

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वुस्वारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.473/Viz/2018

(निर्धारणवर्ष/ Assessment Year :2014-15)

3F Industries Limited,
P.B. No. 15, Tanuku Road,
Tadepalligudem, West Godavari
District, Andhra Pradesh-534101.
PAN: AAACF 2643 K
(अपीलार्थी/ Appellant)

Vs. The Assistant Commissioner
of Income Tax,
Circle-1, KKS Towers,
RR Pet, Eluru,
Andhra Pradesh-534002.
(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Smt. SuvibhaNolkha, CA

प्रत्यर्थीकीओरसे/ Respondent by

: Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 02/02/2023

घोषणाकीतारीख/Date of

: 16/02/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal is filed by the assessee against the final assessment order of the Ld. Assessing Officer [AO] passed U/s. 143(3) r.w.s 144C(13) of the Income Tax Act, 1961 [the Act] for the AY 2014-15.

2. Brief facts of the case are that the assessee-company is engaged in the business of manufacture and trading of edible oils and agro-based products, filed its return of income on 30/11/2014 for the AY 2014-15. Thereafter, the assessee filed the revised return on 25/11/2015 admitting a total income of Rs. 9,06,97,982/-. The return was initially processed U/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and a notice U/s. 143(2) was issued to the assessee and in response the assessee's Authorized Representatives appeared from time to time and furnished the details as called for by the Ld. AO. During the assessment proceedings, on examining the details furnished by the assessee-company, the Ld. AO noted that the assessee-company has entered into various transactions during the AY 2014-15 with its Associated Enterprises being the subsidiary companies situated outside India. Accordingly, as per the provisions of section 92E, the assessee-company was requested to furnish the details of international transaction in Form No. 3CEB. On receiving the report from the assessee in Form No.3CEB, the same was forwarded to the Joint Commissioner of Income Tax (Transfer Pricing), Hyderabad for computation of Arm's Length Price [ALP] of the transactions entered into by the assessee with its Associated Enterprises [AEs]

outside India. The Ld. TPO in his report made U/s. 92CA(3) of the Act observed that during the year, the assessee has provided Corporate Guarantee on behalf of 3F Singapore and 3F Ghana. The Ld. TPO also observed that the assessee has reported the same in Form 3CEB as "shareholder activity" by using other method. Before the Ld. TPO it is the submission of the assessee that the corporate guarantee given by them is different from letter of credit usually given by banks and it more in the nature of personal guarantees given by the promoters of the companies in India for the loan taken by the AE companies from banks outside India. It was also submitted that on account of this corporate guarantee, neither the assessee's AEs gained any direct financial benefit nor any expense was absorbed by the assessee (parent company) on behalf of its AEs and requested to drop the TP adjustment in this regard. After considering the submissions of the assessee as well as on perusal of the information obtained from State Bank of India U/s. 133(6) on rates charged for corporate guarantee, the Ld. TPO proceeded to make the TP adjustment u/s. 92CA of the Act on corporate guarantee charges @ 1.60% on Rs. 61,10,82,000/- which worked out to Rs. 97,77,312/-. On appeal, the Ld. Dispute Resolution Panel [DRP] upheld the decision of the Ld. TPO while making the TP

adjustment. Thus, the Ld. AO giving effect to the directions of the Ld. DRP determined the ALP of corporate guarantee outstanding @ Rs. 97,77,312/- and added the same to the income returned by the assessee-company and passed the final assessment order on 31/7/2018 u/s 143(3) r.w.s 144C(13) of the Act. Aggrieved by the final assessment order of the Ld. AO, the assessee is in appeal before us.

3. The assessee has raised the following grounds of appeal:

"Based on the facts and circumstances of the case and in law, the Ld. AO / TPO and the Hon'ble DRP erred in:

TRANSFER PRICING MATTER:

1. *Notional Guarantee fee on shareholders guarantee*
 - a. *Making adjustment on the shareholders corporate guarantee is not covered under the loans availed by the AE, without appreciating the fact that the guarantee was provided for the benefit of the 3F Group.*
 - b. *Not appreciating that the shareholder corporate guarantee is not covered under definition of international transaction u/s. 92B of the Act.*
 - c. *Without prejudice to the above ground, not undertaking an objective analysis for determining the ALP on the shareholders corporate guarantee.*
 - d. *Further, without prejudice to the above ground, not making adjustment for the differences in the comparable transactions selected vis-à-vis corporate guarantee provided by the company.*
 - e. *Without prejudice to the above, not considering the bank guarantee commission rate charged by the bank to the appellant as a benchmark.*

OTHER GROUNDS

2. *Levy of interest U/s. 234B of the act of INR 6,71,027/-.*
3. *Levy of interest U/s. 234C of the Act of INR 1,45,673/.*
4. *Initiating penalty proceedings U/s. 271(1)(c) of the Act."*

4. In the grounds of appeal, though the assessee has raised four grounds, but the main issues involved are:

- (i) Whether the corporate guarantee given by the assessee-company to its AEs for the loan taken by the AEs can be considered as an international transaction as per the provisions of section 92B of the Act or not?
- (ii) Whether the upward TP adjustment made by the Ld. TPO and confirmed by the Ld. DRP in the corporate guarantee commission on the gross guarantee given to AEs is justifiable or not?

5. On these issues, at the outset, the Ld. AR submitted and pleaded that the corporate guarantee given by the assessee-company to its AEs is not an international transaction as the assessee has not charged the AE. The Ld. AR relied on the following decisions:

- a. DCIT, Circle-1(1), Guntur vs. CCL Products (India) Ltd, ITA No.348/Viz/2018 (2014-15)

- b. DCIT Circle-1(1), Guntur vs. CCL Products (India) Ltd, ITA No.191/Viz/2018 (2013-14)
- c. Britannia Industries Ltd vs. DCIT, Circle-7(1), Kolkata (AY 2013-14), ITA No. 2235/Kol/2017
- d. ACIT, Circle-6(2), Kolkata Vs. M/s. Emami Limited (AY 2013-14) ITA No. 1958/Kol/2017
- e. Rain Industries Ltd vs. DCIT, Circle-3(1), Hyderabad (AY 2012-13), ITA Nos. 1728 & 1729/Hyd/2016
- f. DCIT, Chennai vs. M/s. Redington India Ltd (AY 2010-11) ITA No. 535 & 959/Mds/2015
- g. Bharati Airtel Limited vs. Additional CIT, Range-2, New Delhi (AY 2008-09), ITA No. 5816/Del/2012.
- h. Micro Ink Limited vs. Addl. CIT (AY 2006-07), ITA No. 2873/Ahd/10.

The Ld. AR placed heavy reliance in the ratio laid down in DCIT, Central Circle-1(1), Guntur vs. M/s. CCL Projects (India) Pvt Ltd in ITA No.348/Viz/2018 (AY: 2014-15). The Ld. AR submitted that in the case of M/s. CCL Projects (India) Pvt Ltd (supra), the Coordinate Bench of the Tribunal held that the provision of corporate guarantee on behalf of the AE without incurring any cost would not constitute international transaction within the meaning of section 92B of the Act. The Ld. AR further submitted that the above view was also held in the case of Dr. Reddy's Laboratories Limited vs. Addl. CIT reported in 81 taxmann.com 398. The Ld. AR further submitted that for bank guarantee facility provided by Axis Bank the rate adopted was 0.4% and in case if the Bench decides to treat the corporate guarantee as an international transaction in the alternative the

rate of 0.4% shall be considered. The Ld. AR further submitted that as per the OECD guidelines corporate guarantee is not an international transaction and it is only a shareholders obligation. The Ld. AR further submitted that merely relying on the information obtained U/s. 133(6) of the Act which was not shared with the assessee, the Ld. TPO erred in determining the rate of 1.60% guarantee commission given to AEs.

Per contra, the Ld. DR relied on the orders of the Ld. TPO and the Ld. DRP.

6. We have heard the rival submissions and perused the material available on record and the orders of the Ld. Revenue Authorities. It is observed from the order of the Ld. TPO that the Ld. TPO has obtained a rate of fees charged by State Bank of India on the issuance of financial guarantees given for the computation of ALP and the tested party with respect to the guarantees given to the AEs. The Ld. TPO has thus concluded that the median of the ALP works out to 1.60% on the corporate guarantee given to AEs. In the case of CIT vs. Redington India Ltd [2021] 430 ITR 298, Hon'ble Madras High Court held that corporate guarantee given to the AE is covered by the retrospective amendment made by the Finance Act, 2012. In the

case of CIT vs. Everest Kanto Ltd reported in 378 ITR 57 the Hon'ble Bombay High Court held that the corporate guarantee commission is an international transaction and should be charged @ 50% on the corporate guarantee amount given to the AEs. In the case of M/s. Devi Sea Foods Limited vs. DCIT, Circle-3(1), Visakhapatnam in ITA No. 75/Viz/2022 (AY; 2017-18), dated 09/09/2022 this Bench of the Tribunal has held that the corporate guarantee given to the AE is an international transaction and shall be chargeable @ 0.50% on the amount of corporate guarantee given to the AEs. In view of the above discussions and by respectfully following the ratio laid down in various judicial pronouncements as discussed above, we are of the considered view that the corporate guarantee commission is an international transaction and should be charged @ 0.50% on the corporate guarantee amount given to the AEs. We therefore partly allowed the grounds raised by the assessee.

7. Grounds No. 2, 3 & 4 raised by the assessee are consequential in nature and therefore need no separate adjudication.

8. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on the 16th February, 2023.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :16.02.2023

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-3F Industries Limited, P.B. No. 15, Tanuku Road, Tadepalligudem, West Godavari District, Andhra Pradesh-534101.
2. राजस्व/The Revenue -The Assistant Commissioner of Income Tax, Circle-1, KKS Towers, RR Pet, Eluru, Andhra Pradesh-534002.
3. The Principal Commissioner of Income Tax,
(ii) Dispute Resolution Panel-1, Bengaluru.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
(ii) Deputy Commissioner of Income Tax (Transfer Pricing Officer)-2, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam