

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.525/DEL/2019  
Assessment Year 2013-14

Sona BLW Precision Forgings Ltd. UGF-6, Indraprakash 21 Barakhamba Road New Delhi	Vs.	Addl. CIT Special Range-8 New Delhi
TAN/PAN: AABCS4786P		
(Appellant)		(Respondent)

Appellant by:	Ms. Aditi Gupta, AR		
Respondent by:	Shri Rajesh Kumar, CIT (DR)		
Date of hearing:	22	06	2023
Date of pronouncement:	14	07	2023

**ORDER**

**PER KUL BHARAT, A.M.:**

The captioned appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-44, New Delhi ['CIT(A)' in short] dated 26.11.2018 arising from the assessment order dated 21.11.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) pertaining to Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal.

*"1. The learned Commissioner of Income Tax (Appeals) erred in law and facts in partially upholding the arm's length price of corporate guarantees extended by the Appellant to the bankers of the Associate Enterprises and thereby erred in upholding upward transfer pricing adjustment of Rs.66,30,450 (net of suo moto adjustment by the Appellant) u/s. 92CA of the Income Tax Act, 1961 in respect of Corporate Guarantee Commission.*

*2. Without prejudice to the foresaid grounds, the learned Commissioner of Income Tax (Appeals) erred in facts and law by upholding the partial addition even though the operating margin of the assessee as per accepted benchmark method of TNMM, was within acceptable range even after considering the Transfer Pricing Officer's adjustment on corporate guarantee fee."*

3. The facts in brief are that in this case the assessee filed its return of income declaring income at INR 28,64,70,841/- on 25.01.2013 which was later revised to INR 28,70,84,296/- on 20.03.2015. The case was selected for scrutiny under CASS. Thereafter, statutory notices were issued. The assessee-company is engaged in the business of manufacturing of Precision Forged Bevel Gears and Synchronizer rings used in the automobile industry. It was noticed that during the year under consideration, the assessee-company had undertaken international transactions therefore, the matter was referred to Transfer Pricing Officer (TPO) for determining Arms' Length Price who proposed that adjustment of INR 1,06,66,002/- qua the value of international transactions against this assessee did not file any objection before the Dispute Resolution Panel (DRP). Thereafter, the Assessing Officer made addition of INR 1,06,66,002/-. Thus, the Assessing Officer assessed the income at INR 29,77,50,298/- against the declared income at INR 28,64,70,841/-.

4. Aggrieved against this, the assessee preferred appeal before the Id. CIT(A) who sustained the addition by following the order of the predecessor in the Assessment Year 2012-13.

5. Now the assessee is in appeal before this Tribunal.

6. At the outset, the Id. counsel for the assessee submitted

that under the identical facts Co-ordinate Bench of this Tribunal in respect of proceedings related to Assessment Year 2012-13 had decided the issue in favour of the assessee by directing the Assessing Officer to apply CUP method and restored the matter to the file of the Assessing Officer for fresh determination. The ld. counsel further submitted that following the decision in Assessment Year 2012-13, the issue in Assessment Year 2016-17 also was restored to the file of the Assessing Officer, therefore, it was contended that matter be restored to the file of the Assessing Officer.

7. We have heard the rival contentions and perused the material available on record.

8. We find that the Co-ordinate Bench of the Tribunal in ITA Nos.204 & 3134/Del/2017 vide order dated 18.11.2021 for Assessment Years 2011-12 & 2012-13 had restored the issue to the file of the Assessing Officer. This decision was also followed by the Co-ordinate Bench in the Assessment Year 2016-17. For the sake of clarity, the relevant paragraphs of the order passed on 18.11.2021 are reproduced hereunder:-

*“4. Assessee filed objections before the DRP. DRP, after some discussions, held as under:-*

*“It is well settled that LIBOR being an internationally recognized rate is the appropriate benchmark interest rate which conforms to the arm's length standard under the CUP Method for benchmarking foreign currency loans. The LIBOR rate is therefore the appropriate uncontrolled comparable to be applied to the assessee's transactions for the relevant period. In cases where the invoices are raised in foreign currency, the applicable rate will be LIBOR plus, in line with judgment of the Hon'ble Delhi High Court in the case of M/s Cotton Naturals. The AO is directed to verify the assessee's claim of the said loans being in foreign currency from the relevant agreements, in which case the applicable LIBOR rate of interest should be taken based on credit rating, purpose and term of loan etc.,*

*which are specific to the terms of the loan I payment with the AE and to re-compute the adjustment accordingly. The TPO shall verify the claim of the assessee that the AE concerned was Sona Holding B.V. Netherland as per the audited financials and not Sana BLW Germany and Sona BLW USA as taken in the draft order This Ground is disposed off as above.”*

5. *Ld. Counsel of the assessee pleaded that on identical issued, this Tribunal in ITA Nos.204 & 3134/Del./2017 vide order dated 18.11.2021 for AYs 2011-12 & 2012-13 gave the following directions :-*

*“16. As far as issue of benchmarking is concerned, we find that Assessing Officer has applied the rate of 2.02% which has been restricted by the CIT(A) to 1% of the loans availed. However, we are of the opinion that, the transaction has to be benchmarked applying most appropriate method as per the provisions of the Act. The adjustment made by the Assessing Officer taking average rate of guarantee commission by the banks cannot be held as a comparable uncontrolled price. The Learned AO or the TPO has to compare the transaction of the assessee with actual transaction happened during relevant period in circumstances comparable to the assessee, as per the strict requirement of CUP method. In the circumstances, we feel it appropriate to restore the issue of benchmarking of the international transaction of guarantee fee/commission to the file of the Ld. AO/TPO for deciding afresh after providing adequate opportunity of being heard to the assessee. The ground of the appeal of the assessee, are accordingly allowed for statistical purposes.”*

*Ld. Counsel for the assessee pleaded that the matter may be set aside to the AO/TPO in accordance with the above said order.*

6. *Per contra, ld. DR for the Revenue did not have any objection to this proposition.*

7. *Accordingly, in the interest of justice, we remit the issue to the AO to consider the issue afresh in the light of the aforesaid observations of the Tribunal. Needless to add, assessee should be granted an opportunity of being heard.”*

9. It is not disputed that the ld. CIT(A) in paragraph 5.6 of the impugned order has followed the decision of predecessor in the A.Y. 2012-13. For the sake of clarity, the same is reproduced as under:

*“5.6 The material facts of the case at the same in the instant year also. In accordance with the principle of consistency, the doctrine of judicial discipline and respectfully following the order of the CIT(A)-44, in Appeal No. 13/2016-17 dated 17.01.2017 for AY 2012-13, the AO/TPO is directed to consider ALP for corporate guarantee at 1%. The grounds of Appeal No. 1 to 6 are accordingly disposed off.”*

10. We therefore taking a consistent view, hereby restore the issue to the file of the Assessing Officer to decide in accordance with the direction of the Tribunal in ITAs No.204 & 3134/Del/2017 order dated 18.11.2021. The grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 14/07/2023**

**Sd/-**  
**[B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**

DATED: /07/2023  
*prabhat*

**Sd/-**  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**