

**आयकर अपीलीय 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.1861/Hyd/2017  
(निर्धारण वर्ष/Assessment Year:2013-14)

M/s. GD Research Centre Pvt. Ltd., Hyderabad. PAN:AACCD4075B	<b>Vs.</b>	Dy. Commissioner of Income Tax, Circle-2(2), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Aliasgar Rampurawala, C.A.	
राजस्व द्वारा/Revenue by:	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख/Date of hearing:	05/08/2024	
घोषणा की तारीख/Pronouncement:	16/08/2024	

**आदेश/ORDER**

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

This appeal is filed by M/s. GD Research Centre Pvt. Ltd., Hyderabad (“the assessee”), feeling aggrieved by the final assessment order passed by the Learned Assessing Officer (“Ld. AO”) as per the direction of Dispute Resolution Panel, Bengaluru (“Ld. DRP”) on 25.09.2017 for the A.Y. 2013-14 u/s.143(3) r.w.s. 144C(5) r.w.s. 144C(13) of the Income Tax Act, 1961 (“the Act”).

2. The facts of the case are that the assessee was engaged in providing contract Information Technology enabled Services (ITeS) to its Associated Enterprises (AEs), which includes business support services, data creation, content development in relation to content search and analysis provided by the AE to the various business units within the group, under an agreement for provision of ITeS was entered into between the assessee and

its AE. For the A.Y. 2013-14, the assessee filed the return of income on 22.11.2013 declaring total income of Rs.8,14,37,300/-. 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 31/10/2016, suggested upward adjustment of Rs.3,68,91,000/- in respect of ITeS and Rs.2,77,52,911/- in respect of interest on receivables. Accordingly, the Ld. AO passed the draft assessment order dated 25/11/2016. Aggrieved, assessee preferred objection before the Ld. DRP, and pursuant to the directions of the Ld. DRP dated 18/08/2017, Ld. AO finalised the assessment, determining the ALP of both the transactions at Rs.4,82,41,484/-. Hence, this appeal.

3. At the outset, Ld. AR submitted that the assessee is disputing the inclusion of two comparables, namely, a) Capgemini Business Services (I) Limited ("Capgemini") on the ground of functional dissimilarity and related party transactions ("RPT") filter and b) Harton Communications Limited ("Harton") on the ground of functional dissimilarity and having exceptional performance. Therefore, he requested that, these comparables may be excluded from the list of comparables.

4. The Ld. AR also submitted that besides the issue raised for exclusion of two comparable, the assessee is also challenging the computation of interest on outstanding receivables.

5. As a matter of fact, the suitability of the entity, namely, Capgemini, to be compared with the assessee was considered, the Ld. AR submitted that Capgemini is not comparable to the assessee on the ground of functional dissimilarity and related party transactions ("RPT") filter. As far as functional dissimilarity is concerned the Ld. AR brought our attention

to page no. 999 & 1004 of PB and submitted that Capgemini is engaged in provision of BPO services, Cloud services, Business Information Management services and other IT related services. He also submits that Capgemini is engaged in providing diversified services, offering business process management services, assurance and compliance services and therefore Capgemini is functionally dissimilar to the activities performed by the Assessee.

5.1 With regards to RPT filter the Ld. AR brought our attention to page no.5 of PB and submitted that the RPT in the case of Capgemini is 82.32 % and therefore Capgemini is not a suitable comparable on this count also.

6. Per Contra the Ld.DR placed reliance on the decision of the revenue authorities and submitted that as far as the objection of the assessee with regard to RPT filter is concerned, it was not raised by the assessee before the revenue authorities and hence it should not be accepted.

7. We have heard the rival contention and also gone through the records in the light of the submissions made on either side. On perusal of page no. 999 & 1004 of PB it is clear that Capgemini is engaged in provision of BPO services, Cloud services, Business Information Management services, diversified services, assurance and compliance services and other IT related services. Hence Capgemini is engaged in high end KPO services, however the assessee is engaged in contract ITeS. In this view of the matter, we are of the considered opinion that Capgemini is functionally dissimilar to the activities performed by the assessee. Therefore, without commenting on the objection of the assessee with regards to RPT filter, we direct the Ld.AO to exclude Capgemini from the list of comparable. Accordingly the

ground of the assessee is allowed as far as exclusion of Capgemini from the list of comparable is concerned.

8. As a matter of fact, the suitability of the entity, namely, Harton, to be compared with the assessee was considered, the Ld. AR submitted that Harton is not comparable to the assessee on the ground of functional dissimilarity and exceptional filter. As far as functional dissimilarity is concerned the Ld. AR brought our attention to page no. 1016 of PB and submitted that Harton is engaged in offshore business process (medical billing and health care) and also made an entry into real estate business and has started business activities in the field of real estate. Hence the Ld. AR submitted that the Harton is engaged in diversified activities and the segmental information is also not available. Therefore he submitted that, Harton is functionally dissimilar to the activities performed by the Assessee.

8.1 With regards to exceptional performance the Ld. AR brought our attention to page no.6 of PB and submitted that the profit % of the Harton for the F.Y. 2010-11 to 2014-15 were -97.56%, -37.15%,25.05%,-2.52% and -26.02% respectively. He further submitted that the year under consideration was an exceptional year as far as profit % is concerned i.e. only in the year under consideration Harton had a positive profit % and in other four years it had negative profit %. Therefore the result of the year under consideration was of exceptional nature and hence Harton is not a suitable comparable on this count also.

9. Per Contra the Ld.DR placed reliance on the decision of the revenue authorities and submitted that as far as the objection of the assessee with regard to exceptional filter is concerned, it is obvious that the business result may fluctuate in every year and hence this argument of the assessee should not be accepted.

10. We have heard the rival contention and also gone through the records in the light of the submissions made on either side. On perusal of page no. 1016 of PB, it is clear that Harton is engaged in offshore business process (medical billing and health care) and also made an entry into real estate business and had started business activities in the field of real estate. Hence Harton is engaged in diversified activities, however the assessee is engaged in contract ITeS. Further the segmental informations in case of Harton are also not available. In this view of the matter, we are of the considered opinion that Harton is functionally dissimilar to the activities performed by the assessee. Therefore, without commenting on the objection of the assessee with regards to exceptional performance, we direct the Ld.AO to exclude Harton from the list of comparable. Accordingly the ground of the assessee is allowed as far as exclusion of Harton from the list of comparable is concerned.

11. Now coming to the issue relating to the interest on outstanding receivables, the assessee submitted that the Revenue Authority have calculated interest by adopting SBI short term fixed deposit rates. He further submitted that interest have been calculated on the outstanding receivables for the period which is beyond 31/03/2013. The Ld. AR relying on the decision of Hon'ble Bombay High Court in the case of PCIT vs. Tecnimont (P.) Ltd. [2018] 96 taxmann.com 223 (Bombay) for the A.Y. 2009-10, in which the hon'ble 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, requested the bench to adopt LIBOR rates in their case also. He further submitted that the interest on the receivables should be calculated up to the end of the year i.e. 31/03/2013.

12. Per Contra the Ld.DR placed reliance on the decision of the revenue authorities and requested the bench to uphold the decision of revenue authorities.

13. 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 direct the Ld. AO to calculate the interest at LIBOR+200 points. We direct the Ld. AO to calculate the interest for the period restricted upto 31/03/2013. Therefore this ground of the assessee is allowed .

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

**Order pronounced in the open Court on 16th Aug., 2024.**

Sd/-

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

Sd/-

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 16.08.2024.

\* Reddy gp

**Copy of the Order forwarded to :**

1.	M/s. GD Research Centre Private Limited, 3 <sup>rd</sup> Floor, MSR Block, Krishe Sapphire Building, Madhapur, Hyderabad-500 081
2.	DCIT, Circle 2(2), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,