

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4314/MUM/2023
(Assessment Year : 2009-10)**

**ITA No. 4315/MUM/2023
(Assessment Year : 2010-11)**

Air Works India (Engineering) Pvt. Ltd. Gate No.8, Old Airport, Near Kalina Military Camp, Santacruz (E), Mumbai 400029	Vs.	ITO, Circle 9(1)(1), Aaykar Bhavan, Mumbai 400020
PAN/GIR No. AABCA1069P		
(Appellant)		(Respondent)

Assessee by	Shri. Abhishek Kumar Tripathi
Revenue by	Shri. Manoj Kumar Sinha
Date of Hearing	25 /04 /2024
Date of Pronouncement	30/04/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against order dated 16/08/2023 for A.Yrs. 2009-10 and 2010-11

passed by Id. CIT(A)-55, Mumbai in relation to penalty proceedings u/s.271(1)(c).

2. Since identical issues are involved in both the appeals, therefore, same were heard together and disposed of by way of this consolidated order.

3. The brief facts are that the assessee is engaged in the business of providing aviation services to scheduled airlines, business and people who own or operate air craft as well as to the country's defense services. It provides engineering, asset management, safety and technology solutions to the commercial and solutions to the aviation industry. Here in this case reference to the Id. TPO was made to determine the international transaction with the AE. The Id. TPO on going through the Article in Form 3CEB notice that M/s. Mac Air Sales Ltd is an AE of the assessee group based in Mauritius, which is engaged in aviation consultancy. Assessee holds 26% of the voting power in Mac Air Sales Ltd. On going through the report, he noted that assessee advanced loan to its AE amounting to USD 25,39,270/- (Rs.12,64,42,000/-) and this includes restatement due to foreign exchange fluctuation of Rs.1,21,35,738/- for meeting its working capital requirement. Out of such loan, USD 9,90,000/- has been repaid by M/s. Mac Air Sales Ltd. He further noticed that interest free loan in Form 3CEB does not mention any such international transaction. In response to the show-cause notice, assessee had submitted as under:-

“the entire working capital loan was extended out of own funds of the assessee company The assessee company categorically submits that no loan funds were raised by the assessee company to extend the interest free working capital loans to the AE. Under section 92B of the Act, the international transaction means a transaction between 2 or more associated enterprises, either or both of whom are nonresidents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises and shall include a mutual agreement or arrangement between 2 or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

The above mentioned transactions were in the nature of the investment in the form of equity/quasi equity. This investment is made in the AE as start-up investments so as to promote the business in the Asian region to enable the assessee company to support the international customers for aircraft sales and/or acquisition consultancy. It is to submit that a mere lending of interest free working capital loan itself cannot constitute an international transaction unless it has a bearing on the profits, income, losses or assets. In the present case the assessee company has extended the interest free working capital loan as a start-up support and according to the RBI approvals. The debt equity ratio of AE East 2:1 which is at accepted level. The assessee being a holding company has extended the loan as start-up support and also for its business gain. When no interest is charged and the lending is out of owned funds the loan transaction has no bearing on the profit of the assessee company. Therefore for the purposes of section 90B of the act, the loan transaction alone cannot be international transaction unless it has bearing on the profits of the enterprise. Further as the assessee has extended the working capital loan out of its own funds thus no expenses are incurred for it.”

4. Apart from that, assessee has also cited certain decisions wherein in such cases it was held that no interest should be

charged. However, the ld. TPO made upward adjustment by taking rate of interest @11.96%, however, in the quantum proceedings, the matter has been settled by applying LIBOR +300 bps, accordingly, the addition has been reduced to Rs.22,11,203 as against Rs.66,28,068/- in the A.Y.2009-10 and similar reduction was made in the A.Y.2010-11.

5. Now on this, penalty u/s.271(1)(c) has been levied by invoking Explanation 7 to Section 271(1)(c) levying penalty both on inaccurate particulars of income leading concealment of income and penalty of Rs.6,63,361/- has been levied in A.Y.2009-10 and Rs.7,46,823/- in A.Y.2010-11. The penalty has also been confirmed by the ld. CIT(A).

6. Before us, ld. Counsel has raised various legal grounds and *firstly*, there is no proper satisfaction; and *secondly*, in the notice ld. AO has not specified the charge under which claim he has proposed to initiate the penalty proceedings. Even while levying the penalty he has levied on both the charges which cannot be sustained. On merits he submitted that, *firstly* in Form 3CEB assessee has categorically mentioned that entire loan was extended from own funds of the assessee and *secondly*, these were in the nature of investment in the form of equity / quasi-equity as part of investment so as to promote business in Asian region. Thus, under these circumstances, no interest was charged and there was no bearing on the profit of the assessee company.

7. On the other hand, ld. DR submitted that Explanation 7 is clear that if adjustment made by the ld. TPO then it is deemed to be the income in respect to which particulars have been concealed or inaccurate particulars have been furnished and here in this case, it is an admitted fact that assessee has not charged interest on such loan and therefore, till the stage of Tribunal, adjustment on account of interest has been confirmed which has been reduced by applying LIBOR + 300 bps. Thus, the order of the ld. CIT (A) should be upheld.

8. After considering the rival submissions and on perusal of the material placed on record, we find that it is not in dispute that assessee had advanced loan to its AE of USD 25,39,270/- (Rs.12,64,42,000/-) and out of which USD 9,90,000/- has been repaid to the assessee. When this was pointed out, assessee has explained that the entire working capital loan was extended out of own funds of the assessee company and these were in the nature of investment in the form of equity / quasi-equity as part of investment so as to promote business in Asian region to support international customers for aircraft sales. Apart from that, assessee has disclosed all the particulars of income including ALP of interest in the TP study report, by claiming that no interest is chargeable on this transaction. Though assessee has given explanation before the ld. TPO / ld. AO, however, the same has not been accepted. The assessee has explained all the reasons for not charging of interest due to various reasons and also one of the important explanations was that these investments were in the form of equity / quasi equity then in

that case there could not have been any issue of imputing any interest even under TP provisions. However, what was the extent of the investment in equity / quasi equity has not been elaborated however, the contention of the assessee is that it has given partly that capital loan out of its own funds and has also justified the reasons for not imputing interest, then such explanation can be said to be not bonafide and does not lead to inference that assessee has furnished inaccurate particulars. Accordingly, penalty levied by the ld. AO in both the years are deleted.

9. In the result, both the appeals of the assessee are allowed on merits.

Order pronounced on 30th April, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 30/04/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL 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, Mumbai