

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

**BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

ITA No. 1584/MUM/2014 (A.Y. 2006-07)

DCIT – 1(3) Room No. 564, Aayakar Bhavan M.K. Road, Mumbai - 400020	v.	M/s. Rabo India Finance Ltd., Forbes Building, 1 st Floor Charanjit Rai Marg, Fort Mumbai – 400001 PAN: AAACR6065R
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Nitesh Joshi
Department Represented by	:	Shri Gaurav Batham
Date of Conclusion of Hearing	:	24.05.2023
Date of Pronouncement	:	18.08.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is recalled vide Miscellaneous Application No. 160/Mum/2022 by observing that the issue raised in Ground Nos. 3 & 4 of ITA.No. 1584/Mum/2014 for the A.Y. 2006-07 have certain mistakes and needs rectification vide order dated 22.11.2022. Since the mistake

was apparent on record this Miscellaneous Application was allowed and recalled the issue under consideration for fresh adjudication.

2. Limited Grounds were recalled by the Tribunal for denovo adjudication are Ground No. 3 and 4 raised by the revenue, the same are reproduced below: -

"3. Whether in the facts and in the circumstances of the case and in Law, the Ld. DRP erred in deleting the addition made in draft assessment order on account of interest on external commercial borrowing?"

4. Whether in the facts and in the circumstances of the case and in Law, the Ld.DRP erred in deleting the addition made in draft assessment order on account of Guarantee fee paid-Rs. 5,63,600/-, Service fee paid-Rs. 5,63,600/- and Interest on ECB- Rs. 3,90,69,364/- paid to its holding company even though no substantial/specific service have been rendered by the holding company?"

3. At the time of hearing, Ld. DR brought to our notice relevant facts and submitted that Ld. DRP erred in deleting the addition made in draft assessment order on account of interest on external commercial borrowing. Further, Ld. DR submitted that Ld. DRP erred in deleting addition made in draft assessment order on account of Guarantee fee paid of ₹.5,63,600/-, Service fee paid of ₹.5,63,600/- and Interest on ECB of ₹.3,90,69,364/- paid to its holding company even though no substantial/specific service have been rendered by the holding company. Ld. DR relied on the findings of the TPO/Assessing Officer.

4. On the other hand, Ld. AR of the assessee objected to the submissions made by the Ld. DR and he relied on the order of Ld. DRP. He filed its submissions vide letter dated 29.05.2023, the same are reproduced below: -

"Brief facts of the case"

1. *The Miscellaneous Application was filed by the Department arising out of the order passed by the Hon'ble Income-tax Appellate Tribunal in Department's Appeal ITA No. 1584/Mum/ 2014 dated 26th March 2021 only with respect to Ground No. 3 and 4 of the said order*

2. *The contention of the Department in the Miscellaneous Application was that Hon'ble ITAT has wrongly attributed the disallowance in ground No. 3 and 4 of Department's Appeal ITA No. 1584/Mum/ 2014 under section 37(1) of the Income-tax Act, 1961 ('Act) to the Transfer Pricing Officer*

3. *The said Miscellaneous Application filed by the Department was allowed and the ground no. 3 and 4 of the appeal were recalled for fresh adjudication. The matter was freshly heard on 24 May 2023.*

The ground No. 3 and 4 of the Department's Appeal ITA No. 1584/Mum/ 2014 are pertaining to following expenses which were paid to group companies of RIFL/ Associated Enterprises:

Sr. No.	Particulars	Amount (INR)
a.	Guarantee fees (Payment of guarantee fees to Rabobank Hongkong in respect of a loan given by RIFL to third party]	3,13,168
b.	Fees for services [Payment of fees for services to Rabobank International, Netherlands in relation to certain specialized project undertaken by it]	5,63,600
c.	Interest on External commercial borrowings (ECB) (Payment of interest on borrowed funds from Rabobank Hong Kong to finance its working capital requirements)	3,81,92,596

Transfer Pricing proceedings

5. *The case under consideration was reopened under section 147 of the Act. The learned Assessing Officer (learned AO) had made*

a reference to the Transfer Pricing Officer (learned TPO) for determination of Arm's length price (ALP) with reference to all the international transactions reported in Form 3CEB (including the transactions tabulated above)

6. The learned TPO has specifically noted all the above 3 payments as international transactions in the transfer pricing order under section 92CA(3) of the Act dated 29 January 2013 (TP Order) [refer page no. 1 and 2 (Sr. No. 4,5,6) of the TP order, which is part of the appeal set]

7. After analysing all the international transactions with AES, the learned TPO has accepted the above 3 tabulated expenses at ALP and accordingly, no adjustment was done by TPO in relation to 'Interest on ECB', 'Guarantee fees' and 'Service fees'. There are adjustment made by the learned TPO on other international transactions which are not subject matter of this appeal.

Assessment Proceedings - Draft Assessment order

8. The learned AO passed the draft assessment order dated 8 May 2013 under section 143(3) r.w.s. 147 and 144C of the Act disallowing the aforesaid expenditures under section 37(1) of the Act on the ground that these expenses are not for business expediency

Objections filed by RIFL before Hon'ble Dispute Resolution Panel (DRP)

9. With reference to the addition of guarantee fee, fees for services and interest on ECB, RIFL had filed detailed objections before the Hon'ble DRP. The copy of the objections filed before Hon'ble DRP for these grounds was handed over to the Hon'ble Bench during the course of hearing on 24 May 2023 (refer Objection no. 9,10,11)

Interest on ECB

10. In the financial year 2003-04, RIFL availed an ECB from Rabobank Hong Kong under Automatic Route. RIFL had availed the ECB to finance working capital requirements in India.

11. Also, RIFL had submitted various documents before the Hon'ble DRP which are forming part of paperbook submitted before your Honour [refer page no. 1073 to 1088, page no. 1119 to 1210

of the paperbook, which inter alia includes, ECB agreement, return of income filed by Rabobank Hong Kong, TDS certificate, FIRC/ bank statement for receipt of ECB, etc.]

Guarantee Fees

12. *RIFL had given a loan to third party 'Noble Grain/Sidharth Soya' and for the said loan, Rabobank Hongkong had provided a guarantee that in case of default by the borrower entity. RIFL would recover the amount from Rabo Hong Kong RIFL had taken such a guarantee in order to protect its interest in case of default by borrower for which it paid guarantee fees.*

13. *RIFL had submitted various documents before the Hon'ble DRP which are forming part of paperbook submitted before your Honour [refer page no.1050 to 1117 of the paperbook which inter alia includes, guarantee agreement, loan agreement, TDS certificate, remittance document etc)*

Fees for services

14 *During the captioned year, RIFL requested Rabobank International, Netherlands to provide services relating to certain specialized project undertaken by it in case of advisory services received by RIFL from Rabobank Netherlands, the fee was negotiated with the entity, keeping in mind the benefits expected by RIFL from the services. In view of above, RIFL clearly demonstrated that the transaction is in accordance with the principles of commercial expediency and hence, the same cannot be disallowed under section 37 of the Act*

15 *Therefore, the payment of guarantee fee, fees for services and interest on ECB amounting to Rs 3,13,168, Rs. 5,63,600 and Rs 3,81,92,596 respectively should be allowed as deduction*

DRP Directions

16 *Considering the objections filed by RIFL and documents as mentioned above, the Hon'ble DRP had taken a note that the AO had denied the deduction in respect of these 3 amounts solely on the ground that assessee had not received commensurate services*

17. *The Hon'ble DRP allowed these grounds in favour of RIFL in its order under section 144C(5) of the Act dated 30 December 2013 by observing that:*

- *the payments were not made for any service but in fact it was in the nature of fees for issue of guarantee and interest on ECB;*
- *The learned AO had not disputed the agreement submitted for guaranteeing the loan or agreement for taking ECB; and*
- *Once the transactions are not disputed by the learned AO, these should necessarily be allowed as deduction.*

18. *Considering the above, the Hon'ble DRP directed the learned AO to not to make any disallowance in relation to 'Interest on ECB. Guarantee fees' and 'Service fees paid (Refer page 16 & 17 of the Directions issued under section 144C of the Act).*

Final Assessment order passed by AO

19. *Following the directions issued by Hon'ble DRP, the learned AO had not made any addition relating to guarantee fees, service fees and interest on ECBS to the total income of RIFL while issuing the final assessment order dated 7 January 2014. (Refer page 7 of the Assessment Order).*

Hon'ble ITAT order

20. *The Hon'ble ITAT in its order dated 26 March 2021 had dismissed the Department's appeal by observing that:*

- *Undisputedly, RIFL furnished guarantee agreement and ECB agreement. The same has not been disputed by the TPO*
- *RIFL has benchmarked the transaction by applying CUP as the most appropriate method. and*
- *The requirement of law is that the expenditure should be incurred wholly and exclusively for the purpose of business. This fact has not been disputed by the learned AO.*

21 *As it can be seen, the Hon'ble ITAT has discussed the aforesaid grounds in the Order dated 29 March 2021 in light of commercial expediency and documentation furnished by RIFL and pronounced in favour of RIFL, albeit the references to the fact that grounds pertain to TPO should be removed*

Prayer

22. *During the course of the hearing on 24 May 2023, it was argued by our Counsel that RIFL has furnished guarantee agreement*

and ECB agreement which has not been disputed by the learned TPO and AO RIFL has borrowed funds from Rabobank Hong Kong to finance its working capital requirements. The interest paid by it has been reflected in the books and tax has been deducted on the same. Similarly, in respect of guarantee fees and service fees, RIFL has substantiated that the payments are made for RIFL's business.

23. In light of the aforesaid facts and submissions, the Appellant most humbly prays to your Honour to allow the expenditures as deduction and dismiss the grounds raised by Department."

5. Considered the rival submissions and material placed on record, we observe that assessee has entered into following international transactions during the current Assessment Year: -

S. No.	Nature of Transaction	FY 2005-06	Method adopted by the assessee
1	Fees for services (Received)	40,62,250	CUP
2	Fees for Investment Banking Services - FCCB Placement (Received)	3,70,83,020	PSM
3	Fees for Investment Banking Services -Mergers & Acquisitions (Received)	47,51,516	PSM
4	Fees for Loan Support services (Received)	4,90,79,381	PSM
5	Guarantee Fee (Paid)	3,13,168	CUP
6	Fees for services (Paid)	5,63,600	CUP
7	Interest on ECB (Paid)	3,81,92,596	CUP
8	Payment for Support services (Paid)	14,71,32,88	CUP
9	Receipt for support service charges (Received)	80,38,180	CUP
10	Reimbursement of expenses (Received)	30,77,605	CUP
11	Reimbursement of expenses (Paid)	1,89,28,418	CUP
	TOTAL	31,12,22,615	

6. The Assessing Officer referred the international transactions to the TPO u/s. 92CA(1) of the Act on 12.12.2011. TPO passed the order dated 29.01.2013 and proposes the adjustments of interest income only without proposing any adjustment on the issue of guarantee fees paid, fees for services paid and interest on ECB paid to its holding company totaling at ₹.3,90,69,364/-. However, while passing the draft Assessment Order Assessing Officer observed issue of allowability of the above said expenditure u/s. 37 of the Act and asked the assessee to submit the relevant information.

7. After considering the submissions of the assessee, Assessing Officer observed that, it was admitted that no analyses was done as to the payment which would have been made to an independent person for such services. The facts in the present case shows that whether or not assessee needed these services or whether or not such services were mainly for its direct benefit or whether or not such services were actually availed by it, assessee had to share the costs on the basis of some allocation of keys. No independent person in similar circumstances would pay such amount. Accordingly, he proceeded to make the disallowance u/s. 37 of the Act.

8. Aggrieved assessee filed objection before Ld. DRP and submitted the relevant documentation relating to external commercial borrowing borrowed from the Hong Kong Branch of Rabo bank for the purpose of its own working capital and also details of External Commercial Borrowing [ECB] by the overseas entity and details of guarantee fees paid to the Rabo bank Hong Kong Branch for the loans advanced by the assessee to third parties. After considering the submissions of the assessee, Ld. DRP deleted the addition with the following observations: -

"18. It is observed that the only reason cited by the Assessing Officer to deny the deduction in respect of these three amounts is that assessee has not received commensurate services. However it is observed that these payments are not for any service but are in fact in the nature of fees for issue of guarantee and interest on external commercial borrowings. The Assessing Officer has not disputed the agreement for guaranteeing the loan or the external commercial borrowing made by the assessee. Once these transactions are not disputed by the AO, then the guaranty fees and the interest on ECB's should necessarily be allowed as deduction. As stated by the assessee, these two amounts are for the purposes of assessee's business. Under the circumstances this objection of the assessee is allowed and the Assessing Officer is directed not to make this disallowance as proposed in the draft order in respect of guaranty fees, service charges and interest on ECB's."

9. Aggrieved with the above order revenue is in appeal before us raising Ground No. 3 and 4 before us.

10. Considered the rival submissions and material placed on record, we observe from the record that Ld. DRP has considered the issue of interest of ECB, Ld. DRP has given benefit to the assessee based on the fact that

assessee has availed the ECB from Rabo Bank, HongKong Branch under automatic route and it has availed the above loan to finance working capital requirement in India. Therefore, it is a genuine transaction to finance the business carried by it in India. Therefore, the interest paid by ECB is a genuine business transaction.

11. With regard to guarantee fees, assessee has given a loan to third parity and Rabo Bank, Hong Kong Branch had provided the guarantee that in case of default by the borrower entity, assessee would recover the amount from Rabo Bank, Hong Kong Branch. Accordingly, it has paid the guarantee fees in order to protect its interest in case of default by the respective borrowers. In this regard assessee has submitted various documents before Ld. DRP and Ld. DRP has convinced with documentation submitted by the assessee.

12. With regard to fees for services, assessee has availed advisory services from Rabobank International, Netherlands and paid the relevant fees. Therefore, assessee has availed the services of Rabobank International, Netherlands and paid the relevant advisory fees to them during the course of the business. Accordingly, the Ld. DRP has allowed the claim of the assessee u/s. 37 of the Act. Therefore, the decision of

the Ld. DRP is binding on the Assessing Officer.

13. From the above, we observe that Ld. DRP has considered the issues with the various documents submitted before them and issues were properly directed to be part of the business operation of the assessee carried on by them in India and it is part of the Indian operation. Therefore, we do not see any reason to disturb their findings and nothing on record shows that the expenditure claimed by the assessee is not relating to the business carried on by it in India. Therefore, the ground raised by the revenue is accordingly, dismissed.

14. In the result, Ground Nos. 3 & 4 raised by the revenue are dismissed.

Order pronounced in the open court on 18th August, 2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 18/08/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum