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**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.501/Hyd/2022**  
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. DSM Shared Services India Pvt. Ltd., Hyderabad. PAN: AADCD8407C	<b>Vs.</b>	Asst. Commissioner of Income Tax, Circle-8(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Aliasgar Rampurawala, C.A.	
राजस्व द्वारा / Revenue by:	Shri B. Bala Krishna, CIT-DR	
सुनवाई की तारीख / Date of hearing:	06/03/2025	
घोषणा की तारीख / Pronouncement:	05/05/2025	

**आदेश/ORDER**

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

This appeal is filed by M/s. DSM Shared Services India Pvt. Ltd. ("the assessee"), feeling aggrieved with the final assessment order of Learned Assessing Officer ("Ld. AO") passed u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), as per the direction of Learned Dispute Resolution Panel-1, Bangalore ("Ld. DRP") on 30.07.2022 for A.Y. 2018-19.

2. The assessee has raised the following grounds of appeal :

1. On the facts and in the circumstances of the case and in law, the assessment order dated 30.07.2022 passed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ('the Act') by the Learned Assistant Commissioner of Income-tax, Circle 8(1), Hyderabad ('Ld. AO') in pursuance to the directions dated 08.06.2022 passed under section 144C(5) of the Act by the Learned Dispute Resolution Panel – 1, Bengaluru ('Ld. DRP') to the extent prejudicial to the Appellant, is bad in law, contrary to the facts and circumstances of the case and is liable to be quashed.
2. On the facts and in the circumstances of the case and in law, the final assessment order dated 30.07.2022 passed by the Ld. AO in violation of section 144B of the Act is without jurisdiction, bad in law and is liable to be quashed.

**Grounds on Transfer Pricing issues:**

3. On the facts and in the circumstances of the case and in law, the Ld. DRP erred in upholding the action of the Ld. AO / Learned Transfer Pricing Officer ('Ld. TPO') in making a transfer pricing adjustments amounting to Rs. 6,03,14,533 comprising of adjustments on account of:
  - 3.1 International transaction pertaining to provision of Information Technology ('IT') enabled back-office services - Rs. 5,97,75,244; and
  - 3.2 Levying notional interest on trade receivables - Rs. 5,39,289.
4. On the facts and in the circumstances of the case and in law, the Ld. AO / Ld. TPO / Ld. DRP erred in rejecting the transfer pricing documentation, which was maintained in good faith and with due diligence.

**Grounds with respect to the international transaction pertaining to provision of IT enabled back-office services:**

5. On the facts and in the circumstances of the case and in law, the Ld. TPO erred in conducting a fresh search for comparable companies with respect to the international transaction pertaining to provision of IT enabled back-office services.
6. On the facts and in the circumstances of the case and in law, the Ld. AO / Ld. TPO / Ld. DRP erred in rejecting certain filters applied by the Appellant.
7. On the facts and in the circumstances of the case and in law, the Ld. AO / Ld. TPO / Ld. DRP erred in applying certain additional filters which are not relevant to the Appellant.

8. On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO/ Ld. DRP erred in including following companies in the comparable set which are not comparable to the Appellant's functions, asset base and risk profile:
  - 8.1 Infosys BPM Limited
  - 8.2 CES Limited
  - 8.3 Vitae International Accounting Services Private Limited
  - 8.4 Access Healthcare Services Private Limited
  - 8.5 Inteq BPO Services Limited
  - 8.6 Motif India Infotech Pvt. Limited
  - 8.7 Eclerx Services Limited
  - 8.8 Domex E-Data Pvt. Limited
  - 8.9 MPS Limited
  - 8.10 Tech Mahindra Business Services Limited
  
9. On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO/ Ld. DRP erred in excluding following companies from the comparable set which are comparable to the Appellant's functions, asset base and risk profile:
  - 9.1 R Systems International Limited – Business Process Outsourcing Segment
  - 9.2 Allsec Technologies Limited
  - 9.3 Athena BPO Private Limited
  - 9.4 Cameo Corporate Services Limited
  - 9.5 One Point One Solutions Limited
  - 9.6 Bhilwara Infotechnology Limited - Medical Transcription segment
  - 9.7 HDB Financial Services Limited - BPO services segment
  - 9.8 Digicall Teleservices Private Limited
  - 9.9 DKM Online Private Limited
  - 9.10 Genius Consultants Limited
  - 9.11 Jindal Intellicom Limited - BPO Segment
  
10. On the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. TPO/ Ld. DRP erred in not considering certain items of revenue/expenditure as operating/non-operating for certain companies.
  
11. On the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. TPO/ Ld. DRP erred in not correcting the errors in computation of margins for certain companies.
  
12. On the facts and circumstances of the case, and in law, without prejudice to the above grounds of objections, Ld. AO/ Ld. TPO/ Ld. DRP erred in computing the adjustment at an entity level instead of restricting to the segment pertaining to the international transaction with the AE.
  
13. On the facts and in the circumstances of the case and in law, Ld. AO / Ld. TPO/ Ld. DRP erred in:
  - 13.1 Not granting working capital adjustment; and
  - 13.2 Not granting risk adjustment.

**Ground with respect to levying of notional interest on trade receivables:**

14. On the facts and circumstances of the case and in law, Ld. DRP/Ld. TPO / Ld. AO has erred in making an adjustment of INR 5,39,289 towards interest on receivables. In doing so, the Ld. DRP/Ld. TPO/ Ld. AO has erred in:
  - 14.1 Treating outstanding receivables from AE as deferred;
  - 14.2 Considering deferred receivables as separate international transaction for arriving at an arm's length price;
  - 14.3 Not appreciating the fact that the working capital adjustment takes into account the impact of deferred receivables on the profitability; and
  - 14.4 Levying interest by arbitrarily adopting State Bank of India ("SBI") short term deposit rate.
  - 14.5 Without prejudice to the above, not adopting LIBOR denominated rate for the purpose of levying interest as against the SBI short term deposit rate.

**Grounds on corporate tax issues:**

15. On the facts and in the circumstances of the case and in law, the Ld. AO erred in levying interest under Section 234B of the Act.
16. On the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating the penalty proceedings under Section 270A read with Section 274 of the Act.

The Appellant craves leave to add to, alter, omit or substitute any or all of the above grounds of appeal or produce further documents at any time before or during the appeal proceedings.

**2.1 The assessee has raised the following additional grounds of appeal :**

17. On the facts and in the circumstances of the case and in law, the learned AO/TPO erred in not adopting the upper turnover filter while doing the comparability analysis for the Appellant's international transaction pertaining to provision of Software Development Segment ('SWD') segment.
18. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in not quoting a **valid computer-generated DIN** on the body of DRP directions dated 08 June 2022, u/s. 144C (5) of the Income-tax Act, 1961 ('Act') in contravention to the Circular No. 19 of 2019 by the CBDT, and thus rendering such an order/ direction to be invalid and never to have been issued as per para 4 to the said Circular.
19. On the facts and in the circumstances of the case and in law, the final assessment order dated 30 July 2022 under section 143(3) read with section 144C (13) of the Act passed by the Assistant Commissioner of Income Tax, Circle 8(1), Hyderabad, pursuant to invalid directions passed by Hon'ble DRP, is illegal; thus making the final assessment order bad in law, null and void and so liable to be quashed.
20. On the facts and circumstances of the case and in law, the draft order dated 10 September 2021 issued under section 143(3) read with section 144B read with section 144C of the Act by the Assessment Unit for AY 2018-19 is barred by limitation and therefore, is void-ab-initio, bad in law and is liable to be quashed.

21. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in not mentioning the fact of taking necessary approval in the final assessment order, for transferring of the matter to the Assessing Officer as per the provisions of section 144B(8) of the Act, thereby raising a presumption that no approval is taken, rendering the order under section 143(3) r.w.s. 144C(13) bad in law and liable to be quashed.

Further, the Assessee craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing. Further, this ground of appeal is independent of the grounds of appeal already filed by the Appellant.

22. On the facts and in the circumstances of the case, and in law, the learned Assessing Officer ('AO') /Transfer Pricing Officer ('TPO') erred by not giving effect to the rectified directions of the Dispute Resolution Panel dated 27 January 2023 to exclude Access Healthcare Services Pvt. Ltd. from the final set selected by the TPO for benchmarking of Information technology enabled services provided by the Appellant to its AE, as per Rule 13 of the Income-tax (Dispute Resolution Rules), 2009."

3. The additional grounds so filed are admissible in view of judgment rendered by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC). The prayer for admission of additional grounds noted above which are not in memorandum of appeal are being admitted for adjudication in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in additional grounds are legal in nature for which relevant facts are stated to be emanating from the existing records.

4. The facts of the case are that the assessee is a company engaged in the business of IT enabled services ("ITES"), filed its Return of Income ("ROI") for A.Y. 2018-19 declaring total income at Rs.4,89,46,490/- on 30.11.2018. In view of the international transactions involved during the year under consideration, for determination of Arm's Length Price ("ALP"), the case was

referred to Learned Transfer Pricing Officer (“TPO”). The Ld. TPO vide his order dated 30.07.2021 suggested upward adjustment of Rs. 6,80,09,066/- on account of ITES and Rs. 5,39,289/- on account of interest on trade receivables. Accordingly, the Ld. AO passed the draft assessment order on 10.09.2021.

5. Aggrieved with the draft assessment order passed by the Ld. AO, the assessee preferred objection before the Ld. DRP. In pursuance to the directions of Ld. DRP dated 08.06.2022, the Ld. AO finalized the assessment on 30.07.2022 at total income of Rs.11,29,46,523/- by making addition on account of Transfer Pricing (“TP”) adjustment of Rs.6,03,14,533/- and addition u/s. 43B of the Act for Rs.36,85,500/-.

6. Aggrieved with the final assessment order of Ld. AO, the assessee is in appeal before us. At the outset, the Learned Authorised Representative (“Ld. AR”) submitted that, ground nos.1 to 4 are general in nature, ground nos.15 & 16 are consequential and they are not pressing ground nos.5 to 7, 9 to 12, 13.2 and 21 . Therefore, the Ld. AR submitted that these grounds do not need separate adjudication. Accordingly, ground nos. 1 to 7, 9 to 12, 13.2,15,16 and 21 are dismissed being not pressed.

7. Ground no.8 & 17 of the assessee is related to the seeking of exclusion of ten companies from the set of comparables . However, the Ld. AR submitted

that, they are pressing for exclusion of only 4 companies from the list of comparables i.e. Infosys BPM Limited (“Infosys BPM”), Inteq BPO Services Limited (“Inteq BPO”), Eclerx Services Limited (“Eclerx”) and Tech Mahindra Business Services Limited (“Tech Mahindra”) on the basis of turnover filter. The Ld. AR further submitted that the turnover of the assessee is Rs. 62.89 Crores, however, the turnover of (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra are Rs.3061 crores, 2.45 crores, 1144.02 crores and Rs. 703.6 crores respectively, which are significantly vary as compared to the turnover of the assessee. Accordingly, these comparables are liable to be excluded from the list of comparables. The Ld. AR placed reliance on the decision of this Tribunal in the case of iMedX Information Services (P.) Ltd Vs. DCIT (ITA-TP No.1755/Hyd/2019 dated 10.05.2023) and Benu Networks Packet Switch Pvt. Ltd. Vs. DCIT (ITA No.86/Hyd/2022 dated 25.11.2024), wherein this Tribunal has held that the turnover filter of 10 times (both upward and downward) is a valid filter to determine the comparability. Therefore, the Ld. AR contended that (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra should be excluded from the list of comparables as their turnover falls outside the threshold determined by the Tribunal.

7.1 Per contra, the Learned Department Representative (“Ld. DR”) objected the exclusion of (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech

Mahindra and submitted that the turnover filter should not be considered in the selection of comparables provided the functional comparability is established. The Ld. DR further argued that, the assessee as well as comparable companies are operating in the field of human sources intensive industry, wherein increase in turnover is accompanied by a corresponding increase in the expenditure. Therefore, mere turnover difference should not be a ground for exclusion, if the core business function remains the same. Finally, the Ld. DR prayed that (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra should not be excluded from the list of comparables merely on the ground of significant difference in turnover.

7.2 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. The primary dispute before us is to decide whether (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra should be excluded only on the basis of their significant difference in turnover or not. It is well settled by various decision of co-ordinate benches of ITAT, including in the case of iMedX Information Services (P.) Ltd. Vs. DCIT (supra) that the turnover filter of 10 times (both upward and downward) is a valid criteria for determining the comparability. Under the similar issue, this Tribunal in the case of iMedX Information Services (P.) Ltd. Vs. DCIT (supra) at para no. 11 to 17 of its order has held as under :

“11. On a careful consideration of the matter, we find that in the case of CIT vs. Pentair Water India (P) Ltd. [2016] 69 taxmann.com 180, the Hon'ble Bombay High Court while placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Agnity India Technologies (P) Ltd. [2013] 36 taxmann.com 289 held that turnover is obviously a relevant factor to be considered for comparability and the large and bigger company in the area of development of software cannot be benchmarked or equated with little size companies; whereas the Hon'ble Delhi High Court in the case of Chryscapital Investment Advisors (India) (P) Ltd. (supra) held that turnover filter is an inappropriate filter and when once the company is found functionally comparable, it cannot be rejected from the set of comparables on the ground of the turnover.

12. In this situation, the Co-ordinate Bench of this Tribunal took a view in the case of M/s. Galax E Solutions India Pvt. Ltd. vs. ACIT, (2022) 192 ITD 326 (Bang.)(Trib.) took a view that where two views are available on an issue, the issue favourable to the assessee has to be adopted and, therefore, followed the decisions of the Hon'ble High Court.

13. Even the ICAI TP guidance note on transfer pricing clearly lays down that a transaction entered into by a Rs. 1,000 crore company cannot be compared with the transaction entered into by a Rs. 10 crore company and two most obvious reasons are the size of the two companies and the relative economies of scale under which they operate. Under these circumstances, while respectfully following the decision of the Hon'ble Bombay High Court, we hold that for a proper TP analysis, we need to apply the turnover filter. Now the question arises as to what should be the appropriate turnover filter. This question also has come up for a consideration of Co-ordinate Benches of this Tribunal earlier. In the case of M/s Genisys Integrating Systems (India) Pvt. Ltd, vs. DCIT in ITA No. 1231/Bang/2010, dated 05/08/2011 an argument was advanced basing on the Dun and Bradstreet's analysis which has classified the software companies into categories like large size firms of Rs. 2,000 crores, medium size firms of Rs. 200 and 2000 crores and little size firms below Rs. 200 crores. The bench find it to be a reasonable classification and taking the Indian scenario into consideration, it was found that the classification made by Dun and Bradstreet's analysis was more suitable and reasonable. With that view of the matter, it was held that the turnover filter is very important and companies having turnover of Rs. 1 crore to Rs. 200 crores have to be taken as a particular range.

14. This turnover filter of the company between Rs. 1 crore to Rs. 200 crores is followed in some cases, but in the case of ITO vs. M/s. Maxim India Integrated Circuit Design Pvt. Ltd. in IT(TP)A No. 28/Bang/2012, dated 31/03/2016 while considering this aspect it was found that this approach has an inherent difficulty in applying such a turnover slab of Rs. 1 crore to Rs. 200 crore and the observations of the Bench are that,-

“12. It is pertinent to note that the CIT(A) has applied turnover slab of Rs.1 crore to Rs.200 crores for excluding these companies, whereas there is an inherent difficulty in applying such a turnover slab of Rs.1 crore to Rs.200 crores because the said classification on the basis of slab of the turnover gives unrealistic results, as an entity having Rs.1 crore turnover can be compared with any entity having Rs.200 crores turnover, but at the same time an entity having Rs.200 crores turnover cannot be

*compared with an entity having Rs.201 crores turnover. Thus, as it is clear from the above illustration that it gives ambiguous result as two entities having difference of Rs.1 crore cannot be considered as comparable, whereas on the other hand difference of Rs.199 crores can be considered as comparable company. Therefore, such classification of comparables on the basis of companies selected on turnover basis is not appropriate and acceptable. The turnover, no doubt, is a relevant factor to be taken into account, but there should be some proper and reasonable parameter to apply the difference of turnover between the assessee and the comparable which may be a multiple in the range of 2 times, 3 times, X times or any other number of times which should be applied to all the comparable companies, instead of taking a slab from Rs.1 crore to Rs.200 crores....”*

15. *With this premise, the Co-ordinate Bench of this Tribunal in the case of M/s. Maxim India Integrated Circuit Design Pvt. Ltd. (supra) held that the turnover filter upto ten times can be applied.*

16. *Hon'ble Karnataka High Court in the case of Acusis Software India (P) Ltd. vs. ITO [2018] 98 taxmann.com 183 (Karnataka) approved the approach of the Tribunal in applying tolerance range of turnover of ten times on both sides of the turnover of the assessee to fix the turnover filter. In the case on hand, it could be seen from the order of the learned TPO that the learned TPO accepted the turnover filter selected by the assessee with companies, whose net sales are more than Rs. 1 crore, but failed to notice that without fixing the upper limit of such filter, it would lead to the insertion of certain entities, who operate on different scales and economies and render themselves as unsuitable for comparison. Though we agree with the counsel that certain comparables have to be deleted for their operation in relation with the assessee's operation is huge in scale and economies. We, therefore, find it desirable on this aspect to restore the issue to the file of the learned Assessing Officer/learned TPO to take the range of turnover at ten times at both the ends and to conduct survey afresh. It is clear that since the assessee's turnover is Rs. 5.17 crore in the software development services, the range could be Rs. 52 lakhs to Rs. 52 crores, which will satisfy the test approved and referred to by the Tribunal in the case of M/s. Maxim India Integrated Circuit Design Pvt. Ltd. (supra) and also in the case of Acusis Software India (P) Ltd. (supra). As a matter of fact, the view taken by the Tribunal in the case of Acusis Software India (P) Ltd. (supra) is approved by the Hon'ble Karnataka High Court.*

17. *We accordingly set aside the findings of the authorities and direct the learned Assessing Officer/learned TPO to take the range of turnover filter at ten times on both the ends and conduct search afresh to take a plausible view. These grounds are accordingly treated as allowed for statistical purposes.”*

7.3 On perusal of above, we found that, as far as the applicability of the turnover filter is concerned, this Tribunal at para no.13 of its order has held

that, the application of turnover filter is needed for a proper Transfer Pricing analysis. Further as far as the appropriate turnover filter is concerned, this Tribunal has categorically held that, the application of tolerance range of turnover of ten times on both sides of assessee's turnover is proper and accordingly directed the Ld. AO to take range of turnover filter at ten times on both the ends and conduct search afresh to take a plausible view. Therefore, respectfully following the decision of this Tribunal in the case of iMedX Information Services (P.) Ltd. Vs. DCIT (supra), we hold that, turnover filter is inevitable for a proper Transfer Pricing analysis. Further, there is no dispute about the fact that the turnover of (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra clearly breaches the threshold set by this Tribunal in the case of iMedX Information Services (P.) Ltd. Vs. DCIT (supra). Therefore, respectfully following the decision of this Tribunal in the case of iMedX Information Services (P.) Ltd. Vs. DCIT (supra), we hold that (i) Infosys BPM, (ii) Inteq BPO (iii) Eclerx and (iv) Tech Mahindra cannot be considered as good comparable companies.

7.4 Further, we observe that, the Ld. TPO did not apply the turnover filter of 10 times (both upward and downward) to other comparables as well. Therefore, in the interest of justice, we deem it appropriate to remand the

issue back to Ld. TPO, granting liberty to the Ld. TPO to apply the turnover filter uniformly to all the comparables and carryout the necessary verification.

8. Ground no.13.1 of the assessee is related to the denial of working capital adjustment (“WCA”) by the Ld. TPO while determining the ALP. The Ld. AR submitted that the Ld. TPO denied WCA on the ground that only year-end figures were available and the assessee failed to furnish detailed working capital cycle data during the year. The Ld. AR further submitted that the assessee is not in a position to obtain granular or daily/monthly working capital data of the uncontrolled comparable companies, as such data is not available in the public domain, and the assessee has no access or right to call for such internal details from third-party comparables. The Ld. AR also submitted that WCA is a legitimate adjustment intended to neutralize the impact of difference levels of working capital between the tested party and the comparables, which affects the margins and profitability. It was also submitted that the WCA may be computed on the basis of average of opening and closing balances as available from the annual reports of comparables, which is consistent with settled principles laid down in multiple judicial precedents. Finally, the Ld. AR prayed before the Bench that, in order to bring parity in comparison, a working capital adjustment should be granted.

8.1 Per contra, the Ld. DR relied on the decision of Ld. AO/TPO and submitted that the assessee has not furnished the necessary data or workings in support of its claim for working capital adjustment. Therefore, in the absence of any such supporting material, the assessee’s request for working capital adjustment is required to be rejected.

8.2 We have considered the rival contentions and perused the material available on record in view of the submissions made by either side. The Ld. AR has submitted that the Ld. TPO denied WCA on the ground that only year-end figures were available and the assessee failed to furnish detailed working capital cycle data during the year. The Ld. AR also submitted that the assessee is not in a position to obtain granular or daily/monthly working capital data of the uncontrolled comparable companies, as such data is not available in the public domain, and the assessee has no access or right to call for such internal details from third-party comparables. In terms of Rule 10B(1)(e)(iii) of the Income-tax Rules, 1962, the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and comparable uncontrolled transactions which could materially affect the amount of net profit margin. In our view, difference in levels of working capital between the tested party and the comparables have an affects on the margins and profitability. Therefore, the Ld. TPO's approach in insisting upon daily/monthly working capital cycle data of third-party comparables is, in our considered view, unjustified, particularly when such data is admittedly not available in the public domain. The assessee cannot be expected to obtain information which is beyond its reach. Therefore, we are of the considered opinion that, WCA cannot be denied merely due to the absence of detailed working capital cycle data and the adjustment should be granted based on average of opening and closing balances. Hence, we direct the Ld. TPO to grant appropriate WCA to the assessee while determining the ALP, by adopting the average of opening and closing working capital balances of comparables, as available from their annual reports. Accordingly, the ground No. 13.1 of the assessee is allowed for statistical purpose.

9. Ground no. 14 of the assessee is related to adjustment made by the Ld. TPO on account of interest on trade receivables.

9.1 The Ld. AR submitted that, the Ld. TPO erred in applying the interest rate charged by SBI on short term deposits for benchmarking the interest on outstanding trade receivables relating to sale of services by the assessee to its Associated Enterprises (“AEs”). The Ld. AR further submitted that, this Tribunal in many cases has held that the interest on trade receivables should be benchmarked at LIBOR +200 basis points. Accordingly, the Ld. AR prayed before the bench to direct the Ld. TPO to apply the LIBOR + 200 basis points on trade receivables.

9.2 Per contra, the Ld. DR relied on the order of Ld. AO/TPO and submitted that this Tribunal in the case of Hetero Lab Limited Vs. ACIT in ITA nos.312 & 313/Hyd/2023 has upheld the application of SBI short term deposit rate for benchmarking the interest on trade receivables. Accordingly, the Ld. DR argued that the rate applied by the Ld. TPO is correct and should be upheld in accordance with the decision of this Tribunal in the case of Hetero Lab Limited (supra).

9.3 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. The core issue before us is to decide the appropriate interest rate to be applied for trade receivables from foreign AEs. We find that an identical issue has been dealt by this Tribunal in the case of HARSCO India Private Ltd. v/s DCIT in ITA No. 1041/Hyd/2024 dated 06/03/2025, wherein at para no. 6 to 10 of the order this Tribunal has held as under :

*“6. It is pertinent to note that, not following the decisions of the Tribunal in assessee’s own case amounts to judicial indiscipline on the*

part of the DRP. However, since the issue has now come up before the Tribunal, therefore, we will discuss the merits of this issue. The basic question before us is, whether for benchmarking the outstanding receivables from AEs, the comparable interest rate should be PLR rate/SBI short term rate or LIBOR rate/LIBOR+ mark up. This issue was considered by the Chennai Special Bench of this Tribunal in case of *Shiva Industries & Holdings Ltd. v. Assistant Commissioner of Income-tax* reported in 46 SOT 112/11 Taxmann.com 404 (SB) and held in para 11 as under:

**“11.** We have considered the rival submissions. A perusal of the order of the TPO clearly shows that the assessee had raised the funds by way of issuance of 0 per cent optional convertible preferential shares. Thus, it is noticed that the funds raised by the assessee company for giving the loan to India Telecom Holdings Ltd., Mauritius, which is its Associated Enterprises and which is the subsidiary company, is out of the funds of the assessee company. It is not borrowed funds. The assessee has given the loan to the Associated Enterprises in US dollars. The assessee is also receiving interest from the Associated Enterprises in Indian rupees. Once the transaction between the assessee and the Associated Enterprises is in foreign currency and the transaction is an international transaction, then the transaction would have to be looked upon by applying the commercial principles in regard to international transaction. If this is so, then the domestic prime lending rate would have no applicability and the international rate fixed being LIBOR would come into play. In the circumstances, we are of the view that it LIBOR rate which has to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the Associated Enterprises. As it is noticed that the average of the LIBOR rate for 1-4-2005 to 31-3-2006 is 4.42 per cent and the assessee has charged interest at 6 per cent which is higher than the LIBOR rate, we are of the view that no addition on this count is liable to be made in the hands of the assessee. In the circumstances, the addition as made by the Assessing Officer on this count is deleted.”

7. Thus, a transaction of loan to the AEs in foreign currency is considered as international transaction between the assessee and its AEs, then the transaction would have to be looked upon by applying the commercial principles in regard to the international transactions. Therefore, the domestic prime lending rate or domestic deposit rate would have no applicability on international transaction, but the international rate being London Interbank Offered Rate (LIBOR) or similar rate i.e. Euro Interbank Offered Rate (EURIBOR) would govern the international transactions of lending by the assessee to the AEs. This issue also came up for consideration before the Hon'ble Delhi High Court

in the case of *CIT vs. Cotton Naturals (I) Private Ltd*, reported in 276 CTR 445 (Del.) and the Hon'ble Delhi High Court has held in para 35 to 40 as under:

**35.** *The LIBOR rate plus markup or the interest rate prevailing in the United States at that time, i.e. 2003 have not been examined and are not the basis on which the TPO made the adjustment and compute the interest rate for the transaction under consideration. It claimed that the LIBOR rates in the year 2002 varied between 1.447 % to 3.006 % and in the year 2003 between 1.201% to 1.487%. Rates in the year 2004 were again marginal, with the highest at 3.100% and the lowest at 1.340%. The LIBOR rate of 5.224% quoted in the TPO's order, it is pointed out, was the rate received on the investment made during the assessment year in question by the assessed. Thus, it was argued that the present case is of a long-term loan granted to the AE and the rate of interest charged was much higher than the then prevailing LIBOR interest rate. There is no finding of the TPO, the DRP or the Assessing Officer questioning the long-term transaction as such.*

**36.** *Under sub-rule (4) to Rule 10B, the data used for comparability of the uncontrolled transaction should be the data relating to the financial year in which the international transaction has been entered into. The proviso permits consideration of data, not more than two years prior to the financial year, if such data reveals facts which would have influenced determination of transfer price in relation to the transaction being compared. The transaction in question was entered into in the year 2002-03 when the loans were granted to the AE. This was the financial year of the international transaction. Payment of interest is also an international transaction but would have reference to the year in which the loan was granted in case of a long term loan. However, in such situations, question may arise whether the case would fall under the second exception mentioned in the case of *E.K.L. Appliances (supra)*, when an AE has the right to recall and ask for repayment of loan. These aspects have not been considered and applied by the TPO, DRP and the Assessing Officer. Neither has this ground been argued before us on behalf the Revenue. We, therefore, would not proceed to examine the said aspect and leave the question open. Similarly, we have not expressed any opinion on the issue or question of "thin capitalization" which does not arise for consideration in the present case.*

**37.** *We observe that whatever the Revenue argues and submits in the case of outbound loans or for that matter what we have observed would be equally applicable to inbound loans given to Indian subsidiaries of foreign AEs. The parameters cannot be different for outbound and inbound loans. A similar reasoning applies to both inbound and outbound loans. Revenue has erroneously argued that different parameters would apply for inbound and outbound loans, which is not acceptable.*

**38.** *The DRP referred to the PLR rates fixed in India. It is evident that the PLR rates were not the basis for fixing the arm's length price. Both TPO and the DRP have referred to the PLR rates only by way of analogy so as to state the prevailing interest rates in India, but while applying CUP method for comparability, they had applied LIBOR rates prevailing and had applied a mark-up of 700 points on*

account of low credit rating of the subsidiary AE and the cost of transaction.

**39.** *The question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, in our considered opinion, must be answered by adopting and applying a commonsensical and pragmatic reasoning. We have no hesitation in holding that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. Klaus Vogel on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115 states as under:—*

*"The existing differences in the levels of interest rates do not depend on any place but rather on the currency concerned. The rate of interest on a US \$ loan is the same in New York as in Frankfurt—at least within the framework of free capital markets (subject to the arbitrage). In regard to the question as to whether the level of interest rates in the lender's State or that in the borrower's is decisive, therefore, primarily depends on the currency agreed upon (BFH BSt.B1. II 725 (1994), re. 1 § AStG). A differentiation between debt-claims or debts in national currency and those in foreign currency is normally no use, because, for instance, a US \$ loan advanced by a US lender is to him a debt-claim in national currency whereas to a German borrower it is a foreign currency debt (the situation being different, however, when an agreement in a third currency is involved). Moreover, a difference in interest levels frequently reflects no more than different expectations in regard to rates of exchange, rates of inflation and other aspects. Hence, the choice of one particular currency can be just as reasonable as that of another, despite different levels of interest rates. An economic criterion for one party may be that it wants, if possible, to avoid exchange risks (for example, by matching the currency of the loan with that of the funds anticipated to be available for debt service), such as taking out a US \$ loan if the proceeds in US \$ are expected to become available (say from exports). If an exchange risk were to prove incapable of being avoided (say, by forward rate fixing), the appropriate course would be to attribute it to the economically more powerful party. But, exactly where there is no 'special relationship', this will frequently not be possible in dealings with such party. Consequently, it will normally not be possible to review and adjust the interest rate to the extent that such rate depends on the currency involved. Moreover, it is questionable whether such an adjustment could be based on Art. 11 (6). For Art. 11(6), at least its wording, allows the authorities to 'eliminate hypothetically' the special relationships only in regard to the level of interest rates and*

not in regard to other circumstances, such as the choice of currency. If such other circumstances were to be included in the review, there would be doubts as to where the line should be drawn, i.e., whether an examination should be allowed of the question of whether in the absence of a special relationship (i.e., financial power, strong position in the market, etc., of the foreign corporate group member) the borrowing company might not have completely refrained from making investment for which it borrowed the money."

**40.** *The aforesaid methodology recommended by Klaus Vogel appeals to us and appears to be the reasonable and proper parameter to decide upon the question of applicability of interest rate. The loan in question was given in foreign currency i.e. US \$ and was also to be repaid in the same currency i.e. US \$. Interest rate applicable to loans granted and to be returned in Indian Rupees would not be the relevant comparable. Even in India, interest rates on FCNR accounts maintained in foreign currency are different and dependent upon the currency in question. They are not dependent upon the PLR rate, which is applicable to loans in Indian Rupee. The PLR rate, therefore, would not be applicable and should not be applied for determining the interest rate in the extant case. PLR rates are not applicable to loans to be re-paid in foreign currency. The interest rates vary and are thus dependent on the foreign currency in which the repayment is to be made. The same principle should apply."*

8. *The Hon'ble High Court has answered the question whether the interest rate prevailing in India should be applied for the lender who is an Indian Company/Assessee or the lending rate prevailing in the US, the place of the AE should be applied. The Hon'ble High Court has held that the interest rate should be the market determined rate applied to the currency concerned in which the loan has to be repaid. The interest rate should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of resident of either party. Once the loan or credit is given in foreign currency and also to be repaid in same currency, the interest applicable to loan granted and to be returned in Indian rupee would not be the relevant comparable. The Hon'ble High Court has held that the PLR rate would not be applicable and should not be applied for determining the interest rate in such cases where loan to be repaid in foreign currency. This issue was again considered by the Hon'ble Bombay High Court in the case of CIT vs. Tata Autocomp Systems Ltd reported in (2015) 56 Taxmann.com 206 (Bom.) and the Hon'ble Bombay High Court has upheld the decision of the Tribunal directing the Assessing Officer to benchmark the interest at the prevailing EURIBOR rate instead of rupee loan rate to be computed at Arms' Length*

on the loan advanced to the AE. The relevant findings of the Hon'ble High Court in para 7 & 8 are as under:

**“7.** We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of *VVF Ltd. v. Dy. CIT [IT Appeal No. 673 (Mum.) of 2006]* and *Dy. CIT v. Tech Mahindra Ltd. [2011] 12 taxmann.com 132/46 SOT 141 (Mum.) (URO)* to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr. Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in *VVF Ltd. (supra)* and *Tech Mahindra Ltd. (supra)* on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in *VVF Ltd. (supra)* and *Tech Mahindra Ltd. (supra)*. The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in *VVF Ltd. (supra)* and *Tech Mahindra Ltd. (supra)*.

**8.** In view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law.”

9. We further note that, the Pune Benche of the Tribunal in the case of *DCIT vs. iGATE Global Solutions Ltd* reported in (2019) 109 *Taxmann.com 48 (Pune)* has again discussed this issue elaborately in Para 4 to 10 as under:

**“4.** We have heard both the sides and gone through the relevant material on record. It is observed from the order passed by the TPO that the assessee advanced loans to its two AEs, one in the USA and the other in Germany. Insofar as loan to *Symphoni Interactive LLC*, an Associated Enterprise in the USA is concerned, the assessee charged interest @ 6%. The ld. CIT(A) has recorded that the assessee also paid interest to another AE in the USA, namely, *iGATE Corporation, USA* at 5.9% on its External Commercial Borrowings (ECB). He further recorded in para 57 of the impugned order that the TPO accepted this transaction and made no transfer pricing adjustment on this score, thereby, he also impliedly accepting this transaction at ALP. The viewpoint of the ld. CIT(A) on this point is not fully correct. We have noted above that the TPO worked out the transfer pricing adjustment by considering the loans advanced by the assessee to both of its AEs, including *Symphoni Interactive LLC, USA*. Be that as it may, it is seen that the ld. CIT(A) also impliedly accepted the interest earned by the assessee from *Symphoni Interactive LLC, USA*, at 6% as at ALP, against which the Department has no grudge as the assail is only to the application of EURIBOR of 4.42%, which relates to the loan advanced by the assessee to *Mascot GmbH, Germany*. As such, we are confining ourselves only to international transaction of receipt of interest from *Mascot GmbH, Germany*. As against the assessee charging interest at the rate of

1.50% from Mascot GmbH, Germany, the TPO determined the arm's length rate of interest at 14%, which the ld. CIT(A) reduced to 4.42% by treating it as the average EURIBOR rate for the year under consideration.

**5.** There are two facets of the dispute raised by the Revenue on this issue. The first is that the rate of interest should be considered with reference to the prime lending rate prevalent in India and the second is that the reduction in rate to 4.42% by the ld. CIT(A) is not justified.

**6.** As against the TPO's point of view that since the assessee in India advanced loan to its AE in Germany, which if not given, would have fetched interest @14% in India, the ld. CIT(A) has held that interest rate prevalent in the country in which the loan is received, should be considered for determining the ALP of transaction of interest received. We find that there is almost judicial consensus *ad idem* at the higher appellate forums on the question of which country, that is the borrower or the lender, should be considered for determining the arm's length rate of interest on loans advanced to the AEs. The Hon'ble Bombay High Court in *CIT v. Tata Autocomp Systems Ltd.* [2015] 56 taxmann.com 206/230 Taxman 649/374 ITR 516 has held that the ALP in case of loan advanced to AEs should be determined on the basis of rate of interest charged in the country where loan is received. The Hon'ble Delhi High Court in *CIT v. Cotton Naturals (I) (P.) Ltd.* [2015] 55 taxmann.com 523/231 Taxman 401 has also held that the currency in which the loan is to be repaid normally determines the rate of return on the money lent, i.e. rate of interest. The Hon'ble Bombay High Court in *CIT v. The Great Eastern Shipping Co. Ltd.* [2018] 301 CTR 642 has reiterated that the arm's length rate of interest is to be considered with reference to the country in which the loan is received and not from where it is paid. In view of these precedents, it is palpable that the viewpoint of the AO in considering the rate of interest prevalent in India, being, the lender country, as determinative of the ALP of rate of interest charged by the assessee, is not correct. To this extent, we uphold, in principle, the view canvassed by the ld. CIT(A) that the rate of interest prevalent in Germany, being, the country in which the loan was consumed, is determinative of the arm's length rate of interest charged by the assessee-lender.

**7.** Now we espouse the second facet of the dispute relating to the determination of the arm's length rate of interest. It is seen that the ld. CIT(A) has held that average EURIBOR for the A.Y. 2007-08 should be considered as a benchmark. In determining the average EURIBOR at 4.42%, he relied on an order passed by the Tribunal in which the average LIBOR was considered at 4.42%. In other words, the ld. CIT(A) considered EURIBOR as a comparable uncontrolled transaction for the purpose of benchmarking the rate of interest charged by the assessee.

**8.** At this juncture, we consider it expedient to clarify that EURIBOR (Euro Inter-bank Offered Rate) is not a rate of interest, in itself, at which loans are advanced by banks in Euros to borrowers. EURIBOR is a reference rate which is calculated from the average interest rate at which Euro Zone Banks offer lending on inter-bank market. While calculating EURIBOR, 15% of the

lowest and 15% of the highest interest rates collected by a panel of European banks are eliminated and the remaining 70% form the basis for its calculation. In such circumstances, EURIBOR, being, not an average rate at which the loans are advanced by European banks to borrowers, cannot per se be characterized as a comparable uncontrolled rate of interest at which loans are advanced in Germany.

**9.** On lines of EURIBOR, there is LIBOR (London Inter-bank Offered Rate), another rate which is applied on behalf of British Bankers Association. Similar to EURIBOR, LIBOR is also a rate at which major global banks lend to one another in the international inter-bank market on short-term basis. In calculation of LIBOR, 25% of lowest and 25% of the highest values are eliminated and the remaining 50% are considered for determining LIBOR. Therefore, LIBOR, as such, can also not be construed as a comparable uncontrolled transaction. The Hon'ble Bombay High Court in *CIT v. Aurionpro Solutions Ltd.* [2017] 99 CCH 70 approved the action of the Tribunal in considering LIBOR +2% as the arm's length rate as against the TPO applying LIBOR plus 3%. Drawing an analogy from this position, we hold that EURIBOR+2% should be considered as arm's length rate of interest for determining the ALP of the international transaction of interest received by the assessee from Mascot Systems GmbH, Germany.

**10.** Before parting with this issue, we would like to clarify that the *Id. CIT(A)* has considered 4.42% as EURIBOR applicable for the assessment year under consideration by relying on an order of the Tribunal, in which the average LIBOR was considered at this level. Equality of LIBOR and EURIBOR could not be substantiated from any material on record. In the given circumstances, we set aside the impugned order and remit the matter to the file of the AO for considering EURIBOR +2% as arm's length rate of interest to be applied on loan advanced by the assessee to Mascot Systems GmbH, Germany. In case EURIBOR +2% turns out to be lower than 4.42% as directed to be applied by the *Id. CIT(A)* on the understanding of the same being EURIBOR simplicitor, then the addition should be restricted with reference to 4.42% rate of interest, as the assessee is not in appeal on this issue. In the otherwise scenario, the relief allowed by the *Id. CIT(A)* will be restricted pro tanto.”

10. Therefore, we find force in the assessee's case to adopt LIBOR rate for benchmarking the transactions of outstanding receivables from the AEs. Accordingly, the Assessing Officer/TPO is directed to adopt the LIBOR + 200 basis as comparable rate for benchmarking the transaction of outstanding receivables from AEs after allowing a credit period of 60 days as a normal credit period without any interest.”

9.4 On perusal of above, we found that this Tribunal has adopted LIBOR rate for benchmarking the transactions of outstanding receivables from the AEs.

We have also gone through the decision of this tribunal in the case of Hetero Lab Limited Vs. ACIT(supra) relied by the revenue and found that, the Tribunal has given it's findings relying on the decisions of some Tribunals, however, this Tribunal in the case of HARSCO India Private Ltd. v/s DCIT (supra) has given it's findings relying on the decisions Hon'ble Bombay high court. In our considered opinion the decision of hon'ble high court always prevails over the decision of Tribunal. Therefore, respectfully following the decision of this Tribunal in the case of HARSCO India Private Ltd. v/s DCIT (supra), we hold that, the justice will be served by applying LIBOR + 200 basis points on trade receivables in the case of the assessee. Therefore, we direct the Ld. AO/TPO to apply LIBOR + 200 basis points for benchmarking of interest on trade receivables.

10. Ground Nos. 18 to 20, raised through additional grounds, pertain to a legal issue. During the course of hearing, the Ld. AR submitted that the legal issue involved in these grounds pertains to the question of judicial discipline and is identical to the issue raised in the case of Roca Bathroom Products Pvt. Ltd., which is currently pending adjudication before the Hon'ble Supreme Court. The Ld. AR, therefore, requested that these legal grounds be kept open and a suitable direction be issued to the Ld. AO/TPO to follow the outcome of the decision of the Hon'ble Supreme Court in the case of Roca Bathroom Products Pvt. Ltd., while giving effect to the present order of the Tribunal.

10.1 Per contra, the Ld. DR did not raise any objection to the request of the Ld. AR.

10.2 We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. Considering the pendency of the identical legal issue before the Hon'ble Supreme Court and no-objection from the Ld. DR, we are inclined to accept the request of the assessee.

Accordingly, the issue raised in ground nos.18 to 20 are set aside to the Ld. AO/T.P.O with the direction to follow the outcome of the decision of the Hon'ble Supreme Court in the case of Roca Bathroom Products Pvt. Ltd. while giving effect to the order of the Tribunal in the present appeal. Accordingly, Ground Nos. 18 to 20 are kept open, with the above direction.

11. Ground no. 22 of the assessee, raised through additional ground of appeal is related to seeking exclusion of Access Healthcare Services Private Ltd. (Access Healthcare") by the assessee from the set of comparables on the basis of the rectification order passed by the Ld. DRP on 27/01/ 2023. In this regard, we have gone through para nos. 1 to 2.1 of the rectification order of the Ld. DRP placed at page no. 560 of the paper book, which is to the following effect:

*" 1. The Dispute Resolution Panel-1, Bengaluru had given directions under Section 144C (5) of the Income tax Act, 1961 vide order dated 08.06.2022 on the objection filed by the assessee against the draft assessment order passed by the AO dated 10.09.2021. Subsequently, the assessee filed an application for rectification dated 11.07.2022 received in this office on 12.07.2022 and submitted that the Panel had not adjudicated on the filters of the Access Healthcare Services Pvt. Limited.*

*2. Access Healthcare Services Pvt. Limited ('Access Healthcare')*

*>Fails export filter applied by the Ld. TPO*

*> Fails RPT filter applied by the Ld. TPO*

*> Functionally dissimilar and lack of segmental information.*

*2.1 Having considered the submissions, and on perusal of the annual report it is seen that the company has received a domestic revenue from sale of services amounting to Rs.436.57 crores as per the information statement of profit and loss account given at page nos. 100-102 of the annual report. The company reported that it is exclusively engaged in the business of IT enabled services. On perusal of the statement of profit and loss account (Pg-102 of*

*AR), it is seen that the earnings from foreign currency is reported as NIL whereas the entire revenue is reported to be derived from domestic sale of services. In view of the above, the company fails the export turnover filter adopted by the TPO. The TPO is directed to exclude the comparable for the comparability analysis under ITES segment.”*

11.1 On perusal of the above, we found that the Ld. DRP has given a categorical direction to the Ld. TPO to exclude Access Healthcare from the set of comparables. Therefore, accepting the request of the assessee, we direct the Ld . AO/TPO to give effect to the direction of the Ld. DRP with regards to the exclusion of Access Healthcare from the set of comparable. Accordingly, ground no. 22 of the assessee is allowed.

12. In the result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the open Court on 5th May, 2025.**

**Sd/-  
(VIJAY PAL RAO)  
VICE PRESIDENT**

**Sd/-  
(MADHUSUDAN SAWDIA)  
ACCOUNTANT MEMBER**

Hyderabad.  
Dated: 05.05.2025.

*\* Reddy gp*

**Copy of the Order forwarded to :**

1. M/s. DSM Shared Services India Pvt. Ltd., The Skyview, Sy.No.83/1, Raidurgam, Hitech City Main Road, Hyderabad-500 081 Telangana.
2. ACIT, Circle 8(1), Hyderabad.
3. Dispute Resolution Panel (DRP), Bangalore.
4. Director of Income Tax (IT & TP), Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard File.

BY ORDER,