

**IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 848/MUM/2014
(Assessment Year: 2009-10)**

Standard Chartered Capital Limited
[Formerly known as Standard Chartered
Investments and Loans (India) Limited],
Corporate Office, Floor 6, G-Block,
Crescenzo Office, Bandra Kurla Complex,
Mumbai - 400051
[PAN: AAHCS6432N]

..... **Appellant**

Deputy Commissioner of Income Tax
1(3), Mumbai,
Aayakar Bhavan, Marine Lines,
Mumbai - 400001

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sanjiv M. Shah
For the Respondent/Department : Shri Samuel Pitta
Shri Manoj Kumar Sinha

Date

Conclusion of hearing : 31.03.2023
Pronouncement of order : 23.06.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal is directed against the Assessment Order dated, 06/12/2013, passed under Section 143(3) read with Section 144C(13) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], as per directions, dated 01/11/2013, issued by the Dispute Resolution Panel-II, (hereinafter referred to as 'the DRP') under Section 144C(5) of the Act pertaining to the Assessment Year 2009-10.

2. The Appellant has raised the following grounds of appeal:

"GROUND NO. 1: Transfer Pricing adjustment related to Interest paid to Standard Chartered Bank-India (SCB-India') on Working Capital loan obtained - Rs. 21,75,000

The learned Deputy Commissioner of Income Tax-1(3) (DCIT) pursuant to the directions issued by Dispute Resolution Panel -II (DRP) erred in making the price adjustments of Rs. 21,75,000 for interest paid on working capital loan obtained from SCB-India on 20 October 2008 considering that interest 14.75% is not at arm's length rate.

SCCL submits that DRP have ignored the economic factors influencing the interest rate pricing on such loans granted by SCB-India based on which average internal comparables are considered as most appropriate for benchmarking such transactions.

SCCL prays that the DCIT be directed to delete the adjustments made in his order under appeal.

GROUND NO. 2: Transfer pricing adjustment related to Interest received from SCB-India on fixed deposits placed - Rs. 8,150

The learned DCIT pursuant to the directions issued by DRP erred in making price adjustments of Rs. 52,548 for interest received on fixed deposits placed with SCB-India considering the rate card of Punjab National bank (PNB) as a closest comparable benchmark.

SCCL submits that DRP have rejected the internal comparables and directed DCIT to adopt PNB rate card for SCCL without assigning any reasons for the same.

SCCL prays that the DCIT be directed to delete the adjustments made in his order under appeal.

GROUND NO. 3: Disallowance under Section 14A of the Act read with Rule 8D - Rs. 900,000

The learned DCIT pursuant to the directions issued by DRP erred in invoking Rule 8D of the Income- tax Rules, 1962 and disallowing an amount of Rs 9,00,000 under Rule 8D(2)(iii) as deemed expenses related to earning dividend

income.

SCCL submits that no notional disallowances for the expenses can be made under Rule 8D (2)(iii) as it has not incurred any direct and indirect expenses incurred related to earning exempt dividend income.

SCCL prays that the DCIT be directed to delete the said additions made in his order under appeal.

GROUND NO. 4: Depreciation on Computer peripherals restricted to 15% as against 60%- Rs. 10,42,446

The learned DCIT pursuant to the directions issued by DRP erred in classifying the computer peripherals as Plant & Machinery and thus restricting the tax depreciation at 15% as against 60% allowable under the head "Computers.

SCCL submits that the learned DCIT ignored the detailed submissions made by them and proposed the addition without providing any justification for his views.

SCCL prays that the DCIT be directed to delete said addition made in his order under appeal."

3. The relevant facts in brief are that the Appellant, wholly owned subsidiary of M/s Standard Chartered Bank, U.K, is engaged in non-banking finance business and its primary activities involved lending and investments. The Appellant has filed its return of income for the Assessment Year 2009-10 declaring total loss of INR 1,59,74,320/-. The return was processed under Section 143(1) of the Act. Subsequently, the case of the Appellant was selected for scrutiny and notice under Section 143(2) of the Act was issued to the Appellant.
4. During the assessment proceedings, the Assessing Officer noted that the Assessee had entered into international transactions with Associated Enterprises (AEs) and therefore, made a reference to the Transfer Pricing Officer (TPO) for computation of Arm's Length Price (ALP) under Section 92CA(1)

of the Act. The TPO, vide order, dated 29/01/2012, passed under Section 92CA(3) of the Act, proposed Transfer Pricing Adjustment of INR 22,27,548/- consisting of (a) transfer pricing adjustment of INR 21,75,000/- in respect of interest paid to Standard Chartered Bank, India [For short 'SCB India'] and (b) transfer pricing adjustment of INR 52,548/- in respect of interest received from SCB India on fixed deposits. The aforesaid transfer pricing adjustment was incorporated in the Draft Assessment Order, dated 14/02/2013. In addition, the Assessing Officer also proposed corporate tax addition which included, inter alia, disallowance of INR 9,00,000/- under Section 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'), and (b) disallowance of INR 10,42,446/- being excess depreciation claimed by the Appellant.

5. Against the Draft Assessment Order, dated 14/02/2013, the Appellant filed objections before DRP which were disposed of vide order dated 01/11/2013. As per the direction of DRP, transfer pricing adjustment of INR 52,548/- in respect of interest received from SCB India on fixed deposits was reduced to INR 8,150/- while the other transfer pricing adjustment and additions/disallowances were confirmed vide Final Assessment Order dated 06/12/2013 passed under Section 143(3) read with Section 144C(13) of the Act.
6. Being aggrieved, the Appellant is now in appeal before us challenging the Final Assessment Order, dated 06/12/2013, on the grounds reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

Ground No. 1

7. Ground No. 1 pertains to transfer pricing adjustment of INR 21,75,000/- relating to interest paid to SCB India on working capital loan taken by the Appellant.
8. The relevant facts in brief are that during the relevant previous year, the Appellant had obtained working capital loans from SCB India for short tenure at prevailing interest rates. The Appellant had obtained a loan of INR 35 Crores from SCB India at the interest rate of 14.75% for a period of 21 days (22/10/2008 to 31/08/2008). The Appellant had benchmarked the aforesaid interest rate of 14.75% charged by SCB India on the basis of following transaction:

Customer Name	Loan Start Date	Loan Maturity date	Tenure (days)	Loan amount	Interest rate
Neel metal Products Limited (Loan No. 20920000984)	21/10/2008	29/10/2008	8	5 crore	14.25
Neel metal Products Limited (Loan No. 20920000982)	21/10/2008	29/10/2008	8	9 crore	14.25
Amit Jadhav (Loan No. 20920002751)	17/10/2008	15/11/2008	29	10 crore	14.50
Indian Farmers Fertilizers Co-op Limited (IFFCO) (Loan No. 20920000064)	22/10/2008	31/10/2008	9	29 crore	14.00
Average arms length rate			14.25%	14.9625%	

9. On the basis of the above transactions, the Appellant had computed average interest rate of 14.9625% as arm's length

rate of interest. According to the Appellant, the rate of 14.75% charged by SCB India was within a range of (+/-) 5% and therefore, no transfer pricing adjustment was warranted. It was also contended on behalf of the Appellant that in case the average rate of interest of 14.70% (approx) thus determined by the Appellant is not considered to be arm's length rate of interest, the closest comparable transaction would be the transaction of loan of INR 10 Crores given by SCB India to its customers Mr. Amit Jadhav for a period of 29 days (17/10/2008 to 15/11/2008) at the interest rate of 14.50%. However, the TPO was not convinced and therefore, rejected the average rate of interest 14.75% determined by the Appellant and concluded that the transaction of loans of INR 29 Crores granted by the SCB India to Indian Farmers Fertilizers and Co-operative Limited (IFFCO) for a period of 9 days (22/10/2008 to 31/10/2008) at the interest rate of 14% was the closest comparable transaction. The TPO, thus, arrived at arm's length interest rate of 14%, and concluded that Appellant had paid excess interest of INR 21,75,000/- [29,00,00,000 x (14.75 - 14%)].

10. We have heard the rival submissions and perused the material on record. During the course of hearing, the Ld. Authorised Representative for the Appellant had submitted that the interest rate on working capital loans is a function of prevailing market rates, liquidity conditions and other related economic/commercial factors surrounding the transaction. The Appellant had relied upon internal workings to substantiate the rate of interest of 14.75% as being arm's length rate of interest. The TPO erred in rejecting the aforesaid arm's length

rate of interest and cherry picked a single transaction as the comparable transaction. He further submitted that the TPO erred in rejecting the loan transaction between SCB India and Mr. Amit Jadhav was closest comparable transaction which constituted internal CUP.

11. The Ld. Departmental Representative supported the order passed by the TPO/Assessing Officer and submitted that the TPO was justified in rejecting the average rate of interest adopted by the Appellant to benchmark the international transaction under consideration. The Ld. Departmental Representative further submitted that the loan transaction identified by the Appellant was between SCB India and an individual which could not be compared with a loan transaction between corporate such as the Appellant and SCB India. According to the Ld. Departmental Representative submitted that the TPO was justified in adopting loan transaction between SCB India and IFFCO as the loan amount of INR 29 Crores was comparable with the loan amount of INR 35 Crores taken by the Appellant from SCB India.
12. In rejoinder, the Ld. Authorised Representative for the Appellant submitted that the tenure of the loan transaction between SCB India and Mr. Amit Jadhav was comparable with the loan transaction between SCB India and the Appellant and therefore, the TPO erred in rejecting the same.
13. Having considered the rival submissions and on perusal of record we find that the transaction of loan taken by the Appellant from SCB India, with the Appellant being a tested

party, has been sought to be benchmarked by the transactions undertaken by the SCB India with third parties whereby loan has been granted by SCB India to such third parties. The Appellant is not party to the loan transaction identified by the Appellant and therefore, in our view, rate of the interest determined by the Appellant as arm's length rate of interest on the basis of such transactions does not constitute internal CUP. Further, as per the Appellant's own submissions, the interest rate on working capital loans is a function of prevailing market rates, liquidity conditions and other related economic/commercial factors surrounding the transaction. However, no such information/details is available on record in relation to the loan transactions identified by the Appellant. In the aforesaid facts and circumstances, we are constrained to remand the issue back to the file of the Assessing Officer/TPO for determination of arm's length rate of interest and transfer pricing adjustment, if any, in relation to transaction of working capital loan of INR 29 Crores granted by SCB India to the Appellant afresh. With the above direction, Ground No. 1 raised by the Appellant is allowed for statistical purposes.

Ground No. 2

14. Ground No. 2 pertains to transfer pricing adjustment of INR 52,548/- made by the TPO/Assessing Officer in respect of interest received by the Appellant from SCB India on fixed deposits which was restricted to INR 8,150/- as per the following directions issued by the DRP.
15. We find that the TPO had compared the rate of interest charged by the Appellant with the Punjab National Bank ('PNB')

interest rate card and noted that interest rate on fixed deposits exceeding INR 1 Crore was higher by 1%. Therefore, the TPO proposed transfer pricing adjustment of INR 52,548/-. However, DRP noted that the PNB interest rate card adopted by the TPO was effective from 01/03/2009 only and therefore, directed the TPO/Assessing Officer not to adopt the PNB interest rate card for deposits prior to 01/03/2009 and restricting the adjustment to interest on fixed deposit placed thereafter. Thus, in effect, the transfer pricing adjustment stood reduced from INR 8,150/-.

16. During the course of hearing, the Ld. Authorised Representative for the Appellant challenged the transfer pricing addition of INR 8,150/- contending that the PNB interest rate card cannot be adopted to benchmark the interest charged by a private company such as the Appellant as PNB was a nationalized bank. However, there is nothing on record to support the aforesaid contention of the Appellant. Accordingly, we are not inclined to interfere with the Final Order passed by the Assessing Officer on this issue as per the direction of DRP. Accordingly, Ground No. 2 raised by the Appellant is dismissed.

Ground No. 3

17. Ground No. 3 pertains to disallowance of INR 9,00,000/- made under Section 14A of the Act read with Rule 8D(2)(iii) of the Rules. The Ld. Authorised Representative for the Appellant vehemently contended that no addition could have been made in the hands of the Appellant as no expenditure was incurred by the Appellant for earning exempt income. He submitted that the Assessing Officer has made no addition/disallowance under

Rule 8D(2)(i)/(ii) of the Rules. He further submitted that the Assessing Officer failed to record satisfaction before making addition/disallowance under Section 14A of the Act and in this regard, he relied upon the following judgments - Maxopp Investment Ltd. vs. CIT 347 ITR 272 and Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT: 394 ITR 449

18. Per contra, the Ld. Departmental Representative relied upon the order passed by the Assessing Officer. He submitted that the Assessing Officer has rightly invoked provisions of rule 8D to make disallowance of INR 9,00,000/- in terms of Rule 8D(2)(iii) of the Rules as the Appellant had made no disallowance under Section 14A of the Act despite earning exempt income.
19. We have considered the rival submissions and perused the material on record. We find merit in the contention of the Appellant with the Assessing Officer has failed the record satisfaction before invoking provisions of Section 14A of the Act read with Rule 8D of the Rules. On perusal of the assessment order we find that the Assessing Officer has rejected the contention of the Assessee that no disallowance should be made under Section 14A of the Act and while doing so, the Assessing Officer has neither referred to any interest cost and/or administrative expenses incurred/claimed by the Assessee for earning the exempt income, nor made any reference to the accounts of the Assessee.
20. The Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT: 394 ITR 449 had observed that it was only

after the Assessing Officer had recorded his dissatisfaction as regards the correctness of the claim of the Assessee that the provisions of Section 14A of the Act read with Rule 8D could be invoked. It relevant observations of the Hon'ble Supreme Court are as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (Emphasis Supplied)

21. Similar view was taken by the Hon'ble Supreme Court in case of Maxopp Investment Ltd. vs. CIT 347 ITR 272 wherein it was held as under:

"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO." (Emphasis Supplied)

22. Thus, it is settled legal position that before proceeding to invoke provisions of Rule 8D of the Rules for computing

disallowance under Section 14A of the Act the Assessing Officer must express his dissatisfaction regarding the computation of disallowance made by the Assessee. Accordingly, in view of the above judgments, the addition of INR 9,00,000/- made under Section 14A of the Act read with Rule 8D(2)(iii) of the Rules is deleted. Ground No. 3 raised by the Appellant is allowed.

Ground No. 4

23. Ground No. 4 raised by the Appellant pertains to disallowance of depreciation of INR 10,42,446/-.
24. The relevant facts in brief are that from the Previous Year 2006-07 relevant to the Assessment Year 2007-08 the Appellant had claimed depreciation of INR 1,01,13,325/-, on routers, connection charges and servers as the Appellant was of the view that the same qualify for depreciation at the rate of 60%, being the rate applicable to computers. However, the Assessing Officer restricted the depreciation to 15%.
25. During the relevant previous year, the Appellant again claimed depreciation of INR 13,89,928/- computed at the rate of 60% on the opening Written Down Value (WDV) as no additions were made to the block of assets during the relevant previous year. However, the Assessing Officer again restricted the claim of depreciation to 15% and made a disallowance of INR 10,42,446/- out of the total depreciation of INR 13,89,928/- claimed by the Appellant.
26. We find that this issue stands decided in favour of the Appellant by the Tribunal in appeal preferred by the Appellant for the Assessment Year 2007-08 [ITA No. 7069/Mum/2016]

vide order dated 29/01/2020. The relevant extract of the decision of the Tribunal read as under:

"27. We have considered the submission of both the parties and perused the record. The Assessing Officer while passing the assessment order allowed depreciation @ 15% against the claim of assessee of 60%. The Id. CIT(A) confirmed the action of Assessing Officer.

28. We have noted that Hon'ble Delhi High Court in DCIT vs. BSES Rajdhani Powers Ltd. (supra) and in CIT vs. Bonanza Portfolio Ltd. (supra) held that computer peripherals and accessories form an integral part of computer system and eligible for depreciation @ 60%. Considering the decision of Tribunal, the Hon'ble Delhi High Court is directed the Assessing Officer to allow the depreciation @ 60% on printers, cable lines and other connected peripherals. Hence, this ground of appeal is allowed. (Emphasis Supplied)

27. In view of the above, the Appellant is entitled to claim depreciation at the rate of 60%. Accordingly, disallowance of depreciation of INR 10,42,446/- stands deleted. Ground No. 4 raised by the Appellant is allowed.
28. In result, the present appeal filed by the Assessee is partly allowed.

Order pronounced on 23.06.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.06.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
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6. गार्ड फाईल / Guard file.

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सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai