

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "A" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1611/Hyd./2019
Assessment Year : 2015-16**

M/s ADP Private Limited
Hyderabad

vs. Deputy CIT, Circle 1(1)
Hyderabad

[PAN: AAACW2655C]

(Appellant)

(Respondent)

For Assessee: Sri H Srinivasulu, A.R.

For Revenue: Sri Sibendu Moharana, D.R.

Date of Hearing : 02/02/2021

Date of Pronouncement : 09/04/2021

ORDER

PER S.S. GODARA, J.M.

This assessee's appeal for A.Y. 2015-16 arises against the Dy.CIT, Circle 1(1) Hyderabad's assessment dated 23.09.2019 framed in furtherance to Dispute Resolution Panel 'DRP' -1 Bangalore's directions dated 31.07.2019 in F.No 4/DRP1/BNG/2019-20 making arm's length price 'ALP' adjustment of Rs.43,93,92,803/- in proceedings u/s 143(3) r.w.s. 92CA(3) and 147 of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal.

“General:

1. On the facts and circumstances of the case and in contrary to law, the Deputy Commissioner of ~ Income-tax (Transfer Pricing Officer)-I, (hereinafter referred to as 'the Ld. TPO') and the Ld. AO under the directions issued by Hon'ble DRP, erred in making a Transfer Pricing addition of Rs. 43,93,92,803 to the Appellant's income and thereby determining a total income of Rs. 4,24,67,62,545 and the said addition being wholly unjustified are liable to be deleted.

Transfer Pricing:

2. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in accepting the following comparable companies, without appreciating that these companies were functionally dissimilar to the Appellant, engaged in product development have presence of brand and intangibles, have peculiar economic circumstances, and huge turnover:

- Tata Elxsi Limited*
- Rheal Software Private Limited*
- Mindtree Limited*

- Larsen & Toubro Infotech Limited.*
- R S Software (India) Limited*
- Infobeans Technologies Limited*
- Persistent Systems Limited*
- Nihilent Technologies Limited*
- Aspire Systems (India) Limited*
- Inteq Software Private Limited*
- Infosys Limited*
- Thirdware Solutions Limited*
- Cybage Software Private Limited*

3. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in rejecting the following companies engaged in software development services as a comparables, without appreciating that the said companies were functionally comparable to the Appellant :

- SagarSoft (India) Limited*

- *Akshay Software Technologies Limited*
- *Evoke Technologies Private Limited*
- *Harbinger Systems Private Limited*
- *I2T2 India Limited*
- *Infomile Technologies Limited*
- *Kireeti Soft Technologies Limited*

4. *Without prejudice to the above grounds on rejection of functionally dissimilar comparable companies, on the facts and circumstances of the case and in contrary to law, the Ld. TPO erred by incorrectly computing the margin of following comparable companies:*

- *Tata Elxsi Limited*
- *Nihilent Technologies Limited*

- *Thirdware Solutions Limited*

5. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the C) Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in rejecting the transfer pricing analysis / study prepared by the Appellant, without appreciating that none of the conditions mentioned in clauses (a) to (d) of Section 92C(3) of the Act were satisfied.*

6. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in considering provision for bad and doubtful debts as a non-operating expenditure while computing the Profit Level Indicator ('PU') of the Appellant as well as the comparable companies.*

7. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. TPO in not allowing working capital adjustment in accordance with the provisions of Rule 110B of the Income-tax Rules, 1962 ('Rules') to account for differences between the international transactions undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.*

8. *On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon 'ble DRP further erred in upholding / confirming the action of the Ld. TPO in not allowing risk adjustment in accordance with the provisions of Rule 10B of the Rules to account for differences ~ between the international*

transactions undertaken by the Appellant, being a captive unit, and those undertaken by the alleged comparables.

9. On the facts and circumstances of the case and in contrary to law, the addition made by the Ld. TPO with respect to interest on outstanding receivable is untenable and be deleted since the addition has been made by computing interest on an invoice to invoice basis as against on a weighted average basis for all invoices raised during the year under consideration.

10. On the facts and circumstances of the case and in contrary to law, Ld. TPO erred in not acknowledging the fact that the Appellant had received certain payments within the due date as per the agreement and the Ld. TPO had not given the benefit against the delayed invoices by not following the weighted average method.

11. On the facts and circumstances of the case and in contrary to law, Ld. TPO erred in not acknowledging the fact that the Appellant had received certain payments within the due date as per the agreement and the Ld. TPO had not given the benefit against the delayed invoices by not following the weighted average method.

12. On the facts and circumstances of the case and in contrary to law, the Ld. TPO erred in and the Hon'ble DRP further erred in considering the facilitation cost of CDK Global (India) Private Limited incurred by the Appellant for transition of sale of dealer services division as the cost of the Appellant and thereby imputing a mark-up on such cost. Further, the Ld. TPO erred in holding this transaction as a deemed international transaction and the Hon'ble DRP erred in holding this transaction as an international transaction.

Consequential:

13. On the facts and in the circumstances of the case and in law, the Ld. AO erred in and the Hon'ble DRP further erred in upholding / confirming the action of the Ld. AO in levying interest and the said levy of interest being wholly unjustified, ought to be deleted.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, to enable the Hon'ble Members to decide this appeal according to law."

2.1. Learned counsel is fair enough at the outset in not pressing assessee's substantive grounds nos.1, 3, 4, 5, 6 and 8; being general in nature qua the

1st ground and others keeping in mind the fact it's substantive ground no.2 would render the other issues academic.

2.2. We thus proceed to deal with assessee's second substantive ground seeking to exclude :

- i. M/s Tata Elxsi Limited;
- ii. M/s Infobeans Technologies Ltd.;
- iii. Persistent Systems Ltd.;
- iv. Infosys Ltd. and
- v. M/s Cybage Software Private Ltd.

from the array of comparables adopted by lower authorities. We are informed during the course of hearing that this tribunal's coordinate bench order in assessee's case itself ITA 2233/Hyd/2018 for assessment year 2014-15 dated 18.12.2020 has directed the departmental authorities to exclude the very five comparables for the purpose of determining the ALP in the corresponding segment of development of software and ITES.

2.3. Learned CIT DR has drawn our attention to DRP's detailed discussion in paras 2.7 , 2.12, 2.13, 2.17 and 2.18; entity wise, respectively; taking into consideration not only their financial statements but also the alleged FAR analysis. He fails to dispute that the very aspects already stand considered in tribunal's earlier decision in preceding assessment years. We thus adopt judicial consistency and decline Revenue's foregoing stand. This 2nd substantive ground raised at assessee's behest is restored back to the TPO for his appropriate adjudication in light of the coordinate bench directions since there is no factual or legal distinction involved in the twin assessment years. The 2nd substantive ground is treated as allowed for statistical purposes in above terms.

3. The assessee's 7th substantive ground is that the learned lower authorities ought to have granted it working capital adjustment. The Revenue relied on this tribunal coordinate bench decision in Mobis India Limited vs. Dy.CIT (2013) 38 taxman.com 231 (Chennai) denying identical relief to concerned assessee. Mr.Moharana fails to rebut the clinching fact that this tribunal's yet another decision in ITA 2029/Bang/2017 M/s GXS India Technology Centre Pvt. Ltd vs ITO dated 04.01.2021; after considering Mobis India, holds that the said assessee's failure in placing on record the relevant working capital particulars only led to the impugned disallowance than on merits. We thus accept this 7th substantive ground for statistical purposes and direct the TPO to consider assessee's working capital adjustment as per law.

4. Next comes assessee's 9th to 11th substantive grounds seeking to delete ALP adjustment in the nature of interest on receivables due to its overseas Associated Enterprises 'AEs'. Suffice to say, it transpires that the learned lower authorities had adopted SBI short term fixed deposit rate on assessee's international transactions without doing any benchmarking as per market rates in the very segment by referring to comparable entities. We accept this instant substantive ground on this count alone and direct the TPO to delete the impugned adjustment.

5. This leaves us with assessee's substantive ground that learned lower authorities have erred in law and on facts in making ALP adjustment of Rs. 18,74,75,482/- in respect of recoveries made from resident associated enterprise M/s CDK Global India Private Limited. Both the learned representatives took us to para 22.4.2 to 22.4.2.5 (pages 98 to 107) of the TPO's order dated 30.11.2018 discussing the issue as under:

22.4.2. Recoveries made from CDK Global India Pvt Ltd without mark-up

22.4.2.1. It is seen from Notes 10, 20, 21 and 23(b) forming part of the financial statements(Annual Report for F. Y. 2014-15) that the following amount have been reduced from the respective heads of income.

Note No	Expenses incurred by assessee in Rs.	Recovered from CDK (Global) India Ltd. In Rs.	Expenses debited to P&L a/c in Rs.
10 - Fixed Assets Depreciation	54,64,89,538	62,48,698	53,39,92,142
20 - Employee benefit expenses	639,70,12,324	38,18,46,654	601,51,65,670
21 - Operating, Administration and other expenses	213,86,32,098	8,42,74,161	205,43,57,937
	Total:	47,23,69,513/-	

From the above it could be seen that a recovery of Rs. 47,23,69,513/- was made from M/s. CDK Global India Limited towards Depreciation, Employee benefit expenses, operating, administration and other expenses. Further, it is seen from Note 23 (b) that pursuant to India Country Participation Agreement, the assessee company facilitated the business transfer by providing assistance to CDK with regard to facilities and maintenance, payroll costs etc., which have been recovered at cost and amount recovered towards employee benefit expenses, operating expenses and depreciation has been netted off against respective expenses heads.

22.4.2.2. In view of the above, it is evident that certain services were rendered by the assessee company to CDK Global (the AE of which has been reported as AE of the assessee company) but no mark-up was charged on the cost of Rs. 47,23,69,513/incurred in rendering such services. No independent party would render such service without a margin. In this connection, the assessee was required to show cause as to why a mark up 27.63%) should not be made on the cost of Rs.47,23,69,513/- and thereby an adjustment of Rs. 13,05,15,696/- should not be made u/s 92CA(3) of the Act.

22.4.2.3. In response to the above, the assessee vide its letter dated 16/10/2018 submitted that the consideration for the transfer of 'Dealer Services' from the assessee company to CDK Global India Limited was negotiated between the above

mentioned parties. The assessee further submitted that there was no prior agreement between the AE of the assessee and the AE of CDK Global India Limited. Hence, the said transaction would not fall under the meaning of Deemed international transactions.

22.4.2.4. The submissions of the assessee were considered and found to be not acceptable for the following reasons.

i) The assessee did not furnish any evidence to support that the price negotiation was made between the assessee and the CDK Global India Limited independent of their respective parent companies in USA. It should be noted here that the decision to transfer the Dealer Services Division to CDK Group was made by the ADP LLC, USA and the assessee is merely implementing the said decision. This implies that there is a prior agreement between the AE of the assessee and the third party, by virtue of which the said transaction is covered within the meaning of deemed international transaction.

ii) In its TP Study Report, the assessee itself has reported M/s. CDK Global as an Associated Enterprises.

From the above it is evident that the services rendered by the assessee to M/s. CDK Global India Limited is a deemed international transaction and the ALP needs to be determined on the same.

22.4.2.5. Since the Dealer Services Division, was a software development service division of the assessee company, the above mentioned amount of Rs.47,23,69,513/- is added to the operating cost of the Software development segment of the assessee and ALP is computed accordingly.

Based on this, the arm's length price of the services rendered by the assessee to its AE(s) is computed as under:

Description	SDS Segment Amount in Rs.	ITES Segment Amount in Rs.
Operating Cost	5,53,90,83,786/-	3,53,99,00,766/-
Arm's Length Margin (ALM) in %	27.37	23.20
Arm's Length Price = $[100+ALM]*OC$	7,05,51,31,018	4,36,11,57,744
Operating Revenue	5,97,38,55,451	4,17,36,82,262
Shortfall being adjustment u/s 92CA	1,08,12,75,567	18,74,75,482

- *Operating Cost for SDS segment includes recoveries made from CDK Global India P Ltd of Rs47,23,69,513/- but reduced by the assessee from its profit and loss a/c.*

The above shortfall of Rs.1,08,12,75,567/- is treated as transfer pricing adjustment u/s 92CA in respect of software development segment of the assessee's international transactions and the shortfall of Rs. 18,74,75,482/- is treated as transfer pricing adjustment u/s 92CA in respect of ITeS of the assessee's international transactions.

23. INTEREST ON DELAYED TRADE RECEIVABLES:

23.1. It is seen from TP Study report that, there are outstanding receivables from AEs to an extent of Rs. 26,11,83,164/-. It was informed to the assessee vide this office show cause notice dated 28.09.2018, that in case of trade receipts from AEs beyond credit period, the delayed receipts are proposed to be treated as "unsecured loans" advanced to the AEs for the period of delay and the interest rate is proposed to be charged on the basis of average SBI PLR during the financial year 2014-15 (i.e. 14.75% per annum). Further, the assessee was asked to furnish invoice wise aging details of outstanding receivables, in respect of all invoices raised during the FY 2014-15 as well as the invoices which were raised in previous FYs but remained unpaid on the opening day of current FY 2014-15 vis-a-vis credit period as per service agreement with its AEs in following format:

<i>S. No</i>	<i>Name of AE</i>	<i>Invoice No.</i>	<i>Date of Invoice</i>	<i>Amount (In Rs.)</i>	<i>Due date of receipt of payment as per agreement</i>	<i>Actual Date(s) of receipt of payment (INR)**</i>	<i>Period of delay</i>	<i>Interest For the delay period ***</i>	<i>Credit period allowed As per service agreement</i>
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23.2 Further, the assessee vide its letter dated 16.10.2018, submitted as follows,

- Outstanding receivables are not covered under the definition of International Transaction*
- Not an international transaction and no separate adjustment is warranted*
- Working capital adjustment takes into account the outstanding receivables and hence separate adjustment is not required*
- Restriction of period for imputation of interest to the previous year*

23.3. The submissions of the assessee were considered and found to be not acceptable for the following reasons.

23.3.1. Outstanding receivables are not covered under the definition of International Transaction.

Objections of the assessee :

The provisions of S. 928 of the Act, as amended by Finance Act, 2012 does not cover the outstanding receivables arising out of sales transactions, as the word 'capital financing' used there in particularly refers to loans or advances but not the outstanding receivables.

TPO's remarks :

i) The above submission of the assessee is not acceptable for the reason that in view of the amendment inserted by way of explanation to Section 92B with retrospective effect from 01. 04.2002, international transaction would specifically include within its ambit, "deferred payment or receivable or any other debt arising during the course of business". The relevant extract of the explanation (i)(c) to S. 92B of the Act, is reproduced here for ready reference.

"Capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business"

Further, S. 92F(v) of the Income Tax Act reads as follows:

"Transaction" includes an arrangement, understanding or action in concert,-

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrange, understanding or action is intended to be enforceable by legal proceeding ... »

In view of above and doctrine of 'substance over form', deferred payment or receivable or any other debt arising during the course of business is held to be an "International Transaction" within the meaning of section 92B(1) of the Act. In this

case, admittedly, the taxpayer has provided benefit to its AE by way of advancement of interest free loan in the garb of delayed receipt of sale proceeds. These funds could have been otherwise deployed for at least earning interest income. The taxpayer has therefore incurred cost in connection with a benefit and services provided to the AE by way of delayed receipt of sales proceeds. Accordingly, the delay in receipt of receivables is an international transaction u/s 92B(1) read with clause (v) of section 92F.

ii) In view of the above, non-charging or under charging of interest on the excess period of credit allowed to the AE, for the realization of sales invoices would amount to an international transaction. This view finds support in the latest decision of the Hon'ble ITAT, Delhi in the case of Bechtel India Pvt. Ltd. (in ITA No. 6530/Del/2016 dated 16.05.2017). It is important to note that the Hon'ble Bench while arriving at the said conclusion distinguished its own earlier order in Bechtel case, and also rejected the contention that interest gets subsumed in the working capital adjustment. The relevant discussion holding 'deferred receivables' would constitute international transaction is as under:-

"In the case of Techbooks India International Pvt. Ltd. vs. DCIT (supra), taking note of the Explanation inserted by the Finance Act, 2012 to Section 92B, it was observed that there remained no doubt that apart from any short-term or long-term borrowing, etc., or even advance payments or deferred payments, 'any other debt arising during the course of business' had also been expressly recognized as an international transaction. In the said decision, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Patni Computer Systems was also considered, wherein Hon'ble Bombay High Court set aside the view taken by the Tribunal in view of amendment to section 92B. The decision in the case of Kusum Healthcare Pvt. Ltd. was duly considered in the case of Ameriprise India Pvt. Ltd. and it was observed from para 20 to 23 as under:

"20. The ld. AR supported the impugned order by relying on a Tribunal order dated 31.3.2015 passed in Kusum Healthcare Pvt. Ltd. vs. ACIT (ITA No.6814/Del/2014) in which it has been held that no additional imputation of interest on the outstanding receivables is warranted if the pricing/profitability is more than the working capital adjusted margin of the com parables. In the opposition, the ld. DR. relied on a later order dated 6. 7.2015 passed by the Tribunal in the case of Techbooks International Put. Ltd. (supra), in which the transfer pricing adjustment on account of the delayed realization of invoices from AEs has been upheld. The ld. DR contended that the order in the case of Kusum Healthcare Pvt. Ltd. (supra), A.Y.2015-16 has been passed without considering

the amendment to section 92B carried out by the Finance Act, 2012 with retrospective effect from 1.4.2002, which has been duly taken into account by the Tribunal in its later order in Techbooks International Pvt. Ltd. (supra).

21. After considering the rival submissions and perusing the relevant material on record, it is noticed as highlighted above, that the assessee argued before the TPO that interest on receivables is not an international transaction. At this stage, it would be apposite to note that the Finance Act, 2012 has inserted Explanation to section 92B with retrospective effect from 1.4.2002. Clause (i) of this Explanation, which is otherwise also for removal of doubts, gives meaning to the expression 'international transaction' in an inclusive manner. Sub-clause (c) of clause (i) of this Explanation, which is relevant for our purpose, provides as under:- . Explanation.- For the removal of doubts, it is hereby clarified that- (i) the expression "international transaction" shall include- (a) (b) (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;

22. On going through the relevant part of the Explanation inserted with retrospective effect from 1.4.2002, thereby also covering the assessment year under consideration, there remains no doubt that apart from any long-term or short-term lending or borrowing, etc., or any type of advance payments or deferred payments, any other debt arising during the course of business' has also been expressly recognized as an international transaction. That being so, the payment/non-payment of interest or receipt/non-receipt of interest on the loans accepted or allowed in the circumstances as mentioned in this clause of the Explanation, also become international transactions) requiring the determination of their ALP. If the payment of interest is excessive or there is no or low receipt of interest, then such interest expense/income need to be brought to its ALP. The expression 'debt arising during the course of business' in common parlance encompasses, inter alia, any trading debt arising from the sale of goods or services rendered in the course of carrying on the business. Once any debt arising during the course of business has been ordained by the legislature as an international transaction, it is, but, natural that if there is any delay in the realization of such debt arising during the course of business, it is liable to be visited with the TP adjustment on account of interest income short charged or uncharged. Under such circumstances, the contention taken by the assessee before the TPO that it is not an international transaction, turns out to be bereft of any force.

23. *The Hon'ble Bombay High Court in the case of CIT vs. Patni Computer Systems Ltd., (2013) 215 Taxmann 108 (Bom.) dealt, inter alia, with the following question of law:- "(c) Whether on the facts and circumstances of the case and in law, the Tribunal did not err in holding that the loss suffered by the assessee by allowing excess period of credit to the associated enterprises without charging an interest during such credit period would not amount to international transaction whereas section 92B(1) of the Income-tax Act, 1961 refers to any other transaction having a bearing on the profits, income, losses or assets of such enterprises?"*

24. *While answering the above question, the Hon'ble High Court noticed that an amendment to section 92B has been carried out by the Finance Act, 2012 with retrospective effect from 1.4.2002. Setting aside the view taken by the Tribunal, the Hon'ble High Court restored this issue to the file of the Tribunal for fresh decision in the light of the legislative amendment.*

25. *The foregoing discussion discloses that non-charging or undercharging of interest on the excess period of credit allowed to the AE for the realization of invoices amounts to an international transaction and the ALP of such an international transaction is required to be determined. "*

Similar views have been taken by the Hon'ble ITAT, Bangalore in the case of Ingersoll Rad (I) Pvt Ltd (dated 10.11.2017) and ITAT Delhi in the case of BT e-serve India Pvt. Ltd (dated 30.10..2017) (87 Taxmann.com 251). The Hon'ble ITAT, Delhi in the case of BT e-serve India Pvt. Ltd. held that :

"receivables or any other debt arising during the course of business is included in the definition of capital financing as an international transaction as per explanation 2 to section 92B w.e.f. 2002 inserted by the Finance Act, 2012. Even outstanding receivables partake the character of capital financing and consequently overdue outstanding is an international transaction".

iii) Even prior to the said amendment by the Finance Act, 2012, the Bangalore ITAT, in the case of Logix Micro Systems Ltd. held deferred receivables to be an international transactions with the following reasoning:-

"As a general rule, we agree with the learned Chartered Accountant that what is to be assessed as income is the income earned by an assessee and not the income that could have been earned by the assessee. Thus there is a real difference between the actual and the probable. But that general rule of taxation is not as such directly applicable to the present case as the TPO was really examining the financial impact of an international transaction. What is made in an analysis of

ALP is the evaluation of the said financial impact. On one side the pricing adopted by the assessee for all its international transactions with its AE is comparable and the ALP test is satisfied. To that extent in the present case, the TPO has accepted the position reported by the assessee company. But in spite of the fact that on one aspect of the transaction, the assessee has complied with the ALP parameters, on another side the assessee has parked huge amount of funds for long period with its AE in USA. Only for the reason that the pricing of international transactions has been accepted for ALP test, it is not possible to hold that the TPO should not go into this question of parking of funds with its AE in USA. If the funds are repatriated into India on ordinary within the normal period, the assessee would have been in a position to pay all its working capital loan or other loans, if any, and/ or earning some income from an appropriate investment of those repatriated funds. This potential loss is definitely a factor to be considered while evaluating the financial impact of the international transactions concluded by the assessee with its AE in USA. Therefore, we agree with the arguments of the Revenue and uphold the finding of the TPO that an additional income is to be added in the present case as part of ALP analysis.”

In view of the above provisions of the Act and decisions of various Appellate authorities, the objection of the assessee to treat the ‘outstanding receivable’ as an international transaction is hereby rejected.

5.1. Learned counsel’s only case during the course of hearing is that the TPO’s above extracted detailed discussion is not sustainable in the eyes of law since the corresponding transaction is not an international transaction as the assessee as well as M/s CDK India Limited are resident entities only.

5.2. Mr. Moharaa on the other hand took us to paper book pages 583 and 584 (assessee’s TP study) in para 3 thereof prima facie indicating that this taxpayer has itself declared the corresponding transactions as international transactions in view of the fact that the entire arrangement involves the above stated two domestic as well as autonomous non-entity residents in the nature of holding company.

5.3. Mr. Moharana next argued that the TPO had rightly taken the amounts in issue as Rs. 35,35,68,415/- as per third party's customer agreements and related outstanding receivables of Rs.5,51,27,154/-. He thus urges us to confirm the impugned ALP adjustment.

5.4. Learned authorised representative strongly argued in rebuttal that the assessee's foregoing declaration of deemed international transaction are altogether different than those taken in the TPO's detailed discussion extracted in the preceding paragraphs. Faced with this situation, we are of the opinion that this last issue of deemed international transaction deserves a fresh innings before the TPO. We accordingly deem it appropriate to restore the same back to the file of TPO for his adjudication as per law within three effective opportunities of hearing. The assessee or its authorized representative shall appear before the TPO on or before 31.08.2021 with all necessary papers/ verification of records at its own risk and responsibility in the specified number of opportunities, failing which our remand directions shall stand vacated.

5.5. No other ground has been argued before us.
This assessee's appeal is partly allowed in above terms.

Pronounced in Open Court on 09th April, 2021.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Dated: the 09th April, 2021.

* gmV

Copy of the Order forwarded to:

1. M/s ADP Private Limited, 6-3-1091/C/1, Fortune 9, Raj Bhavan Road, Somajiguda, Hyderabad 500 082, Telangana.
2. Dy.CIT, Transfer Pricing Officer, Circle 1(1), Hyderabad
3. ACIT, Range 1, Hyderabad.
4. CIT(A)-1, Hyderabad.
5. Pr.CIT-1, Hyderabad
6. (i) Chief CIT (International Taxation), Bengaluru; (ii) ITO (OSD) & Secretary, DRP-1, Bengaluru
7. DR, ITAT, Hyderabad.
8. Guard File.