

**IN THE INCOME TAX APPELLATE TRIBUNAL “K (SMC)” BENCH, MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JM  
AND  
SHRI. PRABHASH SHANKAR, AM**

ITA No.4447/Mum/2024  
(Assessment Year: 2013-14)

<b>ACIT Circle 5(1)(1), Mumbai</b> R. No. 568, Aaykar Bhavan, M. K. Road, Mumbai – 400020.	Vs.	<b>Blue Star Diamonds Pvt. Ltd.</b> CE-9010, 9013, 9 <sup>th</sup> Floor, Tower-C, Bharat Diamond Bourse, BKC, Bandra (E), Mumbai – 400051.
<b>PAN/GIR No. AADCB6475E</b>		
<b>(Assessee)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri. Madhur Agarwal
<b>Respondent by</b>	:	Shri. Kiran Unavekar Sr. DR.

<b>Date of Hearing</b>	:	01.01.2025
<b>Date of Pronouncement</b>	:	29.01.2025

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The revenue has raised the following grounds of appeal:

(1) "Whether on the facts and in the circumstances of the case and in law the Learned CIT(A) is justified in deleting the adjustment of Rs.2,57,55,200/made by the Assessing Officer/Transfer Pricing Officer for International Transaction in respect to the corporate guarantee to Associated Enterprises namely Antwero Star Diamond NV and Blue Star Diamonds (HK) Limited?"

(ii) "Whether on the facts and in the circumstances of the case and in law the Learned CIT(A) is justified in not appreciating that the corporate guarantee. has provided benefit to the Associated Agency and the assessee should have charged a fee for its services in the form of guarantee charge 62% instead of 1%?"



*(iii) The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.*

*(iv) The appellant craves leave to add, amend or alter all or any of the grounds of appeal”*

3. Briefly stated the assessee company filed its return of income dated 29.11.2013, declaring total income at Rs. 39,13,33,730/- and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) observed that the assessee has entered into international transaction with its Associated Enterprises (AE) as per the audit report in form no. 3CEB and reference to learned Transfer Pricing Officer (ld. TPO for short) was made u/s. 92CA(1) of the Act. The ld. TPO vide order dated 27.10.2016, passed u/s. 92CA (3) of the Act made an adjustment of Rs. 2,57,55,200/- on account of corporate guarantee commission on corporate guarantee given by the assessee to its AE. The ld. AO then passed the final assessment order dated 23.12.2016, determining total income at Rs. 41,70,88,930/-, after making various additions/disallowances.
4. Aggrieved the assessee was in appeal before the ld. CIT(A), who vide order dated 04.07.2024, deleted the adjustment made by the ld. AO/TPO towards corporate guarantee commission holding the same to be at Arm's Length Price (ALP for short).
5. The revenue is in appeal before us, challenging the impugned order of the ld. CIT(A) on the above-mentioned grounds.
6. We have heard the rival submissions and perused the materials available on record. It is observed that the revenue has challenged the order of the ld. CIT(A) in deleting the adjustment of Rs. 2,57,55,200/- made by the ld. AO/TPO towards the corporate



- guarantee commission charged by the assessee from its AE for providing corporate guarantee.
7. During the appellate proceedings, the learned Authorised Representative ('ld. AR' for short) for the assessee contended that the ld. TPO had taken 2% to be the bank guarantee rate to determine ALP of the international transaction and had also erroneously included the amount of service tax, processing charges and professional fees recovered from the assessee from its AE for determining the ALP. The ld. AR submitted that the assessee has charged 1% guarantee commission on the corporate guarantee provided to the AE which was much higher than what was determined by the Hon'ble Jurisdictional High Court in the case of *Everest Kanto Cylinders Ltd. Vs. DCIT Circle 3(4), Mumbai in Writ Petition (L) No. 18458 of 2024* which determined corporate guarantee commission at 0.5%. The ld. AR stated that since the assessee has already declared 1% as guarantee commission, the revenue should have challenged only the remaining 1% guarantee commission which was deleted by the ld. CIT(A). Even otherwise, the ld. TPO has erroneously included the service tax and the other expenses for determining the guarantee commission and when these are excluded, the revenue's appeal would fall under the low tax effect as per CBDT Circular No. 17/2019, 5/2024 and 9/2024. The ld. AR prayed that the revenue's appeal be dismissed on this note.
8. The learned Departments Representative ('ld. DR' for short) on the other hand could not controvert the said facts.
9. On the above factual matrix of the case, we find merit in the submission of the ld. AR and prima facie it appears that the revenue's case would fall under the low tax effect



which is much below the prescribed limit specified by the CBDT in its circular for preferring appeal below the threshold limit. The grievance of the revenue in the present appeal is only to the extent of 1% of the corporate guarantee commission being the difference in the determination by the assessee and by the Id. TPO which was deleted by the Id. CIT(A). It is also observed that the Id. TPO has also included the expenses claimed by the assessee in the nature of service tax, professional fee and processing charges which ought to have been excluded while determining the corporate guarantee commission. We therefore are of the considered opinion that the appeal of the revenue is to be dismissed for low tax effect, with the liberty given to the revenue to restore the appeal, if in case, the same does not fall under the low tax effect as per the CBDT circular or if it falls within the exception to the said circular.

10. In the result, the appeal filed by the revenue is dismissed.

*Order pronounced in the open court on 29.01.2025*

Sd/-  
**(PRABHASH SHANKAR)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated: 29.01.2025  
*Karishma J. Pawar (Stenographer)*

Sd/-  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai