

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "K", MUMBAI**

BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2693/MUM/2016
Assessment Year: 2010-11**

The Dy. Commissioner of Income Tax, Central Cir-7(4), Room No. 659, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 20	Vs.	M/s Roha Dyechem Pvt. Ltd., 12, Abhishek Bldg., 303/307, Samuel St. Vadgadi, Mumbai - 400003 PAN: AAACR4974P
(Appellant)		(Respondent)

Revenue by : Shri V. Jenardhanan (DR)
Assessee by : Shri Snehal J. Shah

Date of Hearing: 23/05/2018
Date of Pronouncement: 31/05/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 27.01.2016, passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-57, Mumbai, for the assessment year 2010-11, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring the total income of Rs. 37,46,97,880/-. The return was processed u/s 143 (1). Subsequently, notice u/s 143 (2) and 142 (1) were issued to the assessee calling details, clarification etc. In response to the said notices, the authorized representative of the assessee attended the proceedings and submitted the details. The AO after examining the details and hearing the authorized representative of the assessee

made *inter alia* addition of Rs. 79,20,972/- in respect of international transaction reported in Form 3CB filed by the assessee as determined by the Transfer Pricing Officer (TPO) u/s 92CA (3) of the Act and computed the total income of the assessee at Rs. 38,44,25,440/-. The assessee challenged the assessment order before the CIT (A). The Ld. CIT (A) after hearing the assessee partly allowed the appeal of the assessee. Aggrieved by the impugned order passed by the Ld. CIT (A), the assessee and the revenue filed cross appeals against the said order. One of the common ground in both the appeals pertain to addition of Rs. 79,20,972/- on account of adjustment made in respect of loans extended to AEs by the assessee for expansion of their business through AEs. The assessee challenged the findings of the Ld. CIT(A) on the ground that the Ld. CIT(A) has wrongly confirmed the findings of the Transfer Pricing Officer (TPO) and wrongly directed the AO to recalculate the rate of interest at LIBOR+300 bps treating the said rate at A LP rate of interest.

3. On the other hand the revenue in its cross appeal has challenged the action of the AO on the following effective ground:-

“On the facts and in the circumstances of the case and in law, the CIT (A) erred in holding that LIBOR+ 300 bps is the Alp rate of interest merely relying on the decision of ITAT in the case of Fire Star International P. Ltd. in ITA No. 488/Mum/2015 without discussing the applicability of the decision relied on to the facts of the present case and how the rate of LIBOR+300 bps is a CUP data for application in the instant case.”

4. Before us, the Ld. counsel for the assessee submitted that the Tribunal has dismissed the identical ground raised in assessee's appeal and upheld the findings of the Ld. CIT(A). Since, the Tribunal has affirmed the findings of the Ld. CIT(A), the revenue's appeal is liable to be dismissed.

5. The Ld. departmental representative did not controvert the aforesaid facts.

6. We have perused the material placed before us in the light of the submissions of the Ld. counsel for the assessee. We notice that the assessee had charged the interest from the AEs ranging from 5% to 8% and in some cases no interest was charged. Before the TPO, the assessee failed to demonstrate the circumstances under which such differential rates of interest were charged. The TPO determined the interest rate 6% domestic cost of borrowing plus 3% exchange risk and accordingly determined the rate of interest at 9% and computed the adjustment of Rs. 79,20,972/-. However, in the first appeal, the Ld. CIT(A) held that interest rate at LIBOR+300 bps is the ALP rate of interest and directed the AO to compute the rate of interest accordingly. The operative part of the order of the Ld. CIT(A) reads as under:

"I have gone through the fact of the case. It is undisputed that the appellant has advanced loans to 8 of its Associate enterprises. Out of these 8, the AO has concluded that in 5 cases either no interest has been charged or low rate of interest has been charged. The AO has adopted the reasoning that no 3rd party would extend facility of Finance to these AEs without charging interest. The AO has thereby calculated the charging of the interest on the basis that the average domestic cost of borrowings for the assessee is 6% p.a., adding to this the various risk factors and other processing costs etc. for which 3% mark up is required the cost of capital for the AEs should be at 9% p.a. interest rate. On the other hand the appellant has submitted that it has given loans to the AEs for expansion and since they were all newly established, they were not able to earn sufficient profits to pay interest. It is further reasoned by the appellant that since the assessee is charging comparative sale rate in supplying of materials to AE and AE has to supply the materials in their territory of operations in comparative with the local manufacturers, AE could not generate sufficient profits. Given the present facts I am of the considered view that the decision of the Hon'ble Delhi HC in the case of Cotton Naturals India P. Ltd. ITA No. 233/2014 AY 2007-08 Delhi High Court-taxsutra.com becomes the guiding decision wherein it was held that interest rate should be market determined and should be applicable to the currency in which the loan is borrowed/repaid. In the present case, loans are given as per dollar currency and there is merit in the argument of the AO that the AEs would not able to get access to capital in the open market without paying any interest. In this regard reference is also made to the decision of the Hon'ble ITAT, Mumbai 'K' bench in ITA No. 488/Mum/2015

in the case of Fire Star International P. Ltd. announced on 31/07/2015. In the said decision it has been held that interest rate charged at LIBOR+300 bps is liable to be considered as an ALP rate of interest. The AO is accordingly directed to re-calculate the rate of interest accordingly instead of 9% that has been adopted. The above three grounds are accordingly decided.”

7. The assessee challenged the findings of the Ld. CIT(A) before the Tribunal. The coordinate Bench of the Tribunal after hearing the rival contentions upheld the findings of the Ld. CIT(A) vide order dated 27.10.2017 holding as under:

“4.6 We find that in respect of the 4th and 5th ground of appeal the Ld. CIT (A) has rightly held that interest rate be charged at LIBOR+300 bps as an ALP rate of interest. More reasonably, the Ld. CIT (A) has directed the AO to recalculate the rate of interest accordingly instead of 9%. We do not find any basis to disturb such a reasonable view of the Ld. CIT (A) which is based on the decision in Cotton Naturals India P. Ltd. (supra) and Fire Star International P. Ltd. (supra). Accordingly, we uphold the order of the Ld. CIT (A) and dismiss the 4th and 5th ground of appeal.”

8. Since, the coordinate Bench has confirmed the findings of the Ld. CIT(A) by holding LIBOR+300 bps as an ALP rate of interest, we find no merit in the departments appeal. We therefore, dismiss the sole ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2010-2011 is dismissed.

Order pronounced in the open court on 31st May, 2018.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/05/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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