

आयकर अपीलीय अधिकरण  
मुंबई पीठ “ जे ”, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “J”, MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री नबीन कुमार प्रधान, लेखा सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER  
आअसं. 96/मुं/2018 (नि.व.2013-14)  
ITA NO.96/MUM/2018 (A.Y.2013-14)

M/s.Oriental Aromatics Ltd.,  
2<sup>nd</sup> Floor, 133, Jehangir Building,  
M.G.Road, Mumbai 400 001  
PAN: AAACO4618F

..... अपीलार्थी /Appellant

बनाम Vs.

The Dy. Commissioner of Income Tax 1(2)(2),  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Usha Kadam

प्रतिवादी द्वारा/Respondent by : Shri Uodal Raj Singh

सुनवाई की तिथि/ Date of hearing : 22/07/2020

घोषणा की तिथि/ Date of pronouncement : 27/07/2020

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 31/10/2017 passed under section 143(3) r.w.s. 144C (13) of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2013-14.

2. The assessee has raised 12 grounds of appeal. Ms. Usha Kadam, appearing on behalf of the assessee submitted at the outset that she would not be pressing ground No.1 to 3 of the appeal.

2.1. In grounds of appeal no.4, 5 & 6 the assessee has assailed Transfer Pricing (TP) adjustment made in respect of interest on loans given to its Associated Enterprise (AE). The Id. Authorized Representative of the assessee submitted that the assessee had advanced loans aggregating to USD 29,00,000 (equivalent to INR 12,66,18,520/-) to overseas AE. The Transfer Pricing Officer (TPO) to benchmark Arm's Length Price (ALP) of the loan transactions applied LIBOR + 3% interest and made TP adjustment of Rs.77,22,054/-. The Id. Authorized Representative of the assessee submitted that on similar loan transactions in assessment years 2010-11 and 2011-12, the TPO made identical TP adjustment. The assessee carried the issue in appeal before the Tribunal in ITA Nos.1039 & 687/Mum/2016, respectively. The Tribunal vide order dated 06/12/2019 common for both the assessment years held that LIBOR rate is to be applied without any mark-up. To further buttress her contentions, the Id. Authorized Representative of the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. TATA Autocomp Systems Ltd. reported as 56 taxmann.com 206.

2.2. The Id. Authorized Representative of the assessee submitted that in ground No.7 to 11 of the appeal, the assessee has assailed disallowance of Rs.23,08,735/- made under section 14A r.w.r. 8D. The Id. Authorized Representative of the assessee submitted that during previous year relevant to the assessment year under appeal, the assessee has earned exempt dividend

income of Rs.2,01,121/-. The disallowance under section 14A should be restricted to the exempt income earned.

3. Per contra, Shri Uodal Raj Singh, representing the Department vehemently defended the impugned assessment order. However, the Id. Departmental Representative admitted that the TP adjustment in respect of interest on loans to AE was made in assessment year 2010-11 and 2011-12, as well. The Tribunal has adjudicated this issue in assessee's appeals for the aforesaid assessment years.

4. We have heard the submissions made by rival sides and have perused the orders of authorities below. There are two issues in appeal for our consideration i.e.:

- i. TP adjustment w.r.t. interest on loans advanced to AE; and
- ii. Disallowance u/s 14A r.w.r. 8D.

5. The Id. Authorized Representative of the assessee stated at the Bar that she is not pressing **grounds of appeal no. 1 to 3, these grounds are dismissed as not pressed, accordingly.**

6. In grounds of appeal No.4 to 6, the assessee has assailed TP adjustment of Rs.77,22,054/- on account of interest on loans advanced to AE. The assessee has purportedly advanced interest free loans to its AE. The TPO in order to benchmark the loan transaction at arm's length applied LIBOR +3% rate of interest. The contention of the assessee is that only LIBOR rate should be applied without any mark-up. We find that the Hon'ble Bombay High Court in

the case of CIT vs TATA Autocomp Systems Ltd. (supra) has upheld the order of Tribunal in determining ALP of loans advanced to overseas AE at EURIBOR/LIBOR rates without any mark-up. We further observe that in the immediately preceding assessment years, the TPO had made similar adjustments qua interest on loans advanced to AE. The Co-ordinate Bench directed the TPO to apply LIBOR rates to benchmark Arm's Length Price (ALP) of International Loan Transaction. Thus, in the light of the afore mentioned judgement of the Hon'ble Jurisdictional High Court and the order of Tribunal in assessee's own case, we direct the TPO to apply LIBOR rate to benchmark the transactions of loan advanced to AE during the relevant period. **The grounds of appeal No.4 to 6 are partly allowed, accordingly.**

7. The grounds of appeal No.7 to 11 are on disallowance made under section 14A r.w.s. 8D. The assessee during the period relevant to assessment year under appeal has earned dividend income of Rs.2,01,121/-. The Assessing Officer has made disallowance of Rs.23,08,734/- under section 14A r.w.s. 8D(2)(iii). The Hon'ble Apex High Court in the case of PCIT vs. State Bank of Patiala reported as 99 taxmann.com 286 has approved that disallowance under section 14A of the Act is to be restricted to exempt income earned. Thus, in the light of above, we direct the Assessing Officer to restrict disallowance under section 14A r.w.r. 8D to the extent of exempt income earned by the assessee during the relevant period. **The grounds of appeal No.7 to 11 are partly allowed.**

8. The Ground No.12 of the appeal is general, hence, requires no adjudication.

9. In the result, **appeal of the assessee is partly allowed.**

Order pronounced on Monday the 27th day of July, 2020.

Sd./-

Sd./-

(N.K.PRADHAN)

(VIKAS AWASTHY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/07/2020  
Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**