

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
"DB" BENCH, COCHIN**

**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**IT(TP)A ITA No.601/COCH/2017
(Assessment Year:2013-2014)**

IBS Software Services Private Limited

5th Floor, NILA, Technopark Campus,
Karyavottam Trivandrum, Kerala-695581
[PAN: AAACI6825N]

..... **Appellant**

Vs

**Assistant Commissioner of Income Tax
Circle 1(1), Thiruvananthapuram**

Aayakar Bhavan, Kowdiar, Trivandrum - 3

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rajakannan, Advocate
For the Respondent/Department : Shri Sanjit Kumar Das, CIT-DR

Date

Conclusion of hearing : 19.08.2025
Pronouncement of order : 13.11.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is pertaining to Assessment Year 2013-2014 challenging Final Assessment Order, dated 18/09/2017, passed by the Assessing Officer under Section 143(3) read with Section 92CA read with Section 144C of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'], as per the directions issued by Dispute Resolution Panel - 2, Bangalore [for short '**DRP**'], on 07/08/2017 under Section 144C(5) of the Act.
2. The relevant facts in brief are that the Assessee is a subsidiary of International Business Services Group (P) Limited ("**IBSG**") having units in Software Technology Park of India ("**STPI**") and Special

Economic Zone ("SEZ"). The Assessee, a company engaged in the business of development and sale of computer software, filed return of income for Assessment Year 2013-2014 on 27/11/2013 declaring income at INR.56,96,08,040/-. The return of income was selected for scrutiny through CASS. During the assessment proceedings, it was noticed from the audit report in Form 3CEB that the Assessee had entered into International Transactions amounting to INR.2,34,83,13,172/- with its Associated Enterprises. The case of the Assessee was referred to the Transfer Pricing Officer (**TPO**) under Section 92CA of the Act for determination of the Arm's Length Price (**ALP**) in relation to the said international transactions. TPO passed order, dated 28/10/2016, under Section 92CA(3) of the Act proposing an upward transfer pricing adjustment of INR.31,09,52,334/-. The Assessing Officer passed the Draft Assessment Order, dated 29/11/2016, proposing aforesaid transfer pricing addition and corporate tax additions/disallowances including (a) disallowance of INR.5,66,26,572/- in respect of loss on onerous contracts, (b) disallowance of INR.77,71,759/- in respect of employee's contribution towards Provident Fund (PF) and Employee State Insurance (ESI), (c) disallowance of interest of INR.12,68,911/- under Section 36(1)(iii) of the Act. The objection raised by the Assessee were disposed off by the DRP vide Order, dated 07/08/2017. DRP rejected the objections raised by the Assessee in relation to the aforesaid additions/disallowances. Accordingly, the Assessing Officer passed the Final Assessment Order, dated 18/09/2017, making. Inter alia, the following additions/disallowances:

- (a) Transfer pricing adjustment of INR.31,09,52,334/-
- (b) Loss on onerous contracts of INR.5,66,26,572/-
- (c) Disallowance under Section 36(1)(va) of the Act of INR.77,71,759/-
- (d) Disallowance under Section 36(1)(iii) of the Act of

INR.12,68,911/-

The Assessee has now preferred the present appeal challenging Final Assessment Order. The Assessee has raised 17 Grounds of Appeal which are taken up in seriatim hereinafter.

Ground No.1

3. Ground No.1 raised by the Assessee reads as under:

"1. That the order of the learned Assistant Commissioner of Income-tax, Circle 1(1), Thiruvananthapuram (Assessing Officer' or learned AO') pursuant to the directions of the learned Dispute Resolution Panel -II (learned Panel), to the extent prejudicial to the Appellant, is bad in law and liable to be quashed."

3.1. Ground No.1 raised by the Assessee does not require specific adjudication and is dismissed as being general in nature.

Ground No.2

4. Ground No.2 raised by the Assessee reads as under:

"2. That the directions of the learned Panel and the consequent assessment order is bad in law and on facts while upholding the action of the learned Additional Commissioner of Income-tax, (Transfer Pricing). Kochi (learned Transfer Pricing Officer' or 'learned TPO) of making an adjustment of INR 310,952.334 to the transfer price of the Appellant's international transaction with its associated enterprises ('AEs')."

4.1. The above ground raised by the Assessee does not require specific adjudication and is dismissed as being general in nature.

Ground No.3 to 7

5. Ground No.3 to 7 raised by the Assessee pertains to transfer pricing adjustment in relation to notional interest on (a) loans/advances to AEs, and (b) receivables outstanding from AEs. Ground No. 3 to 7 read as under:

"Imputation of notional interest

3. *On the facts and circumstances of the case and in law, the learned AO erred in making and adjustment of INR.292,487,928/- to the income of the Appellant in respect of notional interest on delay in collection of trade receivables from Associated Enterprises ("AEs") and INR.16,092,646/- to the income of the Appellant in respect of notional interest on delay in collection of loans and advances from AEs.*
 4. *In doing so, the learned AO/TPO erred in:*
 - 4.1. *considering overdue receivable from the AEs as a separate international transaction under the provisions of section 92B of the Income-tax Act, 1961;*
 - 4.2. *disregarding the fact that the Appellant has not charged any interest to its non-AEs for the delay in collection of dues.*
 5. *Without prejudice to ground nos. 3 & 4, the learned AO/TPO erred in not restricting the time period to 31 March while computing the notional interest on overdue receivable of the relevant financial year.*
 6. *Without prejudice to ground nos. 3 & 4. the learned AO/TPO erred in ignoring that, if at all transfer pricing adjustment to be sustained with respect to notional interest on overdue receivables, it should be restricted to AEs outstanding for more than 150 days.*
 7. *Without prejudice to ground nos. 3 & 4, the learned AO/TPO erred in ignoring that, if at all transfer pricing adjustment has to be sustained with respect to notional interest on overdue receivables, it has to be restricted at an interest rate of LIBOR as against SBI PLR rate."*
- 5.1. We have heard both the sides on the grounds under consideration and have perused the material on record.
 - 5.2. We are of the considered view that the loans/advances to AEs as well as outstanding receivables fall with the definition of term 'International Transaction' as defined in Section 92B of the Act. The Finance Act, 2012 extended the definition of expression 'International Transaction' to include capital financing, loans, advances, deferred payments, and receivables. After the retrospective amendment introduced by the Finance Act, 2012 in the

definition of expression 'International Transaction' the issue raised by Assessee is no longer res-Integra. The amendment explicitly included 'receivables' as part of 'International Transactions'. Therefore, we reject the contention of the Assessee that overdue receivable from the AEs do not constitute a separate international transaction under the provisions of Section 92B of the Act. We also reject the contention of the Assessee that continuing debit balance of short term advances did not constitute an 'International Transaction'. Therefore, **Ground No. 4.1** raised by the Assessee is dismissed.

- 5.3. During the assessment proceedings the TPO noted that the Assessee was providing loans and advances to its AEs and was not charging any interest. When the Assessee was asked to provide explanation it was submitted on behalf of the Assessee that no interest should be charged on the loans/advances to AEs. The Assessee contended that the loans/advances given to the AEs were of temporary nature given in the ordinary course of business. The same were given either on account of commercial expediency or represented payments made on behalf of AEs to be recovered from AEs within a reasonable period of time. Assessee contended that no notional interest needs to be charged on interest free loans/advances to AEs. Without prejudice to the aforesaid contention, the Assessee submitted that loans to its AEs are in foreign currency (i.e., USD and GBP) and therefore, the LIBOR Rates for the said currencies should be considered as a suitable benchmark for determining the ALP of rate of interest to be charged. The aforesaid contentions were examined and rejected by the TPO. The TPO computed notional interest taking SBI Prime Lending Rate (14.475%) as the basis with Mark-up of 3%. TPO observed that the source of funds was from India and therefore, LIBOR Rate could not be adopted. Since the Assessee had aggregate Loans/ Advances to AEs amounting to INR.9,20,89,535/-, the TPO proposed adjustment of INR.1,60,92,646/- [INR.9,20,89,535/- x

17.475%] in respect of notional interest on loans/advances.

- 5.4. Adopting identical reasoning, the TPO also proposed transfer pricing adjustment of INR.29,24,87,928/- in respect of interest on outstanding receivables [INR.167,37,50,666/- x 17.475%]. Before the TPO the Assessee had contended that no notional interest was required to be imputed as (a) the Assessee was following a consistent policy of not charging interest on outstanding receivables from AEs & non-AEs, and (b) the primary transaction was benchmarked and accepted by the TPO as being at arm's length.
- 5.5. The Assessing Officer incorporated the above transfer pricing adjustments on account of notional interest in the Draft Assessment Order. The filed objections before the DRP which were rejected. Resulting into addition of INR.1,60,92,646/-, and INR.29,24,87,928/- on account of notional interest in Loans/Advances and Outstanding Receivables, respectively.
- 5.6. Before us, both sides reiterated their respective submission/stand before the authorities below.
- 5.7. Perusal of the orders passed by the authorities below show that the Assessee has consistently contended that the Assessee as followed a policy of not charging interest on receivables from AEs and non-AEs. In our view, the aforesaid contention has been rejected by the authorities below without examining the policy. We are of the view that in case the Assessee is able to establish that in case of independent third parties for similar transaction with similar credit period of similar goods no interest has been charged by the Assessee, then the same would constitute as an internal CUP. Given the fact view of the fact that the TPO has accepted the primary international transaction as being a arm's length, no adjustment on account of notional interest would be warranted. Accordingly, we deem it appropriate to set aside the Transfer Pricing Addition of

INR.29,24,87,928/- and restore the issue back to the file of TPO/Assessing Officer for denovo adjudication in terms of our observations. The Assessing Officer/TPO is directed to ascertain whether the Assessee had consistently followed the policy of not charging interest from AEs and non-AEs for delayed realization of receivables. For the aforesaid the Assessee is directed to place before the Assessing Officer/TPO, all the relevant material show that in case of similar transaction with similar credit period of similar goods no interest was charged by the Assessee on outstanding receivables from a non-AE. In terms of the aforesaid **Ground No. 4.2** raised by the Assessee is allowed for statistical purposes.

- 5.8. Since we have restored the issue of notional interest on outstanding receivables as aforesaid, **Ground No. 5 & 6** are dismissed as having been rendered infructuous at this stage. However, before parting we would like to observe that the TPO/Assessing Officer erred in computing the notional interest in receivables by applying the interest rate of 17.475% for the whole year taking the outstanding receivables at the end of the year as the basis. In our view the notional interest, if any, can only be charged on the outstanding receivables from AE for the period for which the respective receivable from the AE was overdue beyond the normal period of credit provided to a non-AE by the Assessee for a comparable transaction.
- 5.9. As regards interest rate on which notional interest has been charged on Loans and Advances is concerned, we find merit in the contention advanced on behalf of the Assessee that in case of loans and advances denominated in foreign currencies, LIBOR Rates would be more suitable for benchmarking. In the case of Commissioner of Income-tax -I vs. Cotton Naturals (I) (P.) Ltd. : [2015] 231 Taxman 401 (Delhi)/[2015] 276 CTR 445 (Delhi)[27-03-2015], it was held by the Hon'ble Delhi High Court held that when loans or trade

receivables are denominated in foreign currency, the arm's length interest rate should reference the international market rate (such as LIBOR) plus an appropriate basis point spread, not Indian domestic rates. Accordingly, we direct the Assessing Officer/TPO to benchmark the international transaction of Loan/Advances to AEs using applicable LIBOR Rate. Accordingly, in terms of the aforesaid the transfer pricing addition of INR. is set aside with the direction to compute the ALP and transfer pricing addition, if any, afresh using LIBOR Rates. Thus, **Ground No.7** is partly allowed.

- 5.10. In terms of above, Ground No. 3 is partly allowed, Ground No. 4.1 is dismissed, Ground No. 4.2. is allowed for statistical purposes, Ground No. 5 & 6 are dismissed (as being infructuous) and Ground No. 7 is partly allowed.

Ground No.8

6. Ground No.8 raised by the Assessee pertains to transfer pricing adjustment of INR.23,71,760/- in relation to expenses recovered from AEs at cost and the same reads as under:

Recovery of expenses

"8. That the directions of the learned Panel and the consequent assessment order is bad in law and on facts while upholding the learned TPO's action in concluding that the recovery of expenses is not on cost to cost basis".

- 6.1. In this regard, it was submitted by the Assessee that these expenses were not part of normal business operations. The same were in the nature of reimbursements of third party expenses incurred by the Assessee on behalf of its AEs involving no element of profit. Therefore, not requiring any mark-up.
- 6.2. Perusal of the order passed by the TPO, on which reliance was placed by the Learned Departmental Representative, shows that notional interest has been computed at the rate of 17.475% on cost

recovery of INR.1.357 Crores. In our view, the aforesaid approach adopted by the TPO cannot be countenanced. At the same time we note that the TPO has noted that the Assessee had failed to establish that the INR.1.37 Crore represented reimbursement of expense received from AEs on cost to cost basis. No third party evidence were furnished by the Assessee. The DRP has also concurred with the TPO on this issue. Before us, the Learned Authorised Representative for the Assessee reiterated that the expenses were recovered from AEs on cost to cost basis and did not have any element of profit. Keeping in view the overall facts and circumstances of the case, we deem it appropriate to set aside the transfer pricing adjustment of INR.23,71,760/- and restore this issue back to the file of Assessing Officer/TPO for denovo adjudication. The Assessee is directed to produce all relevant documents/detauks before the Assessing Officer/TPO to substantiate that transaction under consideration were on cost to cost basis and did not include any mark up. Thus, Ground No. 8 raised by the Assessee is allowed for statistical purposes.

Ground No.9 to 11

7. Ground No.9 to 11 raised by the Assessee pertain to disallowance of INR.5,66,26,572/- related to loss on onerous contracts and the same read as under:

Disallowance of Loss on Onerous Contracts

9. *That on the facts and circumstances of the case, the learned AO and the learned Panel erred in disallowing INR 566,26,572/- representing anticipated loss on onerous contracts entered into by the company.*
10. *That on the facts and circumstances of the case, the learned AO and the learned Panel erred in treating the provision for loss on onerous contract as contingent in nature.*
11. *That on the facts and circumstances of the case, the learned AO and learned Panel erred in not appreciating the facts of the*

case by holding that the loss on onerous contracts claimed in the Profit and Loss account is in the nature of provision for expenses not allowable as deduction for the year under consideration.

8. We have heard both the sides on this issue and have perused the material on record.
9. The relevant facts in brief are that the Assessee had entered into two separate contracts with "Make My Trip" and "China Eastern Airlines" during the ordinary course of business. In case of both these projects, there was an implementation delay of several months as a result of which the customers denied to compensate the Assessee for the additional costs to be incurred for completing the project. This lead to a project cost over-run situation wherein anticipated cost to be incurred for completing the project exceeded the contracted revenue. Accordingly, a provision for such loss amounting to INR.566,26,572/- was created and deduction for the same was claimed. This was disallowed by the Assessing Officer/DRP. Being aggrieved, the Assessee has carried the issue in appeal before this Tribunal.
10. It was submitted by the Learned Authorised Representative for the Assessee that the loss for onerous contracts was claimed in compliance with the Accounting Standard 4 : Contingencies and Events occurring after Balance Sheet Date' Issued by Chartered Accountants of India which required a provision be created and changed to Profit and Loss Account where there has been permanent loss incurred owing to business activity carried out by an entity or a liability has been incurred at the balance sheet date. In the present case the loss on onerous contacts represented the amount provided for anticipated loss to be incurred in respect of two contracts entered into with "Make My Trip" and "China Eastern Airlines".
11. Per contra, the Learned Departmental Representative supported the

disallowance made by the Assessing Officer and submitted that loss on onerous contract was merely a provision for unascertained liability and therefore, deduction could not be allowed for the same. It was submitted that DRP has observed that the liability of the assessee did not arise during the relevant previous year as the settlement deeds were executed by the Assessee in Financial Year 2014-2015 and 2015-2016.

12. We have given thoughtful consideration to the rival submission and on perusal of record.
13. We note that the DRP has, while rejecting the objections raised by the Assessee, returned following findings:

"6.1 This is a new ground before the DRP and did not exist in the previous years. On a perusal of the facts and circumstances indicate that this is only a provision make for the F.Y.2012-13 on anticipated loss in the subsequent years.

6.2 As per the evidence submitted by the assessee in the form of settlement deed the following facts are noticed

a. The settlement deed was signed with Make My Trip India Private Limited on 12-06-2014

b. The settlement deed was signed with Shanghai Bertelsmen Commercial Services Co., Ltd on 30-06-2015.

6.3 The perusal of the above settlement deed would indicate that the loss on onerous contract has crystalized only in the F.Y 2014-15 & 2015-16 and therefore the anticipated loss debited for the account for the F.Y 2012-13 cannot be allowed in the hands of the assessee as contended by the AO in the para 3 of his order. Therefore we are in agreement with the AO on this ground. The objection of the assessee is not accepted and the grounds are rejected."

14. Thus, it is clear that the DRP has returned a finding that the Settlement Agreements were executed after the expiry of the relevant previous year. The aforesaid finding returned by the DRP has gone uncontroverted during the present appellate proceedings. It is clear that contractual arrangement/settlement deeds under

which the Assessee was required that pay/bear the cost overrun expenses came into existence after the expiry of the relevant previous year. Therefore, concurring with the DRP, we hold that the liability to pay/bear cost overrun expenses was contingent during the relevant previous year and became ascertained only on execution of settlement deeds in the subsequent financial years. AS a result, the provision for loss on onerous contracts created by the Assessee during the relevant previous year was in the nature of provision for contingent liability. Accordingly, we reject Assessee's claim for deduction of INR.566,26,572/- for provision for loss on onerous contracts for the Assessment Year 2013-2014. Thus, Ground No.9 to 11 raised by the Assessee are dismissed.

15. Before parting we would like to observe that The Income Computation and Disclosure Standards (ICDS) on which reliance was placed by the Revenue were notified by the Government of India to be effective from April 1, 2015 vide Notification No. 33/2015 [F. No. 134/48/2010-TPL] and therefore, the same are not applicable to the relevant assessment year 2013-2014 to which the present appeal pertains. Further, the Assessee would have such liberty as available under law to claim deduction for provisions for loss on onerous contracts in the year of crystallization or conversion into ascertained liability if so permitted under law.

Ground No.12 to 13

16. Ground No.12 to 13 raised by the Assessee reads as under:

"Disallowance of Employees Contribution to Provident Fund("PF") and Employee State Insurance("ESI") under section 36(1)(va)

12. *That on the facts and circumstances of the case, the learned AO and the learned Panel erred in disallowing an amount of INR 77,71,759/- on the ground that Employees contribution to PF and ESI has been made after the due date specified in the governing Acts.*

13. *That on the facts and circumstances of the case, the learned AO and the learned Panel erred in not considering the facts of the case Le. even though the amounts were paid after the due date specified in the respective governing Acts, however for the purpose of claiming deduction under the Act, the amounts were paid within the due date of filing return of income and hence allowable as deduction under the provisions of section 36(1) (va) of the Act.*
17. By way of Ground No. 12 & 13 the Assessee has challenged the disallowance of employee's contribution to PF and ESI that has been disallowed in view of the fact that the payment towards the same was made after the expiry of the time specified in the respective statutes. The contention of the Assessee is that since the payments were made before the due date prescribed for filing return of income, deduction should be allowed to the Assessee. We note that the identical contention raised by the assessee has been rejected by the Hon'ble Supreme Court in the case of Checkmate Services Private Ltd. Vs. Commissioner of Income Tax: [2022] 448 ITR 518 (SC). It has been held by the Hon'ble Supreme Court that Employee contributions to PF and ESI that are not deposited by the due date prescribed under the respective welfare statutes are not deductible under Section 36(1)(va) of the Act. Therefore, late deposits, even if made before filing the tax return, cannot be claimed as a deduction under Section 43B of the Act. Section 43B of the Act which provides for deduction on payment basis does not override the specific provisions of Section 36(1)(va) of the Act. Accordingly, we do not find any merit in the contention raised by the Assessee and therefore, Ground No. 12 & 13 raised by the Assessee are dismissed.

Ground No.14 & 15

18. Ground No.14 & 15 raised by the Assessee reads as under:

Disallowance of Interest Expenditure under section 36(1)(iii)

14. *That on the facts and circumstances of the case, the learned*

AO and the learned Panel erred in disallowing the proportionate interest of INR 12,68,911/- relating to certain expenses incurred by the appellant on behalf of the subsidiary/ group company/associated enterprise.

15. *That on the facts and circumstances of the case, the learned AO and the learned Panel erred in holding that the appellant has not produced any basis to substantiate its claim that expenses incurred by the appellant on behalf of the subsidiary/ group company/ associated enterprise were made in the ordinary course of business and out of commercial expediency.*

The facts relevant for the grounds under consideration are that as at the end of the relevant previous year 2012-2013, the Assessee had outstanding loan of INR.10,602,772/- given to IBS Technologies Private Limited, a wholly owned subsidiary of the Assessee-Company. The Assessing Officer was of the view that the Assessee had utilized interest bearing funds to grant interest free loans to its subsidiary. Therefore, the Assessing Officer disallowed proportionate interest expenses of INR.12,68,911/-.

The DRP concurred with the Assessing Officer and rejected the objections raised by the Assessee.

Before us it was contended on behalf of the Assessee that loans were granted on account of commercial expediency and out of interest free funds. However, we note that the Assessing Officer/DRP has returned concurrent finding that no supporting documents were filed by the Assessee. Therefore, we do not find any infirmity in the order passed by the authorities below. Ground No. 14 and 15 raised by the Assessee are dismissed.

Ground No.16

19. Ground No.16 raised by the Assessee pertains to computation of interest under Section 234B and 234C of the Act and the same is dismissed as being consequential in nature.

Ground No.17

20. Ground No.17 raised by the Assessee pertains to initiation of penalty proceedings. The penalty proceedings are separate and distinct from the assessment proceedings. Therefore, Ground No. 17 is dismissed as being premature in nature.

21. In result the appeal preferred by the Assessee is partly allowed

Order pronounced on 13.11.2025.

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

कोचीन Cochin; दिनांक Dated : 13.11.2025

Milan, LDC/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण कोचीन / DR,
ITAT, Cochin
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोचीन / ITAT, Cochin