

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 7028/DEL/2017 [A.Y 2012-13]

ITA No. 7029/DEL/2017 [A.Y 2013-14]

ITA No. 7030/DEL/2017 [A.Y 2014-15]

Hacienda Projects Pvt Ltd  
C - 23, Greater Kailash,  
Part - 1, New Delhi

Vs.

The Asstt. C.I.T  
Central Circle - 6  
New Delhi

PAN: AACCH 3475 M

[Appellant]

[Respondent]

Assessee by : Shri Sanjiv Sapra, FCA

Revenue by : Shri Surender Pal, CIT-DR

Date of Hearing : 22.02.2021

Date of Pronouncement : 22.02.2021

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above three separate appeals are preferred by the assessee against the assessment order dated 23.10.2017 framed u/s 144C r.w.s 153C of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] pertaining to A.Ys 2012-13, 2013-14 and 2014-15.

2. Since common issue is involved in all the above three appeals, they are taken up together and are disposed of by this common order for the sake of convenience and brevity.

3. The solitary dispute in the above three appeals is in respect of Transfer Pricing adjustment made by the Assessing Officer out of interest paid by the assessee to its Associated Enterprise [AE] M/s Twilzon Limited on Fully and Compulsorily Convertible Debentures [FCCDs] issued by the assessee to such AE. The FCCDs were issued on 26.07.2011 i.e. in F.Y. 2011-12 relevant to A.Y 2012-13 and no FCCDs were issued in A.Y 2013-14 and 2014-15. Therefore, A.Y 2012-13 is taken as the lead year.

4. At the very outset, the ld. counsel for the assessee stated that the entire quarrel has been decided by the Tribunal in a group company, namely, Granite Gate Properties Ltd for A.Ys 2009-10, 2010-11 and 2011-12. The ld. counsel for the assessee supplied copy of the order of the Tribunal.

5. Briefly stated, the facts of the case are that during the previous year 2011-12, the appellant company paid interest of Rs. 3,17,54,311/- on FCCDs availed from Twilzon Ltd as per investment agreement. In terms of this agreement, the appellant was required to pay interest @ 17.25%. During the Transfer Pricing assessment proceedings, it was explained that FCCDs issued to AE are rupee denominated and interest payments are also paid in Indian Rupees, therefore, LIBOR is not applicable in the case of the assessee and hence SBI PLR rate + 300 basis points has been taken and the same is at arm's length. It was explained that 300 basis points have been taken to cover risk, cost of funds and administrative costs which all depend upon the credit rating of the issuer of the CCDs.

6. The reply of the assessee did not find any favour with the TPO who made the following observations while dismissing the contention of the assessee:

- a) The assessee has not given any documentary evidence in support of its credit rating.
- b) Assessor's various projects are in progress which gives

a good credibility to the assessee and that is why, assessee is getting funds from its AE.

- c) With regard to risks which form basis for providing spread on PLR also minimizes as assessee is receiving investments in own currency & paying in rupee only. Therefore, exchange risk becomes ineffective.
- d) Risk to cost of funds also minimizes because assessee is paying taking SBI PLR as arm's length interest rate because no one would lend at less than this rate.
- e) And for administering the costs assessee has not explained and justified that it has incurred tiny extra cost or made any extraordinary effort.
- f) The main thing to be noted is that AE is making such huge investment in assessee's business and undertaking big risk, which again substantiates that the assessee has very good credibility.

7. The aforementioned observations of the TPO were also heavily relied upon by the Id. DR during the course of his submissions. On the basis of the aforementioned observations, 300 basis points over and

above base rate PLR was disallowed and differential interest amount was added in the captioned A.Ys and the same can be understood from the following chart:

S. No.	Assessment Year	Interest rate as per	Amount of interest payable	Rate of Interest	Differential ial rate of	Amount of Interest	Differential amount of
1	2012- 13 FCCDs of Rs.269,500,000 as issued during the year on 26.07.2011	17.25%	31,754,611.00	14.25%	3.00%	26,232,069.96	<b>5,522,541.04</b>
			31,754,611.00			26,232,069.96	<b>5,522,541.04</b>
2	2013- 14 FCCDs of Rs.269,500,000 as issued during AY	17.25%	46,488,750.00	14.25%	3.00%	38,4C3,753.00	<b>8,085,000.00</b>
			46,488,750.00			38,403,750.00	<b>8,085,000.00</b>
3	2012-13 Total						
	2014- 15 FCCDs of Rs.269,500,000 as Total	17.25%	46,488,750.00	14.25%	3.00%	38,403,750.00	<b>8,085,000.00</b>
			46,488,750.00			38,403,750.00	<b>8,085,000.00</b>

8. The assessee raised objections before the DRP but the same were dismissed.

9. As mentioned elsewhere, on similar circumstances, in group company, namely, Granite Gate Properties Ltd, the Tribunal in ITA No. 7025/DEL/2017 for A.Y 2012-13 has considered similar quarrel where

FCCDs were issued to same AE and there also SBI PLR rate + 300 basis points were taken into consideration for payment of interest. The relevant findings in ITA No. 7025/DEL/2017 read as under:

"13. On a careful perusal of the record more particularly the order relied upon by the assessee, we find that vide para 27, a coordinate bench of this Tribunal has recorded its finding to the following effect:

"27. On merit also, the AO/TPO made the addition on account of differential rate of interest on FCCDs. The assessee applied the interest rate on the basis of SBI PLR rate plus 300 basis points for the reasons that the FCCDs being unsecured and hybrid/quasi equity instrument as compared to plain vanilla loan instrument. Therefore, the SBI PLR plus 300 basis points over it was reasonable and on the arm's length, particularly when the same was permissible under Foreign Exchange Control Regulations. The AO/TPO, however, restricted the interest rate to 12.25%. The variance in the rate of interest as per TPO/AO to be adjusted and added was 3.75% which was within the permissible range of 5% as permitted by second proviso to Section 92C(2) of the Act. It is also relevant to point out that the percentage of 3% in the aforesaid proviso has been inserted by the [Finance Act](#), 2012 w.e.f. 01.04.2013 and prior to that amendment, this percentage was at 5%. In the present case, since the difference is less than 5%, therefore, no addition on account of arm's length price could have

been made by the AO/TPO. As such on merit also, no addition could have been made. "

14. Therefore, in view of the above finding of a coordinate bench of this Tribunal in assessee's own case for the immediately preceding years, we are of the considered opinion that the issue is no longer res integra and this bench is required to follow the same in the absence of any change of circumstances. No change of circumstances is pleaded before us. We, therefore, while respectfully following the above decision, reach a conclusion that it is reasonable on facts and also permissible under law to include 300 points basis while calculating the interest rate. Further, in view of the fact that the variance does not exceed 5% for the FCCDs issued during the FYs 2008-09 and 3% for the FCCDs issued subsequently interference by the Ld. TPO with the value of the international transaction. The addition, therefore, cannot be sustained and shall be directed to be deleted. We accordingly direct the learned AO/TPO to delete the same.

10. Similar view was taken by the Tribunal in ITA No. 7026/DEL/2017 and 7027/DEL/2017. The relevant findings read as under:

"11. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. We have also perused the orders of the co-ordinate bench relied upon by the Id. counsel for the assessee. The undisputed fact is that the FCCDs

were issued during FY 2008-09, 2009-10 and 2011-12, which means that no fresh FCCDs were issued during the year under consideration. The year wise details of interest rate, interest amount payable and interest rate and amount restricted by the TPO can be understood from the following chart:

Amount of Differential Amount of Differential amount Interest  
rate interest Rate of Interest rate of interest of interest as per  
S No Type of FCCD's as per payable on as per TPO to payable at  
ITPO to be:

S No	Type of FCCD's	Interest rate as per Assessee on the basis of SBI PLR rate plus 300 basis points	Amount of interest payable on FCCD's as per Assessee	Rate of Interest restricted by TPO to be at Arm's length based on SBI PLR rate	Differential rate of interest as per TPO to be adjusted/added to income	Amount of Interest payable at Arm's length as per TPO	Differential amount of interest as per ITPO to be: adjusted/added to income
1.	FCCD's @ 16% as issued during FY 2008-09 (Note 1)	16.00%	210,328,320.00	12.25%	3.75%	161,032,620.00	49,295,700
2.	FCCD's @ 14.75% as issued during FY 2009-10	14.75%	166,371,062.00	11.75%	3.00%	132,532,879.90	33,838,182
	FCCD's @ 17.75% as issued during FY 2011-12(Note 2)	17.75%	141,432,000.00	14.75%	3.00%	117,528,000.00	23,904,000
	<b>Total</b>		<b>518,131,382.00</b>			<b>411,093,499.90</b>	<b>107,037,882.</b>

12. On the basis of the aforesaid facts, the co-ordinate bench in ITA No. 7022/DEL/2017 and others had considered this issue and held as under:

"27. On merit also, the AO/TPO made the addition on account of differential rate of interest on FCCDs. The assessee applied the interest rate on the basis of SBI PLR rate plus 300 basis points for the reasons that the FCCDs being unsecured and hybrid/quasi equity instrument as compared to plain vanilla loan instrument.

Therefore, the SBI PLR plus 300 basis points over it was reasonable and on the arm's length, particularly when the same was permissible under Foreign Exchange Control Regulations. The AO/TPO, however, restricted the interest rate to 12.25%. The variance in the rate of interest as per TPO/AO to be adjusted and added was 3.75% which was within the permissible range of 5% as permitted by second proviso to Section 92C(2) of the Act. It is also relevant to point out that the percentage of 3% in the aforesaid proviso has been inserted by the Finance Act, 2012 w.e.f.

01.04.2013 and prior to that amendment, this percentage was at 5%. In the present case, since the difference is less than 5%, therefore, no addition on account of arm's length price could have been made ITA Nos. 7022 to 7024/Del/2017 Granite Gate Properties Pvt. Ltd. 19 by the AO/TPO. As such on merit also, no addition could have been made."

13. Similarly, in ITA No. 7025/DEL/2017, the findings given by the co-ordinate bench read as under;

"14. Therefore, in view of the above finding of a coordinate bench of this Tribunal in assessee's own case for the

immediately preceding years, we are of the considered opinion that the issue is no longer *res integra* and this bench is required to follow the same in the absence of any change of circumstances. No change of circumstances is pleaded before us. We, therefore, while respectfully following the above decision, reach a conclusion that it is reasonable on facts and also permissible under law to include 300 points basis while calculating the interest rate. Further, in view of the fact that the variance does not exceed 5% for the FCCDs issued during the FYs 2008-09 and 3% for the FCCDs issued subsequently interference by the Ld. TPO with the value of the international transaction. The addition, therefore, cannot be sustained and shall be directed to be deleted. We accordingly direct the learned AO/TPO to delete the same."

14. As no distinguishing decision has been brought to our notice, respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer /TPO to delete the impugned adjustments."

11. As no new distinguishing decision has been brought to our notice, respectfully following the findings of the co-ordinate bench in group case [*supra*], we direct the Assessing Officer/TPO to delete the impugned adjustments.

14. In the result, appeal of the assessee in ITA Nos. 7028/DEL/2017, 7029/DEL/2017 and 7030/DEL/2017 are allowed.

The order is pronounced in the open court in the presence of both the representatives on 22.02.2021.

Sd/-

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 22<sup>nd</sup> February, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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