

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 4021 & 4022/MUM/2023  
(A.Ys: 2015-16 & 2016-17)**

KEC International Limited 463 RPG House, Dr. Annie Besant Road Worli, Mumbai - 400030  <b>PAN: AACCK5599H</b>	v.	DCIT – Circle – 5(2)(1) Room No. 571, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NOs. 4076 & 4078/MUM/2023  
(A.Ys: 2016-17 & 2015-16)**

DCIT – Circle – 5(2)(1) Room No. 571, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	KEC International Limited 463 RPG House, Dr. Annie Besant Road Worli, Mumbai - 400030  <b>PAN: AACCK5599H</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Vijay Mehta</b>
<b>Department Represented by</b>	<b>:</b>	<b>Smt Uodal Raj Singh</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>24.04.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>03.05.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

1. ITA No. 4021/MUM/2023 and ITA No. 4078/MUM/2023 are cross appeals by the assessee and revenue preferred against order of the Learned Commissioner of Income-Tax (Appeals)-56, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 12.09.2023 pertaining to the A.Y. 2015-16 and ITA No. 4022/Mum/2023 and ITA No. 4076/MUM/2023 are cross appeals for the A.Y. 2016-17.

2. Since common issues are involved in these captioned appeals they were heard together and are disposed off by this common order for the sake of convenience and brevity.

**ITA NO. 4021/MUM/2023 (A.Y. 2015-16) – ASSESSEE APPEAL**

3. The first grievance of the assessee is in respect of transfer pricing addition on account of corporate guarantee. On perusal of the record show that this issue is decided against assessee by the Coordinate Bench in earlier assessment year in ITA No. 115/MUM/2018 order dated 14.09.2020 for the A.Y.2012-13. The relevant findings read as under: -

*"7.10. ....Therefore, the arguments that the said transactions could not be considered to be international transaction do not convince us and therefore, we hold that the same was to be benchmarked on ALP principles. The aforesaid reasoning / conclusion would also make the cited case laws of Ld. AR inapplicable to the facts of the present case.*

*7.11 Coming to the benchmarking rate of 2% as adopted by Ld. TPO, the same do not convince us since a pertinent fact to be noted that both the AEs were subsidiaries of the assessee which were special purpose vehicle to enable certain acquisition on behalf of the assessee and the assessee would be the ultimate beneficiary of such acquisition. Therefore, the assessee's risk in such a case would be very low since both the AEs were assessee's subsidiaries only. Therefore, considering the fact that it was a corporate guarantee for which no fees was paid by the assessee and going by the ratio of the decision of coordinate bench of the Tribunal in Everest Kanto Cylinders Ltd. Vs. DCIT [34 Taxmann.com 19] as affirmed by Hon'ble Bombay High Court on 08/05/2015 [58 Taxmann.com 254], we estimate the TP adjustments against both these transactions @0.20%. The Ld. TPO / Ld. AO is directed to recompute the same in terms of our above order. The grounds stand partly allowed."*

**4.** Respectfully following the findings of the Coordinate Bench (supra), we hold accordingly. Accordingly, this ground is dismissed.

**5.** The next grievance relates to short credit for the taxes paid in Kenya under section 90 of Income-tax Act, 1961 (in short "Act").

**6.** Briefly stated the facts of the case are that the, profit of the company for the year under consideration also include profit from several projects executed outside India. The profit from such projects are subject to income tax in India as well as in the country where

projects are executed. Therefore, in the return of income the assessee has claimed Double Taxation Avoidance Relief as per section 90 / 91 of the Act.

**7.** During the course of the assessment proceedings the assessee submitted proof of tax paid in the foreign countries based on which corresponding Double Taxation Avoidance Relief was allowed to the assessee. The assessee also claimed relief in respect of tax paid at Kenya but the same was denied invoking Rule 128 of the I.T. Rules wherein it has been provided that the tax paid in foreign countries on such income will be allowed only on furnishing of Form No. 67 for availing tax credit. We find that Rule 128 of I.T. Rules has been inserted by income tax 18<sup>th</sup> Amendment Rules, 2016 and has made applicable w.e.f 01.04.2017. We fail to understand how the Rule which came into effect from 01.04.2017 be made applicable to the return filed on 27.11.2015. We therefore set-aside this issue to the file of the Assessing Officer. The Assessing Officer is directed to allow the credit of tax paid in Kenya after due verification and after affording an opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

**8.** The third grievance relates to the short credit of TDS credit of ₹.44,33,553/- arising on account of payment made by Madhya Pradesh Government to KEC TNR Infra JV.

**9.** The underlying facts in this grievances are that, the tax credit has been denied to the assessee on finding that the impugned income has not been shown as its income by the assessee. It is the say of the counsel that the impugned income belongs to KEC TNR Infra JV and the TDS has been deducted in the name of KEC TNR Infra JV. Counsel pointed out that the claim of TDS has not been in either case.

**10.** We have given a thoughtful consideration to the orders of the authorities below, in the interest of justice and fair play, we deem it fit to set-aside this issue to the file of the Assessing Officer. The Assessing Officer is directed to verify in whose hands the income has been shown and allow the credit of Tax Deducted at Source as per the relevant provisions of the law. This ground is allowed for statistical purpose.

**11.** The last grievance relates to the disallowance under section 14A of the Act while computing the book profits under section 115JB of the Act.

**12.** We find that an identical quarrel was decided by this Tribunal in assessee's own case in A.Y. 2014-15 in ITA No. 1852/MUM/2022 order dated 04.12.2023 and the relevant findings read as under: -

*"026. Coming to the remaining grounds of appeal of assessee, as per ground number 2 the learned CIT – A has confirmed the addition of ₹ 93,145/- paid by the learned assessing officer under section 14 A of the income tax act read with rule 8D of the income tax rule in computing the book profit under section 115JB of the act. We find that this issue is squarely covered in favour of the assessee by the decision of special bench in case of ACIT versus vireet investments private limited 165 ITD 27. Even otherwise it is stated that assessee has not received any exempt income during the year and therefore there is no question of making any disallowance under section 14 A of the income tax act even in the normal computation of total income and therefore the same also cannot be imputed while computing the book profit under section 115JB of the act. Accordingly ground number 2 of the appeal of the assessee is allowed."*

**13.** Respectfully following the findings of the Coordinate Bench (supra) we decide accordingly. Ground No. 4 is allowed.

**14.** In the result, appeal of the assessee is allowed in part for statistical purposes.

**ITA NO. 4078/MUM/2023 (A.Y. 2015-16) – REVENUE APPEAL**

**15.** The first grievance relates to the deletion of the TP adjustment in respect of business advances given to EJP KEC Joint Venture, South Africa, this issue has been considered and decided by this Tribunal in

assessee's own case in A.Ys. 2012-13, 2013-14 and 2014-15. The relevant findings in A.Y. 2013-14 in ITA No. 33/MUM/2022 order dated 31.05.2023, read as under: -

*"14. In Ground No. 1 the Revenue has challenged the order passed by the CIT(A) deleting the upward transfer pricing adjustment of INR.6,06,09,173/-.*

*15. On perusal of the record, we find that the Assessee had advanced INR 61,19,16,491/- to EJP KEC JV, South Africa without charging any interest. Assessee claimed that the advances were paid on account of business expediency to meet business requirements of the AE which was facing cash deficit due to enormous losses from the projects of the joint venture. TPO rejected the aforesaid explanation/submission and made the above transfer pricing adjustment by holding the aforesaid advance given by the Assessee were akin to loan and therefore, TPO calculated the arm's length interest that should have been paid on the advance/loan to arrive at transfer pricing adjustment of INR.6,06,09,173/-. In appeal preferred by the Assessee, the CIT(A) deleted the addition by placing reliance of the decision of the Tribunal in the case of the Assessee for the Assessment Year 2012-13 [ITA No. 17&115/Mum/2018, dated 14/09/2020] wherein it was held by the Tribunal as under:*

*"4. Upon careful consideration, the undisputed position that emerges are that the advances have been given by the assessee to an entity in which it held 50% share. The assessee has entered into a Joint Venture (JV) agreement with an entity namely Edison Jehamo Power (PTY) Ltd. (EJP) on 25/11/2009 with respect to transmission line construction project. The assessee's proportionate share in the JV was 50%. From the financial statements of JV entity as placed on record, it is quite discernible that the accumulated losses of that entity, at yearend, stood at 98.26 Million Rands which are substantially funded out of joint venture partners' account amounting to 162.80 Million Rands. The assessee's contribution in the JV*

*account is 41.12 Million Rands. The JV incurred losses of 108.13 Million Rands during the year, which has primarily triggered the assessee to make the stated advances to its JV. These advances have been classified under the head Joint Venture partners' account. All these facts would lead strength to the argument of Ld. AR that there was pre-existing liability to make such advances to JV and the business interest of the assessee would have been adversely impacted by not making such advances. The advances were more in the nature of capital contribution and by advancing the same, the assessee had protected its own business interest which is evident from the financial statements of JV. The advances were towards fulfilment of the assessee's obligation of being a JV partner as any financial incapacitation of JV would adversely affect the continuation of the project and ultimately jeopardize the interest of the assessee. Therefore, the said advances could not be put in the category of loans as done by the lower authorities. Further, it could not be said that JV entity derived / gained certain benefits out of such advances but rather it was the assessee who would ultimately gain by continuing with the projects and taste the fruits of the success of project. Hence, not convinced with impugned adjustments as confirmed by first appellate authority, we direct Ld. AO to delete the same." (Emphasis Supplied)*

*16. There is nothing on record to persuade us to take a view different from the view taken by the Co-ordinate Bench of the Tribunal. Thus, facts and circumstances being identical, we dismiss Ground No.1 raised by the Revenue by following the above decisions of the Tribunal in the case of the Assessee for the Assessment Year 2012-13."*

**16.** Respectfully following the findings of the Coordinate Bench (supra) we decline to interfere. Ground No. 1 is dismissed.

**17.** The Second grievance relates to the deletion of the addition on account of corporate guarantee given to various banks in favour of AL Sharif Group in respect of working capital loan obtained from the bank. This issue was also considered and decided by this Tribunal in A.Y.2013-14 in ITA No. 33/MUM/2022, the relevant findings read as under: - .

*"17. Ground No. 2(i) to (ix) raised by the Revenue are directed against the relief granted by the CIT(A) in relation to aggregate transfer pricing adjustment of INR 98,43,602/- pertaining to different Performance Guarantees.*

*18. We note that the Assessing Officer/TPO had arrived at the arm's length rate of guarantee fee for performance guarantees at 1% and had computed transfer pricing adjustment for the four performance guarantees specified in paragraph 7.2 above. In appeal preferred by the Assessee before CIT(A), the transaction of performance guarantee was held to be an 'international transaction'. However, the CIT(A) deleted the transfer pricing addition in respect of performance guarantees by placing reliance of the decision of the Tribunal in the case of the Assessee for preceding assessment years. The CIT(A) observed that the issue relating to transfer pricing adjustment on account of guarantee fee to be recovered by the Assessee from its AEs in relation to performance guarantee was recurring in nature and was decided in favor of the Assessee and against the Revenue in appeals for the Assessment Year 2010-11/2011-12 as identical ground raised by the Revenue regarding the benchmarking of the transaction of giving performance guarantee was dismissed.*

*19. On perusal of the decision of the Tribunal in the case of the Assessee for the Assessment Year 2010-11, 2011-12 and 2012-13 (placed at pages 76 to 148 of the paper-book), we find that two performance guarantee on behalf of KEC Global FZ, LLC, UAE to Chadian Company for Water & Electricity (CCWE) have been continuing since Financial Year 2009-10 relevant to Assessment Year 2010-11.*

*20. First performance guarantee of Euro 10,03,126/- was granted in 2009 while the Second performance guarantee of*

*Euro 20,06,252/- was granted in August, 2009. Both the aforesaid performance guarantees were given by the Bank of India, Mumbai Branch in favour of CCWE, a customer of Assessee's AE (i.e. KEC Global FZ LLC), and Bank of India, had charged guarantee commission of 0.93% per annum in respect of the same which was recovered by the Assessee from the AE. For Assessment Year 2010-11, 2011-12 and 2012-13, the Tribunal has accepted the aforesaid rate of 0.93% as arm's length rate of guarantee fee.*

*21. Similarly, the third performance guarantee granted by the Assessee to Bahawan Engineering Company, LLC, Oman on behalf of KEC Global FZ, LLC for securing performance of the contract has also been continuing since Financial Year 2009-10 relevant to Assessment Year 2010-11. The AE had assigned its rights and obligation under the aforesaid contract to the Assessee. For Assessment Year 2010- 11, 2011-12 and 2012-13, the Tribunal has accepted rate of 0.60% as arm's length rate of guarantee fee.*

*22. whereas, the fourth performance guarantee was given in December 2010 by Royal Bank of Scotland, Mumbai Branch to SNC Lavalin Canada on behalf of Assessee's AE (i.e. SAE Tower Holding, LLC). For Assessment Year 2012-13, the Tribunal has accepted rate of 0.70% as arm's length rate of guarantee fee.*

*23. There is nothing on record to persuade us to take a view different from the view taken by the Co-ordinate Benches of the Tribunal for the preceding assessment years for the same performance guarantees. Thus, facts and circumstances being identical, we dismiss Ground No.2(i) to (ix) raised by the Revenue by following the above decisions of the Tribunal in the case of the Assessee for the Assessment Years 2010-11 [ITA No. 5611/Mum/2015, dated 10/07/2019], 2011-12 [ITA No 6447/Mum/2016, dated 23/03/2021] and 2012-13 [ITA No 17 & 115/Mum/2018, dated 14/09/2020]."*

**18.** Respectfully following the findings of the Coordinate Bench (supra) we decline to interfere. Ground No. 2 is also dismissed.

**19.** The next grievance related to the transaction of giving guarantee is not an international transaction. This issue has been decided in favour of revenue, therefore this ground becomes otiose.

**20.** The next grievance relates to the restricting guarantee commission in respect of guarantee given to ICICI Bank, U.K. in favour of U.S. subsidiaries at 0.2% of the guarantee.

**21.** We find that this Tribunal since A.Y. 2011-12 to A.Y. 2017-18 has decided this issue in favour of assessee by restricting the corporate guarantee at 0.2% of the guarantee but in A.Y. 2018-19 this Tribunal has directed to apply corporate guarantee rate @0.6%. The relevant findings in ITA No. 2512/MUM/2022 for the A.Y. 2018-19 read as under:-

*"7. With regard to corporate guarantee given to KEC Transmission LLC and KEC US LLC, USA (WOS) now known as SAE Tower Holding LLC, he submitted that the corporate guarantee given by the assessee in the A.Y.2011-12 and the rate for the same was also sustained by the Ld. DRP @1.16%. However, in the earlier assessment year and subsequent Assessment Years, the Coordinate Bench has sustained the same @0.20%. He prayed that following the rule of consistency the corporate guarantee @0.20% may be sustained by following the decision of the Coordinate Bench in the earlier Assessment Years.*

*8. However, at the time of hearing, the bench asked the Ld. AR of the assessee to substantiate the claim made on the issue of SAE Tower Holding LLC considering the fact that this guarantee was given in A.Y.2011-12 and how the same guarantee was continued till date without there being any revision. The bench observed that the corporate*

*guarantee is reviewed every year or atleast once in three years. The corporate guarantee cannot be same which was given in the A.Y.2011-12. The Ld.AR prayed that the rule of consistence may be followed.*

*9. On the other hand, Ld. DR relied on the orders of lower authorities and prayed that the corporate guarantee rate determined by the lower authorities may be sustained.*

*10. Considered the rival submissions and material placed on record, the Coordinate Bench considered the same issue in the earlier Assessment Years in ITA.No. 33/Mum/2022 dated 31.05.2023 and observed as under:-*

*"29. As regards the balance 3 corporate guarantees, we find that same were given by the Assessee on behalf of its AEs to banks for the purpose of availing loans. In respect of the aforesaid three corporate guarantees that the CIT(A) has held as under:*

*"7. Now I consider benchmarking of 3 transactions of Corporate guarantees Details are as under*

*(i) Corporate guarantee given to National Bank of Oman on behalf of KEC Global FZ LLC RasUI Khaimah of OMR 52,60,323/-: As per the order of the TPO. this corporate guarantee was given in 2010 for availing loan of Rs 74.24.02,536/- (OMR 52,60,323) from National Bank of Oman The Appellant recovered guarantee fee @ 0.6% of Rs 44,54,415/-. The TPO determined the ALP at 2% and computed adjustment of Rs 91,32,568/-*

*(ii) Corporate guarantee given to State Bank of India, Jeddah on behalf of Al Sharif Group and KEC Limited Co. of SAR 11,15,94,000/- .: As per the order of the TPO, this corporate guarantee was given in 2012 for availing loan of Rs 1,61,66,73.437/- (SAR 11,15,94,000) from State Bank of India, Jeddah The Appellant has recovered guarantee fee @0.6% of 97.00.041/- The TPO determined the ALP at 2% and computed adjustment of Rs 1,97,10,128/-.*

*(iii) Corporate guarantee given to Bank Muscat SAOG on behalf of Al Sharif Group and KEC Limited Co. of SAR 8,45,29,440/-: As per the order of the TPO, this corporate guarantee was given in 2012 for availing loan of Rs 1.22 45,86,450/- (SAR 8,45,29,440) from Bank Muscat SAOG. The recovered guarantee fee @ 0.6% of Rs 73,47,519/- The TPO determined the ALP at 2% and computed adjustment of Rs 89,57,934/-*

*7.1 Submission: The Appellant has made a common submission. It is submitted that corporate guarantee is not an international transaction. The Appellant has also submitted that corporate guarantees were issued to enable AEs to avail credit facilities as a matter of commercial prudence primarily to protect the business interest of the group by fulfilling the shareholder's obligations.*

*The Appellant has also claimed that non-charging of commission is justified where additional security is provided. In case of Al Sharif Group which obtained financing facility from SBI, Jeddah and Bank of Muscat, the banks obtained primary right over AEs contract receivables of project of Saudi Electricity company. While these receivables were security for the credit facility provided, the Appellant provided corporate guarantee to comply with administrative requirements. It is thus claimed that no risk was borne by the Appellant under the circumstances. As such charging of guarantee commission is not warranted.*

*The Appellant has further stated that benchmarking rate of 2% adopted by the TPO is ad hoc and is not justified. Reliance is placed on decision of the Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd v CIT (ITA 1165 of 2013) for the proposition that considerations applied for issuance of corporate guarantee are from that of the bank guarantee and that high rate of commission in case of corporate guarantee issued by holding company for subsidiary is not justified.*

*It is submitted without prejudice that Appellant has charged guarantee commission @ 0.6% to AES. The said rate is based on rate mentioned under the facility letter issued by the assessee's bank. It is claimed that this rate is most direct comparable uncontrolled transaction to benchmark the rate of guarantee commission.*

*Lastly, the Appellant has relied on ITAT's decision in its case for AY 2012-13, by reproducing Para 7.11 of the order (already reproduced in Para 6.7.1 above) and submitted that benchmarking be done @ 0.2%.*

*7.2 I have considered the order and submissions of the Appellant. The transaction of issue of corporate guarantee is covered under the definition of 'International Transaction' u/s 92B rw. Explanation. As per Explanation (1) (c) of 92B (inserted with retrospective effect from 01.04.2002 by*

*Finance Act 2012), 'guarantee' has been specifically clarified to be an international transaction. The legislature is aware that there are some conditions to be satisfied under section 92B for qualifying as an International transaction. The very fact that it has included certain items as international transaction in the explanation implies that in the view of the legislature, these items fulfil the conditions of section 92B(1) and have been included in the explanation as a matter of abundant caution. Therefore there can be no onus on department to show that a guarantee is an international transaction in terms of section 92B(1) in the case of corporate guarantee. If the assessee fails to show a guarantee as International Transaction and claims that it is not an international transaction in terms of section 92B(1), it is for the assessee to show that there is no service or impact on income*

Xx

*7.2.1 As regards the benchmarking rate, the Appellant has already charged 0.6% as guarantee commission. The TPO has increased this benchmarking rate to 2% in all the 3 cases. The Appellant has submitted that benchmarking be done at 0.2% following the decision of the Hon'ble ITAT in its case in respect of benchmarking of corporate guarantee Issued by the Appellant to ICICI, UK on behalf of its AE KEC US LLC & KEC Transmission LLC. The operative part of the decision is already produced in Para 6.7. It is seen that the facts of 2 corporate guarantees are different. The 3 guarantees under consideration are for availing of regular credit facilities whereas credit facilities from ICICI, UK was for certain of which the Appellant was to be the ultimate beneficiary. Therefore, the benchmarking rates cannot be same. The Appellant has already charged 0.6% rate which is based on a facility letter by its own bank, which is a good comparable. It is, therefore, held that no interference is called for in the benchmarking @ 0.6% done by the Appellant and the adjustments made by the TPO are deleted" (Emphasis Supplied)*

30. On perusal of the above, it can be seen that the CIT(A) held that the transaction of issuance of corporate guarantee to be an international transaction as per Explanation (1)(c) to Section 92B of the Act (inserted with retrospective effect from 01.04.2002 by

*Finance Act 2012). The CIT(A) rejected the contention of the Assessee to benchmark the guarantee fee in respect of the three corporate guarantees at the rate of 0.2% by highlighting the difference in the purpose of giving corporate guarantees and the reasoning given by the Tribunal that corporate guarantee issued by the Assessee to ICICI, UK on behalf of its AE KEC US LLC and KEC Transmission LLC, was for the ultimate benefit of the Assessee. The CIT(A) pointed out that the 3 guarantees under consideration were given for the purpose of availing of regular credit facilities whereas credit facilities from ICICI, UK benchmarked at the rate of 0.2% was for the ultimate benefit of the Assessee itself. The CIT(A) noted that the Assessee had already recovered the guarantee fee at the rate of 0.6% from the AEs on the basis of letter issued to the Appellant by its bank for similar facility. Perusal of the order passed by TPO shows that the TPO had determined arm's length guarantee fee at the rate of 2% by way of estimation. During the course of hearing, it was pointed out by the Learned Authorised Representative for Assessee that the corporate guarantee was given for working capital loan facility granted to the AE in which the Assessee was 50% partner, and therefore, there was no default risk. Further, repayment of loan was secured by way of charge against the receivables from Saudi Electric Company, a Government Undertaking and a client of the Assessee's AE and therefore, the Assessee had only provided secondary security. The aforesaid submission, at best, supports the view taken by the CIT(A) to adopt the lower rate of 0.6% proposed to be charged by the bank of the Assessee as the arm's length rate for corporate guarantee fee instead of 2% determined by the TPO/Assessing Officer. Given the facts and circumstances of the present case, we are not inclined to interfere with the order passed by the CIT(A) on this issue. Accordingly, Ground No. 3(ii)-(iii) raised by the Revenue are dismissed."*

*11. Respectfully following the above said decision, we are inclined to sustain the corporate guarantee of 0.60% proposed to be charged by the bank of the assessee as the ALP rate for all the corporate guarantees given by the assessee including the corporate guarantee given to SAE Tower Holding LLC, considering the fact that the corporate guarantee given in A.Y. 2011-12 may not be proper since the assessee has not brought on record any material on the subsequent corporate guarantee awarded to SAE Tower Holding LLC, in our considered view the same rate of 0.60% may be sustained for all the corporate guarantee given by the assessee under consideration. Accordingly, ground raised by the assessee is partly allowed."*

**22.** Respectfully following the latest decision of the Coordinate Bench (supra) we direct the Assessing Officer to apply corporate guarantee rate @0.6%. This ground is partly allowed.

**23.** In the result, appeal filed by the revenue is partly allowed.

**ITA NO. 4022/MUM/2023 (A.Y. 2016-17) – ASSESSEE APPEAL**

**24.** The first grievance relates to the TP adjustment on account of bank guarantee. This issue has been decided against the assessee by this Tribunal in earlier years and the same has been considered in detail in ITA No. 4021/MUM/2023 (supra), for our detailed discussion therein, this grievance is dismissed.

**25.** The second grievance relates to the short grant of TDS.

**26.** Similar issue has been considered and decided by us in ITA No. 4021/MUM/2023 (supra) vide Ground No. 3 of that appeal, for our detailed discussion therein, we direct accordingly. This ground is allowed for statistical purpose.

**27.** In the result, appeal filed by the assessee is partly allowed.

**ITA NO. 4076/MUM/2023 (A.Y. 2016-17) – REVENUE APPEAL**

**28.** The first grievance relates to the deletion of TP Adjustment in respect of business advances given to EJP KEC Joint venture, South Africa.

**29.** A similar grievance has been considered and decided by us in ITA No. 4078/MUM/2023 (supra). For our detailed discussion therein, this ground is dismissed.

**30.** The next grievance relates to corporate guarantee given to various banks in favor of AL Sharif group in respect of working capital loan obtained from the bank.

**31.** An identical issue has been considered and decided by us in ITA No. 4078/MUM/2023 (supra), for our detailed discussion therein, this ground is dismissed.

**32.** The grounds relating to transaction of giving guarantee is not an "international transaction", has been treated as otiose in ITA No. 4078/MUM/2023 (supra), for similar reasons these grounds are treated as otiose for the present appeal.

**33.** The next grievance relates to the restricting guarantee commission in respect of guarantee given to ICICI Bank, U.K. in favour of U.S. subsidiaries at 0.2% of the guarantee.

**34.** This issue has been decided in favour of revenue by us in ITA No. 4078/MUM/2023 (supra), for the reasons given therein, the Assessing Officer is directed to apply corporate guarantee rate @0.6%.

**35.** In the result, appeal filed by the revenue is allowed in part.

Order pronounced in the open court on 03<sup>rd</sup> May, 2024.

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Mumbai / Dated 03.05.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**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**