IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI

BEFORE AMIT SHUKLA (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.6313/Mum/2017
(Assessment year 2013-14)

Jardine Lloyd Thompson Private Limited, 1001-A, Supreme Business Park, Hiranandani Business Park Powai, Mumbai-400 076 **PAN : AABCJ8288K**	vs	Assistant Commissioner of Income-tax-15(2)(1), Mumbai Aayakar Bhavan, Mumbai-400 020
APPELLANT		**RESPONDENT**

Assessee represented by	Shri Nishant Thakkar / Jasmin Amalsadvala
Department represented by	Dr.Yogesh Kamat, CIT DR / Ashish Kumar, Sr AR

Date of hearing	04-05-2023
Date of pronouncement	12-05-2023

O R D E R

PER : MS PADMAVATHY S. (AM)

This appeal is against the final order of assessment passed by the Assistant Commissioner of Income-tax-15(2)(1), Mumbai dated 15/09/2017 for AY 2013-14 passed u/s.143(3) r.w.s. 144C(13)

2. The assessee is engaged in the business of rendering administrative and back office support services in India to its associated enterprise. The assessee filed the return of income for A.Y. 2013-14 on 28/11/2013 declaring total income of

Rs.10,87,09,850/-. The assessee filed subsequently a revised return on 30/03/2015 where the assessee revised the claim of credit for taxes paid in UK. The case was selected for scrutiny and notice under section 143(2) was duly served on the assessee. Since the assessee had international transactions with its associated enterprise, a reference was made to the Transfer Pricing Officer (TPO). The TPO passed an order wherein an adjustment of Rs.6,70,16,931/- was proposed. The Assessing Officer passed a draft assessment order incorporating the transfer pricing adjustment. Besides, the Assessing Officer also treated the interest income as not eligible for deduction claimed under section 10AA and according made the addition to the income. Aggrieved, the assessee raised its objections before the Ld.Dispute Resolution Panel(DRP). The Ld.DRP sustained the TP adjustments as well as the additions made by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee raised 9 grounds contesting the transfer pricing adjustment as well as treatment of interest income as not eligible for deduction u/s.10A and other consequential issues.

TP Adjustment(Grounds 1 to 3)

4. As per the Transfer Pricing Study, the assessee has entered into the following international transactions:-

Sr. No.	Transaction	Amount	Method
1	Provision o administrative support and back office services	1,13,12,38,862	TNMM
2	Receipt of Cost Allocation	3,62,36,546	TNMM
3	Payment of interest on external commercial	44,44,050	Other Method

	borrowings		
4	Payment of interest on debentures	16,53,312	CUP
5	Reimbursement of expenses	1,11,79,233	Other Method
6	Recovery of expenses	6,95,43,254	Other Method

5. The assessee has benchmarked the transaction of provision of administrative support and back office services under Transaction Net Margin Method (TNMM). The operating profit to total cost is taken as the profit level indicator (PLI). The PLI of the assessee as per the Transfer Pricing Study is calculated at 20.14%.

Particulars	FY 2012-13
Income	
Income from services rendered	1,13,12,38,862
Other Income	2,98,72,438
Less : Non-operating income	
Interest received	1,47,38,409
Total operating income	**1,14,63,72,891**
Expenditure	
Employee cost	63,44,57,882
Administrative and other expenses	28,58,90,631
Interest & Finance Charges	60,97,362
Depreciation / amortization	3,38,29,009
Less : Non-operating expenses	
Interest & Finance Charges	60,97,362
Total Operating Cost	**95,41,77,522**
Operating profit	**19,21,95,369**
Operating profit / Operating Cost	**20,14%**

6. The assessee chose the following comparables, the arithmetic mean of which works out to 15.67%.

Sr.No.	Name of the company	Weighted average of operating profits on operating cost (%)
1	Caliber Point Business Solutions Limited (Segmental)	10.10%
2	Datamatics Financial Services Ltd	3.63%
3	e4e Healthcare Business Services Private Limited	13.48%
4	eClerx Services Limited	58.87%

5	ICRA Online Limited (Segmental)	21.71%
6	Informed Tchnologies India Ltd	6.82%
7	Microgenetics Systems Limited	9.22%
8	R Systems International Limited (Segmental)	1.51%

7. Accordingly, the assessee concluded that the administrative support and back office services rendered by the assessee to its Associated Enterprise (AE) can be considered to be at arm's length from Indian Transfer Pricing perspective.

8. The TPO rejected the comparables selected by the assessee and made a fresh search to select the following final set of comparables:-

Sr.No.	**Name of the Company**	**Single year margin for FY 2012-13 (OP/TC)**
1	e4e Healthcare Business Services Private Limited	19.49%
2	eClerx Services Limited	59.08%
3	ICRA Online Limited (Segmental)	25.53%
4	Cheers Interactive (India) Private Limited	-3.27%
5	IRIS Business Services Limited	27.06%
	Average Margin	**25.58%**

9. Accordingly, the TP arrived at the Transfer Pricing adjustment as under :

Operating Cost	95,41,77,252
Arms length Margin	25.58%
Arms Length Price @125.58% of operating cost	1,19,82,55,793
Actual receipt	1,13,12,38,862
Shortfall being adjustment u/s 92CA	**6,70,16,931**

10. The Ld.DRP confirmed the Pricing adjustment.

11. During the course of hearing, the Ld.AR submitted that if the exclusion of one comparable, viz. R Systems International Ltd by the TPO is adjudicated in favour of the assessee, then the other comparables/contentions raised by the

assessee with regard to TP adjustment would become academic. Accordingly, we will first proceed to adjudicate the inclusion of R Systems International Ltd to the list of comparables.

12. The TPO has excluded R Systems International Ltd from the list of comparables for the reason that the company is following different financial year end. The DRP confirmed the rejection for the reason that the assessee is fully engaged on ITeS whereas the BPO revenue of R Systems International Ltd is only 13.05% of its total turnover and therefore the company is not comparable. The DRP had also relied on its own order for AY 2010-11 in assessee's case to confirm the exclusion of R Systems International Ltd.

13. Before us, the Ld.AR submitted that the TPO has rejected the R Systems International Limited from the list of comparables on the basis that it has a different year end as compared to assessee. The Ld.AR also submitted that the TPO has not questioned the functional comparability of R Systems International Limited. The Ld.AR further submitted that the Tribunal is consistently holding that an otherwise comparable company cannot be rejected solely because it adopts a different financial year. It was also submitted that the quarterly financial year information are available on whose basis the operating margin of R Systems International Limited for the relevant financial year can be computed. The Ld.AR also drew our attention to the fact that the company has been accepted as a comparable in assessee's own case for A.Y. 2010-11 (ITA No.1319/Mum/2015 dated 11/08/2022). The ld AR also relied on the following decisions

(i) ARM Embedded Technologies (P) Ltd vs DCIT in 129 taxmann.com 263

(ii) NXP India (P) Ltds vs DCIT 116 taxmann.com 421

14. The Ld.DR relied on the order of the lower authorities. The Ld.DR submitted that when the data pertaining to the relevant financial year are not available, the filters cannot be applied correctly and accordingly, this comparable would get excluded.

15. We have heard the parties and perused the materials on record. We notice that the coordinate bench in assessee's own case has considered the issue of inclusion of R Systems International Ltd which was excluded for the same reason that the financial year is not the same. The relevant findings of the Hon'ble Tribunal is extracted herein below –

> 6. Per contra the Ld. Sr. AR appearing on behalf of the Revenue vehemently supported the orders of the lower authorities. He pointed out that the Ld. DRP had rightly observed that, only 14% of the revenue of M/s. CG-Vak Software & Exports and less than 11% of the revenue of M/s. R. Systems International was derived from their respective BPO related business activities, whereas the bulk of the activities of both these concerns were software services and therefore there were rightly categorized by the lower authorities as functionally different. He invited our attention to the findings of the Ld. DRP wherein it was noted that, the business structure of both these concerns would be geared for their primary activity. According to the DRP, the segmental accounts wherein the financials relatable to the BPO segments are typically derived, using allocation keys, are from the overall revenues and relatable expenses of the entire business. Such derived BPO segmental results of concerns primarily engaged in software service like the two presently under consideration would not be comparable to an entity like the assessee which is wholly or predominantly operating in the back office support segment. He also referred to the findings given by the Ld. DRP accepting M/s Acropetal Technologies Ltd and M/s Infosys BPO Ltd as suitable comparables. The Ld. Sr. DR thus supported the orders of the lower authorities and claimed that it does not call for any interference.

7. We have heard both the parties and perused the material placed on record. We have also gone through the decisions cited before us. On the question of exclusion of M/s. CG-Vak Software and Exports and M/s. R. Systems International as comparables, it is noted that similar issue had come up for consideration before this Tribunal in American Express (I) (P) Ltd. Vs. DCIT (supra). In the decided case also, that assessee (American Express) was rendering back office support services to its group entities which was functionally characterized as ITES segment and TNMM was taken as the MAM with OP/OC as the suitable PLI. In the decided case also, the TPO rejected M/s. CG-Vak Software and Exports and M/s. R. Systems International as comparables on the same line of reasoning as adopted by the TPO/DRP in the present case before us. On appeal this Tribunal however did not agree with the lower authorities and held that the BPO segments of M/s. CG-Vak Software and Exports and M/s. R. Systems International was functionally comparable. The turnover filter of 15% applied by the TPO in the decided case was also rejected by this Tribunal. The relevant findings are as follows:

> "29. Now coming to the entities which were found to be comparable, as stated above, among the six comparables rejected by the ld. TPO, assessee is challenging such rejection in respect of R. Systems, CG Vak Software, Informed Technologies ltd. and Micro Genentic Systems Ltd. Firstly, in respect of M/s R. Systems, ld. TPO rejected the same on the ground that this company is having financial year ending other than March and, therefore, not a suitable comparable. Ld. DRP also felt that the applicability of different financial year ending filter is applicable and, therefore, this company cannot be a good comparable.
>
> 30. Contention of the assessee has been that this company files return of income and such parties prepare the accounts as required under the Income-tax Act and, therefore, it is within competency of the ld. AO to seek requisite information by invoking the powers u/s 133(6) of the Act, so long as the company is functionally comparable with the assessee. It is further submitted that M/s R. System's comparability was considered at length and accepted on the very same ground by a coordinate bench of this Tribunal in ITA No.1973/Del/2014 for Asstt. Year 2009-10 and the Tribunal recorded that inasmuch as this company has not been rejected on the ground of functionality, if the quarterly results are available in the public domain wherein the figures for the relevant quarter are also available, there cannot be any difficulty to work out the proportionate margin. While placing reliance on the decision of this Tribunal in the case of Cadence Design

Systems India Ltd., the Tribunal directed the TPO to consider the quarterly results and work out the proportionate margin results.

31. We have gone through the order and also the facts involved in this matter. The rejection of this comparable is not on the ground of functional dissimilarity, but only because of a different accounting period. Facts being similar, we are of the considered opinion that it is a fit case to direct the ld. AO to consider the quarterly results and work out the proportionate profit margin for this purpose, we remand the matter to the file of the ld. TPO/AO for compliance of our direction.

32. ****

33. *****

34. ****

8. Respectfully following the decision of the Tribunal (supra), we direct the TPO/AO to consider these two entities for benchmarking the international transactions.

16. We notice that the reasons quoted by the TPO and the DRP for exclusion of R Systems International Ltd is same as in AY 2010-11 and therefore in our considered view, the issue is covered by the above decision of the coordinate bench in assessee's own case. Therefore respectfully following the same we remit the issue back to the TPO with a direction to consider the quarterly results and work out the proportionate profit margin of the comparable after giving a reasonable opportunity of being heard to the assessee. This issue is allowed for statistical purposes.

17. In the light of our decision with regard to inclusion of R Systems International Limited the other grounds raised with regard to the transfer pricing adjustment have become academic not warranting specific adjudication and left open.

Corporate Issue- Denial of deduction u/s.10AA for interest income(Ground 4)

18. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed exemption under section 10AA in respect of two SEZ units. The Assessing Officer further noticed that the income claimed as exempt also includes interest income. The assessee submitted before the Assessing Officer that such interest income is earned from fixed deposits along with income from export of services from SEZs and, therefore, it is eligible or deduction under section 10AA. The assessee also submitted that the Ld.DRP for A.Y. 2010-11 had considered the interest income earned on fixed deposit as part of business income and has allowed the deduction under section 10AA. The Assessing Officer did not accept the contentions of the assessee by stating that the principle of *res judicata* is not applicable to Income-tax proceedings. The Assessing Officer, therefore reduced the interest income from the claim of deduction under section 10AA of the Act and added the same to the total income of the assessee.

19. On further objections raised before the DRP, the assessee submitted that the same issue has been held in favour of the assessee by the Hon'ble Tribunal in AY 2010-11 and that the department has not preferred further appeal which would mean that the issue has reached finality that the interest income need to be included for the purpose of claiming deduction u/s.10AA. However the DRP rejected the contentions raised by the assessee and upheld the Assessing Officer's order by stating that the term "derived from" should be construed narrowly and that the Revenue did not file appeal against the earlier order of DRP for the reason of low tax effect and, therefore, that contention cannot be accepted.

20. Before us, the Ld.AR submitted that the issue is covered by the of the Hon'ble Karnataka High Court in the case of CIT vs Hewlett Packard Global Soft Ltd (2017) 87 taxmann.com 182 where it has been held that all profits and gains of 100% EOU including incidental income by way of interest on bank deposits or soft loans would be entitled to 100% exemption or deduction under section 10A / 10B. The Ld.DR relied on the order of the lower authority.

21. We heard the parties and perused the materials on record. We notice that the Hon'ble Karnataka High Court while considering the issue of interest on deposits being treated as income eligible for deduction under section 10A / 10B has held that -

> *"34. We are of the considered opinion that the above referred decisions relied upon by the learned counsel for the Revenue, Mr. Aravind do not cover the cases under Sections 10-A and 10-B of the Act which are special provisions and complete code in themselves and deal with profits and gains derived by the assessee of a special nature and character like 100% Export Oriented Units (EOUs.) situated in Special Economic Zones (SEZs), STPI, etc., where the entire profits and gains of the entire Undertaking making 100% exports of articles including software as is the fact in the present case, the assessee is given 100% deduction of profit and gains of such export business and therefore incidental income of such undertaking by way of interest on the temporarily parked funds in Banks or even interest on staff loans would constitute part of profits and gains of such special Undertakings and these cases cannot be compared with deductions under Sections 80-HH or 80-IB in Chapter VI-A of the Act where an assessee dealing with several activities or commodities may inter alia earn profits and gains from the specified activity and therefore in those cases, the Hon'ble Supreme Court has held that the interest income would not be the income "derived from" such Undertakings doing such special business activity.*
>
> *35. The Scheme of Deductions under Chapter VI-A in Sections 80-HH, 80-HHC, 80-IB, etc from the 'Gross Total Income of the Undertaking', which may*

arise from different specified activities in these provisions and other incomes may exclude interest income from the ambit of Deductions under these provisions, but exemption under Section 10-A and 10-B of the Act encompasses the entire income derived from the business of export of such eligible Undertakings including interest income derived from the temporary parking of funds by such Undertakings in Banks or even Staff loans. The dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category of assessees entitled to the incentive in the form of 100% Deduction under Section 10-A or 10-B of the Act, rather than it being a spec: character of income entitled to Deduction from Gross Total Income under Chapter VI-A under Section 8 HH, etc. The computation of income entitled to exemption under Section 10-A or 10-B of the Act is done the prior stage of computation of Income from Profits and Gains of Business as per Sections 28 to 44 under Part-D of Chapter IV before 'Gross Total Income' as defined under Section 80-B(5) is computed and after which the consideration of various Deductions under Chapter VI-A in Section 80HH etc. comes into picture. Therefore analogy of Chapter VI Deductions cannot be telescoped or imported in Section 10-A or 10-B oft Act. The words 'derived by an Undertaking' in Section 10-A or 10-B are different from 'derived from employed in Section 80-HH etc. Therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction under Section 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the Undertaking even though not as a direct result of export but from the Bank Deposits etc., and therefore eligible for 100% deduction.

36. *We have to take a purposive interpretation of the Scheme of the Act for the exemption under Section 1 A/10-B of the Act and for the object of granting such incentive to the special class of assessees selected the Parliament, the play-in-the-joints is allowed to the Legislature and the liberal interpretation of t exemption provisions to make a purposive interpretation, was also propounded by Hon'ble Supreme Court the following cases:—*

[I] In Bajaj Tempo Ltd. v. CIT [1992] 196 ITR 188/62 Taxman 480. the Hon'ble Supreme Court held that:—

"5. ..... Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. But that turned out to be the, unintended, consequence of construing the clause literally, as was do by the High Court for which it cannot be blamed, as the provision is susceptible of such construction the purpose behind its enactment, the objective it sought to achieve and the mischief it intended control is lost sight of. One way of reading it is that the clause excludes any undertaking formed transfer to it of any building, plant or machinery used previously in any other business. No objection could have been taken to such reading but when the result of reading in such plain and simple manner analysed then it appears that literal construction would not be proper. ..."

[II] In R.K. Garg v. Union of India [1982] 133 ITR 239/[1981] 7 Taxman 53, the Hon'ble Apex Court has lit as under:—

'8. Another rule of equal importance is that laws relating to economic activities should be viewed w greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, when having regard to the nature of the problems required to be dealt with, greater play in the joints has to allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights is involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [351 \ 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. T courts have only the power to destroy, not to reconstruct. When these are added to the complexity economic regulation, the uncertainty, the liability

to error, the bewildering conflict of the experts, and t number of times the judges have been overruled by events — self-limitation can be seen to be the path judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that la are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.'

37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also inter earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the / is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act."

22. In assessee's case, we notice that the assessee has placed the surplus funds in FDs and has earned interest from the same. The facts of assessee's case being

identical to the case of Hewlett Packard Global Soft Ltd (supra), respectfully following the above full bench decision of the Hon'ble Karnataka High Court, we hold that the interest income earned by the assessee is eligible for deduction under section 10AA. Accordingly, we delete the disallowance made by the Assessing Officer in this regard.

23. In view of our decision with regard to Ground 4, Ground 5 has become academic and does not warrant any adjudication.

24. GroundS No.6 and 7 pertain to non granting of credit for TDS & foreign tax by AO. In this regard we direct the AO to consider the submissions and evidences provided by the assessee and decide in accordance with law.

25. Grounds No.8 & 9 are consequential and does not warrant separate adjudication.

In result the appeal is partly allowed.

Order pronounced in the open court on 12 /05/2023.

Sd/-	**sd/-**
(AMIT SHUKLA)	**(PADMAVATHY S)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt : 12th May, 2023
Pavanan

<u>प्रतिलिपि अग्रेषित</u>Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai