

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'J' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.(TP).A. No. 587/Mum/2017 (A.Y. 2012-13)

Miranda Tools Pvt. Ltd. (earlier know as PMP Auto Components P. Ltd.) Peninsula Spenta, 2 <sup>nd</sup> Floor Mathuradas Mill Compound Senapati Bapat Marg Lower Parel, Mumbai-400 0013. (Appellant)	Vs.	DCIT, Circle- 7(3)(2) Room No. 12 Ground Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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I.(TP).A. No. 209/Mum/2017 (A.Y. 2011-12)

DCIT, Circle-7(3)(2) Room No. 12 Ground Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	Miranda Tools Pvt. Ltd. (earlier know as PMP Auto Components P. Ltd.) Peninsula Spenta, 2 <sup>nd</sup> Floor Mathuradas Mill Compound Senapati Bapat Marg Lower Parel, Mumbai-400 0013. (Respondent)
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PAN : AAACP7200N

Assessee by	Ms. Mahek Savla
Department by	Shri Samuel Pitta
Date of Hearing	30.03.2023
Date of Pronouncement	17.05.2023

O R D E R

Per B.R.Baskaran (AM) :-

The appeal of the assessee relates to assessment year 2012-13 and the appeal of the revenue relates to assessment year 2011-12. Both these appeals were heard together and are being disposed of by this common order.

2. The assessee is engaged in the business of manufacture and sale of Auto electrical components. Both the above said appeals were initially

disposed of by the Tribunal, vide its common order dated 24-05-2019. Subsequently, the assessee moved two miscellaneous applications in respect of above said appeals. The miscellaneous application no.453/Mum/2019 was related to the revenue's appeal for AY 2011-12 in ITA No.209/Mum/2016. The miscellaneous application no.452/Mum/2019 was related to the assessee's appeal for AY 2012-13 in ITA No.587/Mum/2017.

3. We shall now take up the appeal of the revenue for AY 2011-12 in ITA No.209/Mum/2016. As noticed earlier, this appeal was disposed of by the Tribunal, vide its common order dated 24.05.2019. Against the miscellaneous application filed for AY 2011-12 (MA No.453/Mum/2019), the Tribunal has corrected certain mistakes, vide its order dated 09-01-2020, which was again corrected by a Corrigendum dated 27-02-2021. As such the order passed in ITA No.209/Mum/2016 has not been recalled by the Tribunal and the registry has erroneously has revived this appeal. Hence, this appeal of revenue does not require any specific adjudication and order already passed on 24.05.2019 in this appeal shall stand as it is, wherein the appeal of the revenue was dismissed.

4. We shall now take up the appeal filed by the assessee for AY 2012-13. The Tribunal, vide its order dated 09-01-2020 passed in M A No.452/Mum/2019 recalled its earlier order dated 24.05.2019 for the limited purpose of adjudicating Ground No.3 in ITA No.587/Mum/2017. The said ground no.3 reads as under:-

“Ground No.III:- Addition on account of treading Equity Investments in Overseas Subsidiary as a Loan and thereby making an addition of Notional interest income amounting to Rs.93,23,585/-.

1. On the facts and circumstances of the case in law, the Ld AO, pursuant to the directions of the Ld DRP erred in treating equity capital investment made in wholly owned subsidiary in the previous years as an international transaction u/s 92B(1) and recharacterising the same as a loan and calculating notional interest on such loan amounting to Rs.93,23,585/-.

2. The Ld AO failed to appreciate and ought to have held that:  
The assessee had made investment in its subsidiary in previous years is on capital account. No further infusion was done in the year under consideration.  
Such investment cannot be recharacterised as deemed loan and therefore, the question of charging notional interest on such investment do not arise.
3. The appellant prays that the aforesaid addition made by the Ld AO, pursuant to the directions of the Hon'ble DRP, be deleted or be appropriately reduced.
4. Without prejudice to 3 above the interest rate charged should be restricted to Libor + 2%."
5. We heard the parties on this issue and perused the record. The above said ground related to the notional interest charged on the equity investments re-charactering it as "deemed loan". The facts relating to this issue are that, in the earlier years, the assessee had acquired entire capital of a company PMP Bakony from a third party in Hungary for Rs.437.20 lakhs, where the capital contribution was by way of "quota". The ownership was in proportion to quota holding. The assessee purchased shares in the above said company in the subsequent years also. In assessment year 2010-11, the Transfer pricing adjustment to the tune of Rs.2,58,94,765/- was made holding that the shares have been purchased at excess value and the excess so computed by TPO was added as transfer pricing adjustment. The Tribunal, vide its order dated 13-01-2016 passed in ITA No.7724/Mum/2014, held that the investment in shares is a capital account transaction. In this regard, the Tribunal followed the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Vodafone Services India (P) Ltd vs. UOI (268 ITR 1)(Bom). It is pertinent to note that the decision in the case of Vodafone Services India (P) Ltd was rendered in respect of inbound investment. However, the principle laid down in the above said case was followed by the Tribunal in AY 2010-11 with the following observations:-

"17. The aforesaid principles and ratio will equally apply to out bound investments also, because it is the investment on shares, which is purely

on capital field and there is no income which needs to be bench marked in this year for making any kind of transfer pricing adjustment. Thus, respectfully following the decision of Hon'ble Jurisdictional High Court, we hold that the transfer pricing adjustment made by the TPO cannot be sustained and accordingly, ground no.4 as raised by the assessee is treated as allowed."

6. It is pertinent to note that the TPO had also made transfer pricing adjustment in AY 2010-11 by way of notional interest on the above said investment to the tune of Rs.2,50,95,228/- and the said secondary adjustment was deleted by Ld Dispute Resolution Panel (DRP). Hence the revenue had filed appeal before ITAT in ITA No.429/Mum/2015 challenging the above said directions given by Ld DRP. The Tribunal dismissed the appeal of the revenue, since it had taken the decision that the investment made in subsidiary is a capital account transaction.

7. The revenue challenged the above said decision of ITAT rendered in AY 2010-11 on both the following transfer pricing adjustment by filing appeal before Hon'ble High Court of Bombay:-

- (a) Rs.2,58,94,765/- relating to excess money paid on purchase of shares and
- (b) Rs.2,50,95,228/- relating to interest charged on deemed loan.

The Hon'ble Bombay High Court, vide its order dated 20<sup>th</sup> February, 2019 reported as PCIT vs. PMP Auto Components (P) Ltd (416 ITR 435)(Bom) has dismissed the appeal of the revenue upholding the order passed by the Tribunal.

8. The above said ground no.3 raised by the assessee in AY 2012-13 relates to the transfer pricing adjustment made by charging notional interest by treating the equity investments as deemed loan. We notice that an identical adjustment made in AY 2010-11 has been deleted by the co-ordinate bench and the said decision of the Tribunal has since been upheld by the jurisdictional High Court. For the sake of convenience, we extract below the

decision rendered by Hon'ble Bombay High Court in AY 2010-11 in the assessee's own case:-

**"2.** The Revenue has urged following two questions of law for our consideration—

- (A) Whether on the facts and circumstances of the case and in law, was the Tribunal correct in deleting the adjustment of Rs.2,58,94,765/- on account of excess money paid to PMP Bakony (AE) for acquiring share?
- (B) Whether on the facts and circumstances of the case and in law was the Tribunal correct in upholding the deletion of the adjustment of Rs.2,50,95,228/- being interest chargeable on deemed loan transaction with PMP Bakony (AE)?

.....

- (d) There is no dispute before us that the transaction of purchase of shares by the respondent of its subsidiary company i.e. A.E. at a price much higher than its fair market value would be international transaction as defined in Section 92(B) of the Act. The only issue before us as considered by the impugned order of the Tribunal is whether Chapter X of the Act would at all be applicable in case of any investment made on capital account. This on the premise that the transaction of purchase of equity share capital would not give rise to any income. We note that similar issue was before this Court in *Vodafone (supra)* and this court inter alia observed that Chapter X of the Act is machinery provision to arrive at the arm's length price of transaction between associated enterprises. However, before the provisions can be kicked in, it is necessary that income must arise under the substantive provisions found in the Act viz., under the heads of salaries or income from house property or profits and gains in business or profession or capital gains and/or income from other sources. Section 92 of the Act requires income to arise from an international transaction while determining the ALP. Therefore the *sine qua non* is that income must first arise on account of the international transaction.
- (e) The view of this Court in *Vodafone (supra)* has been accepted by the Central Board of Direct Taxes (CBDT) by issue of instruction No.2/2015 dated 29th January 2015.
- (f) In this case also, the shares which have been purchased by the respondent assess are on capital account. The revenue is seeking to bring the difference between the actual investment of Rs. 2.67 Crores and fair market value of the shares (investment) at Rs. 8.13 lakhs i.e. Rs. 2.58 Crores to tax. This without being able to specify under which substantive provision would income arise.. In our view, therefore, the issue arising here stands concluded by the decision of this Court in *Vodafone India Services (P.) Ltd. (supra)*. The distinction which is

sought to be made by the revenue on the basis of this being an inbound investment and not an outbound investment as in the case of *Vodafone (supra)* is a distinction of no significance. On principle, if this court has held that Chapter X of the Act is machinery provision and can only be invoked to bring to tax any income arising from an international transaction, then, it is necessary for the revenue to show that income as defined in the Act does arise from the international transaction. The distinction between inbound and outbound investment is a distinction which does not take the case of revenue any further, as the Legislature has made no such distinction while providing for determination of any income on adjustments to arrive at ALP arising from an international transaction.

- (g) The further submission on behalf of the revenue that in future the respondent may sell these shares at a loss as they have purchased the same at much higher price than its fair market value. Thus gives rise to reduction of its tax liability in future. This submission is in the realm of speculation. At this stage, it is hypothetical. The issue has to be examined on the basis of law and facts as existing before the authorities in the subject assessment year. No provision of the Act has been shown to us, which would allow the Revenue to tax a potential income in the present facts.
- (h) We note that with effect from 1st April 2013, the definition of Income as provided under section 2(24) of the Act was amended to include sub-clause (xvi) therein. It provided as income, any consideration received for issue of shares, if it exceeds the fair market value, as falling under clause (viib) of sub-section (2) of Section 56 of the Act. The amendment/ insertion of section 56(2) (viib) of the Act was with effect from 1st August 2013 and reads as under:-
- "56(2)(viib): Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares."
- (i) However, as this provision was made effective only with effect from 1st April 2013, and it is not even the case of revenue before the authorities or before us that the said provision would apply for the subject assessment year 2010-11. In the above view, there is no occasion to examine the above amendments in the context of this case. This would be done appropriately in a case arising post the amendment.
- (j) In the above view, the view taken by the Tribunal being concluded by the decision of this Court in *Vodafone India Services (P.) Ltd. (supra)* the question as proposed does not give rise to any substantial question. Thus not entertained.

**5.Regarding Question No.B :-**

- (a) The issue arising herein is a consequence of Question No.A herein. However, as we have not interfered with the decision of the Tribunal with regard to question No.A, this question becomes academic in the present facts. This, as no amount paid to acquire equity shares of the A.E. can be considered to be a loan to the A.E.
- (b) As the issue is now academic, it does not give rise to any substantial question of law. Therefore, it is not entertained.
6. Accordingly, appeal dismissed. No order as to costs.”

Accordingly, following the decision of the jurisdictional Hon'ble Bombay High Court in the assessee's own case in AY 2010-11, we deleted the transfer pricing adjustment of Rs.93,23,585/- towards notional interest on deemed loan.

9. In the result, the appeal of the revenue in AY 2011-12 is dismissed. The appeal of the assessee in AY 2012-13 relating to ground no.3 is allowed.

Pronounced in the open court on 17.5.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(B.R. BASKARAN)  
Accountant Member

Mumbai; Dated : 17/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS