

**आयकर अपीलिय अधिकरण, हैदराबाद**

**पीठ**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

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

आ.अपी.सं / **ITA No.2215/Hyd/2018**  
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. S & P Capital IQ (India) Private Limited, Hyderabad. PAN:AACCS8657G	<b>Vs.</b>	Dy. Commissioner of Income Tax, Circle 3(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri K.C.Devdas, Mrudulata and Shri Kranthi, C.As	
राजस्व द्वारा / Revenue by::	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख / Date of hearing:	29/07/2024	
घोषणा की तारीख / Pronouncement:	07/08/2024	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M:**

This appeal is filed by M/s. S&P Capital IQ (India) Private Limited, Hyderabad ("the assessee") against the final assessment order of learned Assessing Officer ("Ld. AO") dated 29/10/2018 passed as per the directions of Dispute Resolution Panel, Bengaluru ("Ld. DRP"), for the A.Y. 2014-15, u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ("the Act").

2. Facts of the case are that the assessee is engaged in providing information technology enabled services ("ITeS") to its Associated Enterprise (AE). For the A.Y. 2014-15, the assessee filed the return of income on 28/11/2014, declaring an income of Rs. 72,98,75,440/-. In view of the international transaction of provision of ITeS to the AEs, determination of Arm's Length Price ("ALP") was referred to the learned Transfer Pricing Officer ("Ld. TPO"). Ld. TPO by order dated 31/10/2017, suggested upward adjustment of Rs. 66,99,26,671/- in respect of ITeS and Rs. 4,16,08,479/- in respect of interest on receivables. Accordingly, the Ld. AO passed the draft assessment order dated 08/12/2017. Aggrieved, assessee preferred objection before the Ld. DRP, and pursuant to the directions of the Ld. DRP dated 18/10/2018, Ld. AO finalised the assessment, determining the ALP of both the transactions at Rs. 76,39,54,331/-. Hence, this appeal.

3. At the outset, Ld. AR submitted that the assessee is disputing the inclusion of four comparables, namely, Infosys BPO Limited, Eclerx Services Limited, Crossdomain Solutions Pvt. Ltd. And MPS Limited, on the grounds of functional dissimilarity. These comparables except MPS Limited were in fact considered in assessee's own case in earlier assessment years and found to be not good comparables by the Co-ordinate Benches of the Tribunal. He prayed that the findings of the Co-ordinate Benches of the Tribunal are still relevant for this assessment year also. He also submitted that although MPS Limited have not been tested earlier in their own case, is not comparable on functional

dissimilarity. Therefore, he requested that, these comparables may be excluded from the list of comparables.

4. He also submitted that the assessee is praying for inclusion of two comparables, namely, ACE BPO Services Private Limited and Informed Technologies India Limited, which was excluded by the Revenue authorities. Apart from these two issues, assessee is challenging the computation of interest on outstanding receivables.

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

6. We have gone through the record in the light of the submissions made on either side. As a matter of fact, the suitability of the entity, namely, Infosys BPO Limited, to be compared with the assessee was considered, the company had been excluded in assessee's own case by DRP in A.Y. 2010-11, AY 2011-12 and AY 2013-14 and also had been excluded in assessee's own case by Hon'ble ITAT in A.Y. 2009-10. Further Hon'ble ITAT also upheld exclusion of the company by the DRP in A.Y. 2011-12.

7. So far as, the suitability of the entity, namely, Eclerx Services Limited, to be compared with the assessee was considered, the company had been excluded

in assessee's own case by DRP in A.Y. 2010-11 and A.Y.2011-12. Further, the company had been excluded in assessee's own case by Hon'ble ITAT in A.Y. 2007-08 and A.Y. 2009-10.

8. So far as, the suitability of the entity, namely, Crossdomain Solutions Pvt. Ltd., to be compared with the assessee was considered, the company had been excluded in assessee's own case by Hon'ble ITAT in A.Y. 2011-12 citing functional dissimilarity.

9. No change of facts and circumstances is either pleaded or proved to take a different view for this year and, therefore, while respectfully following the view taken by the co-ordinate benches of ITAT for the earlier assessment years, we deem it just and proper to exclude these three comparables for this year also. Accordingly we direct the Ld. AO to exclude these three comparables from the list for the purpose of working of profit level indicator("PLI").

10. So far as, the suitability of the entity, namely, MPS Limited, to be compared with the assessee was considered, the Ld. AR submitted that MPS Limited is functionally dissimilar to the assessee . The Ld. AR brought our attention to the relevant portion of the annual report of MPS Limited (placed at Page no. 21 of the Annual Report , Page No. 377 of Annual Report Compilation Vol I), and submitted that MPS Limited is engaged in the business of e-publishing services, therefore it is not functionally comparable to the assessee. Hence he requested the bench to exclude MPS Limited from the list of comparable. With regard to the facts that no objection was raised by the assessee before the

revenue authority, the Ld. AR submitted that during the preparation of Transfer Pricing Documentation, no relevant information was available to do a qualitative analysis.. Relying on the decision of ITAT Special Bench in the case of Quark Systems (P) Ltd. [2010] 38 SOT 307 (CHD.) (SB), the Ld. AR further submitted that, the assessee is not estoppel from pointing out that MPS Limited has wrongly been taken as comparable in the Transfer Pricing Documentation, wherein it was held as under :

*"38. Accordingly, on facts and circumstances of the case, we hold that taxpayer is not estopped from pointing out that Datamatics has wrongly been taken as comparable. While admitting additional ground of appeal raised by the assessee to require us to consider whether or not Datamatics should be included in the comparable, we make no comments on merit except observing that assessee from record has shown its prima facie case. Further claim may be examined by the Assessing Officer. This course we adopt as objection to the inclusion of Datamatics as comparable has been raised now and not before revenue authorities. Therefore, we deem it fit and proper to remit the matter to the file of the Assessing Officer for consideration of claim of the taxpayer and make a de novo adjudication of the arm's length price after providing reasonable opportunity of being heard to the assessee. We order accordingly"*

11. Per contra the Ld. DR rely on the decisions of Ld. AO and opposed to exclude MPS Limited from the list of comparable.

12. We have heard the rival contention and also gone through the records in the light of the submissions made on either side. There is no dispute about the facts that no objection was raised by the assessee before the revenue authorities regarding the exclusion of MPS Limited from the list of comparable. The claim has been raised before us for the first time. Respectfully relying on the decision of coordinate special bench of Tribunal in the case of Quark Systems (P) Ltd. (Supra), we hold that taxpayer is not estopped from pointing out that MPS Limited had

wrongly been taken as comparable. While admitting the fresh claim of the assessee to include MPS Limited included in the comparable, we make no comments on merit except observing that assessee from record has shown its prima facie case. Further the claim may be examined by the Ld. AO. Therefore, we deem it fit and proper to remit the matter to the file of the Ld. AO for consideration of the claim of the assessee and make a de novo adjudication after providing reasonable opportunity of being heard to the assessee.

13. Coming to the issue relating to the inclusion of the entities, ACE BPO Services Private Limited, which was rejected by the revenue authority due the reason that, sufficient financial information to verify related party transaction("RPT") were not available. The Ld. AR submitted that, the annual report of ACE BPO Services Limited is now available on the public domain and contended that ACE BPO Services Limited should be considered as the comparable company as it is engaged in ITeS and passes all the filter applied by the Ld. TPO. Considering their submissions, we are of the considered opinion that, if the comparable is functionally same as that of tested party then same cannot be rejected. Hence we direct the Ld. AO to verify the RPT from the available data and to permit the assessee to demonstrate the RPT from the available data and consider the same as a good comparable.

14. Coming to the issue relating to the inclusion of the entities, Informed Technologies Limited, which was rejected by the revenue authority due the reason that, this company was functionally different and had high non current investment. The Ld. AR submitted that, Informed Technologies Limited passes all

the filters applied by the Ld. TPO and functionally comparable to the assessee. To justify their contention, the Ld. AR placed their reliance on the decision of co-ordinate bench of ITAT in case of Infor (India) Pvt. Ltd. (ITA No. 161 and 2307 /Hyd/2018) wherein it was held as under:

*"29. After hearing both the parties, we find that Informed Technologies Ltd is into ITeS and its entire revenue is from BPO services only. Therefore, factual findings of the DRP that it falls income of less than 75% of the total operating revenue filter is not correct. Therefore, we remand this issue of comparability of this company to the TPO for reconsideration of the issue by considering only the operating revenue."*

Respectfully following the decision of co-ordinate bench of ITAT in case of Infor (India) Pvt. Ltd(Supra), we direct the Ld. AO to verify afresh and consider Informed Technologies Limited as a good comparable after providing an opportunity of being heard to the assessee.

15. Now coming to the issue relating to the interest on outstanding receivables, the assessee placed reliance on the decision of the Co-ordinate Benche of the Tribunal in the case of M/s. Albany Molecular Research Hyderabad Research Center Private Limited vs. DCIT in ITA No. 425/Hyd/2015 and batch, dated 26/11/2020, in support of its contention that prior to 2013-14, no TP adjustment could be made on outstanding receivables by way of imputation of notional interest as they do not fall under the category of international transaction for such year.

16. We have heard the rival contention and also gone through the records in the light of the submissions made on either side. In the case of PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) for the A.Y. 2009-10,

Hon'ble Bombay High Court held that interest chargeable on delayed recovery of export receivables from AEs should be taken at LIBOR rates for determining ALP of notional interest on delayed recovery. Respectfully following the same, we are of the considered opinion that the ends of justice would be met by accepting the interest rate at LIBOR+200 points. We direct the Ld. AO to adopt the same. Therefore this ground of the assessee is allowed in part.

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

**Pronounced in the open court on 7<sup>th</sup> Aug., 2024**

Sd/-

**(K. NARAIMHA CHARY)**  
JUDICIAL MEMBER

Sd/-

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 07.08.2024.

\* Reddy gp

**Copy of the Order forwarded to :**

1.	M/s. S & P Capital IQ (India) Private Limited, Survey No.12P, Kondapur Village, Serilingampally Mandal, R.R. District, Hyderabad-500081
2.	DCIT, Circle 3(1), Hyderabad.
3.	Dispute Resolution Panel (DRP), Bengaluru.
4.	Director of Income Tax, HQs, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

BY ORDER,