proposition that

interest free advance to the subsidiary, in which assessee has deep interest, are justified on the grounds of commercial expediency are in the context of the question whether such a use of borrowed funds can be said to be for the purposes of business, and, accordingly, whether interest on borrowings for funds so used can be allowed as a deduction in computation of business income of the assesee. That is not the issue here, and these judicial precedents on the commercial expediency, therefore, have no relevance in computation of arm's length price of loan given to an associated enterprise. Similarly, learned counsel's contention that a notional income cannot be taxed, and reliance on Shoorjivallabhdas decision (supra) in this regard, is wholly misplaced because that proposition is in the context of tax laws in general, whereas, transfer pricing provisions, being anti abuse provisions with the sanction of the statute, come into play in the specific situation of certain transactions with the associated enterprise. The general provisions of the law have to give way to these specific anti abuse provisions. While a notional interest income cannot indeed be brought to tax in general, the arm's length principle requires that income is computed, in certain situations, on the basis of certain assumptions which are inherently notional in nature. When the legal provisions are not in parimateria, as the provision of normal |.T.A. Nos.1548 and 1549/Kol/2009 Assessment years: 2003 04 and 2004-05 computation of income and the provision of computation of income in the case of international transactions between the associated enterprises, what is held to be correct in the context of one set of legal provisions has no application in the context of the other set of legal provisions."

2.7.14 Further, it is already discussed that the Honourable Karnataka High court in the case of DCIT VS. AMD India Private Limited in ITA No. 274/2018 dated 31.08.2018 (TS-993-HC-2018-Kar-TP) held that the deferred receivables would constitute an "an independent international transaction and hence, separate bench making has to be done and TP adjustment is to be made as per law". Thus, the interest imputation is not hypothetical but as per the requirements of TP regulations. Accordingly, these pleas are rejected.

2.7.15 The next issue for consideration is the plea advanced by the assessee, that outstanding amount gets adjusted in working capital adjustment and that a separate adjustment is not required. It was contended that interest cost is

embedded in the pricing of the services and that a working capital adjustment would take into account the differences in the levels of account receivables and accounts payable vis-á-vis the comparable companies. But the assessee has not filed any factual information as to the extended credit period and its impact on the profitability or pricing of the transaction. The basic premise of the assessee's argument is that the interest cost related to delay in realization of receivable is factored in the profitability l pricing of the assessee. Such an assumption may be acceptable only to the extent of credit period agreed between the parties and cannot be extended beyond. Working capital adjustment can have no impact on determination of ALP on interest receivables from the AEs beyond the stipulated credit period. The Hon'ble ITAT Delhi in the case of Bechtel (in ITA No.6530/Del/2016 dated 16 May 2017), deviating from its earlier order in the same case, rejected the contention that interest gets subsumed in the working capital adjustment. The Honourable ITAT held that the deferred receivable transaction has to be analysed as a separate international transaction, and also observed that working capital adjustment can have no impact on the determination of ALP of international transaction relating to interest on deferred receivables. The relevant extract of the observation is as under:

19. In the case of Ameriprise (supra), it has been observed that the working capital adjustment is in respect of international transaction of rendering services to the AE. Interest for credit period allowed as per the agreement is given in the price charged for rendering of services. Whereas the non-realisation of invoice value beyond the stipulated period is a separate international transaction whose ALP is required to be determined. Granting of working capital adjustment is confined to the international transaction of rendering of services, whose ALP is separately determinable. On the other hand, the international transaction of interest receivable from its AEs for late realization of invoices beyond such stipulated period is a separate international transaction. Allowing working capital adjustment in the international transaction of rendering of services can have no impact on the determination of ALP of the international transaction of interest on receivables from AEs beyond the stipulated period allowed as per agreement. In the case of Mckinsey Knowledge Centre Pvt. Ltd. (supra), again, the Tribunal reiterated this reasoning and, inter alia, observed that:

"... In our considered opinion, whereas, the international transaction of purchase/sale of goods from/to AE contemplates comparison of the price charged/paid for such goods by impliedly including the interest for the period allowed for realization of invoices as per the terms of the agreement, the international transaction of charging interest on late recovery of trade receivable covers the period which starts with the termination of the period of credit allowed under the agreement, which is subject matter of the international transaction of purchase/sale of goods."
20. The Tribunal also explained that if an invoice is raised during the year and the proceeds are realized within the year, but, beyond the stipulated period of agreement, then, the same will not come within the working capital adjustment because working capital adjustment is made with reference to the opening and closing balances as on 1st April and 31st March. Therefore, respectfully following the decision of the Tribunal noted above, we reject the assessee's contention that the interest on delayed payment of receivables get subsumed in the working capital adjustment allowed to the assessee.

2.7.16 In view of the above reasoning we reject the plea that working capital adjustment would take into account the impact of outstanding receivables and no need to impute any interest on receivables.

2.7.17 As regards adoption of ALP interest rate, in the facts of the case, we consider that, it is pertinent to look into the opportunity costs i.e., the income that the assessee would have earned, had the assessee received the amounts in time. This has to be determined taking into account the Indian market conditions, the assessee being taken as the tested party. Factoring these aspects, we are of the view, that the SBI short term fixed deposit interest rate may be the appropriate ALP rate to measure the interest compensation in these types of transactions. In this regard, we place reliance on the principle held by the Honourable Bangalore ITAT in the case of Logix Microsystems Ltd (ITA No. 423/Bang/2019 dated 07.10.2010) (20l0-TI 1-50-1TAT Bang-TP), under similar factual circumstances, wherein it was observed, "While adopting the Indian rate, it is not proper to rely on PLR of the State Bank of India. This is because if the funds were brought in time and those funds were properly deployed, the assessee company may earn an income at the maximum rate applicable to deposits and not at the rate applicable to loans.

We find it appropriate to adopt a reasonable rate that would be available to the assessee on short-term deposits". Accordingly, the TPO is directed 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. As the SBl short term deposit rate is an index rate adopted under lndian conditions to charge interest it is not an adhoc rate as contended by the assessee. Therefore, we reject the plea of the assessee to adopt LIBOR rate at the purpose of computing interest on outstanding receivables.

2.7.18 The SBI short term deposit interest rate is as under:

"DOMESTIC TERM DEPOSIT RATES OF SBI AS ON:

"DOMESTIC TERM DEPOSIT RATES OF SBI AS ON:

Duration	18.02.2014	18.07.2014	18.09.2014	07.10.2014	01.11.2014	08.12.2014	Revised for Public w.e.f. 10.04.2015	Revised for Public w.e.f. 11.05.2015	Revised for Public w.e.f. 08.06.2015
7 days to 45 days	7.5	7	7	6.00	5.00	5.00	6.00	6.00	5.5
46 day to 90 days	7.5	7	7	7.00	7.00	7.00	6.00	6.00	5.5
91 days to 179 days	7.5	7	7	7.00	7.00	7.00	7.00	7.00	6.75
180 days to 210 days	7	7	7.25	7.25	7.25	7.25	7.25	7.25	7.25
211 days to less than 1 year	7.5	7.5	7.5	7.50	7.50	7.50	7.50	7.50	7.50
1 year to 455 days	9	9	8.75	8.75	8.75	8.50	8.25	8.00	8.00
456 days to less than 2 years	9	9	8.75	8.75	8.75	8.50	8.50	8.25	8.25
2 years to less than 3 years	9	9	8.75	8.75	8.75	8.50	8.50	8.25	8.25
3 years to less than 5 years	8.75	8.75	8.75	8.75	8.75	8.50	8.50	8.25	8.25
5 years and upto 10 years	8.5	8.5	8.5	8.50	8.50	8.25	8.25	8.00	8.00

As per the TPO order, the TPO observed that assessee has not provided the actual date of receipt of invoice amount and accordingly the TPO computed the interest @ SBI short term deposit rate considering credit period of 30 days. In the interest of principle of natural justice, the TP0 is directed to provide another opportunity to the assessee to furnish details of invoices. After procuring the necessary details, the TPO shall compute the interest @ SBI short term deposit rate considering the credit period as per the intercompany agreement or the invoice period mentioned. The assessee shall cooperate with the TPO in providing the necessary information in this regard. Accordingly, this objection is disposed off."

16. We have considered the rival arguments and perused the material available on record. In fact, the issue is whether the interest on delayed outstanding is an international transaction or not is no more res integra and the various Courts have decided the issue relying upon the definition of the transaction u/s 92B of the Act and held that it is an international transaction. Now the next question calls for the adjudication as to whether the SBI/LIBOR Plus rate is required to be applied or not. In this regard, the contention of the learned AR before us that the LIBOR+200 rate basis point is required to be applied for that purpose. The learned AR had filed written submission which are reproduced herein above. Further, she has submitted that in this case, the agreement period as mentioned by the TPO at page 87 reproduced herein above was only 30 days. However, the learned AR in the written submission has submitted that the credit period of more than 30 days may kindly be awarded.

17. We have been consistently following the applicability of the SBI rate of 6% and 60 days in the case mentioned herein above by the Revenue. Further, the co-ordinate Bench of the Tribunal in the peculiar facts of the appropriate case, has been examined the applicability of LIBOR + 200 basis points and LIBOR + 300 basis points with the credit period of 30 days.

17.1. In our view, the applicability of LIBOR+200 / LIBOR+300 basis points is a question of fact that is required to be applied

based on the credit rate of the assessee company as well as the AE. Further, once the amount is to be received by the assessee in India for the supply of goods and services to its AE and in the absence of non-receipt of the amount within the reasonable period, the assessee had been deprived from the outstanding amount and might have been approach to the financial institution for borrowing the similar amount and further, in case, the assessee having surplus amount, then the assessee as a prudent business man will keep this surplus amount in the bank and earn the interest thereon.

17.2. In case the amount is not paid by the AE and utilized by the AE for its business operations, in that eventuality, the AE is using the funds/resources of the assessee without any obligation to pay the interest or in other words, the amount is available to the AE without borrowing it from the institution or from the market and in our view, this is nothing but a mode of financing by the assessee to its AE or shifting of profit of the assessee to its AE.

17.3. In the present case, the assessee has not filed any submissions in this regard and has merely submitted that the LIBOR+200 basis points is to be applied. As mentioned hereinabove, there is no thumb rule of applicability of LIBOR plus basis points, as it depends upon various factors. The LIBOR is a London Inter-Bank Offered Rate (Libor /ˈlaɪbɔːr/) was an interest

rate average calculated from estimates submitted by the leading banks in London and this LIBOR rate has been discontinued way back in the year 2021. However, it is for the assessee to establish how the LIBOR rate can be applied in the case of the assessee. In view of the above, we deem it appropriate to remand back this issue to the file of the Assessing Officer with a direction to examine as to whether the LIBOR+200 points / LIBOR+300 basis points or SBI rate 6% is required to be applied on the facts of the present case.

17.4. No other ground has been pressed before us and accordingly, the remaining grounds raised by the assessee are dismissed.

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

Order pronounced in the Open Court on 5th July, 2024.

Sd/-	Sd/-
(MANJUNATHA G.) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 5th July, 2024
Vinodan/sps

Copy to:

S.No	Addresses
1	TEK Systems Global Services (P) Ltd Floor 22, Skyview 10, Sy.No.83/1 Hyderabad Knowledge City, Raidurgam (Panmaktha) Serilingampally Mandal, Hyderabad 500032
2	Dy.CIT Circle 2(1) Signature Towers, Kondapur Hyderabad 500084
3	DRP-1 Kendriya Sadan, 4th Floor, C Wing Bengalujru 560034
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order