

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

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

आ.अपी.सं / **ITA No.446/Hyd/2015**  
(निर्धारण वर्ष / Assessment Year: 2010-11)

CAP GEMINI TECHNOLOGY SERVICES INDIA LTD(formerly IGATE Global Solutions Ltd) HYDERABAD PAN:AACCA4255G	Vs.	Income Tax Officer Ward 2(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		Advocate A.V. Raghuram
राजस्व द्वारा/Revenue by::		Shri Kumar Pranav, CIT(DR)
सुनवाई की तारीख/Date of hearing:		04/07/2024
घोषणा की तारीख/Pronouncement:		23/07/2024

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

This appeal filed by the assessee is directed against the assessment order dated 27/02/2015 passed by the Assessing Officer u/s 143(3) r.w.s. 92CA(3) & 144C of the I.T. Act, 1961.

2. The assessee has raised the following grounds:

*“In the facts and the circumstances of the case, and in law, the learned Assessing Officer erred in making various additions/disallowances as under and further the Dispute Resolution Panel erred in confirming the said additions/disallowances and observations relating thereto made by the Assessing Officer:*

*1. In concluding that the sum of Rs.3,69,58,189 is to be the arm's length compensation receivable by the assessee on account of provision of software development services to its associated enterprises, Reimbursement of expenses received from the associated enterprises & interest chargeable on the amounts due from the associate entities.*

*2. In confirming the rejection of the transfer pricing study conducted by the assessee. The transfer pricing study of the Transfer Pricing Officer resulted in selection of 19 companies as comparables and an Arm's Length Margin of 23.87% was arrived at. However, a relief was granted by the DRP to exclude Infosys Technologies Ltd. and L & T Infotech Ltd from the list of final comparables of the TPO.*

*3. In rejecting the objections of the assessee against the selection companies with extraordinary margins as comparables.*

*4. In retaining companies viz., E-Infochips Bangalore Limited and Kals Information Systems Limited as comparables which are into diversified business and has intangible assets and operates at full-fledged risk bearing entity.*

*5. In retaining company Persistent Systems Limited as comparable which in into product development apart from software services, and there is no segmental information available in respect of such services.*

*6. In retaining company Mind Tree Limited as comparable which is extensively into research and development and has its own intangible which differentiate it from the operations of the assessee company. Further, the margin of Mind Tree Limited has grown exponentially when compared to the profits of previous years.*

7. Without prejudice to any of the above grounds, the assessee submits that it is entitled to the standard deduction of (+) or (-) 5% of as per the proviso to section 92C(2) of the Income Tax Act, 1961.

8. In concluding that adjustment is required on account of interest chargeable on the amounts due from the associate entities.

(a) In not appreciating the facts obtained in the case of proposing adjustment without applying any specified method.

(b) In not appreciating that on the basis of CUP method, no interest is recoverable from AEs since no interest is charges/recovered on delayed recoveries from Non-AE's also.

(c) In not appreciating the submissions of the assessee in this regard that they are fully funded by equity and the receivables do not bear working capital risk, which may require charging of notional interest.

(d) Without prejudice to the assessee's contention that no adjustment is required on account of delayed recoveries from AE's, in adding 250 basis points to the average LIBOR rate for the purpose of computing the adjustment on account of delayed recoveries from AE's.

9. In concluding that adjustment is required on account of Reimbursement of expenses received from the associated enterprises.

(a) In considering the reimbursements of Rs.1,51,36,893 as operating revenue and as operation cost.

(b) In not appreciating that these are purely recovery of expenses from the associated enterprises at cost without any mark up.

10. While passing the final assessment order u/s. 143(3) r.w.s. 92CA(3) & 144C the learned Assessing Officer erred in setting off the profits of Rs.7,69,85,754 of Pune STPI undertaking against the loss of Rs.8,53,79,564 of the Hyderabad undertaking. Thus, no deduction u/s.10A for Pune undertaking was allowed and the business loss of

*Rs.8,53,79,564 of Hyderabad undertaking was not allowed to be carried forward.*

*11. Any other ground that may be urged at the time of hearing.”*

3. Facts of the case, in brief, are that the assessee is engaged in the business of Software Development filed its return of income for the A.Y 2010-11 on 01.10.2010 declaring total income at Rs 'NIL' and claiming deduction u/s 10A amounting to Rs.7,69,85,754/-. The case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 27.08.2011 and served on the assessee. In response to the said notice, the A.R of the assessee appeared before the Assessing Officer and furnished the requisite details as called for from time to time. Based on the material furnished by the assessee, the Assessing Officer completed the assessment and assessed the net tax demand at Rs.1,66,66,539/-.

4. The assessee has international transaction with its Associated Enterprises amounting to Rs.24,69,512,177/-. The assessee has carried out the economic analysis and TP documentation which was filed along with Audit Report in Form 3CEB. The assessee short listed 13 comparables with an arithmetic mean PLI (OP/OC) at 9.67% as against the margin of the ass at (-) 12.38%.

5. The TPO rejected the TP study of the assessee. The profit of the assessee to the cost is worked out to 1.47% (OP/OC) as per the order of the TPO. The TPO arrived at the figure after adjusting arms length margin of 23.87% by considering 18 comparables as per TPO order page No.28. The TPO rejected 9 comparables selected by the assessee and arrived at Arms Length Price on provision of SDB, Receivables and Reimbursements at Rs.21,41,97,287/- enhancing the income by Rs.4,01,10,496/-.

6. The assessee filed its objection before the DRP and challenged rejection of 9 comparables selected by it. The assessee also challenged the inclusion of (i) E-Infochips Bangalore Ltd, (ii) Kals Information Systems Ltd (Seg.), (iii) Persistent Systems Ltd, (iv) Infosys Technologies Ltd, (v) L&T Infotech Ltd and (vi) Mind Tree Ltd. The assessee also challenged the benefit of standard deduction u/s 92C(2) of the Act imputing interest on receivables and reimbursements of Rs.14,10,695/- and Rs.1,51,36,893/-.

7. The learned DRP deleted the 9 comparables selected by the assessee. The DRP in respect of comparables selected by the TPO (i) Infosys Technologies Ltd and (ii) L&T Infotech Ltd. The DRP retained 16 comparables selected by the TPO. The DRP did not interfere with the findings of the TPO on the receivables and reimbursements.

8. Aggrieved by the order of the learned TPO, the assessee filed appeal before the Tribunal broadly on four issues viz.

- (a) Inclusion of 4 comparables viz (i) E-Infochips Bangalore Ltd, (ii) Kals Information Systems Ltd (Seg.), (iii) Persistent Systems Ltd and (iv) Mindtree Ltd.
- (b) Standard deduction of (+) or (-) 5% as available u/s 92C(2) of the Act.
- (c) Imputing interest on receivables and treating reimbursements as operative revenue and cost and
- (d) Setting off of the loss of Rs.8,53,79,564 suffered by the Hyderabad Unit against the profit of Rs.7,69,85,754/- earned by the Pune Unit. The non-granting of deduction u/s 10A of the Act for Pune Unit independently and allowing carried forward of loss suffered in the Hyderabad Unit.

9. The assessee in this regard relied upon the decision of the ITAT Pune Bench in the case of ACIT vs. MSS India (P) Ltd reported in (2009) 123 TTJ 657.

10. It is the submission of the assessee that the assessee is a fully funded company and does not bear working capital risks. The assessee submitted that it neither collects interest nor was charged interests and therefore, should not be imputed with notional interest.

11. The learned Counsel for the assessee submitted that the TPO charges interest @ 12% is charged on receivables of Rs.1,17,55,791/- quantified at Rs.14,10,695/-. The DRP directed the TPO to adopt LIBOR Plus 250 basis points for charging interest on delayed receivables from its AEs.

12. The assessee reiterated its submission before the TPO and submitted that no specific method was followed in imputing interest and the assessee neither charged interest on recoverables from AE as well as from Non-AEs. In this regard, the assessee relied on the decision of Global Logic India Ltd vs. ACIT (2020) 185 ITD 795(Del.). It is the submission of the learned Counsel for the ass that the TPO treated reimbursement of Rs.1,51,36,893/- received from AEs as international transaction and considered the same as operating revenue and cost. The TPO rejected the contention of the assessee that they are purely recovery expenses from AEs and without any mark up.

13. The learned counsel for the assessee submitted that the Assessing Officer erred in setting off the profits of Rs.7,69,85,754/- of Pune STPI unit against the loss of Rs.8,53,79,564 of the Hyderabad Unit and in denying deduction u/s 10A of the Act to the Pune Unit. Further, the business loss of Hyderabad Unit of Rs.8,53,79,564 ought to have been allowed to be carried forward.

14. The learned Counsel for the assessee submitted that the issue is squarely covered by the judgment of Hon'ble Supreme Court in the case of CIT vs. Yokogawa India Ltd reported in (2017) 391 ITR 274 (S.C).

15. Aggrieved with such final assessment order assessee is in appeal before the Tribunal.

16. During the course of arguments, the ld.AR has made submissions in respect of comparables which are captured hereinbelow.

### **E-Infochips Bangalore Ltd**

17. With regard to the inclusion of E-Infochips Bangalore Ltd, the assessee submitted that the this company is having extra ordinary margin and for this purpose the assessee has drawn out attention to Page 210 of the Paper Book and further submitted that the assessee is having diverse business interest and for that he has drawn our attention to Page 217 of the Paper Book and it is also the case of the assessee that this company E-Infochips Bangalore Ltd also owns intangible.

17.1. Per contra, the learned DR drew our attention to the order of the TPO where at page 22, the learned TPO has discussed the profile of E-Infochips and after examining the E-Infochips and having reference to the P&L account and other documents, the TPO comes to the conclusion that this company is functionally comparable with that of the assessee.

18. Though it is the contention of the assessee before the TPO that this company operates in 2 segments i.e. SDS and ITES. However, the TPO rejected the above submission of the assessee and thereafter has come to the conclusion that the income from consultancy services was only Rs.5.90 crores as against total revenue of Rs.43.05 crores. The income from consultancy services was only 13.72% and the income from the software services was more than 75% of the total revenue. In our view, the TPO was correct in rejecting the contention of the assessee and has rightly, retained the comparable. Thus, this ground is dismissed.

### **Kals Infosys**

19. The next comparable i.e. Kals Infosys, the learned AR drew our attention to page 238 of the Paper Book and it was the contention of the assessee that this company is having extra ordinary margin and is also into diverse business.

20. Per contra, the learned DR relied on the order passed by the TPO/DRP.

21. We have examined the record and documents referred to by the assessee. In this regard, the TPO at page 27 of its order had discussed the extracts of the annual reports and recorded that this company is into the development of computer software which is similar to the functions performed by the assessee and therefore, the functions performed by the company are broadly comparable to that of the assessee. In view of the above, we do not find any reason to exclude this company as a comparable. We may point out that merely because this company has earned some extra ordinary profit is no reason to exclude this company as long as this company continues to be comparable with that of the assessee on FAR analysis. In view of the above, we do not find any reason to exclude this company and accordingly, the ground raised by the assessee is dismissed.

**Persistent Systems Ltd.**

22. With regard to Persistent Systems Ltd, the submission of the assessee that this company is a product development company and our attention was drawn to page 260 of the paper

book. It was submitted that the assessee being into product development, therefore, this company is required to be excluded from the list of comparables.

23. Per contra, the learned DR drew our attention to the order passed by the lower authorities and supported the orders passed by the TPO/DRP.

24. We have gone through page 260 of the Paper Book wherein it was sought to convince that this company is into product development wherein the income of the assessee was shown from sale of software services and products. If we look into schedule 11 where bifurcation of sales and software services and products are mentioned, then we find that this company does not have any inventories showing software products and though this company has classified as sales of software products. In view of the above, it is difficult to accept the contention of the assessee that this company is into product development. Further, if we look at the revenue recognition, then only we find that the Revenue the assessee is recognizing the income from software services only and there is no reference of making development of any products. For that purpose, we may rely upon the revenue recognition at column H which is to the following effect:

*“H. Revenue recognition:*

*Revenue is recognised to the extent it is probable that the economic benefits will flow to the Company and the revenue can, be reliably measured.*

*i. Income from software services*

*Revenue from time and material engagements is recognised on time basis in accordance with the terms of the contracts with customers.*

*In case of fixed price contracts, revenue is recognised based on the milestones achieved as specified in the contracts, on proportionate completion basis.*

*Revenue from licensing of products is recognised on delivery of products.*

*Revenue from royalty is recognised on sale of products in accordance with the terms of the relevant agreements.*

*Revenue from maintenance contracts are recognised on a pro-rata basis over the period of the contract as and when services are rendered.*

*Unbilled revenue represents revenue recognised in relation to work done on time and material projects and fixed price projects until the balance sheet date for which billing has not taken place. Unearned revenue represents the billing in respect of contracts for which the revenue is not recognised.*

*ii. Interest*

*Revenue from interest is recognised on a time proportion basis taking into account the amount outstanding and the rate applicable.*

*iii. Dividends*

*Revenue from dividend is recognised when the shareholder’s right to receive Payment is established by the balance sheet date. Dividend from subsidiaries is recognised even if such dividend is declared after the balance sheet date but pertains to period on or before the date of Balance Sheet as per the requirement of Schedule VI of the Companies Act, 1956.”*

25. In view of the above, we do not agree with the contention of the assessee and accordingly, this ground is also dismissed.

### **Mindtree**

26. In this regard, the learned AR submitted that Mindtree company owns intangible and our attention was drawn to the page No.376 of the paper book. Further, the learned AR drew our attention to page 360 to 366 and 374 of the paper book to show that the profit of this company has increased exponentially.

27. Per contra, the learned DR relied upon the order of the TPO and the DRP.

28. We have gone through the record and considered the documents filed before us. In this regard, it is relevant to mention here that the assessee has not objected to the inclusion of this company in the list of comparable selected by the TPO while filing objection in response to the show cause notice before the TPO. Before the learned TPO, the assessee has only raised objection with respect to E-Infochips Bangalore Ltd, Infosys Technologies Ltd, Kal Infosystems Ltd, L&T Infotech Ltd. No objection has been filed by the assessee with respect to any other comparables. In

our view, once the assessee has forgone his right to raise objection before the TPO, it is not permissible in law to raise the objection before the Tribunal at this stage. Further, we are of the opinion that merely because the company is owning intangible and earned reasonable margin cannot be a ground to exclude this company if on FAR analysis, it is found to be otherwise comparable with that of the assessee. In view of the above, we do not find any reason to exclude this company. Accordingly, this ground is also dismissed.

**Interest on Trade Receivables:**

29. In this regard, the learned DRP has directed the TPO to adopt LIBOR Plus 250 basis points for charging interest on delayed payments. Our attention was drawn to Para 12 of the DRP order. The Id.AR has submitted that LIBOR Plus 200 basis points may be taken for the purposes of computation of notional interest on trade receivables.

30. Per contra, Id.DR relied upon the orders of the authorities below and submitted that the Tribunal in the case of Satyam Ventures Engineering Services Vs. ACIT, has decided the issue in favour of the Revenue and held that the SBI rate of 6% would be reasonable rate for benchmarking interest on outstanding receivables.

31. We have heard the rival arguments and perused the material available on record. Admittedly, this Tribunal in the case of Satyam Ventures Engineering Services Vs. ACIT, Zeta Interactive Systems India Private Limited, M/s. Apache Footware India Private Limited etc has decided the issue in favour of the Revenue by holding that the SBI bank rate of 6% with a credit period of 60 days is to be applied for determining the interest on delayed trade receivables. However, in the present case, the Revenue is not in appeal against the finding given by the DRP and the assessee cannot be worsened off in the appeal filed by the assessee.

32. Further, if we look into the order passed by the DRP where the DRP has decided the issue in favour of the assessee by restricting the interest to be paid at LIBOR Plus 250-point basis, though the said decision of the DRP is contrary to the decision of the Tribunal. However, since the Revenue is not in appeal against the decision of the DRP, therefore, we deem it proper to dismiss the ground raised by the assessee and sustain the order passed by the DRP by reiterating that the delay on trade receivable will be restricted to LIBOR Plus 250 point basis, as there is no appeal of the Revenue and the assessee cannot be worsened off in its appeal by following the decision in the case of Satyam Ventures (Supra). Thus, this ground of appeal is dismissed.

### **Set off of losses**

33. Finally, the last ground raised by the assessee is with regard to the set off of losses of the Hyderabad Unit against the profit of the Pune Unit. In this regard the submission of the assessee is as under:

*“11. The Assessing Officer erred in setting off the profits of Rs.7,69,85,754/- of Pune STPI unit against the loss of Rs.8,53,79,564 of the Hyderabad Unit, and in denying deduction under section 10A of the Act to the Pune Unit. Further, the business loss of Hyderabad unit of Rs.8,53,79,564/- ought to have been allowed to be carried forward.*

*This issue has not been raised by the appellant before the DRP. However, since the same is also arising from the final assessment order, the same is raised for the kind consideration of the Hon’ble ITAT.*

*The issue is squarely covered by the judgment of Hon’ble Supreme Court in the case of CIT Vs. Yokogawa India Limited reported in (2017) 391 ITR 274 (SC).”*

34. Per contra, the learned DR had submitted that the assessee has not raised this issue before the DRP and neither any additional ground has been raised before us.

35. We have heard the arguments of both side and perused the material available on record. Since in the present case, the assessee has not raised ground before the learned DRP and therefore, the grievance of the assessee is not emanating from the final assessment order or from the direction of the DRP.

Therefore, the assessee is not entitled to raise this ground before the Tribunal now. We may also point out that no deduction u/s 10A or 10B or under Chapter VI A is allowable in respect of income by which the total income of the assessee is enhanced after computation of income under sub section 92C, in view of 1<sup>st</sup> proviso to Section 92C(4) of the Act.

36. In view of the above, we do not find any merit in this ground raised by the assessee. Accordingly, this ground is dismissed.

37. In the result, appeal raised by the assessee is dismissed.

Order pronounced in the Open Court on 23<sup>rd</sup> July, 2024.

Sd/- <b>(MANJUNATHA, G.) ACCOUNTANT MEMBER</b>	Sd/- <b>(LALIET KUMAR) JUDICIAL MEMBER</b>
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Hyderabad, dated 23<sup>rd</sup> July, 2024

**Vinodan/sps**

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*By Order*