

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 2419/DEL/2023 (A.Y 2016-17)**

<p>TBO TEK Limited 728, Phase V, Udyog Vihar, Gurgaon, Haryana, 122016 <b>PAN No. AACCT6259K</b> <b>(APPELLANT)</b></p>	Vs.	<p>Assistant Commissioner of Income Tax, Circle 25(1), C. R. Building, New Delhi  <b>(RESPONDENT)</b></p>
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<b>Assessee by :</b>	<b>Sh. A. K. Srivastava, AR</b>
<b>Department by:</b>	<b>Sh. Dharamvir Singh, CIT(DR)</b>

<b>Date of Hearing</b>	<b>28.11.2024</b>
<b>Date of Pronouncement</b>	<b>10.12.2024</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Assessee for the Assessment Year 2016-17 against the order of the Commissioner of Income Tax (Appeal), ("Ld. CIT (A) for short)-Delhi 44 dated 09/03/2023.

2. The grounds of Appeal are as under: -

*“1. That on the facts and circumstances of the case and in law, the Assessing Officer and the Learned Commissioner of Income Tax (Appeals), failed to appreciate the true nature of Guarantee / Standby Letter of Credit, issued by Standard Chartered Bank, New Delhi and treating it as an International Transaction.*

*2. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in upholding the average rate of 2.22% of nine banks, for making adjustment u/s 92CA(3), at Rs. 10,27,804/- as against Rs. 5,78,720/-, suo-moto adjusted by the assessee, based on actual cost incurred by the assessee.*

*3. That the Assessing Officer having made adjustment by selecting inappropriate sample, as against the rate adopted by the assessee, the Learned Commissioner of Income Tax (Appeals), erred in confirming the rate, without giving valid reasons for rejecting assessee's stand.*

*4. The appellant craves leave to add, alter, modify, vary or delete any ground of appeal before or during the appellate proceedings.”*

3. Brief facts of the case are that, the Assessee filed return of income of Rs. 12,90,45,370/-. The case of the Assessee was selected for scrutiny. In view of international transaction with AE a reference was made to TPO u/s 92CA(1) of the Income Tax Act, 1961 ('Act' for short). The TPO passed order u/s 92CA(3) of the Act on 04/11/2019 by proposing adjustment of Rs. 4,49,084/- in

respect of corporate guarantee given on behalf of the AE. Accordingly, the assessment was finalized at total income of Rs. 12,94,94,454/- vide order dated 26/02/2020. Aggrieved by the assessment order dated 26/02/2020, the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 26/02/2020, dismissed the Appeal filed by the Assessee which is under challenges before us on the Grounds mentioned above.

4. The Ld. Counsel for the Assessee arguing on Ground No. 2, submitted that the Ld. CIT(A) erred in upholding the average rate of 2.22% of 9 banks for making adjustment u/s 92 CA(3) of the Act at Rs. 10,27,804/- as against Rs. 5,78,720/- *suo-moto* adjustment made by the Assessee based on the actual cost incurred by the Assessee. Thus, sought for allowing the Appeal.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities, sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. The only dispute between the Assessee and the Department of Revenue regarding the addition/adjustment of

Rs. 4,49,084/- made by the A.O. which has been upheld by the Ld. CIT(A). The Assessee Company has given corporate guarantee for its subsidiary TEK Travel DMCC, wherein made voluntary adjustment of 0.94%. The said voluntary adjustment was in respect of actual amount paid to Standard Charter Bank for bank guarantee of Rs. 5,78,720/-. The Standard Charter SLBC charge per year of 1.2% has been adjusted by the Assessee for the shorter period of nine months to 0.94%. The Ld. A.O. was of the opinion that the average corporate guarantee rate at Arm's Length Price at 2.22%, thus, the difference between the actual bank guarantee cost written back at the rate of 1.2% at Rs. 5,78,720/- and computed the amount at 2.22% of Rs. 10,27,804/-, accordingly made addition of Rs. 4,49,084/-.

7. Considering the fact that the Assessee has made voluntary adjustment of 0.94% which is claimed be made based on the actual cost incurred by the Assessee, without going into the issue raised in Ground No. 1 and 3, considering the smallness of the amount, with an intention to put an end litigation, we delete the addition made by the A.O. which has confirmed by the Ld. CIT(A) by

allowing Ground No.2 of the Assessee. Since we have allowed the Ground No. 2 of the Assessee, the Ground No. 1, 3 & 4 are not been adjudicated.

8. In the result, the Appeal of the Assessee is partly allowed.

Order pronounced in the open court on 10th December, 2024.

**Sd/-**  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Dated: 10/12/2024

*R.N, Sr. PS\**

Copy forwarded to:

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

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI