

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"J" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Ram Lal Negi, Judicial Member**

**ITA No. 846/Mum/2016**  
(Assessment Year: 2011-12)

M/s. VVF Limited		DCIT, Central Circle - 6(1)
Plot No. 109		Room No. 1905, 19th Floor
Opp. Sion Fort Gardens	Vs.	Air India Building
Sion (E), Mumbai 400022		Nariman Point, Mumbai 400020

PAN – AAACV3847R

**Appellant**

**Respondent**

Appellant by: Shri Madhur Agrawal  
Respondent by: Shri Uday Raj Singh

Date of Hearing: 20.07.2020  
Date of Pronouncement: 30.07.2020

**ORDER**

**Per Shamim Yahya, AM**

This appeal by the assessee is directed against the order of the Assessing Officer passed under section 143(3) r.w.s. 144(C) of Income Tax Act, 1961 (hereinafter "the Act") dated 29.12.2015 for assessment year 2011-12 passed pursuant to the direction of the Dispute Resolution Panel (DRP) dated 27.11.2015.

2. Although the assessee has raised various grounds, the issues can be summarised and dealt with as under: -

- i. Transfer Pricing adjustment on provision of corporate guarantee.
- ii. Transfer Pricing adjustment on interest receivable on loan given to associated enterprise.
- iii. Transfer Pricing adjustment by imputing interest on share application money sent to associated enterprise.
- iv. Set off of brought forward the assessee

3. In this case assessee is a producer and exporter of chemicals and a leading contract manufacturer of toilet soaps and personal care products. During the year under consideration the assessee entered into various international transactions. The Transfer Pricing Officer has made the following transfer pricing adjustment: -

- i. Adjustment on account of corporate guarantee issued to AEs of ₹2,03,60,516/-
- ii. Interest on foreign currency loan given to associated enterprise of ₹45,69,098/-
- iii. Characterisation of share application money as loan and consequent interest of ₹25,35,316/-

4. Upon assessee's appeal in this regard learned CIT(A) has upheld the adjustment on account of corporate guarantee. For the adjustment on account of foreign currency loan given to the associated enterprise, Dispute Resolution Panel has referred to the earlier year order of the ITAT and directed that the interest should be charged at the rate of libor +3%. For the re-characterisation of share application money into loans, the same was upheld by the DRP. However, it was directed that the interest charge should be @ libor +3%, as in the case of loans. Against this order assessee is in appeal before us.

5. We have heard both the Counsels and perused the records. Learned counsel of the assessee submitted that assessee has charged corporate guarantee fee at the rate of 1.68% on the basis of its internal cup, the rate at which assessee obtains such guarantee. Further he submitted that internal cup in this regard has been found to be acceptable by the ITAT in assessee's own case in the decision referred by the DRP. Learned counsel further submits that the DRP has wrongly interpreted the ITAT decision that the charge of interest should be at the rate of libor +3% perpetually. He submitted that the same was the internal cup available for that assessment year and following the aforesaid ratio the internal cup available for the current year has been adopted by the assessee and

accordingly, the same needs to be upheld.

6. As regards the interest on share application money learned counsel of the assessee submitted that there are various decisions of honourable Bombay High Court in which for delay in allotment of shares the re-characterisation of share application money as loan transaction has not been sustained. However, on query from the bench learned counsel of the assessee submitted that in the subsequent year the share application money has been refunded. However, he submitted that the share application money transaction and its refund were genuine transactions.

7. Per Contra learned Departmental Representative relied upon the grounds of appeal, and the orders of the authorities below.

8. Upon careful consideration as regards the corporate guarantee fee is concerned, we find that authorities below rightly rejected the assessee's contention that the same is not an international transaction and that the same was shareholder function. However we agree with the learned counsel of the assessee that if the assessee is charging the same rate as it is being charged on search guarantee received the same needs to be accepted. As the rate of 1.68% charged by the assessee is an internal cup available, the same needs to be upheld. The DRP has found that the TPO charged a mark up of 1.75% on bank rates for such transactions. This we found is not sustainable. In several decisions the Hon'ble Bombay High Court has upheld a charge of 0.5% for such guarantee. Hence we set aside the order of the authorities below on this issue.

9. Similarly, as regards the interest on loan to the Associate Enterprise we agree with the learned counsel of the assessee that the ITAT has upheld the application of internal cup for that assessment year on the basis of internal cup of libor + 3% available for that assessment year, if the rate of interest being the internal cup available for the current assessment year is libor + 2.68% the same needs to be accepted. We direct accordingly.

10. As regards the share application money issue is concerned, we find

that learned counsel of the assessee has accepted that the shares have not been allotted and the share application money has been refunded. However, learned counsel of the assessee submits that the transactions were genuine and the refund was also warranted by genuine circumstances. Accordingly in the interest of justice, we direct the Assessing Officer to examine the veracity of assessee's submissions. If the Assessing Officer is convinced by the veracity of assessee submissions, no interest is leviable, however, if the Assessing Officer is not so convinced the internal cup rate of interest being  $\text{libor} + 2.68\%$  shall be levied.

11. As regards the issue of giving effect to the brought forward losses concerned, the Assessing Officer shall examine the issue and give effect as per law.

12. In the result, this appeal by the assessee stands allowed for statistical purposes

Order pronounced under Rule 34(4) of the ITAT Rules on 30<sup>th</sup> July, 2020.

Sd/-  
**(Ram Lal Negi)**  
**Judicial Member**

Sd/-  
**(Shamim Yahya)**  
**Accountant Member**

Mumbai, Dated: 30<sup>th</sup> July, 2020

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *DRP-2, Mumbai*
4. *The CIT - Central-6, Mumbai*
5. *The DR, "D" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.