



IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no. 882/Mum./2017
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Central Circle-1(1), Mumbai

..... Appellant

v/s

Rolta India Ltd.
Rolta Tower-A
Rolta Technology Park
Andheri (E), Mumbai 400 093
PAN - AAACR2711G

..... Respondent

Revenue by : Shri Rignesh Das
Assessee by : Smt. Renu Kapoor

Date of Hearing - 04.09.2018

Date of Order - 07.09.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the Revenue challenging the order dated 21st October 2016, passed by the learned Commissioner (Appeals) for the assessment year 2012-13.

2. The issue in the present appeal is confined to the direction of the learned Commissioner (Appeals) to apply the commission rate of 0.5% to the corporate guarantee provided to the Associated Enterprise (AE).

3. Brief facts are, the assessee, an Indian Company, is engaged in the business of software development, designing / data conversion services, purchase and marketing of hardware / software products and e-services. For the assessment year under dispute, the assessee filed its return of income on 31st December 2012, declaring total income of ₹ 4,05,03,240. During the assessment proceedings, the Assessing Officer noticing that the assessee has entered into international transaction with its overseas AE made a reference to the Transfer Pricing Officer for determination of arm's length price of the international transaction with the AE. In course of proceedings before him, the Transfer Pricing Officer noticing that the assessee had given performance and financial guarantee on behalf of the AEs called upon the assessee whether any commission was charged on such guarantee. In response, it was submitted by the assessee that no guarantee commission has been charged, since, providing such guarantee did not fall within the meaning of international transaction as per section 92B of the Act. The Transfer Pricing Officer, however, did not find merit in the submissions of the assessee and held that providing corporate guarantee to the AEs is an international transaction as per section 92B of the Act. Having held so, the Transfer Pricing Officer ultimately charged guarantee commission of 2.25% which resulted in addition of ₹ 2,34,40,824. Being aggrieved of such

addition, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee, though, held that providing corporate guarantee to the AEs comes within the ambit of international transaction under section 92B of the Act, however, relying upon the decision of the Hon'ble Jurisdictional High Court in CIT v/s Everest Kento Cylinders Ltd. [2015] 378 ITR 57 (Bom.), he held that guarantee commission @ 0.5% should be charged.

5. The learned Departmental Representative relied upon the observations of the Transfer Pricing Officer. Whereas, the learned Authorised Representative strongly supported the decision of the learned Commissioner (Appeals).

6. We have considered rival submissions and perused materials on record. At the outset, we must observe, whether provision of corporate guarantee comes within the ambit of international transaction as defined under section 92B of the Act has not been disputed by the assessee before us. Therefore, the only dispute at this stage is confined to the rate of guarantee commission to be charged to the AE for provision of corporate guarantee. As could be seen, the Transfer Pricing Officer has charged guarantee commission @ 2.25%. Whereas, the learned Commissioner (Appeals) relying upon the decision of the

Hon'ble Jurisdictional High Court in Everest Kento Cylinders Ltd. (supra) has held that guarantee commission should be charged @ 0.5%. Since, the aforesaid decision of the learned Commissioner (Appeals) is in consonance with the view expressed by the Hon'ble Jurisdictional High Court (supra) and by different Benches of the Tribunal including Mumbai Benches, we uphold the decision of the learned Commissioner (Appeals) on the issue by dismissing the grounds raised.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 07.09.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 07.09.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai