

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5720/MUM/2017
Assessment Year: 2013-14**

The Dy. Commissioner of Income Tax, Central Circle 1(1), Mumbai	Vs.	M/s Rolta India Ltd., Tolta Tower A, Rolta Technology Park, M.I.D.C., Andheri (East), Mumbai - 400093 PAN: AAACR2711G
(Appellant)		(Respondent)

Revenue by : Shri Jeevan Lal Lavidiya (DR)
Assessee by : Mrs. Renu Kapoor (AR)

Date of Hearing: 13/08/2019
Date of Pronouncement: 29/08/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 27.06.2017 passed by the Commissioner of Income Tax (Appeals)-57 (for short 'the CIT(A), Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 144C (3) r.w.s. 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of software development, designing/data conversion, services/purchase and marketing of hardware /software products and e-services, filed its return of income for the assessment year under consideration declaring the loss of Rs. 647,46,28,208/-. The AO completed the assessment u/s 144C (3) r.w.s. 143 (3) of the Act. The AO, after making addition of Rs. 4,62,63,933/- towards transfer pricing adjustment, addition of Rs. 20,14,808/- on account of disallowance of

prior period expenses and addition of Rs. 2,47,20,391/- on account of disallowance of loss on sale of discarded assets, determined the total loss of the assessee at Rs. 640,16,29,080/- under the normal provisions of the Act and income of Rs. 27,84,25,370/- under section 115JB of the Act. The assessee challenged the assessment order inter alia on the ground that the AO has erred in making addition of Rs. 4,62,63,933/- on account of transfer pricing adjustment relating to Guarantee Commission and the action of AO in making addition of Rs. 95,55,069/- u/s 14A to the book profit for the purpose of section 115JB of the Act. The Ld. CIT (A) after hearing the assessee allowed the aforesaid grounds of the appeal filed by the assessee. The revenue is in appeal against the said findings of the Ld.CIT (A).

3. The revenue has challenged the impugned order passed by the Ld.CIT (A) on the following effective grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A)-57, Mumbai was correct in directing to apply Guarantee Commission @ 0.5% as Internal CUP without appreciating the fact that this rate is applicable to the Assessee getting the guarantee and no applicable to the international transaction of guarantee received by the Associated Enterprises, thereby it does not constitute a valid CUP as per Rule 10B(1)(1) of the Income Tax Rules, 1962.”*
2. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A)-57, Mumbai was correct in directing to apply Guarantee Commission @ 0.5% as Internal CUP without appreciating the facts, arguments, and legal positions discussed in this regard by the TPO against such adoption at Page 12-19 of the Transfer Pricing Order passed u/s 92CA(3) of the Income Tax Act, 1961, in the case of the Assessee for this year.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was correct in deleting the disallowance of Rs. 95,55,069/- being expenditure attributable to the exempted income, being Dividend, made in accordance with Explanation 1(f) to section 115JB of the Income Tax Act, 1961, while computing Book Profit.*

4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A-57) was correct in inferring that the provisions of Explanation 1(f) to section 115JB of the Income Tax Act, 1961, does not cover the disallowance made u/s 14A of the Act, 1961.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A-57) was correct in holding that Explanation 1(f) to section 115JB of the Income Tax Act, 1961, should have included section 14A of the Income Tax Act, 1961, to adjust the Book Profits u/s 115JB of the Income Tax Act, 1961.”*

4. Before us, the Ld. Departmental Representative (DR) relying on the assessment order submitted that the Ld. CIT (A) has wrongly deleted the addition of Rs. 4,62,63,933/- made by the AO on the basis of arm's length determined by the Transfer Pricing Officer (TPO) in respect of the transactions between the assessee and its associate enterprises (AEs). Since, the Ld. TPO has rightly determined the arms length price consideration the commission @ 1.5% in his order, in the light of the admitted fact that providing corporate guarantee is an international transaction u/s 92B, the Ld. CIT (A) has wrongly restricted the commission to 0.5%. The Ld. DR further submitted that the Ld. CIT (A) has wrongly directed to apply guarantee commission @ 0.5% as internal CUP rejecting the arguments and legal position discussed by the TPO against application of CUP method in its order u/s 92CA(3) of the Act. The Ld. DR further submitted that since the order passed by the Ld. CIT (A) is not in accordance with the provisions of law, the same is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee submitted that the Mumbai Bench of the Tribunal has already dealt with the identical issue in assessee's own case ITA No. 882/Mum/2017 for the AY 2012-13 and the Tribunal has restricted the commission to 0.5% by relying upon the decision of the Hon'ble jurisdictional High Court in the case of *CIT vs. Everest Canto Cylinders Ltd.* 378 ITR 57 (Bom). Since, the findings of the Ld. CIT (A) are in

accordance with the decision of the Mumbai Tribunal rendered in the assessee's own case aforesaid, there is no merit in the appeal of the revenue.

We have heard the rival submissions and also perused the material on record in the light of the rival contentions of the parties. As pointed out by the Ld. counsel for the assessee, the coordinate Bench has dealt with the identical issue in the assessee's own case for the AY 2012-13 referred above and the Bench upheld the finding of the Ld. CIT (A) whereby the Ld. CIT (A) had directed the AO to apply the commission rate of 0.5% to the corporate guarantee provided by the assessee to its AE. The operative part of the order of the coordinate Bench reproduced herein below:-

“We have considered rival submissions and perused the material 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 the stage is confined to the rate of warranty 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 Kanto 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.”

6. The coordinate Bench has already upheld the findings of the Ld. CIT (A) restricting the corporate guarantee commission to 0.5% from 2.25% determined by the Ld. TPO. Since, the coordinate Bench has upheld the findings of the Ld. CIT (A) in the assessee's own case for the AY 2012-13 and since the order passed by the Ld. CIT (A) in the present case is in accordance with the decision

of the coordinate Bench, we do not find any reason to interfere with the findings of the Ld.CIT (A). Hence, respectfully following the decision of the coordinate Bench, rendered in assessee's own case discussed above, we uphold the findings of the Ld. CIT (A) and dismiss Ground No. (i) and (ii) of the revenue's appeal.

7. Vide Ground No. (iii) to (v), the revenue has challenged the action of the Ld. CIT (A) in deleting disallowance of Rs. 95,55,069/- being expenditure attributable to the exempt income made in accordance with Explanation -1 (f) to section 115JB of the Act holding that the provisions of the said Explanation do not cover the disallowance made u/s 14A of the Act. The Ld. DR submitted before us that during the previous year, the assessee earned dividend amounting to Rs. 1,19,58,438/-, which it had claimed u/s 10(35) of the Act. The assessee made *suo moto* disallowance of Rs. 95,55,069/- u/s 14A r.w. Rule 8D on the normal income. However, while computing its books profits u/s 115JB did not include the said amount to the book profit u/s 115JB. Since, the Ld. CIT (A) has wrongly deleted the addition made by the AO amounting to Rs. 95,55,069/-, the impugned order is liable to be set aside.

8. On the other hand, the Ld. counsel for the assessee submitted that the order passed by the Ld. CIT (A) is in accordance with the decision of the Special Bench of ITAT, Delhi rendered in the case of *ACIT vs. Vireet Investment Pvt. Ltd.*, ITA No. 502/Del/2012, there is no merit in this ground of appeal of the revenue. We have heard the rival submissions and also perused the relevant material on record. As pointed out by the Ld. counsel for the assessee, the Ld. CIT (A) has deleted the addition in question by following the decision of the Mumbai Tribunal in the case of *DCIT vs. Viraj Profiles Ltd.* and the decision of the Special Bench of ITAT, Delhi. The operative part of the decision of the Ld. CIT (A) reads as under:-

"I have considered the facts and submissions made by the appellant. In my appellate order for assessment year 2012-13 I have confirmed the disallowance u/s 14 A to be added while

computing book profit under 115 JB by application of Explanation 1(f) relying on the decision of the Hon'ble Mumbai Tribunal in the case of DCIT vs. Viraj Profiles Ltd. ITA No. 4439/Mum/2013 reported in 177 TTJ. However, during the instant proceedings the authorised representative brought to my notice that the ITAT Special Bench, Delhi in the case of ACIT vs. Vireet Investment (P) ITA No. 502/Del/2012 vide order dated 16.06.2017 has held that "computation under close (f) of Explanation 1 to section 115 JB(2) is to be made without resorting to computation as contemplated under section 14 A read with Rule 8D." The Hon'ble ITAT has relied on the decision of the Hon'ble Delhi High Court in the case of Bhushan Steel Ltd. Thus, following the above decisions, the addition of Rs. 95,55,069/- u/s 14A of the book profit for the purpose of section 15 JB is deleted."

9. The issue raised by the revenue is covered by the decision of the coordinate Bench in the case of *Viraj Profiles Ltd.* (supra) and the decision of the Special Bench of ITAT, Delhi in *ACIT vs. Vireet Investment Pvt. Ltd.* (supra). Since, the decision of the Ld. CIT (A) is in accordance with the decisions of the Tribunal discussed above, we do not find any infirmity in the order passed by the Ld. CIT (A) to interfere with. Accordingly, we uphold the findings of the Ld. CIT (A) and direct the AO to delete the addition.

In the result, appeal filed by the revenue for assessment year 2013-2014 is allowed.

Order pronounced in the open court on 29th August, 2019.

Sd/-
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/08/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**