

आयकर अपीलिय अधिकरण
दिल्ली पीठ "आई", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री प्रदीप कुमार केडिया, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आअसं. 1213/दिल्ली/2022 (नि. व. 2017-18)
ITA No.1213/DEL/2022 (A.Y.2017-18)

Amplus Power Solutions P. Ltd.,
6th Floor, The Palm Square,
Golf Course Extension Road, Sector-66,
Gurugram 122102, Haryana
PAN: AAOCA0544J

..... अपीलार्थी/ Appellant

बनाम Vs.

The Assessing Officer, National Faceless Assessment Centre,
Jurisdictional Assessing Officer-Circle1(1),
New Delhi

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nikhil Tiwari
प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Kumar, CIT-DR
सुनवाई की तिथि/ Date of hearing : 05/06/2024
घोषणा की तिथि/ Date of pronouncement : 13/06/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 29.3.2022 passed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961(hereinafter referred to as 'the Act'), for assessment year 2017-18.

2. The assessee in appeal has raised nine grounds. The ground no. 1 to 8 of appeal are against addition made on interest on Non Convertible Debentures and non compliance of directions of the Dispute Resolution Panel (DRP) by the Transfer Pricing Officer (TPO)/Assessing Officer (AO).

3. Shri Nikhil Tiwari, appearing on behalf of the assessee submitted that during the period relevant to assessment year under appeal, the assessee paid interest to its AE on Non Convertible Debentures (NCDs) @14.25% and 14.30% (i.e. SBI base rate + 500 basis points). The assessee paid interest on Non Convertible Debentures Rs. 1,74,39,485/- . The TPO to benchmark interest rate adopted Prime Lending Rate (PLR) of State Bank of India i.e. 14.03%. However, while concluding the order, the TPO erred in adopting rate of interest @19.30% and made adjustment of Rs. 20,51,173/-. The assessee filed objections before the DRP *inter alia* highlighting the factual mistake made by the TPO in mentioning the interest rate on NCDs @19.30%, instead of 14.30%.

3.1. The Id. AR pointed that the DRP vide directions dated 04.02.2022 in para 3.3.1 directed the TPO to verify the factual contentions of the assessee and pass a speaking order in respect thereof. The TPO while giving effect to the directions of the DRP vide order 17.03.2022 fail to consider the directions of DRP and retained the adjustment without even referring to the observations of the DRP in para 3.3.1.

The Id. AR placed reliance on the decision in the case of *ESPN Star Sports Mauritius S.N.C ET Compagnie vs. UOI 68 taxmann.com 377* to contend that where the AO/TPO failed to follow directions of the DRP, the final assessment order is liable to be quashed.

3.2 He further pointed that determination of arm's length interest rate at 17.03% by the TPO as against the interest rate paid by assessee 14.03%/14.25% would show the international transaction undertaken by the assessee is at arm's

length. Thus, on merits also the TP adjustment made by TPO is liable to be deleted.

4. Shri Rajesh Kumar, representing the Department strongly supported the assessment order and prayed for upholding the same. However, the Id. DR fairly admitted that the TPO while giving effect to the directions of the DRP has only considered operating part of the directions and missed to see directions of the DRP in para 3.3.1. He prayed that the issue can be restored to the TPO/AO to give effect to the directions of the DRP in para 3.3.1. He further placed reliance on the decision of Delhi Bench of Tribunal in the case of *Hitachi Astemo Haryana P. Ltd. vs. DCIT* to contend that where the TPO/AO has failed to give effect to the order of DRP, the issue can be restored for giving effect to the directions of DRP.

5. We have heard the submissions made by rival sides and have examined the order of authorities below. The TPO while giving effect to the DRP directions dated 04.02.2022 has failed to take note of following directions of the DRP:-

“3.3 Grounds No. 3 to 5 assail the adjustment on account of determination of ALP of non-convertible debentures. It is stated that the TPO has considered wrong facts, while computing the TP adjustment for the impugned international transaction and that he has erroneously mentioned that the assessee has paid interest at a rate of 19.30% on the NCDs issued to its AEs, whereas the assessee has paid interest at a rate of 14.30%/14.25%. Since, the TPO has determined the arm's length interest rate as 17.03 percent and the interest rate paid by the assessee is 14.30/14.25 percent, the international transaction undertaken by the assessee can be considered to be at arm's length from the Indian TP perspective. Accordingly, the TP adjustment made by the TPO is liable to be deleted.

3.3.1 The Panel has considered the submission. The TPO is directed to verify this factual contention and pass a speaking order in respect thereof.”

6. This fact has been admitted by the Department that the TPO has failed to give effect to the directions of the DRP. Taking into consideration entire facts of the case, we deem it appropriate to restore this issue to the file of TPO/AO to

comply with the aforesaid directions of the DRP. We have also considered the decision rendered by the Hon'ble Delhi High Court in the case of ESPN Star Sports Mauritius S.N.C ET Compagnie vs. UOI (supra). We find that facts in the instant case are distinguishable; the aforesaid decision was rendered in peculiar facts of that case, hence the ratio laid down in the said decision would not support the cause of assessee. In the result, ground no. 1 to 8 of appeal are allowed for statistical purpose.

7. In ground no. 9 of appeal, the assessee has assailed initiation of penalty proceedings u/s. 270A r.w.s 274 of the Act. Challenge to penalty proceedings at this stage is premature. Hence, ground no. 9 of appeal is dismissed as such.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Thursday the 13th day of June, 2024.

Sd/-

(PRADIP KUMAR KEDIA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 13/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI