

IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, PUNE
BEFORE SHRI INTURI RAMA ROAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

I.T.A. No. 623/PUN/2022 – A.Y. 2018-19

Varroc Engineering Ltd.,
L4, MIDC, Industrial Area
Waluj, Aurangabad 431 136
PAN: AAACV 2420 J

: Appellant

Vs.

The Asstt. CIT Cir. 3, Aurangabad

: Respondent

Appellant by : Shri Kishor Phadke
Respondent by : Shri Keyur Patel – CIT-DR

Date of Hearing : 09-11-2022
Date of Pronouncement : 09-11-2022

ORDER

PER SHRI PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by the assessee emanates from the Id. D.R.P.'s order 09-06-2022 for the assessment year 2018-19, as per the following grounds of appeal.

1. General

The learned DRP-3 Mumbai erred in law and facts in directing and the learned National Faceless Assessment Centre, (hereinafter referred to as "AO") erred in law and facts in making additions of Rs. 4,67,36,375 to the taxable income of assessee.

2. The learned DRP and AO erred in law and on facts in not appreciating the fact that extension of the guarantee to the bankers of the subsidiary companies is a shareholders activity and not an International transaction u/s 92B(1)(c) of the Income Tax Act 1961.

3. The learned DRP, Id. AO and the Id. TPO has erred in law and on the facts in making addition of Rs. 4,67,36,375 by holding that assessee should have recovered guarantee/ SBLC commission @ 2% instead of 1% recovered by the assessee for extending guarantees/SBLCs to the Bankers of Associated Enterprises Located in USA, Mexico & Netherlands.

4. Learned DRP and AO / TPO further erred in ignoring the internal CUPs cited by the assessee suggesting a commission percentage of 0.50%. Learned DRP and AO / TPO also erred in distinguishing the precedents on similar lines suggesting the commission percentage of 0 as held by Hon'ble Bombay High Court in CIT Mumbai v. Everest Kento Cylinders Ltd. [2015] 58 taxmann.com 254 (Bombay)

5. *Appellant craves leaves to add, modify, alter, amend, or withdraw all or any of the Grounds of Appeal.*

2. The relevant facts are that Varroc Group is a global provider of Automotive Parts, set up by the Jain group in 1985. Beginning with aluminium die casting, the group made a successful foray into automobile industry by manufacturing Engineering products. Most of the Varroc group operations are based in Aurangabad, India. The Varroc Group consists of two main companies viz. Varroc Engineering Pvt. Ltd., and Varroc Polymers Pvt. Ltd.

2.1. Varroc Engineering is a premier supplier for the automotive industry with full capabilities in design, development and manufacturing.

2.2 Varroc European Holding B.V. (Netherland) (VEHBV) was incorporated by the assessee as a Special Purpose Vehicle (SPV) with an intention to route acquisition in the European market. VEHBV is predominantly an investment company only.

2.3 Varroc Lighting Systems S.de.R.L. De. C.V., Mexico is into manufacturing lighting products. Varroc Lighting Systems Inc. USA is the holding company of the lighting business and is into manufacturing and distribution of Lighting Products.

2.4 Assessee borrowed heavily from the bankers and acquired the lighting business from Visteon USA. All the investments were routed through the Netherlands. The investment company located in the Netherlands is holding all the European assets of the group. European business mainly consists of lighting business and smaller part includes forging business.

2.5 During the FY 2017-18, the assessee is mainly having Loan transaction, interest transactions, and corporate guarantee transactions.

2.6 The assessee company e-filed its original return of income for the year under consideration on 29/11/2018, declaring total income of Rs.54,20,14,631/- having total business income of Rs.78,14,70,695/- and Short Term Capital Gain of Rs.30,23,989/- and being set off to the tune of Rs.20,59,52,731/- against unabsorbed depreciation for A.Y .2015-16 and of Rs.3,65,27,344/- for A.Y.2016-17 and thus arrived at total income of Rs.53,68,23,234/-. Thereafter, assessee company e-filed its revised return of income for the A.Y.2018-19 on 30.11.2018 declaring total income of Rs.54,20,14,631/-.

2.7 Subsequently, the case was selected for complete scrutiny under CASS and the Assessing Officer made a reference u/s. 92CA (3) of the Act to the Transfer Pricing Officer (TPO) for determination of the arm's length price of the inter international transactions entered into by the assessee with its Associated Enterprise (AE) during the year and as reported in Form 3CEB filed by the assessee.

2.8 After considering the submissions and objections of the assessee, the TPO in his order dated 27/07/2021 passed u/s 92CA (3) of the Act, proposed a total upward adjustment of Rs.4,67,36,375/-, in respect of the international transaction pertaining to Corporate Guarantee.

2.9 Subsequently, the AO passed a draft assessment order u/s 143(3) read with sec. 144C of the Act on 27.09.2021, wherein he proposed to make an addition of Rs. 4,67,36,375/- on account of Transfer Pricing adjustment proposed by the TPO with regard to Guarantee Commission being altered in his aforesaid order dated 27-07-2021 passed u/s 92CA (3) of the Act, Rs. 10,95,59,211/- towards disallowance u/s 35(2AB), Rs. 60,84,685/- towards disallowance u/s 14A, Rs. 1,47,40,224/- towards Duty Drawback and Rs. 70,50,440/- towards Education Cess. Thus, in the draft assessment order, the total income of the

assessee for the year under consideration was proposed to be assessed at Rs. 96,16,15,463/-, as against the returned income of Rs. 54,20,14,631/-.

3. It is the grievance of the assessee that the Id. D.R.P has erred in law and facts in making an addition of Rs. 4,67,36,375/- by holding that the assessee should have recovered guarantee/SBLC commission at the rate of 2% instead of 1% recovered by the assessee for extending guarantees/SBLCs to the Bankers of Associated Enterprises located in USA, Mexico and Netherlands. The assessee had suggested a commission percentage in internal CUPs at the rate of 0.50%. In fact, this commission percentage of 0.50% is in conformity as held by Hon'ble Bombay High Court in CIT vs. Everest Kento Cylinders Ltd. (2015) 58 taxmann.com 254 (Bom).

4. At the time of hearing, the Id. Counsel for the assessee submitted that this issue has already been decided in favour of the assessee in assessee's own case for A.Y. 2013-14 in ITA No. 2649/PUN/2017 dated 28-09-2018. The Id. Counsel further submitted that this fact has been acknowledged by the Id. D.R.P as well in this year also at para 3.7.4 of their findings. The Id. T.P.O has held the corporate guarantee @ 2%. The Id. D.R.P vide para 3.7.4 has upheld the finding of the Id. T.P.O only on the ground that though in the earlier assessment year 2013-14 in assessee's own case the Tribunal given relief to the assessee and since this order has not been accepted by the Department and they have preferred an appeal before the Hon'ble Jurisdictional High Court and on this ground only the Id. D.R.P had upheld the upward adjustment on the issue of corporate guarantee at the rate of 2% as held by the Id. A/OT.P.O.

5. The Id. D.R supported the orders of the subordinate authorities and conceded to the facts mentioned at para 3.7.4 of the Id. .D.R.P's findings. Admittedly, the appeal of the Revenue till date has not been admitted for hearing

by the Hon'ble Jurisdictional High court. In such scenario, the order of the Tribunal in assessee's own case in ITA No. 2649/PUN/2017 (supra) still holds good.

6. Having heard the parties and considering the issue of corporate guarantee, we find that in assessee's own case, the Tribunal in ITA No. 2649/PUN/2017 dated 28-09-2018 (supra) has observed and held as follows:

7. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to adjustment on account of guarantee commission receivable on corporate guarantees given by assessee to its A.Es. As far as then guarantee commission from Varroc Corp. Holding B.V., is concerned, the guarantee was jointly given by assessee along with VPPL. In case of VPPL, who was also in receipt of equivalent amount of guarantee commission, no adjustment has been made by Revenue. The aforesaid contentions of assessee have not been controverted by Revenue. In such a situation, we are of the view that when no adjustment has been made in the case of VPPL and also in the case of assessee in earlier and subsequent assessment years, then without there being any change in the facts in the assessment in the year under consideration, following the principle of consistency, there is no reason for making the adjustment in the year under appeal. As far as the adjustment on account of the guarantee commission from IMES Italy & Esex Forging SRL is concerned, it is the submission of the assessee that the guarantees to the aforesaid A.E.'s were given by the assessee in earlier years and it continued in subsequent assessment years. The transactions were held to be at arm's length by the Revenue in earlier and subsequent years as no adjustment was made and the transaction has been disturbed only in the year under consideration. The aforesaid contention of the assessee has not been controverted by Revenue. Further Revenue has not brought out any distinguishing feature in the facts in the year under consideration and that of earlier years. In such a situation, we are of the view that on the basis of principles of consistency, no adjustment to the transaction in the year under appeal is required. We further find that Hon'ble Bombay High Court in the case of CIT Vs. Everest Kento Cylinders (supra) has held that no comparison can be made between guarantees issued by commercial banks as against a corporate guarantee issued for the benefit of A.E for computing ALP at guarantee commission.

In view of the aforesaid facts, we direct the deletion of adjustment of Rs. 2,09,81,272/- made towards ALP adjustment on account of guarantee commission. Thus, the ground of assessee is allowed."

7. In the aforesaid decision, the Tribunal while providing relief to the assessee has also relied on the Hon'ble Bombay High court decision in the case of Everest Kento Cylinders (supra). Respectfully following this decision and on the same parity of reasoning, we allow the grounds of appeal of the assessee

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on this 9th November 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 09th day of November 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT- 1, Pune
4. The NFAC, Delhi
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune

/// TRUE COPY ///

		Date	
1	Draft dictated on	09-11-2022	Sr.PS
2	Draft placed before author	09-11-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	09-11-2022	Sr.PS/PS
7	Date of uploading of order	09-11-2022	Sr.PS/PS
8	File sent to Bench Clerk	09-11-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		