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

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1579/Mum/2017

(A.Y: 2012-13)

Godrej Consumer Products Ltd., Kalyaniwalla & Mistry LLP, Esplanade House, 2nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai – 400 001.	Vs.	DCIT, CC-14(1)(1) Aayakar Bhavan, 4th Floor, MK Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AABCG3365J		
Appellant	..	Respondent

Appellant by :	Mr.Farrokh.V. Irani.AR
Respondent by :	Dr.Yogesh Kamat. CIT DR & Mr.Satya Pinisetty.DR

Date of Hearing	27.01.2022
Date of Pronouncement	05.04.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order u/s 143(3) r.w.s 144(C)(13) of the Income Tax Act, 1961 passed in pursuance to directions of the DRP.The assessee has raised the following grounds of appeal.

NON TRANSFER PRICING ISSUES

1. The learned Dispute Resolution Panel erred in confirming the

action of the Assessing Officer in computing the deduction under Section 801C / 801E of the Act claimed by the eligible units of the Appellant by excluding claims received, miscellaneous income and sundry balances written back forming part of the 'Other Income' of such eligible units and in reducing the deduction claimed accordingly.

2.The learned Dispute Resolution Panel erred in confirming the action of th undertakings to the eligible undertakings of the Appellant, while computing the deduction u/s 80IC/ 801E of the Act:

> *Miscellaneous Expenses*

> *Conveyance and Travelling Expenses*

> *Rent. Rates and Taxes*

> *Advertisement and Publicity*

> *Schemes and Promotions*

3. The learned DRP erred in holding that the provisions of Section 14A of the Act were applicable in the case of the Appellant, since the dividend from shares/units of mutual funds is subjected to tax in the hands of the payer under section 115-O/115- R of the Act and as the Appellant receives an amount after the tax has been paid, it cannot be said that such dividend income is not chargeable to tax under the Act and, hence, the provisions of Section 14A are not attracted in the case of the Appellant.

4. The learned Dispute Resolution Panel erred in confirming the action of the Assessing Officer in making a disallowance under Section 14A of the Act in the absence of exempt income.

5. The learned Dispute Resolution Panel erred in holding that the interest expenditure on borrowings utilized for the purpose of the business activities of the Appellant was not allowable under Section 36(1)(iii) of the Act and in disallowing interest expenditure under Section 14A of the Act aggregating to Rs.1,93,000/- in accordance with the provisions of sub-clause (ii) of Clause 2 of Rule 88D.

6. Without prejudice to the Appellant's contention that no interest is allocable to the earning of exempt dividend income and in any

view of the matter, the Appellant submits that the disallowance computed at Rs. 1,93,000/- is arbitrary and grossly excessive and the same requires to be deleted.

7 The learned Dispute Resolution Panel erred in confirming the action of the Assessing Officer in disallowing administrative and other expenditure under Section 14A of the Act aggregating to Rs.20,32,000/- towards the earning of exempt dividend income, in accordance with the provisions of sub-clause (iii) of Clause 2 of Rule 8D

8. Without prejudice to the Appellant's contention that no expenditure is [al]locable to the earning of exempt dividend income and in any event, the Appellant submits that the disallowance computed at Rs.20,32,000/- is arbitrary and grossly excessive and the same requires to be reduced substantially.

9 The learned Dispute Resolution Panel erred in confirming the action of the Assessing Officer in considering the strategic long term investments made by the Appellant in shares of its subsidiary companies, as investments yielding tax free income for computing the average value of investments for the purpose of Rule 8D.

10. The learned Dispute Resolution Panel erred in confirming the action of the Assessing Officer in holding that the disallowance made under Section 14A of the Act under normal computation of income is also required to be added back for computing book profits under section II 5JB of the Act. The Appellant submits that section ii 5JB of the Act is a separate code by itself and the provisions of Section 14A cannot be applied for computing the book profits under section 1 15JB of the Act.

TRANSFER PRICING ISSUES

Corporate Guarantee given on behalf of the Associated Enterprises

11. The learned Dispute Resolution Panel erred in holding that the transaction of giving corporate guarantees by the Appellant on behalf of its Associated Enterprises would fall within the

definition of an 'international transaction" under Section 9213 of the Act and thereby erred in determining the Arm's Length price in respect of such Transaction.

12. The learned Dispute Resolution Panel erred in holding that the credit rating of the AE is not equal to the credit rating of the Appellant Company and therefore a higher risk is involved while giving a guarantee on behalf of the AE's.

13. The teamed Dispute Resolution Panel erred in holding that the guarantee commission rate charged by a third party bank to the Appellant Company cannot constitute a comparable rate.

14. The learned Dispute Resolution Panel erred in holding without any basis that the arm's length rate of corporate guarantee commission in respect of the guarantees given by the Appellant Company in favour of its Associated Enterprises is at 2% per annum.

15. The learned Dispute Resolution Panel erred in confirming the action of the TPO in relying on the Bank Guarantee rates and information obtained from various banks a1s. 133(6) of the Act for the purpose of benchmarking the Corporate Guarantee given by the Appellant on behalf of the its Associated Enterprises, without considering the facts of the case.

16. Without prejudice to the above grounds 11 to 15, and in any event, the Appellant submits that the transfer pricing adjustment made in respect of corporate guarantee given by the Appellant Company on behalf of its Associated Enterprises should be restricted to the actual loan exposure of the Associated Enterprises and not on the entire amount of Corporate Guarantee given by the Appellant Company.

17. Without prejudice to the above grounds II to 16, and in any event, the Appellant submits that the transfer pricing adjustment made in respect of corporate guarantees given by the Appellant on behalf of its Associated Enterprises is highly arbitrary and excessive and needs to be reduced substantially.

Interest on Outstanding Receivables from the A.E.

18. The learned Dispute Resolution Panel erred in confirming the

re-characterisation of outstanding receivables from the AEs beyond 60 days as a "Loan to AEs" and imputing Interest on the said amount.

19. The learned Dispute Resolution Panel erred in holding that the said outstanding receivables from the AEs would fall within the definition of an "international transaction" under Section 92B of the Act, since such receivables comprised of the amounts due on account of sales made to the AEs, which itself was an international transaction.

20. The learned Dispute Resolution Panel erred in directing the AO / TPO to compute interest at LIBOR + 3% in respect of Interest on Loan advanced to the Associated Enterprises without appreciating the fact that the sales transaction with the AEs was at Arm's Length and the fact that the Appellant does not charge any interest on overdue balances from third parties.

21. Without prejudice to the Appellant's contention that the amount receivable on sales made to AEs cannot be treated as a loan, the adjustment made is highly arbitrary, excessive and needs to be reduced substantially.

2. The Brief facts of the case are that, the assessee company is engaged in the business of manufacture of fast moving consumer goods and manufactures toilet soaps, hair colour, liquid detergents and other toiletries, insecticides, air care, body care, household and other products has manufacturing units at various locations in India. The assessee has filed the return of income electronically for the A.Y 2012-13 on 30.11.2012 disclosing a total income of Rs.4,05,74,15,905/- after claiming deduction u/s 80IC/80IE of the Act of Rs.

1,72,80,21,460/-.The assessee has paid tax u/s 115JB on the book profit of Rs.7,60,53,97,849/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with the questionnaire are issued. In compliance the Ld.AR of the assessee appeared from time to time and submitted the details. The A.O on perusal of the facts found that the assessee has international transactions with its associate enterprises (A.E.) exceeding Rs.15crores, therefore the matter was referred to the transfer pricing officer (TPO). The TPO upon the receipt of the information from the AO and form.no 3CEB has issued notice u/s 92CA(3) of the Act along with questionnaire to submit the details and documents in support of arm's length price (ALP). The T.P.O find that the assessee has provided corporate guarantees to the lenders that enabled its overseas subsidiaries to borrow the funds. The TPO has dealt on the methodology and the submissions of the assessee and benchmarked the rates applied and charged by the banks for giving corporate guarantee, the TPO has dealt on facts and the bank guarantee rates at page 8 to 10 of the order. Finally, the TPO has relied on the judicial decisions on the several approaches for determination of ALP in the corporate guarantee by the Indian companies and applying Rule 10B of the I T Rules, which laid down

the method of determination of ALP u/s 92C of the Act. The TPO considering all the factors and the methodology adopted has estimated the Corporate Guarantee @2% of barrowings and dealt at page 23 Para 6.8 as under:

> *6.8 On consideration of different methods of determining the ALP of a corporate guarantee as discussed above and the availibilty of data, I am of the view that the CUP method with adjustments offers the least complicated approach with maximum data available. Hence, this is selected as the Most Approprate Method. As per the details of the guarantee fee rates charged by banks to Indian companies discussed earlier, the rates vary from 1.10% to 3% depending upon various factors. As discussed earlier, the corporate guarantee rate would be normally higher the bank guarantee rate, and further that corporate bank guarantee rate for guarantee given to a foreign bank for foreign based companies would normally be higher than the corporate guarantee rate charged to an Indian entity. Hence, the range of corporate guarantee fee for foreign based transactions should conservatively be in the range of 1.5% to 3.5%. In the present case, considering the fact that the loan has been taken for acquiring a vessel, I estimate the corporate guarantee fee to be 2% of the actual borrowed amount and re-compute the Aim's Length Price accordingly.*

3. Further, TPO has granted working capital adjustment in respect of the interest on delayed debtors and determined the ALP of international transactions of Rs.32,62,50,223/- dealt at page 24 Para 8.0 as under:

8. Conclusion: In view of the above, the adjustment in ALP in respect of international transaction reported by the tax payer is determined as under:

Sr. No	*Nature of transaction*	*Adjustment*
1	*Corporate guarantee*	*32,61,30,622*
2	*Interest on delayed debtors*	*1,19,601*
	Total	*32,62,50,223*

It is hereby that the findings and discussions made in this order are applicable only in respect of reference revised for A.Y 2012-13. The A.O may consider initiating penalty proceedings for above adjustment.

The TPO has passed the order U/s 92CA(3) of the Act dated 29.01.2016.

4. Subsequently, the A.O. considering the transfer pricing adjustments and disallowance u/sec14A of the Act has determined the taxable income of Rs.4,75,92,29,588/- as per normal income tax provisions and computed the book profit U/sec115JB of the Act of Rs. 7,60,92,72,849/- and passed the order u/s 143(3) r.w.s 144C(1) of the Act dated 25.02.2016.

5. Against the draft assessment order the assessee has filed objections in Form-35A before the DRP. Whereas the DRP has dealt on the objections and issued specific directions and passed the order u/s 144C(5) of the Act on 31.10.2016.The AO has passed the order considering the transfer pricing adjustment, the DRP directions,

reallocation of expenses and CBDT Circular and disallowance u/s 14A of the Act and determined the total income under the normal provisions of Income Tax of RS. 475,92,23,316/- and the book profits u/s 115JB of the Act of Rs. 760,76,22,849/- and passed the order u/s 143(3) r.w.s 144(C)(13) of the Act dated 25.01.2017. Aggrieved by the order, the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing the Ld. AR made elaborate submissions on the grounds of appeal pertaining to (i) the DRP/A.O. has erred in computing deduction u/sec80IC of the Act by excluding certain items forming part of operational income.(ii) the DRP/A.O. erred in reallocating 50% of administrative and selling expenses of non eligible units to eligible units in computing the deduction U/sec80IC of the Act(iii)the corporate guarantee commission percentage is on the higher side on comparing to the industry standard and the charging of interest on outstanding receivables from AE is not a prudent practice.(iv) the disallowance computed u/sec14A r.w.r8D(2) is not in accordance with the IT rules and no exempt income is earned. The Ld.AR substantiated the submissions with the judicial decisions in the assessee own case and catena of legal case laws and voluminous

paper book and prayed for allowing the appeal.Contra, the Ld. DR relied on the order of the DRP/TPO and AO.

7. We heard the rival submissions and perused the material on record. The Ld.AR on the first disputed issue submitted that the DRP erred in confirming the action of the A.O in computing the deduction u/s 80IC of the Act claimed by the eligible units excluding certain items forming part of the operational income of such eligible units and in reducing the deduction. We find in the assessee's own case for the A.Ys 2009-10, 2010-11 & 2011-12 the Honble Tribunal has restored the matter to the file of the AO to determine whether the said items form part of the operational income of the eligible units and allow the deduction u/s 80IC of the Act. We find in the A.Y 2011-12, the Hon'ble Tribunal in ITA No. 1074 & 1003/Mum/2016 dated 25.02.2020 has observed at page 4 & 5 at Para 6 to 7 read as under:

> *6. We have considered rival submissions and perused the material on record. The issue before us is, whether certain items of income, such as, claims received, misc. income, sundry balance written back, etc., can be considered as part of the profits of the eligible unit for computing deduction under section 80IC of the Act. Notably, identical issue came up for consideration before the Tribunal in assessee's own case for the assessment year 2009–10. While deciding the issue in ITA no.1299/Mum./2013, dated 20th April 2016, the Tribunal has restored the issue to the Assessing Officer with certain directions.*

> *7. Pertinently, while deciding same issue in assessee's own case in assessment year 2010–11 in IT(TP)A no.1899/Mum./2015, dated 5th September 2019, the Tribunal following its earlier decision again restored the issue to the Assessing Officer for fresh adjudication. Facts being identical, following the decisions of the Co–ordinate Bench in assessee's own case as referred to above, we restore the issue to the Assessing Officer for fresh adjudication with similar directions. The Assessing Officer must decide the issue after providing adequate opportunity of being heard to the assessee. This ground is allowed for statistical purposes.*

We restore the disputed issues to the file of the assessing officer with the similar directions and allow the ground of appeal for statistical purpose.

8. Whereas on the second disputed issue, with respect to reallocating 50% of certain administrative and selling and marketing expenses of the non eligible units to the eligible units while computing the deduction u/s 80IC of the Act, the DRP has erred in confirming the action of the AO. We find the issue is covered in assessee's own case in ITA No. 1102/Mum/2015 for the A.Y 2010-11 dated 19.06.2019 at page 5 to 7, Para 2.4 to 4.1 read as under:

> *2.4 Proceeding further, the balance claim of deduction of Rs.14.74 Crores was also denied on the basis of re-allocation of certain expenses like miscellaneous expenses, conveyance & travelling, rates and taxes, advertising and publicity and schemes and promotions, as done in the earlier years. In other words, entire deduction of Rs.104.19 Crores was denied to the assessee.*

3.1 Aggrieved, the assessee agitated the same before Ld. DRP vide directions dated 14/11/2014 and submitted that Ld. AO erred in disregarding the method of allocation of expenses as consistently adopted by the assessee. The Ld. DRP noted that similar claim arose in AYs 2005- 06 to 2009-10 wherein the matter was decided against the assessee by CIT(A) / DRP. However, the Tribunal in AYs 2005-06 & 2006-07, after considering the decision of Hon'ble Supreme Court rendered in Consolidated Coffee Ltd. V/s State of Karnataka [248 ITR 432], decided the issue in assessee's favor. Following the same, Ld. DRO directed Ld. AO not to restrict the claim of the assessee for deduction u/s 80-IB/80-IC by reallocating common indirect expenses

3.2 The invocation of Section 80-IA(10) was also overruled by Ld. DRP by following the directions of Ld. DRP in earlier AYs 2008-09 & 2009-10. Aggrieved, the revenue is in further appeal before us.

4.1 We have carefully considered the same. We find that while deciding the issue of reallocation of expenses, Ld. DRP has merely followed the decision of Tribunal in assessee's own case for AYs 2005-06 & 2006-07. The revenue is unable to point out any distinguishing feature during the impugned AY. Nothing on record would suggest that the ruling of Tribunal is not applicable to the facts of the present case. In fact, the decision of AY 2006-07 has been followed by Tribunal in AY 2008-09 in ITA No.598/Mum/2013 dated 11/03/2015 and also in AY 2009-10 in ITA No.1251/Mum/2014 order dated 18/11/2015. It has been brought to the notice that department's appeal against Tribunal's decision for AY 2008-09 has already been dismissed by Hon'ble Bombay High Court. Respectfully following binding judicial pronouncement, we upheld the stand of Ld. DRP. Ground No. 1 stand dismissed.

Considering the facts and ratio of the judicial decisions and the DRP directions for the A.Y.2011-12, we direct the assessing officer not to restrict the claim

u/sec80IC of the Act by reallocating 50% of administrative and selling & marketing expense of the non eligible unit.

9. On the disputed issue of disallowance u/s 14A r.w.r 8D(2) of the IT Rules. the Ld. AR has made elaborate submissions that no exempt income is earned and hence no disallowance is warranted and relied on the Honble Tribunal decision in the assessee's own case for the A.Y 2011-12 in ITA No. 1074 & 1003/Mum/2016 dated 25.02.2020 were the issue was restored to the file of the A.O. dealt at page 7 & 8 Para 13 read as under:

13. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. As discussed earlier, it is the specific contention of the learned Sr. Counsel for the assessee before us that during the year under consideration, the assessee has not earned any exempt income whatsoever and the dividend income referred to by the Assessing Officer was earned from a foreign company and offered to tax in India. In our considered opinion, if in the year under consideration the assessee has not earned any exempt income, no disallowance under section 14A r/w rule 8D can be made. Therefore, the Assessing Officer is directed to delete the disallowance after verifying assessee's claim. Even otherwise also, it is now fairly well settled that while computing book profit, the Assessing Officer cannot make any adjustment by invoking the provisions of section 14A of the Act. The only adjustment which the Assessing Officer can make is as per Explanation–1(f) to section 115JB of the Act. Therefore, if there is no exempt income earned during the year, then there is no question of making any disallowance under section 14A of the Act. Subject to factual verification of assessee's claim, these grounds are allowed.

We find the facts of the present year are similar to earlier year were the contentions envisaged by the Ld.AR that the assessee has not earned tax exempt income and therefore no disallowance U/sec14A r.w.r 8D(2) is applicable. We considered the ratio of judicial decisions were no disallowance u/sec14A of the Act is warranted in the absence of earning the exempt income. Accordingly, with the similar directions in the earlier year the assessing officer is directed to delete the disallowance after examination and verification of assessees claim.

10. In respect of Transfer pricing issue, the Ld. AR submitted that the DRP has erred in confirming the action of the A.O. that the transaction of providing guarantee falls within the definition of international transactions. We find this issue is against the assessee in the assessee's own case for the A.Y 2011-12. The assessee has provided corporate guarantee and falls within the definition of international transaction under sec92B of the Act as in the earlier assesseement year.

11. In respect of transfer pricing adjustment on account of guarantee commission. We find the Hon'ble High Court of Bombay and Hon'ble Tribunal in assessee's own case has observed that the rate of guarantee commission cannot exceed 0.5% of the guarantee amount. The Honble

Tribunal in A.Y 2011-12 has dealt at page9&10 Para 18 as under:

> *18. We have considered rival submissions and perused the material on record. Notably, identical issue came up for consideration before the Tribunal in assessment year 2009–10. While deciding the issue in ITA no.1299/Mum./2013, dated 20th April 2016, though, the Tribunal has held that the provision of corporate guarantee to the AE comes within the purview of international transaction as defined under section 92B of the Act. However, noticing that in assessee's own case the Revenue has accepted the arm's length price of corporate guarantee commission @ 0.5% in assessment year 2006–07 and 2007–08, the Tribunal has held that arm's length price of the corporate guarantee commission should be fixed @ 0.5%. The same view was reiterated by the Tribunal while deciding identical issue in assessee's own case for the assessment year 2010–11 in appeal being IT(TP)A no.1899/Mum./ 2015, dated 5th September 2019. Facts being identical, respectfully following the aforesaid decisions of the Co–ordinate Bench in assessee's own case, though, we hold that the provision of corporate guarantee to the AEs is an international transaction within the meaning of section 92B of the Act, however, we are of the view that guarantee commission charged by the assessee @ 0.5% is at arm's length requiring no further adjustment. Therefore, we delete the adjustment made by the Transfer Pricing Officer and confirmed by learned DRP. Ground no.9, is dismissed and grounds no.10 to 15, are allowed.*

12. We fallow the judicial precedence and direct the TPO/AO to restrict the corporate guarantee commission charged by the assessee as against the 2% of the actual barrowed amount considered for ALP by the TPO.

13. The Ld.AR made submissions on interest on delayed debtors/outstanding receivables from the AE. The Ld.AR emphasized that the export sales to AEs and non-AEs are similar and the assesssee does not charge any interest from the AEs as well from the Non-AEs, and receives the outstanding amounts generally within the stipulated credit period. The Ld.AR relied on the judicial decisions supporting the non chargeability of interest. We considering the facts, and circumstances are of the opinion that the assesee is fallowing a consistency approach of equality by not charging any interest from its AEs and non AEs though the payment in exceptional cases received beyond the credit period. Accordingly, we direct the AO/TPO to exclude the charging of interest on delayed debtors in computing the ALP.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 05.04.2022

Sd/-	Sd/-
(PRAMOD KUMAR)	(PAVAN KUMAR GADALE)
VICE PRESIDENT	**JUDICIAL MEMBER**

Mumbai, Dated 05.04.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai