

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 285/HYD/2021

Assessment Year: 2016-17

M/s.Synergies Castings Limited, HYDERABAD [PAN: AAICS7410H]	Vs	Asst. Commissioner of Income Tax, Circle-3(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri P.V.S.S.Prasad, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 17-09-2021
Date of Pronouncement : 23-09-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2016-17 arises against the assessment dated 27-05-2021, framed by the National Faceless Assessment Centre, Delhi in furtherance to the Dispute Resolution Panel ('DRP')-1, Bengaluru's directions dt.02-03-2021 in F.No.59/DRP-1/BNG/2019-20, involving proceedings u/s.143(3) r.w.s.144C(13) r.w.c.144B of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case file perused.

2. Coming to the first and foremost issue of correctness of the learned lower authorities' action making corporate guarantee adjustment of Rs.1,52,39,800/- @2% commission rate, learned authorised representative's vehement contention

before us is that the assessee has not derived any income since the corresponding corporate guarantee's object was to help the overseas associated enterprise 'AE' which nowhere yielded any returns thereupon. Mr.Prasad therefore submitted that the learned lower authorities ought not to have made any adjustment in view of the foregoing clinching aspect. We express our inability to accept the assessee's instant former substantive grievance. We make it clear that we are dealing with Chapter-X of the Act which is in the nature of a "Special Provision" not dependent upon actually derived income component; whatsoever.

Coupled with this, hon'ble Madras high court's decision PCIT Vs. M/s.Redington (India) Ltd., (TCA Nos.590 and 591 of 2019, dt.10-12-2020) holds that a corporate guarantee to be an international transaction u/s.92B, Explanation-(c) with retrospective effect from 01-04-2001. We thus, affirm the impugned corporate guarantee adjustment in principle.

3. Next comes equally important aspect of quantification of the impugned guarantee. This tribunal's co-ordinate bench decision in the case of DCIT Vs. M/s.Nava Bharat Ventures Ltd, ITA No.634/Hyd/2018, dt.22-07-2021, decided the issue as under:

"9.1. Next comes latter issue of corporate guarantee adjustment of Rs.3,51,06,335/- deleted in the CIT(A)'s detailed discussion as under:

"5.1 With regard to adjustment on amount of shortfall in corporate guarantee commission of Rs.3,51,06,335/-, after considering the submissions of the appellant company and also by following earlier order in the appellant's own case for the AY.2011-12, wherein I decided the issue in favour of the appellant company by observing that, "the Transfer Pricing Officer had charged corporate guarantee commission @ 2% which is higher than the appellant charged. Since

the appellant has charged a reasonable corporate guarantee commission i.e. @ 0.875% are more than the Tribunals allowed. Therefore, the addition made by the Assessing Officer is hereby deleted". Therefore, the addition made by the Assessing Officer is deleted".

9.2. It has come on record that the assessee had itself recorded comparable guarantee commission @8.75% i.e. much more than that that decided by the tribunal (supra). We therefore adopt judicial consistency and decline Revenue's instant latter substantive ground for this precise reason alone.

We thus affirm the impugned adjustment @0.875% as against the assessee's stand that the same ought to be taken as 0.5% only. We therefore partly accept both the learned representatives' arguments against and in favour @2% commission in issue to this limited extent. The assessee's instant former substantive ground succeeds in above terms.

4. Next comes the latter issue of ALP adjustment pertaining to interest on receivables to the tune of Rs.82,66,546/- emanating from the order of Transfer Pricing Officer's (TPO's) and DRP's directions going by interest rate @7.5% as per SBI domestic term deposits returns.

Suffice to say, it transpires at the outset that we need not delve much deeper *qua* the relevant facts pertaining to the instant issue. We find that assuming but not accepting that the ld.lower authorities have rightly found the assessee's interest receivables as beyond the period involving un-controlled transactions, the impugned adjustment is not liable to be sustained for the sole reason that the same has not only been made as per 'LIBOR' rate applicable in case of international transactions after taking State Bank of India's term deposit(s) rate only but also no comparable to this effect in the very segment has been found so as to form the

necessary benchmarking in uncontrolled circumstances. The impugned ALP adjustment of Rs.82,66,546/- is directed to be deleted therefore.

No other argument has been raised before us.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court on 23rd September, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 23-09-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.M/s.Synergies Castings Limited, Flat No.301, M.J.Towers, H.No.8-2-698, Road No.12, Banjara Hills, Hyderabad.

2.The Asst.Commissioner of Income Tax, Circle-3(2), Hyderabad.

3.Dispute Resolution Panel (DRP)-1, Bengaluru

4.Director of Income Tax (IT & TP), Hyderabad.

5.Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.

6.D.R. ITAT, Hyderabad.

7. Guard File.