

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

**BEFORE SHRI SUDHIR PAREEK, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3641/Del/2017

[Assessment Year : 2011-12]

M/s. Acme Cleantech Solutions Ltd., C/o-M/s. RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi-110049 PAN-AAECA0914A	vs	DCIT, Circle-1(2) New Delhi
APPELLANT		RESPONDENT

ITA No.4478/Del/2016

[Assessment Year : 2010-11]

M/s. ACME Cleantech Solutions Ltd., C/o-M/s. RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi-110049 PAN-AAECA0914A	vs	Addl.CIT, Range-1 New Delhi
APPELLANT		RESPONDENT

ITA No.1074/Del/2023

[Assessment Year : 2010-11]

DCIT, Circle-1(1) New Delhi	vs	M/s. ACME Tele Power Ltd. [Now, known as M/s. ACME Cleantech Solutions Ltd.] C/o-M/s. RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi-110049 PAN-AAECA0914A
APPELLANT		RESPONDENT

Appellant by	Dr. Rakesh Gupta, Adv. Shri Somil Agarwal, Adv. (Virtual) Shri Sakshamm Agarwal, AR & Shri Deepesh Garg, Adv.
Respondent by	Shri Dharm Veer Singh, CIT DR
Date of Hearing	21.08.2025
Date of Pronouncement	20.11.2025

ORDER**PER MANISH AGARWAL, AM :**

In the captioned appeals, one appeal is filed by assessee against the assessment order dated 30.04.2015 passed u/s 143(3) of the Income Tax Act, 1961 [“the Act”] for Assessment Year 2011-12 and other two are the cross-appeals filed by the assessee and the Revenue against the final assessment order dated 19.05.2014 passed u/s 144C(13) r.w.s. 143(3) of the Act for Assessment Year 2010-11.

2. The issues being common, interlinked and inter-connected in the captioned appeals filed by the assessee and the Revenue for different Assessment Years, therefore, all the three captioned appeals are heard together and accordingly, adjudicated by a common order. First we take the assessee’s appeal for AY 2011-12 in ITA No. 3641/Del/2017.

ITA No.3641/Del/2017 [Assessment Year 2011-12]
[Assessee’s appeal]

3. Brief facts of the case are that assessee company is engaged in the business of manufacturing and service of passive telecom infrastructure equipment i.e. PIU, Shelter, AC, PCM etc. used in mobile telecom sites. The return of income was filed declaring loss of INR 78,66,48,709/- on 30.11.2011. As in this case, there were international transactions therefore, a reference was made to the Transfer Pricing Officer (“TPO”) for determination of Arm’s Length

Price (“ALP”) in respect of international transactions. The TPO passed the order u/s 92CA of the Act on 12.01.2015 wherein total adjustments of INR 11,62,89,103/- were proposed on the loans advanced to its Associated Enterprises (“AEs”) and further adjustment of INR 33,33,195/- is proposed on the outstanding receivables. Thereafter, the AO passed the final assessment order wherein total income of the assessee is assessed at a loss of INR 61,26,35,080/- wherein besides the additions towards the transfer pricing adjustment as proposed by TPO, the AO further made additions of INR 62,91,336/- u/s 14A of the Act and also disallowed the provisional liability of INR 4,81,00,000/- towards warranty.

4. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 03.02.2017, partly allowed the appeal of the assessee.

5. Aggrieved by the order of Ld. CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in making reference to TPO for determining of ALP of International transaction.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate addition of Rs. 11,62,89,103/- on the basis of adjustment proposed by the Ld. TPO on account of determination of Arm's Length Price for loan advanced to its associated enterprises and that too by applying domestic lending rate and impugned addition has been made by recording incorrect facts and findings and without observing the principles of natural justice.*

3. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making aggregate addition of Rs.11,62,89,103/- on the basis of adjustment proposed by Ld. TPO on account of loan advanced to its associated enterprises is bad in law and against the facts and circumstances of the case.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.33,33,195/- fully as made by Ld. AO on the basis of adjustment proposed by the Ld. TPO on account of determination of Arm's Length Price for Interest on outstanding receivables and that too by applying external CUP method and further erred in observing that the outstanding receivables is a separate international transaction a per explanation 1(C) to section 92B which has to be benchmarked separately and that too by recording incorrect facts and findings.*
5. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not deleting the addition of Rs.33,33,195/- fully as made by Ld. AO on the basis of adjustment proposed by Ld. TPO on account of outstanding receivables is bad in law and against the facts and circumstances of the case and more so when no interest has been charged.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.62,91,336/- u/s 14A of the Act r/w Rule 8D and further erred in taking those investments also which are not yielding any exempt income and that too by recording incorrect facts and findings.*
7. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.62,91,336/- u/s 14A of the Act r/w Rule 8D, is bad in law and against the facts and circumstances of the case.*
8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.4,81,00,000/- on account of Provision for Warranty and that too by treating it as contingent/provisional liability and that too by recording incorrect facts and findings.*
9. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.4,81,00,000/- on account of Provision for Warranty, is bad in law and against the facts and circumstances of the case.*

10. *That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

6. **Ground of appeal Nos.1 to 3** raised by the assessee are with respect to the additions of INR 11,62,89,103/- towards the loan advanced to its AEs wherein AO/TPO has applied domestic lending rate of SBI PLR for charging the interest on these loans by observing that the same were repayable in Indian Rupee.

7. Before us, Ld.AR for the assessee submits that the assessee has advanced loans to its AEs which are being repayable in US\$ hence the LIBOR rate is applicable. The assessee filed the agreements of all the loans given to its AEs from time to time according to which all of them were given in US\$ and during the year, no fresh loan was given and all are the opening balances. Ld.AR for the assessee further submits that terms of loans were subsequently revised and also filed the modified agreements wherein in terms of terms and conditions of the modified agreements also, all the loans are receivable in US\$ equivalent currency and therefore, he submits that LIBOR rate should be applied as has been applied by the assessee. For this Reliance is placed on the judgement of Hon'ble Jurisdictional High Court in the case of **CIT-I vs Cotton Naturals (I) (P.) Ltd.** reported in **[2015] 55 Saxmann.com 523 (Delhi)** and further in the case of Hon'ble Rajasthan High Court in the case of **CIT vs Vaibhav Gems Ltd.** reported in **[2017] 88 taxmann.com 12 (Raj.)**. Ld. AR prayed accordingly.

8. On the other hand, Ld. CIT DR for the Revenue vehemently supported the orders of the lower authorities and submits that Ld. CIT(A) dealt with this issue in detail wherein Ld. CIT(A) has discussed all the terms of the agreements as well as of the modified agreements therefore, he was of the view that repayments were done in Indian Rupees therefore, the AO/TPO has rightly applied the SBI PLI rate. Ld. CIT DR alternatively prayed that the matter may be remanded back to the file to the AO for making necessary verification of the claim of the assessee that as per the modified agreements, all the loans are receivable in US\$ at the time of maturity.

9. Heard the contentions of both parties and perused the material available on record. In the instant case, the main allegation of the Revenue is that the assessee as per the modified agreement has agreed that all these loans are receivable in Indian Rupees. In this regard, Ld. AR for the assessee drew our attention to the Paper Book wherein the original agreements of all the loans are placed and as per terms of each agreement, it was provided that same were repayable in US \$. Further all the modified agreements entered with the AEs are also placed in the paper book which are available at page 371 to 388. For verification purposes, we took one modified loan agreement with its AE at Mauritius which is at page 372 of the Paper Book wherein as per clause (1) specifically provides that the repayment of the loan shall be made in US \$ equivalent currency as on the date of the repayment and as on the time specified. Likewise in respect of the other loans given to AEs at Mauritius as well as at Cyprus, as per

modified agreements placed at page 374 to 388 of the Paper Book, it is clearly provided that the repayment should be made in US \$. Therefore, observations of Ld. CIT(A) with regard to the repayment of loans in Indian Rupees is incorrect. The Hon'ble Delhi High Court in the case of **CIT-I vs Cotton Naturals (I) (P.) Ltd.** (supra) held that the interest rate should be market determine interest rate applicable to the currency concern in which loan has to be repaid.

10. In view of the above facts and by respectfully following the judgement of hon'ble jurisdictional high court in the case of Cotton Natural (supra), we direct the AO to charge the interest on the loan at LIBOR rate as all the loans are to be repaid in US \$ and the same is to be further increased by the factor of 5.5% as applicable at the relevant point of time. Accordingly, Ground of appeal Nos. 1 to 3 raised by the assessee are allowed as directed above.

11. **Ground of appeal Nos. 4 & 5** raised by the assessee are with respect to the addition of INR 33,33,195/- made towards the transfer pricing adjustment on account of interest on outstanding receivables with AEs.

12. Before us, ld.AR of the assessee argued that the assessee has not charged any interest on outstanding balances of receivables from both AEs and non-AEs. The learned counsel further pointed out that interest cost has also been suitably factored in sale price as operating

profit margin of the assessee is much higher than operating margin of the comparable companies.

13. Further, Ld.AR drew our attention to the table of margin computed of sales including sales goods to AEs and non-AEs Paper available at paper book page 90 submitted before the TPO vide letter dated 30.12.2014 according to which the margin on sales to non-AEs was 23.65% as against margin of 47.21% from the sale of goods to its AEs. Ld.AR also placed reliance on the judgement of Hon'ble Delhi High Court in the case of ***Pr.CIT vs Kusum Healthcare (P.) Ltd. [2018] 99 taxmann.com 431 (Delhi)*** wherein Hon'ble Delhi High Court has held that when assessee has factored the impact of receivable on working capital, no further adjustment is required on the outstanding receivables.

14. On the other hand, Ld. CIT. DR supported the orders of the lower authorities and requested for the confirmation of the same.

15. We have heard the rival submissions and perused the material. By way of Finance Act, 2012 an *Explanation* to Section 92B has been inserted to the Income Tax Act with retrospective effect from 01.04.2002, which clarifies the expression 'international transaction' as follows :

Explanation.—For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

- (a) *the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;*
- (b) *the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;*
- (c) *capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business.”*

16. The above explanation clarified and justified the adjustment made by the TPO towards interest on receivables, which is well within the definition of international transaction. Therefore, interest on outstanding receivables to AE is an international transaction.

17. In this case, it is seen that assessee has been able to demonstrate that after undertaking the economic adjustments of working capital, the operating profit margin charged by the assessee on its AE's was higher than the margin on the goods sold to Non-AE's. From the perusal of the table available at paper book page 90 as filed before the TPO vide letter dated 30.12.2014, it is seen that margin on sales to non-AEs was 23.65% as against margin of 47.21% from the sale of goods to its AEs thus no further adjustment is required.

18. The Hon'ble Delhi High Court in the case of ***Pr.CIT vs Kusum Healthcare (P.) Ltd. (supra)***, held as under:

- (i) *“The inclusion in the Explanation to Section 92B of the Act of the expression "receivables" does not mean that de hors the context every item of "receivables" appearing in the accounts of an entity, which may have dealings with foreign AEs would automatically be characterized as an international transaction, and*
- (ii) *“With the Assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction.”*

19. This view is further confirmed by the Hon'ble Delhi High Court in the case of ***Avenue Asia Advisors Pvt. Ltd. vs. DCIT reported in 398 ITR 120 (Delhi)***.

20. In view of the above discussion and by respectfully following the aforesaid orders of hon'ble jurisdictional high court in the case of Kusum Healthcare (supra) and others we direct the AO to delete the addition made on account of transfer price adjustments towards interest on outstanding receivable. The grounds of appeal No. 4 & 5 of the assessee are allowed.

21. **Ground of appeal Nos. 6 & 7** raised by the assessee wherein the assessee has challenged the addition of INR 62,91,336/- made u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962.

22. Heard the contentions of both parties and perused the material available on record. The AO has made the addition of INR 62,91,336/- u/s 14A of the Act after reducing the amount to 41,35,664/- *suo-motto* disallowed by the assessee. The AO has computed the amount of disallowance in terms of computation provided in Rule 8D of the Rules. The main argument of the assessee is that investment which had not yielded exempt income should be excluded from the monthly average value of investments considered for computing the disallowance in terms of Rule 8D(2)(ii) of the Rules.

23. We find that as per Rule 8D(2)(ii), the average value of investment which has yielded exempt income needs to be considered and therefore, the action of the AO in considering the average value of gross value of investment is not correct. This view is supported by the judgement of Hon'ble Delhi High Court in the case of **ACB India Ltd.** reported in **[2015] 374 ITR 108 (Delhi)** and by the judgement of hon'ble Special Bench of the Delhi Tribunal in the case of **ACIT, Circle-17(1), New Delhi vs Vireet Investment (P.) Ltd.** reported in **[2017] 82 taxmann.com 415 (Delhi-Trib.) (SB).**

24. In view of the above facts and discussions and by respectfully following the judgement of Hon'ble Delhi High Court in the case of ACB India (supra) and of the Special Bench of Delhi Tribunal in the case of Vireet Investments (supra), we direct the AO to re-compute the amount of disallowance by considering the value of only those

investment which has yielded exempt income. Accordingly, Ground of appeal Nos. 6 & 7 raised by the assessee are partly allowed for statistical purposes.

25. **Ground of appeal Nos. 8 & 9** raised by the assessee are with respect to the disallowance of INR 4.81 crores made of the provision of warranty claimed by the assessee by holding the same as contingent/provisional liability.

26. Heard the contentions of both parties and perused the material available on record. The claim of the assessee is that it has provided warranty to its customer and has created the provision which is charged from the Profit & Loss account. Assessee further claimed that this liability is not contingent and the amount of provision was worked out based on the preceding two years' experience of claims of replacements and repairs. It is further claimed that since majority of the provision made was squared off in the immediately succeeding financial year, therefore, claim of warranty is an ascertained liability and the provision created to meet out liability out of the profits of the current year in which such warranty is extended to the customer alongwith the sales of the goods is an ascertained liability and should not be added to the book profit u/s 115JB of the Act.

27. From the perusal of the Financial statements of the assessee for the year under appeal as available in the paper book, we find that in

Schedule 24 i.e. "Notes to financial statement" in Item No.9, it is observed by the auditors that there was an opening balance of INR 759 Lakhs of the provision for warranty out of which a sum of INR 641 Lakhs were claimed as utilized against the repairs and replacements done during the year under appeal and after adding the amount of fresh provision for the year under appeal of INR 481 Lakhs, the closing balance of provision of INR 599 Lakhs was taken to the Balance Sheet. It is the claim of the assessee that out of the current year provisions, majority of the amount was claimed as expenses towards repairs and replacement warranty provided to the customers on the goods sold during the year under appeal in immediately succeeding financial Year.

28. In view of facts as discussed above, we set aside this issue to the file of AO for making necessary verification of fact that whether out of the provisions made during the year towards warranty, how much amount was claimed as incurred in succeeding financial year, if substantial amount is claimed, no disallowance is required to be made. Further since it is ascertained liability, no addition is required to be made in the book profits u/s 115JB of the Act. With these directions, Ground of appeal Nos.8 & 9 raised by the assessee are partly allowed for statistical purposes.

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

ITA No.4478/Del/2016 [Assessment Year 2010-11]
[Assessee's appeal]

30. **Ground of appeal No.1** raised by the assessee is general in nature hence, required no adjudication.

31. **Ground of appeal No. 2** raised by the assessee is with respect to the addition of INR 38,270/- by holding the investment in shares as unexplained cash credit.

32. Heard the contentions of both parties and perused the material available on record. From the facts of the case, it is seen that the M/s. Jackson Heights Investment Ltd., Mauritius has made investment in the shares of M/s. Acme Telly Energy Solutions P. Ltd. who was got merged with the assessee company during the year under appeal. The shares were to M/s. Jackson Heights Investment Ltd., Mauritius in the month of June, 2009 & August, 2009. Before the AO and Ld. CIT(A), the assessee had filed all the necessary evidences relating to the allotment of shares before merger by the erstwhile company and also filed KYC details, financials and tax residency certificates of M/s Jackson Heights. It is further seen that financial statements were directly sent by the company to the AO however, all these facts remained unverified on the part of the AO therefore, the addition was made.

33. As the details were already filed before the AO therefore, in our opinion, one fresh opportunity must be provided to assessee for get the necessary verification and accordingly, this issue remitted back to the file to AO for making necessary verification from the financials and tax residency certificate submitted in respect of the company M/s. Jackson Heights Investment Ltd., Mauritius. Accordingly, Ground of appeal No.2 raised by the assessee is partly allowed for statistical purposes.

34. **Ground of appeal Nos. 3 & 4** raised by the assessee are with respect to the disallowance of provisions for warranty. This issue has been decided by us while dealing with Grounds of appeal Nos. 8 & 9 in assessee's appeal in ITA No.3641/Del/2017 for Assessment Year 2011-12, wherein we hold that this provision is with respect to ascertained liability of repairs and replacement of the goods sold and therefore, the same should not be added to the book profits computed u/s 115JB of the Act and further remand back the matter to the file of AO for making necessary verification of the facts whether majority of the provision was squared off or utilized in immediately succeeding financial year as the actual expenses incurred towards repairs and replacements and allow the same. Thus, by following the same directions which are *mutatis mutandis* applied to facts of the present appeal, Grounds of appeal Nos. 3 & 4 raised by the assessee are allowed for statistical purposes.

35. **Ground of appeal No.5** raised by the assessee is not pressed hence, dismissed.

36. **Ground of appeal No.6** taken by the assessee is general in nature hence, not adjudicated.

37. **Ground of appeal Nos. 7 to 10** raised by the assessee are with respect to the transfer pricing adjustments made on account of interest on loans given to its AEs wherein AO has charged the interest by applying SBI PLR as against LIBOR rate taken by the assessee. This issue has already been discussed and decided in favour of the assessee while deciding Ground of appeal Nos. 2 & 3 in ITA No.3641/Del/2017 for Assessment Year 2011-12 herein above. The observations made therein are applied *Mutatis Mutandis* to the facts of the present case. Therefore, by following the same, we direct the AO to apply the LIBOR plus 300 points to charge interest on such outstanding receivable as they are receivable in US \$. Thus, Ground of appeal Nos. 7 to 10 raised by the assessee are allowed.

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

ITA No.1074/Del/2023 [Assessment Year 2010-11]
[Revenue's appeal]

39. The appeal filed by the Revenue is delayed by 2445 days and the reasons stated in the application of condonation of delay filed before us are as under:-

2. *“In this connection, it is hereby stated that this office has received letter from CIT(DR), ITAT-9, New Delhi in which it was mentioned that in this case the appeal of 4 years i.e. AYs. 2010-11, 2011-12, 2012-13, & 2013-14 are pending before the Hon'ble ITAT. The assessee has filed appeal for A. Ys, 2010-11 and 2011-12 and for A.Ys 2012-13 and 2013-14 both the assessee and revenue are in the appeal. The common issue in all four years is upward adjustment by the AO/TPO on account of interest to be charged by the assessee company on loans given to its Associated Enterprises, mainly in Cyprus and Mauritius. The AO/TPO has made additions in all the four years by taking the interest rate as SBI, PLR+300 base points. The Ld. CIT(A) has confirmed the interest rate charged by the AO for the AY. 2011-12. The Ld. CIT(DR) has suggested that department need to file appeal/cross objection for AY. 2010-11 to defend the stand of CIT(A) for AY. 2011-12 on this issue.”*

40. From the perusal of the reasons stated in the petition filed by the AO, we find that the reasons given are not convincing as it is stated by the Revenue that the present appeal is filed delayed because of the fact that the appeals were filed by the revenue for other years also. Merely for this reason, the appeal for the present year was filed before the Tribunal with a delay of 2445 days. We find that there is no Bonafide on the part of the Revenue in not filing the appeal on time where there must be some reason for not filing the appeal within the prescribed time and now solely because appeals were filed for other years, the Revenue seeks to file the appeals for this year also.

Under these facts, we do not find any merit in the petition filed by the Revenue for condonation of delay and Revenue has failed to state reasonable cause for such an inordinate delay of 2445 days therefore, the appeal of the Revenue is dismissed as not admitted on account of delay.

41. In the result, appeal of the Revenue is dismissed.

42. In the final result, appeal of the assessee in **ITA No. 4478/Del/2016** and **3641/Del/2017** for Assessment Year 2010-11 and Assessment Year 2011-12 respectively, are partly allowed and appeal of the Revenue in **ITA No.1074/Del/2023** for Assessment Year 2010-11 is dismissed.

Order pronounced in the open Court on 20.11.2025.

Sd/-

(SUDHIR PAREEK)
JUDICIAL MEMBER

Date:- 20.11.2025

Amit Kumar, Sr.P.S

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

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