

आयकर अपीलीय अधिकरण
मुंबई पीठ "के", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
BEFORE VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER

आअसं. 5011/मुं/2017 (नि.व. 2012-13)
ITA NO.5011/MUM/2017A.Y.2012-13)

The DCIT-4(1)(2),
Room No.640, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s.Aurionpro Solutions Ltd.
35th Floor, Sunshine Tower,
Tulsi Pine Road, Near Flower Market,
Dadar (W), Mumbai 400 013
PAN;AAACV7297H

..... प्रतिवादी/Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Shri Sunil Deshpande

सुनवाई की तिथि/ Date of hearing : 17/02/2021

घोषणा की तिथि/ Date of pronouncement : 25/02/2021

आदेश/ ORDER

PER VIKAS AWASTHY,JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-55, Mumbai (in short 'the CIT(A)') dated 26/04/2017 for the assessment year 2012-13.

2. The Revenue in appeal has raised following grounds:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to work out the arms length price of international transaction in the

appellant's case applying LIBOR plus 2% on monthly closing balance of advance to subsidiaries."

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the action of the TPO in working out the rate of benchmarking @11.17% based on the material on records by invoking yield method."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rejecting the view of the TPO that loans advanced by assessee to AEs are in the nature of short term working capital requirement and hence interest rate of 1-2 years bonds is applied relying on the information obtained from CRISIL and not based on LIBOR plus."*

4. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not bringing in any comparable transactions and deleting the adjustment made by TPO."*

5. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the TPO has worked out the interest rate on yield method after analyzing the rate at which the assessee would have earned in advancing loan of above amount to unrelated third parties with similar financial strength as that of its subsidiary."*

3. Shri Satyaprakash Singh appearing on behalf of the assessee submitted at the outset that the solitary issue in the appeal by the Revenue is the determination of interest rate on working capital advanced by the assessee to its overseas Subsidiaries/Associated Enterprises (AEs). The CIT(A) after placing reliance on the order of Tribunal in assessee's own case for assessment year 2007-08 applied LIBOR +2% on monthly closing balances of advances to subsidiaries. The Id.Authorized Representative of the assessee submitted that the Tribunal in appeal by the assessee in ITA No.7872/Mum/2011 for assessment year 2007-08 decided on 12/04/2013 held that the loans advanced by the assessee to AEs is an international transaction and subject to Arm's Length Price(ALP) as per Transfer Pricing (TP) regulations. The Tribunal further held that the transaction would be at the arm's length if interest LIBOR + 2% on monthly closing balances of advances is applied. The Revenue filed appeal before the Hon'ble Bombay High Court against the said order of Tribunal in Income Tax Appeal No.1869 of 2014, the Hon'ble High Court dismissed the appeal of Revenue vide order dated 09/06/2017. Thus, the findings of Tribunal in assessee's case have become final.

4. Shri Sunil Deshpande representing the Department fairly admitted that the issue raised in the present appeal by Revenue was subject matter of appeal before the Tribunal in assessee's own case in assessment year 2007-08.

5. Both sides heard, orders of authorities below examined. The Revenue is in appeal against the findings of CIT(A) in applying LIBOR + 2% interest rate on the monthly closing balance of advances to subsidiaries during the period relevant to the assessment year under appeal.

6. The assessee is engaged in the business of computer software development and web designing. During the period relevant to assessment year under appeal, the assessee advanced loans to its overseas AEs. The TPO benchmarked the transaction by applying the rate of 11.17% on such advances and made adjustment of Rs.4,23,44,986/-. The Assessing Officer vide order dated 24/02/2016 passed under section 143 (3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act'), inter alia, made addition of the adjustment proposed by TPO in respect of loans advanced by the assessee to its AE. In First Appellate proceedings, the CIT(A) followed the order of Tribunal in assessee's own case in ITA No.7872/Mum/2011(supra) and directed the Assessing Officer to work out the ALP of international transaction by applying LIBOR +2% on monthly closing balances to its subsidiaries

7. Both sides are unanimous in stating that the nature of transaction of advancing loans by assessee to its overseas AEs is identical to the one as in assessment year 2007-08. The Co-ordinate Bench after considering the issue in detail held that advancing of loans to AEs is an international transaction and as regards determination of interest rate, the Tribunal held that LIBOR +2% on monthly closing balances of advances be applied for transaction to be at arm's length. For the sake of completeness the relevant extract of the order of Tribunal in ITA No.7872/Mum/2011(supra) is reproduced herein below:

“8.13 Though in principle we do concur with the view of DRP on this issue, however, since the issue of LIBOR has been considered and decided by the Tribunal in various cases as relied upon by the assessee (supra); therefore, to maintain the rule of consistency, we follow the decision of the coordinate Benches of this Tribunal, and accept LIBOR for benchmarking interest on interest free loans to AEs. Since the LIBOR is a rate applicable in the transactions between the banks and further the loans advanced by the bank to clients are secure by security and guarantee; therefore, a loan which has been advanced without any security or guarantee as in the case of the assessee has to be benchmark by taking the Arm’s Length interest rate as LIBOR plus. Though the TPO took ALP as LIBOR + 3%; however, in our view, the appropriate rate would be LIBOR plus 2%. We accordingly, direct the AO/TPO to determine the Arm’s Length interest by considering the LIBOR plus 2% on the monthly closing balance of advances during the financial year relevant to the AY under consideration”.

8. We find that the aforementioned order of the Tribunal was challenged by the Revenue before the Hon'ble Bombay High Court in Income Tax Appeal No. 1869 of 2014(supra). The substantial question of law for consideration before the Hon'ble High Court was :

“Whether on the facts and in the circumstances of the case and in law, the Hon’ble Tribunal was justified in directing the Assessing Officer to determine the Arm’s Length interest by considering the LIBOR (London Inter Bank Operative Rate) plus 2% on the monthly closing balances of the advances?”

The Hon’ble High Court upheld the findings of the Tribunal on this issue and dismissed the appeal of Revenue. Since the issue has now been settled by the Hon’ble Jurisdictional High Court in favour of the assessee, we find no infirmity in the order of CIT(A), hence, the same is upheld, ergo, the appeal of Revenue is dismissed sans merit.

9. In the result, appeal by Revenue is dismissed.

Order pronounced in the open court on Thursday, the 25th day of February, 2021.

Sd/-

(S.RIFAUH RAHMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25/02/2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषित Copy 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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai