IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

AND

RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.5387/M/2024

Assessment Year: 2021-22

Rosy Blue (India) Private Limited 1608/09, Prasad Chambers, Tata Road No.2, Opera House, Mumbai- 400004. **PAN: AACCR2413B**	Vs.	**Assistant Commissioner of Income Tax, Central Circle 8(3)** 659, 6th floor, Aayakar Bhawan, Maharishi Karve Marg, Mumbai- 400020.
Appellant	:	**Respondent**

Present for:
Assessee by : Shri Nitesh Joshi & P. P. Bhandari
Revenue by : Shri Asif Karmali (SR. D.R.)

Date of Hearing : 27.11.2024
Date of Pronouncement : 27.11.2024

ORDER

Per Narendra Kumar Billaiya, A.M.:

This appeal by the assessee is preferred against the order dated 28/09/2024 framed u/s. 143(3) r.w.s. 144C (13) of the Act pertaining to A.Y.2021-22. The grounds of the assessee read as under:-

1. *"The learned Dispute Resolution Panel ('DRP') and Learned Transfer Pricing Officer ('TPO')/Assessing Officer ('AO') erred in*

making an upward adjustment of Rs. 7,01,080/- under section 92CA of the Act being notional interest on loan given by the Assessee to its wholly owned subsidiary. The DRP and TPO failed to appreciate that based on the appellate decision for earlier years, it has suo- moto added an amount of Rs. 1,11,746/- towards notional interest and no further adjustment is called for.

2. *The learned DRP and learned TPO and AO erred in making an upward adjustment of Rs. 17,96,004/- under section 92CA of the Act in respect of corporate guarantee provided by the Assessee on behalf of its wholly owned subsidiary. The DRP and TPO failed to appreciate that based on the appellate decision for earlier years, it has suo-moto added an amount of Rs. 17,96,004/- towards corporate guarantee charges and no further adjustment is called for.*
3. *The learned DRP and AO erred in disallowing proportionate depreciation of Rs. 4,32,802/-on WDV of the factory premises. The learned DRP and AO failed to appreciate the fact that the factory premises owned by the Assessee was exclusively used for the purpose of its business of the Assessee and depreciation has been consistently allowed by appellate authorities in earlier years.*
4. *The learned DRP and AO erred in disallowing amount of Rs. 6,18,771/ out of property tax paid in respect of the factory premises without appreciating that the property is exclusively used for the business of the Assessee. The property tax is incurred wholly and exclusively for the purpose of its business and as such no disallowance is called for.*
5. *The learned DRP and AO erred in making an addition of Rs.10,01,200/- by invoking the provisions of Section 50C of the Act. The DRP and AO failed to appreciate that the sale consideration is for a single plot of land and the aggregate sale consideration is within the tolerance limit prescribed under Section 50C of the Act. The addition made under Section 50C of the Act is bad in law and ought to be deleted.*

   The Appellant reserves the right to add, to alter or to amend the grounds of appeal."

2. Ground No. 1 relates to the upward adjustment on account of notional interest of loan given by the assessee to its wholly owned subsidiary.

3. The briefly stated facts of the case are that during the year under consideration, loan of USD 7,50,000 carrying 0% interest was given by the assessee to its A.E. in earlier years which was repaid on 27/08/2020.
4. Drawing support from the proceedings of earlier assessment years, the assessee made adjustment with respect to interest free loan at LIBOR rate of 0.49438 and computed the adjustment at Rs.1,11,746/-.
5. The action of the assessee did not find favour with the TPO who drawing support from Bloomberg data. Consider the interest rate arrived from the Bloomberg data base to be the arm's length price for the interest payment transaction and accordingly computed the adjustment at Rs.7,01,080/- which was confirmed by the DRP.
6. Before us, the counsel pointed out that in A.Y. 2013-14 the Tribunal in assessee's own case in ITA No. 308/M/2019 has considered a similar quarrel and decided the issue in favour of the assessee. The Ld.DR could not bring any distinguishing decision in favour of the revenue.
7. We have given thoughtful consideration to the orders of the authorities below. We find that in A.Y. 2013-14, the coordinate bench in ITA No. 308/M/2019 had considered a similar quarrel and held as under:-

> *6. We find that the Ld. DR in his argument was not able to point out any error in the order passed by this Tribunal for A.Y.2014-15. He merely pointed out by making a fresh argument that naked LIBOR alone cannot be adopted. We also find that the Hon'ble Rajasthan*

> *High Court in the case of CIT vs. Vaibhav Gems Ltd., reported in 88 Taxmann.com 12 which was heavily relied upon by the Id. AR had addressed the issue in dispute before us and held that only LIBOR rate should be taken for the purpose of adding notional interest income on account of interest free loan given to foreign subsidiary. We further find that the special leave petition preferred by the Revenue before the Hon'ble Apex Court against this judgement has been dismissed by the Hon'ble Apex Court which is reported in 259 Taxmann 130 (SC). When the issue is already covered in assessee's own case by the order of this Tribunal in subsequent year l.e. A.Y.2014-15 on the very same interest free loan transaction given to AE, there is no need to take a divergent view by this Tribunal for the year under consideration. We find that this Tribunal in A.Y.2014-15 had held as under:-*
>
> > *"7. We have considered rival submissions and perused materials on record. Though, learned Counsel for the assessee has submitted that advancing of interest free loans to the subsidiaries is a shareholder's activity, hence, should not be subjected to arm's length price determination, however, we are not convinced. A perusal of Explanation-1(c) of section 92B of the Act makes it clear that capital financing including any type of long term and short term borrowing, lending, etc., comes within the ambit of international transaction. Since, the assessee has provided interest free loan to the AEs, which, under similar circumstances would not have been provided to unrelated parties, arm's length interest has to be determined. It is further observed, in the course of proceedings before the first appellate authority the assessee relying upon various judicial precedents had submitted that arm's length interest should be determined by applying LIBOR rate. Since, learned Commissioner (Appeals) has accepted the aforesaid contention of the assessee, we do not find any infirmity in the decision of learned Commissioner (Appeals). This ground is dismissed."*
>
> *6.1. Respectfully following the same, we direct the Id. TPO to consider only LIBOR rate @1.52% as arm's length price for benchmarking the interest free loan given by the assessee to its AE and recompute the transfer pricing adjustment accordingly. Accordingly, the ground No.1 raised by the assessee is partly allowed."*

8. Respectfully following the decision of the coordinate bench (supra), we direct the Ld.AO/TPO to consider only Libor rate.

Ground No. 1 is accordingly allowed.

9. Ground No. 2 relates to the upward adjustment in respect of corporate guarantee provided by the assessee on behalf of its wholly owned subsidiary.

10. The underlying facts show that during the year under consideration, assessee has provided a corporate guarantee to its wholly owned subsidiary Tia Shan Gems Ltd. It was contended that the assessee has neither incurred any cost nor charged any commission for issue of guarantee and during the year the assessee has closed the guarantee given on behalf of its A.E. and there is no outstanding guarantee as at the end of the year. Drawing support from the appellate proceedings of earlier year adjustments with respect to guarantee commission is computed at 0.5%.

11. The TPO was of the firm belief that it is an international transaction and on such belief proceeded on computing the corporate guarantee. The TPO gathered information regarding the rate charged for giving guarantee from various banks which is as under:-

Sr. No.	**Bank Name**	**Rate**
1.	Kotak Mahindra Bank	0.45%
2.	Standard Chartered Bank	0.75%
3.	Citibank	0.90%
4.	Union Bank of India	1.20%
5.	HDFC	1.80%
6.	IDBI	2.00%
7.	SBI	2.55%

8.	ICICI	3.00%
	35th percentile	**0.90%**
	Median	**1.50%**
	65th percentile	**2.00%**

12. Based on the above, the TPO thought it to be appropriate to charge 1% from the A.E. for the guarantee given on their behalf to 3rd party financial institution and computed the adjustment at Rs.17,96,004/- which was uphold by the DRP.
13. The similar issue was considered by the coordinate bench in A.Y. 2013-14 in ITA No. 308/M/2019. The relevant findings read is under:-

> *"7. Ground No.2 raised by the assessee is with regard to transfer pricing adjustment made on account of fee for corporate guarantee.*
> *8. We have heard rival submissions and perused the material available on record. We find that assessee has given corporate guarantee during the year on behalf of its AE In favour of Barclays Bank PLC on 02/04/2012 for an amount of USD 7500000, on the strength of which, the AE had taken loan from Barclays Bank. The assessee has not charged any commission / fees for issue of such guarantee for the benefit of the AE. The Id. TPO determined fee / commission for corporate guarantee at 2.25% and arrived at the transfer pricing adjustment figure of Rs.93,35,250/-. In appellate proceedings, the Id. CIT(A) directed the Id. AO to determine the commission on corporate guarantee at 0.5% on the loans availed.*
> *8.1. The Id. DR placed reliance on the decision of Co-ordinate Bench of Mumbal Tribunal in the case of Mahindra and Mahindra Ltd., and other Tribunal decisions in the case of Technimont JCB India Ltd., to support the order of the Id. TPO. We find that appeal of the Revenue against the order of the Id. CIT(A) for the year under consideration had been dismissed due to low tax effect. Hence we hold that the Id. DR before us cannot argue for determination of rate of commission beyond 0.5% as was held by the Id. CIT(A). We find that this issue is also already considered by this Tribunal in assessee's own case for A.Y.2014-15 in ITA No.1724/Mum/2019 dated 16/02/221 wherein it was held as under:-*
> *"13. We have considered rival submissions in the light of*

decision relied upon and perused material on record. As far as the contention of learned Counsel for the assessee that provision of corporate guarantee is not an international transaction, we are not convinced with it. A reading of Explanation-l(c) of section 92B of the Act, makes it clear that the provision of any kind of guarantee will come within the ambit of international transaction under section 92B of the Act. Further, as rightly observed by learned first appellate authority, the Tribunal, Mumbai Bench, in Everest Kanto Cylinders Ltd. v/s DCIT, [2013] 34 Taxman.com 19 (Mum.) while negating identical contention made by the assessee has held that provision of corporate guarantee is an international transaction. The aforesaid decision of the Co-ordinate Bench has also been upheld by the Hon'ble Jurisdictional High Court in case of the same assessee as reported in [2015] 58 Taxman.com 254 (Bom.). That being the case, we do not find any merit in the submissions of the assessee that provision of corporate guarantee is not an international transaction. As regard the arm's length rate of fee/commission, the learned Counsel for the assessee relying decision of the Asian Paints India Ltd. (supra) has submitted that it should be reduced to 0.2% However, on careful perusal of the decision rendered in case of Asian Paints (supra), we find that in the facts of the said case the assessee itself had charged commission @ 0.2% over the years and the Tribunal has accepted the claim of the assessee which was not contested by the Revenue. Taking note of these facts the Hon'ble Jurisdictional High Court has dismissed the appeal of the Revenue. These are not the facts in case of the present assessee. Therefore, we are not inclined to interfere with the decision of learned Commissioner (Appeals) on this issue. This ground is dismissed."

8.2. Since we find that the Id. CIT(A) had relied on the decision of the Hon'ble Jurisdictional High Court while deciding this issue, we find no infirmity in the said order of the Id. CIT(A). Accordingly, the ground No.2 raised by the assessee is partly allowed."

14. Respectfully following the decision of coordinate bench, we order accordingly.

    The Ground No. 2 is allowed.

15. Ground No. 3 relates to the disallowance of the depreciation of Rs.4,32,802/- on WDV of the factory premises.
16. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings, the Ld.AO noticed that the assessee has claimed depreciation at Rs.12,32,341/- for the factory premises located at 11, Chakravarthy Road, Kandivali (East), Mumbai. The Ld.AO found that the said factory premises are also used by other entities and accordingly disallowed the claim of depreciation proportionately.
17. Before us, the counsel vehemently stated that it has given part of its premises to job workers who were engaged in doing business of the assessee in polishing diamonds. Therefore, it is incorrect to say that the premises were used by other entities. The counsel pointed out that an identical dispute arose in A.Y. 2010-11 and the tribunal has decided the issue in favour of the assessee in ITA No. 3679 & others. The Ld.DR strongly supported the findings of the Ld.AO. We have carefully considered the orders of the authorities below. The undisputed fact is that the assessee has given the premises to the job workers who were doing job work for the assessee. The premises were actually used by the assessee, R. B. Cutters Pvt. Ltd. as job worker and Intercontinental Diamonds LLP also as a job worker. The facts on record show that in order to comply cutting and polishing of diamonds the workers

required are employed through R. B. Cutters Pvt. Ltd. and Intercontinental Diamonds LLP and this job contractors were operating from the premises of the assessee and exclusively working for the assessee. Therefore, it cannot be said that the premises were utilized by other entities.

18. A similar quarrel arose in A.Y. 2010-11 in Tribunal in ITA No. 3679/M/2018 along with other appeals, considered and decided the issue as under:-

> *"11. After hearing both the parties and on perusal of the material on record, we find that it is an undisputed fact that the factory premises belong to the assessee, for its own business activity of manufacturing, i.e. cutting and polishing of diamonds, assessee has outsourced the said activity to two entities who have carried out the job work from the said premises. Not only that, the plant and machinery installed therein also belongs to the assessee company on which depreciation has already been allowed by the Assessing Officer for which there is no dispute. Nowhere the job workers or contractors had any right or control over the premises albeit the entire activity carried out by them was under superintendence and control of the assessee company. Thus, it cannot be held that the agreement between the said party and Assessee Company is tenancy agreement. Rs.24,000/- annually for such a huge premises of 58905 sq. ft. in such a prime location cannot be said to be rental value and same cannot be equated with tenancy. We do not find any infirmity in the order of Ld. CIT(A) that if the assessee is owner of the premises and the said premises is used for manufacturing of rough diamonds and cutting and polishing for its own captive consumption, depreciation of said factory premises cannot be disallowed. Accordingly, the order of Ld. CIT(A) is confirmed and ground nos. 1 & 2 raised by the Revenue is dismissed."*

19. On finding parity of facts, respectively following the decision of the coordinate bench, we direct the Ld.AO to delete the impugned disallowance.

Ground No. 3 is accordingly allowed.

20. Ground No. 4 relates to the disallowance of property tax proportionately on the ground that the property is used by other entities also.

21. A perusal of the assessment order show that for the reasons given for disallowing depreciation proportionately considered vide ground no. 3 above similar reasons were given by the Ld.AO for disallowing proportionately the property tax paid by the assessee.

22. For our detailed discussion in ground no. 3 while allowing the claim of depreciation for similar reasons the property tax is also directed to be allowed.

Ground No. 4 is also allowed.

23. The ground no. 5 relates to the addition of Rs.10,01,200/- by invoking the provision of section 50C of the Act.

24. The underlying facts show that during the course of the scrutiny assessment proceedings, the Ld.AO noticed that the assessee has sold one property being plot no.265/4 measuring 1.568 hectare for a consideration of Rs.1,79,50,000/-. The stamp duty value of which was Rs.1,90,24,800/- invoking the provision of section 50C of the Act. The Ld.AO made the addition of Rs.10,01,200/- which pertains to the conveyance deed of a portion of land to Shri Rajesh Agal measuring 0.732 hectare. The consideration received by the assessee was Rs.73,50,000/-, whereas, the

stamp duty value was Rs.83,51,200/-.

25. The addition made by the Ld.AO was upheld by the DRP. Before us, the counsel explained that as per agreement to sale, the assessee agreed to sell the impugned land to three persons namely Vishwas son of Hasmukh Soni, shashank son of Mahendra Vaidya and Rajesh son of Narayandas Maheshwari for the total consideration of Rs.1,79,49,998/-. It is the say of the counsel that conveyance deed was executed in three different names separately though the agreement of sale was one with three different purchasers, therefore, the impugned transaction should be considered as one transaction and the third proviso to section 50C would apply as if the transaction has taken as one transaction. The difference in the stamp duty value and the actual consideration is within the parameters of 110%. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Varshaben Bharathben Shah 248 ITR 342.

26. Per contra the Ld.DR strongly submitted the findings of the Ld.AO and vehemently contended that the decision of the Hon'ble supreme court is clearly distinguishable from the facts of the case in hand in as much as in the case decided by the Hon'ble Supreme Court. There was one transaction in the name of different persons whereas the facts under consideration show that there were different conveyance deeds executed by the assessee.

27. We have carefully considered the orders of the authorities below and have given a thoughtful consideration to the decision of Hon'ble Supreme Court (supra). There is no dispute that when the agreement was executed it was a single agreement for the sale of plot no. 265/4 measuring 1.565 hectare. The agreement was between the assessee and three different persons. It is also the admitted fact that when the actual conveyance deeds were executed, there were three convenience deeds separately executed with three different purchasers and basis the separate conveyance deed in the name of Rajesh Agal, the stamp duty value was found to be Rs.83,51,199/- and the consideration received by the assessee was Rs.73,50,000/- thereby showing the difference of Rs.10,01,200/- which was added by the Ld.AO. On these facts, we are of the considered opinion that there is no error or infirmity in the findings of the Ld.AO.
28. The decision relied upon by the counsel (supra) is clearly distinguishable in as much as in the case considered by the Hon'ble Supreme Court, what had been transferred by the second and third respondents to the first respondents were there equal half shares in the said immovable property and they owned such equal half shares was indicated in their income tax return and in the said agreement which stated that the earnest money had been paid by two separate cheques to the second and third respondents. The Hon'ble

Supreme Court held as under:-

> "*What, in our opinion, therefore, has to be seen for the purposes of attracting Chapter XX-C is: what is the property which is the subject-matter of transfer and what is the apparent consideration for such transfer. This has to be seen in the real light with due regard to the object of the Chapter and not in an artificial or technical manner. If the apparent consideration for the transfer is more than the limit prescribed for the relevant area under rule 48K, what has then to be seen is whether the apparent consideration for the property is less than the market value thereof by 15 per cent or more. If so, the notice for pre-emptive purchase can be issued and it is then for the parties to the transaction to satisfy the appropriate authority that the apparent consideration is the real consideration for the transfer.*

29. Whereas the facts under consideration show that three different purchasers have executed three different conveyance deeds with the assessee with three separate consideration on which three separate stamp duty has been valued. Therefore, the Ld.AO was correct in applying the provision of section 50C of the Act in the case of Rajesh Agal. Therefore, we decline to interfere with the findings of the DRP/Ld.AO.

    Accordingly, Ground No. 5 is accordingly dismissed.

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

Order pronounced in the open court on 27.11.2024.

Sd/-	**Sd/-**
RAHUL CHAUDHARY	**NARENDRA KUMAR BILLAIYA**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place: Mumbai,

Dated: 27.11.2024
Snehal C. Ayare, Stenographer

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai
4. Guard File
5. CIT

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai