

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Vimal Kumar, Judicial Member**

ITA No. 7700/Del/2019 : Asstt. Year: 2013-14

Addl. CIT, Special Range-6, New Delhi-110002	Vs	Maharashtra Seamless Ltd., Plot No. 5, 2 nd Floor, Pusa Road, New Delhi-110005
(APPELLANT)		(RESPONDENT)
PAN No. AAACM0511B		

ITA No. 7066/Del/2019 : Asstt. Year: 2013-14

Maharashtra Seamless Ltd., Plot No. 5, 2 nd Floor, Pusa Road, New Delhi-110005	Vs	DCIT, Circle-16(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACM0511B		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, AR
Revenue by : Sh. Prakshit Singh, Sr. DR**

Date of Hearing: 25.06.2024	Date of Pronouncement: 27.06.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the Revenue and the assessee against the orders of Id. CIT(A)-44 dated 28.06.2019.

2. At the outset, both the parties fairly submitted that the issues involved in the grounds of appeal are similar to the issues taken up by the assessee in the earlier Assessment Year 2012-13 which stands adjudicated by the order of the Tribunal in ITA No. 7065/Del/2019 for A.Y. 2012-13 vide order dated

27.02.2024. For the sake ready reference, the order of the Tribunal is reproduced as under:

"3. *The brief facts of the case are that the assessee is a company engaged in the business of manufacturing of Seamless, ERW Pipes and Tubes, and trading of Pipes and Tubes. The assessee has filed its return of income in original on 28.09.2012. During the year under consideration, the assessee has advanced loan to Jindal Pipes (Singapore) Pte. Ltd (JPSPL) of around US\$ 33,64,847.52, equivalent to Rs. 16,99,24,281/-. The assessee has charged interest of Rs. 19,88,755/- on such advances at the rate of 1 months LIBOR plus 300 basis points which is 3.23% p.a. approx and the same was declared in the return of income filed by the assessee.*

4. *The above International transaction of interest received of Rs. 19,88,755/-was benchmarked by the assessee adopting CUP method, being the appropriate method. The assessee has considered JPSPL, its Associated Enterprise as the internal comparable because JPSPL (AE) has also taken the loan from Citibank N.A. Singapore for the tenure of 3 months at the rate of 6 months LIBOR + 225 basis points i.e. 2.937% p.a. approx. and the assessee has charged the higher rate of interest from JPSPL, AE, being 1 month LIBOR + 300 basis points i.e. 3.23% p.a. approx., thus the transaction of the assessee is at arm's length.*

5. *During the course of Transfer Pricing proceeding, the assessee submitted the rate charged by assessee to JPSPL is 1 month LIBOR + 300 basis points which comes out to be 3.23% p.a. approx. is already more than the rate of interest charged by Citibank, Singapore, and the transaction is considered at arm's length.*

6. *The TPO rejected the comparable provided by assessee citing following reasons:*

- *The loan granted by Citibank, Singapore is just for a period of 3 months.*
- *There involves a guarantee in the agreement between JPSPL and Citibank, Singapore where assessee stands as a guarantor.*
- *The two agreements pertains to different financial year and hence they are not comparable ignoring the fact that assessee has given loan in November 2011 to February 2012 and the agreement entered into between the JPSPL and Citibank, Singapore is dated April 2012.*

7. The TPO has benchmarked the interest amount on the basis of Master circular on ECB and trade credits issued by RBI. While adopting the rate to be applied, the TPO has adopted 6 month Libor + 500 basis points i.e 5.687% p.a. approx. which was ceiling rate given for loans exceeding 5 years and thus, made the addition of Rs. 15,02,959/- on the basis of interest at the rate of 5.687% p.a. as under:

Particulars	Balance/Transaction	Amount in INR	No. of days	Interest Rate (6 months LIBOR + 500 bps)	Interest amount in INR
New Loan					
	11.11.2011	32,55,001.22	142	5.687	72,016.14
	14.11.2011	15,51,39,500.00	139	5.687	33,59,909.28
	22.02.2012	98,39,336.90	39	5.687	59,788.93
Total Interest					34,91,714.36
Arms' Length Interest					34,91,714.36
Less: Interest received					19,88,755.00
Difference to be adjusted					15,02,959.36

8. Aggrieved by the order of the AO, assessee filed the appeal before CIT(A), who directed to consider LIBOR +350 points, resulting in filing of appeal before the Tribunal.

9. Heard the arguments of both the parties and perused the material available on record.

10. With regard to the tenure of loan granted by Citibank, Singapore being for a period of 3 months, the assessee explained that one of clauses of loan agreement entered into between the assessee and JPSPL is that the loan is repayable on demand and is for meeting temporary fund requirement which is evident from the agreement. Thus it is in essence a short term loan. On the other hand, the loan agreement between JPSPL and Citibank was for the period of 3 months which also qualifies as a short term loan. Thus when both the loans are for short term, they are aptly comparable. The assessee further submitted that the loan granted by assessee has also been repaid back to it by JPSPL in the year 2012 itself i.e. within 12 months from the date of grant.

11. With regard to the guarantee in the agreement between Citibank, Singapore and JPSPL, it was submitted that JPSPL has obtained loan from Citibank, Singapore of around USD 2,90,00,000/-. No bank would provide such a huge amount of loan without taking any security in return, the security being any asset or any guarantee. In such circumstances, JPSPL has obtained loan backed by assessee's guarantee. The TPO has not brought on record any facts or material which depicts that the interest rate charged

by bank is impacted by the securities offered by the borrower of the loan. The assessee holds 30% shareholding of JPSPL and the guarantee has been advanced by the assessee as a matter of commercial prudence primarily to protect the business interest of the group by fulfilling the shareholder's obligation.

12. *With regard to the fact that two agreements pertain to different financial year, it was submitted that both the transactions pertain to the same period in which LIBOR rates are applied i.e. in 2012. It is noticeable that agreement between JPSPL and Citibank, Singapore pertains to Year 2012 and since the tenure of loan is for a period of 3 months, the interest will be accrued in same calendar year i.e. 2012. On the other hand, with reference to loan agreement between JPSPL and the assessee, it is undisputed that one of the clause in the agreement between assessee and JPSPL reads that interest shall be charged at 1 month LIBOR + 300 basis points as on the last business day of the financial year, in which interest is being accrued. This transaction belongs to FY 2011-12 and thus the interest shall be charged at LIBOR prevalent in the year 2012. Accordingly, the ground of the TPO that the matter pertains to two different financial years is baseless as LIBOR of year 2012 only are being considered in both the cases.*

13. *Reliance is placed on the following judgments:*

- *DABUR INDIA LTD. VERSUS ADDL. CIT. RANGE-10. NEW DELHI in 2021 (2) TMI 1250 - ITAT DELHI - Dated.- February 18. 2021.*
- *COMMISSIONER OF INCOME TAX-I VERSUS M/S COTTON NATURALS (II PVT.LTD. In 2015 (3) TMI 1031 - DELHI HIGH COURT - Dated.- March 27. 2015.*
- *INSLICO LTD. VERSUS DCIT, CIRCLE 11 (11 . NEW DELHI in 2015 (12) TMI 1779 - ITAT DELHI - Dated.- December 4. 2015*
- *M/S E4E BUSINESS SOLUTIONS INDIA PVT. LTD., VERSUS THE DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE-3 (1) (2) BANGALORE AND VICE-VERSA in 2015 (11) TMI 1545 - ITAT BANGALORE - Dated.- November 4, 2015.*
- *GHARDA CHEMICALS LTD. VERSUS DEPUTY COMMISSIONER OF INCOME-TAX 9 (1). MUMBAI in 2009 (11) TMI 653 - ITAT MUMBAI - Dated.- November 30. 2009.*
- *M/S. AG1LA SPECIALTIES PVT. LTD. NOW MERGED WITH MYLAN LABORATORIES LTD.. VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX. CIRCLE 1 (1) (1).*

BANGALORE AND VICA-VERSA in 2015 (12) TMI 33 - ITAT BANGALORE Dated.- October 9. 2015.

- *TECNIMONT ICB P. LTD. AND ANOTHER VERSUS ADDITIONAL COMMISSIONER OF INCOME-TAX AND ANOTHER in 2013 (9) TMI 595 - ITAT MUMBAI Dated.- July 17. 2012*

14. *In view of the above, it is comprehensible that interest has been earned by assessee at arm's length rate and accordingly, no adjustment on account of arm's length rate is required to be carried out. Therefore the addition sustained of Rs. 5,81,986/- is hereby directed to be deleted."*

3. With regard to corporate guarantees, having heard the arguments of both the parties who relied on the respective orders of the AO and the Id. CIT(A), we find no reason to interfere with the reasoned order of the Id. CIT(A). (para 7.5 to 7.8) which relied on the order of the Tribunal in case of DCIT Vs. Spentex Industries Ltd. (94 taxmann 419) and the judgment of Hon'ble High Court of Mumbai in the case of CIT Vs. Everest Cantor Cylinder Ltd. (378 ITR 57). For the sake of ready reference, the relevant part of the Id. CIT(A) is reproduced below:

"7.5 Grounds No. 7, 8 & 9 pertain to the contention of the appellant that the AO/TPO had erred in charging corporate-guarantee at the rate of 0.12% from its AE and making a transfer pricing adjustment using 1.3% as per SBI rate on guarantee. The appellant had provided corporate guarantee of USD 13 crores to banks on behalf of its AE namely Maharashtra Seamless (Singapore) Pte. Ltd. and Dev Drilling Pte. Ltd. The appellant argued that the its transaction were at arm's length.

7.6 The Hon'ble Delhi ITAT in the case of DCIT vs Spentex Industries Ltd. 2018 94 taxmann.com 419 (Delhi – Trib) dated 17.05.2018 has held that transfer pricing adjustment are applicable from AY 2013-14 onwards

in view of the amendment to section 92B of the Act by the Finance Act, 2012 which was held to be prospective and not retrospective. Hence, the contention of the appellant that the transaction pertaining to corporate guarantee was not an international transaction within the definition of the transfer pricing regulations in India is not correct. Moreover, the corporate guarantee has been charged by the appellant itself during the year under reference.

7.7 It is seen that the Hon'ble Bombay Tribunal in the case of Everest Kanto Cylinder Ltd versus ACIT 2015 113 TDR Mumbai (TRIB) 108 which has been affirmed by the Bombay High Court in CIT versus Everest Cantor Cylinder Ltd (2015) 378 ITR 57 (BOM) 119 TDR 0394 (BOM) has stated as follows: -

"The Transfer Pricing Officer in his order dated 28/10/2010, observed that during the financial year 2006-07 the associated enterprise had taken a loan of Rs. 86.18 crores, that is USD 20,000,000 from ICICI Bank and one of the clauses of the term loan was to provide a corporate guarantee by the assessee. In this behalf, the assessee provided a corporate guarantee/guarantee repayment of borrowings made by the associated enterprise at Dubai for purchase of assets and inventories and for working capital and as a term loan. The assessed had charged guarantee commission at 0.5%. The, transfer pricing officer found that the guarantee fee charged was at a lower rate and proceeded to compare the guarantee costs. The provision of guarantee was found to be an international transaction as defined under section 92 B of the Act and was found that the transaction would have a bearing on profits, income, losses or assets of the assessee. It was observed that overall risk exposure of the assessee company becomes higher by virtue of the amount of guarantee and the company becomes more leveraged including by virtue of its debt equity ratio which would ultimately effect the cost of borrowing. The Dubai subsidiary was newly formed was unknown had a low credit rating and as such the transfer pricing officer concluded that if the guarantee had not been provided, ICICI bank would not have lent an advanced monies to the associated

enterprise. Relying upon the principles of computing guarantee fees in the case of General Electric Capital Canada Inc versus Her Majesty, the Queen (2009) TCC 563, the difference between the bank rate and the prime lending rate it showed a return for bearing risk followed by other banks during the relevant year with 6% while the average prime lending rate was 11.35%. This shows that the return for bearing risk was around 5.35%. It was also found in another case taken up for comparison that a public company with limited liability in which 51% stake was held by Dutch state, FMO (Netherlands Financierings Maatschappij Voor Ontwikkelingslanden NV) had charged 2.5% for furnishing guarantee in the case of Rabo India Finance Private Limited despite the fact that FMO and Rabo were not related entities. The transfer pricing officer came to the conclusion that the banks and companies are charging at least 3% for providing guarantees and therefore the benchmarked arm's length price for guarantee given by the assessee to ICICI for benefit of the associated enterprise at 3% of the amount of guarantee. In this manner he arrived at an amount of Rs.34,99,003 as guarantee commission and made an adjustment of Rs.28,50,353 since the amount of Rs.6,48,650 equivalent to 0.5% had already been provided for.

9. Mr. Pardiwala then assailed the Transfer Pricing Officer's findings by making a reference to the order of the Tribunal. He pointed out in paragraph 14 (b) that the associated enterprise could have borrowed money as per the prevailing rate in the associate head enterprise countries which were around 5.5% per annum and during the said period the associated enterprise had borrowed at the rate of Libor +0.83% for term loan for working capital purpose. Thus if it could have borrowed at the said rate, the prevailing Libor rates ranging from 5.3% and effective rate of borrowing was 6.13% for the term loan and 5.8% for the working capital loan which was in line with the normal rates prevailing in the associated enterprise country. Mr. Pardiwala further submitted that the associated enterprise had obtained a loan from its bankers on first charge towards the fixed asset and further hypothecation of inventory and book debts. Associated enterprise has a

gross fixed asset base valued at about USD 13 million and had inventory valued at USD 7.6 million, book debts of USD 5.4 million and cash and bank balance of USD 1.8 million. A pointed out that against a loan outstanding of USD 10 million as of ' 31/03/2007, assets available were to the tune of USD 27.4 million. Accordingly, it was no question the associated enterprise not being able to obtain a loan without this corporate guarantee issued by the assessee.

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In the matter of guarantee commission, that adjustment made by the transfer pricing officer were based on instances; restricted to commercial banks providing guarantees and did not contemplate the issue of corporate guarantee. No doubt these are contracts of guarantees, 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 associated enterprise does not repay the 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 the bank guarantee arid accordingly, we are of the view that the commission charged cannot be called in question, in the manner the transfer-pricing officer has done. In our view, the comparison are not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against the corporate guarantee issued by holding company for the benefit of associated enterprise, a subsidiary company. In view of the above discussion we are of the view that the appeal does not raise any substantial question of law and it is dismissed.”

7.8 In the case of Everest Kanto Cylinders Ltd.(supra) the appellant itself had benchmarked its corporate guarantee 0.5% per annum and had paid bank guarantees of 0.35% to 4% during the year and that the rate used by the TPO was the bank guarantee rate and not the corporate guarantee rate. Thus the Hon'ble High Court had accepted the rate of 0.5% shown by the appellant. The High Court held that there was a difference between bank guarantee and corporate guarantee. Hence, relying upon the order of the Bombay High Court in the case of Everest Kanto Cylinders Ltd. (supra) and on the basis of the facts and the circumstances of-the case, it is held that it would be reasonable to benchmark corporate guarantee at the rate of 0.5% instead of 1.3% as done by the AO/TPO or 0.12% made by the appellant. The AO/TPO is directed to allow relief to the appellant accordingly.

4. In the result, LIBOR + 300 points be charged and corporate guaranteed commission be charged @ 0.5%.

5. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 27/06/2024.

Sd/-

(Vimal Kumar)
Judicial Member

Dated: 27/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR