

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No. 53/Bang/2020
Assessment year: 2015-16

G Corp Spaces Pvt. Ltd., No.21/19, Craig Park Layout, Off M G Road, Bengaluru – 560 001. PAN: AAECG 6624M	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Nageshwar Rao, Advocate
Respondent by	:	Shri Kannan Narayanan, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	24.08.2021
Date of Pronouncement	:	24.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 29.11.2019 of the CIT(Appeals)-3, Bengaluru for the assessment year 2015-16 on the following grounds of appeal:-

Sr. No.	Grounds of Appeal	Tax effect relating to each Ground of Appeal (Rs.)
1	The CIT(A) erred in confirming the transfer pricing adjustment of Rs.4,26,70,529/- on account of interest paid on Non-convertible Debentures (NCDs) issued by the Appellant to its Associated Enterprise	Rs.1,31,85,193/- (including 3% education cess)

2	The CIT(A) erred in confirming the arm's length rate of interest of 10.62% p.a. in respect of NCDs issued by the Appellant	
3	The CIT(A) / Assessing Officer (AO) / Transfer Pricing Officer (TPO) failed to appreciate that the credit ratings of the comparable borrowers are a relevant factor while applying Comparable Uncontrolled Price (CUP) method for determining the arm's length price (ALP) of interest on NCDs paid by the Appellant	
4	The CIT(A) / AO / TPO failed to appreciate that the industry to which the Appellant belongs in a relevant factor in computing the ALP of the interest paid by the Appellant on NCDs by applying CUP method	
5	The CIT(A) / AO / TPO failed to appreciate that the NCDs issued by the Appellant had a moratorium period of 60 / 58 months wherein the Appellant was not required to pay interest on the NCDs and therefore the effective rate of interest in respect of the NCDs was 11.61% p.a.	
6	The CIT(A) / AO / TPO failed to appreciate that as per the searches conducted for comparable interest rates, the rate of interest of 15% p.a. paid by the Appellant on the NCDs issued by it was at arm's length	
7	Without prejudice to Ground Nos.1 to 6, the Appellant submits that the transfer pricing adjustment should be made in respect of interest expenditure claimed as a deduction	Rs.42,85,515/- (including 3% education cess)

2. The facts of the case are that the appellant during the year had an international transaction exceeding Rs. 15 crores. The matter was referred by the AO to the Transfer Pricing Officer (TPO). The appellant had issued two tranches of non-convertible debentures (NCDs) to its associated enterprises (AE) at an interest rate of 15% per annum. Accordingly the

relevant transactions including transaction relating to interest accrued of Rs. 14,61,39,150/- was reported by the appellant in form 3CEB. As per the appellant, it had benchmarked the transaction using 'any other method' under rule 10AB of the IT rules on the basis SBI Base Rate (10%) plus 500 basis point. The appellant could not provide any reasonable basis for 500 basis point increase adopted by it. The TPO also noted that the interest rate for debentures, repayment for which was in foreign currency would be governed by the decision of Hon'ble Delhi High Court in the case of *CIT v Cotton Naturals(1) Pvt Ltd 9ITA No 233/2014 AY 2007-08 dt. 27.03.2015*). So the TPO used Bloomberg SWAP Manager tool to have converted rate of interest and thus conducted a search for comparable transactions on Bloomberg data base and proposed the interest @ 10.62% on the basis of the comparable set. The appellant argued that the TPO had not considered credit rating of the comparables vis-a-vis that of the appellant. The TPO did not accept this argument of the appellant by holding that the credit rating was just a subjective figure which was based on the image a company holds in the eyes of other independent players in the market. The TPO noted that different rating agencies assigned different credit ratings to same financial institutions. The TPO further noted that the transaction of the appellant was with its own AE, having same parent and controlling entity and as such there was no risk of default or non-payment associated with the loan being borrowed by the one entity from the other. The TPO noted that variation in the interest rate across different credit ratings will be automatically accounted for in the final set because at the end only an average was adopted. In view of the above the AO held that Arm Length interest rate for the case under consideration was 10.62% as against 15% adopted by the appellant and accordingly proposed an adjustment of Rs. 4,26,70,529/-.

3. On appeal, the CIT(Appeals) noted that the issue of credit rating has duly been dealt by the TPO while passing his order and the reasoning given by the TPO for not accepting the contention of the appellant cannot be faulted with. The CUP method adopted by the TPO and the usage of Bloomberg database for finding the set of comparables was also found to be appropriate. Raising funds by issue of debentures also does not have any correlation with the nature of the industry which is raising the funds. According to the CIT(A), the argument of the appellant on this issue is very generic and unsubstantiated. He was of the view that moratorium period would not make any difference as the corresponding data of the comparables has also not be taken into account and the averaging is on the basis of declared interest rate only. Therefore, the CIT(Appeals) upheld the action of the AO.

4. At the time of hearing, the Id. AR apart from raising the contentions touching upon the merits of the matter dealt with by the CIT(Appeals), mainly emphasized that the CIT(Appeals) has passed the impugned order in total non-application of mind to the arguments made by the Id. AR in detail against the order of the AO. It was contended by him that the order of AO is very cryptic and also the findings are non-speaking which cannot be upheld by scrutiny of law. According to the Id. AR, the CIT(Appeals) should have considered the entire arguments and records placed before him. In view of the above, he submitted that the order of CIT(Appeals) has to be vacated and the issue remitted back to his file to pass a speaking order after considering the entire arguments and material placed on record by the assessee.

5. On the other hand, the Id. DR submitted that the CIT(Appeals) has considered the entire arguments of Id. AR and passed the impugned order which cannot be set aside and the same has to be decided on merits.

6. We have heard both the parties and perused the material on record. We have carefully gone through the findings of the CIT(Appeals) on the impugned issue which is recorded at para 4.2 of the impugned order which has been discussed above. There is no proper discussion or independent findings by the CIT(A) by passing a speaking order on the issues raised by the assessee and the order of the CIT(A) is very cryptic and can be called as an order passed without proper application of mind. Therefore, we are convinced that the matter has to go back to the CIT(Appeals) for fresh consideration of the entire arguments and material in detail brought on record by the parties and to pass a fresh order in accordance with law with reasons and independent findings. Then only, after such speaking order is passed by the CIT(A), the AO will be in a position to understand the same and pass the consequential order. Therefore we agree with the contention of the Id. AR and the impugned order is set aside and the issue is remitted back to the file of the CIT(Appeals) to pass a fresh speaking order on merits. Since we have remitted the issue to the file of CIT(Appeals), we refrain from going into the other grounds of appeal at this stage.

7. In the result, the appeal by the revenue is allowed for statistical purposes.

Pronounced in the open court on this 24th day of August, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th August, 2021.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.