आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

श्री रविश सूद,न्यायिक सदस्य एवं श्री मधुसूदन सावड़िया लेखा सदस्य समक्ष।
Before Shri Ravish Sood, Judicial Member
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA No. 967/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2020-21)

M/s. CURIA INDIA PRIVATE LIMITED, HYDERABAD PAN: AAFCA1469D	Vs.	Dy. CIT Circle 1(1) Hyderabad
(Appellant)		(Respondent)

निर्धारिती द्वारा/Assessee by:	Advocate Ananya Kapoor
राजस्व द्वारा/Revenue by:	Ms. Seema Meena, CIT (DR)
सुनवाई की तारीख/Date of hearing:	06/08/2026
घोषणा की तारीख/Pronouncement:	21/08/2026

आदेश/ORDER

Per Madhusudan Sawdia, A.M.:

This appeal is filed by M/s. Curia India Private Limited ("the assessee"), feeling aggrieved by the order passed by the Assessing Officer ("A.O"), on 30.07.2024 under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 ("the Act") for the A.Y. 2020-21.

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

Based on the facts and circumstances of the case, Curia India Private Limited respectfully submits that in the order passed by Assessment Unit, Income Tax Department under section 143(3) r.w.s. 144C(13) r.w.s. 144B of the Income Tax Act, 1961 ('the Act') dated 30 July 2024 ('Ld. AO'), the Ld. AO / Ld. Transfer Pricing Officer ('TPO') and the Hon'ble Dispute Resolution Panel ('DRP') erred in:

Ground 1 – The Orders passed are illegal, bad in law, without jurisdiction and barred by time limitation and liable to be quashed

a) That, in view of the facts and circumstances of the case and in law, the draft assessment order dated 07.09.2023 issued under section 144C(1) of the Income Tax Act, 1961 ('the Act'), the directions of the Dispute Resolution Panel ('DRP') dated 03.06.2024 and the Final Assessment Order dated 30.07.2024 passed under section 143(3) r.w.s 144C(13) read with section 144B of the Act are illegal, bad in law, without jurisdiction and barred by time limitation. Hence the said orders are liable to be quashed and the additions made therein are liable to be deleted.

b) That, in view of the facts and the circumstances of the case and in law, the draft assessment order dated 07.09.2023, the DRP directions dated 03.06.2024 as well as the final assessment order passed on 30.07.2024 by the Assessing Officer are barred by time limitation and in violation of the provisions of section 153 read with section 144C of the Act and as such the said orders and the additions made therein are illegal, bad in law, null and void and liable to be quashed.

Ground 2 – Rejection of TP documentation and making an adjustment

Not accepting the economic analysis undertaken by the Appellant in accordance with the provisions of the Act read with the Income Tax Rules, 1962 ("Rules") and modifying / undertaking fresh analysis while determining the arm's length price and in doing so making an adjustment of INR 5,87,85,005 to the total income of the Assessee in respect of international transactions pertaining to provision of contract R&D services by the Assessee to its associated enterprises ("AEs"), payment of interest on ECBs to AE, and imputed interest on outstanding intercompany receivables.

Ground No 3 - 8 – Without Prejudice grounds for adjustment of INR 3,25,40,128 pertaining to international transaction of provision of contract R&D services.

Ground 3 against applying Persistent losses filter

Inter-alia use of the persistent losses filter by rejecting certain comparable companies identified by the Assessee having losses in two out of three years instead of all three years. Further, operating profits/ losses have to be considered instead of entity level profits/ losses for application of such filter.

Ground 4 against rejection of companies not forming part of search matrix

Rejecting certain comparable companies identified by the Assessee since the companies were not forming part of the search matrix.

Ground 5 against selection of uncomparable companies for contract R&D services

Not undertaking an objective comparative analysis and inter alia selecting the following companies as comparable to the Appellant's contract R&D services, which are functionally not comparable to the Appellant:

a) Aurigene Discovery Technologies Limited;
b) Vanta Bioscience Limited; and
c) Veeda Clinical Research Private Limited.

Subin Kumar Sadhukhan

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Ground 6 against rejection of comparable companies for contract R&D services

Not undertaking an objective comparative analysis and inter alia rejecting comparable companies as not comparable to the Appellant's contract R&D services, which are functionally comparable and/ or qualify all the filters and hence should not be rejected.

a) TCG Lifesciences Private Limited;
b) Jeevan Scientific Technology Limited;
c) Synchron Research Services Private Limited;
d) Accutest Research Laboratories India Private Limited; and
e) Micro Therapeutic Research Labs Limited

Ground 7 pertaining to adjustments to risk differences

Not adjusting the net margins of comparable companies for functional and risk differences in accordance with the provisions of rule 10B(1)(e) of the Rules.

Ground 8 pertaining to working capital adjustments

Not making appropriate adjustments to account for differences in working capital employed by the Appellant vis-à-vis comparable companies in respect of the subject transaction pertaining to provision of contract R&D services.

Ground 9 pertaining to mark-up on reimbursements - Adjustment of INR 2,44,334

Imputing an ad-hoc mark-up amounting to INR 2,44,334 at the rate of 5% on reimbursement of expenses by AEs without appreciating that the same were recovered on a cost-to-cost basis.

Ground 10 pertaining to interest on ECBs – Adjustment of INR 32,98,063

a) Rejecting the benchmarking rate adopted by the Company without providing reasons and making an adjustment by considering the ALP rate of interest at LIBOR plus 200 bps. The said adjustment is purely on an ad-hoc basis which is not permitted in law.

b) Not following any statutorily prescribed method and without doing any comparability benchmarking as prescribed under Chapter X of the Act and has also erred in not appreciating that LIBOR + 300 bps rate of interest is also held to be at arm's length by various judicial precedents.

c) Without prejudice to our contention (against contradictory and inconsistent action of Ld. TPO in considering SBI rates to benchmark outstanding receivables) that SBI interest rates are not comparable to benchmark foreign currency loans/ receivables and that a uniform approach needs to be followed for benchmarking both the transactions.

Ground 11 against imputing interest on outstanding receivables due from AEs – Adjustment of INR 2,27,02,480

a) Not appreciating that the inter-company receivables, which arise from the primary international transactions of contract R&D services and contract manufacturing services, should not be delinked and benchmarked separately using the Comparable Uncontrolled Price (CUP) method and has erred in re-characterising the outstanding receivables as unsecured loan extended by the Assessee to its AE.

b) Determining ALP arbitrarily without an appropriate benchmarking approach as prescribed and no comparability analysis under Chapter X of the Act.

c) Not appreciating that the Company does not to collect interest on outstanding receivables from customers (both AEs & Non – AEs) and not appreciating that the Company does not pay interest on outstanding payables to AEs and hence on principles of parity, no addition is warranted.

d) Not appreciating that working capital adjustment, if provided appropriately takes into account the outstanding receivable and separate TP adjustment is unwarranted.

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e) Not appreciating that TNMM takes into account the outstanding receivables and separate TP adjustment is unwarranted.

Without prejudice to the above

f) Not appreciating that the receivables due from overseas AE's are in foreign currency and hence interest, if any, is to be benchmarked with the rates prevalent in the international market for foreign currency loans;.

g) Determining the arm's length credit period as 60 days without any basis and not allowing credit period as per industry average;

h) Not netting off the consolidated amount of outstanding payables to AEs against consolidated amount of outstanding receivables from its AE.

i) Not following method of computation as held by Hon'ble ITAT in Assessee' s own case for AY 2010-11 to AY 2014-15.

Ground 12 against disallowance towards payment of bonus u/s 43B

Disallowing an amount of INR 28,06,716 towards payment of bonus on account of difference in the disallowance u/s 43B as stated in the Form 3CD and the ROI for the AY 2020-21 without considering the online response filed by the Appellant against notice issued under section 143(1)(a).

Ground 13 against non-adjustment of brought forward business losses

Not adjusting brought forward business losses pertaining to previous years of INR 58,15,20,103 against the business income of INR 24,80,66,040 computed after making the above adjustment.

Ground 14 against restriction of credit of Tax deducted at Source

Restricting the credit of Tax Deducted at Source ('TDS) to INR 97,503 as against an amount of INR 2,37,039 as claimed by the assessee in its Return of Income (ROI) filed for AY 2020-21, thereby resulting into a short credit for TDS of INR 1,39,536.

Ground 15 on erroneous initiation of penalty under section 270A of the Act

Initiating penalty proceedings under section 270A of the Act by falsely stating that the Assessee has under-reported the income.

For Curia India Private Limited

Signature: Subir Kumar Sadhukhan

Name: **Subir Kumar Sadhukhan**

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Designation: Director

3. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing and contract research activities in the field of medicinal chemistry. The assessee filed its return of income for the assessment year 2020-21 on 15.12.2020 declaring total income at Rs. Nil. The case of the assessee was selected for scrutiny and accordingly, notice under section 143(2) of the Act dated 29.06.2021 was issued by the AO to the assessee. Since the assessee had entered into

international transactions with its Associated Enterprises ("AEs"), the matter was referred by the AO to the Transfer Pricing Officer ("TPO") for determination of the arm's length price ("ALP") of such international transactions. The TPO, vide order passed under section 92CA(3) of the Act dated 31.07.2023, proposed transfer pricing adjustments of Rs. 3,39,62,641/- on account of provision of R&D services, Rs. 2,27,02,480/- on account of interest on delayed trade receivables and Rs. 32,98,063/- on account of interest on External Commercial Borrowings ("ECBs"), thereby proposing total transfer pricing adjustment of Rs. 5,99,63,184/-. Pursuant thereto, the AO passed the draft assessment order under section 144C(1) of the Act dated 07.09.2023 by taking the base income at Rs. 28,06,716/- as computed under section 143(1) of the Act and proposing the aforesaid transfer pricing adjustment of Rs. 5,99,63,184/- and further proposing an addition of Rs. 11,35,083/- on account of variation in the deduction claimed under section 35DD of the Act, thereby proposing the total income of the assessee at Rs. 6,39,04,983/-.

4. Aggrieved by the draft assessment order, the assessee filed objections before the Learned Dispute Resolution Panel (" Ld. DRP"). The Ld. DRP issued directions under section 144C(5) of the Act dated 03.06.2024. In pursuance of the directions of the Ld. DRP, the TPO passed the order giving effect dated 13.07.2024 computing adjustments of Rs. 3,25,40,128/- on account of provision of R&D services, Rs. 2,44,334/- on account of markup on reimbursement of expenses, Rs. 2,27,02,480/- on account of interest on trade receivables and Rs. 32,98,063/- on account of interest on ECB, thereby

determining the total transfer pricing adjustment at Rs. 5,87,85,005/-. Thereafter, the AO passed the final assessment order by taking the base income at Rs. 28,06,716/- as computed under section 143(1) of the Act and making the transfer pricing adjustment of Rs. 5,87,85,005/-, thereby determining the total income of the assessee at Rs. 6,15,91,721/-.

5. Aggrieved by the final assessment order, the assessee is in appeal before the Tribunal. At the outset, the Learned Authorized Representative ("Ld. AR") submitted that the assessee is pressing only the following issues arising out of the grounds of appeal:

(i) transfer pricing adjustment of Rs. 3,25,40,128/- on account of provision of R&D services;

(ii) transfer pricing adjustment of Rs. 2,27,02,480/- on account of interest on delayed trade receivables;

(iii) transfer pricing adjustment of Rs. 32,98,063/- on account of interest on ECB;

(iv) adjustment of Rs. 28,06,716/- made by the CPC under section 143(1) of the Act on account of disallowance towards payment of bonus under section 43B of the Act and non-adjustment of brought forward business losses of the earlier years against the business income of the current year.

6. So far as the issue relating to the transfer pricing adjustment of Rs. 3,25,40,128/- on account of provision of R&D services is concerned, the Ld. AR submitted that if the assessee's contention seeking exclusion of Aurigene Discovery Technologies Limited ("Aurigene") from the final set of comparables is accepted, the other issues raised by the assessee in respect of this adjustment would become academic. Accordingly, the Ld. AR confined her submissions to the

exclusion of Aurigene from the final set of comparables. In this regard, the Ld. AR invited our attention to clause (d) at page no. 12 of the order of the TPO and submitted that the TPO himself had applied a filter whereby companies having income from R&D services of less than 75% of their total operating revenue were excluded from the set of comparables. Further inviting our attention to the segmental information contained in the audited financial statements of Aurigene, placed at page no. 1656 of the paper book, the Ld. AR submitted that the total revenue of Aurigene during the year under consideration was Rs. 28,005 lakhs, whereas its revenue from research services and discovery and collaboration was Rs. 19,443 lakhs, constituting only 69.43% of its total revenue. It was thus submitted that Aurigene itself fails the 75% R&D service-income filter adopted by the TPO and, therefore, cannot be retained in the final set of comparables. Accordingly, the Ld. AR prayed for exclusion of Aurigene from the final set of comparables.

7. Per contra, the Learned Departmental Representative ("Ld. DR") relied upon the order of the AO/TPO and supported the inclusion of Aurigene in the final set of comparables.

8. We have heard the rival submissions and perused the material available on record. We have gone through clause (d) at page no. 12 of the order of the TPO, which is to the following effect:

d) Companies whose Income from R & D Services is less than 75% of its total operating revenues were excluded

In respect of enterprises whose main sources of income is from sales of Research & Development activities and the same constitutes more than 75% of the operating revenues have been considered for the ALP study, as the other segments may not materially affect the financial results of the company.

9. On perusal of the above, we find that the TPO, while selecting the comparables, has himself applied a filter whereby companies whose income from R&D services is less than 75% of their total operating revenue have been excluded from the set of comparables. We have also gone through the segmental information contained in the audited financial statements of Aurigene for the year under consideration, placed at page no. 1656 of the paper book, which is to the following effect:

26) Segment information

The main business activity of the Company is to undertake research services relating to drug discovery for its customers, long term collaboration with customers for drug discovery and out-licensing inhouse intellectual property rights. The Board of Directors reviews the results when making decisions about allocating resources and assessing performance of the Company as a whole hence the Company has only one reportable segment.

a) Revenue from external customers based on nature of services

Particulars	For the year ended March 31, 2020	For the year ended March 31, 2019
Research services	11,547	9,079
Discovery and collaboration	7,896	5,896
Licensing	8,562	6,146
	28,005	21,121

10. On perusal of the above, we find that the revenue of Aurigene from research services and discovery and collaboration is Rs. 19,443 lakhs as against its total revenue of Rs. 28,005 lakhs. Thus, the revenue from research services

and discovery and collaboration constitutes approximately 69.43% of its total revenue, which is below the threshold of 75% adopted by the TPO himself for selection of comparables. In our considered view, once the TPO has adopted the R&D service-income filter of 75% for selection of comparables, the said filter has to be applied uniformly to all the companies under consideration. A company which does not satisfy the filter adopted by the TPO himself cannot be retained in the final set of comparables. Since Aurigene derives only 69.43% of its total revenue from research services and discovery and collaboration, it fails the 75% filter applied by the TPO. Accordingly, we direct the AO/TPO to exclude Aurigene from the final set of comparables and recompute the ALP of the international transaction relating to provision of R&D services in accordance with law. In view of the submission of the Ld. AR that the other contentions raised in respect of this adjustment would become academic upon exclusion of Aurigene, the same are left open and are not adjudicated. Accordingly, the relevant ground of appeal of the assessee on the issue relating to the transfer pricing adjustment of Rs. 3,25,40,128/- on account of provision of R&D services is allowed for statistical purposes.

11. So far as the issue relating to the transfer pricing adjustment of Rs. 2,27,02,480/- on account of interest on delayed trade receivables is concerned, the Ld. AR submitted that the TPO benchmarked the interest on outstanding trade receivables by adopting the SBI term deposit rate. The Ld. AR submitted that the issue relating to benchmarking of interest on delayed trade receivables is squarely covered by the order of this Tribunal in the assessee's own case for the assessment year 2018-19 in ITA No. 389/Hyd/2022 dated 15.05.2026,

wherein the Tribunal directed the AO/TPO to compute interest by applying LIBOR plus 200 basis points after allowing a credit period of 30 days. Accordingly, the Ld. AR prayed that a similar direction may be issued for the year under consideration.

12. Per contra, the Ld. DR fairly submitted that the issue is covered by the order of this Tribunal in the assessee's own case for the assessment year 2018-19 (supra).

13. We have heard the rival submissions and perused the material available on record including the case law relied upon. We have also gone through para no. 28 of the order of this Tribunal in the assessee's own case for the assessment year 2018-19 (Supra), which is to the following effect:

> *"28. Coming to the benchmarking of the interest on the outstanding trade receivables relating to the provision of contract R&D services and contract manufacturing services to AEs, we are unable to concur with the Ld. AR that the same is not an international transaction. However, we find that as had been brought to our notice by the Ld. AR, the issue is squarely covered by the order passed by the Tribunal in the assessee's own case for AYs 2010-11 to 2014-15 in ITA No.425/Hyd/2015, 233 & 107/Hyd/2016, 2184/Hyd /2017 and 2376/Hyd/ 2018, dated 26/11/2020. In the said order, it was observed that, as the assessee company had received its outstanding receivables from its AE in foreign currency, it would be just and fair to adopt LIBOR + 200 basis points as the applicable ALP interest rate for the purpose of imputing interest on outstanding receivables from AEs. Also, it was observed that the said imputation of interest is to be made on an invoice-to-invoice basis on outstanding receivables so that the period of delay in respect of each invoice could be actually worked out. For the sake of clarity, we deem it apposite to cull out the observations of the Tribunal in the Curia India Private Limited vs. DCIT aforesaid case of the assessee company for the preceding years, as under:*
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> *"5.7. It would be relevant to note in the aforesaid paragraph that assessee had to receive its outstanding receivables from its AE in foreign currency, it would be just and fair to adopt LIBOR rate + 200 basis points as the applicable ALP interest rate for the purpose of imputation of interest on outstanding receivables from*

AEs. Needless to mention that the said imputation of interest is to be made on invoice-to-invoice basis on outstanding receivables so that the period of delay in respect of each invoice could be actually worked out.

5.8. The ground raised by the assessee for both the years praying for netting of outstanding payables to AEs with outstanding receivables from AEs cannot be entertained in view of our direction that imputation of interest is to be made on invoice-to-invoice basis on supplies made/services rendered by the assessee to its AEs. In view of this direction and in view of the fact that date of raising of export invoice on AE would be different from date of purchase of goods or import of services from AE. Accordingly, the ground raised on netting of outstanding payable with outstanding receivable is hereby dismissed for both the years.

5.9.To sum up for the A.Yrs 2013-14 & 2014-15, we hold that the outstanding receivables from AEs would constitute a separate international transaction on which imputation of interest is to be made by applying LIBOR + 200 basis points as under:-

a. In respect of invoices raised in earlier years by the assessee on its AEs, where the amounts were realized during the year under consideration but beyond the agreed credit period, imputation of interest is to be made from first day of April or from the expiry of the agreed credit period (i.e. 30 days as accepted by Id DRP) whichever is later till the date of realization of debts.

b. In respect of invoices raised during the year on its AEs, where the amounts were realized during the year itself but beyond the agreed credit period, imputation of interest is to be made from the date of expiry of agreed credit period till the date of realization of debts.".

14. On perusal of the above, we find that the issue involved in the present appeal relating to benchmarking of interest on delayed trade receivables is squarely covered by the aforesaid decision of the Tribunal. The Tribunal, in the assessee's own case for the assessment year 2018-19 (Supra), directed the AO/TPO to compute the interest on delayed trade receivables by applying LIBOR plus 200 basis points after allowing a credit period of 30 days. No distinguishing feature in the facts for the year under consideration has been brought to our notice by the Revenue. Accordingly, respectfully

following the decision of the Tribunal in the assessee's own case for the assessment year 2018-19 (supra), we direct the AO/TPO to compute the ALP of interest on delayed trade receivables by applying LIBOR plus 200 basis points after allowing a credit period of 30 days, in terms of the observations and directions contained in the aforesaid order of the Tribunal. Accordingly, the relevant ground of appeal of the assessee on the issue relating to the transfer pricing adjustment of Rs. 2,27,02,480/- on account of interest on delayed trade receivables is allowed for statistical purposes.

15. So far as the issue relating to the transfer pricing adjustment of Rs. 32,98,063/- on account of interest on ECBs is concerned, the Ld. AR submitted that the assessee had benchmarked the interest paid on ECBs at LIBOR plus 3%. However, the TPO benchmarked the said transaction by adopting LIBOR plus 2%. Inviting our attention to para nos. 22 to 27 of the order of the Tribunal in the assessee's own case for the assessment year 2018-19 (Supra), the Ld. AR submitted that the identical issue is squarely covered by the said decision, wherein the Tribunal directed that the interest paid on ECBs be benchmarked by applying LIBOR plus 3%. Accordingly, the Ld. AR prayed that a similar direction may be issued for the year under consideration.

16. Per contra, the Ld. DR fairly submitted that the issue is squarely covered by the decision of the Tribunal in the assessee's own case for the assessment year 2018-19 (supra).

17. We have heard the rival submissions and perused the material available on record including the case law relied upon. We have also gone through para nos. 22 to 27 of the

order of this Tribunal in the assessee's own case for the assessment year 2018-19 (supra), which is to the following effect:

> *"22. We shall now deal with the Transfer Pricing adjustment of interest on External Commercial Borrowings (ECBs) suggested by the TPO, wherein the benchmarking of the interest on the ECBs borrowed by the assessee company @ LIBOR + 3% was rejected and substituted by the TPO for LIBOR + 2%, which thereafter had been upheld by the DRP.*
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> *23. As is discernible from the record, though the assessee company had undertaken a detailed benchmarking analysis in its Transfer Pricing Study Report (TPSR) for benchmarking the Arm's Length Price (ALP) of the interest on ECBs borrowed (denominated in USD), the TPO, brushing aside the same, had summarily taken ALP of the said transaction at LIBOR + 2%.*
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> *24. In our view, there is substance in the Ld. AR's contention that as the assessee company had obtained prior approval of the RBI for borrowing the loan from its AE, and the interest rate of Curia India Private Limited vs. DCIT LIBOR + 3% is lower than the ceiling rate prescribed by the RBI, therefore, on the said basis itself, the transaction of payment of interest on ECBs can be held to be at Arm's Length.*
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> *25. Before proceeding further, we deem it apposite to cull out the payment of interest by the assessee company on ECBs taken from its AE, as under:*

FY in which the ECB was taken	Rate of interest	Amount of interest charged to P & L Account (INR)
2013-14	GBP LIBOR plus 3%	15,22,598
2014-15	GBP LIBOR plus 3%	48,69,917
2015-16	GBP LIBOR plus 3%	16,00,495
2016-17	GBP LIBOR plus 3%	45,72,842
2017-18	GBP LIBOR plus 3%	55,07,130
	Total	1,80,72,981

> *26. We find that it has been the claim of the assessee company that the TPO had erred in not appreciating that the loan borrowed from the AE after obtaining prior approval from RBI was well within the ceiling contemplated in the RBI circulars. In fact, we find that the RBI Master Circular on ECB and trade credits for FY 2013-14, FY 2014-15, and FY 2015-15 reveals that the interest paid by the assessee company at LIBOR + 300 basis points on ECBs borrowed from its AEs is less than the interest ceiling provided by RBI. We find that the*

Hon'ble High Court of Karnataka in the case of CIT vs. M/s. GE India Technology Center Pvt. Ltd., ITA No. 282 of 2013, dated 17/12/2020 observed that the RBI's approval of the rate of interest is a relevant factor in determining the ALP of that rate. Also, it was observed that, as per the settled position of law, the rate of interest should be determined on the basis of the rate of interest prevailing at the time of availing the loan. Also we find that the ITAT, Mumbai in the case of Firemenich Aromatics (India) Pvt Ltd vs. ACIT-9(3)(1), Mumbai in ITA No.7844/Mum/2019, dated 26/10/2021 had observed that the assessee company which had obtained a loan in the nature of External Commercial Borrowing (ECB) from its AEs had benchmarked the same at the interest rate of six months USD LIBOR rate + 350 basis points by relying upon the RBI Circular No.12/2012-13, which allowed the ECB loan on automatic route at those rates. However, the TPO had computed the benchmark rate as LIBOR + 143.62 basis points, based on the Bloomberg database. The Tribunal, relying upon its earlier order in the assessee's own case for AY 2014-14, held that the ALP of such transactions would be more accurately determined by following the rate of interest fixed by RBI in respect of ECB loan. Also, we find that the ITAT, Mumbai Bench, in M/s. Goodyear South Asia Tyres Private Limited vs. Assistant Commissioner of Income Tax, Circle-1, Aurangabad, ITA Curia India Private Limited vs. DCIT No.7715/Mum/2012, dated 26/10/2016 had upheld the view taken by the assessee company by relying on its earlier order for AY 2006-07 in ITA No.143/PN/2010, dated 28/04/2014, and held that the rate of interest paid on ECB at the rate of LIBOR + 3% was as per the rate of interest notified by the RBI at the time of raising the said ECB loan, thus, the same was at Arm's Length. Further, we find that the ITAT, Mumbai, in the case of Asst. Commissioner of Income Tax, Central Circle-39, Mumbai vs. M/s. Firestone International Pvt Ltd, ITA No. 5471/Mum/2014, dated 13/04/2016, has held that the interest charged by the assessee company at LIBOR + 300 BPS as being at Arm's Length.

27. At this stage, we may herein observe that there is substance in the Ld. AR's contention that the TPO had erred by summarily rejecting the benchmarking of the interest paid on ECBs carried out by the assessee company at LIBOR + 3%, without following any comparability benchmarking analysis prescribed under Chapter X of the Act. We thus, in terms of our aforesaid deliberations, are unable to persuade ourselves to concur with the view taken by the TPO/DRP and uphold the benchmarking of the interest paid on ECBs by the assessee company at LIBOR + 3%."

18. On a perusal of the above, we find that the issue involved in the present appeal is identical to the issue considered and decided by the Tribunal in the aforesaid assessment year. The Tribunal, after considering the facts and circumstances of the case, directed that the interest paid on ECBs be benchmarked by applying LIBOR plus 3%. No distinguishing feature in the facts for the year under consideration has been brought to our notice by the Revenue. Accordingly, respectfully following the decision of this Tribunal in the assessee's own case for the assessment year 2018-19 (supra), we direct the TPO to benchmark the interest paid on ECBs by applying LIBOR plus 3%. Accordingly, the relevant ground of appeal of the assessee on the issue relating to the transfer pricing adjustment of Rs. 32,98,063/- on account of interest on ECBs is allowed for statistical purposes.

19. So far as the issue relating to the adjustment of Rs. 28,06,716/- made by the CPC under section 143(1) of the Act on account of disallowance towards payment of bonus under section 43B of the Act and non-adjustment of brought forward business losses of earlier years against the business income of the current year is concerned, the Ld. AR invited our attention to page no. 9 of the assessment order and submitted that the AO has taken the income of Rs. 28,06,716/- computed by the CPC under section 143(1)(a) of the Act as the base income for computation of the total income of the assessee. The Ld. AR submitted that while processing the return of income under section 143(1) of the Act, the CPC made adjustment on account of payment of bonus under section 43B of the Act and also did not allow set-off of brought forward business losses of the earlier years against the business income of the current year.

Accordingly, the Ld. AR prayed that suitable directions may be issued to the AO to verify both the issues and allow the claims of the assessee in accordance with law.

20. Per contra, the Ld. DR submitted that the assessee has already filed an appeal against the intimation passed by the CPC under section 143(1) of the Act challenging the aforesaid adjustments and the said appeal is presently pending adjudication before the Ld. CIT(A). Accordingly, the Ld. DR submitted that no adjudication on these issues is called for by the Tribunal when the very same issues are pending adjudication before the Ld. CIT(A).

21. We have heard the rival submissions and perused the material available on record. We find that the issues raised by the assessee relating to the adjustment on account of payment of bonus under section 43B of the Act and non-adjustment of brought forward business losses of the earlier years do not arise from the impugned assessment order. The AO has merely adopted the income of Rs. 28,06,716/- computed by the CPC under section 143(1) of the Act as the base income for determining the total income of the assessee and has not independently examined or adjudicated these issues in the impugned assessment order. We further find that the assessee has already challenged the aforesaid adjustments made by the CPC under section 143(1) of the Act by filing an appeal before the Ld. CIT(A), which is stated to be pending adjudication. In these circumstances, when the aforesaid issues do not arise from the impugned assessment order and are already the subject matter of a separate appeal pending before the Ld. CIT(A), we are not inclined to adjudicate the same at this stage. Accordingly, the relevant grounds raised by the

assessee are dismissed, leaving it open to the assessee to pursue the said issues in the appeal pending before the Ld. CIT(A) in accordance with law.

22. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 21st August, 2026.

Sd/-	Sd/-
(RAVISH SOOD) **JUDICIAL MEMBER**	**(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 21st August, 2026.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. Curia India Private Limited, Plot no 9, Phase-1, MN Park, Genome Valley, Turkapally, Shameerpet Mandal, Rangareddy District, Hyderabad 500078, Telangana.
2	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad, Office of the Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad: IT Towers, Masab Tank, Hyderabad, Telangana -500004
3	Pr. CIT, Hyderabad
4	DRP-1 Bengaluru
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order

KAMALA KUMAR ORUGANTI

Digitally signed by KAMALA KUMAR ORUGANTI
Date: 2026.08.21 11:25:59 +05'30'