

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपीलसं./IT(TP)A No.:66/CHNY/2019

निर्धारण वर्ष/Assessment Year: 2013 - 14

The DCIT,
Corporate Circle 3(1),
Chennai.

TVS Motor Company Ltd.,
vs. No.29/8, Jayalakshmi Estates,
Haddows Road,
Nungambakkam,
Chennai – 600 006.

(अपीलार्थी/Appellant)

PAN: AAACS 7032B
(प्रत्यर्थी/Respondent)

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आयकर अपीलसं./ITA No.: 2404/CHNY/2019

निर्धारण वर्ष/Assessment Year: 2013 - 14

TVS Motor Company Ltd.,
No.29/8, Jayalakshmi Estates,
Haddows Road,
Nungambakkam,
Chennai – 600 006.

The ACIT,
vs. Corporate Circle 3(1),
Chennai.

PAN: AAACS 7032B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by
राजस्व की ओर से /Revenue by

: Shri Vikram Vijayaraghavan, Advocate
: Shri A. Sasikumar, CIT

सुनवाई की तारीख/Date of Hearing : 27.09.2023

घोषणा की तारीख/Date of Pronouncement : 20.10.2023

आदेश / O R D E R**PER MAHAVIR SINGH, VICE PRESIDENT:**

These cross appeals by the Revenue and assessee, are arising out of order of the Commissioner of Income Tax (Appeals)-11, Chennai in ITA No.363/16-17 dated 11.06.2019. The assessment was framed by the ACIT, Corporate Circle 3(1), Chennai, for the assessment year 2013-14 u/s.143(3) r.w.s.144C of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 13.02.2017.

IT(TP)A No.66/CHNY/2019

2. The first issue in this appeal of Revenue is as regards to the order of CIT(A) in deleting the upward ALP adjustment on account of corporate guarantee holding the same as international transaction and estimating upward adjustment at 1%. Aggrieved, Revenue raised ground Nos.1 to 3, which are argumentative and factual and hence, need not be reproduced.

3. We have heard rival contentions and gone through facts and circumstances of the case. The facts are that the assessee company is engaged in the business of manufacturing two wheelers. The assessee's case was selected for scrutiny assessment for the relevant assessment year 2013-14 and the AO during the course of

scrutiny assessment proceedings noticed that assessee entered into international transaction as per Form No.3CEB for more than Rs.15 crores, a reference was made to the Transfer Pricing Officer (TPO) by the AO on 30.09.2015 for determination of Arms Length Price. Accordingly, TPO passed order u/s.92CA of the Act on 27.10.2016 by making transfer pricing adjustment towards corporate guarantee provided to the AE by the assessee. Draft assessment order passed on 31.12.2016 and thereafter assessment was completed by the AO by passing final assessment order u/s.143(3) r.w.s. 144 of the Act on 13.02.2017 making this disallowance on account of corporate guarantee at the rate of 1% by treating the LOC as fee for guarantee and the same has been considered as Comparable Uncontrolled Price (CUP) and arms length price was determined at Rs.70,16,550/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) going into the details of corporate guarantee and relying on Tribunal decision in assessee's own case for assessment year 2011-12 in ITA No.1153/Mds/2016 held that providing credit facility to its AE is not an international transaction because the AE has in fact paid higher rate of interest for the loan where the

assessee stood as a guarantor. Hence, it cannot be concluded that the AE has not particularly benefited from the corporate guarantee advanced by the assessee. Finally, it was held that it cannot fall under the purview of international transaction in terms of section 92B of the Act so as to make the adjustment. The CIT(A) observed in para 5 as under:-

“5. As above, assessee has submitted that this issue has already been decided in their favour by the Hon’ble ITAT, Chennai. The facts and circumstances of the issue for AY 2013-14 have been similar to the facts and circumstances for earlier years. Considering the same, assessee gets relief with respect to TP adjustment of Rs.70,16,550/- made by the Assessing Officer on account of assessee providing corporate guarantee on a working capital credit facility obtained by its subsidiary M/s.PT-TVS Motor Company, Indonesia. Grounds of appeal on this issue are allowed.”

Aggrieved, Revenue is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee stated that the assessee has provided a Letter of Credit (LOC) to SBI, Indonesia to provide working capital to its overseas AE. The LOC provided is without any cost to the assessee nor does the same has any bearing on profits, income, losses, assets or business of the assessee and therefore same is outside the ambit of international transaction. It was also contended by Id.counsel that the same is merely a shareholder activity and hence, transfer pricing is not applicable. He relied on the Tribunal decision in assessee’s own case for

assessment year 2011-12 and ITAT, Ahmedabad in the case of Micro Ink Ltd., vs. ACIT in ITA No.2873/Ahd/2010 and ITAT, Kolkata in the case of Rohit Ferro Tech Ltd., in ITA No.262 and 263/Kol/2018. But on query from the Bench, the Id.counsel for the assessee stated that the complete detail of term loan and working capital credit facility of SBI, Indonesia is given to the CIT(A), which are reproduced in the order of CIT(A) at page 3 and the same is being reproduced from the order of CIT(A) as under:-

<i>Nature of the loan</i>	<i>Bank</i>	<i>Loan Amount</i>	<i>Interest Rate</i>	<i>Remarks</i>
<i>Term Loan</i>	<i>IFC</i>	<i>USD 12 mil or INR 53.88 Cr.</i>	<i>5.52%</i>	<ul style="list-style-type: none"> • <i>Loan obtained on March 19,2019</i> • <i>Loan was for the period of 9 years</i> • <i>Payable semi-annually starting 15 March 2013</i>
<i>Working capital credit facility</i>	<i>SBI Indonesia</i>	<i>USD 3 mil</i>	<i>USD loan – 6.5% p.a. IDR (Indonesian Rupiah – 12.00% p.a)</i>	<i>The working capital credit facility was issued against the Letter of Comfort issued by SBI, CAG, Chennai. TVSM had provided counter guarantee for the issuance of Letter of Comfort.</i>

6. On the other hand, the Id.CIT-DR Dr. A. Sasikumar stated that this issue is squarely covered in favour of Revenue and against assessee by the decision of Hon'ble Bombay High Court in the case of Everest Kento Cylinder Ltd., (2015) 378 ITR 57. He urged that

the transaction to be treated as international transaction and the adjustment be given at the rate of 1% as has been done by the TPO.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of Everest Kento Cylinder Ltd, *supra*, wherein the value of transaction is to be assessed at the rate of 0.5% and not 1% as assessed by the TPO in the present case. The Hon'ble Bombay High Court has held as under:-

“The Tribunal as the second fact finding authority had gone into factual aspects in great detail and therefore having interpreted the law as it stood on the relevant date the order passed cannot be faulted. In the matter of guarantee commission, the adjustment made by the TPO were based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of a Corporate Guarantee. No doubt these are contracts of guarantee, however, when they are Commercial banks that issue bank guarantees which are treated as the blood of commerce being easily encashable in the event of default, and if the bank guarantee had to be obtained from Commercial Banks, the higher commission could have been justified. In the present case, it is assessee company that is issuing Corporate Guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which applied for issuance of a Corporate guarantee are distinct and separate from that of bank guarantee and accordingly we are of the view that commission charged cannot be called in question, in the manner TPO has done. In our view the comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company.”

7.1 Even the issue is covered by the decision of Hon'ble High Court of Madras in the case of PCIT vs. Redington (India) Ltd., 430 ITR 298 wherein the Hon'ble Madras High Court also held as under:-

75. The concept of Bank Guarantees and Corporate Guarantees was explained in the decision of the Hyderabad Tribunal in the case of Prolifics Corporation Limited. In the said case, the Revenue contended that the transaction of providing Corporate Guarantee is covered by the definition of international transaction after retrospective amendment made by Finance Act, 2012. The assessee argued that the Corporate Guarantee is an additional guarantee, provided by the Parent company. It does not involve any cost of risk to the shareholders. Further, the retrospective amendment of Section 92B does not enlarge the scope of the term international transaction to include the Corporate Guarantee in the nature provided by the assessee therein. The Tribunal held that in case of default, Guarantor has to fulfill the liability and therefore, there is always an inherent risk in providing guarantees and that may be a reason that Finance provider insist on non-charging any commission from Associated Enterprise as a commercial principle. Further, it has been observed that this position indicates that provision of guarantee always involves risk and there is a service provided to the Associate Enterprise in increasing its creditworthiness in obtaining loans in the market, be from Financial institutions or from others. There may not be immediate charge on P & L account, but inherent risk cannot be ruled out in providing guarantees. Ultimately, the Tribunal upheld the adjustments made on guarantee commissions both on the guarantees provided by the Bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of Associate Enterprise.

76. In the light of the above decisions, we hold that the Tribunal committed an error in deleting the additions made against Corporate and Bank Guarantee and restore the order passed by the DRP.

7.2 Since the issue is covered, we direct the AO to adopt the guarantee commission as international transaction and assess the

value at 0.5% as against 1%. This issue of Revenue's appeal is partly allowed.

8. The next issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the additional depreciation disallowed by AO. For this, Revenue has raised following ground No.4:-

4. The CIT(A) erred in holding that the 50% of the remaining additional depreciation pertains to the new machinery installed in the FY:2011-12 (AY:2012-13) and utilized for less than 180 days, is allowable in the AY:2013-14 though the explanation to section 32(1)(iib) allowing the same is having effect only from 01/04/2016.

9. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the assessment order and noted that the assessee has claimed additional depreciation which is reminder of the depreciation from earlier year, for which the assessee has claimed balance eligible depreciation. The AO simpliciter noted that such practice is not permitted and additional depreciation is allowable only on plant and machinery. Hence, he disallowed the additional depreciation claimed by assessee amounting to Rs.4,53,04,584/-. Aggrieved, assessee preferred appeal before CIT(A).

10. The CIT(A) noted the fact that the assessee has claimed balance 50% of additional depreciation on plant and machinery installed and put to use for less than 180 days in financial year 2011-12 relevant to assessment year 2012-13 and claimed in financial year 2012-13 relevant to this assessment year 2013-14 for an amount of Rs.4,53,04,584/-. The CIT(A) relying on the decision of Hon'ble High Court of Madras in the case of T.P. Textiles P Ltd., 79 taxmann.com 411 and High Court of Karnataka in Rittal India P Ltd., 66 taxmann.com 4 deleted the disallowance and allowed the claim of additional depreciation by observing in in para 20 as under:-

20. The submissions of the assessee are examined. The assessee has objected to the same and has started that the assets were put to use in the latter part of the previous assessment year and as such only 50% of additional depreciation was claimed in the first year in which the new assets were put to use. The balance 50% of the additional depreciation eligible to the assessee is claimed in the second year of the assets being put to use. The legal submissions of the assessee is accepted as being correct and justified. Several judicial decisions supporting the stand of the assessee are noted as under:-

Shri T.P. Textiles P Ltd (HC of Madras) (79 taxmann.com 411)

Rittal India P Ltd (HC of Karnataka) (66 taxmann.com 4)

Birla Corporation Ltd (Kolkata ITAT) (55 taxmann.com 33)

Cosmo Films Ltd (Delhi ITAT) (24 taxmann.com 189)

Century Enka Ltd (Kolkata ITAT) (58 taxmann.com 318)

Automotive coaches and components (ITAT Bench in ITA No.1789/Mds/2014)

Meenakshi India Ltd (ITAT Bench in ITA No.206/Mds/2016)

Considering the above, the Assessing Officer is directed to allow the balance 50% of depreciation claimed in the second year. Assessee gets relief to the extent of Rs.4,53,04,584/-.

11. We noted that the Hon'ble High Court of Madras in assessee's own case for assessment year 2004-05 has held that the additional depreciation is allowable for the reminder period i.e., remaining depreciation which is claimed for the asset which has been put to use for less than 180 days in the previous year. We find no infirmity in the order of CIT(A) and hence, this issue of Revenue's appeal is dismissed. Therefore, the appeal of the Revenue is partly-allowed.

Assessee's Appeal in ITA No.2404/CHNY/2019

12. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing expenses relatable to exempt income by invoking the provisions of section 14A r.w.rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules').

13. Briefly stated facts are that the AO noted that the assessee's investment portfolio for the year stands as on 31.03.20113 at Rs.868,84,00,000/-. The assessee earned dividend income of

Rs.1,97,14,440/- and claimed the same as exempt u/s.10 of the Act. Accordingly, the AO invoked the provisions of section 14A r.w.rule 8D of the Rules and quantified the disallowance under Rule 8D(2)(ii) at Rs.14,93,79,958/- being interest on borrowed capital and under Rule 8D(2)(iii) being 0.5% of average value of investment at Rs.4,49,94,000/- and thereby disallowed the total sum of Rs.19,43,73,958/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, now assessee is in appeal before the Tribunal.

14. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee stated that the issue of disallowance of interest on investments is already covered by the decision of the Tribunal of ITAT, Chennai in assessee's own case for assessment year 2008-09 and 2009-10, wherein it is held that no disallowance is to be made under Rule 8D(2)(ii), wherein there is sufficient own funds. The Id.counsel for the assessee produced before us balance sheets and tried to show us that it has sufficient share capital and reserves and surplus but these are not filed before the lower authorities. The assessee has a case but these facts and figures are to be verified,

whether assessee has sufficient own funds for making investment and in case, there was availability of funds, the AO will not make any disallowance in view of the decision of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Ltd., reported in 366 ITR 505. Hence, this issue is remitted back to the file of the AO for verification.

15. As regards to disallowance under Rule 8D(2)(iii) of the Rules, the Id.counsel for the assessee only made submission that only dividend yielding investments should be considered for disallowance under Rule 8D(2)(iii) in view of the decision of Delhi Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investments Pvt. Ltd., in ITA No.502/Del/2012 & CO No.68/Del/2014, reported in 165 ITD 27. The Id.counsel for the assessee has given its computation under Rule 8D(2)(iii), which reads as under:-

Computation of disallowance under section 14A

<i>Name of the Company</i>	<i>Year of Inv.</i>	<i>Inv. On 31.03.2013</i>	<i>Inv. On 31.03.2012</i>	<i>Avg. Investment</i>	<i>Dividend Income</i>
<i>Suprajit Engineering Ltd</i>	<i>1999-2000</i>	<i>8,00,000</i>	<i>8,00,000</i>	<i>8,00,000</i>	<i>20,24,400</i>
<i>Ucal Fuel Systems Ltd</i>	<i>1999-2000</i>	<i>25,00,000</i>	<i>25,00,000</i>	<i>25,00,000</i>	<i>3,67,040</i>
<i>Sundaram Auto Components Ltd. (Subsidiary company)</i>	<i>1999-2000 in 2011-12</i>	<i>60,90,00,000</i>	<i>60,90,00,000</i>	<i>60,90,00,000</i>	<i>1,73,25,000</i>

<i>Total Rs.</i>	<i>61,23,00,000</i>	<i>1,97,16,440</i>
<i>14 A Disallowance @ 0.5% of dividend yielding investment</i>	<i>30,61,500</i>	
<i>Less: Amount already disallowed in computation of total income</i>	<i>16,500</i>	
<i>Balance disallowance to be made</i>	<i>30,45,000</i>	

16. We direct the AO to verify the above computation and considered only dividend yielding investment alone for the computation of disallowance under Rule 8D(2)(iii) of the Rules. We direct the AO accordingly. This issue of assessee's appeal is set aside and allowed for statistical purposes.

17. In the result, the appeal filed by the Revenue in IT(TP)A No.66/CHNY/2019 is partly-allowed and the appeal filed by the assessee in ITA No.2404/CHNY/2019 is allowed for statistical purposes.

Order pronounced in the open court on 20th October, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 20th October, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee

2. राजस्व/Revenue

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT