

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No2870./Bang/2018
(Assessment Year: 2014-15)

M/s. GMR Infrastructure Limited,
25/1, Skip House, Museum Road,
Bangalore-560025
PAN AABCG8889P

....Appellant

Vs.

Asst. Commissioner of Income Tax,
Central Circle 2(2), Bangalore.

.....Respondent.

Assessee By:	Shri Sunil Jain, C.A.
Revenue By:	Ms. Neera Malhotra, CIT (D.R)

Date of Hearing :	22.01.2020
Date of Pronouncement :	03.02.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-11, Bangalore passed under Section 143(3) r.w.s. 144C and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the only ground of appeal:

Ground I: Adjustment towards Stand by Letter of Credit amounting to Rs.24,49,737/-

1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the action of the Assessing Officer in confirming the adjustment made under section 92 to the extent of Rs.24,49,737/- as against the claim of the Appellant that no adjustment is to be made. The Appellant has permitted the Associated Enterprise to utilise its non-fund based limits which is in the nature of shareholder's activity and has not recovered the amount as a measure of commercial expediency.

3. The assessee company is in the business of promotion of infrastructure development and investments in the shares and securities, and filed the Return of Income on 29.11.2014 with total loss of Rs.35,66,74,072 under the normal provisions of Income Tax and Book Profits u/sec 115JB Rs.211,85,82,199. The case was selected for scrutiny and Notice under Section 143(2) of the IT Act was issued. The Assessing Officer as per Form 3CB Report filed by the assessee, found that the assessee has international transactions, and referred the matter for determination of Arm's Length Price (ALP) to the Transfer Pricing Officer (TPO). Whereas the TPO made an adjustment of Rs.15,45,49,138 on transaction of Stand By Letter of Credit (SBLC) and similarly on Corporate Guarantee TP adjustment of Rs.41,28,60,585 and passed order u/sec 92CA of the Act. Subsequently, The AO along with the Transfer Pricing Adjustments, made disallowance under Section 14A of the act and unamortized amounts claimed and Finally Assessed the total income of Rs.1,67,87,08,248 and passed the order under Section 143(3) r.w.s. 144C of the Act dt.15.12.2017. Aggrieved by the order, the assessee has

filed an appeal with the CIT(Appeals). The CIT(Appeals) on the disputed issue considered the submissions of the assessee and observed that the TPO has made adjustments towards commission for utilization of non-fund based limits of the assessee by Associated Enterprises (AEs) and the Bank has issued SBLC and charged commission of Rs.35,56,787. Whereas the assessee has recovered an amount of Rs.11,07,050 charged by the Bank from its ISG AE, and balance amount of Rs.24,49,737 is non-recoverable. Hence CIT(A) restricted the addition to the extent of Rs.24,49,737 and with other reliefs partly allowed the appeal. Aggrieved by the CIT (A) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative argued that the CIT(Appeals) has erred in restricting the addition to the extent of Rs.24,49,737. The contentions of the learned Authorized Representative that there is no requirement of ALP adjustment on this issue, as the AE is permitted to utilize its non-fund based limits, which is in the nature of shareholders operations and on commercial expediency, and prayed for allowing the appeal. Contra, the learned Departmental Representative supported the orders of CIT (Appeals).

5. We heard the rival contentions and perused the material on record. The sole matrix of the disputed issue as envisaged by the learned Authorized Representative that there is no requirement of TP Adjustment, as the standby letter of credit (SBLC) was issued in Group Concerns, where the AE was allowed to utilize the

non-fund base limits of the assessee, which are in the nature of a shareholder activity and satisfy the test of commercial expediency. We found the CIT(Appeals) has made observations at page 10 and para 6.1.4 of the order which is read as under :

6.1.4 I have considered the submissions of the appellant and the order of the TPO. It is seen that the TPO has made adjustment towards commission for utilization of non fund based limits of the appellant by the AE. The Bank which has issued SBLC has charged commission of Rs. **35,56,787/- and USD 44,868.08** and out of which an amount of USD 44,868.08 was directly charged by the bank from the respective AEs while an amount of Rs. 35,56,787/- in respect of ISG was charged from the appellant and the appellant in turn has recovered the amount of commission to the extent of Rs.

11,07,050/- charged by the bank from its ISG AE. However, the AO on completion of TP assessment has made adjustment of Rs. 15,45,49,138/- holding that the appellant should have also recovered the similar amount for utilization of its non-fund based limits. It is noticed that the banks have directly charged an amount of USD 44,868.08 and hence here is no involvement of the appellant while in respect of SBLC issued for ISG AE the appellant has partly recovered the amount of commission to the extent of Rs. 11,07,050/- out of the amount of Rs. 35,56,787/- which the bank has charged from the appellant for providing SBLC. Hence, non-recovering the remaining amount paid by the appellant definitely has a cost, charge on the profit/assets of the appellant and to this extent the action of the AO is justified in making adjustment. However, the Assessing Officer is not justified in assuming equivalent charge by the appellant from AE with respect to the amount directly recovered by the banks from AE and/or the amount recovered by the appellant from its AE. Having regard to the facts of the case and non-recovery of amount to the extent of Rs. 24,49,737/- incurred by the appellant from its AE, the Assessing Officer is therefore directed to restrict the addition to the extent of Rs.24,49,737/- being the amount which the appellant has borne and did not charge the same from its AE. This ground of appeal is, therefore, **PARTLY ALLOWED**

The learned Authorized Representative vehemently submitted that, there is no necessity of Transfer Pricing adjustment on SLBC because of commercial expediency, But could not controvert the observations and findings of the CIT(Appeals) with cogent evidence. Accordingly, we are not inclined to interfere with the order of CIT (A) on this disputed issue and confirm the same and dismiss the ground of appeal of the assessee.

6. In the result, the assessee appeal is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 03.02.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore