

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I-2": NEW DELHI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)

ITA No. 1048/Del/2018  
(Assessment Year: 2013-14)

ACIT, Circle-14(2), New Delhi	Vs.	Knowledge Infrastructure Systems Pvt. Ltd, G-02, Salcom Aurum complex, Jasola, New Delhi PAN: AACCK4380L
(Appellant)		(Respondent)

Revenue by :	Shri R. S. Shinshvi, Adv
Assessee by:	Shri Dhiraj Jain, Sr. DR
Date of Hearing	16/02/2021
Date of pronouncement	08/04/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Id CIT(A)-44, new Delhi dated 30.11.2017 for the Assessment Year 2013-14. The Id AO has raised the following grounds of appeal:-

- “(i) Whether in the facts and circumstances of the case, whether the order of Ld. CIT(A) is perverse in giving relief to the assessee by reducing the rate of Interest from LIBOR+400(4.96231%) to 2.11% for the transaction pertaining to ‘Interest on Loan to AE’ by completely ignoring the direction of Hon’ble High Court in the case of M/s Cotton Naturals (I) (P) Ltd. and various tribunal judgments?
- (ii) Whether in the facts and circumstances of the case, whether the order of Ld. CIT(A) is perverse in giving relief to the assessee by reducing the rate of Interest from LIBOR+400(4.96231%) to 2.1 for the transaction pertaining to ‘Interest on Loan to AE’ by relying on the TPO’s stand in previous AY, without appreciating the fact there is no res judicata in income tax proceedings and in the process neglected the judgement of various courts and tribunals?
- (iii) Whether in the facts and circumstances of the case, whether the order of Ld. CIT(A) is perverse, deleting the adjustment made by the TPO regarding the Corporate Guarantee, by allowing Corporate Guarantee fees at mere 0.25% instead of the 1.30% levied by the TPO, whereas if the Safe Harbour Rules laid down under Income Tax Rules were to be followed, the assessee should have had accept the fees at 2%?
- (iv) Whether in the facts and circumstances of the case, whether the order of Ld. CIT(A) is perverse deleting the adjustment made by the TPO regarding the Corporate Guarantee without appreciating the fact that there is no res judicata in income tax

*proceedings and in the process neglected the judgement of various courts and tribunals on the issue?*

(v) *That the order of the Ld.CIT(A) is erroneous and is not tenable on fact and in law.”*

2. Brief facts of the case shows that the assessee is a private limited company incorporated in the year 2003 engaged in the business of import and delivery of coal to PSUs, and in power trading.
3. The assessee filed its return of income on 29.11.2013 declaring total income of Rs. 35,46,51,760/-. The assessee has entered into an international transaction of purchase of coal along with others. The assessee has also entered into certain specified domestic transactions. The Id TPO vide order dated 25.10.2016 proposed an adjustment of Rs. 7,53,37,772/-. The impugned adjustment was with respect of interest on loan of Rs. 70,24,273/- corporate guarantee commission of Rs. 1,20,14,304/- and remuneration paid to key management personnel of Rs. 5,62,99,195/-. Consequently, the draft assessment order was passed by the Id AO and thereafter final assessment order was passed u/s 143(3) read with 92CA3 of the Act on 27.01.2017, wherein, the total income of the assessee was assessed at Rs. 42,99,89,530/- against the return income of Rs. 35,46,51,760/- wherein, transfer pricing adjustment of Rs. 7,53,37,772/- was incorporated.
4. The assessee preferred an appeal before the Id CIT(A) who passed an order partly allowing the appeal of the assessee and therefore revenue is aggrieved. The only ground of appeal of the revenue is with respect to the adjustment deleted by the Id CIT(A) with respect to interest of loan and corporate guarantee.
5. At the time of hearing the Id AR submitted advance pricing agreement u/s 92CC of the Act dated 18.12.2017 wherein, in roll back years the impugned assessment years is covered. As per para No. 10 of that agreement, the assessee filed revised income tax return for impugned assessment year on 15.03.2018 and submitted Form 3CEF on 16.03.2018 which has been accepted by the Id AO.
6. In view of this appeal of the Id AO is dismissed.  
Order pronounced in the open court on 08/04/2021.

-Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 08/04/2021  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi