

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 738/JP/2012
निर्धारण वर्ष/Assessment Year : 2008-09

Dy. Commissioner of Income Tax, Circle-2, Jaipur.	बनाम Vs.	M/s Jaipur Rugs Company Pvt. Ltd., G-250, Mansarovar Industrial Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6934 C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 1124/JP/2016
निर्धारण वर्ष/Assessment Year : 2009-10

M/s Jaipur Rugs Company Pvt. Ltd., G-250, Mansarovar Industrial Area, Jaipur.	बनाम Vs.	Dy. Commissioner of Income Tax, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6934 C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 1083/JP/2016
निर्धारण वर्ष/Assessment Year : 2009-10

Dy. Commissioner of Income Tax, Circle-2, Jaipur.	बनाम Vs.	M/s Jaipur Rugs Company Pvt. Ltd., G-250, Mansarovar Industrial Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6934 C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 1125/JP/2016
निर्धारण वर्ष/Assessment Year : 2010-11

M/s Jaipur Rugs Company Pvt. Ltd., G-250, Mansarovar Industrial Area, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6934 C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT-DR) &
Shri J.C. Kulhari (JCIT)
निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA).

सुनवाई की तारीख / Date of Hearing: 11/12/2018
उदघोषणा की तारीख / Date of Pronouncement : 22/01/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.:

These are group of four appeals comprising of appeal by the revenue for the A.Y. 2008-09, cross appeals by the assessee and the revenue for the A.Y. 2009-10 and the appeal by the assessee for the A.Y. 2010-11 are directed against the respective orders of the Id. CIT(A)-II, Jaipur dated 22/06/2012 and 30/09/2016 respectively.

2. First we take up the appeal filed by the department for the A.Y. 2008-09, wherein the revenue has raised following grounds of appeal:

“Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) is justified in:

Deleting addition of Rs. 97,06,241/- made by the A.O. U/s 92C of the I.T. Act, 1961.

Deleting the addition of Rs. 1,63,68,461/- made by the A.O. on account of interest not charged from AE on outstanding receivables.

Not appreciating the fact that the second proviso to Section 92C(2) is not applicable in the instance case, as the A.O. has applied CUP method of determining ARM'S LENGTH PRICE.”

3. The assessee is a company engaged in the business of manufacturing and exporting of hand knotted carpets. Since the assessee has reported international transactions entered into with its Associated

Enterprises (AE), therefore, the Assessing Officer referred the issue of determination of Arm's Length Price in respect of international transactions to the TPO. The assessee is exporting the carpets to M/s Jaipur Rugs Inc, USA which is Associated Enterprise of the assessee as well as to the other unrelated parties. The international transactions reported by the assessee are reproduced by the TPO in para 3 as under:

"3. INTERNATIONAL TRANSACTIONS:

The international transactions entered into by the assessee with its associated enterprise during the year are as following:

	<i>Description of transaction</i>	<i>Method</i>	<i>Value (in Rs.)</i>
1.	<i>Sale of Carpet to M/s jaipur Rugs Inc, USA (11.25 lac Sq. feet)</i>	<i>CUP</i>	<i>29,29,83743/-</i>

During the course of the T.P. proceedings, it was noted that the assessee had substantial amount of outstanding receivables from the AE/ M/s Jaipur Rugs Inc. USA. These amounts remained outstanding for a prolonged period and no interest had been charged by the assessee on such amounts. The interest free credit allowed to AE was considered as international transaction and the same was evaluated in the course of the T.P. Proceedings, in terms of the provision U/s 92CA)2A) of the IT Act.

Thus, it is clear that the TPO has also noted that apart from the export to the associated enterprises, the assessee has also substantial amount of outstanding receivables from the AE M/s Jaipur Rugs Inc USA on which no interest has been charged by the assessee. Accordingly, the TPO considered the interest free credit allowed to the AE as international transaction and the same was evaluated in the course of TP proceedings

in terms of Section 92CA(2A) of the Income Tax Act, 1961 (in short the Act). The assessee applied CUP as most appropriate method for benchmarking its international transaction on the premises that the assessee is also selling the product to non-AE and accordingly the assessee has worked out the average sale price to AE as well as to non-AE. The average price of the carpets sold to the non-AE was considered as comparable uncontrolled price and hence the assessee claimed that its international transactions are at Arm's Length Price. The TPO did not accept the average method applied by the assessee for applying the CUP method and has worked out the rate of each transaction which were found below the CUP rate and then worked out the difference of Rs. 97,06,240/-. Accordingly, the TPO proposed the T.P. addition U/s 92CA of the Act of Rs. 97,06,241/-. The T.P.O. then proceeded to make the adjustment on account of notional interest in respect of the credit allowed by the assessee in realization of sale proceeds. The TPO has applied 17.26% as Arm's length interest rate on the outstanding amount and calculated the amount of interest after allowing the normal credit period of 60 days at Rs. 1,63,68,461.30. Accordingly, the TPO has proposed the total adjustment U/s 92CA of Rs. 2,60,74,702/-.

4. The assessee challenged the action of the TPO/A.O. before the Id. CIT(A). The Id. CIT(A) has accepted the method applied by the assessee for benchmarking of international transaction and held that the price of

international transaction is within the tolerance range of $\pm 5\%$ of ARM'S LENGTH PRICE and consequently directed the Assessing Officer to delete the addition made on account of T.P. adjustment. As regards the addition made on account of notional interest, the Id. CIT(A) applied LIBOR as against the PLR applied by the TPO and then worked out the ALP on account of interest at Rs. 25,61,118/-. However, the said amount was found to be set off against the foreign exchange differences as the exchange rate of dollar was increased as against INR at the time of realization or at the end of the year in comparison to the rate at the time of transaction. Therefore, even after considering the balance amount on account of arm's length price of the interest to be added, the Id. CIT(A) found that the price of international transaction is still within the tolerance range of $\pm 5\%$ from the arm's length price. Hence, the Id. CIT(A) has deleted the additions made by the Assessing Officer on account of transfer pricing adjustment.

5. Before us, the Id. CIT-DR has submitted that the assessee has applied CUP method by taking the average price of sale to the unrelated parties whereas the goods sold to the AE and to unrelated parties are not the same but there is a vast difference in the quality and variety of goods sold to the AE and to the non-AE parties. Therefore, aggregation of all the transactions of non-AE parties and then benchmarked the average rate of sales to the AE would not give the correct results. The Id

CIT-DR has submitted that the TPO has rightly adopted the method of comparing the transaction one by one by taking the CUP rates and compared the same with the transactions of each category of carpets sold to related parties/AE. Hence, the Id DR has submitted that the TPO has adopted a correct method for benchmarking the transaction by adopting CUP of each and every transaction instead of clubbing of different transactions and then averaging out the arm's length price which is not giving the correct result. He has further contended that the Id. CIT(A) has accepted the transfer pricing analysis of the assessee without considering the crucial fact that there is a difference in the quality of carpets sold to the related parties and to the non-related parties and therefore, the rate of a particular carpet sold to the non-related parties cannot be applied for a different carpet sold to the related party. Hence, the approach of the TPO is more reasonable and proper in computing the arm's length price and working out the adjustment. As regards the determination of arm's length interest in respect of the credit allowed by the assessee to the AE, there is no dispute that the assessee has allowed abnormal period of credit to the AE which is very much falling in the definition of international transaction under the provisions of Section 92B of the Act. The TPO has already allowed a reasonable credit period of 60 days while computing the arm's length price of interest to be

charged from the AE on abnormal credit period. Hence, he has relied upon the order of the TPO.

6. On the other hand, the Id AR of the assessee has submitted that the assessee has been selling the variety of carpets to AE as well as non-AE. Since the assessee is selling the carpet to the AE in bulk which includes defective, rejected and carpets involved minor variations in quality and design which were not preferred by the non-related parties, therefore, the sale price of such bulk sale to the AE is always less than in comparison to the price charged from the non-related parties who are buying the goods as per their choice. The Id AR has further submitted that since the sale of carpets is made on regular basis and a large volume, therefore, it is not possible to compare each and every carpet price with arm's length price under CUP. Accordingly the assessee has taken average price of carpets sold to the non-AE under CUP and then benchmarked its international transactions by taking the average price of sale made to the AE. Though, the sale made to the AE is forming major part of the total sales, however, due to the large volume of quantity and number of transactions it is not possible to compare each transaction with corresponding comparables uncontrolled price. Hence, the assessee has worked out the average of comparable uncontrolled price being the sale price of unrelated party and the sale price of the AE as per the Rules 10A and 10B of the Income Tax Rules, 1962 (in short the Rules). The Id

AR has further pointed out that the Rules 10A and 10B of the Rules permits the aggregation of the transactions if the transactions are closely related even under CUP and consequently when the average price charged to the AE is within the tolerance range of $\pm 5\%$ of the arm's length price then no adjustment is called for. In support of his contention, he has relied upon the decision of Pune Bench of the Tribunal in the case of Cummins India Limited Vs Addl.CIT in ITA No. 1616/PN/2011 order dated 31/12/2014. The Id AR has also relied upon the decision of Delhi Benches of the Tribunal in the case ITW India Limited Vs ACIT in ITA No. 521/Del/2013 order dated 30/01/2015 and submitted that the TPO cannot be allowed to cherry picking of the transaction while determining the arm's length price and consequential adjustment. Even otherwise if more than one comparable uncontrolled price are taken into consideration then the arithmetic mean of such prices should be taken as arm's length price for benchmarking the international transaction. The Id AR has also relied upon the decision of Hon'ble Bombay High Court in the case of CIT Vs. Indo American Jewellery Ltd. (2014) 44 taxmann.com 310 (Bom) and submitted that the Hon'ble High Court while confirming the order of the Tribunal held that the interest income is associated only when the lending and borrowing of money and not in case of sale. It was also held that when the assessee is not charging any interest from the non-AEs then it is a complete

uniformity in the act of the assessee for not charging the interest from the AE also, therefore, the delay in realization of export proceeds in both the cases is same then no notional interest can be added under the transfer pricing. He has also referred a series of decisions on this point and submitted that allowing the credit to the AE in respect of sale proceeds is not an international transaction and therefore, no notional interest can be added to the income of the assessee. He has also relied upon the decision of Hon'ble Delhi High Court in the case of JCB India Ltd. Vs DCIT 298 CTR 558 (Del). The Id AR has then relied upon the decision of ACIT Vs. Nimbus Communications Ltd. (2013) 34 taxmann.com 298 (Mum-Trib) and submitted that the Tribunal has considered the issue of allowing the credit to the AE and charging of interest as not an independent international transaction. He has supported the order of the Id. CIT(A).

7. We have considered the rival submissions as well as relevant material on record. The assessee has reported the international transactions being sale of carpets to the AE of Rs. 29,29,83,743/-. The carpets sold to the AE varies in quality, size and design. As per the details reproduced by the TPO, there are around 300 different varieties of products sold to the AE. Though, the quantity of products sold to the AE is very large in comparison to the non-AE. The assessee adopted CUP method as most appropriate method for benchmarking of the

international transaction. The assessee has computed the arm's length price by taking the average price of all the carpets sold to the non-AE and then compared the average price of all the carpets sold to the AE. We find that the variation in the rates of different carpets varies many times and it goes to even up to 8 times, therefore, the vast variation of the rates of different variety of the carpets, designs and pattern makes it difficult to compare the average price computed as per the arithmetic mean of all the transaction with the carpets sold to the non-AE. Therefore, we find that the average method adopted by the assessee in working out the arm's length price under CUP does not give the correct results of arm's length price. Even the average price adopted by the assessee in respect of the international transaction is also not representing the correct price of the international transactions. Once the differences in the rate of the various varieties of carpets sold to the AE as well as to the non-AE is so apparent and substantial then taking a simple average price will not be a proper and reasonable method to work out the arm's length price as well as the price of the international transaction of such a large number of transactions. We note that the rate of the some of the carpets is as low as Rs. 4.00 per Sq.ft. and whereas the rate of some other carpets is Rs. 29.00 per sq.ft. If the quantity of carpet sold at lower rate and quantity of carpet sold at high rate are also having the difference of a high degree than such transactions having variation of

more than of 7 times cannot be aggregated by taking a simple arithmetic mean. Though if the transactions are closely related and depending upon each other than Rule 10A(d) of the Rules permits the aggregation of the transactions for the purpose of transfer pricing analysis. Even the OECD guidelines of transfer pricing also referred to portfolio approach as business strategy consisting of tax payers bundling certain transactions for the purpose of earning an appropriate return across portfolio rather than single product. If number of transactions are closely linked or continuous in nature and arising from a continuous transaction of supply or sale of goods then such transactions can be aggregated and clubbed for the purpose of transfer pricing analysis. In order to examine whether the number of transactions are closely linked or continuous so as to aggregate for the purpose of evaluation, it is to be considered that one transaction is follow on of the earlier transaction and then subsequent transaction is carried out and dependent wholly and substantially on the earlier transaction. In the case of the assessee, though the entire sale to the assessee is in respect of the carpets, however, due to the variation in the quality and design of the carpets, the rates of each variety of carpet is different from the other and the variation is very high, therefore, these transactions cannot be simply aggregated or clubbed together for evaluation under the transfer pricing regulations. We find that the method adopted by the assessee is not giving the correct result as the

assessee has adopted a simple method of working out arithmetic means instead of considering the rate and quantity of each transaction. Therefore, we find that a weighted average of price rate of the transactions with the AE as well as the non-AE will mitigate the scope of any variation or difference in the working out of the sale price of the international transactions as well as the uncontrolled/unrelated price being arm's length price. We find that the TPO has also not taken a correct view while picking only those transactions with the AE which are found to be sold at less rate than the comparables uncontrolled price. In this exercise, the TPO has left out the transactions with AE at the price which is more than the comparables uncontrolled price, therefore, such an approach of the TPO is also not permissible/ warranted while computing the arm's length price in respect of the one product and with one AE. Therefore in course of sales of a variety of the goods of the same product, the arm's length price and comparison of the international transaction has to be taken on the total transactions instead of cherry picking of the transactions. Accordingly, we find that neither the assessee has applied the correct working nor the TPO adopted a valid and permissible approach while computing the arm's length price and benchmarking of international transaction. The Id. CIT(A) has accepted the working of the assessee and hence we find that the said acceptance of the arm's length price as well as benchmarking as reported by the

assessee in the transfer pricing is also not acceptable. Hence, we find that the matter has not been properly examined by the TPO or by the Id. CIT(A) to work out the correct methodology for the purpose of computing the arm's length price and then benchmarking the same with the price of the international transaction. Hence, in the facts and circumstances of the case, we set aside this issue to the record of the A.O./TPO to carry out a fresh exercise of determining the arm's length price as well as the price of the international transaction by using **weighted average** instead of simple average of all the transactions entered into by the assessee with AE as well as all the transactions of sale of carpets to non-AE. Further once the comparable uncontrolled price taken are more than one then the benefit of second proviso to Section 92C(2) of the Act has to be allowed and thereby if the price of the international transaction is within the tolerance range of $\pm 5\%$ of the arm's length price then no adjustment is called for.

7.1 As regards the adjustment made by the TPO on account of notional interest in respect of the credit period allowed to the AE, we find that the TPO has already allowed a normal credit period of 60 days while computing the period of abnormal credit allowed to the AE. However, we find that since the sale proceeds to be realized from the AE is in foreign currency, therefore, instead of applying the PLR as arm's length interest LIBOR shall be considered as arm's length interest. Moreover, the act of

allowing the credit period to the AE is not an independent international transaction but it is depending and consequential on the sales made to the AE. Therefore, when the credit period allowed by the assessee which is more than the normal period then the financial effect of the said credit allowed to the AE has to be taken and considered as part of the sales made to the AE and not as an independent international transaction. This Tribunal has taken a consistent view on this point. We note that the Bangalore Benches of the Tribunal in the case of ACIT Vs. Millipore (India) Ltd. (2017) 80 taxmann.com 12 has considered an identical issue in para 13 as under:

“13. The assessee-company had placed no material before us or before the CIT(A) controverting above finding of the AO and the reasoning of the AO cannot be found fault with. Therefore, ground No.4 of cross objections is dismissed. Ground No.2 of Cross objection challenges the confirmation of ALP adjustment in respect of amount due from AEs. The TPO made adjustment on account of notional interest for non-realization of its dues. There is no dispute that the transaction in question is not an independent transaction. It is an integral part of transaction of sale made to AE and therefore, it has to be considered along with main transaction. It is only w.e.f. assessment year 2012- 13 amendment to section 92A was brought in the statute book. Since amendment is not applicable to the assessment year under consideration, law laid down by several co-ordinate benches like *Goldstar Jewellery Ltd. v. Jt. CIT* [2015] 53 taxmann.com 353/68 SOT 259 (URO) (Mum.) is applicable and in the case of *Avnet India (P.) Ltd. v. Dy. CIT* [2016] 65 taxmann.com 187 (Bang. - Trib.) to which one of us is a party, it has been held as follows:

'8. We have heard the rival submissions. The assessee company reported international transactions in its TP report. On a reference by the AO, the learned TPO accepted that the price charged by the assessee company on these transactions are at arm's length. However, the TPO made adjustments on account of notional interest for the excess period allowed by the assessee- company to its AE for realization of its dues. The TPO applied 14% of interest on the outstanding amount of Rs. The learned DRP also had also concurred with the finding of learned TPO. There is no dispute that the transaction in question falls within the ambit of international transactions u/s 92B of the IT Act. However, this

transaction is not an independent transaction. It is an integral part of transaction of sale made to the AE and therefore, it has to be considered alongwith the main transaction. The similar issue had come up for consideration before the Co-ordinate Bench of Mumbai in the case of M/s Goldstar Jewellery Ltd. (Supra), wherein it was observed as under;

" However, this transaction of allowing the credit period to AE on realization of sale proceeds is not an independent international transaction but it is closely linked or continuous transaction along with sale transaction to the AE. The credit period allowed to the arty depends upon various factors which also includes the price charged by the assessee from purchaser. Therefore, the credit period extended by the assessee to the AE cannot be examined independently but has to be considered along with the main international transaction being sale to the AE. As per Rule 10A(d) if a number of transactions are closely linked or continuous in nature and arising from a continuous transactions of supply of amenity or services the transactions is treated as closely linked transactions for the purpose of transfer pricing and, therefore, the aggregate and clubbing of closely linked transaction are permitted under said rule. This concept of aggregation of the transaction which is closely liked is also supported by OCED transfer pricing guidelines. In order to examine whether the number of transactions are closely linked or continuous so as to aggregate for the purpose of evaluation what is to be considered is that one transaction is follow-on of the earlier transaction and then the subsequent transaction is carried out and dependent wholly or substantially on the earlier transaction. In other words, if two transactions are so closely liked that determination of price of one transaction is dependent on the other transaction then for the purpose of determining the ALP, the closely linked transaction should be aggregated and clubbed together. When the transaction are influenced by each other and particularly in determining the price and profit involved in the transaction then those transactions can safely be regarded as closely lined transactions. In the case in hand, the credit period extended to the AE is a direct result of sale transaction. Therefore, no question of credit period allowed to the AE for realization of sale proceeds without having sale to AE. The credit period extended to the AE cannot be treated as a transaction stand alone without considering the main transaction of sale. The sale price of the product or service determined between the parties is always influenced by the credit period allowed by the seller. Therefore, the transaction of sale to the AE and credit period allowed in realization of sale proceeds are closely linked as they are inter linked and the terms and conditions of sale as well as the price are determined based on the totality of the transaction and not on individual and separate transaction. The approach of the TPO and DRP in analyzing the credit period allowed by the assessee to the AE without considering the main international transaction being sale to the AE will give distorted result by disregarding the price charged by the assessee from AE. Though extra period allowed for realization of sale proceeds from the AE is an international transaction, however, for the purpose of determining the ALP, the same has to be clubbed or aggregated with the sale transactions with the AE. Even by considering it as an independent

transaction the same has to be compared with the internal CUP available in the shape of the credit allowed by the assessee to non-AE. When the assessee is not making any difference for not charging the interest from AE as well as non-AE then the only difference between the two can be considered is the average period allowed along with outstanding amount. If the average period multiplied by the outstanding amount of the AE is at arm's length in comparison to the average period of realization and multiplied by the outstanding from non-AEs then no adjustment can be made being the transaction is at arm's length. The third aspect of the issue is that the arm's length interest for making the adjustment. Both the TPO and the DRP has taken into consideration the lending rates, however, this is not a transaction of loan or advance to the AE but it is only an excess period allowed for realization of sales proceeds from the AE. Therefore, the arm's length interest in any case would be the average cost of the total fund available to the assessee and not the rate at which a loan is available. Accordingly, we direct the AO/TPO to re-do the exercise of determination of the ALP in terms of above observation".'

Respectfully following the above decision, we hold that there can be no separate international transaction of 'interest' in the international transaction of sale. Early or late realization of sale proceeds is only incidental to transaction of sale, but not a "separate transaction in nature. Since we hold that the impugned transaction of interest on delayed realization of sale proceeds is not international transaction, it is not necessary to adjudicate upon the additional grounds raised by the assessee company. Hence, the appeal is treated as partly allowed for statistical purposes.

Respectfully following this decision, we hold that no ALP adjustment is permissible on this issue. This cross objection is allowed.”

Thus, it is clear that the Coordinate Bench of the Bangalore Tribunal has followed the decision in the case of Goldstar Jewellery Ltd. Vs Jt.CIT (2015) 53 taxmann.com 353 as well as the another decision of Coordinate Bench. One of us the Judicial Member is the party of the said decision in the case of ACIT Vs. ACIT Vs Millipore (India) Ltd. (supra) as well as Goldstar Jewellery Ltd. Vs Jt.CIT (supra). Therefore, the Tribunal has held that the transaction of sale to the AE and credit period allowed in realization of sale proceeds are closely linked as they are interlinked and the terms and conditions of sale as well as price are determined

based on the totality of the transaction and not on individual and separate transaction. Therefore, for the purpose of determining the arm's length price the transaction of allowing the credit to the AE for realization of sale proceeds has to be clubbed or aggregated with the sale transaction with the AE. It is also pertinent to note that the credit period allowed to the AE would not arise if there is no sale transaction to the AE, therefore, the said transaction of allowing the credit period is absolutely an outcome of the sale transaction and consequently would form part of international transaction of sale to the AE. The Hon'ble Bombay High Court in the case of PCIT Vs Tecnimont (P) Ltd. (2018) 96 taxmann.com 223 (Bom) has upheld the order of the Tribunal in para 7 and 8 as under:

- “7. We note the finding of fact by the Tribunal that no interest is charged by the respondent assessee from its AEs as well as its non-AEs for delayed payment of export receivable and expenses. Further finding of fact that operating margin earned by the respondent assessee in respect of its transactions with AEs is higher than that earned on transactions with non-AEs entities. Thus, keeping the above finding of fact, we proceed to examine the Revenue's challenge to the impugned order of the Tribunal. The entire exercise of determining the ALP in respect of the AE transaction is to arrive at the price which would be the normal price in competitive conditions between non-AEs. In this case, it is only the notional interest which is being computed as in fact no interest is charged by the respondent for delayed payments universally i.e. from AEs and non-AEs. In cases where any business enterprise is required to pay interest on delayed payment, it would examine the cost of interest and if the same is higher then the amount of interest payable on funds obtained locally, it would take a loan from local sources and pay the amounts payable for exports and expenses within time. Therefore, extending of credit beyond the normal period of 60 days is in substance a granting of loan to an AE so as to enjoy the funds, which the AE would otherwise have to repay within the period of 60 days. The aforesaid finding of ours also finds support from the question of law at Sr. No.2 as proposed by the Revenue. Thus, in these circumstances, in the facts of this case order of the Tribunal computing interest at LIBOR rates as the rate prevailing in

country where the loan is received/consumed by the AE cannot in these facts be faulted as it is in line with the decision of this Court in *Tata Autocomp Systems Ltd. (supra)*.

8. In the above view, the two questions of law as proposed do not give rise to any substantial question of law. Thus, not entertained.”

Thus the Hon'ble High Court has considered that extension of credit beyond the normal period of 60 days is in substance a granting of loan to the AE so as to enjoy the funds which the AE would otherwise has to be repay within the period of 60 days and upheld the arm's length interest at LIBOR rate as against the PLR applied by the TPO. In the case in hand, the Id. CIT(A) has rightly applied the LIBOR for the purpose of benchmarking the credit allowed to the AE for realization of sale proceeds. However, the Id. CIT(A) has also considered the exchange rate gain against the said arm's length interest which in our view, is not proper as the exchange gain or loss would be part of the sale proceeds and therefore would consequently increase or decrease the sale price at the time of computing the arm's length price and benchmarking of international transaction. Hence the forex gain or loss has to be taken as part of the sale price in both the cases of international transaction as well as comparable uncontrolled price. In other words, the exchange gain or loss would be part of the sale price of the transaction between the assessee and AE as well as non-AE. Therefore, the effect of the exchange gain or loss has to be given in computing of arm's length price being the part of sale proceeds as well as comparable price. The adjustment on account of credit allowed to the AE beyond 60 days shall

be made at the time of determining the arm's length price of sale transaction and not to be considered as a separate international transaction. Accordingly, this issue is also set aside to the record of the TPO/A.O. for computation of arm's length price alongwith main international transaction of sale. Hence, appeal of the revenue for the A.Y. 2008-09 is allowed for statistical purposes only.

8. In the appeal for the A.Y. 2009-10, the assessee as well as the revenue has raised following grounds:

"Grounds of assessee's appeal:

1. *In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of Id. A.O./Id.TPO in making an addition of Rs. 81,43,662/- on account of alleged notional interest on outstanding receivables in respect of transactions with AE. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 81,43,662/-."*

"Grounds of revenue's appeal:

1. *Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in deleting the addition of Rs. 1,86,27,160/- made by the AO u/s 92C of the IT Act, 1961.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in not appreciating the fact that assessee's claim is self contradictory. On one hand assessee is claiming that the average sale price of AE is better than the unrelated parties whereas on the other hand it has been claimed that the AE is given bulk discount for which no evidence was produced whatsoever.*
3. *Whether on the facts & circumstances of the case & in law, Ld. CIT(A) was justified in not appreciating the fact that the second proviso to section 92C(2) is not applicable in the instance case, as the AO has applied CUP method for determining ARM'S LENGTH PRICE."*

9. The issue involved in the cross appeals is common to the issue involved in the revenue's appeal for the A.Y. 2008-09, therefore, the issue raised by the assessee regarding the addition of notional interest for allowing the credit to the AE is covered by our finding in the appeal for A.Y. 2008-09 and accordingly, the matter is set aside to the TPO/A.O.. Similarly the issue raised by the revenue is also common to the issue of transfer pricing adjustment made by the TPO was deleted by the Id. CIT(A). Being the common issue involved in these cross appeals for the A.Y. 2009-10 as it was in the A.Y. 2008-09, the same are set aside to the record of the TPO/A.O. on same terms and directions.

10. In the appeal for the A.Y. 2010-11, the assessee has raised following grounds:

"1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of Id. A.O./Id.TPO in making an addition of Rs. 76,82,931/- on account of alleged notional interest on outstanding receivables in respect of transactions with AE. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 76,82,931/-."

11. The only issue raised by the assessee in this appeal is regarding the addition sustained by the Id. CIT(A) on account of transfer pricing adjustment in respect of notional interest on the outstanding receivables from the AE. This issue is common as it written submissions for the A.Y. 2008-09, accordingly, in view of our findings in the appeal for the A.Y.

2008-09, this issue also set aside to the record of A.O./TPO on same terms and directions.

12. All these four appeals are allowed for statistical purposes only.

Order pronounced in the open court on 22nd January, 2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22nd January, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- The D.C.I.T./ACIT, Circle-2, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Jaipur Rugs Company Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 738/JP/2012, 1124/JP/2016, 1083/JP/2016 & 1125/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar