IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER & SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 6056/Del/2017
Assessment Year: 2010-11

ACIT, Circle-27(1), New Delhi	**Vs.**	Uniparts India Ltd., Block 5, Gripwel House, C-6 & 7, Vasant Kunj, New Delhi
PAN :AAACU0454D		
(Appellant)		**(Respondent)**

Department by	Shri Tarandeep Singh, Adv.
Assessee by	Ms. Mrinal Kumar Das, Sr. DR

Date of hearing	20.02.2023
Date of pronouncement	28.02.2023

ORDER

PER SAKTIJIT DEY: JUDICIAL MEMBER:

Captioned appeal by the Revenue arises out of order dated 23.01.2017 of learned Commissioner of Income-Tax (Appeals)-44, New Delhi pertaining to assessment year 2010-11.

2. The Registry has notified delay of 108 days in filing the present appeal. The appellant has filed an application dated 21.09.2017 seeking condonation of delay.

3. After considering rival submissions, we are of the view that delay in filing the appeal was due to reasonable cause. Accordingly, we condone the delay and admit the appeal for adjudication on merits.

4. In ground nos.(i) and (ii), the Revenue has challenged deletion of addition of Rs.1,87,18,942, being transfer pricing adjustment on account of interest charged on loan advance to Overseas Associated Enterprises (AEs).

5. Briefly, the facts relating to this issue are, the assessee is a resident corporate entity and is engaged in manufacture and sale of tractor implements, linkage parts, system and forging. As stated by the Transfer Pricing Officer (TPO), assessee was a part of Gripwell Group.

6. During the year under consideration, the assessee entered into various international transactions with its AEs. However, except the transaction relating to interest charged on loans advanced to AEs, the TPO accepted all other transactions to be at arm's length. In so far as

charging of interest on loans advanced to AEs. The Assessing Officer found that the assessee had advanced loans to two overseas subsidiaries viz. Uniparts USA Ltd. and Uniparts Europe BV, Netherlands. In respect of loans advanced to subsidiary in USA, the assessee had charged interest @ 8%. Whereas, in respect of loan advanced to Uniparts Europe BV, the assessee had charged interest by applying the rate of Euribor plus 200 basis points (bps), which works out to interest rate at 3.68%. Being of the view that rate of interest charged on loans advanced to AEs are not at arm's length, the TPO issued a show cause notice to the assessee seeking explanation why interest should not be charged at appropriate rate. Though, the assessee justified its benchmarking of interest charged to the AEs, however, the TPO was not convinced. Though, the TPO agreed that the loans were advanced in currencies of respective countries of residence of the AEs, however, he observed that the assessee would not have charged interest at the same rate to unrelated parties. Thereafter, referring to various judicial precedents and risk factor involved in the advancement of loan, the TPO observed that the assessee was unable to demonstrate that the burden it has taken on

behalf of subsidiaries had resulted in any tangible benefit either to it or to the group as a whole. Further, he observed, LIBOR is not applicable where the funds have been lent from rupee denominated fund as it would not be prudent for an enterprises to lend fund at a much cheaper interest rate than what is available as interest on rupee denominated loans.

7. Having held so, the TPO proceeded to apply the domestic Prime Lending Rate (PLR) applied by Indian Banks on commercial borrowings and determining the arm's length rate of interest on the loans advanced to the AEs at 14.74%. This resulted in a total adjustment of Rs.1,95,31,473. The adjustment proposed by the TPO was added to the income of the assessee by the Assessing Officer while framing the assessment order. Assessee contested the aforesaid addition before learned Commissioner (Appeals).

8. After considering the submissions of the assessee in the context of facts and material on record as well as judicial precedents cited before me, learned Commissioner (Appeals) held that domestic PLR cannot be applied to benchmark the rate of interest charged on foreign currency loans advanced to AEs located in foreign countries. While

coming to such conclusion, learned Commissioner (Appeals) specifically relied upon the decision of the Hon'ble jurisdictional High Court in case of CIT vs. Cotton Natural (I) Pvt. Ltd. (2015) 55 Taxmann.com 523 (Del.).

9. Learned Departmental Representative submitted, though, the TPO may not be justified in applying domestic PLR to determine the arm's length nature of interest on foreign currency loans, however, the decision of learned Commissioner (Appeals) in deleting the adjustment is unacceptable. He submitted, at the time of passing the order under Section 92CA(3) of the Act, the TPO did not have the benefit of the Hon'ble jurisdictional High Court decision in case of CIT vs. M/s. Cotton Natural (I) Pvt. Ltd., (supra).

10. Drawing our attention to certain observations made in the aforesaid judgment, learned Departmental Representative submitted, while deleting the addition, learned Commissioner (Appeals) has not taken note of certain guiding principles set out by the Hon'ble jurisdictional High Court. Thus, he submitted, the issue may be restored back to the TPO for fresh benchmarking.

11. Strongly opposing the contentions of learned Departmental Representative, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the Hon'ble Delhi High Court. Hence, there is no justifiable reason to restore the matter back to the TPO.

12. We have considered rival submissions and perused material on record.

13. In so far as factual aspect of the issue is concerned, there is no dispute that the assessee has advanced foreign currency loans to two related parties located in USA and Netherlands. It is also evident, the assessee has charged interest to the concerned parties at fixed rates. In so far as AE in USA is concerned, the assessee had charged interest @ 8%. Whereas, in respect of the AE in Netherlands, interest is charged by applying BURIBOR rate plus 200 basis points. It is relevant to note, while deliberating on the issue, the TPO has accepted that foreign currency loan has to be benchmarked using EURIBOR. As the rate of interest is fixed and not floating, the rate of LIBOR will be the rate on the day the loan was taken by the assessee on behalf of the AEs. He has further observed that additional mark up of 4% shall be

added as the credit rates of the loan given by the assessee to its subsidiaries has been considered as (BB). However, while ultimately computing the adjustment, the TPO has applied domestic PLR applied by Indian Banks on commercial loans.

14. This, in our view, is unsustainable. Now, it is fairly well settled that the rate of interest on loans advanced by the assessee to AEs have to be in accordance with the rate of interest prevailing in the country of residence of the AEs wherein the loan was availed. This is the view expressed by Hon'ble jurisdictional High Court in case of CIT vs. Cotton Natural (I) Pvt. Ltd. (supra) and many other decisions. Therefore, domestic PLR rate cannot be applied in respect of loans advanced in foreign currency to AEs situated in USA and Europe. As regards, the submission of learned Departmental Representative that certain guiding principles laid down by the Hon'ble jurisdictional High Court have not been followed, we are not convinced.

15. Considering the fact that the assessment year involved is 2010-11 and more than 12 years have passed, we are disinclined to restore the issue to the Assessing Officer at this stage. Thus, having considered the overall facts and circumstances of the case in the light

of judicial precedents cited before us, we do not find any infirmity in the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

16. In ground no. 3, the Revenue has challenged deletion of disallowance of interest expenditure amounting to Rs.1,41,63,945 under Section 36(1)(iii) of the Act.

17. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee had availed loan from bank at interest rate of 14% to 16% per annum and has incurred interest expenditure of Rs.11,70,29,496. Whereas, it has advanced loans to its wholly owned subsidiaries at interest rate of 6% per annum. Therefore, he called upon the assessee to explain why the interest paid to banks on loans utilized for non-business purposes like advancing loan to subsidiaries at a lesser rate, should not be disallowed. Though, the assessee objected to the proposed disallowance, however, rejecting the explanation of the assessee, the Assessing Officer disallowed an amount of Rs.1,41,63,945 out of the interest expenditure. While, considering assessee's appeal on the issue, learned Commissioner (Appeals) deleted the disallowance.

18. We have considered rival submissions and perused material on record.

19. It is observed, while considering identical nature of dispute in assessee's own case in assessment year 2009-10, the co-ordinate Bench in ITA No.1216/Del/2014 dated 30.09.2021 has deleted similar disallowance with the following observations:

> "26. A perusa*l of the facts show that on receiving financial assistance from the assessee, revenue from sales of M/s UniLink Engineering Pvt Ltd increased from Rs. 94.73 lakhs from F.Y 2005–06 to Rs. 26.12 crores in F.Y 2008–09. We further find that own funds of the assessee as on 31.03.2007 were at Rs.33.35 crores which jumped to Rs. 127.62crores as on 31.03 2009 and tp Rs.139.17 crores as on 31.03.2009.*
>
> *27. It is true that the loan was given in earlier F.Y and the assessee had sufficient own funds to give the loan. It is equally true that no disallowance was made in the earlier Assessment Year though the DRP 19 has observed that rest judicata is not applicable under Income Tax proceedings but, in our considered opinion, when the facts are same, and the law has not changed, then the rule of consistency ought to have been followed. Considering the facts of the case in totality, we do not find any merit in the addition of Rs. 72,23,773/- made by the Assessing Officer. We, accordingly, direct the Assessing Officer to delete the same. Ground No. 4 is, accordingly, allowed."*

20. Considering that there is no difference in factual position in the impugned assessment year and the Assessing Officer has referred to

similar disallowance made in assessment year 2009-10, we are inclined to uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.

21. In ground no.4, the Revenue has raised the issue of deletion of disallowance of Rs.8,95,765, being delayed payment of ESIC under Section 36(1)(va) of the Act.

22. Before us, learned counsel appearing for the assessee fairly conceded that the issue has to be decided against the assessee in view of the recent decision of the Hon'ble Supreme Court in case of Checkmat Services (Pvt.) Ltd. Vs. CIT (2022) 143 Taxmann. 178 (SC).

23. Learned Departmental Representative agreed with the aforesaid submission with the assessee.

24. Having considered rival submission, we find that learned Commissioner (Appeals) has deleted the disallowance made under Section 36(1)(va) of the Act on the ground that the payments were made before the due date of filing of return of income under Section 139(1) of the Act. However, in case of Checkmat Services (P)Ltd. vs. CIT (supra), Hon'ble Supreme Court has held that unless the payment

towards employees contribution to PF and ESIC are paid within the time limit prescribed under the relevant statutes, as provided under explanation to section 36(1)(va) of the Act, no deduction can be allowed to the assessee. Respectfully following the ratio laid down by the Hon'ble Supreme Court, we uphold the disallowance made by the Assessing Officer. The decision of learned Commissioner (Appeals) stands reversed. This ground is allowed.

25. In ground nos. 5 & 6, the Revenue has challenged deletion of disallowance made under Section 14A read with Rule 8D of the Act.

26. We have considered rival submissions and perused material on record.

27. It is an agreed position before us that in the year under consideration, the assessee has not earned any exempt income. That being the factual position emerging on record, no disallowance under Section 14A read with Rule 8D can be made in absence of any exempt income earned during the year. In this regard, we refer to the decision of the Hon'ble jurisdictional High Court in case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 Taxmann.com 289 (Del.).

Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds.

28. In the result, the appeal is partly allowed.

Pronounced on 28.02.3023.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(SAKTJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 28th February, 2023.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi