

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "J" BENCH, MUMBAI**

**[Coram: Pramod Kumar, Vice President, and,
Vikas Awasthy, Judicial Member]**

ITA No. 7417/Mum/2013
Assessment year: 2009-10

Deputy Commissioner of Income Tax 8(3)Appellant
Mumbai

Vs

M/s. Vishay Semiconductor India Pvt. Ltd.Respondent
*SDF No. 1, Unit No. 23, SEEPZ,
Andheri (East), Mumbai 400096
[PAN: AAACS6827Q]*

Appearances by

A. Mohan *for the appellant*
Farrokh V. Irani *for the respondent*

Date of concluding the hearing : November 24th, 2020
Date of pronouncement : November 24th, 2020

ORDER

Per Pramod Kumar, VP:

This appeal, filed by the Assessing Officer, calls into question correctness of order dated 29th October 2013 passed by the Dispute Resolution Panel under section 144C (15) of the Income Tax Act 1961, in the matter of assessment under section 143(3) r.w.s. 144C of the Act, for the assessment year 2009-10.

2. Grievances raised by the Assessing Officer are as follows:

- (i) *"Whether on the facts and circumstances of the case and in law, the Hon'ble DRP is correct in deleting 3% risk premium added to SBI PLR on account of risk arising out of foreign exchange fluctuation without appreciating the fact that risk realized (foreign exchange gain realized during the year) is different from the risk assumed on account of foreign*

exchange fluctuation in which case, an unrelated entity expects premium for assuming such risk at arm's length?"

- (ii) ***"Whether on the facts and circumstances of the case and in law, the Hon'ble DRP is correct in holding that the assessee is not assuming risks on account of foreign exchange fluctuation on late realization of receivables in foreign currency without appreciating that such risks exist in the market due to timing of foreign currency realized from debtors, more so when the assessee admittedly has not hedged its foreign currency exposure of its export sales?"***

3. To adjudicate on this appeal, only a few material facts need to be taken note of. During the course of scrutiny assessment proceedings in this case, one of the addition was on account of arm's length price adjustment of Rs. 67,24,871/- with regard to interest on delay in realization of debt from an associated enterprise. While in the draft assessment order, this adjustment was computed @ 15.25% (i.e. 12.25% being SBI's PLR rate plus 3% as foreign exchange premium), in terms of directions of the DRP this arm's length price adjustment was computed @ 12.25% only by excluding foreign exchange premium adopted @ 3%. The Assessing Officer is aggrieved of the relief so granted by the DRP, and is in appeal before us.

4. When this appeal was taken up for hearing, Shri F.V Irani, learned counsel for the assessee, pointed out that the tax effect involved in this appeal is less than Rs. 50 lakhs, and, as such, it can be dismissed summarily on that account. He however fairly also pointed out that there is a cross appeal by the assessee on the same point, i.e. ALP adjustment for delayed realization of debt from AE, but that appeal will have no hearing on the issue in this appeal. Learned Representative graciously leaves the matter to the bench.

5. Undoubtedly, the cross appeals should ideally be heard together so as to ensure that disposal of one appeal does not pre-empt the decision on the other appeal or render it infructuous. Hon'ble Courts above have highlighted that aspect time and again. However, in the present case, we are satisfied that disposal of this appeal, being on a limited issue of foreign exchange risk premium, does not prejudice, pre-empt or otherwise affect disposal of the cross appeal. Whatever is decided in this appeal will have no bearing on the outcome of the cross appeal. We, therefore, deem it fit and proper to dispose of this appeal independently.

6. As the tax effect is admittedly less than Rs. 50,00,000/- at Rs. 5,59,780/-, and as the present appeal is admittedly not covered by any of the exception clauses set out in CBDT circular 17 of 2019 dated 08.08.2019, in our considered view, this appeal is liable to be treated as withdrawn. Accordingly, the appeal is dismissed as withdrawn.

7. In the result, the appeal is dismissed. Pronounced in the open court today on the 24th day of November, 2020.

Sd/-
Vikas Awasthy
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 24th day of November, 2020

Nishant Verma, Sr. SP

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai