

**IN THE INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH, COCHIN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.558 & 559/Coch/2019
Assessment Year: 2011-12 & 2012-13**

ACIT, Circle-1, Kollam.	Vs.	M/s. Olam Agro India Pvt. Ltd. Bishop Jerome Nagar, Kollam PAN: AAACO 4020 D
(Appellant)		(Respondent)

Present for:

Assessee by : Sri.Uday Agarwal, CA
Revenue by : Shri Sanjit Kumar Das, CIT-DR

Date of Hearing : 22.08.2024
Date of Pronouncement : 18.11.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

Both these appeals filed by the revenue pertaining to A.Y. 2011-12 & 2012-13. Since common issue are involved in these two appeals therefore for the sake of convenience ITA No. 558/Coch/2019 for A.Y. 2011-12 is taken as a lead case and its finding will be applied mutatis mutandis wherever it is applicable.

ITA No. 558/Coch/2019

"1. The Ld. Commissioner of Income tax (Appeals)-II, Kochi erred "in allowing the risk adjustment in case of exports @2% in place of 1% as allowed by TPO and in allowing Commission on Corporate Guarantee on the gross loan limit and not on the actual loan availed".

2. On the issue of risk adjustment, CIT(A) failed to appreciate that the TPO had already discussed the factors such as sale commission, credit risk to the assessee, volume discounts etc. passing the order u/s 92CA(3) of the Income-tax Act.

3. *The CIT(A) ought to have noticed that TPO rejected appellant's claim citing that the appellant has not conducted any meaningful study commodity wise and AE wise on the volume discounts granted.*

4. *The CIT(A) ought to have noticed that as the appellant claimed a market risk of 1%, credit risk was also taken care of by TPO and no separate adjustment was necessary with respect to its exports to unrelated parties other than 1%.*

5. *With respect to the issue of Commission on Corporate Guarantee, The Ld.CIT(A) ought to have considered the bank documents and the guarantee bonds in respect of the loans availed by the appellant on corporate guarantee of Olam International Limited.*

6. *The CIT(A) ought to have noticed that the obligation of Olam International Limited under the guarantee would extend only to the outstanding balance due to the bank at any point of time, as per the guarantee agreements in which it was clearly stipulated that the guarantee shall extend to cover any sums of money owing which shall for the time being constitute the balance due from the assessee to the bank.*

7. *Ld. CIT(A) ought to have considered the judgement in ITA No.2186/Hyd/2017 in the case of M/s BS Limited, Hyderabad, wherein it was held that "the quantum of exposure to Corporate Guarantee should be on the basis of actual exposure".*

8. *For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Thiruvananthapuram on the above points may be set aside and that of the Assessing Officer restored."*

2. Fact in brief is that revenue has raised ground of appeal against the decision of ld. CIT(A) in allowing the risk adjustment in the case of exports @2% in place of 1% as allowed by TPO and in allowing commission on corporate guarantee on the gross loan limit and not on the actual loan availed.

3. Heard both the sides and perused the material on record. In respect of allowing the risk adjustment in case of exports @2% in place of 1% as allowed by the TPO, we find that this is a recurring issue and

assessee has claimed similar adjustment in the earlier years and the department has accepted the such claim of risk adjustment until A.Y. 2007-08. In the A.Y. 2008-09, the claim of risk adjustment was denied to the assessee however the ITAT has allowed the risk adjustment.

4. During this year also, the assessing officer has observed that risk adjustment claims of the assessee @2.5% was on the higher side therefore, AO had restricted it @1% of export value. The ld. CIT(A) has considered that on same issue and identical facts, ITAT has allowed such risk adjustment for the A.Y. 2008-09. The ld. CIT(A) has also analyzed that assessee-company provide commission of Rs. 1.04 crores on its sales of Rs. 89.62 crores to Non-AEs and such commission was not paid on its export to associated enterprises. Further, there is absence of risk of a debt going bad on the export made to associated enterprises but there is more risk of export made to the non-associated enterprises.

5. Considering the above facts and circumstances, we do not find any reason to interfere in the decision of ld. CIT(A) in allowing risk adjustment @2% in place of 1% as allowed by the assessing officer.

6. In respect of providing guarantee commission to the parent associated enterprises M/s. Olam International Ltd. for the loan availed by the assessee on gross basis, the AO has restricted the commission to the extent of actual loan availed by the assessee however the ld. CIT(A) held that commission on corporate guarantee is to be provided on the gross loan sanctioned by the bank following the of decision of Mumbai ITAT in the case of Laqshay Medica Pvt. Ltd. vs DCIT, reported in (2017) 80 taxmann.com 309.

7. After hearing both the sides and perusal of material on record, we find that the issue is squarely covered by the decision of ITAT as

referred above wherein it is held that commission of corporate guarantee is to be allowed on the gross loan limit and not on the basis of actual loan availed. Therefore, we do not find any reason to interfere in the decision of Id. CIT(A). Accordingly, this ground of the revenue is dismissed.

ITA No. 559/Coch/2019

8. Similar issue of risk adjustment in case of export @2% and the issue of allowability of commission on corporate guarantee on gross basis have already been adjudicated vide ITA No. 558/Coch/2019 as above in this order therefore, applying the finding of the same this appeal of the revenue is also dismissed.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 18.11.2024.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Dated: 18.11.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Cochin Bench, Cochin