

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

BEFORE SHRI MANJUNATHA G, ACCOUNTNAT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं / **ITA No.458/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

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 B. Balakrishna, CIT-DR
सुनवाई की तारीख / Date of hearing:		19/09/2024
घोषणा की तारीख / Pronouncement:		30/09/2024

आदेश/ORDER

PER PRAKASH CHAND YADAV, J.M:

Present appeal filed by the assessee is arising from the order of Assessing Officer passed u/s.144C(13) of the Income Tax Act, 1961 ("the Act") dated 31.07.2022 for the Assessment Year 2018-19.

2. The assessee has raised total nine grounds of appeal; Ground No.7 is further sub-divided into sub-grounds when we take up for hearing.

3. At the outset, the learned counsel for the assessee pointed out that the assessee has entered into bilateral advance pricing agreement (BAPA) with

CBDT on 28.03.2024 and hence only Ground Nos.3, 4, 6 & 7 are required the consideration of the Hon'ble Bench.

4. The facts leading to the filing of present appeal are as under :

4.1 The assessee is a company engaged in the business of providing computer software development and Information Technology Enabled Services (ITES) to its Associated Enterprise (AE), the Assessing Officer referred the matter to the Transfer Pricing Officer (TPO)/A.O. The TPO vide its order dt.30.07.2021 made certain adjustments to the returned income of the assessee and thereafter draft assessment order has been passed by the Assessing Officer on 16.09.2021. Aggrieved with the draft assessment order, the assessee filed its objections before the Dispute Resolution Panel (DRP) and assailed the order of TPO/A.O. The learned DRP vide its order dt.15.06.2022 partly affirmed the order of TPO. Following the direction of DRP the AO passed the final assessment order, which is impugned by the assessee before us.

5. The learned counsel for the assessee has mainly argued Ground Nos.3, 4, 5, 6 & 7. So far as ground Nos.3 & 4 are concerned, the learned counsel for the assessee submitted that the Assessing Officer has erred in making adhoc disallowances with respect to employee training expenses and printing and stationery expenses to the tune of Rs.1.54 Crores. The learned counsel for the assessee drawn the attention of the bench towards

para 2.33.1 at page 72 of the DRP order and contended that the DRP has simply affirmed the order of Assessing Officer without considering the submissions made by the assessee before the DRP. The learned counsel for the assessee referred to page No.1267 of the paper book to contend that the assessee has duly explained the increase in employee training expenses and printing and stationery expenses. Counsel for the assessee further contended that the DRP has not even considered the alternative arguments of the assessee.

6. The Ld. DR relied upon the orders of authorities below and argued that the assessee failed to produce evidences vis-à-vis the claim of expenses made by the assessee.

7. So far as the issue involved in Ground No.7 i.e. bench marking of interest receivable on outstanding towards the AE, the learned counsel fairly submitted that this issue may kindly be decided as per the order of Hon'ble ITAT in assessee's own case for the Assessment Year 2017-18 decided in ITA No.95/Hyd/2022 order dated 09.09.2024.

8. The Ld. DR relied upon the orders of authorities below in respect of the issue involved in Ground No.7. Here it is relevant to mention that the assessee had fairly conceded the Ground No.7.1 i.e. whether interest receivable on outstanding is an international transaction or not.

9. After considering the rival submissions, we observe that so far as the issue of adhoc disallowances on employee training expenses and printing and stationery expenses are concerned, the assessee has submitted before the DRP as under :

“10.2 In this regard, the assessee humbly submits that the employee training expenses constitutes a minor proportion of the total ‘Other expenses’ incurred by the assessee (Refer Note 28 of the financials enclosed as a part of the paper book). Further, as evidenced by percentages tabulated below, expense incurred towards employee training is 1.86% of the total other expenses and 0.36% of the total turnover of the Assessee for AY 2018-19 (as compared to 1.09% and 0.21% of the total other expenses and total turnover respectively incurred by the Assessee in AY 2017-18). The increase in said expenditure was mainly due to increase in routine day to day business activities of the Assessee during the year under consideration i.e. such expenses have been incurred for the purpose of business of the Assessee and hence should be allowed as tax deduction. Further, as compared to the preceding year figures, your Honour would appreciate that there is no substantial percent increase in the expense incurred towards employee training. The details of expense incurred as a proportion of total turnover and other expense for the year under consideration and preceding year have been tabulated below for your Honour's easy reference:

(Amount in INR Lakhs)

<i>Sl.No.</i>	<i>Particulars</i>	<i>AY 2018-19</i>	<i>AY 2017-18</i>
<i>1</i>	<i>Total revenue from operations (A)</i>	<i>126,200.12</i>	<i>117,582.70</i>
<i>2</i>	<i>Total other expenses (B)</i>	<i>24,702.54</i>	<i>23,145.16</i>
<i>3</i>	<i>Employee training expenses (C)</i>	<i>458.48</i>	<i>251.25</i>
<i>4</i>	<i>Percentage of total other expenses (C / B * 100)</i>	<i>1.86</i>	<i>1.09</i>
<i>5</i>	<i>Percentage of total revenue from operations (C / A * 100)</i>	<i>0.36</i>	<i>0.21</i>

10.3. Thus, as evident from the above table, employee training expenses are minuscule expenses and there is only marginal percentage increase in these expenses

as compared to last year. Considering the above-mentioned facts, the claim of the Ld. AO that the expenses were exorbitant, was arbitrary and without any basis.

10.4. Further, the Assessee would like to submit before your kind Honour that the Ld. AO, on one hand has examined the increase in employee training expenses as discussed above, however the Ld. AO failed to appreciate the fact the there was corresponding increase in turnover and profit of the Assessee as well, which is explained in the below mentioned table:

(Amount in INR Lakhs)

Sl. No.	Particulars	A.Y. 2018-19	A.Y.2017-18
1	Total revenue from operations	126,200.12	117,582.70
2	Total profit (after tax)	14,065.70	12,587.47
3	Percentage increase in revenue when compared to preceding year	7.33%	--
4	Percentage increase in profit (after tax) when compared to preceding year	11.74%	--

10.5 Moreover, the ledger of employee training expenses amounting to INR 458.48 lakhs representing the amount debited to the Statement of Profit and Loss account during the year under consideration is enclosed as a part of the paperbook for your Honour's reference.

10.6 In this regard, as evidenced by the ledgers, your Honour would appreciate the fact that despite there being more than 2000 line items in the ledger account of employee training expense, the Assessee submitted the details of majority of such expense incurred during the year under consideration.

10.7 The copy of invoices on a sample basis is enclosed as a part of the paper book for your Honour's reference.

10.8 In case your Honour requires any further information on this matter for adjudication, the Assessee shall provide the same upon hearing from you.

10.9 Without prejudice to the above, the Assessee submits before your kind Honour that the Assessee is a captive service entity, and the business model of the Assessee works on Cost plus profit model. Without admitting, even if there is unreasonable increase in expenses, then the same results in additional income being offered to tax and would be in the interest of revenue. No prudent businessman would have a thought as to on one hand increase the expenses and on other hand for the same increase pay additional taxes to the exchequer”.

10. We observe that DRP while deciding this issue against the assessee has not at all discussed these arguments in its order and has simply gone away by observing that the assessee had failed to submit necessary documentary evidence, which in our view, is not correct for the reason that there is corresponding increase in revenue from operations as well as profits of the impugned year and hence without appreciating this aspect the ad hoc disallowances are legally not permissible. Therefore, we restore this matter to the AO for deciding afresh considering all the main and alternative arguments of the assessee.

11. In ground number 5 the grievance of the assessee is that the AO despite the directions of Ld DRP has not considered the returned income and has considered the income determined while processing the return of income u/s 143(1). We observe that the Ld DRP in its order at Page number 72 Para 2.34.1 has categorical held that “*the AO is directed to consider the determination of income as the return of income instead of determining the*

income as per intimation u/s 143(1). Therefore, the AO is directed to follow the directions of the DRP, we order accordingly.

12. In ground number 6 the contention of the assessee is with respect to the credit of TDS as claimed by assessee. We direct the AO to examine this issue and decide the same as per law.

13. So far as the issue of rate of interest on outstanding of receivable is concerned, we observe that co-ordinate bench of this Tribunal has observed as under:

“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."*

14. Respectfully following our own decision in assessee's own case, we hold that Libor +200 would be the rate to be applied for bench marking the transaction of interest receivable on outstanding.

15. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the open Court on 30th Sept., 2024.

Sd/-

(MANJUNATHA G)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Hyderabad.
Dated: 30.09.2024.

* *Reddy gp*

Copy of the Order forwarded to :

1. M/s. ADP Private Limited, One West Building, Survey No.88/AA and 88/E, Nanakramguda Village, Serilingampally Mandal, Hyderabad-500008
2. DCIT, Circle 1(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard file.

//True Copy//

BY ORDER,