

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "I" NEW DELHI]

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 3316/Del/2018
निर्धारण वर्ष/Assessment Year: 2011-12

DCIT, Circle : 27 (1) New Delhi.	<u>बनाम</u> Vs.	Uniparts India Ltd., C-6 & 7, Gripwel House, LSC Block 5, Vasant Kunj New Delhi - 110 001.
		PAN No. AAACU0545D
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओरसे / Assessee by :	Shri Tarandeep Singh, Adv.; & Shri Sandeep Yadav, Adv.;
राजस्व की ओरसे / Department by :	Shri Manu Chaurasia, Sr. D. R.;

सुनवाई की तारीख/ Date of hearing :	01.08.2023
उद्घोषणा की तारीख/ Pronouncement on :	16.10.2023

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-44 [hereinafter

referred to CIT (Appeals)] New Delhi, dated 31.10.2017 for assessment year 2011-12.

2. The Revenue has raised the following substantive grounds of appeal:-

"i) Whether the CIT (A) was justified in rejecting the benchmarking done by the TPO- even while ignoring the decision of Hon'ble Supreme Court in the case of Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport with regard to the "Doctrine of Election" and the "Doctrine of Approbation and Reprobation", wherein it has been laid down that a litigant cannot change and choose its stand to suit its convenience."

"ii) Whether the CIT (A) was justified in concluding that the loans are given in foreign currency, even when the taxpayer has failed in submitting any tangible proof regarding the same."

"iii) Whether, the CIT (A), in the facts and circumstances of the case and in law, was justified in not considering the facts presented by the TPO in its original order"

"iv) On the facts and circumstances of the case, the Ld. CIT (A) has erred in disallowing interest amounting to Rs1,23,10,923/- paid to subsidiaries.

"v) On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.2,49,332/- u/s 14A read with rule 8D of the Act."

3. Ground Nos. (i) to (iii) are in respect of TP adjustment made by the TPO on the interest received by the assessee from the AEs.

4. The Id. Counsel for the assessee, at the outset, submits that the Tribunal in assessee's own case in ITA. No. 6056/Del/2017

dated 28.02.2023 for the assessment year 2010-11 on identical facts decided the issue in favour of the assessee by deleting the transfer pricing adjustment on account of interest charged on loan advanced by the assessee to over-seas associated enterprises (AEs).

5. The ld. DR, however, submits that in assessment year 2009-10 the issue has been decided in favour of the Revenue.

6. The ld. Counsel for the assessee submits that the facts in assessment years 2009-10 and 2010-11 are not identical and in fact the facts in the assessment year 2010-11 are identical to assessment year 2011-12 and, therefore, the order of the Tribunal for assessment year 2010-11 may be followed.

7. Heard rival submissions perused the orders of the authorities below. We find that an identical issue has been decided by the Tribunal in assessee's own case for the assessment year 2010-11 where the facts are identical to assessment year 2011-12 and the appeal under consideration. The Tribunal while affirming the order of the ld. CIT (Appeals) in deleting the TP adjustment on interest received by the assessee held as under:-

“5. Briefly, the facts relating to this issue are, the assessee is a resident corporate entity and is engaged in manufacture and sale of tractor implements, linkage parts, system and forging. As stated by the Transfer Pricing Officer (TPO), assessee was a part of Gripwell Group.

6. During the year under consideration, the assessee entered into various international transactions with its AEs. However, except the transaction relating to interest charged on loans advanced to AEs, the TPO accepted all other transactions to be at

arm's length. In so far as charging of interest on loans advanced to AEs. The Assessing Officer found that the assessee had advanced loans to two overseas subsidiaries viz. Uniparts USA Ltd. and Uniparts Europe BV, Netherlands. In respect of loans advanced to subsidiary in USA, the assessee had charged interest @ 8%. Whereas, in respect of loan advanced to Uniparts Europe BV, the assessee had charged interest by applying the rate of Euribor plus 200 basis points (bps), which works out to interest rate at 3.68%. Being of the view that rate of interest charged on loans advanced to AEs are not at arm's length, the TPO issued a show cause notice to the assessee seeking explanation why interest should not be charged at appropriate rate. Though, the assessee justified its benchmarking of interest charged to the AEs, however, the TPO was not convinced. Though, the TPO agreed that the loans were advanced in currencies of respective countries of residence of the AEs, however, he observed that the assessee would not have charged interest at the same rate to unrelated parties. Thereafter, referring to various judicial precedents and risk factor involved in the advancement of loan, the TPO observed that the assessee was unable to demonstrate that the burden it has taken on behalf of subsidiaries had resulted in any tangible benefit either to it or to the group as a whole. Further, he observed, LIBOR is not applicable where the funds have been lent from rupee denominated fund as it would not be prudent for an enterprises to lend fund at a much cheaper interest rate than what is available as interest on rupee denominated loans.

7. Having held so, the TPO proceeded to apply the domestic Prime Lending Rate (PLR) applied by Indian Banks on commercial borrowings and determining the arm's length rate of interest on the loans advanced to the AEs at 14.74%. This resulted in a total adjustment of Rs.1,95,31,473. The adjustment proposed by the TPO was added to the income of the assessee by the Assessing Officer while framing the assessment order. Assessee contested the aforesaid addition before learned Commissioner (Appeals).

8. After considering the submissions of the assessee in the context of facts and material on record as well as judicial precedents cited before me, learned Commissioner (Appeals) held that domestic PLR cannot be applied to benchmark the rate of interest charged on foreign currency loans advanced to AEs located in foreign countries. While coming to such conclusion, learned Commissioner (Appeals) specifically relied upon the decision of the

Hon'ble jurisdictional High Court in case of CIT vs. Cotton Natural (I) Pvt. Ltd. (2015) 55 Taxmann.com 523 (Del.).

9. Learned Departmental Representative submitted, though, the TPO may not be justified in applying domestic PLR to determine the arm's length nature of interest on foreign currency loans, however, the decision of learned Commissioner (Appeals) in deleting the adjustment is unacceptable. He submitted, at the time of passing the order under Section 92CA(3) of the Act, the TPO did not have the benefit of the Hon'ble jurisdictional High Court decision in case of CIT vs. M/s. Cotton Natural (I) Pvt. Ltd., (supra).

10. Drawing our attention to certain observations made in the aforesaid judgment, learned Departmental Representative submitted, while deleting the addition, learned Commissioner (Appeals) has not taken note of certain guiding principles set out by the Hon'ble jurisdictional High Court. Thus, he submitted, the issue may be restored back to the TPO for fresh benchmarking.

11. Strongly opposing the contentions of learned Departmental Representative, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the Hon'ble Delhi High Court. Hence, there is no justifiable reason to restore the matter back to the TPO.

12. We have considered rival submissions and perused material on record.

13. In so far as factual aspect of the issue is concerned, there is no dispute that the assessee has advanced foreign currency loans to two related parties located in USA and Netherlands. It is also evident, the assessee has charged interest to the concerned parties at fixed rates. In so far as AE in USA is concerned, the assessee had charged interest @ 8%. Whereas, in respect of the AE in Netherlands, interest is charged by applying BURIBOR rate plus 200 basis points. It is relevant to note, while deliberating on the issue, the TPO has accepted that foreign currency loan has to be benchmarked using EURIBOR. As the rate of interest is fixed and not floating, the rate of LIBOR will be the rate on the day the loan was taken by the assessee on behalf of the AEs. He has further observed that additional mark up of 4% shall be added as the credit rates of the loan given by the assessee to its subsidiaries has been considered as (BB). However, while ultimately computing the

adjustment, the TPO has applied domestic PLR applied by Indian Banks on commercial loans.

14. This, in our view, is unsustainable. Now, it is fairly well settled that the rate of interest on loans advanced by the assessee to AEs have to be in accordance with the rate of interest prevailing in the country of residence of the AEs wherein the loan was availed. This is the view expressed by Hon'ble jurisdictional High Court in case of CIT vs. Cotton Natural (I) Pvt. Ltd. (supra) and many other decisions. Therefore, domestic PLR rate cannot be applied in respect of loans advanced in foreign currency to AEs situated in USA and Europe. As regards, the submission of learned Departmental Representative that certain guiding principles laid down by the Hon'ble jurisdictional High Court have not been followed, we are not convinced.

15. Considering the fact that the assessment year involved is 2010-11 and more than 12 years have passed, we are disinclined to restore the issue to the Assessing Officer at this stage. Thus, having considered the overall facts and circumstances of the case in the light of judicial precedents cited before us, we do not find any infirmity in the decision of learned Commissioner (Appeals). Grounds raised are dismissed.”

8. Respectfully following the decision of the Tribunal, we affirm the order of the ld. CIT (Appeals) and reject ground Nos. (i) to (iii) of the Revenue.

9. Ground No. (iv) of grounds of appeal is with respect to deletion of disallowance made towards interest paid to subsidiary.

10. The ld. Counsel for the assessee submits that this issue is also decided in favour of the assessee by the Tribunal in para Nos. 16 and 17 at page No. 82 of the paper book.

11. The ld. DR supports the order of the TPO/AO.

12. Heard rival submissions perused the orders of the authorities below. We find that an identical issue came up before the Tribunal in the immediately preceding assessment year and the Tribunal decided the issue in favour of the assessee deleting the interest expenditure disallowed by the Assessing Officer observing as under:-

“16. In ground no. 3, the Revenue has challenged deletion of disallowance of interest expenditure amounting to Rs.1,41,63,945 under Section 36(1)(iii) of the Act.

17. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee had availed loan from bank at interest rate of 14% to 16% per annum and has incurred interest expenditure of Rs.11,70,29,496. Whereas, it has advanced loans to its wholly owned subsidiaries at interest rate of 6% per annum. Therefore, he called upon the assessee to explain why the interest paid to banks on loans utilized for non-business purposes like advancing loan to subsidiaries at a lesser rate, should not be disallowed. Though, the assessee objected to the proposed disallowance, however, rejecting the explanation of the assessee, the Assessing Officer disallowed an amount of Rs.1,41,63,945 out of the interest expenditure. While, considering assessee's appeal on the issue, learned Commissioner (Appeals) deleted the disallowance.

18. We have considered rival submissions and perused material on record.

19. It is observed, while considering identical nature of dispute in assessee's own case in assessment year 2009-10, the co-ordinate Bench in ITA No.1216/Del/2014 dated 30.09.2021 has deleted similar disallowance with the following observations:

“26. A perusal of the facts show that on receiving financial assistance from the assessee, revenue from sales of M/s UniLink Engineering Pvt Ltd increased from Rs. 94.73 lakhs from F.Y 2005-06 to Rs. 26.12 crores in F.Y 2008-09. We further find that own funds of the assessee as on 31.03.2007 were at Rs.33.35 crores which jumped to Rs.127.62 crores as on 31.03 2009 and tp Rs.139.17 crores as on 31.03.2009.

27. It is true that the loan was given in earlier F.Y and the assessee had sufficient own funds to give the loan. It is equally true that no disallowance was made in the earlier Assessment Year though the DRP 19 has observed that rest judicata is not applicable under Income Tax proceedings but, in our considered opinion, when the facts are same, and the law has not changed, then the rule of consistency ought to have been followed. Considering the facts of the case in totality, we do not find any merit in the addition of Rs.72,23,773/- made by the Assessing Officer. We, accordingly, direct the Assessing Officer to delete the same. Ground No. 4 is, accordingly, allowed.”

20. Considering that there is no difference in factual position in the impugned assessment year and the Assessing Officer has referred to similar disallowance made in assessment year 2009-10, we are inclined to uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.”

13. Facts being identical, respectfully following the said decision, we uphold the order of the ld. CIT (Appeals) and reject ground No. (iv) of grounds of appeal of the Revenue.

14. Coming to last ground No. (v) i.e. in respect of deletion of disallowance made under section 14A read with Rule 8D the ld. Counsel submits that the assessee has not received exempt income during the assessment year under consideration and, therefore, no disallowance is warranted. The ld. Counsel further submits that in assessee's own case the Tribunal for assessment year 2010-11 in para No. 27 decided the issue in favour of the assessee in deleting the disallowance made under section 14A read with Rule 8D.

15. The ld. DR supported the order of the Assessing Officer.

16. Heard rival submissions. The Tribunal in the immediately preceding assessment year decided identical issue in para No. 27 as under:-

“27. It is an agreed position before us that in the year under consideration, the assessee has not earned any exempt income. That being the factual position emerging on record, no disallowance under Section 14A read with Rule 8D can be made in absence of any exempt income earned during the year. In this regard, we refer to the decision of the Hon'ble jurisdictional High Court in case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 Taxmann.com 289 (Del.). Accordingly, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds.”

17. Admittedly there is no dividend income received by the assessee during the year under consideration. Thus, following the decision of the jurisdictional High Court in the case of PCIT Vs. Era Infrastructure (India) Ltd. [(2022) 141 taxmann.com 289 (Del.)] we hold that there cannot be any disallowance in the absence of any dividend income earned during the assessment year under consideration by the assessee. The ground raised by the Revenue is dismissed.

18. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on : 16/10/2023

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 16/10/2023

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	11.10.2023
Date on which the typed draft is placed before the dictating member	12.10.2023
Date on which the typed draft is placed before the other member	16.10.2023
Date on which the approved draft comes to the Sr. PS/ PS	16.10.2023
Date on which the fair order is placed before the dictating member for pronouncement	16.10.2023
Date on which the fair order comes back to the Sr. PS/ PS	16.10.2023
Date on which the final order is uploaded on the website	16.10.2023
Date on which the file goes to the Bench Clerk	16.10.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	