

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI 'K' BENCH, MUMBAI**

[Coram: Pramod Kumar AM and Pawan Singh JM]

ITA No.6654/Mum/2014
Assessment Year: 2010-11

Dy. Commissioner of Income Tax**Appellant**
Circle - 6(1), Mumbai.

Vs.

Ion Exchange India Limited**Respondent**
Ion House,
Dr. E. Moses Road,
Mahalaxmi,
Mumbai.
[PAN: AAACI 1726 L]

Appearances by:

Mallikarjun Utture, *for the appellant*
P.R.V. Raghavan, *for the respondent*

Date of concluding the hearing : January 14th, 2016
Date of pronouncing the order : February 29th, 2016

O R D E R

Per Pramod Kumar AM:

By way of this appeal, the Assessing Officer has challenged correctness of the order dated 18th August, 2014 passed by the ld. CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter), for the assessment year 2010-11.

2. In the first and second ground of appeal, which we will take up together, the Assessing Officer has raised the following grievances :-

“1. Whether the Ld. CIT(A) has erred in holding that on the facts and circumstances of the case the rate of interest free loan given to AE/Subsidiary should be charged using LIBOR rate instead of average yield on corporate bond taken by the TPO”

2. Whether on facts and circumstances of the case, the Ld. CIT(A) erred in the fact and in law while benchmarking the imputed interest on interest free loans by relying upon the RBI's circular in respect of External Commercial borrowings, which does not take into account the geographical perspective of the international transactions and violates the very spirit of Transfer Pricing provisions.”

3. Learned Representatives fairly agree that so far as this issue is concerned, the matter is now covered, in favour of the assessee, by Tribunal's order in assessee's own case for the assessment year 2008-09. We have noted that, vide order dated 10th February, 2014, the Tribunal has observed as follows :-

“2.2 The aforementioned rate of 17.26% has been computed by TPO based on LIBOR+ Adjustment for credit rating of the A.E, transaction and for loan given without security. The assessee disputed such computation on the basis that the interest rate applied by the TPO is based on hypothetical assumption of credit rating of the AE and assumption cost of transaction, premium over LIBOR towards risk etc. It was pleaded that credit rating assumption by the TPO was purely based on profit of the AE for the year under consideration as the ratio considered by PBIT to interest. Considering such submission of the assessee Ld. CIT(A) has found that the standalone factor adopted by the TPO for arriving at the credit rating of a company may not give appropriate result as the same does not consider assets held and future prospects/business and corresponding risk and return. Such credit rating assignment is done by the experts taking into account a various factors and not alone the ratio of PBIT/interest. Accordingly, Ld. CIT(A) has held that credit rating assigned by TPO are not acceptable and consequently the bench marking considering the corresponding yield or interest rate for five years unsecured bond would not be justifiable. According to Ld. CIT(A) when the money is lent the interest rates applicable should LIBOR based which also find support from the decisions of ITAT. It was observed by Ld. CIT(A) that TPO in his order also has considered even LIBOR rate and arriving at the interest rate to be charged at LIBOR + 650 basis point + 300 basis points (transaction cost). Ld. CIT(A) has further found that it was the submission of the assessee that loan given by the assessee to its AE have no transaction cost and it was observed by Ld. CIT(A) that TPO did not give any comparable circumstances to arrive at 650 basis points more than on LIBOR and further 300 basis points on account of transaction cost. Considering all these facts Ld. CIT(A) arrived at a finding that suitable benchmark in the case of the assessee with regard to impugned transaction will be the rate prescribed by RBI for ECB. Accordingly, he has given the direction to the AO to adopt LIBOR rate as per RBI's Master Circular No.02/2007-08 dated 2/7/2007 on External Commercial

Borrowings (ECB) provided that all in cost ceiling for ECB with average maturity period of three years and up to 5 years is to be six months LIBOR + 150 basis points and for period more than five years the rate is six months LIBOR +250 basis points. Accordingly, Ld. CIT(A) directed the AO/TPO to work out the amount of adjustment towards the interest chargeable on loans given by the assessee to its AEs by considering rate of interest provided in the aforementioned circular depending upon the term/period of loan given by the assessee to its AE. Accordingly, the ground raised by the assessee was partly allowed.

2.3 The Department in its appeal is agitating the aforementioned direction of Ld. CIT(A) and assessee in its appeal is contending that the disallowance made by the assessee should only be made and balance disallowance should be deleted.

2.4 We have heard both parties on this issue and we found that Ld. CIT(A) has rightly held that according to aforementioned Master Circular issued by RBI the ALP of impugned international transactions should be worked out. We found that such view taken by Ld. CIT(A) has been consistently followed by ITAT as is observed by Ld. CIT(A) in his order. Therefore, we decline to interfere in such directions issued by Ld. CIT(A). Accordingly, this ground of the assessee's appeal as well as departmental appeals are dismissed."

4. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench in assessee's own case. As a matter of fact, the learned CIT(A) has given the impugned relief only on the basis, and by following, the views so expressed by the co-ordinate bench. We, therefore, confirm the stand of the learned CIT(A) and decline to interfere in the matter.

5. Ground nos.1 & 2 are thus dismissed.

6. In ground nos.3, 4 & 5, which we will take up together, the Assessing Officer has raised the following grievances:-

"3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in giving direction to A.O. to follow the direction of the Hon'ble ITAT to re-examine the issue of Sec. 14A for the A.Y. 2008-09 by which ITAT simply restored the matter back to A.O. without any specific direction thereby Ld. CIT(A)

ignored the fact that he is empowered by virtue of Sec. 251(1)(a) of the IT Act, to confirm, reduce, enhance or annul the assessment but has no power to set aside/restore back the issue to AO for fresh adjudication."

4. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in giving direction to A.O. to follow the direction of the Hon'ble ITAT to re-examine the issue of disallowance of interest free advances given by assessee to its subsidiary companies and addition on account of interest expenditure on investment for the A.Y. 2008-09 by which ITAT simply restored the matter back to A.O. without any specific direction thereby Ld. CIT(A) ignored the fact that he is empowered by virtue of Sec. 251(1)(a) of the IT Act, to confirm, reduce, enhance or annul the assessment but has not power to set aside/restore back the issue to AO for fresh adjudication.*

5. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in giving direction to A.O. to follow the direction of the Hon'ble ITAT to re-examine the issue of disallowance of interest on account of interest on borrowed capital utilized for capital work in progress for the A.Y. 2008-09 by which ITAT simply restored the matter back to A.O. without any specific direction thereby Ld. CIT(A) ignored the fact that he is empowered by virtue of sec. 251(1)(a) of the IT Act, to confirm, reduce, enhance or annul the assessment but has no power to set aside/restore back the issue to Assessing Officer for fresh adjudication."*

7. As a plain reading of the above grounds of appeal clearly shows, the grievance of the Assessing Officer is not on merits but only on the question as to whether the learned CIT(A) could have at all remanded the matter to the file of the Assessing Officer, in view of the limitations of his powers under section 251(1). There is no dispute that the core issue, on merits, is covered by the order of the co-ordinate bench and, following the said judicial precedent, matter is required to be remitted to the file of the Assessing Officer.

8. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

9. The plea is well taken. It is indeed true that post finance Act 2001 amendment in section 251(1)(a), it is no longer open to the learned CIT(A) to remit the matter to the file of the Assessing Officer for making a fresh assessment in accordance with the directions of the learned CIT(A). However, on the facts of the present case, the Assessing Officer does not get any advantage from raising this issue inasmuch as, even if we vacate the order of the learned CIT(A) on this point, and to proceed to decide the matter on our own, we will come to the same conclusion. We are bound by the coordinate bench decision whereby the matter has been remitted to the file of the Assessing Officer, and, unlike learned CIT(A), we are denuded of the powers to remit the matter to the Assessing Officer. It is, therefore, wholly academic as to whether the learned CIT(A) was in error, on this point, or not. The conclusions remain the same. With these observations, conclusions arrived at by the learned CIT(A) remain intact, even though, on an academic note, the learned CIT(A) was in error in remitting the matter to the file of the Assessing Officer. The grievance raised by the Assessing Officer is thus wholly academic.

10. Ground nos.3, 4 & 5 are thus academic in effect, and dismissed as such.

11. In the result, the appeal is dismissed. Pronounced in the open court today 29th day of February, 2016.

Sd/-

Pawan Singh
(Judicial Member)

Sd/-

Pramod Kumar
(Accountant Member)

Dated: the 29th day of February, 2016.

PBN/*

Copies to: (1) The appellant (2) The respondent
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Dy./Assistant Registrar
Income Tax Appellate Tribunal
Mumbai Benches, Mumbai