

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**  
*(Through Video Conferencing)*

**Before Shri A.M. Alankamony, Accountant Member and**  
**Shri S.S. Godara, Judicial Member**

Appeal in ITA	A.Y	Appellant	Respondent
134/Hyd/2017	2011-12	Maanaveeya Development & Finance P Ltd Hyderabad PAN:AAECM1085E	A.I.C.T. Circle 16(2) Hyderabad
149/Hyd/2017	2011-12	Dy.C.I.T. Circle 16(2) Hyderabad	Maanaveeya Development & Finance P Ltd Hyderabad PAN:AAECM1085E
565/Hyd/2017	2012-13	-do-	Dy.C.I.T. Circle 16(2) Hyderabad
1507/Hyd/2018	2013-14	-do-	-do-
1682/Hyd/2018	2014-15	-do-	-do-
1811/Hyd/2018	2014-15	Dy.C.I.T. Circle 16(2) Hyderabad	Maanaveeya Development & Finance P Ltd Hyderabad PAN:AAECM1085E
149/Hyd/2017	2011-12	-do-	-do-
1506/Hyd/2018	2013-14	-do-	-do-

Assessee by	Shri B. Satyanarayana Moorthy
Revenue by	Shri Rajendra Kumar, CIT (DR)
Date of hearing:	30/11/2021
Date of pronouncement:	14/12/2021

**ORDER**

**Per Bench.**

The instant batch of seven appeals pertains to a single assessee M/s. Maanaveeya Dev. & Finance (P) Ltd. All other relevant details thereof reads as follows:

S.No	A.Y & ITA No	Order under challenge	Proceedings u/s
1	2011-12 149/Hyd/2017	Dy.CIT Circle 16(2) vs Maanaveeya Dev. & Finance Private Ltd	143(3) r.w.s & 92CA (3)
2	2011-12 134/Hyd/2017	Maanaveeya Dev. & Finance Private Ltd vs	-do-

		ACIT, Circle 16(2)	
3	2012-13 565/Hyd/2017	Maanaveeya Dev. & Finance Private Ltd vs DCIT, Circle 16(2)	143(3) r.w.s 92CA (3) rws 144C(5)
4	2013-14 1507/Hyd/2018	-do-	143(3) rws 92CA
5	2013-14 1506/Hyd/2018	Dy.CIT Circle 16(2) vs Maanaveeya Dev. & Finance Private Ltd	-do-
6	2014-15 1811/Hyd/2018	-do-	143(3)rws 92CA3
7	2014-15 1582/Hyd/2018	Maanaveeya Dev. & Finance Private Ltd vs DCIT, Circle 16(2)	-do-
8	2014-15 1682/Hyd/2018	-do-	-do-

Heard both the parties. Case files perused.

2. It transpires during the course of hearing that both parties' respective appeals (except A.Y 2014-15) raise an identical issue of ALP adjustment (involving varying sums, qua interest payment made by the assessee to its overseas associate enterprises @ 11% while adopting domestic prime lending rate only. Its case is that the Transfer Pricing Officer "TPO" respective orders have erred in law and on facts in adopting LIBOR+200 interest rate; coming to 2.9% only; which in turn, stands enhanced to 9.72% by the CIT(A)/DRP as the case may be, in all these assessment years. It is in these facts that all assessee's four appeals in ITA Nos.134 & 565/Hyd/2017 for A.Y 2011-12 and 2012-13 along with ITA Nos.1507 & 1682/Hyd/2018 for A.Ys 2013-14 and 2014-15; respectively, seek to delete the impugned ALP adjustment with the interest rate adopted @ 11% paid to the overseas AEs on compulsory convertible debentures (CCDs). The Revenue's three cross appeals in ITA No.149 of 2017, 1506 and 1811 of 2018 for A.Y 2011-12, 2013-14 and 2014-15, respectively, plead that the TPO had rightly adopted the foregoing

LIBOR + 200; which has been enhanced to the extent of 9.72%, in respective authorities orders under challenge.

3. Learned AR vehemently contended during the course of hearing that the assessee's overseas AEs; compulsory convertible debentures involve domestic currency only which had been rightly benchmarked in the light of the domestic prime lending rate at the relevant point of time. He has also filed various paper books regarding all the relevant facts of the interest paid @ 11% to AE, corresponding varying exchange fluctuation details and payments, safe harbour rules regarding payment of interest in domestic currency as well as catena of case law that it is not "LIBOR" but domestic interest rates only which had been rightly adopted by the assessee as an interest benchmark for making payment to the overseas AE.

4. The Revenue has placed strong reliance on the TPO's respective orders.

5. We find no merit in assessee's stand. We make it clear first of all that it was very much imperative for the assessee to place on record that all the corresponding CCDs relevant scheme throwing sufficient light qua the currency sought to be forming part thereof. Page 13 (Annexure B) in assessee's Paper Book in A.Y 2012-13 itself makes it clear that the corresponding FDI had been remitted/received in "Euros" only. Coupled with this, its impugned interest payment has also witnessed foreign exchange fluctuation loss of Rs.39.91 crores as well on account of conversion in foreign currency. Coupled with this, the assessee had itself made it clear regarding absence of any agreement qua interest payment as well. It has also not placed on record it's AE's

financial statement. All these relevant facts lead us to an irresistible conclusion that the learned lower authorities, and more particularly the DRP directions in A.Y 2012-13, have rightly declined the assessee's objection reading as under:

*"Ground of Objections*

*1. The Learned Assessing Officer (AO){Transfer Pricing Officer (TPO) are erroneous in law and on the facts of the case.*

*2. The Ld. Assessing Officer/TPO are not legally justified in adopting LIBOR plus 200 percentage points (2.90%) as arm's length interest rate in respect of loan borrowed by appellant company from its AE as against actual interest paid @ 11 % and arrived at an adjustment of as, 11,53,12,001/-.*

*3. The Ld. Assessing Officer/TPO ought to have appreciated that the appellant company borrowed from its AE a rupee loan and not a foreign currency loan and thereby LIBOR rate is inappropriate.*

*4. The Ld. Assessing Officer/TPO ought to have appreciated the fact that the interest paid on Compulsory Convertible Debentures (CCOs) by the Assessee @11% is lower than the normal rate of interest which the appellant company is paying on the other loans borrowed, in Indian rupees and thereby complying with arm's length principle.*

*5. Any other ground that may be urged at the time of hearing with the previous approval of the Hon'ble Members of the Dispute Resolution Panel.*

*Out of the above grounds, grounds 1 & 5 are general and require no specific directions.*

*Grounds 2, 3 & 4 are O11 the adjustment made by the TPO to the interest rate in respect of loan borrowed by appellant company from its AE. The directions on the same are issued as under:*

*The assessee company is a non-banking financial institution. The company IS based in Hyderabad and it extends bulk loans to Financial Intermediaries and Development organizations spread throughout India. It currently operates from 4 regions, i.e. North, South, East & West, with 15 employees and focuses on providing loans to Micro Finance Institutions & Development Projects including Agriculture, Education, and Health Care & Renewable Energy.*

*It was submitted that the assessee company had borrowed funds in the earlier years in the form of FDI. The INR value as recorded in the books of account as outstanding on 1.4.2011 is Rs. 113.09.88,750/-. There was also a receipt of FDI in the*

form of investments in CCDs amounting to Rs. 43,23,45,000/- during the financial year. The CCOs are subscribed in Rupee component and are also to be converted into shares at their Rupee value. They are not subscribed in foreign currency It was also submitted that the assessee company also borrowed funds from the following banks at the prime lending rates as mentioned below:

Name of the Bank	PLR
ING Vysya Bank	10.90% to 11.25%
Standard Chartered Bank	12.00%
Rabo India Finance Ltd	10.50%
Axis Bank Ltd	11.00%

It was submitted that the assessee company agreed to pay interest @ 11 %, which amounted to Rs. 15:34,84,244/, (Emphasis supplied). It used Comparable Uncontrolled Price method (CUP) to determine the arm's length price for the interest, Considering the above interest rates of various banks. 11 % of interest incurred by the assessee company on CCO of Okio credit is considered at ALP under CUP,

This was not accepted by the TPO who relying on the following decisions of the Hon'ble ITAT in the cases of Foursoft Ltd, Market Tools, Or Reddy laboratories held that UBOR is appropriate for benchmarking of ALP. The assessee submitted the case laws cited by the TPQ, in these cases the issues was that the Associated Enterprises have availed loans from the Indian company and in our case it is the reverse i.e. the company has availed a loan from the holding company in the form of CCDs and are paying interest to them. Hence it was submitted that where the transaction is of borrowing money in Indian currency from Indian subsidiaries the comparable transactions should be at the interest in Indian currency paid to unrelated parties like SBI, Standard Chartered Sank, ING Vysya Bank etc., The assessee further relied on the following decisions:

- India Debt Management (P.) Ltd. v. Deputy Commissioner of

- Income-tax. Circle- 3(2)(1), Mumbai" [2016] 69 taxmann.com 125 (Mumbai • Trib.)-

KPIT Cummins Infosystems Ltd. v. Income-tax Officer, Ward- 11(3). Pune"" [2016] 68 taxmann.com 294 (Pune . Trib.),

- CIT v Tata Autocomp Systems Ltd. [2015] 56 taxmann.com 206 (Bombay)

Shrenuj & Co . Ltd. v. Additional Commissioner of Income-tax- Range 5 (3). Mumbai (2015) 57

*CIT v Cotton Naturals (I) (P.) Ltd. [2015j 55 taxmann.com 523*

*Having considered the submissions, the only issue is rate of interest charged is whether to be based on the Indian PLR as claimed by the assessee or to rely on LIBOR. Plus adopted by the TPO. The submissions made, case laws cited by the assessee are carefully considered. The assessee had objected to the case laws cited by the AO stating that the facts in those cases, AEs have availed loans from an Indian company, hence LIBOR rate was held to be appropriate for computation of ALP. Now the case laws cited by the assessee are considered.*

- In the case of Indian Debt Management, the Hon'ble ITAT held that Indian rates to be applied based on the facts of that case, as the Hon'ble IT AT came to that conclusion based on the fact that the CCDs have been issued in INR denominated debt and the interest paid or payable also was in INR.*

- In the case of Cotton Naturals, the issue therein was arms and interest rates for loan advanced to foreign subsidiary by Indian company. The assessee itself had submitted that its case is of receipt of loan from its holding company. Hence, the facts cited in the present case referred to above is not applicable to the facts of assessee's case by its own admission.*

- The decision of the Hon'ble High Court of Bombay in the case of Tata Autocomp Systems does not come to the rescue of the assessee as the facts in this case is again, the assessee advanced loans to its AE in Germany. Assessee itself had admitted in its case it was a receipt of loan from its holding company, hence the facts are completely distinguishable and reliance is also misplaced.*

- The decision in the case of Shrenuj & Co Ltd, the issue was of interest free loan to its only owned subsidiary, hence distinguishable from the facts of the present case.*

- The case of KPIT Cummins Infosystems Ltd, the issue was when assessee advanced a loan to its AE which by assessee's own admission is not the case hence reliance on the above decision in view of the facts of the assessee's case is misplaced.*

*Similarly, the facts cited in other case laws cited by the assessee are also distinguishable from the facts of the present case before this Panel. Having considered the case laws, it is to be examined whether the claim of the assessee that the said CCDs were in fact received in INR. On consideration of the submissions made along with Form 35A filed on 21.04.2016, it is noticed that from pages 9 to 13 of the written submissions, a copy of the Form No. 3CEB Issued by fv1/s Venugopal & Chenoy, Chartered Accountants, Hyderabad is enclosed. The said form is perused, at page 13 of the written*

*submissions at Annexure 'A' it indicates the name, relationship and brief description of business. Below that on the same page at Annexure 'B' gives the details of investments made by the AE. At (c) of the said details, it clearly mentions that the FDI has been received by the assessee from its AE in Euros, and the Indian Rupees value IS recorded in the Books of Accounts. Further, with regard to interest rate and payment at (d), it is stated that the assessee is agreed to pay at an interest of 11 %. The basis for the same is not furnished nor substantiated, The relevant page as discussed above is enclosed as Annexure A to this order. In view of the foregoing discussions, in view of the facts that the monies were received in Euros. The basis for payment of interest at the rate of 11 % is not substantiated, we agree with the view of the TPO as given in para 7.4 of the order to adopt LIBR Plus 200 basis points for computation of Arm's Length interest. The same is upheld and the objections rejected”.*

6. Learned counsel has quoted a catena of case law regarding adoption of interest rate going by currency involved in the international transactions. We note that the same are not relevant to this instant issue since we have already held that the currency involved herein is not “Euro” only. The alleged “safe harbor” rules (supra) also do not pertain to these four assessment years. We thus affirm the TPO’s identical action in all these four assessment years adopting “LIBOR + 200” interest rate coming to 2.9% as against that claimed @ 11% at assessee’s behest. These four taxpayer appeals in ITA Nos.134 & 565/Hyd/2017 for A.Ys 2011-12 and 1507 and 1682/Hyd/2018 for the A.Ys 2013-14 and 2014-15; respectively, are dismissed. The Revenue’s former two cross appeals in ITA Nos.149/Hyd/2017 and 1506/Hyd/2018 for A.Ys 2011-12 and 2013-14 raising in the instant sole ground are accepted.

7. This leads us to that the Revenue’s latter substantive ground in A.Y 2014-15 seeking to revive section 14A r.,w.Rule 8D disallowance of Rs.23,09,741/- made by the Assessing Officer which has been restricted to the extent of exempt income only of

Rs.522/- in the CIT (A)'s order in the light of Joint Investment (P) Ltd 372 ITR 394 (Delhi). We thus decline this latter ground and partly accept the main appeal ITA 1811/Hyd/2018 for A.Y 2014-15.

8. To sum up, the assessee's four appeals ITA Nos 134/Hyd/2017, 565/Hyd/2017, 1507/Hyd/2018 and 1682/Hyd/2018 are dismissed. The Revenue's former twin cross appeals ITA Nos. 149/Hyd/2017, 1506/Hyd/2018 are allowed and third appeal 1811/Hyd/2018 is partly allowed in above terms. A copy of this common order be placed in respective files.

Order pronounced in the Open Court on 14<sup>th</sup> December, 2021.

<b>Sd/-</b> <b>(A. MOHAN ALANKAMONY)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> December, 2021.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Maanveeya Dev. & Finance (P) Ltd, Venugopal & Chenoy, C.A, 4-1-889/16/2, Tilak Road, Hyderabad 500001
2	ACIT/Dy.CIT, Circle 16(2) Hyderabad
3	CIT (A)-4, Hyderabad
4	Pr. CIT – 4, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*