आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गा राव,न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER&
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.348/VIZ/2018**
(निर्धारण वर्ष**/ Assessment Year:2014-15)**

DCIT, Circle-1(1) Guntur	Vs.	M/s CCL Products (India) Pvt. Ltd. Duggirala Post & Mandal Guntur **[PAN : AAACC9552G]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri D.K.Sonowal, DR
प्रत्यार्थी की ओर से/ Respondent by	:	Shri Ramesh Babu, AR
सुनवाई की तारीख / Date of Hearing	:	20.03.2019
घोषणा की तारीख/Date of Pronouncement	:	03 .04.2019

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue is against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur vide Appeal No.10198/2017-18 dated 06.04.2018 for the Assessment Year (A.Y.) 2014-15.

2. Ground No.1 and 8 are general in nature which does not require specific adjudication.

3. Ground No.2 to 5 are related to the interest on receivables. For the A.Y. 2014-15, the AO found from Form 3CEB that there was an international transaction exceeding Rs.15 crores and referred the issue to Transfer Pricing Officer (TPO) u/s 92CA(1) of the Income Tax Act, 1961 (in short 'Act') for determination of Arms Length Price(ALP). The TPO made the study of transfer pricing document and found that an amount of Rs.10,21,81,783/- was due from Associated Enterprises (AEs) at the end of the year. The TPO requested for breakup and reconciliation of the receivables outstanding and opening balances as at the end of the year which were not been provided by the assessee. As per clause (c) of Explanation of section 92B ,inserted by Finance Act 2012 w.e.f.01.04.2002, receivables are treated as international transaction. Since the taxpayer failed to submit the details, the TPO proposed to charge interest @6% on delayed payments beyond 60 days credit period. The AO relied on the case of M/s Logix Micro Systems Ltd., 42 SOT 525 and M/s Chiel India Pvt. Ltd. [TS-145-ITAT-2014(DEL)-TP] and considered the SBI term deposit rates as appropriate to charge interest on receivables. Accordingly determined the

arm's length price on receivables at Rs.66,41,816/- u/s 92CA of the Act. The AO made the addition of Rs.66,41,816/- on account of interest on receivables as recommended by the TPO u/s 92CA of the Act.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO holding that the receivables reflected by the assessee from it's AEs are 100% subsidiaries of the assessee. For the sake of clarity and convenience, the facts of the case in the order of the Ld.CIT(A), which is made available from page No.9 to 12 are reproduced as under :

> *"I have carefully considered the assessment order, order of the TPO and submissions of the appellant. The appellant reflected receivables from its AEs which are 100% subsidiaries of the appellant. The appellant has huge capital and reserve as on 31-03-2014 and very meager borrowings. Most of the exports are with AEs. The appellant contended that it has provided the breakup of receivables vide letter dated 05-09-2017 and 16-9-2017 to the TPO informing invoices raised, amount realizable and date of realization including the number of days the credit was extended. This fact has been verified from the documents submitted and found correct. Hence, the assertion of the TPO that bifurcation was not provided is not correct. The appellant contends that considering the extra credit period allowed to the AEs, the price has been charged suitably at a higher rate when compared to the non-AEs. A comparative statement has been submitted to demonstrate that the price charged to the AEs is more than 9.84%. The appellant also contends that the TPO has taken the comparable which is not on the record of the appellant company. It is also pleaded that sample sale of 500 Kgs to a particular party and that too a new party cannot be compared when the AEs were purchased around 864 MTs of goods. The appellant relied on the several decisions and requested to delete the addition.*
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> *The Id. TPO relied on the decision of Hon'ble ITAT Bangalore in the case of MIs. Logix Micro Systems Ltd. The facts of that case are distinguishable from the facts of the present case. Hence, the ratio of the said decision*

cannot be applied straight away. In that case, the assessee company M/s. Logix Micro Systems Ltd., (Logix India' for short) is having an AE in USA as 100% subsidiary known as Logix America Inc. USA (Logix USA for short). Logix USA in turn holds 76% of the shares in another US company by name MIs. Homestar LLC (USA) ('Homestar- USA' for short). Because of the above shareholding, pattern Homestar-USA stands in the position of AE to the assessee-Logix India. The TPO further found that on the last day of the previous year a total amount of Rs. 7,73,23,619/- has shown as debts receivable from its AE-Homestar USA.

In the present case, the appellant company has dues receivable from its 100% subsidiaries and AEs. Further, in that case, the outstanding is more than 6 months. But in this case, it is a fact that the receivables received in reasonable period. Hence, the said ratio cannot be applied. Moreover, the appellant is a debt free company and not charging interest on the creditors and also not paying interest on debts. In view of this, the ratio relied upon by the Id. TPO is not applicable to the facts of the case.

The appellant relied on the decision of Hon'ble ITAT Delhi in the case of Bain Capability Centre India (P.) Ltd for the proposition that no TP adjustment on receivables to be done in case neither interest is charged on the creditors nor interest is paid to the debtors. On careful consideration of this decision it is found that the ratio applies to the facts of the case as it was held that where assessee a debt free company had neither received any interest from its creditors nor paid any interest to any of its debtors, it could not be inferred that it had given any benefit to AE by blocking its interest-bearing funds to AE by extending credit period, hence, TP adjustment made by TPO by imputing interest on delay in receipt of receivables from AE was uncalled for. The relevant pare of the headnote is as under:

> *"Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Corn parables and Adjustments/Adjustments - Interest) - Assessment year 2012-13 - Whether where assessee was a debt free company and since it had neither received any interest from its creditors nor paid any interest to any of it·s debtors, it could not be inferred that interest-bearing borrowed funds were utilised for extending any kind of loan to its AE and thus it could not be reckoned that assessee had given any benefit to AE by blocking its interest- bearing funds to AE by extending credit period - Held, yes - Whether therefore, transfer pricing adjustment, as made by TPO, by imputing interest on delay in receipt of payment was uncalled for and same was directed to be deleted - Held, yes"*

Hon'ble High Court of Delhi in the case of Kusum Healthcare Pvt. Ltd (ITA

765/2016, dated 25-04-2017) held that inclusion of receivables in Explanation W Sec.92B of the Act does not mean that all the receivables are in the nature of international transactions. It has to be decided on the case to case basis. In view of this face, as the appellant contended that pricing has been fixed to take care of longer period of credit period should have been considered by the TPO.

The appellant also relied on the decision of Hon'ble ITAT Delhi in the case of BC Management Services (P.) Ltd (83 taxmann.com 346) and requested to delete the adjustment. The Hon'ble Tribunal held that TP adjustment on receivables regarding extended credit period is not called for on the basis of the company is debt free one. The relevant part of the headnote is as under:

> *"Section 92C of the Income-tax Act, 1961 - Transfer pricing - Computation of arm's length price (Comparables and Adjustments/Adjustments - Interest) - Assessment year 2011-12 - TPO noted that there was delay in receipt of payment from AE and observed that estimate period of 30 days would be considered as normal period for inter-company sales and services and any delay beyond said period should be benchmarked - After treating said delay as a part of loan transaction, he calculated interest on basis of 551 base rate and made adjustments - It was found that assessee was a debt free company as it neither received any interest from any creditors nor paid interest to any debtor Whether once it was accepted that assessee did not have any interest bearing borrowed funds for extending any kind of loan to its AE_1 then it could not be reckoned that assessee gave any benefit to AE by blocking its interest bearing funds by extending credit period - Held, yes"*
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> *Considering the ratios of the above decisions and also the material 'facts of the case the TP adjustment made by, he AO is hereby deleted. Hence, these grounds of appeal are allowed."*

5. Aggrieved by the order of the Ld.CIT(A), the revenue filed appeal before this Tribunal. During the appeal hearing the Ld.DR supported the orders of the Assessing officer.

6. On the other hand the Ld.AR argued that all the AEs are 100% subsidiaries of the assessee company and the assessee company has huge capital reserves as on 31.03.2014 and very meager amount of borrowings. Most of the exports are with AEs. The Ld.AR further submitted that keeping in view the extra credit period allowed to the AEs, the price has been charged suitably at a higher rate when compared to non-AEs. Since the TPO has made the adjustment or held that the transaction with the AEs are at arm's length, no further adjustment is required to be made on account of interest on receivables. The Ld.AR relied on the orders of this Tribunal in the case of Mahati Software Pvt. Ltd. in I.T.A. No.67/Viz/2016 & 68/Viz/2017 and in the case of GVK Power & Infrastructure Ltd. Vs. ACIT, 94 taxmann.com 415 on identical issue.

7. We have considered the arguments of both the parties. The issue is similar to the facts of the case of this Tribunal relied upon by the Ld.AR. in the case of Mahati Software Pvt. Ltd supra., wherein the Coordinate Bench held that no separate benchmark is required on receivables when PLI is comparable. For the sake of clarity and convenience, we extract para No.17 and 17.1 of the said order which reads as under :

"17. We have heard both the parties and perused the material placed on record. In this case, there were receivables outstanding for both the assessment years which was not received in time. It was also observed that the receivables were not received during the entire year. The Ld.TPO has not furnished the delay in recovery of receivables and period of outstanding. As per the order of the TPO, the PLI margin in the assessee's case is 37.26% which is higher than the average margin of comparable case. The interest on receivables is bench marked to equate the PLI of the tax payer company with that of comparable company. The TPO has accepted that there is no arm length adjustment is required in this case on account of margin. The AO has not brought on record to show that the assessee has extended undue credit to the AE for the period beyond the time specified in the master service agreement. The AO has also not made out a case that there was any undue advantage by extending credit on receivables by the assessee. Though there was financial impact on giving loans from the funds of the assessee such impact cannot be imparted in the case of receivables when the PLI is comparable. Hon'ble ITAT Hyderabad in the case of Cura Logistics relied upon by the assessee held that on trade advance, no interest is leviable, relying on the decision of GSS Infotech Ltd. Vs. ACIT (supra).In the case of Bartronics India Ltd., ITAT Hyderabad has held that if the work contract is within the ALP, there is no separate requirement for bench marking the interest on trade advances. The assessee relied on the decision of this tribunal in GVK Power & Infrastructure Ltd. vs ACIT Circle-2(1) dated 18/05/2018 where in ITAT held that no notional interest is chargeable on delayed payments. For ready reference we extract the relevant para of the ITAT's order in GVK Power & Infrastructure Ltd which reads as under:

> *12. Even otherwise as observed from the order of the TPO on three occasions, there was a delay of receivables and pointed out by the Ld. A.R. the assessee is not indulged in any systematic or organized activity of allowing the undue credit to the AEs. The assessee relied on the decision of Motherson SumiInfotech & Designs Limited Vs. DC1T reported In (2018) 52 CCH 0122 Delhi, and Hon'ble ITAT Delhi held as under:*
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> *5. We have considered the rival submissions and perused the material available on record. The assessee has given several reasons to explain that it being a business transaction, commercial consideration should have been considered by the authorities below. It was explained that the long term business relation with the customer and A.E. predicate waiver of this right. The interest is only associated with the loans and not services. It was explained that payments are received only after satisfaction of the customer and therefore, there was delay in receiving the payments. The assessee also explained before T.P. authorities below that average outstanding days for recovering sales dues was 57 days in the case of A.Es, whereas, in the case of non-A.E. it was 66 days. It was also explained that non-charging of interest from A.Es. as well as non-A.E. on interest receivables was that it being pre-*

dominantly involved in the provision of services to it's A.Es. as well as third parties. The contention of the assessee have not been disputed by the authorities below. It may also be noted here that all international transactions were accepted by the TPO to be at arm's length, except, payment of interest on loan. The authorities below have treated the delayed payment beyond 30 days as loans. In fact, no loan have been extended by the assessee. It was the amount 'due' against the A.Es. as well as non-A.E. on which interest have been charged by considering the deemed loans. Therefore, the decision of ITAT, Delhi Bench in the case of M/s. Kusum Healthcare Pvt. Ltd., (supra), squarely apply in the case of the assessee, since the assessee earned significantly higher margin than the comparable companies, which have been accepted by the TPO, therefore, there was no justification to charge interest on outstandings. The decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Kusum Healthcare Pvt. Ltd.,(supra), squarely apply to the facts and circumstances of the case. The assessee also explained that there are similar delays in collection of outstanding receivables from both A.Es and non-A.Es which is due to business and commercial reasons. Therefore, there is uniformity in act of assessee in not charging interest from A.Es and non-A.Es. Therefore, the decision of the Hon'ble Bombay High Court in the case of CIT vs. Indo American Jewellery Ltd., (supra), squarely apply to the facts of the case.

5.1. Considering the nature of business of assessee and the facts explained above, we are of the view that there was no justification for the authorities below to make adjustment to the income declared by assessee. Recently, the ITAT, I-2 Bench in the case of Terradata India Pvt. Ltd., vs. ACIT in ITA.No.7885/Del./2017 vide order dated 21st February, 2018, following the order in the case of same assessee, in which the decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. M/s. Kusum Healthcare Pvt. Ltd., (supra), have been relied upon, allowed the appeal of assessee on the similar ground. In view of the above discussion and in the light of various decisions above and facts of the case, we are of the view that the adjustment to the income of the assessee is wholly unjustified on account of interest on receivables. We, accordingly, set aside the orders of the authorities below and delete the entire addition.

6. In the result, appeal of the assessee is allowed.

The department has not made out case of systematic planning of allowing the undue credit to the AE. Further Ld.AR relied on the decision of Pr.CIT vs B.C.Management Services (P) Ltd, (2018) 164 DTR (Del)299 where in Hon'ble Delhi High court held that delayed payment made by AE cannot be treated as part of income. For ready reference we extract the relevant part of the order of the Hon'ble Delhi High court which reads as under:

9. With respect to the treatment of notional interest by the TPO/AO, the Court is of the opinion that no question of law arises. In an identical situation, in Principal Commissioner of Income Tax Vs. Bechtel India Pvt. Ltd. ITA 379/2016, *decided on 21.07.2016, the Court had held that such notional income on account of delayed payment made by the AO cannot be treated as part of the income and made the subject matter of the adjustments.*

While rendering the judgement the Hon'ble High court has considered the decision in the case of Bechtel India (P) ltd. Therefore, placing reliance on the decision of Motherson SumiJnfotech& Designs Limited Vs. DCIT (supra) and the decision in the case of B.C.Managemerit services (P) Ltd we hold that the revenue has not made out case of disallowance of notional interest on delayed payments and accordingly, we set aside the orders of the authorities below and delete the addition. The appeal of the assessee on this ground is allowed.

17.1. In the instant case the PLI is higher than comparable cases and the TPO held that no ALP adjustment is required with regard to profit margin. The assessee contended that having accepted that the PLI is higher than the comparable cases the potential loss of interest is taken care and embedded in the sale price. The department has not given the specific details such as what was the period of recovery, what was the delay, what was the reasonable delay etc., thus the department has not made out a case for charging the interest on delay. The revenue also did not controvert the submission of the assessee that due to higher margins and the long term relations and business considerations the right of interest is waived. In the case of M/s Cura Technologies supra Hon'ble ITAT , Hyderabad bench has held that no interest required to be charged on trade advances. Similar view was taken by the ITAT, Hyderabad in the case of M/s Bartronics supra. Therefore respectfully following the decisions cited supra, we hold that there is no justification for charging the interest on receivables in the case of the assessee, accordingly, we delete the interest levied on receivables and allow the appeals of the assessee for the assessment year 2011-12 and 2012-13."

7.1 The Ld.AR also relied on the decision of GVK Power & Infrastructure Ltd. Vs. ACIT, 94 taxmann.com 415 of this bench on similar issue. For ready reference we extract para No.12 of the said order which reads as under:

12. *Even otherwise as observed from the order of the TPO on three occasions, there was a delay of receivables and pointed out by the Ld. A.R. the assessee is not indulged*

in any systematic or organized activity of allowing the undue credit to the AEs. The assessee relied on the decision of Motherson SumiInfotech& Designs Ltd. (supra), and Hon'ble ITAT Delhi held as under:

"We have considered the rival submission and perused the material available on record. The assessee has given several reasons to explain that it being a business transaction, commercial consideration should have been considered by the authorities below. It was explained that the long term business relation with the customer and A.E. predicate waiver of this right. The interest is only associated with the loans and not services. It was explained that payments are received only after satisfaction of the customer and therefore, there was delay in receiving the payments. The assessee also explained before T.P. authorities below that average outstanding days for recovering sales dues was 57 days in the case of A.Es, whereas, in the case of non A.E., it was 66 days. It was also explained that non charging of interest from A.E.s as well as non A.E. on interest receivables was that it being predominantly involved in the provision of services to it's A.Es as we l as third parties. The contention of the assessee have not been disputed by the authorities below. It may also be noted here that all international transactions were accepted by the TPO to be at arm's length, except, payment of interest on loan. The authorities below have treated the delayed payment beyond 30 days as loans. In fact, no loan have been extended by the assessee. It was the amount 'due' against the A.Es as well as non A.E on which interest have been charged by considering the deemed loans. Therefore, the decision of ITAT, Delhi Bench in the case of M/s. Kusum Healthcare Pvt. Ltd., (supra) squarely apply in the case of the assessee, since the assessee earned significantly higher margin than the comparable companies, which have been accepted by the TPO, therefore, there was no justification to charge interest on outstanding. The decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT v. Kusum Healthcare Pvt. Ltd. (supra) squarely apply to the facts and circumstances of the case. The assessee also explained that there are similar delays in collection of outstanding receivables from both A.Es and non AEs which is due to business and commercial reasons. Therefore, there is uniformity in act of assessee in not charging interest from AEs and non AEs. Therefore, the decision of the Hon'ble Bombay High court in the case of CIT v. Indo American Jewellery Ltd. (supra) squarely apply to the facts of the case.

5.1 Considering the nature of business of assessee and the facts explained above, we are of the view that there was non justification for the authorities below to make adjustment to the income declared by assessee. Recently, the ITAT, I-2 Bench in the case of Terradata India Pvt. Ltd. v. ACIT in ITA No.7855/Del/2017 vide order dated 21st February, 2018, following the order in the case of same assessee, in which the decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT v. M/s. Kusum Healthcare Pvt. Ltd. (supra) have been relied upon, allowed the appeal of assessee on the similar ground. In view of the above discussion and in the light of various decisions above and facts of the case, we are of the view that the adjustment to the income of the assessee is wholly unjustified on account of interest on receivables. We,

accordingly, set aside the orders of the authorities below and delete the entire addition."

The department has not made out case of systematic planning of allowing the undue credit to the AE. Further Ld.AR relied on the decision of Pr.CIT v. B.C. Management Services (P.) Ltd. [2018] 89 taxmann.com 68/253 Taxman 138/403 ITR 45 (Delhi) where in Hon'ble Delhi High court held that delayed payment made by AE cannot be treated as part of income. For ready reference we extract the relevant part of the order of the Hon'ble Delhi High court which reads as under:

"9. With respect to the treatment of notional interest by the TPO/AO, the Court is of the opinion that no question of law arises. In an identical situation, in Bechtel India (P.)Ltd.(supra), the Court had held that such notional income on account of delayed payment made by the AO cannot be treated as part of the income and made the subject matter of the adjustments. The question no. 2 and 3 therefore does not arise for consideration."

While rendering the judgment the Hon'ble High court has considered the decision in the case of Bechtel India (P.) Ltd. (supra) Therefore, placing reliance on the decision of Motherson SumiInfotech& Designs Ltd. (supra) and the decision in the case of B.C. Management services (P.) Ltd. (supra) we hold that the revenue has not made out case of disallowance of notional interest on delayed payments and accordingly, we set aside the orders of the authorities below and delete the addition. The appeal of the assessee on this ground is allowed.

7.2 The facts of the assessee's case are similar. In the instant case also it is established that the transactions with the AEs are at arms length price. All the AEs are 100% subsidiary companies and the assessee is debt free company having large amount of reserves. The department has not made out a case of undue advantage of allowing credit. The Ld.CIT(A) has given finding that the receivables were received in reasonable period and there was no delay. The department did not place any evidence to controvert the finding given by the Ld.CIT(A). Therefore, we hold that there is no case for

making adjustment of interest on receivables in the assessee's case. Ld.DR did not place any other decision of the Apex Court to controvert the case laws relied upon by the assessee. Accordingly, we uphold the order of the Ld.CIT(A) and appeal of the revenue on this ground is dismissed.

8. Ground No.6 and 7 are related to the issue of corporate guarantee to subsidiaries. The TPO found that the assessee has given corporate guarantee of Rs.177,29,00,000/- to it's AEs and the taxpayer did not disclose the same in From 3CEB and TP study report. The TPO issued show cause notice, proposing to make adjustment u/s 92CA on the amount of corporate guarantee at 1.60%. The assessee objected for making adjustment on account of corporate guarantee stating that the AEs are 100% step down companies for which corporate guarantees are extended upto Rs.153.76 crores and the details were furnished to the TPO. The assessee further stated that the corporate guarantee was given to its AEs to protect the interest of the assessee company since they are 100% share holders and the corporate guarantee was provided for commercial purpose, for securing the credit facilities of 100% subsidiaries. The assessee stated that there is no case for making any adjustment towards corporate guarantee. The assessee further stated to the TPO, that the corporate

guarantee given by the assessee is not in the form of standby letters of credit as given by banks, but more in the nature of personal guarantee given by the promoters of the company in India for the loan taken by the companies from banks. The assessee also further stated that no direct financial benefit was given to the overseas beneficiaries on account of corporate guarantee nor any expenditure was absorbed by the parent company on behalf of its subsidiaries and requested to drop the proposal of adjustment u/s 92C of the Act. However, not being convinced with the explanation of the assessee, the Ld.AO made the adjustment of Rs. 2,83,66,400/- @1.60% on the corporate guarantee of Rs.177.29 crores. The AO made the addition of Rs.2,83,66,400/- to the returned income by an order u/s 143(3)r.w.s. 92CA(3) of the Act dated 28.12.2017.

9. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO following the order of the coordinate Bench of ITAT, Hyderabad in the case of Bartronics India Limited Vs. Dy.Commissioner of Income Tax, 86 taxmann.com 254 and Dr.Reddy Laboratories Limited Vs. Addl.CIT in 81 taxmann.com 398. For the sake of clarity and convenience, we extract relevant part of the order of the CIT(A) which reads as under :

"*The appellant also filed certain case laws in its support and also filed copy of the order of the Ld.CIT(Appeals)-2, Guntur for the A.Y.2013-14 with a request to follow the same and to delete the addition. In this connection, having regard to the facts of the case, the decisions relied upon by the appellant and the order of the Ld. CIT(Appeals)-2, Guntur have been carefully considered, Hon'ble ITAT Hyderabad in the case of Bartronics India Ltd (86 taxmann.com 254) held that where assessee had provided corporate guarantee to its AE without charging any fees for same, said transaction would not constitute international transaction within meaning of section 92B. Similarly, Hon'ble ITAT Hyderabad in the case of Dr. Reddy's Laboratories Ltd (81 taxmann.com 398) held that where assessee has not incurred any cost in providing corporate guarantee on behalf of its AE, it would not constitute 'international transaction' within the meaning of section 92B. The other case laws relied by the appellant also perused and found that the contention of the appellant get support from all the decisions to the fact that when there is no cost incurred by the appellant, the guarantee given cannot be treated as international transaction. Respectfully following the above decisions and also considering the decision given by Ld. CIT(Appeals)-2, Guntur, the addition made by the AO is hereby deleted.*"

10. We have heard both the parties and perused the material placed on record. The issue involved in these appeals is with regard to corporate guarantee. On identical facts, in assessee's own case, this Tribunal deleted the addition made by the AO and upheld the order of the Ld.CIT(A) in I.T.A. No.191/Viz/2018 dated 28.09.2018. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.5 to 5.2 which reads as under :

"5. We have heard both the parties and perused the material placed on record. During the appeal hearing, the Ld.AR argued that providing corporate guarantee to its AE would not constitute an international transaction as held by various tribunals and hence no adjustment is required. The ld.AR further submitted that the AE is 100% subsidiary of the assessee company, hence it is

the obligation of the assessee to extend it's support to improve the business and smooth running of the company without any financial impediment. Therefore the Ld.AR submitted that the corporate guarantee is given to it's AE in the commercial interest and no expenditure was incurred, thus there is no case of any adjustment and no addition is warranted in the assessee's case. The Ld.AR invited our attention to the decision of ITAT Kolkata, 'C' Bench in the case of DCIT, Circle-8(1), Kolkata Vs. M/s EIH Ltd., [2018] 89 taxmann.com 417 (Kolkata – Trib) wherein Hon'ble ITAT held as under :

> *"12.12. Thus, we hold that when a parent company extends an assistance to the subsidiary, being associated enterprise, such as corporate guarantee to a financial institution for lending money to the subsidiary, which does not cost anything to the parent company, and which does not have any bearing on its profits, income, losses or assets, it will be outside the ambit of international transaction under section 9213(1) of the Act. In this regard, we would like to hold that issuance of corporate guarantee by the assessee to its AE would have influence on the profits, incomes, losses or assets of enterprise 'but not necessarily have any impact on the profits, incomes, losses or assets' as admittedly no consideration was received by the assessee in respect of this corporate guarantee from its AE. We find that the Ahmedabad Tribunal in the ease of Micro Ink Ltd. (supra) had observed that if a subsidiary (AE in the instant case) could not borrow money from third party sources on its own standing and the guarantee provided by the parent (assessee in the instant se) enables it to make such borrowing, then the guarantee could be said to be a shareholder function, not warranting a guarantee fee. This ratio would squarely be applicable to the facts of the instant case before us."*

5.1. Similarly in the case Dr.Reddy Laboratories Limited Vs Additional Commissioner of Income tax,Circle-1(2),Hyderabad reported in 81 Taxman 398, the Coordinate Bench of ITAT Hyderabad 'A' held that where the assessee had not incurred any corporate guarantee charges on behalf of its AE it would not constitute international transaction within the meaning of 292B of the Act. For ready reference, we extract para No.29 of the order of the ITAT which reads as under :

> *"29. We have carefully considered the rival contentions and perused the record. The ITAT, Delhi Bench in the case of Bharati Airtel Ltd., (supra) has considered an identical issue which was re-affirmed in the case of Siro Clinpharma (P.) Ltd. v. Dy. CIT [IT Appeal No. 2618 (Mum.) of 2014, dated 31-3-2016). The Bench observed that transfer pricing is a legislation seeking the tax-payers to organise their affairs in a manner compliant with the norms set-out. In short, it is an anti abuse legislation which tells you as to what is the acceptable behaviour but it does not trigger levy of*

tax in a retrospective manner because no party can be asked to do an impossibility. Analysing further the Bench observed that though Explanation to Section 92B is stated to be clarificatory, it has to be necessarily treated as effective from the A.Y. 2013-2014 and in this regard, relied upon the observations of the Hon'ble Delhi High Court in the case of Skies Satellite. We have also analysed the case law relied upon by the Ld. D.R. and also the provisions of the Act. In our considered opinion, the view taken by the Delhi Bench of ITAT in the case of Bharati Airtel Ltd., (supra) is one of the possible views on the matter and so long as there is no binding decision of any other Higher Forum taking a contrary view, the one which is favourable to the assessee has to be adopted even though other Benches have taken a different view. We, therefore, hold that the Explanation to Section 92B cannot be applied retrospectively and for the years under consideration the assessee having not incurred any costs in providing corporate guarantee it would not constitute "International Transaction" within the meaning of Section 92B of the Act and consequently, ALP adjustment is not warranted on this aspect."

5.2. Similar view was taken up by the Coordinate Bench of ITAT, Hyderabad in the case of Batronics India Ltd. (supra). In the instant case, the facts are identical. The assessee had given corporate guarantee to its 100% subsidiary and the AE for the purpose of business. The assessee had not incurred any expenditure towards the corporate guarantee. The revenue could not bring any evidence to establish that the assessee had incurred any expenditure for extending the corporate guarantee. As stated by the Ld.AR it is the obligation on the part of the assessee to extend the support and assistance to its subsidiaries for business development. Since the facts are identical, respectfully following the view taken by coordinate benches in the case laws cited, we hold that the corporate guarantee given by the assessee on behalf of its AE would not constitute an international transaction within the meaning of 92B of the Act. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue."

The Ld.DR did not bring any other case law to controvert the submissions made by the assessee. Therefore, respectfully following the view taken by this Tribunal in the assessee's own case for the A.Y. 2013-14, we do not see any reason to interfere with the order of the

Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 3rd April, 2019.

Sd/-	Sd/-
(वी.दुर्गा राव)	**(डि.एस. सुन्दर सिंह)**
(V. DURGA RAO)	**(D.S. SUNDER SINGH)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam
दिनांक /Dated : 03.04.2019
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s CCL Products (India), Pvt. Ltd., Duggirala Post & Mandal, Guntur
2. राजस्व/ The Revenue – DCIT, Circle-1(1), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income-Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam