IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

[Coram: Pramod Kumar, (Vice President)
And Amarjit Singh, Judicial Member]

ITA No 3577/Mum/2014
ITA No. 361/Mum/2015
ITA Nos. 5617 & 5337/Mum/2016
Assessment Years: 2008-09 to 2010-11

M/s. Virgo Valves & Controls Ltd. **……..…… Appellant**
(now Virgo Valves & Controls Pvt Ltd.)
7B, 3rd Floor, Sambhava Chambers, Sir P.M.Road,
Fort, Mumbai 400001 [PAN: AABCV8733H]

Vs

Deputy Commissioner of Income Tax 1(3)
Mumbai **…… Respondent**

Appearances:
Aditya Ajgaonkar *for the Appellant*
Vikas Kumar Agarwal *for the Respondent*

Date of conclusion of hearing : 09.12.2021
Date of pronouncement of order : 08.03.2022

O R D E R

Per Pramod Kumar, VP:

1. These four appeals, pertain to the same assessee, involve some common issues and were heard together. As a matter of convenience, therefore, all the four appeals are being disposed of by way of this consolidated order.

2. We will first take up ITA No 3577/Mum/2014.

3. This appeal, filled by the assessee, is directed against the order dated 04.03.2014 in the matter of assessment under section 143(3) r.w.s 144C (1) of the Income Tax Act 1961 (hereinafter referred to as 'the Act') for the assessment year 2008-09.

4. In ground nos. 1 to 4, which will take up together, the assessee has raised the following grievances:-

> **1. The learned CIT (Appeals) has erred in confirming the addition of an amount of Rs.24,38,777/- in the income of the appellant company on account of adjustment in the arm's length price in respect of the interest charged on the advances by the appellant companies to its AE Virgo Europe SPA.**
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> **2. The learned CIT (Appeals) has erred in not appreciating the fact the appellant company has charged interest rate of 4.75% on the Euro denominated loan given to its associated enterprise namely, Virgo Europe SPA, based on EURIBOR plus basis for Euro currency, prevailing then.**
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> **3. The learned CIT (Appeals) has erred in not appreciating that the interest rate of Indian Rupees denominated lending is not material for the purpose of calculating arm's length interest rate in respect of loan denominated in Euro.**
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> **4. The learned CIT (Appeals) has erred in confirming the arm's length rate of interest applicable to lending in Euro by the appellant company to be at 10% for the year**.

5. Briefly stated, the relevant material facts are like this. The assessee had granted a loan of Euro 5,00,000 to it's associated enterprises Virgo Europe SPA, and of US Dollars 5,00,000 to it's another enterprises Virgo Engineers Inc, USA. The assessee had charged interest @4.75% and @7.75% respectively on the basis of referencing to LIBOR. The Transfer Pricing Officer was, however, unsatisfied. He proposed to make arm's length price adjustments to these interest charges on the basis of Indian Prime Lending Rate @9.50%. He thus proceeding to benchmark these loan interest @10%. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) confirmed the action of the Assessing Officer/TPO and observed as follows:-

> **4.3 I have considered the facts of the case, submission of the appellant vis-à-vis the observations of the TPO/AO, in their orders u/s 92CA(3)/143(3) of the Act. The contentions and submission of the appellant are being discussed and decided as under:**
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> **i. The appellant contended that the AO should have considered the interest rate applicable for borrowings by AEs in Euro. In this regard it is noted that the out of two AEs the loan given to one i.e. Virgo Euro is in foreign currency while the loan given to other AE is in Indian currency and hence contention of the appellant is factually incorrect. It is**

further noted that while bench marking such transaction what is important is to be considered is as to whether the AE could have obtained this loan from a foreign bank at this rate on its own credit worthiness. In this regard it was noted from the balance sheet of Virgo Europe spa that it has availed the OD facility for one year from Deutche Bank on the Guarantee provided by Virgo Engineers Inc. Accordingly the credit receipt component of interest rate has been compensated by guarantee provided by another group entity. Thus it is proved that the AB could not have obtained the loan from a foreign bank at the rate claimed on its own credit worthiness.

ii. The appellant contended that rate of 10% charged by TPO was based on lending rate of Indian banks which was quite high. However, in a recent judgment dated 12.04.2013 Hon'ble ITAT Mumbai in ITA No. 7872 Mum 2011 in the case of Aurionpro Solutions Ltd. have held as under:-

"8.10. The Transfer Pricing Regulation are based on the deeming principle by taking into account a hypothetical situation that instead of having transaction with AE had the assessee transacted with unrelated party what would have been the financial/commercial result of that transaction. Thus, the effect of transaction on the income of the assessee is to be seen and considered and not effect on the cost or income of the AE. Therefore, the tested party is always the tax payer and not the AE. None of the factors under the Transfer Pricing Regulations require to consider whether the AEs would have incurred or earned more or less; but it is always considered whether the assessee had earned more or less by doing a similar transaction with an unrelated parties.

8.11. Even under Rule 10B of the IT Rules, the factors prescribed for inclusion or exclusion of comparables to determine the ALP are also based on the comparison of the assessee with the chosen entities and the AE has no rule in the exercise of selecting the comparables. Thus, in our view, the interest that would have been earned by the assessee by advancing or placing the said amount with unrelated parties would be the Arm's Length interest in relation to the interest free loans/advances to the AE. The safest comparables, which can be taken as Arm's Length interest rate in such a case would be the interest on FD with the bank for a term equivalent to the term for which the loans given to the AEs.

8.12. It is pertinent to note that in case of FD with the Bank, the investment is safe as it is free from risk of credit and interest. On the other hand, if the loan/advance is given to the unrelated party, then always there is some risk of credit and interest involved in such transaction. There is one more reason for taking the FD as an appropriate and good comparable because the lending rate by financial institutions/bank varies depending upon the credit rating of the borrower and further on the guarantee and security provided to secure the loans".

In view of the above observations it may be noted that FD rate has been considered to be one of the methods for benchmarking international transactions relating to interest received. Further risk factor has to be considered looking to the fact that the fixed deposits are very secure being with banks as compared to parties like AE of the appellant. Similar observations were made by Hon'ble ITAT Mumbai vide their order dt 16.11.2012 in the case of Wipro Ltd. vs. DCIT 33 taxmann.com 263. Considering all these facts the rate of 10% for charging interest is held to be reasonable and consequently adjustment made by the TPO/AO is upheld.

iii. The Ground Nos. 1 to 4 are therefore dismissed.

6. The assessee is not satisfied and is in further appeal before us.

7. We have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

8. The issue as to whether LIBOR is to be taken as the basis of interest benchmarking for foreign currency denominated loans or whether Indian PLR will be relevant for the same, is no longer *res integra.* In the case of CIT Vs Tata Autocomp Systems Ltd [(2015) 56 taxmann.com 206 (Bom)], Their Lordships have observed as follows:

7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of VVF Ltd. v. Dy. CIT [IT Appeal No. 673 (Mum.) of 2006] and Dy. CIT v. Tech Mahindra Ltd. [2011] 12 taxmann.com 132/46 SOT 141 (Mum.) (URO) to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr. Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra) on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra).

8. In view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law.

9. Clearly, therefore, Their Lordships have held that since the Tribunal decisions in the cases of VVF Ltd (supra) [reported as VVF Ltd Vs DCIT- TS 84 ITAT 2010] and DCIT Vs Tech Mahindra Limited (supra) [reported as (2011) 12 taxmann.com132 (Mum) and as (2011) 46 SOT 141 (Mum)] were accepted by the revenue authorities, it cannot be open to the revenue authorities to challenge the same decision in other cases. Both of these decisions were

incidentally authored by one of us (i.e. the Vice President) and an important common thread in both of these decisions is that there has been a mark up on the Euro and USD denominated LIBOR, rather than LIBOR simpliciter. In Tech Mahindra case(supra), for example, it is specifically stated, in paragraph 7, that "We have adopted the same approach by taking into account the commercial principles and practices with regard to a US Dollar denominated extended credit for arriving at the benchmark rate, and take LIBOR as the base. Accordingly, the LIBOR (US Dollar) has to be a benchmark for US Dollar transactions - rather than the rate of interest on domestic borrowings, even which is lower than the interest rate of 10 per cent taken as ALP by the TPO, or, for that purpose, rate of interest on any other currency loans. Having said that, we may also reiterate that as we hold so, we are not giving any decision on whether the ALP adjustment can be made, on the basis of LIBOR plus mark up, in respect of extended credit because we are dealing with a very limited issue in this appeal which does not require adjudication on the broader question as to whether an extended credit period can anyway be compared with a loan, much less a loan in some other currency which will have distinct lending rates depending on the peculiarities relating that currency, since it does not involve the lending period commitment as a loan necessarily involves. Be that as it may, the CIT(A) cannot thus be said to be in error in adopting the US Dollars LIBOR rate, with mark-up which is not in dispute for its being too low, as a basis for ALP adjustment - as long as he can be said to be justified in upholding the ALP adjustment." Similarly, in VVF's case (supra), which is also reported as VVF Ltd Vs DCIT- TS 84 ITAT 2010, it was specifically noted by the coordinate bench, again in paragraph 7, that "We have noted that as was also noted by the Transfer Pricing Officer himself at page 3 of his order the assessee has borrowed foreign currency loans in US Dollars and for the purposes of investing in subsidiaries abroad, from ICICI Bank at the rate of LIBOR + 3%" and proceed to accept the same, at LIBOR + 3% as an Internal CUP, by observing that "In such a situation, and for the reasons we have discussed earlier, internal CUP is more reliable". In this view of the matter, the stand of the authorities below in replacing the LIBOR with Indian PLR cannot be upheld. It is not even the case of the revenue authorities that the basis points above the LIBOR are inadequate or too low. Accordingly, benchmarking by the assessee cannot be faulted with.

10. In view of the above discussions, as also bearing in mind entirety of the case, we delete the impugned ALP adjustment. The assessee gets the relief accordingly.

11. Ground nos 1 to 4 are thus allowed.

12. In ground nos. 5, 6 and 7, which we will take up together, the assessee has raised the following grievances:-

> **5. The learned CIT (Appeals) has erred in confirming that the pledge of shares of Virgo Europe SPA given to the State Bank of India, which is an Indian Bank, for the loan given by the State Bank of India to Virgo Europe SPA amount to an international transaction.**

6. The learned CIT (Appeals) has erred in confirming the addition of the amount of Rs.15,94,478/- as adjustments towards arm's length price in respect of pledge of shares made by the appellant company of Virgo Europe SPA, pledged to the State Bank of India for credit line received by Virgo Europe SPA, whose shares are pledged.

7. The learned CIT (Appeals) has erred in confirming that the adjustment value of the pledge of shares with the State Bank of India at Rs.15,94,478/- being 2.5% of the book value of 1,10,000 no. of shares costing Rs.6,37,79,120/- owned by the appellant company, though only 32,000 shares costing Rs. 1,86,89,400/- were provided as pledge by the appellant company, and the said shares were pledged only for part of the year.

13. So far as this grievance of the assessee is concerned the relevant material facts are like this. The assessee has pledged certain shares with State Bank of India as a collateral security for loan to it's associated enterprises Virgo Euro SPA. The value of these shares was stated to be Rs. 6,37,79,100. The Transfer Pricing Officer computed value of this pledge and arm's length compensation for the same at 2.5%. Accordingly the Assessing Officer made an arm's length price adjustment at Rs. 15,94,478. Aggrieved assessee carried the matter in appeal before the CIT(A) but without any success. While confirming the stand of the learned CIT(A) observed as follows:-

i. The appellant has stated that pledging of shares is not considered as International Transaction even after the amended definition of International transaction. In this regard it is noted that the definition of international transaction" contained in the explanation to section 92B is inclusive and not exhaustive. It is further noted that Guarantee has specifically been included as international transaction. In case of guarantee the assessee facilities its AE to take loan from any bank for which it stands as a guarantor. For such guarantee given it assumes risk since but for this guarantee given by it the bank could not have given loan to the AE. Since assessee has assumed risk, the same has specially been incorporated as an international transaction us. 92B. Similarly, where the assesse pledges its securities to any bank and on that basis loan is availed by the AB, same would also amount to international transaction since nature of services rendered by the assessee and risk assumed is similar. But for this pledging of shares by assessee, the bank would not have sanctioned loan to the AB. In a third party situation, no entity will assume this risk of pledging its assets, which can be confiscated by the lender on default by the AE, unless it is compensated for the same. Thus, in this case also a compensation was required to be charged by the appellant from its AE which has not been done. This argument of appellant is therefore not acceptable.

ii. The appellant has stated that rate of 2.5% charged by the TPO is quite high. It is mentioned here that in a recent decision dated 6' June, 2012 in ITA Nos. 8597/Mum/2010

and 7999/Mum/2011 in the case of Mahendra & Mahendra Ltd., the Hon'ble ITAT, Mumbai Bench has held that guarantee fee of 3% would represent the arm's length price. Further, Hon'ble ITAT Mumbai in the case of M/s Tecnimont ICB Pvt. Ltd. Vs. DCIT vide ITA No. 6394/Mum/2012(A.Y. 2008-09) dated 28.8.2013, have upheld guarantee commission at a rate of 3%. In view of these decisions, the rate of 2.5% applied by the TPO is quite reasonable and cannot be stated to be high. Accordingly the contention of the appellant is not acceptable.

iii. Without prejudice the appellant contended that it has pledged 32000 shares only and not the entire 1,10,000 shares. In this regard on perusal of the balance sheet of appellant, it is noted that in Schedule V appended to the annual accounts, it is clearly mentioned that these shares are pledged in favour of state bank of India Frankfurt as a security against loan advanced to Virgo Europe SPA." In view of this fact this contention of the appellant being factually incorrect is not acceptable. Consequently the adjustments made by the AO in this case is upheld.

14. The assessee is aggrieved and in further appeal before us.

15. We have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

16. We find that there is no dispute that the shares are pledged, at the instance of or and for the benefit of, an associated enterprises of the assessee, keeping this in mind, when we look at definition of ' transaction' in section 92F(v), it is clear that "transaction includes an arrangement, understanding or action in concert-(A) whether or not such arrangement, understanding or action in concert is formal or in writing; or (B) whether or not such arrangement, understanding or action is concert is intended to enforced by legal proceedings". It cannot, therefore, be said that pledging shares for the benefit of an associated enterprises is not a transaction between the associated enterprise. It is akin to a corporate guarantee and is, therefore, required to be benchmarked as such. The next question is as to what is the rate at which such corporate guarantee is to be benchmarked, and whether a corporate guarantee constitutes international transaction at all. Both of these issues are now covered by a rather recent co-ordinate bench decision, in the case of **Siro Clinpharm Pvt. Ltd vs. ITO [(2012) 131 taxmann.com 73 (Mum)]**, which, *inter alia*, holds as follows:-

11. Learned counsel's primary contention is that it is not an international transaction at all, and, to that extent, the issue is covered, in favour of the assessee, by decisions of the coordinate benches in assessee's own cases for the assessment years 2009-10 and 2010-11, wherein it is, inter alia, held that that issuance of a corporate guarantee is "outside the ambit of international transaction under section 92B(1) of the Act". However, in the case of

Redington (supra), Their Lordships of Hon'ble Madras High Court implicitly rejected this approach in accepting the findings of the Tribunal to the effect that "provision of guarantee always involves risk and there is a service provided to the Associate Enterprise in increasing its creditworthiness in obtaining loans in the market, be from Financial institutions or from others" holding that "the adjustments made on guarantee commissions both on the guarantees provided by the Bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of Associate Enterprise". Once Their Lordships hold so and uphold the contention that 'corporate guarantee' constitutes an international transaction under section 92B, even in the pre-amendment assessment year that Their Lordships were dealing with i.e. assessment year 2009-10, it cannot be open to us to take a stand diametrically opposed to view so taken by Their Lordships. We humbly bow to, to borrow the words of House of Lords in Casell & Co (supra), higher wisdom of the Hon'ble Courts above. As the things stand now, in the light of the above judicial development, the ratio of a series of decisions of this Tribunal, including in the cases of assesse's own case (reported as 177 TTJ 609), in the case of Micro Ink Ltd Vs ACIT [(2016) 157 ITD 132 (Ahd)] and Bharati Airtel Ltd Vs ACIT [(2014) 63 SOT 113 (Del)], holding that issuance of corporate guarantees does not constitute 'international transaction' under section 92B does not hold good in law any longer. The fact that these words are of non-jurisdictional High Court, in view of anything contrary thereto having been expressed by Hon'ble jurisdictional High Court and for the detailed reasons set out in our analysis earlier, does not make any material difference. Many of these decisions are authored by one of us (i.e. the Vice President) but that does not make any difference either. Once a higher judicial forum has expressed it's views on an issue, our views have to make way for the same. We are bound to follow the views expressed by the Hon'ble Courts above, and it is this discipline which is true strength of hierarchical judicial system that exists in our country. We, therefore, hold that the issuance of corporate guarantee by the assessee did constitute an international transaction, and, to that extent, reject the plea of the assessee.

12. The next issue, thereafter, is whether determination of arm's length price at 3% is sustainable in law. Learned representatives fairly agree that as held by Hon'ble jurisdictional High Court in the case of CIT Vs Everest Kento Cylinders Ltd [(2015) 58 taxmann.com 152 (Bom)], rejected similar comparison of corporate guarantees with bank guarantees and upheld determination of arm's length price at 0.5% by observing as follows:

> **In the matter of guarantee commission, the adjustment made by the TPO were based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of a Corporate Guarantee. No doubt these are contracts of guarantee, however, when they are Commercial banks that issue bank guarantees which are treated as the blood of commerce being easily encashable in the event of default, and if the bank guarantee had to be obtained from Commercial Banks, the higher commission could have been justified. In the present case, it is assessee company that is issuing Corporate Guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which applied for issuance of a Corporate guarantee are distinct and separate from that of bank guarantee and accordingly we are of the view that commission charged cannot be called in question, in the manner TPO has done. In our view the comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a**

Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company.

13. We see no reasons to take any other view of the matter than the view so taken by Hon'ble jurisdictional High Court. We, therefore, reject the determination of 3% arm's length price by the authorities below and direct the Assessing Officer to adopt 0.5% as an arm's length consideration for the corporate guarantee issued by the assessee in favour of its AE. To this limited extent, we uphold the plea of the assessee.

17. Respectfully following the above decision, while we uphold the action of the authorities below in principle but we scale down the ALP adjustment to .5% of the correct value of shares and for the actual pledge period. To this extent, the assessee will get relief. Ordered, accordingly.

18. Grounds 5, 6 and 7 stand allowed for statistical purposes in the terms indicated above.

19. In ground nos. 8 and 9, the assessee has raised the following grievances:-

8. The learned CIT (Appeals) has erred in not allowing the disallowance of Rs.30,99,342/- made by the assessing officer on account of unrealized receivables from exports amounting to Rs.30,99,342/- from the deduction allowable u/s 10B of the Income Tax Act.

9. The learned CIT (Appeals) has erred in not giving relief to the appellant company in respect of the mistaken disallowance made by the assessing officer of the export turnover of Rs.30,99,324/-, which could not be bought in India within the required time, though that turnover was already excluded from the export turnover of the appellant company for the purpose of calculation of deduction u/s 10B.

20. Learned representative fairly agree that this issue has not been adjudicated by the CIT(A) on merits. The matter is thus remitted to the file of the CIT(A) for adjudication *de novo* in accordance with the law, by way of a speaking order and after giving yet another opportunity of hearing to the assessee. Ordered, accordingly.

21. Ground Nos. 8 to 9 are thus allowed for statistical purposes.

22. In the result, ITA No 3577/Mum/2014 is thus partly allowed in the terms indicated above.

23. We now take up ITA No 5337/Mum/2016.

24. By way of this appeal, the assessee appellant has challenged correctness of the order dated 26th May 2016 in the matter of penalty under section 271(1)(c) of the Act for the assessment year 2008-09.

25. Grievances raised by the assessee are as follows:-

> **1. The learned CIT (Appeals) has erred in confirming the penalty of 100% of the tax, U/s 271(1)(c) of the Income Tax Act in respect of addition of Rs 15,94,478/- on account of Arm's Length Price computed by the assessing officer in respect of pledge of shares of the A namely Virgo Europe Spa to which the loan for which the pledge of shares was given was granted by State Bank of India.**
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> **2. The learned CIT (Appeals) has erred in not appreciating the fact that transaction of pledge of shares of Virgo Europe Spa with State Bank of India for loan granted by State Bank of India to Virgo Europe Spa does not constitute an international transaction.**
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> **3. Without prejudice to the grounds of appeal no 1 and 2 above, the learned CIT (Appeals) has erred in not appreciating the fact that the assesse has pledged 32,000 equity shares and not 1,10,000 equity shares of Virgo Europe Spa as considered by the assessing officer erroneously and further the pledge was done not for the full year but only from 10.08.2007 to year the end; and therefore, the addition made on account of this pledge of shares is incorrectly calculated at Rs 15,94,478/- on 1,10,000 equity shares and further, for the period of whole year, is incorrect.**

26. To adjudicate on this appeal it is sufficient to take note of the fact that the related quantum addition is in respect of pledge of shares for seeking financing for the associated enterprises. As we have held earlier in this consolidated order, this action was in the nature of a corporate guarantee. It is in this connection that the impugned penalty for concealment of income has been levied which has been upheld by the CIT(A). The assessee is aggrieved and is in appeal before us.

27. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

28. We have noted that there are large number of decisions of the co-ordinate benches, which held filed at the relevant point of time, that issuance of corporate guarantees did not constitute an international transaction under section 92B, as it had no bearing on the profits, income, losses or assets of the enterprise giving such guarantee. This stream of decisions included decisions as in the cases of **Micro Ink Ltd. vs. ACIT [(2016) 157 ITD 132 (Ahd)]**, **Siro Clinpharm Pvt. Ltd vs. DCIT [(2017) 88 taxmann.com 338 (Mum)], Bharti Airtel Ltd Vs. ACIT [(2014) 43 taxmann.com 150 (Del)].** In view of this position, it cannot be said that assessee's explanation that the guarantee given by the pledge of shares did not constitute international transaction was not a reasonable explanation. Accordingly, it was not a fit case for imposition of penalty u/s. 271(1)(c). In view of these discussions, as also bearing in mind entirety of the case, we are of the considered view that the impugned penalty must be deleted. We order so. The assessee gets the relief accordingly.

29. In the result, ITA No. 5337/Mum/2016 is allowed.

30. We will now take up ITA No. 5617/Mum/2016.

31. By way of this appeal, the assessee appellant has challenged correctness of the order dated 30.06.2016 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s 144C of the Income Tax Act 1961 for the assessment year 2009-10.

32. Grievances raised by the assessee appellant are as follows:-

> **1. The learned CIT (Appeals) has erred in confirming that the pledge of shares of an Associated Enterprise(AE) with State Bank of India for the loan granted to the AE amounts to international transaction liable for assessment of arm's length price thereof.**
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> **2. Without prejudice to the grounds of appeal 1 above, the learned CIT (Appeals) has erred in assessing the arm's length value of the pledge of shares of an AE at 2.5% of the value of the shares in spite of the fact that the loan was secured by corporate guarantee of the 100% holding company of the appellant company namely Virgo Engineers ltd.**
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> **3. Without prejudice to the grounds of appeal no 1 above, the learned CIT (Appeals) has erred in confirming the addition on account of arm's length value for the pledge of shares of the AE namely Virgo Europe Spa at Rs. 5,36,880/-**

33. Learned representatives fairly agree that whatever we decide for the assessment year 2008-09 will apply *mutatis mutandis* for this assessment year as well. Vide our order above, we have upheld the ALP adjustment in principle but scaled down it's quantum to .5% of the correct value of shares for the actual period of pledge during the year. Respectfully following the above decision, we direct the Assessing Officer to grant same relief in this year as well. To this extent, plea of the assessee is upheld.

34. In the result, ITA No 5617/Mum/2016 is partly allowed in the terms indicated above.

35. We now take up ITA No. 361/Mum/2015.

36. By way of this appeal, the assessee appellant has challenged correctness of the order dated 10.10.2014 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s 144C of the Income Tax Act 1961 for the assessment year 2010-11.

37. In ground nos. 1 to 3, which we will take together the assessee appellant has raised the following grievances:-

1. The learned CIT (A) has erred in upholding the addition of the amount of Rs. 55,61,575/- in the income of the appellant company as adjustment in the arm's length price of the interest charged on the advances given to the AE namely Virgo Engineers Inc.
2. The learned CIT (A) has erred in not appreciating the fact that the appellant company has charged fair rate of interest of 4.75% in US Dollars on the US Dollar denominated loan given to its associated enterprise namely, Virgo Engineers Inc., which was based on applicable LIBOR plus interest rate for US Dollar loans prevailing then.

3. The learned CIT (A) has erred in not appreciating that the interest rate paid by the appellant company in Indian Rupees denominated borrowing is not material for the purpose of calculating arm's length interest rate in respect of loan advanced to an AE denominated in US Dollars.

4. The learned CIT (A) has erred in concluding that the arm's length rate of interest applicable to lending in US Dollar by the appellant company was 11.26% for the year.

38. Learned representatives fairly agree that whatever we decide in the above issues for the assessment year 2008-09 will apply mutatis mutandis for this assessment year as well. Vide our detailed discussion earlier in this order we have upheld the similar plea of the assessee and deleted the impugned ALP adjustment. We see no reasons to take any other view of the matter for this assessment year. Accordingly, we delete the impugned ALP adjustment of Rs. 55,61,575. The assessee gets the relief accordingly.

39. Grounds nos. 1 to 4 are thus allowed.

40. In ground nos. 5 to 7 which we will take up together, the assessee has raised the following grievances:-

5. The learned CIT (A) has erred in not appreciating the fact that pledging of the shares of Virgo Europe SPA with the State Bank of India did not amount to entering into international transaction with an associated enterprise, though the pledge was given for securing credit line to the AE, Virgo Europe SPA.

6. The learned CIT (A) has erred in upholding the addition of the amount of Rs. 1,94,816/- as adjustment towards determination of arm's length price in respect of pledge of shares of Virgo Europe SPA, by the appellant company, pledged with State Bank of India for credit line received by Virgo Europe SPA; specially when the parent company of the appellant company, namely Virgo Engineers Ltd., has given corporate guarantee for the said credit line and addition for the said guarantee was made in the income of the parent company.

7. The learned CIT (A) has erred in upholding the adjustment value of the pledge of shares with the State Bank of India at 1% of the cost of the pledged shares and equal to Rs.1,94,816/-

41. Learned representatives fairly agree that whatever we decide for the assessment year 2008-09 will apply *mutatis mutandis* for this assessment year as well. Vide our order above, we have upheld the ALP adjustment in principle but scaled down it's quantum to .5% of the correct value of sharing for the actual period of pledge during the year. Respectfully following the above decision, we direct the Assessing Officer to grant same relief in this year as well. To this extent, plea of the assessee is upheld.

42. Ground no 5, 6 and 7 are thus partly allowed for statistical purposes in the terms indicated above.

43 ITA No 361/Mum/2015 is thus partly allowed in the terms indicated above.

Pronounced in the open court today on the 8th day of March, 2022.

Sd/-	Sd/-
Amarjit Singh	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 8th day of March 2022.

Copies to: *(1)* *The Appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai