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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.95/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. ADP Private Limited, Hyderabad. PAN: AANCA8983A	Vs.	Dy. Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Nageswar Rao, Advocate	
राजस्व द्वारा / Revenue by::	Shri Kumar Pranav, CIT-DR	
सुनवाई की तारीख / Date of hearing:	05/09/2024	
घोषणा की तारीख / Pronouncement:	09/09/2024	

आदेश/ORDER

PER PRAKASH CHAND YADAV, J.M:

The present appeal of the assessee is arising from the order of Assessing Officer dt.11.03.2022 passed u/s.92CA (3) of the Income Tax Act, 1961 ("the Act") having DIN No.ITBA/REC/F/154/2021-22/1040595896(1) for the Assessment Year 2017-18.

2. The brief facts of the case are that the assessee company M/s. ADP Private Limited with PAN of AANCA8983A is engaged in the business of providing Computer Software Development Services and Information Technology Enabled Services to its Associated Enterprises. It filed its

Return of Income for the A.Y. 2017-18 on 30.11.2017 declaring an income of Rs. 2,04,05,28,870/- under normal provisions and book profits at Rs. 1,89,51,96,598/- u/s 115JB. The case was selected for scrutiny and notice u/s 143(2) dated 27.09.2019 was issued and served on assessee electronically. Subsequently, notices u/s 142(1) were issued, calling for information electronically. In response, Assessee Company submitted the information electronically. After verification of the information submitted by the assessee, the assessment is completed.

3. Aggrieved with the order of Transfer Pricing Officer (“TPO”), the assessee preferred objections before the Learned Dispute Resolution Panel [“Ld. DRP”] and assailed the order of TPO on various aspects. The Ld. DRP vide its order dt.31.03.2021 partly affirmed the order of TPO.

4. Still aggrieved the assessee preferred the present appeal before the Tribunal and raised as many as 17 grounds of appeal. However, by way of application dt.4.9.2024 the learned counsel for the assessee prayed that the assessee is in the process of entering into an APA agreement with the CBDT and hence the assessee is not pressing other grounds except Ground Nos. 4 & 13. Therefore, the rest of the grounds raised by the assessee are dismissed as withdrawn in view of the Bilateral Advance Price Agreement (“BAPA”) pending between assessee and CBDT.

5. So far as Ground No.4 is concerned, at the outset the learned counsel for the assessee argued that interest on receivables may kindly be benchmarked by applying LIBOR rate only without any further addition. The learned counsel for the assessee drew our attention towards the judgements of co-ordinate bench in the case of S&P Capital IQ in ITA No.2215/Hyd/2018 dt.7.8.2024 for the proposition that for benchmarking the transactions of interest chargeable on delayed recoveries LIBOR rate may kindly be applied. The learned counsel for the assessee further relied upon the judgment of Hon'ble Rajasthan High Court in the case of CIT Vs. Vaibhav Jain reported in 88 taxman.com 12 (copy of the same is furnished in the paper book at page No.798).

6. The Ld. DR appearing for revenue and requested the LIBOR +200 points may kindly be applied in view of the consistent stand taken by the co-ordinate bench in these types of circumstances.

7. After considering the rival submissions, we observe that LIBOR is a rate applicable in the transactions entered into between banks and the loans advanced by these banks are secured by securities. However, in the case of assessee, the transaction is between the assessee and its AE and that too for delayed recoveries i.e. beyond the period agreed for credit. Further a reference can be made to the decisions of Coordinate Bench in the case of Albany Molecular Research VS DCIT dated 26.11.2020, wherein

it is held that where assessee has to receive outstanding from its AE then LIBOR +200 points is the correct rate for determining ALP.

8. Further we observe that in the case of S&P Capital IQ (supra), the co-ordinate bench in para 16 held as under :

“ 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. Assessing Officer to adopt the same. Therefore, this ground of the assessee is allowed in part.”

9. Therefore, following the above view of the co-ordinate bench, we direct the Assessing Officer to apply LIBOR +200 points adjustment without any further adjustment to benchmark the transaction of interest on receivables.

10. In respect of Ground No.13, the limited prayer made by the learned counsel for the assessee is that the credit of tax may kindly be given to the assessee, if the assessee would be able to prove before the AO that it has taken over all the assets and liabilities of the amalgamated company. The

learned counsel for the assessee pointed out that the appointed date of amalgamation as per the order of the authorities is 15.06.2015 and hence all the liabilities and assets of the amalgamated company stands merged with that of the assessee company and therefore the credit of Rs.2,88,45,702/- attributable to the erstwhile company may kindly be allowed. The learned counsel for the assessee, further drawn our attention to the order of Ld. CIT(A) for Assessment Year 2016-17 wherein the Ld. CIT(A) has given same direction with respect to the granting of TDS credit. The observations of the Ld. CIT(A) are reproduced hereunder :

“ 7.6 However, the A.O. has not given any reason in the impugned order for not granting credit of TDS and advance tax as claimed by the assessee in its return of income. In view of the above facts and following the above directions of the Hon'ble ITAT, the Assessing Officer is directed to grant the credit of TDS and advance tax after considering the evidences filed by the assessee and decide the issues in accordance with law after providing opportunity of being heard to the assessee. accordingly, the grounds Nos.3 to 8 are treated as allowed for statistical purpose.”

11. The Ld. DR has also agreed that this may be restored to the file of Assessing Officer for deciding afresh in accordance with the facts and circumstances of the case.

12. After considering the rival submissions, we observe that this issue requires fresh adjudication at the end of Assessing Officer and in case the

assessee would be able to prove that all conditions of merger and acquisitions are fulfilled, i.e. all the assets and liabilities of the transferor company stand merged with assessee then the AO shall allow the claim of assessee in accordance with law. The AO would grant sufficient opportunities to the assessee before taking any view.

13. In the result, ground 4 of the assessee is partly allowed and ground number-7 is allowed for statistical purposes.

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. ADP Limited, One West Building, Survey No.88/AA & 88/E, Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District, Hyderabad-500 008
2. DCIT, Circle 1(1), Hyderabad.
3. Pr.CIT-I, Hyderabad.
4. CCIT – DRP-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.

BY ORDER,