

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

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

आ.अपी.सं / ITA No. 391/Hyd/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Progress Software Development Pvt. Ltd, Hyderabad
[PAN : AADCP4833A] Vs. Asstt.Commissioner of
Income Tax, Circle 16(2)
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: C.A M Sripada &
CA Ashishi Jai

राजस्व द्वारा/Revenue by: Smt. TH Vijaya Lakshmi, CIT(DR)

सुनवाई की तारीख/Date of hearing: 20/06/2024

घोषणा की तारीख/Pronouncement on: 16/07/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the assessment order dated 02/02/2014 passed by the Assessing Officer ("Ld. AO"), in the case of Progress Software Development Private Limited ("the assessee") for the assessment year 2010-11.

Brief facts of the case are that originally by common order dated 15/3/2021, a Coordinate Bench of this Tribunal disposed of ITA 391/Hyd/ 2015 also, allowing the plea of the assessee. However, subsequently by order dated 10/4/2024 in MA No. 18/Hyd/ 2022 the said order in the appeal was recalled insofar as ground No. 12 relating to the interest paid

on loan borrowed from Associated Enterprises (AEs), is concerned. That is how this matter has come up for consideration again. We heard the counsel on ground No. 12.

2. Case of the assessee is that it had taken an External Commercial Borrowing (ECB) loan during the Financial Year 2005-06 at a fixed rate of interest at 5.14% which was within the permissible all-in-cost ceiling notified by the RBI. Assessee pleads that since the borrowing in 2005-06 there have been no changes in the terms of loan and the same have been continued even during the year under consideration, and therefore, the LIBOR rate and the all in cost ceiling notified by the RBI for the financial year 2005-06 itself should be considered. Apart from this, further plea taken by the assessee is that the learned TPO accepted the interest rate at 5.14% payable on ECB for the assessment years 2008-09 and 2009-10 also. Learned AR prayed that rule of consistency may be followed for this year also, since there are no compelling circumstances for the Revenue to deviate from the same. He placed reliance on the decision of the Hon'ble High Court of Karnataka in the case of CIT vs. GE India Technology Centre (P) Ltd (2021) 125 Taxmann.com 168 (Karnataka).

3. Per contra, Ld. DR submitted that where the loans have been taken in the international markets, interest prevailing in the said markets should be adopted for benchmarking interest rates and, therefore, the 12-month USD LIBOR +2% should be adopted for benchmarking purposes and on that ground the impugned orders cannot be interfered with.

4. We have gone through the record in the light of the submissions made on either side. There is no dispute that the assessee had taken the ECB loan during the Financial Year 2005-06 at a fixed interest rate of 5.14% and such was within the permissible limits of all in cost ceiling notified by the RBI. There are no changes in the terms of loan subsequently and the same situation is prevailing in respect of the year under consideration also. For that matter in assessee's own case for the Assessment Years 2008-09

and 2009-10 the Revenue accepted the interest rate at 5.14% payable on ECB to be Arms Length Price ("ALP").

5. In GE India technology Centre private limited (supra), the Hon'ble Karnataka High Court observed that where the learned TPO accepted certain rate of interest consistently in previous assessment years as well as in subsequent assessment years, Revenue cannot reject same for the assessment year under consideration. In the circumstances we are of the considered opinion that when the assessee obtained the ECB loan at a fix rate of interest at 5.14% within the permissible all in cost ceiling notified by the RBI and the same situation is prevailing even during the year under consideration also, and more particularly having accepted the same in the assessment years 2008-09 and 2009-10, it is not open for the Ld. TPO to deviate from the same. Ground No. 12 is allowed accordingly.

6. In the result appeal of the assessee is allowed.

Order pronounced in the open court on this the 16th day of July, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 16/07/2024

Copy forwarded to:

1. Progressive Software Development (P) Ltd, 4th Floor, No.18, 1 Labs Centre, 38 Software Units Layout, Madhapur, Hyderabad 500081
2. The ACIT, Circle 16(2) Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3. DRP, Hyderabad
4. CIT (International Taxation) IT Towers, 10-2-3 AC Guards, Hyderabad 500004
5. CIT -4 Hyderabad
6. DR, ITAT, Hyderabad.
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