

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

IT(TP)A No.2028/Bang/2024
Assessment year : 2021-22

OSI Energy Automation India Private Ltd., Unit No.29, Lower Ground Floor, International Tech Park, Whitefield Road, Bangalore – 560 066. PAN: AABCO 8964F	Vs.	The Deputy Commissioner of Income Tax, Circle 3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Aliasgar Rampurawala, CA
Respondent by	:	Ms. Nandini Das, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	16.01.2025
Date of Pronouncement	:	24.01.2025

ORDER

Per Prakash Chand Yadav, Judicial Member

The present appeal of the assessee is arising out of the order of the ld. AO dated 27.08.2024 having DIN ITBA/AST/S/143(3)/2024-25/1068030064(1) and relates to assessment year 2021-22.

2. The assessee has raised 12 grounds of appeal. At the time of hearing, the ld. counsel for the assessee did not press ground Nos.1 & 2 related to the limitation issue. Ground No.3 is also not pressed by the

assessee related to the DIN issue. Therefore, these grounds are dismissed as not pressed.

3. In ground Nos.4 to 7, the ld. counsel for the assessee contended that assessee wanted to incorporate one comparable in the TP study viz., Infomile Technology P. Ltd. He further contended to exclude 9 comparables from the list of comparables selected by the TPO. It is the contention of the AR that the TPO has failed to apply turnover filter while selecting these comparables for determining the arm's length price (ALP).

Facts of the case

4. The brief facts of the case as coming out from the orders of the authorities below are that assessee is a company engaged in the business of sale, marketing, production, development, transformation, designing, creating, supporting, providing innovative solution in respect of automation system. It has filed its return of income for the impugned AY on 18.2.2022 declaring Nil income. Thereafter, the case of the assessee was selected for scrutiny. Since international transactions with the AEs is involved in this case, the AO made a reference to the TPO for determining the ALP. The ld. TPO vide order dated 28.10.2023 proposed an adjustment of Rs.2,59,43,431 on account of ALP adjustment. Accordingly the AO passed a draft assessment order on 15.11.2023. Against draft order, the assessee has filed its objections before the DRP and challenged the adjustments made by the TPO. The ld. DRP after considering the objections of the assessee, vide its order dated 31.7.2024 confirmed the adjustment

made by the TPO and then the AO framed the present assessment. Now the assessee is in appeal before us.

Adjudication of Ground number 4 to 07

5. While arguing ground Nos.4 to 7 as discussed above, it is the contention of the ld. counsel for the assessee that turnover filter as discarded by the TPO may be adopted and the comparables which fails the testimony of turnover filter having more than Rs.200 crores turnover may be excluded and then fresh TP study may be made by the TPO. The ld. counsel for the assessee placed reliance on the coordinate Bench judgment in the case of Quest Global Engineering Services Ltd., 150 taxmann.com 388 (Bang) for the proposition that companies having turnover from 1 to 200 crores are to be considered alike for conducting the TP study and this turnover has to be applied while making TP adjustments and the companies which have higher turnover should be excluded.

6. The ld. DR, on the other hand, relied on the judgment of Oracle and argued that turnover filter is not a criterion for excluding the comparables selected by the TPO.

Findings with respect to ground number-4 to 7

7. We have heard the rival submissions and perused the material available on record, so far as the inclusion of Infomile Technology P. Ltd. We do not find any force in the argument of the ld. counsel inasmuch as the functions of Infomile Technology P. Ltd. are not akin to the functions of the present assessee. Therefore, we reject the

contention vis-à-vis inclusion of Infomile Technology P. Ltd. for inclusion as a comparable.

8. So far as the exclusion of the comparables having turnover of more than Rs.200 crores, we are of the firm opinion that this filter is a valid filter and has to be applied for selecting the comparables. Therefore, we direct the TPO to exclude the comparables which are having turnover over and above 200 crores and to conduct fresh TP study in accordance with law. This ground of appeal is allowed for statistical purposes.

Adjudication of Ground number 8 to 10

9. In ground Nos. 8 to 10, the ld. counsel for the assessee has contended that the DRP and the TPO erred in computing the interest on receivables @ LIBOR + 200 basis points. The ld. counsel for the assessee pointed out that the impugned transaction of interest on receivable is not even pertaining to the present assessment year. The ld. counsel for the assessee has drawn attention of the Bench towards **page 287** of the appeal memo, which is a copy of the TPO order and contended that the due date of the payments to be received was 30.4.2021 and interest was received on 30.6.2021 having delay of 61 days. The ld. counsel for the assessee contended that if at all any adjustment is to be made, the same is required to be made in the next financial year and not in the impugned financial year.

10. The ld. DR relied on the orders of the authorities below.

Findings with respect to ground number-8 to 10

11. We have heard the rival submissions and perused the material available on record. Perusal of page 267 of the appeal memo would show that the due date of payment was not in the impugned assessment year. Therefore, we are of the view that no adjustment qua the interest on delayed receivables is required to be made in the impugned year. It is settled possible of law that correct income to be taxed in correct year. However, we direct the TPO to apply six months LIBOR + 300 basis points in the subsequent assessment year. Therefore, the contention of the ld. counsel for the assessee is accepted in part.

12. In the result, the appeal of the assessee is partly allowed as indicated above.

Pronounced in the open court on this 24th day of January, 2025.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Bangalore,
Dated, the 24th January, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.