

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 7026/DEL/2017
ITA No. 7027/DEL/2017
[AYs: 2013-14 & 2014-15]

M/s Granite Gate Properties Pvt Ltd Vs.
C - 23, Greater Kailash, Part -1
New Delhi

The A.C.I.T
Central Circle -6
New Delhi

PAN No: AADCR 6248 M

(APPELLANT)

(RESPONDENT)

Assessee By : Shri Sanjiv Sapra, FCA
Department By : Shri Sanjay I Bara, CIT-DR

Date of Hearing : 12.03.2019
Date of Pronouncement : 15.03.2019

ORDER

PER N. K. BILLAIYA, AM:-

The above two appeals by the assessee are preferred against the order dated 23/10/2017 framed u/s 153A r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] pertaining to

A.Ys. 2013-14 and 2014-15. Since the appeals were heard together and involve common grievance, they are being disposed of by this common order for the sake of convenience and brevity.

2. At the very outset, the ld. counsel for the assessee stated that the common grievance in both the appeals relates to the adjustment on account of interest payable/paid by the assessee on Fully and Compulsorily Convertible Debentures [FCCDs] as issued by it to its Associated Enterprises [AEs]. The quantum of adjustment is same in both the years amounting to Rs. 10,70,37,882/-.

3. The ld. counsel for the assessee fairly conceded that the issues are identical in both the years. On such concession, we heard the ld. counsel for the assessee on the facts of assessment year 2013-14.

4. During the course of assessment proceedings, the A.O observed that the assessee has issued FCCD as per the following schedule:

Financial Year	Debentures	Name of the AE	Coupon Rate
2008-09	131,45,520 FCCD debentures of Rs. 100/-	Twilzon Cyprus Limited,	
2009-10	112,79,394/- FCCD of Rs. 100 each	Twilzon Cyprus Limited	
2011-12	79,68,000/-FCCD of Rs 100/-each	Twilzon Cyprus Limited	

5. Since an international transaction with the AE was involved, a reference was made u/s 92CA(1) of the Act. The assessee was asked to explain its international transaction and whether the same is at Arm's Length Price [ALP].

6. In its reply, the assessee explained that interest @ 16%, 14.75% and 17.75% has been paid, which includes SBI PLR + 300 basis points to cover the risk because of funds and administrative cost. The assessee further stated that since the FCCDs issued to AEs are rupee denominated, and interest payments are also paid in Indian rupees, therefore, LIBOR is not applicable in the case of the assessee.

7. The TPO was of the firm belief that the 300 basis points over and above the base rate PLR is excessive and needs to be disallowed and accordingly made the adjustment as under:

<i>Particulars</i>	<i>Amount in INR</i>
Interest paid at 16%	Rs. 21,03,28,320.00
Interest arm's length of 12.25%	Rs. 16,10,32,620.00
Adjustment	Rs. 4,92,95,700.00

<i>Particulars</i>	<i>Amount in INR</i>
Interest paid at 14.75%	Rs 16,63,71,062.00
Interest arm's length of 11.75%	Rs. 13,25,32,879.90
Adjustment	Rs. 3,38,38,182.10

<i>Particulars</i>	<i>Amount in INR</i>
Interest paid at 17.75%	Rs. 14,14,32,000.00
Interest arm's length of 14.75%	Rs. 11,75,28,000.00
<i>Adjustment</i>	Rs. 2,39,04,000.00
<i>Total Adjustment</i>	10,70,37,882.10

8. The assessee raised objections before the DRP, but without any success.

9. Before us, the ld. counsel for the assessee stated that identical issues were considered by the Tribunal in assessee's own case in ITA Nos. 7022 to 7024/DEL/2017 for assessment years 2009-10 to 2011-12. It is the say of the ld. counsel for the assessee that the Tribunal has decided the quarrel in favour of the assessee and against the revenue.

10. Per contra, the ld. DR could not bring any distinguishing decision in favour of the revenue.

11. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We have also perused the orders of the co-ordinate bench relied upon by the ld. counsel for the assessee. The undisputed fact is that the FCCDs were issued during FY 2008-09, 2009-10 and 2011-12, which means that no fresh FCCDs were issued during the year under consideration. The

year wise details of interest rate, interest amount payable and interest rate and amount restricted by the TPO can be understood from the following chart:

S No	Type of FCCD's	Interest rate as per Assessee on the basis of SBI PLR rate plus 300 basis points	Amount of interest payable on FCCD's as per Assessee	Rate of Interest restricted by TPO to be at Arm's length based on SBI PLR rate	Differential rate of interest as per TPO to be adjusted/added to income	Amount of Interest payable at Arm's length as per TPO	Differential amount of interest as per ITPO to be adjusted/added to income
1.	FCCD's @ 16% as issued during FY 2008-09 (Note 1)	16.00%	210,328,320.00	12.25%	3.75%	161,032,620.00	49,295,700
2.	FCCD's @ 14.75% as issued during FY 2009-10	14.75%	166,371,062.00	11.75%	3.00%	132,532,879.90	33,838,182
3.	FCCD's @ 17.75% as issued during FY 2011-12 (Note 2)	17.75%	141,432,000.00	14.75%	3.00%	117,528,000.00	23,904,000
	Total		518,131,382.00			411,093,499.90	107,037,882.

12. On the basis of the aforesaid facts, the co-ordinate bench in ITA No. 7022/DEL/2017 and others had considered this issue and held as under:

"27. On merit also, the AO/TPO made the addition on account of differential rate of interest on FCCDs. The assessee applied the interest rate on the basis of SBI PLR rate plus 300 basis points for the reasons that the FCCDs being unsecured and hybrid/quasi equity instrument as compared to plain vanilla loan instrument.

Therefore, the SBI PLR plus 300 basis points over it was reasonable and on the arm's length, particularly when the same was permissible under Foreign Exchange Control Regulations. The AO/TPO, however, restricted the interest rate to 12.25%. The variance in the rate of interest as per TPO/AO to be adjusted and added was 3.75% which was within the permissible range of 5% as permitted by second proviso to Section 92C(2) of the Act. It is also relevant to point out that the percentage of 3% in the aforesaid proviso has been inserted by the Finance Act, 2012 w.e.f. 01.04.2013 and prior to that amendment, this percentage was at 5%. In the present case, since the difference is less than 5%, therefore, no addition on account of arm's length price could have been made ITA Nos. 7022 to 7024/Del/2017 Granite Gate Properties Pvt. Ltd. 19 by the AO/TPO. As such on merit also, no addition could have been made."

13. Similarly, in ITA No. 7025/DEL/2017, the findings given by the co-ordinate bench read as under;

"14. Therefore, in view of the above finding of a coordinate bench of this Tribunal in assessee's own case for the immediately preceding years, we are of the considered opinion that the issue is no longer res integra and this bench is required to follow the same in the absence of any change of circumstances. No change of circumstances is pleaded before us. We, therefore, while respectfully following the above decision, reach a conclusion that it

is reasonable on facts and also permissible under law to include 300 points basis while calculating the interest rate. Further, in view of the fact that the variance does not exceed 5% for the FCCDs issued during the FYs 2008-09 and 3% for the FCCDs issued subsequently interference by the Ld. TPO with the value of the international transaction. The addition, therefore, cannot be sustained and shall be directed to be deleted. We accordingly direct the learned AO/TPO to delete the same.”

14. As no distinguishing decision has been brought to our notice, respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer /TPO to delete the impugned adjustments.

15. In the result the appeals of the assessee in ITA Nos. 7026 & 7027/DEL/2017 are allowed.

The order is pronounced in the open court on 15.03.2019.

Sd/-

**[SANDEEP GOSAIN]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th March, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which file goes to the Head Clerk.	
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