

IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER**

I.T.A. No.6392/M/2014
(Assessment Year: **2009-2010**)

S. Narendra, FC Tower 9031, Bharat Diamond Bourse, BKC, Bandra (E), Mumbai – 400 051.	बनाम/ Vs.	ACIT-16(3), Matru Mandir, Tardeo, Mumbai.
स्थायी लेखा सं./PAN : AAFS2994P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Mrs. Arati Vissanji
प्रत्यर्थी की ओर से/ Respondent by	:	Shri N.K. Chand, DR

सुनवाई की तारीख /Date of Hearing : 25.05.2016

घोषणा की तारीख /Date of Pronouncement : 20.07.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 16.10.2014 is against the order of the CIT (A)-15, Mumbai dated 8.8.2014 for the assessment year 2009-2010. In this appeal, assessee raised the following solitary ground and the same reads as under:-

"The Ld AO and the Ld Transfer Pricing Officer have erred in making adjustment of Rs. 9,11,746/- being interest @ 15% on excess credit on exports to AE computed by the Ld Transfer Pricing Officer."

2. At the outset, Ld Counsel for the assessee submitted that the issue under consideration is exactly identical to the one already heard by the Tribunal on 24.5.2015 in the case of M/s. Jewellmark India P Ltd vs. ITO vide ITA No.432/M/2014 (AY 2009-2010). Bringing our attention to certain workings relate to the exports and imports, Ld Counsel for the assessee submitted that there is an excess credit period in both the exports and imports and therefore, there is a need for netting out of both types of transactions in which case, the result would be no adjustments by the TPO. In support of the same, assessee furnished working before us and prayed for remanding the matter to the file of the TPO for fresh adjudication considering the similar arguments of the assessee before the Tribunal in the case of

Jewellmark India P Ltd (supra). Further, bringing our attention to the said Tribunal's order (supra), Ld Counsel for the assessee mentioned that while adjudicating that appeal for the AY 2009-2010, Tribunal relied on the decision of the ITAT, Mumbai in the assessee's own case for the AY 2008-09 and remanded the matter to the file of the TPO in tune with the earlier appeal for the AY 2008-09. Considering the same, it is the prayer of the assessee that the issue involved in the instant appeal should also be remanded with identical directions.

3. We have heard both the parties and perused the orders of the Revenue Authorities. At the time of finalization of this order, we find, the said order of the Tribunal in the case of **Jewellmark India P Ltd** (supra) was already pronounced on **24.6.2016**. On perusal of the said Tribunal's order (supra), we find, paras 5 to 8 of the said order are relevant in this regard. For the sake of completeness of this order, the said paras are extracted as under:-

"5. At the outset, the Ld. A.R. of the assessee has brought our attention to the order of the Tribunal dated 15.04.15 passed in the own case of the assessee for A.Y. 2008-09 in ITA No.431/M/2014 wherein considering the identical issue, the Tribunal observed that there was force in the contention of the assessee that if the assessee had to make payments of imports to some party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AE on account of import payments.

6. We have gone through the said order of the Tribunal. The relevant part of the observation of the Tribunal for the sake of convenience is reproduced as under:

"3.1 Before us it was pleaded by Ld. AR that assessee is neither charging interest from its AE and also not paying any interest to its AE. It was submitted that assessee also utilized credit in the shape of import payments to be made to its AE and these are listed at page 133 of the paper book. It was submitted that assessee did not make payment even for a period, more than exceeding 1000 days. It may be mentioned here that on page- 133 of the paper book the assessee has given details regarding "working of interest on delay in import payments". Those payments in excess of 180 days are listed as against impugned interest of Rs.8,36,437/- worked out on delay in export realization, interest on delay in import payments have been worked out at Rs.1,10,01,043/-. Thus, it is the case of Ld. AR that when assessee is not making the payment for delay which is much more than 180 days, then how assessee's transaction for receiving delayed export realization can be considered to be not on arms length. Thus, it was pleaded by Ld. AR that adjustment of Rs.8,36,437/- should be deleted.

3.2 On the other hand, Ld. DR relied upon the order passed by TPO and Ld. CIT(A).

3.3 We have heard both the parties and their contentions have carefully been considered. To some extent there is a force in the contention of Ld. AR that if the assessee has to make payment of imports to same party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AE on account

of import payments. Therefore, in the interest of justice, we consider it just and proper to restore this issue to the file of AO to examine and verify the facts and if on the dates when the impugned interest is computed in respect of export realization, the assessee is already having obligation to pay to its AE the amount regarding import made by it then, to that extent interest cannot be added as TP adjustment. We therefore, restore this matter to the file of AO with a direction to re-adjudicate this issue as per directions given above. For statistical purposes this ground is treated to be allowed."

7. *The Ld. A.R. of the assessee has pleaded that there needs to be certain modifications in directions to be given to the AO in relation to the matter for the year under consideration vis-à-vis the directions given by the Tribunal in the earlier assessment year 2008-09. She has pleaded that though the Tribunal in principle agreed that if the assessee has to make the payments of imports some party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AEs on account of import payments. She, however, has contended that the Tribunal after observing above, directed the AO to examine and verify that if on the dates when the impugned interest is computed in respect of export realization, the assessee is already having obligation to pay to its AE the amount regarding import made by it, then, to that extent interest cannot be added as TP adjustment. She, in this respect, has contended that when the assessee is adopting a uniform policy of neither to receive the interest nor to pay the interest to its AEs, then, not only the parties or the dates on which the payment was receivable by the assessee is to be considered but the matter should be considered as a whole and the netting off of the interest payable and receivable be made.*

8. *We find force in the above contention of the Ld. A.R. The matter is to be examined by the AO as a whole and if bench mark of 180 days is to be taken as the credit period without levy of interest then the AO should adopt the same criteria also in relation to the payments payable by the assessee to its AEs. Thereafter, the AO should do netting off of the interest payable and receivable and to make adjustments of the resultant amount of interest, if any, found, receivable by the assessee. With the above modified directions, the matter is restored to the file of the AO to examine and verify the facts and adjudicate the same as per the directions given above."*

4. From the above, we find the issue under consideration is identical to that of the one adjudicated by the Tribunal. Considering the commonality of issues, we remand the matter to the file of the AO with identical directions to adjudicate the issue afresh after affording a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, ground raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 20th July, 2016.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 20.7.2016
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai