

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**  
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A Nos.1880,1881&1882/Kol/2018  
Assessment years: 2011-12,2012-13 & 2013-14

DCIT, Circle-11(1), Kolkata.....Appellant

vs.

M/s Eveready Industries India Ltd.....Respondent  
2, Rainey Park,  
Kolkata-700019.  
[PAN: AAACE5778N]

**Appearances by:**

Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.

Shri P.P. Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 09, 2023

Date of pronouncing the order : March 30, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The captioned appeals have been preferred by the Revenue against the separate orders all dated 22.06.2018 of the Commissioner of Income Tax (Appeals)-22, Kolkata [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since, common issues are involved in all the appeals, hence these have heard together and are being disposed of by this common order. The appeal in ITA No.1880/Kol/2018 for assessment year 2011-12 is taken as lead case for the purpose of narration of facts.

2. **ITA No.1880/Kol/2018** – The revenue in this appeal has taken the following grounds of appeal:

*“1. That on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the arm's length price adjustment of Rs. 1,49,23,786/- made by the AO TPO on account of Interest Income on Loan forwarded to AEs.*

*2 That the Ld. CIT (A) has erred on facts & law by not determining the arm's length rate of interest in accordance with Section 92C of the Income-tax Act 1961 (the Act) read with Rule 10B & 10C of Income Tax Rules 1962 (the Rules).*

*3. That on the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in stating that the manner of determining the credit rating by the TPO was flawed and erroneous ignoring the fact that the credit rating was determined on the basis of various key elements and by applying the credit rating scale of Standard & Poor.*

*4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying LIBOR since LIBOR is not the rate of consideration for loans where currency is to be bought and rate of interest to be charged from AE should have factored risk elements like exchange rate fluctuation, entity risk etc.*

*5. That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowances u/s 40(a)(ia) for non Deduction of TDS on account of advertisements.*

*6. That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowances u/s 40A(9) for payments made to the employees recreation club.*

*7. The appellant craves for leave to add, alter/or amend any of the grounds of appeal before or at the time of hearing.”*

**3. Ground Nos.1 to 4** - The Revenue vide Ground Nos.1 to 4 has contested the action of the CIT(A) in deleting the addition made by the Assessing Officer on account of transfer pricing adjustments of interest charged by the assessee on loans given to its associate enterprise/subsidiary.

4. The assessee during the year has given loan to its associate enterprise i.e. M/s Novenor SAS France. The assessee charged the interest @ 1.5%. The assessee thereafter applied comparable

uncontrolled price (CUP) method for benchmarking the aforesaid transaction and suo moto made transfer pricing adjustment and shown the interest @ 3.884% being at arm's length price as per the CUP method. The assessee while applying the aforesaid method pleaded that the foreign currency denominated loans were to be benchmarked at the relevant market rate of the relevant currency and of the state in which the loan was advanced and not on the basis of domestic rates prevailing in India. It was pleaded that the London InterBank Offered Rate (LIBOR) was considered one of the fundamental benchmark for global financial market. The Assessing Officer, however, benchmarked the transaction taking the interest rate at which the assessee would get the loan in India and thereby made the transfer pricing adjustment by taking the interest rate @ 14.47%. The ld. CIT(A) however, deleted the additions so made by the Assessing Officer, observing as under:

**“06. FINDINGS & DECISION:**

*1. I have carefully considered the submissions put forth by the ld. ARs of the appellant and the observations made by the ld. A.O in the impugned order. These grounds raised by the appellant concerns the addition of Rs.1,49,23,786/- made by the ld. A.O/TPO upon determination of the ALP of the loans/advances given by the appellant to its AE, Novenor SAS which was denominated in EURO currency.*

*From the TP Study report, I find that the appellant has benchmarked the interest of the loan transaction by applying external CUP Method. Under the CUP Method, the appellant had ascertained the credit quality of the borrower i.e. Novenor SAS and benchmarked the interest rate against the comparative interest rates/bond yields of the EURO denominated currency bonds of similar credit quality. From the detailed Economic Analysis set out in the Transfer Pricing Study Report, I find that the appellant had ascertained the credit rating of the borrower at Moody Ba2 (S&P BB+) and ascertained the comparative arm's length interest rate on EURO bond yield curve in the range of 3.52% to 4.22% during the year. Accordingly the equivalent arm's length interest was determined at Rs.37,53,144/- and since the appellant had actually derived interest of Rs.15,47,050/- on*

loan, the differential sum of Rs.22,06,094/- was suo-moto offered by way of transfer pricing adjustment in the computation of income.

2. On the other hand, upon examination of the transfer pricing order, I find that the Ld. TPO was not in agreement with the TP study of the appellant. From the show cause notice ('SCN') and the transfer pricing order passed by the Ld. TPO, it is noted that according to the Ld. TPO the loans should have been benchmarked at the cost of funds in the hands of the appellant and a mark-up on account of appropriate credit spread, having regard to the credit rating of the AE. The Ld. TPO determined the cost of funds of the appellant at 11.47%. The Ld. TPO included further credit spread of 300 bps to arrive at the arm's length interest rate of 14.47%.

3. From the submissions put forth by the Ld. ARs of the appellant, it is noted that the appellant has substantiated the application of external CUP and determination of ALP of loan, having regard to EURO LIBOR and the credit rating of the AE benchmarked against the EURO bond yield curve. The appellant further submitted that the Ld. TPO was unable to point out any defect or infirmity in the TP Study or the benchmarking exercise carried out by it. On the contrary, the Ld. AR of the appellant pointed out several defects & fallacies in the observations & methodology put forth by the Ld. TPO in the impugned order. The appellant also brought on record several judgments of the coordinate benches of the Hon'ble Income-tax Appellate Tribunal wherein it has been held that the relevant currency related LIBOR rate was the most appropriate benchmark for arriving at ALP of inter-corporate loans and not the cost of funds in the hands of the lender.

4. Upon giving due consideration to the observations made by the Ld. TPO in his impugned order and the submissions of the appellant, in the first instance I note that the Ld. TPO has not given any reasons whatsoever for rejecting the transfer pricing study and application of CUP Method undertaken by the appellant to benchmark the loans advanced to the AEs. It is noted that the appellant had undertaken a sound comparability analysis in view of the requirements laid down under sections 92A to 92F of the Act and rules. 10A to 10E of the Rules and also maintained necessary information and documentation in support thereof. However from the SCN issued by the Ld. TPO as well as his impugned order, I find that no ground whatsoever has been set out for rejecting the TP analysis performed by the appellant. Such action of the Ld. TPO is prima facie erroneous and unwarranted. In my considered view the Ld. TPO was first required to record its reasons for rejecting the TP analysis of the appellant and only then could resort to any other method of his choice. The Ld. TPO's action of straightaway resorting to a completely new

*manner of application of CUP Method, without pointing out the defect in the method applied by the appellant, was not only unsustainable on facts but in law as well.*

5. *As far as the methodology followed by the Ld. TPO for determination of ALP is concerned, I find that it did not have sanction or support of the five methods set out in Rule 10B or any judicial precedent on this subject. In the impugned order the methodology followed by the Ld. TPO for determining the arm's length interest rate comprised of the following steps viz., (a) determination of cost of funds in the hands of the appellant and (b) credit spread based on the credit rating of the borrower on independent basis. I find force in the submissions of the Ld. AR that the aforesaid methodology applied by the Ld. TPO suffered from numerous infirmities. In fact the manner in which the Ld. TPO determined the ALP was sketchy and unscientific.*

6. *The Ld. TPO had determined the base rate with reference to the cost of the funds of the appellant i.e. in Indian currency. On the other hand it is Ld. AR's contention that the base rate should be the relevant currency denominated LIBOR rate viz., Euro LIBOR in the instant case. In this regard, I find that the jurisdictional Hon'ble ITAT, Kolkata in the case of Tega Industries Ltd Vs DCIT (76 taxmann.com 24) on identical facts & circumstances had held that it is the relevant currency LIBOR rate and not the cost of funds in the hands of the lender which is required to be adopted as the base rate for benchmarking foreign currency denominated loans. Respectfully following the ratio laid down in the aforesaid judgment, the Ld. TPO's action of adopting the base rate to be appellant's cost of funds is hereby rejected.*

7. *As regards the ascertainment of credit spread, it is noted that the Ld. TPO's manner of determining the credit rating of the borrower as 'CCC' and thereafter the credit spread at 300 bps was inherently flawed and erroneous. The Ld. TPO has apparently ignored the background, profile and shareholding pattern of the borrower-AE in his quest to ascertain the credit rating. The Ld. TPO was of the view that the credit rating of the borrower is to be ascertained, divorced of its relation with the appellant and viz., its holding company. In my considered view, such proposition may sound good in theory but cannot be applied practically. It is further observed that, according to the Ld. TPO, the profitability of a company is the sole determinative factor for arriving at its credit rating and nothing else. Such assumption made by the Ld. TPO for ascertaining the borrower's credit rating is fundamentally erroneous and unjustified. It is further noted that the Ld. TPO has referred to S&P booklet of 2002-2004 for determining the credit rating of the borrower AE for the period FY 2010-11. In this regard, I concur with the Ld. AR's submissions that the Ld.*

*TPO's reference to the S&P booklet of 2002-2004 was untenable in view of the fact that it neither involved the same time frame nor the data was industry-specific. I further note that the Ld. TPO has also not cited any logic or basis on which he arrived at a credit spread of 300 bps corresponding to his 'CCC' rating of the borrower. For the various reasons set out in the foregoing therefore, I am of the considered view that the Ld. TPO's ascertainment ALP interest rate at 14.47% was unsustainable and is accordingly set aside.*

8. *On the other hand I find that the TP analysis performed by the appellant to arrive at the ALP interest of Rs.37,53,144/- was based on sound logic and scientific basis. Unlike the rating methodology of S&P which is based on manual computation of ratios thereby leaving a scope for human intervention and manipulation, I find that the appellant's credit rating report generated from Moody's RiskCalc for Novenor SAS was objective and reasonable. From the TP study I find that the appellant had arrived at the credit rating of the AE at Ba2. Thereafter the appellant has further undertaken a search on Loan Connector database for the said ratings to identity comparable uncontrolled EURO denominated loan instruments and arrived at interest rates of 3.52% to 4.22%. In my considered view the aforesaid method applied by the appellant to determine the ALP interest of the loan advanced to the AE was scientific and logical. I therefore hold that the arm's length interest of Rs.37,53,144/- as determined by the appellant was justified and is upheld.*

9. *I also find merit in the Ld. AR's alternate contention that it is by now a well-settled view foreign currency denominated loans advanced to AEs should benchmarked against the relevant currency denominated LIBOR rate. Some of the relevant judicial precedents in this regard are as follows:*

- *Cotton Naturals (I) Pvt Ltd [TS-117-HC-2015(DEL)-TP]*
- *Tata Autocomp Systems Ltd. (TS-45-HC-2015(BOM)-TP)*
- *Varroc Engineering Pvt. Ltd vs. ACIT (ITAT Pune) (ITA No.2482/PN/2012)*
- *Bhansali & Co. (TS-461-ITAT-2014(Murr:)-TP)*
- *M/s Four Soft Ltd vs DCIT (ITA No.1495/HYD/2010)*
- *DCIT vs Tech Mahindra Ltd (ITA No. 1176/Mum/2010)*
- *Mahindra & Mahindra Limited vs DCIT (ITA No.7999/Mum/2011)*
- *Hinduja Global Solutions Ltd. vs. Addl. CIT, (ITA No. 254/Mum/2013)*
- *Aurinopro Solutions Ltd. vs. Addl. Commissioner of Income Tax (ITA No.7872/Mum/2011)*
- *VVF Limited vs. DCIT (2010-TIOL-55-ITAT-MUM)*

- *M/s Aithent Technologies Pvt. Ltd. v/s ITO (2010-TII-134-ITAT-DEL-TP)*

*Respectfully following the judgments of the Hon'ble High Courts & Income-tax Appellate Tribunal and for the reasons discussed above, I hold that the ALP determined by the TPO in his order u/s 92CA(3) was wholly inappropriate and excessive. I further hold that the ALP interest rate of Rs.37,53,144/- computed by the appellant was at arm's length and justified. Accordingly, the AO/TPO is directed to delete the addition of Rs.1,49,23,786/- made on account of adjustment of interest on inter-corporate loans. Ground Nos.1 to 5 are therefore allowed.”*

5. The ld. CIT(A) has categorically noted that the TPO in his impugned order had not given any reason, whatsoever, for rejecting the transfer pricing adjustment and application of CUP method undertaken by the assessee for benchmarking the interest rate on loan advanced to associate enterprises. Further the assessee had explained that it was not a mere loan transaction, rather, it was on pure business consideration. The loan was advanced by the assessee to its wholly owned subsidiary for strategic acquisition abroad with a view to further the assessee's business profile. Further, it has been observed by the ld. CIT(A) that the issue is squarely covered by the various decisions of the Benches of the Tribunal as well as of the Hon'ble High Courts, wherein, it has been settled that foreign currency denominated loans advanced to AEs should be benchmarked against the relevant currency denomination as per LIBOR rate.

6. The ld. DR could not rebut the above plea of the ld. AR that the loans were benchmarked as per relevant market rate of the relevant currency in which loans were advanced and as per the prevailing rate in that foreign country. In view of catena of judgements relied upon by the CIT(A), further in the decision of the Coordinate Bench of the Tribunal in the case of Russell Credit Ltd. vs. DCIT in ITA No.33/Kol/2018 &

1090/Kol/2017 vide common order dated 17.01.2020 and further of the Coordinate 'C' Bench of the Kolkata ITAT in the case of DCIT vs. M/s Britannia Industries Ltd. ITA No.1390 to 1392/Kol/2017 vide common order dated 22.11.2017, we hold that the ld. CIT(A) rightly applied the case laws and deleted the impugned loan interest arm's length price adjustment made by the Assessing Officer. Ground Nos.1 to 4 are accordingly dismissed.

7. **Ground No.5** – Vide Ground No.5, the Revenue is aggrieved by the action of the CIT(A) in deleting the disallowance, made by the Assessing Officer u/s 40(a)(ia) of the Act for non-deduction of TDS on payment of Rs.2,94,000/- paid to St. Xavier's Alumni Association.

8. The Assessing Officer held that the aforesaid payment on account of advertisement was made without deduction of TDS. He therefore made the impugned disallowance, however, the ld. CIT(A) deleted the disallowance so made by the Assessing Officer observing that in the appellant's own case for assessment year 2008-09 to 2010-11, his predecessor [CIT(A)] has deleted the impugned disallowance observing that the payee i.e. St. Xavier's Alumni Association was recognised by the department as a charitable institution and its income was exempt and therefore, there was no escapement of income and the assessee was not obliged to deduct TDS, since the income of the said institution/payee was not taxable.

9. We find that the Department has not contested this issue in the earlier years. The ld. DR has not brought any distinguishable facts for this year. In view of this, this ground of the Revenue's appeal is hereby dismissed.

10. **Ground No.6** – Vide Ground No.6, the Revenue is aggrieved by the action of the CIT(A) in deleting the disallowance made u/s 40A(9) for payments made to the employees' recreation club.

11. The Assessing Officer disallowed the said expenditure observing that the said club was a distinct entity and contribution made by the assessee to the said club was not allowable as business expenditure.

12. The ld. CIT(A), however, deleted the additions so made by the Assessing Officer on the issue by observing that the said issue has already been decided by its predecessor in the earlier years in relation to assessment year 2008-09 to assessment year 2010-11, wherein, it was held that recreation club was integral part of the assessee itself, where, the contribution was collected from employees and this was matched by the assessee for providing recreational facilities as a measure of employee welfare. The ld. CIT(A) observed that since the payments were not made to any third party association or trust, rather, the payments represented expenditure on in-house employee welfare activities, the expenditure was allowable.

13. The ld. DR has not brought any distinguishable facts. In view of this, this ground of the revenue's appeal is therefore dismissed.

14. The facts and issues involved in Revenue's appeal for assessment year 2012-13 & 2013-14 are exactly identical except the amounts involved and our findings, given above, will mutatis mutandis apply to all the captioned appeals. In view of this all the appeal filed by the Revenue are hereby dismissed.

15. In the result, all the captioned appeals of the Revenue stand dismissed.

**Kolkata, the 30<sup>th</sup> March, 2023.**

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 30.03.2023.

RS

*Copy of the order forwarded to:*

1. DCIT, Circle-11(1), Kolkata
2. M/s Eveready Industries India Ltd.
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches