

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-2' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 6029/DEL/2017 [A.Y. 2011-12]  
ITA No. 6536/DEL/2017 [A.Y. 2013-14]  
ITA No. 6537/DEL/2017 [A.Y. 2014-15]

The A.C.I.T.  
Central Circle - 26  
New Delhi

Vs.

M/s Shyam Telecom Ltd  
A-60, Naraina Industrial Area,  
Phase - I, New Delhi

PAN: AAACS 0298 E

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv  
Ms. Deepashree Rao, CA

Department By : Shri M. Baranwal - DR

Date of Hearing : 04.04.2022  
Date of Pronouncement : 04.04.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above three separate appeals by the Revenue are preferred against the order of the Commissioner of Income Tax [Appeals] - 38, New Delhi dated 14.06.2017 pertaining to Assessment Year 2011-12,

Commissioner of Income Tax [Appeals] - 26, New Delhi dated 28.08.2017 pertaining to Assessment Year 2013-14 and Commissioner of Income Tax [Appeals] - 26, New Delhi dated 28.08.2017 pertaining to Assessment Year 2014-15.

2. Since common grievance is involved in all the captioned appeals and were heard together, they are being disposed of by this common order for the sake of convenience and brevity.

2. The common grievance of the Revenue in all the three appeals reads as under:

"1. The Ld. CIT(A) has erred in relying on the case of CIT vs Cotton Natural (I) (P.) Ltd.( 55 taxman. Com 523 Delhi High Court) because the case of the assessee under reference pertains to interest on loan and its taxability and not on the issues raised in the order relied upon. Hence, SBI Market Lending Rate will be applicable because money has been loaned from an Indian Rupee Account.

2. The Id. CIT(A) has deleted the addition without considering the fact that loan advanced to the AE has benchmarked the interest rate to its AE with SBI PLR as the loan has been

advanced from India in Indian Currency of the recipient AE that is in US Dollars. .

3. That the grounds of appeals are without prejudice to each other."

3. Representatives were heard at length. Case records carefully perused.

4. A perusal of the aforementioned ground shows that the solitary allegation of the revenue is that the loan advanced to the Associated Enterprise [AE] should have been bench marked with interest rate to its AE with SBI PLR as the loan has been advanced from India in Indian currency of the recipient AE in US dollars.

5. Briefly stated, the facts of the case are that the assessee had advanced loan to STL Inc., based at USA prior to A.Y. 2007-08. This means that no fresh loan was advanced during the year under consideration and we have to see the past assessment history of the assessee qua the benchmarking of interest on the sum advanced to the STL Inc. USA.

6. A perusal of the order of the ld. CIT(A) for the captioned Assessment Years shows that the ld. CIT(A) has followed the findings given in earlier assessment years. It would be pertinent to refer to the findings given in Assessment Year 2010-11 and the same read as under:

"5.2 I have carefully considered the submissions of the appellant the order of the TPO for Assessment Year 2010-11 in the case of the appellant. It is seen that in the case of the appellant for AYs 2007-08 to 2009-10 the Revenue has consistently taken LIBOR mark-up thereon as the basis of determination of interest on the International Transaction loan to foreign AE. Respectfully following the judicial pronouncements of Hon'ble Delhi High Court in the case of Cotton Naturals (Supra) and Bharti Airtel (Supra), these grounds of appeal are allowed."

4.3 Since the facts are similar in the present appeal, following the above decision, transfer price addition of Rs. 1,73,80,385/- u/s 92C(3) on account of notional interest receivable made by the AO/TPO is ordered to be deleted. Hence, grounds of appeal 3 and 4 are allowed."

7. The above finding was given in Assessment Year 2011-12. In Assessment Year 2013-14, the Id. CIT(A) has held as under:

"This issue was dealt with by the Id. CIT(A) -38 for Assessment Year 2010-11, 2011-12 and 2012-13 has computed the ALP@ LIBOR plus basis points on the loan to the AE of the assessee. Respectfully following the precedent on identical set of facts the adjustment is directed to be restricted accordingly to LIBOR plus 250 basis points as done by the assessee. The ground of appeal is disposed of in the above terms."

8. In Assessment Year 2014-15, the Id. CIT(A)'s finding reads as under:

"This issue was dealt with by the Id. CIT(A) -38 for Assessment Year 2010-11, 2011-12 and 2012-13 has computed the ALP@ LIBOR plus basis points on the loan to the AE of the assessee. Respectfully following the precedent on identical set of facts the adjustment is directed to be restricted accordingly to LIBOR plus 290 basis points as done by the assessee. The ground of appeal is disposed of in the above terms."

9. In Assessment Years 2008-09 and 2009-10, the quarrel travelled upto the Tribunal, and this Tribunal in ITA Nos. 2682 and 2683/DEL/2013, vide order dated 08.10.2021 has, inter-alia, held as under:

"6.2 The Hon'ble Delhi High Court in the case of Cotton Naturals I Pvt. Ltd. (supra) has thus held that transaction cost or hedging cost is to be born and paid by the borrower and not by the lender and thus no adjustment for markup of transaction cost, is required to be charged. In the case of Everest Kanto cylinder Limited (Supra) LIBOR rate has been held at arm's length in the facts of that case, and said ratio cannot be applied over facts of the case before us.

6.3 In the instant case, the AE was a relatively new entity in the year under consideration and credit rating of the same being not good, the assessee has advanced loan to the AE, so if in comparable situation, a bank in India sanction a loan to any entity in USA in uncontrolled manner transaction, then credit rating of the loan recipient entity should be taken into account. The AO has followed earlier AY 2007-08 and has not taken into consideration credit rating of the AE in the year under consideration, which has to be based on specific information and not on the basis of assumption. Before the Ld. CIT(A), the assessee has cited the RBI Master Circular and submitted that interest rate on foreign currency working capital loan for a period in excess of 180 days should be as under:

<u>S. No.</u>	<u>Relevant Year</u>	<u>Interest Rate (per annum)</u>
1.	2006	LIBOR + 3% p.a.
2.	2008	LIBOR + 3% p.a.
3.	2009	LIBOR + 505% p.a.
	Average	LIBOR + 3.83% p.a.

6.4 In view of the above, we are of the opinion that no markup for transaction cost should be applied on LIBOR rate for benchmarking of the international transaction; however, appropriate markup for credit rating should be applied depending on credit rating of AE. The Assessing Officer in assessment year 2008-09 and 2009-10 has not given any justification for applying markup of 400 points for credit rating and, therefore, in the interest of justice, the issue in dispute is restored to the file of the Learned Assessing Officer for deciding limited issue of markup for credit rating over LIBOR rate of interest after taking into 9 ITA No 2682 & 2683/Del/2013 consideration criteria for credit rating during relevant period. The grounds of the appeal of the assessee for both the assessment years are accordingly allowed for statistical purposes.

7. In the result, the appeals of the assessee for assessment year 2008-09 and 2009-10 are allowed for statistical purposes."

10. Considering the past history of the assessee wherein the appellate authorities have followed the decision of the Hon'ble Jurisdictional High Court in the case of Cotton Natural I. Pvt Ltd 55 Taxmann.com 523, we do not find any reason to interfere with the findings of the ld. CIT(A). The captioned appeals by the revenue are, accordingly, dismissed.

11. In the result, all the three appeals of the Revenue in ITA Nos. 6029, 6536 and 6537/DEL/2017 stand dismissed.

The order is pronounced in the open court on 04.04.2022 in the presence of both the rival representatives.

**Sd/-**

**[YOGESH KUMAR U.S]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 04<sup>th</sup> April, 2022.

VL/

Copy to :

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
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