

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

**BEFORE SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.201/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. KH Facility Solutions India Private Limited, Hyderabad. PAN:AAECM2448K	<b>Vs.</b>	Dy. Commissioner of Income Tax, Circle 5(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri H. Srinivasulu, Advocate	
राजस्व द्वारा / Revenue by::	Ms. N. Swapna, CIT-DR	
सुनवाई की तारीख / Date of hearing:	04.09.2024	
घोषणा की तारीख / Pronouncement:	09.09.2024	

**आदेश/ORDER**

**PER SHRI PRAKASH CHAND YADAV, J.M:**

The present appeal of the assessee is arising from the order of Assessing Officer Dt.24.03.2023 having DIN No. ITBA/ASSESSMENT/S/ 143(3) / 2021-22/1041462568(1) and relates to Assessment Year 2017-18.

2. The facts leading to the filing of present appeal are that the assessee company filed its return of income for the impugned

assessment year on 30.11.2017 declaring a loss of Rs. 38,71,38,819/-.

The same was processed u/s.143(1) of the Income Tax Act, 1961 (“the Act”) and thereafter the case of the assessee was selected for scrutiny. Since there was international transaction entered into by the assessee the Assessing Officer made a reference to the Transfer Pricing Officer (“TPO”) for determining the Arm’s Length Price (“ALP”) of the international transaction vide reference dt.29.09.2019.

Accordingly, the TPO conducted the TP Study and computed the ALP after making below mentioned adjustments vide order dt.29.01.2020.

Aggrieved with the order of TPO, the assessee filed its objections before the Learned Dispute Resolution Panel (“Ld. DRP”) and contended that the TPO has erred in making following adjustments:

Technical support services	Rs.5,54,59,189/-
Regional support services	Rs.1,27,31,520/-
Interest paid to AE	Rs.74,87,056/-
Interest on delayed receivables	Rs.12,23,461.35
Total adjustment	Rs.7,69,01,226/-

The Ld. DRP vide its order dt.25.05.2021 partly allowed the claim of the assessee and hence restricted the adjustment to the tune of Rs.1,62,50,970/-.

3. Aggrieved with the order of Ld. DRP, the assessee preferred appeal before us and has raised the following grounds of appeal:

*“ 1. The order of the Ld. Assessing Officer pursuant to the directions of the Dispute Resolution Panel, is bad in law and liable to be set aside.*

*2. The Ld. AO/Hon'ble DRP erred in law and on facts in making an upward transfer pricing adjustment of INR 9,05,670 by treating the ALP of the international transaction involving receipt of technical services for project bidding support by the Assessee from its Associated Entity as Nil.*

*3. The Ld. AO/Hon'ble DRP erred in law and on facts in making an upward transfer pricing adjustment of INR 1,27,31,520/- by treating the ALP of the international transaction involving receipt of regional support services by the Assessee from its Associated Entity as Nil.*

*4. The Ld. AO/Hon'ble DRP erred in law and on facts by treating the outstanding receivables from its Associated Enterprises as separate international transaction.*

*5. The Ld. AO/Hon'ble DRP erred in not considering the fact that the Assessee does not charge interest from its non-AE customers for delay in realisation of invoices and therefore computation of notional interest on outstanding receivables from Associated Entities is not warranted.*

*6. Without prejudice to the grounds of appeal no. 4 and 5, the Ld. AO/ Hon'ble DRP erred in adopting SBI's short-term deposit interest rates for computation of notional interest on outstanding receivables denominated in foreign currencies.*

*7. The Ld. AO/Hon'ble DRP erred in law and on facts in making an addition of INR 1,59,016 as interest income where such income has already been offered to tax as operating income.*

*8. The Ld. AO/Hon'ble DRP erred in law and on facts in disallowing the write-off of employee advances of INR 10,95,202.*

*9. The Ld. AO/Hon'ble DRP erred in law and on facts in disallowing the write-off of security deposits of INR 11,73,530.*

*10. The Ld. AO has erred in initiating penalty proceedings under section 270A of the Income-Tax Act, 1961.*

*The Appellant craves leave, to add, amend, modify, rescind, supplement, or alter any or all of the Grounds stated herein above, either before or at the time of hearing of this appeal.”*

4. Ground No.1 is general in nature and hence not adjudicated specifically.

5. In ground number-2, the main contention of the learned counsel for the assessee is that the assessee has paid an amount of Rs.9,05,670/- on account of technical services received from the Associated Enterprise (AE). The assessee explained that these services were received for the purpose of project bidding. However, the assessee could not be able to fetch that project for which the biddings were made and hence the TPO as well as Ld. DRP took a view of the assessee failed to derive any benefit from the technical services and hence the expenses attributable to these bids are not allowable to the assessee. The learned counsel for the assessee contended that it is settled principle of law that genuineness and

necessity of the expenses on account commercial expediency is to be seen, irrespective of the fact that whether such expenses has provided any benefit or not. The learned counsel for the assessee further argued that the TPO cannot sit in the armchair of the assessee for taking the business decisions.

6. On behalf of the revenue, the Ld. DR relied upon the orders of authorities below.

7. We have considered the rival submissions and perused the material available on record. We observe that so far as the receipt of services by the assessee from its AE, vis-à-vis the project bidding is concerned, there is no quarrel between the assessee and the Department. However, the main averment of the Department is that the assessee failed to derive any benefit from these expenses. We find force in the argument of the learned counsel for the assessee that the TPO is not empowered to apply benefit test while computing the ALP. It is settled position of law as held by apex court in SA builder reported in 288 ITR 1(SC) that revenue authorities could not sit in the Arm Chair of the an assessee, when it comes to the business decisions to be taken by an assessee in the interest of business. A reference can be made to the following judgements:

i) Baush and Lomb Eye Care India Pvt. Ltd. 381 ITR 227  
(Del)

ii) Whirlpool India 381 ITR 154 (Del)

iii) Sony Ericsson Mobile Communication India Pvt. Ltd.  
374 ITR 118 (Del)

iv) Ekal Applications 345 ITR 241 (Del)

8. In view of the above we allow the claim of the assessee and direct the AO to delete the addition. (Ground number 2 decided accordingly).

9. Ground No.3 relates to regional support services provided by the assessee. The learned counsel for the assessee has filed certain additional evidences to rebut the observations made by the Ld. DRP. The learned counsel for the assessee has filed a compilation marked as Paper Book 2 running into 790 pages. The learned counsel for the assessee has prayed that the matter may be sent back to the Assessing Officer for fresh adjudication.

10. Ld DR relied on the orders of authorities below.

11. After considering the rival submissions, we are of the view that one more opportunity shall be granted to the assessee in the interest of justice to prove his case in respect of regional support services.

Therefore, this ground of appeal(number 3) is allowed for statistical purposes.

12. Ground Nos.4 to 6 relates to interest on receivables amounting to Rs.1,95,030/-. The facts regarding this issue are that the assessee has borrowed loan from its AE MW Singapore. The assessee has paid interest in Indian currency and hence the assessee paid the adjustment of LIBOR +200 points may kindly be granted to the assessee and the observation of the TPO may kindly be nullified.

13. Before Ld. DRP, the assessee has filed one agreement of loan in support of its contention. However, the Ld. DRP after obtaining the remand report from the TPO has directed the TPO to adopt LIBOR /SBI interest rate as PLR.

14. Before us, the learned counsel for the assessee relied upon the decisions of co-ordinate bench and contended that LIBOR +200 points may kindly be made in view the recent judgments of the Coordinate Benches( referred in finding portion)

15. After considering the rival submissions, we are of the view that the for bench marking the loan transactions rate of LIBOR + 200 points is correct adjustment, in view of the recent decision of this Tribunal in the case of S&P Capital (IQ) in ITA No.2215/Hyd/2018

dt.7.8.2024, we direct the Assessing Officer to apply LIBOR + 200 points in this set of transaction. We also observe that the assessee had not disputed the interest receivable transaction as international transaction per se. Therefore, we affirm the view of the Ld. DRP wherein it was held that the impugned transaction is of international transaction and has to be computed having regard to the ALP.

16. Ground number 4-6 are allowed in above terms-

17. The next ground related to the issue of taxability of interest income of Rs.1,59,016/-. It is the case of the TPO that the assessee could not be able to reconcile the mismatch between the 26AS reflecting interest income as well as the profit and loss account showing interest income. The learned counsel for the assessee pointed out that the assessee has given advance of Rs.62,72,073/- for the supply of electric material to one Jackson Limited. However, there was a delay in supply and hence they paid interest on the advance given to the assessee.

18. The learned counsel for the assessee for the assessee has drawn the attention of the bench towards reconciliation of assessee and Jackson Limited and prayed that the matter may be remitted to the Assessing Officer/TPO for fresh adjudication.

19. Per contra, the Ld. DR relied upon the orders of authorities below.

18. After considering the rival submissions, we remit this issue to the file of TPO for examining afresh in the light of the new facts brought on record before the bench and decide the issue accordingly.

20. Ground No.8 is related to the loans and advances given to employees by the assessee and later written off by the assessee amounting to Rs.10,95,202/-. Adverting to the facts in respect of this issue, learned counsel for the assessee fairly agreed that out of Rs.10.95 Lakhs an amount Rs.4,15,190/- has been wrongly debited to the profit and loss account and hence the same may kindly be disallowed and for the balance advance of Rs.6,79,012/-, the matter may kindly be restored to the file of AO as the assessee is now in possession of the details of the employees with PAN Card and Aadhar Card to prove the identity of the genuineness of the transactions.

21. Per contra, the Ld. DR relied upon the orders of authorities below.

22. After considering the rival submissions, we are of the view that in the interest of justice, this issue would also go back to the file of TPO for examining afresh. Ground number 8 is allowed for statistical purposes.

23. Ground No.9 relates to the security deposit given by the assessee for rental accommodation at the project site. The main contention of the learned counsel for the assessee is that the assessee failed to provide the copies of agreements and other related documents before the lower authorities, and hence this disallowance has been made. He prayed for one more opportunity before the AO in the interest of justice.

24. Per contra, the Ld. DR relied upon the orders of authorities below.

25. After perusing the material on record, we are of the view that heavens are not going to fall if one more opportunity would be given to the assessee to prove the genuineness of expenses in the shape of security advances given for the purpose of business. Therefore, in the interest of justice, we remit this issue also to the file of TPO for fresh adjudication.

26. In the result, the appeal filed by the assessee is partly allowed in above terms.

**Order pronounced in the open Court on 9th Sept., 2024.**

Sd/-

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Sd/-

**(PRAKASH CHAND YADAV)**  
JUDICIAL MEMBER

Hyderabad.

Dated: 09.09.2024.

\* *Reddy gp*

**Copy of the Order forwarded to :**

1. M/s. KH Facility Solutions India Private Limited, Awfis Space Solutions Pvt. Ltd., 6<sup>th</sup> Floor, NN Infra Projects LLP, Plot No.38, Sy. No.64, Madhapur, Hyderabad-500 081
2. DCIT, Circle 5(1), Hyderabad.
3. Pr.CIT (International Transactions), Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,