

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.5362/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.5363/Del./2018  
(ASSESSMENT YEAR : 2010-11)**

**ITA No.5365/Del./2018  
(ASSESSMENT YEAR : 2012-13)**

M/s. Baba Global Limited,  
4873, Chandni Chowk,  
Delhi – 110 006.

vs. ACIT, Central Circle 29,  
New Delhi.

**(PAN : AAACB6357N)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Ashok Kumar, AR  
REVENUE BY : Shri M. Barnwal, Sr. DR

Date of Hearing : 22.06.2022  
Date of Order : 08.07.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are appeals by the assessee against the respective orders of  
1d. CIT (Appeals) pertaining to concerned assessment years.

2. Since issues are common and connected and appeals were heard  
together, these are being consolidated and disposed off by this common  
order.

3. The common issue raised in all the assessment years is that ld. CIT(A) has erred in directing the AO to increase the LIBOR rate by certain basis points which is against the direction of ITAT to apply the LIBOR rate.

4. Brief facts of the case are that this is second round of appeal before the ITAT for AY 2009-10 & 2010-11. The issue in dispute is application of interest rate on the advances made to Associated Enterprises. In the earlier round, in a consolidated order for AYs 2006-07 to 2010-11, ITAT had referred to case laws from Hon'ble jurisdictional High Court in the case of CIT vs. Cotton Naturals (P) Ltd. (2015) 276 CTR 0445 (Del) wherein Hon'ble Delhi High Court has disapproved the application of SBI rate. The Tribunal had given following directions while concluding:-

“21. Accordingly the applicable rate of interest shall be the rate of interest in respect of such foreign currency in which the loans have been advance. As per the details available on record during the assessment years 2009-10 and 2010-11 assessee has advanced to its subsidiary companies as detailed below:-

ASSESSMENT YEAR	Baba Global Co. (BD) Ltd. (Bangladesh)	Baba Global Co. FZC Ltd. (UAE)	Baba Global AG, Switzerland
2009-10	\$44,944	CHF 7,56,957	CHF 40,00,000
2010-11	\$57,944	CHF 98,447	CHF 50,00,000
2011-12	\$77,944	-	CHF 50,00,000 (Converted to share application money)

The interest rates applicable in respect of these currencies during these years, as submitted by the learned AR, were as under:-

ASSESSMENT YEAR	Currency wise LIBOR Rate		
	USD (\$)	EURO (€)	Swiss Franc (CHF)
2009-10	3.089%	4.822%	2.896%
2010-11	1.559%	1.604%	0.800%
2011-12	0.923%	1.327%	0.554%

Taking into consideration of the above facts, the learned AO is directed to verify the above interest rate and recompute the adjustment on account of interest by applying the rate of interest of the relevant currency in the AY 2009-10 & 2010-11. Accordingly this ground of the assessee is partly allowed for AY 2009-10 & 2010-11.”

5. The above direction was considered by Revenue authorities as direction to only substitute SBI rate to LIBOR and continued with further adjustment. Hence authorities have proceeded to adjust the applicable LIBOR rate with 300 basis points if the amount of loan transaction is more than Rs.50 crores and 150 basis points if the amount of loan is less than Rs.50 crores.

6. Now the contention of the ld. counsel of the assessee is that ITAT having been fully seized of the matter had directed the application of only rate of interest of relevant currency and had not given any direction for adjustment by any basis point.

7. The contention of ld. DR of the Revenue is that ITAT has only decided for substitution of LIBOR rate to SBI rate and there was no issue of further adjustment directed by the ITAT.

8. Having gone through the earlier order of ITAT, we do not find ourselves in agreement with the submission of the ld. DR of the Revenue. The issue in dispute noted by the ITAT clearly mentions the dispute before the ITAT as under :-

“5. The AO thereafter took up the assessment by issuing notice under section 153A. During the course of the assessment the AO referred the matter to the Transfer Pricing Officer. The learned TPO noted that the

assessee company has extended loans to its subsidiary companies and held that the assessee ought to have charged interest in respect of such loans and accordingly the TPO recommend that interest as per the Prime Lending Rate of State Bank of India be added as income on account of adjustment of arm's length price. Thereafter the AO passed the draft assessment order making additions as recommended by the TPO.

6. Aggrieved by the order of the TPO, the assessee filed objection before the Dispute Resolution Panel. It was contended by the assessee that since the money given as loan to its subsidiary companies was own money and hence no adjustment is required to be made. It was further submitted that the rate of interest charged cannot be the Prime Lending Rate of State Bank of India. This money has been advanced in foreign currency and as such interest is to be charged as per the interest rate in foreign currency i.e. LIBOR.

7. The learned DRP did not agree with the contention of the assessee. However, it gave a part relief by holding that the interest rate be charged be only base rate and further adjusted by 150 basis point in terms of Safe Harbour Rules. On the issue of addition under Section 14A, the learned DRP confirmed the action of the AO.”

9. The above dispute was answered by the ITAT has already been noted above in which the ITAT has directed that LIBOR rate should be adopted. The ITAT nowhere mentions for further adjustment on any account though it was aware that DRP had directed for further adjustment. If Revenue was aggrieved by the above order of ITAT, the matter should have been carried to the higher forums. Since the Revenue has not carried the matter before the higher forums, the order of ITAT stands undisturbed and according to the order of ITAT, instead of the rate applied by the TPO, the rate should be applied as per the direction of the aforesaid paras of ITAT.

10. In this view of the matter, in our considered opinion, it is not appropriate on the part of the authorities below to give effect to the order

of ITAT in a manner other than what has been specifically directed by the ITAT particularly when the matter has not been challenged before higher forums. Hence we direct that AO should follow the order of ITAT as aforesaid and apply the rates as directed by the ITAT.

11. The above order applies *mutatis mutandis* to AY 2012-13 which is not the matter remanded by the ITAT but the same issue and there is already ITAT order in assessee's own case as noted above, hence the same is also directed to be followed in this case.

12. In the result, all the appeals of the assessee stand allowed for statistical purposes.

**Order pronounced in the open court on this 8<sup>th</sup> day of July, 2022.**

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 8<sup>th</sup> day of July, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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