

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 5185/Del/2018
(for Assessment Year : 2015-16)

ACIT Central Circle-26, New Delhi PAN No. AAACS 0297 E (APPELLANT)	Vs.	Shyam Telecom Ltd. A-60, Naraina Industrial Area, Phase-I, New Delhi-110 028 (RESPONDENT)
---	-----	--

Assessee by	Shri Rohit Jain, Adv. Ms. Deepa Shree Rao, C.A.
Revenue by	Shri B. S. Anand, Sr. D.R.

Date of hearing:	09.05.2022
Date of Pronouncement:	23.05.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 15.05.2018 of the Commissioner of Income Tax (Appeals)-29, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company namely stated to be engaged in the business of manufacturing and sale of telecom products and services. Assessee filed its return of income for A.Y. 2015-16 on 30.11.2015 declaring loss of Rs.3,68,46,772/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 21.12.2017 and the total taxable income was determined at Rs.2,56,42,164/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 15.05.2018 in Appeal No.228/2017-18/CIT(A)-29 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

1. *“The Ld. CIT (A) has erred in relying on the order of CIT(A)- 38 in the appellant's own case for the AY 2012-13 based on CIT Vs Cotton Naturals (I) (P.) Ltd. (55 taxmann.com 523 Delhi High Court) as the case of the assessee pertains to interest on loan and its taxability and not on the issues raised in the judgement relied upon. Hence, SBI Market lending Rate will be applicable because money has been loaned from an Indian Rupee Account.*
2. *The Ld. CIT(A) has erred in deleting the addition on account of interest on loan to AE ignoring the important 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 to the recipient AE.*
3. *That the grounds of appeal are without prejudice to each other.*
4. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

4. During the course of assessment proceedings, AO noticed that assessee had advanced loan to its AE namely Shyam Telecom Inc. USA and had not charged any interest on such advance provided to its AE. AO was of the view that interest needs to be provided in the year under consideration as was done in earlier assessment years. The assessee was therefore asked to show-cause as to why the interest not be calculated at arm's length as done in the previous assessments. The assessee filed the submissions which was not found acceptable to AO. AO thereafter on the basis of the interest charged by State Bank of India to foreign denominated loans, worked out the interest adjustment at LIBOR at 4.5% and accordingly worked out the interest adjustment of Rs.96,86,209/- on substantive basis and Rs.3,08,31,157/- on protective basis on account of not charging of interest for loan extended to its AE.

5. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) following the order of his predecessor for A.Y. 2012-13, decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now before us.

6. Before us, at the outset, Learned AR submitted that identical issue arose before the Tribunal in assessee's own case in A.Ys. 2011-12, 2013-14 & 2014-15 and the Co-ordinate Bench of Tribunal vide order dated 04.04.2022 and following the decision of Hon'ble Delhi High Court in the case of Cotton Natural (I) (P.)

Ltd. (55 taxman.com 523) upheld the order of CIT(A). He therefore submitted that since the facts of the case in the year under consideration are identical to that of earlier years, the grounds of Revenue needs to be dismissed.

7. Learned DR on the other hand supported the order of AO.

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is about the deletion of adjustment made on account of interest of loan on the amount advanced by the assessee to its AE. We find that identical issue arose in Revenue's appeal for A.Y. 2011-12, 2013-14 & 2014-15. The Co-ordinate Bench of Tribunal after noting the fact that identical issue arose in assessee's own case in earlier years and the Tribunal in A.Y. 2008-09 & 2009-10 has decided the issue in favour of the assessee. The Co-ordinate Bench of Tribunal thereafter upheld the findings of CIT(A) and dismissed the appeal of the Revenue. Before us, Revenue has not placed any material on record to demonstrate that the facts in the case in the year under consideration and that of earlier years are different and distinguishable and further no material has been placed by the Revenue to demonstrate that the decision rendered by the Tribunal in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. In such a situation, we find no reason to interfere with the order of CIT(A).

Thus grounds of the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 23.05.2022

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 23.05.2022
PY*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI