



ITA.No.956/Mum/2015
Apar Industries Limited
Assessment Year 2009-10

आयकरअपीलीयअधिकरण“के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. No.956/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2009-10)

Apar Industries Limited Apar House, Corporate Park Building No.5 Sion Trombay Road Chembur Mumbai-400 071	बनाम/ Vs.	Deputy Commissioner of Income Tax Central Circle 6(1) [Erstwhile ACIT Central Circle 34] Aaykar Bhavan, M.K.Road Mumbai – 400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACG-1840-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Vijay Mehta, Ld. AR
Revenue by	:	V.Jenardhanan, Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	16/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	04/05/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2009-10 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-15 [CIT(A)], Mumbai, *Appeal No.CIT(A)-15/Curr.105/14-15*



dated 12/11/2014. The only issue involved in the appeal is *Transfer Pricing [TP]* adjustment on account of *corporate guarantee* given by the assessee to one of its *Associated Enterprises [AE]*. The assessment for impugned AY was framed by Ld. Assistant Commissioner of Income Tax, Central Circle-34 on 21/03/2013 u/s 143(3) read with section 144C of the Income Tax Act, 1961 wherein the assessee has been saddled with *TP adjustment* of Rs.1,66,20,644/- against *corporate guarantee* as proposed by Ld. *Transfer Pricing Officer [TPO]* u/s 92CA(3).

2. Facts in brief, qua the same are that the assessee being *resident corporate assessee* engaged in the business of manufacture of *Transformers/Specialty Oils, Conductors and Synthetic Rubber* provided *corporate guarantee* amounting to Rs.35.46 Crores for one of its *AE* namely *Petroleum Specialty PTE Limited, Singapore [PSPL]* to facilitate *LC facility* by Syndicate bank to its *AE*. The assessee did not benchmark the same on premise that the underlying liability was contingent in nature and given for overall business consideration. However, not convinced, Ld. TPO arrived at impugned *TP adjustment* against the same which was calculated at 5% per annum. The same has been incorporated in the quantum assessment order dated 21/03/2013. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 12/11/2014, wherein the stand of the Lower authorities has been confirmed. Aggrieved, the assessee is in further appeal before us.

3. The Ld. Authorized Representative for assessee [AR] placing reliance on various decisions of the Tribunal submitted that *corporate guarantee* was not an international transaction within the meaning of



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Section 92B and therefore, no adjustment thereof was required. The Ld. AR, in the alternative, submitted that the impugned addition may be restricted to 0.495% as enjoyed by the assessee from its bankers. Per *Contra*, Ld. DR drew attention to various decisions where the additions has been upheld by the judicial authorities.

4. We have heard carefully heard the rival contentions and perused relevant material on record. In our opinion corporate guarantee provided by the assessee brought certain benefits to its *AE* by way of credit facility and therefore, the same was required to be compensated by its *AE*. Our view is duly supported by the decision of this Tribunal rendered in *Everest Kanto Cylinders Ltd. Vs. DCIT [34 Taxmann.com 19]* as affirmed by Hon'ble Bombay High Court on 08/05/2015 [58 Taxmann.com 254] wherein the rate of commission has been adopted @0.5%. Respectfully, following the same, we estimate the impugned additions @0.5% per annum. The Ld. AO is directed to quantity the addition and re-compute the income of the assessee in terms of our above order.

5. Resultantly, the appeal stands partly allowed.

Order pronounced in the open court on 04th May, 2018

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04.05.2018
Sr.PS:-Thirumalesh



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आदेश की प्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**