

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA No. 6340/DEL/2016  
[Assessment Year: 2012-13]

A.C.I.T  
Central Circle 29  
New Delhi

Vs.

Baba Global Ltd.,  
4873, Chandni Chowk  
Delhi

PAN: AAACB 6357 N

[Appellant]

[Respondent]

Date of Hearing : 23.01.2020  
Date of Pronouncement : 28.01.2020

Assessee by : Shri Ashok Kumar, CA

Revenue by : Shri Sachin Dhanania, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] - 31, New Delhi dated 15.09.2016 pertaining to assessment year 2012-13.

2. The grievance of the Revenue is two-fold - firstly, the Revenue is aggrieved by the deletion of TP adjustments made on account of interest on post conversion of loan to share application money and secondly, the revenue is aggrieved by the deletion of disallowance made u/s 14A of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] r.w.r 8D of the Income tax Rules, 1962.

3. The assessee is engaged in the manufacturing of flavoured chewing tobacco, gutkha and pan masala, etc under the brand name 'BABA'. Return of income for the year was filed on 21.09.2012 showing total income of Rs. 7,83,05,730/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. Assessment was completed u/s 143(3) of the Act vide order dated 29.03.2016 after making the following adjustments:

(i) TP adjustment	-	Rs. 3,85,33,408/-
(ii) Disallowance u/s 14A r.w.r 8D	-	Rs. 5,69,058/-

4. While making the impugned addition of Rs. 3,85,33,408/- on account of Transfer Pricing adjustment u/s 92CA(1) of the Act, the Assessing Officer observed as under:

*“6.1 Pursuant to the reference made u/s 92CA(1), The Addl. Commissioner of Tax, TPO1(1) New Delhi passed an order on 14-01-2016 which was received in this office on 27-01 2016. The TPO-1(I) has made transfer pricing adjustment on account of Arm’s determined in respect of interest free loan given by the assessee company to its Associate Enterprises to the tune of Rs.3,85,33,408/- . Order of the TPO-1(1) is enclosed herewith as Annexure - A. The assessee was confronted to the order of TPO and provided a copy thereof in which he was asked to show cause as to why additions of Rs.3,85,33,408/- as determined by TPO should not be made on account of ALP of Interest on loan advances to foreign associates enterprises. In response to same, the assessee submitted that a detailed reply of show cause notice by TPO was given which has been incorporated in the order of TPO. Therefore, the same reply may be considered in the assessment proceedings also and no TPO addition should be made.*

*6.2 The submission of the assessee is considered and discussed with the AR. He was intimated that the reply has been duly considered by the TPO. In respect of earlier*

*years also, the similar reply was submitted and TPO order were passed after considering the replies. The reply of assessee was also considered by Dispute Resolution Panel (DRP) in the case of assessee for A.Ys. 2005-06 to 2011-12. There is no change of the fact and circumstances in the current year viz-a-viz facts of earlier years. Therefore, the submissions of assessee are rejected. In view of the aforesaid order, addition in respect of transfer pricing adjustment on account of ALP of interest on loan advanced to associate enterprises is made at Rs.3,85,33,408/-.*

*I am satisfied that the assessee company has concealed the particulars of its income vide Explanation 7 appended to section 271(1)(c) of the Act. Therefore, penalty proceedings u/s 271(1)(c) is initiated "*

5. As can be seen from the afore-stated observations of the TPO, addition of Rs. 3,85,33,408/- was made following the directions of the DRP for A.Ys 2005-06 to 2011-12.

6. We find that the quarrel travelled upto the Tribunal and the Tribunal vide a consolidated order dated 05.05.2016 in ITA Nos. 1086 to 1091/DEL/2015 in assessee's own case for A.Ys 2006-07 to 2011-12, decided this issue. The relevant findings of the co-ordinate bench read as under:

"21. Accordingly the applicable rate of interest shall be the rate of interest in respect of such foreign currency in which the loans have been advance. As per the details available on record during the assessment years 2009-10 and 2010-11 assessee has advanced to its subsidiary companies as detailed below:-

Assessment Year	Baba Global Co. (BD) Ltd. (Bangladesh)	Baba Global Co. FZC Ltd. (UAE)	Baba Global AG, Switzerland
2009-10	\$44,944	CHF 7,56,957	CHF 40,00,000
2010-11	\$57,944	CHF 98,447	CHF 50,00,000
2011-12	\$77,944 (Converted to share applicable money)	-	CHF 50,00,000 (Converted to share Application Money)

The interest rates applicable in respect of these currencies during these years, as submitted by the Learned AR, were as under:

Assessment Year	Currency wise LIBOR Rate		
	USD (\$)	EURO(€)	Swiss France (CHF)
AY 2009-10	3.089%	4.822%	2.896%
AY 2010-11	1.559%	1.604%	0.800%
AY 2011-12	0.923%	1.327%	0.554%

Taking into consideration of the above facts, the learned AO is directed to verify the above interest rate and recompute the adjustment on account of interest by applying the rate of interest of the relevant currency in the AY 2009-10 & 2010-11. Accordingly this ground of the assessee is partly allowed for AY 2009-10 & 2010-11.

22. As regards the addition on this account in assessment year 2011-12, the advance given to its subsidiary companies stand converted into share application money. Once the loan has been converted into share application money, for the issue of the share capital, then such amount cannot be considered as loan. The TPO is not permitted under the law to re-characterize the transaction and accordingly we are of the view that no interest on such share application money can be charged. The above view is supported by the judgment of the Coordinate Bench of the ITAT in the case of Bharti Airtel Ltd. vs. ACIT. [2014] 161 TTJ 0283 (Del) wherein the ITAT has held as under:-

"47. We find that in the present case the TPO has not disputed that the impugned transactions were in the nature of payments for share application money, and thus, of capital contributions. The TPO has not made any adjustment with regard to the ALP of the capital contribution. He has, however, treated these transactions partly as of an interest free loan,

for the period between the dates of payment till the date on which shares were actually allotted, and partly as capital contribution, i.e. after the subscribed shares were allotted by the subsidiaries in which capital contributions were made. No doubt, if these transactions are treated as in the nature of lending or borrowing, the transactions can be subjected to ALP adjustments, and the ALP so computed can be the basis of computing taxable business profits of the assessee, but the core issue before us is whether such a deeming fiction is envisaged under the scheme of the transfer pricing legislation or on the facts of this case. We do not find so. We do not find any provision in law enabling such deeming fiction.

In view of the above facts and the judgment of coordinate bench, the AO is directed to verify the date of conversion of loan to share application money and not to make any adjustment on account of interest post conversion of loan to share application money and accordingly this ground of the assessee is allowed for statistical purpose."

7. Respectfully following the findings of the co-ordinate bench, we direct accordingly. Ground Nos. 1 and 2 are treated as allowed for statistical purposes.

8. Second grievance relates to disallowance made u/s 14A r.w.r 8D.

9. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned dividend income of Rs. 2,69,493/- which is claimed to be exempt u/s 10(34) of the Act. Since no disallowance was made by the Assessing Officer in relation to earning of the exempt income, invoking of provisions of section 14A r.w.r 8D, the Assessing Officer computed the disallowance at Rs. 5,69,058/-

10. An identical issue was considered by the co-ordinate bench vide order dated 05.05.2016 in ITA Nos. 1086 to 1091/DEL/2015 in assessee's own case [supra]. The relevant findings of the co-ordinate bench read as under:

*"25. The contention of the assessee is that in the absence of any satisfaction being recorded disallowance under, section 14A cannot be sustained. The alternative contention of the learned AR has been that the addition in any case cannot exceed the exempt income. As regards first contention that no satisfaction has been recorded we note from the assessment order that the AO has considered the explanation of the assessed and after*

*taking into consideration the explanation he has invoked Rule 8D. Having done so, it cannot be said that the AO has not taken into consideration the explanation of the assessee.*

*26. However, as regards the second contention of the learned AR that the disallowance cannot exceed the exempt income, we are in agreement with this contention. This view is supported by the judgment of the Hon'ble jurisdictional Delhi High Court in the case of Joint Investments Pvt. Ltd. versus Commissioner of Income Tax [2015] 372 ITR 694 (Del). Accordingly we direct the AO to restrict the addition to the exempt income. Accordingly this ground is partly allowed in favour of the assessee."*

11. We find that the ld. CIT(A) has followed the aforementioned findings of the co-ordinate bench and restricted the disallowance to the extent of exempt income. Therefore, no interference is called for. Ground No. 3 is accordingly, dismissed.

12. Ground Nos. 4 to 6 are general in nature and need no adjudication.

13. In the result, the appeal of the Revenue in ITA No. 6340/DEL/2016 is partly allowed for statistical purposes.

**The order is pronounced in the open court on 28.01.2020.**

**Sd/-**

**Sd/-**

**[N.K. CHOUDHARY]  
JUDICIAL MEMBER**

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

Dated: **28<sup>th</sup>** January, 2020.

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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	