

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 4226/Mum/2024**  
**Assessment Year: 2020-21**

<b>Tata Projects Limited</b> Floor 2, 3 and 4 One Boulevard, Lake Boulevard Street Hiranandani Business Park Powai Mumbai - 400076 <b>[PAN: AAAC4119L]</b>	Vs	<b>Commissioner of Income Tax,</b> <b>Central Circle - 7(3), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Anish Thacker a/w Shri Pranay Gandhi & Shri Lekh Mehta, A/Rs
Revenue by :	Shri Uodal Raj Singh, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 30/09/2024  
घोषणा की तारीख/**Date of Pronouncement** : 08/10/2024

**आदेश/O R D E R**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dated 31/05/2024 framed u/s 143(3) r.w.s. 144C(13) of the Act pertaining to AY 2020-21.

2. Representatives of both the sides were heard at length. Case records were carefully perused and the relevant documentary evidence duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

3. Briefly stated the facts of the case are that the assessee is an engineering procurement and construction contracting company established in 1979. It provides turnkey solutions for the construction of roads, bridges, fully integrated rail & metro systems, commercial building & airports and setting up power generation plants, power transmission &

distribution systems, chemical process plants, water and waste management and complete mining and metal purification systems.

3.1. Return for the year was filed electronically on 15/02/2021 declaring total income of Rs.174,06,88,920/-. The return was selected for scrutiny and accordingly statutory notices were issued and served upon the assessee. A reference u/s 92CA of the Act was made for computation of Arm's length price (ALP) in relation to international transactions as reported in Form 3CEB filed by the assessee. The assessee is having following AEs with whom it had international transactions during the year:-

Sr. No.	Name of the AE	Registered Office Location	Nature of business carried on by the AE
1.	TQ Services Europe GmbH	Fritze-Vomfe Ide-Str. 34, D -40547 Dusse Idorf	Entity is engaged in providing inspection services in European markets
2.	Industrial Quality Services LLC	A 16, 5th Flo or, Building No.1/A/30, M uscat Grand Mall, AlKhu wair, Muscat, Sultanate of Oman	Primarily engaged in rendering service activities incidental to extraction of petroleum and natural gas, excluding surveying.
3.	Ind Project Engineering (Shanghai) Co. Ltd.	Unit-D, 15th Floor, Jiu Shi Fu XingMan sion, No.918, Middle Huai Hai Road, Shanghai	Entity provides certification, inspection and accreditation services in China
4.	NESMA Tata Projects Limited	P.O. Box 7559, Al Madinah Al Munawarah Rd-Al Faisaliyah Dist. Unit No. 6 02, Jeddah 23442-2 430, Kingdom of Saudi Arabia	The company is involved in management of construction projects, development of detailed engineering designs, material procurement and execution of projects in power, water, gas and petro chemical sectors.

4. The international transactions with AEs reported by the assessee are as under:-

Sr. No.	Name of the AE	Description of International Transactions	Amount (in Rs.)	Method adopted
1	TQ Services Europe Gmbh	Secondment of technical personnel/ employees	348473	TNMM
2	Industrial Quality Services LLC Oman	Secondment of technical personnel/ employees	4349196	TNMM
3	TQ Services Europe Gmbh	Sub-contracting of quality and inspection services	16934257	CUP
4	Industrial Quality Services LLC Oman	Sub-contracting of quality and inspection services	84980123	CUP
5	IND Project Engineering (Shanghai) Co . Ltd	Sub-contracting of quality and inspection services	100460600	CUP
6	NESMA Tata Projects Limited	Corporate Guarantee given	342605062	CUP
7	Industrial Quality Services LLC Oman	Recovery of expenses	8883113	2156036
8	IND Project Engineering (Shanghai) Co. Ltd	Recovery of expenses	2156036	2156036

5. While scrutinizing the TP study report, the TPO gathered that NESMA Tata Projects Ltd. (NESMA TPL) is an entity based in Saudi Arabia, which is jointly controlled by the assessee and Nesma Telecom and Technology Company Ltd., has taken a loan from Alawwal Bank against which the assessee had extended corporate guarantee in proportion to its shareholding. The facility with banks includes both fund-based and non-fund-based facilities. The TPO noticed that the assessee has not charged any Corporate Guarantee fee from its AE NESMA TPL.

5.1. The TPO issued notice u/s 133(6) of the Act to different banks and collected data pertaining to the guarantee fee that has been charged during the relevant year. The result of the notices sent u/s 133(6) of the Act is as under:-

<i>Bank Name</i>	<i>Rate</i>
<i>Standard Chartered Bank</i>	<i>0.75%</i>
<i>CITI Bank</i>	<i>0.90%</i>
<i>Union Bank of India</i>	<i>1.20%</i>
<i>HDFC</i>	<i>1.80%</i>
<i>IDBI</i>	<i>2.00%</i>
<i>State Bank of India</i>	<i>2.10%</i>
<i>ICICI</i>	<i>2.50%</i>
<i>Count</i>	<i>7</i>
<b><i>Median</i></b>	<b><i>1.80%</i></b>
<i>35<sup>th</sup> Percentile</i>	<i>1.20%</i>
<i>65<sup>th</sup> Percentile</i>	<i>2.00%</i>

5.1.1. The TPO found that the average bank guarantee rates are 1.80%. Accordingly, a showcause notice was issued to the assessee explaining it to showcause as to why adjustments should not be made @1.80% on corporate guarantee provided by the assessee to its AE. The assessee filed detailed reply strongly contending that the relationship between the parent and the subsidiary is significant and economically relevant. In the interest of protecting the goodwill and reputation of the group, it is strategically important for the parent to support the subsidiary and ensure that there is no default committed by the subsidiary in meeting its financial obligation. Effectively, the consequences of providing explicit guarantee are no different compared to implicit obligation which the parent undertakes in its own business interest. The consequences arising on account of default by the subsidiary resulting in deterioration in the credit rating of the group would be far more onerous. It was strongly

contended that the underlying facts in the issue do not require benchmarking of the corporate guarantee since it is a transaction between subsidiary and holding company.

5.2. The contention of the assessee did not find any favour with the TPO who proposed adjustment of corporate guarantee @1.80% at Rs.61,66,891/-.

5.2.1. The assessee strongly objected before the DRP and reiterated what has been stated before the TPO but the objections raised by the assessee were dismissed by the DRP and pursuant to the directions of the DRP, the AO made adjustment of Rs.61,66,891/-.

6. Before us the ld. Counsel for assessee reiterated what has been stated before lower authorities. The ld. D/R strongly supported the findings of the AO/DRP.

7. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that AE, NESMA TPL has taken a loan from Alawwal Bank which later merged with Saudi British Bank in Saudi Arabia. Therefore, at the very outset, the bank rates adopted by the TPO pertaining to the Indian banks are not accepted. We find that the Co-ordinate Benches across the country have been consistently taking the guarantee fee charged in the range of 0.25% to 0.50%, to name few of such cases:-

<i>Order of the Hon'ble Bench of the Tribunal</i>	<i>Assessment Year</i>	<i>Commission for guarantee fee</i>
<i>Thomas Cook (India) Limited TS-307-ITAT-2016(Mum)- TP I. T.A./1261 &amp; 1238/Mum/2015</i>	2008-09	0.50%
<i>Thomas Cook (India) Limited The DCIT-1(3) TS-227-ITAT-2016(Mum)-TP ITA No. 859/MUM/2014, ITA No. 768/MUM/2014</i>	2009-10	0.50%
<i>Godrej Consumer Products Ltd. TS-222-ITAT-2016(Mum)-TP ITA No. 1299/Mum/2013</i>	2010-11	0.50%
<i>Grabal Alok Impex Limited TS-532-ITAT-2016(Mum)-TP ITA No. 1776/Mum/2015</i>	2009-10	0.50%

<i>Nimbus Communications Ltd.</i> Asst. Commissioner of Income Tax-11(1) TS-43-ITAT-2016(Mum)-TP, ITA.: 1424/Mum/2014; ITA.: 1332/Mum/2014	2009-10	0.50%
<i>Everest Kanto Cylinder Ltd. vs ACIT</i> TS-105-ITAT-2015(Mum)-TP ITA NO.550/Mum/2014 ITA NO. 1386/Mum2014	2008-09	0.50%
<i>Manugraph India Lid: OME</i> TS-113-ITAT-2015(Mum)-TP ITA No. 4761/Mum/2013	2007-08	0.50%
<i>Aditya Birla Minacs Worldwide Ltd. vs DCIT</i> TS-114-ITAT-2015(Mum)-TP ITA No. 7033/Mum/2012 ITA No. 7142/Mum/2012	2008-09	0.50%
<i>Rain Commodities Limited</i> TS-594-ITAT-2015(HYD)-TP ITA No. 157/Hyd/2014 ITA No. 276/Hyd/2014	2009-10 and 2010-11/2008-09	0.50%
<i>Cox and Kings Ltd</i> TS-540-ITAT-2015(Mum)-TP I.T.A. No. 1354/M/2014 I.T.A. No. 7770/M/2014	2010-11	0.50%
<i>Manugraph India Ltd vs DCIT</i> TS-463-ITAT-2015(Mum)-TP ITA No. : 491/Mum/2015 ITA No. : 1072/Mum/2015	2007-08	0.50%
<i>M/S Everest Kento Cylinders Ltd</i> TS-200-HC-2015(BOM)-TP INCOME TAX APPEAL NO. 1165 OF 2013	2006-07 And 2007-08	0.50%
<i>Godrej Sara Lee Ltd vs. ACIT ITA No. : 7227/Mum/2011</i>	2005-06	0.50%
<i>Godrej Household Products Ltd. (TS-330-ITAT-2013(Mum)-TP)</i>	2006-07	0.50%
<i>Reliance Industries Limited vs. ACIT in ITA No.4475/Mum/2007</i>	2006-07	0.38%
<i>M/s. Asian Paints Ltd. v. ACIT, LTU ITA No. 408/Mum/2010</i>	2005-06	0.25%
<i>M/s. Everest Kanto Cylinder Ltd. vs. DCIT</i> ITA No.542/Mum/2012	2007-08	0.60%
<i>Asst. CIT v M/s Nimbus Communications Ltd.</i>	2005-06	0.50%
<i>Asst. CIT v M/s Nimbus Communications Ltd.</i>	2006-07 and 2007-08	0.50%

8. It would be pertinent to refer to the decision of the Co-ordinate Bench in the case of *II & Fs Technolgies Ltd. Mumbai vs. Asst. Cir -14(2)(1), Mumbai* in ITA Nos. 4469 & 1551/Mum, wherein the Co-ordinate Bench held as under:-

“11. The sum and substance of the ratio [laid down by](#) the Hon'ble jurisdictional High Court and also various benches of Tribunal is that corporate guarantee is international transaction which needs to be benchmarked to determine the ALP of said transaction whether or not the assessee has charged any commission on such guarantee. Although, there are divergence view from various bench of Tribunal in the light of Explanation to [section 92B](#) of the Act, on corporate guarantee to be not international transaction, but the Hon'ble jurisdictional High Court has taken view that corporate guarantee is an international transaction and accordingly bound by the judicial decision and also to follow the jurisdictional High Court decision, we are of the considered view that corporate guarantee issued by the assessee on behalf of its AE subsidiary company is an

international transaction. However, while arriving at rate the AO has taken comparables from commercial banks to arrive at mean margin of 1.04% and adopted such rate to determine the ALP of corporate guarantee issued by the assessee. Since, the jurisdictional High Court in the case of [CIT vs Everest Kanto Cylinder Ltd.](#) has considered the issue and upheld the findings of the Tribunal in estimating 0.5% commission on guarantee. We are of the considered view that the Ld. AO as well as the Ld. CIT(a)/DRP IL & FS Technology Limited erred in adopting 1.04% commission on corporate guarantee issued by the assessee for both assessment years. Hence by following jurisdictional High Court decision, we direct the Ld. AO to adopt 0.5% commission on guarantee issued by the assessee on behalf of its AE a subsidiary company, in the result, appeals filed by the assessee for AY 2010-11 and 2011-12 are partly allowed."

9. Further the Co-ordinate Bench of ITAT Bangalore in the case of *Medreich Limited* [TS-181-ITAT-2021(Bang)-TP], has held as follows:-

"9. We have heard rival submissions and perused the material on record. The learned AR has not disputed the fact that corporate guarantee commission is an international transaction. The AR only disputes 2% attributed for imputing ALP of corporate guarantee commission. On identical facts in the case of [Manipal Global Education Services Pvt. Ltd. v. DCIT](#) (supra), the Bangalore Bench of the Tribunal had imputed 0.50% as cost, instead of 2% arrived by the TPO. (A copy of TPO's order u/s 92CA in the case of *Manipal Global Education Services Pvt.Ltd.* is placed on record). The TPO in the cited case also arrived at 2% by taking the credit rating of the tax payer just like this case. The relevant finding of the ITAT in the case of [Manipal Global Education Services Pvt. Ltd. v. DCIT](#) (supra), reads as follow:-

"8. We have heard the parties on this issue and perused the record. We notice that the Tribunal is consistently holding the transaction of providing Corporate Guarantee as an international transaction. Hence the same is required to be examined under Arms length principles. There should not be any dispute that the provision of Corporate guarantee to its subsidiary in order to enable it to avail loans would bring benefit to the subsidiary, in which case, it is proper to compensate the assessee for those benefits under Arms length principles. We notice that the TPO has made an adjustment of 2%, considering the interest benefit @ 4% and taking the view that half of the same should be attributed to the benefit of the assessee. However, we notice that the Hon'ble Bombay High Court has approved the T.P. adjustment of 0.50% in respect of Corporate guarantee given in the case of [Everest Kento Cylinders Ltd.](#) (supra). Though the Ld AR has pleaded for an adjustment of 0.20% by placing reliance on the decision of [Asian Paints Ltd.](#) (supra), yet we notice that the Ld.AR did not highlight the parity of facts between the assessee and the case of *Asian Paints Ltd.* Hence, on the conspectus of the matter, we are of the view that the T.P. adjustment in respect of Corporate Guarantee may be made @ 0.50% as per other decisions of Tribunal and Hon'ble Bombay High Court [referred above](#). Accordingly we set aside the order passed by the A.O. on this issue and direct the AO/TPO to make T.P adjustment in respect of Corporate Guarantee @ 0.50% in all the years under consideration."

10. In the light of the above order of the Bangalore Bench of the Tribunal in the case of [Manipal Global Education Services Pvt. Ltd. v. DCIT](#) (supra), which is identical to the facts of the instant case, we direct the AO/TPO to make TP adjustment in respect of corporate guarantee at 0.50% for the assessment years under consideration. It is ordered accordingly.

10. Considering the plethora of judgments of the Co-ordinate Benches mentioned hereinabove, we direct the AO to restrict the ALP adjustment to 0.5%.

11. Before parting, the assessee has raised an additional ground challenging the validity of the impugned assessment proceedings on account of the same being barred by limitation relying on the decision of the Hon'ble Madras High Court in the case of *M/s. Roca Bathroom Products Private Limited* in W.A. No. 1517 & 1519 of 2021, judgment dt. 09/06/2022. Vide application dated 30/09/2024, the assessee wished to withdraw the legal ground mentioned hereinabove. The assessee is allowed to withdraw the same and it is dismissed as withdrawn.

12. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Court on 8<sup>th</sup> October, 2024 at Mumbai.**

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

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

Mumbai, Dated 08/10/2024

*Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai