IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

ITA No.6598/Del./2018
(Assessment Year : 2014-15)

M/s. JE Energy Venture Private Ltd., (formerly known as Jubilant Energy Pvt.Ltd.), Plot No.1A, Institutional Area, Sector 16A, Noida – 201 301 (Uttar Pradesh)	vs.	DCIT, Circle 1, Noida.

(PAN : AAACE0653K)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Anubhav Rastogi, Advocate
Shri K.M. Gupta, Advocate
REVENUE BY : Shri Sukesh Kumar Jain, CIT DR

Date of Hearing : 23.09.2020
Date of Order : 30.09.2020

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, JE Energy Ventures Pvt. Ltd. (hereinafter referred to as the 'taxpayer') by filing the present appeal sought to set aside the impugned order dated 10.08.2018 passed by the Assessing Officer (AO) in consonance with the orders passed by the ld. Disputes Resolution Panel (DRP)/Transfer Pricing Officer (TPO) under section 143 (3) read with section 144C of the Income-tax

Act, 1961 (for short 'the Act') qua the assessment year 2014-15 on the modified grounds inter alia that :-

> ***"1. On the facts and circumstances of the case and in law, the Learned Assessing Officer ('Ld. AO')/ Learned Transfer Pricing Officer ('Ld. TPO') [in pursuance to the directions of the Hon'ble Dispute Resolution Panel ('Ld. DRP')], erred in not accepting the returned income of the Appellant amounting to Rs.41,96,45,040/- and enhancing the same by Rs.16,66,82,560/-.***
>
> ***2. On the facts and circumstances of the case and in law, the Ld. AO/ Hon'ble DRP grossly erred in confirming the addition of Rs.16,56,86,204/- to the income of the Appellant proposed by the Ld. TPO by holding that provision of corporate guarantee to its Associated Enterprise ('AE') do not satisfy the arm's length principle envisaged under the Income Tax Act, 1961 (' the Act') and in doing so, the Ld. AO/ Hon'ble DRP grossly erred in upholding the Ld. TPO's action of:***
>
> ***2.1. considering provision of corporate guarantee as international transaction u/s 92B of the Act;***
>
> ***2.2. incorrectly holding that the Appellant has undertaken risk on behalf of its AEs and there is an inherent cost in giving corporate guarantees for which the Appellant should have charged a consideration;***
>
> ***2.3 disregarding the fact that the provision of corporate guarantee to the AE was in the nature of shareholder service;***
>
> ***2.4 disregarding the fact that in the absence of the corporate guarantee provided, the Appellant being the holding company would have provided the funds to the subsidiary by increasing the share capital, and thus the guarantee provided should be treated as quasi-equity in nature for which arm's length compensation is not required;***
>
> ***2.5 disregarding the detailed and proper comparability analysis submitted by the Appellant following the 'interest saved' approach;***
>
> ***2.6. imputing the corporate guarantee commission of 2.3% based on the average of guarantee commission rates of various banks without appreciating the fact that the same did not constitute a valid Comparable Uncontrolled Price ('CUP');***
>
> ***2.7 charging of adhoc premium of 150 basis point over the 2.3% as risk on account of single customer risk and lending risk;***

2.8 disregarding the Appellant's contention that bank guarantee cannot be considered comparable to corporate guarantee and adjustments are required to nullify the differences between the two; and

2.9 disregarding the judicial precedents submitted by the Appellant on corporate guarantee

3. On the facts and circumstances of the case & in law, the Ld. AO/ Hon'ble DRP grossly erred in confirming addition of Rs.9,96,356/- to the income of the Appellant pertaining to payment of interest on inter-corporate loan from its related party does not satisfy the arm's length principle envisaged under the Act and in doing so, the Ld. AO/ Hon'ble DRP grossly erred in upholding the Ld. TPO's action of:

3.1. disregarding the Arm's Length Price as determined by the Appellant in the Transfer Pricing documentation maintained by it in terms of Section 92D of the Act read with Rule 10D of the Income Tax Rules, 1962 ('the Rules');

3.2. incorrectly holding that the Appellant did not have a similar transaction with third parties in India and not considering the internal CUP applied by the Appellant;

3.3. comparing the return earned by the Appellant with return earned by investing in corporate bonds and applying the base rate of State Bank of India ('SBI') , thereby resulting in an erroneous application of CUP method;

3.4 adhoc addition of markup of 200 basis point over SBI base rate.

4. Without prejudice to Ground NO.5 below, the Ld. AO/ Hon'ble DRP grossly erred in confirming transfer pricing adjustment of Rs.9,96,356 on account of interest on inter corporate loan, which should be Nil as the entire interest expense has already been disallowed u/s 14A of the Act.

5. On the facts and circumstances of the case & in law, the Ld. AO/ Hon'ble DRP grossly erred in not considering the revised Computation of Income filed by the Appellant and in doing so:

5.1. the Ld. AO/ Hon'ble DRP grossly erred in disregarding the exclusion of disallowance u/s 14A of the Act made by the Appellant through its original return of income which is subsequently withdrawn by way of letter dated June 08, 2018 in accordance with judicial precedents and facts of the case.

5.2. without prejudice, that on the facts and circumstances of the case and in law, disallowance u/s 14A read with Rule 8D should be made only in respect of such investments from which, exempt income not forming part of total income, has been earned by the Appellant.

5.3. without prejudice, that on the facts and circumstances of the case and in law, disallowance u/s 14A made by the appellant should be restricted to the exempt income earned by the Appellant during the year.

6. The Ld. AO has grossly erred in charging interest under section 234B and 234C of the Act.

7. The Ld. AO has grossly erred in initiating penalty under section 271(1)(C) of the Act mechanically and without recording any satisfaction for its initiation."

2. Briefly stated the facts necessary for adjudication of the issue at hand are : JE Energy Ventures Private Ltd. (JEPL), the taxpayer, a strategic venture business segment of Jubilant Group through its alliances and international companies provides business marketing and technical support related oil and gas services, trading in paper spares and aviation related services (sales/maintenance of aircrafts and helicopters). During the year under assessment, the taxpayer entered into international transactions and specified domestic transactions as under :-

No.	*Nature of transaction*	*Method*	*Value of transaction (in Rs.)*
1.	*Receipt of guarantee fee for provision of Corporate Guarantee*	*Other Method*	*3,46,76,825*
2.	*Interest paid on Inter-Corporate loan*	*CUP*	*68,28,685*
3.	*Managerial Remuneration*	*Other Method*	*6,31,77,141*

3. During The year under assessment, the taxpayer has provided corporate guarantee on behalf of its AR Jubilant Energy NV to the tune of Rs.14,00,00,000/- but without charging any guarantee fee. The taxpayer found its international transactions qua providing corporate guarantee to its Associated Enterprises (AE) at arm's length by treating the same as "shareholder activity"; and that guarantee is not covered under the definition of international transactions.

3a. However, ld. Transfer Pricing Officer (TPO) treated the provision of corporate guarantee as an international transaction under section 92B of the Act and in order to benchmark the international transactions, applied Comparable Uncontrolled Price (CUP) method as the Most Appropriate Method (MAM) and proceeded to hold the corporate guarantee commission at 2.30% based on average guarantee commission rate offered by the bank. Ld. TPO also enhanced the rate of 2% on account of lending business risk and proceeded to hold the arm's length commission rate of 4.30% thereby proposed to enhance the income of the taxpayer by applying bank guarantee rates at 2.30% + 2% on accounting of lending business risks total comes to 4.30%.

4. Ld. TPO also enhanced the income of the taxpayer to the tune of Rs.2,62,86,178/- pertaining to payment of interest on inter-corporate deposit (Specified Domestic Transaction (SDT)) on the ground that SDT pertaining to payment of interest on the deposit taken from its related party does not satisfy the Arm's Length Price (ALP) under the Act and has also subtracted an amount of Rs.34,45,175/- from the aforesaid amount on account of non-claiming of interest as expense under section 14A and thereby made adjustment of Rs.2,28,41,006/-.

5. The taxpayer carried the matter before the ld. Disputes Resolution Panel (DRP) by way of filing objections who has partly allowed the same. Complying with the directions given by the ld. DRP, ld. TPO reduced transfer pricing adjustment from Rs.20,06,09,764/- to Rs.16,56,86,204/- in relation to corporate guarantee fee transactions and enhanced the income of the taxpayer at Rs.9,96,356/- by holding that its SDT pertaining to payment of interest on deposit taken from its related party does not satisfy arm's length principle. Feeling aggrieved, the taxpayer has come up before the Tribunal by way of filing the present appeal.

6. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the Revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. Ground No.1 is general in nature, hence needs no specific adjudication.

GROUNDS NO.2 TO 2.9

8. Undisputedly, the taxpayer has provided corporate guarantee to its two subsidiaries, namely, Jubilant Energy NV (JENV) and Jubilant Energy Holdings BV (JEHBV) with regard to four loans raised by the said subsidiaries, detailed as under :-

Loan No.	*Parties*	*Amount of Loan (USD Million)*	*Date of loan availed/ Periods*	*Opening Balance of Loan*	*Amount Drawn/ Repaid during the year*	*Closing Balance of Loan*
Loan 1	*JENV and EXIM Bank*	*USD 50 Million*	*w.e.f. 10th October 2008 to maturity period of 5 years*	*USD 40 Million*	*Repaid the full outstanding amount – USD 40 Million on January 2014*	*Nil*
Loan 2	*JENV and EXIM Bank*	*USD 50 Million*	*1st August, 2011*	*USD 50 Million*	*-*	*USD 50 Million*
Loan 3	*JENV and Axis Bank*	*USD 15 Million*	*28th March 2014*	*0*	*USD 10 Million drawn*	*USD 10 Million*
Loan 4	*JEHBV and EXIM Bank*	*USD 45 Million*	*9th January 2014*	*0*	*USD 35 Million drawn*	*USD 35 Million*

9. It is also not in dispute that Loan Nos.1 & 2 shown in the aforesaid table were raised in the earlier years and were subjected

to transfer pricing adjustment in AY 2013-14 and the issue was decided by the Tribunal in assessee's own case in **ITA No.7602/Del/2017 for AY 2013-14 vide order dated 15.01.2019**.

10. So far as Loan Nos.3 & 4 shown in the aforesaid table are concerned, it is fairly conceded by the ld. AR for the taxpayer that this issue has been decided against the taxpayer by the Tribunal in **ITA No.7602/Del/2017 order dated 15.01.2019** (supra) whereby approach adopted by the taxpayer that provision of corporate guarantee to its AE is a "shareholder activity" and not an international transaction has been disregarded.

11. Coordinate Bench of the Tribunal decided the identical issue qua provision of corporate guarantee to its AE in taxpayer's own case in **ITA No.7602/Del/2017** (supra) by returning following findings :-

> ***"24. So, following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that in order to benchmark the international transactions qua corporate guarantee appropriate comparable data needs to be adopted and benchmarking made in this case on the basis of bank quotes is not sustainable, hence, the TP adjustment made by the TPO/DRP is not sustainable in the eyes of law. We are also not agreed with the contentions raised by the ld. AR for the taxpayer that providing corporate guarantee in case of its loan to its AE is not an international transaction and this issue has been rightly decided by the TPO/DRP by treating the provision of corporate guarantee as international transaction.***
>
> ***25. However, at the same time, we are not inclined to agree with the contentions raised by the taxpayer that since no benefit has been passed on to its AE, there is no need to compensate the taxpayer because in a business transaction there is no concept of***

> ***free lunch. Because without providing corporate guarantee by the taxpayer no loan would have been given to the AE; that the taxpayer has taken the risk on behalf of its AE which would not have been taken by any third party without consideration and that keeping in view the high risk involved in giving loan by any lender to the AE, the cost needs to be charged from the AE and as such, the commission received by the taxpayer for providing corporate guarantee has to be at arm's length. However, the amount received by the taxpayer on account of commission charged for providing corporate guarantee to its AE needs to be at arm's length price in view of the ratio of the order passed by the coordinate Bench of the Tribunal in Glenmark Pharmaceuticals Ltd. (supra) as discussed in Para 21 of this order. So, the TPO is directed to benchmark the international transaction providing corporate guarantee to its AE by providing an opportunity of being heard to the taxpayer. So, grounds no.2 to 2.8 & 3 are determined in favour of the taxpayer for statistical purposes."***

12. So, following the aforesaid order passed by the coordinate Bench of the Tribunal, we direct the TPO to benchmark the international transactions qua provision of corporate guarantee by adopting the appropriate comparable data instead of making the benchmarking on bank quotes in the light of the ratio of orders passed by the coordinate Bench of the Tribunal in case of Glenmark Pharmaceuticals Ltd vs. Addl.CIT (ITA No.5031/M/2012 AY 2008-09), by providing an opportunity of being heard to the taxpayer. Grounds No.2 to 2.9 are determined in favour of the taxpayer for statistical purposes.

GROUNDS NO.3 to 3.4

13. Undisputedly, the taxpayer entered into Specified Domestic Transactions (SDT) for payment of interest on deposit from its

related party. It is also not in dispute that the taxpayer also borrowed loan from a third party bank i.e. IL&FS Financial Services Ltd. (IFIN) at an interest rate of 15% as per following terms & conditions :-

Particulars	**Key Terms-ICD-I**	**Key Terms-ICD-II**	**Key Terms-Third party loan**
Borrower	**JEPL**	**JEPL**	**JEPL**
Lender	**Jubilant Motorworks Pvt. Ltd. (JMWPL)**	**JMWPL**	**IFIN**
Type of deposit	**Inter Corporate Deposit**	**Inter Corporate Deposit**	**Term Loan**
Date of agreement (MM/DD/YYYY)	**01/10/2013**	**24/03/2014**	**18/05/2011**
End Date/ Repayment Date	**Repayable on expiry of 3 years or earlier as agreed between the parties**	**Repayable on expiry of 3 years or earlier as agreed between the parties**	**36 months from date of first disbursement**
Tenor as per original start date (years) – approx.	**Repayable on Demand**	**Repayable on Demand**	**3 years**
Principal	**INR 10 Crores**	**INR 2 crores**	**INR 125 crores**
Currency	**INR**	**INR**	**INR**
Interest rate	**14.05%**	**14.05%**	**15%**
Secured/ Unsecured	**Unsecured**	**Unsecured**	**Secured**
Purpose	**General Corporate Purposes**	**General Corporate Purposes**	**Refinance of existing debt availed/ General Corporate Purposes**

14. Ld. AR for the taxpayer contended that this issue has also been adjudicated by the Tribunal in taxpayer's own case for AY 2013-14 (supra).

15. It is the contention of the ld. AR for the taxpayer that ld. TPO without applying his mind on the application of internal CUP made by the taxpayer rather compared the return of the taxpayer with Prime Lending Rate (PLR) of State Bank of India as on 31.03.2014 i.e. 10%, thereafter, added 150 basis point for the receivables upto Rs.50 crores and 300 basis point if receivables exceeded Rs.50 crores and thereby proposed arm's length interest rate of 11.5% for receivables upto Rs.50 crores.

16. Coordinate Bench of the Tribunal decided the identical issue in taxpayer's own case for ***AY 2013-14*** (supra) by returning following findings :-

> ***"30. We are inclined to agree with the aforesaid contentions raised by the ld. AR for the taxpayer inter alia that when internal CUP was available and the complete data has been supplied for comparable study to the TPO/DRP, the same was required to be applied by providing an opportunity of being heard to the taxpayer. But the TPO has not preferred to make any comment on the rejection of plea of applying internal CUP raised by the taxpayer. Consequently, transfer pricing made by the TPO in respect of SDT payment of interest is not sustainable. When opportunity of being heard is not provided to the taxpayer that as to why internal CUP is not applied by the TPO, the issue is required to be set aside to the TPO to decide afresh after providing an opportunity of being heard to the taxpayer. Grounds No.4 to 4.5 are allowed for statistical purposes."***

17. Ld. TPO has not brought on record any new facts sufficient to depart from the view taken by the coordinate bench of the Tribunal in assessee's own case of AY 2013-14, in the identical set of facts and circumstances of the case. So, following the aforesaid order passed by the coordinate Bench of the Tribunal in taxpayer's own case, we are of the considered view that this issue is required to be set aside to TPO to decide afresh by considering the internal CUP by examining complete data supplied by the taxpayer for comparable study by providing an opportunity of being heard to the taxpayer. Hence, Grounds No.3 to 3.4 are determined in favour of the taxpayer for statistical purposes.

GROUNDS NO.4 & 5

18. The taxpayer in its original return of income made suo motu disallowance u/s 14A of the Act but thereafter by filing revised computation of total income intended to withdraw the suo motu disallowance but AO has not considered the revised computation of total income. Ld. DRP has also declined to give any relief to the taxpayer on this ground for the reason that the taxpayer has not filed any revised return, such claim cannot be allowed.

19. Undisputedly, the taxpayer claimed exempt income of Rs.6,70,80,000/- on account of dividend income exempted under

section 10(34) of the Act by making suo motu disallowance of Rs.19,04,36,363/-. Thereafter, the taxpayer filed a revised computation of income under normal provisions as well as under section 115JB of the Act which the AO as well as ld. DRP have not accepted.

20. Ld. AR for the taxpayer challenging the impugned order passed by the AO/DRP contended inter alia that the taxpayer is not only entitled to raise legal ground and can claim additional claim also; and that disallowance in any case cannot be more than exempt income u/s 14A of the Act and relied upon the decision rendered by the Tribunal in taxpayer's own case for **AY 2013-14** (supra) and **M/s. Jubilant Enpro P. Ltd. vs. ACIT (CO No.194/Del/2017)**.

21. We are of the considered view that the AO cannot make disallowance u/s 14A of the Act mechanically and in view of the law laid down by Hon'ble Supreme Court in case of ***Maxopp Investments Ltd. vs. CIT (2012) 347 ITR 272 (Delhi)***, disallowance cannot exceed the exempt dividend income. Identical issue has been decided in favour of the taxpayer in its own case for **AY 2013-14** (supra) by returning following findings :-

> ***"33. Undisputedly, the taxpayer has suo motu disallowed the amount of Rs.21 crores u/s 14A read with Rule 8D which is more than the dividend income earned during the year under assessment which fact has been duly disclosed in the JTP study and has also brought to the notice of the TPO vide letter, available at page 398 of the paper book. But the ld. TPO/AO has not preferred to decide the issue in***

> ***controversy. It is settled principle of law that in order to make disallowance u/s 14A, Rule 8D cannot be applied mechanically and in any case, the disallowance u/s 14A cannot be more than the exempt income received by the taxpayer during the year under assessment. In these circumstances, we set aside this issue to the AO to recompute disallowance u/s 14A in the light of the decisions rendered by Hon'ble Delhi High Court in Maxopp Investments Limited vs. CIT (2012) 347 ITR 272 (Delhi) by providing an opportunity of being heard to the taxpayer. Consequently, additional ground is allowed for statistical purposes."***

22. Similarly, again in case of **M/s. Jubilant Enpro P. Ltd.** (supra), coordinate Bench of the Tribunal decided the identical issue by returning following findings :-

> ***"Ratio laid on by Hon'ble Bombay High Court in case of B.R Bamsi vs. CIT (supra), supports the argument advanced by Ld.AR. We are therefore inclined to consider the plea of assessee by setting aside the issue back to Ld.AO for re-computation of disallowance under section 14A having regards to the decision of Hon'ble Supreme Court in the case of Maxxop investments Ltd vs CIT reported in (2018) 91 taxman.com 154. In case the disallowance so computed exceeds the exempt income, Ld.AO is also directed ITA 3485/Del/2014 ACIT vs. Jubilant Enpro P Ltd. (A.Y. 2010-11) and C.O.194/Del/17 to restrict the disallowance to Rs.3.17 crores, being the amount of exempt income earned by assessee during year under consideration."***

23. In view of the matter, we are of the considered view that this ground is set aside to the AO to recompute the disallowance under section 14A of the Act on the basis of revised computation of income filed by the taxpayer in view of the law laid down by Hon'ble Apex Court in ***Maxopp Investments Ltd. vs. CIT (2012) 347 ITR 272 (Delhi).***

GROUND NO.6

24. Ground No.6 qua levy of interest u/s 234B and 234C of the Act needs no specific finding being consequential in nature.

GROUND NO.7

25. Ground No.7 being premature needs no specific findings.

26. Resultantly, the appeal filed by the taxpayer is allowed for statistical purposes.

Order pronounced in open court on this 30th day of September, 2020.

Sd/-	**sd/-**
(N.K. BILLAIYA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 30th day of September, 2020.
TS

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.DRP.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.