

THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4799/Mum/2015 (Assessment Year 2010-11)

DCIT-9(1)(1) Room No. 260A 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Air Works India (Engineering) Pvt. Ltd. Gate No. 8, Old Airport Near Kalina Military Camp, Santacruz(E) Mumbai-400 029. (Respondent)
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I.T.A. No. 6938/Mum/2014 (Assessment Year 2009-10)

M/s. Air Works India (Engineering) Pvt. Ltd. Gate No. 8, Old Airport Near Kalina Military Camp, Santacruz(E) Mumbai-400 029. (Appellant)	Vs.	CIT(A)-15 Mumbai. (Respondent)
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PAN : AABCA1069P

Assessee by	Shri Shreyas N. Shah
Department by	Shri Aand Mohan
Date of Hearing	6.6.2019
Date of Pronouncement	7.6.2019

ORDER

Per Shamim Yahya (AM) :

This is an by the assessee for assessment year 2009-10 and another appeal by the revenue for assessment year 2010-11 arising out of respective orders of learned CIT-A for the concerned assessment year.

2. Since the issues are common and the appeals were heard together these are being disposed of by this common order.

3. The common issue raised in these appeals is the interest rate chargeable on the sum advanced by the assessee to its associated enterprises abroad.

4. Assessment year 2009-10 was the first year of the incorporation Assessee has given loan to its associated enterprise in Mauritius, without charging any interest. The assessee's plea was that assessee has given the fund out of its own funds. That intra group loan was given to acquire assets and to set up business operations. That it was, commercially expedient to grant the interest-free loan. However the transfer pricing officer was not satisfied. For assessment year 200 9-10 he applied the rate of interest of 11.96%. For this purpose he held that the annualised rate of 11.96 is adopted as arm's-length interest rate and hence he made an adjustment of rupees 66, 28, 068
5. For assessment year 2010-11 the transfer pricing officer arrived at the rate of LIBOR +950 basis points. Accordingly he held that the reasonable rate of interest should be 9.38%. Hence adjustment of rupees 58,52,296 was made.
6. Up on assessee's appeal for assessment year 2009-10 the learned CIT-A confirmed the addition. For assessment year 2010-11 the learned Commissioner of income tax adopted the rate of interest at LIBOR +300 basis points. He directed that accordingly 3.99% should be adopted as interest rate at arm's-length.
7. Against above orders revenue and assessee are in appeal before.
8. The learned counsel of the assessee submitted that for assessment year 2009-10 the rate of interest charged should be LIBOR. In this regard he referred to several case laws from honourable Bombay High Court as well as ITAT wherein in similar conditions rate of interest at Libor plus 200 basis points to 300 basis points was held to be at arm's-length. For assessment year 2010-11 the learned counsel submitted that the learned Commissioner of income tax order charging interest at LIBOR +300 bps should be accepted. In addition learned counsel of the assessee submitted that the rationality of granting the loan should also be considered. That the AE was the start-up

company and hence only the assessee could have granted loan as it didn't command any confidence. The learned counsel submitted that commercial rationality should be considered as distinct from commercial expediency.

9. Per Contra learned departmental representative submitted that for both the assessment year rate of interest of LIBOR plus 300 bps can be adopted.

10. We have carefully considered the submission and perused the records. We find that the commercial expediency aspect of granting interest-free loans is already against the assessee by a Catena of case laws in this regard. The learned counsel of the assessee submission that, commercial rationality should be considered in distinction from commercial expediency is not at all convincing. It is evident from the submissions of the learned counsel of the assessee himself that ITAT as well as honourable jurisdictional High Court in several case laws have upheld the applicability of interest rate of LIBOR +200 bps to 300 bps. In the present case the learned CIT-A has adopted rate of interest of labour +300 bps for assessment year 2010 – 11 which the assessee accepts. In our considered opinion on the facts and circumstances of the case following the precedent's from ITAT and honourable judicial High Court we hold that arm's-length interest should be computed at the rate of interest of libor +300 bps. That is the rate adopted by the learned CIT-A for assessment year 2010-11 is also directed to be adopted for assessment year 2009-10.

11. In the result assessee's appeal is partly allowed and revenues appeal stands dismissed.

Order has been pronounced in the Court on 7.6.2019.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 7/6/2019

Copy of the Order forwarded to :

1. The Appellant

*M/s. Air Works India
(Engineering) Pvt. Ltd.*

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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