

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'J' BENCH, MUMBAI**

श्री पवन सिंह, माननीय न्यायिक सदस्य एवं  
श्री ओम्कारेश्वर चिदरा, माननीय लेखा सदस्य

**SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6742/MUM/2024  
(निर्धारणवर्ष/ **Assessment Year: 2021-22**)

Ocean Diving Centre Limited PAN : AAACO3937F	Vs.	Asst.Commissioner of Income Tax Central Circle-3(1)
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Vipul Shah, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Aditya Rai, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19/11/2025
घोषणा की तारीख/ Date of Pronouncement	:	05/02/2026

**ORDER**

**PER OMKARESHWAR CHIDARA, AM:**

This appeal is filed by the appellant against the order of the ACIT, Central Circle-3(1) in DIN & Order No.ITBA/AST/S/143(3)/2024-25/1069766751(1) dated 18.10.2024 passed u/s 143(3) r.w.s.144C(13) of the Income Tax Act, 1961 ("the Act") for the A.Y.2021-22.

2. The appellant company filed an appeal before ITAT on the following 4 issues :

- a) DRP erred in upholding the adjustment of 0.5% on account of Corporate Guarantee
- b) DRP erred in upholding the adjustment of Rs.1.29 crores on account of interest on loan.
- c) DRP erred in upholding payment of disputed customs duty
- d) DRP erred in upholding disallowance of Sundry Balances written off.

3. Issue of adjustment relating to Corporate Guarantee : During the year under consideration, the appellant company has provided Corporate Guarantee to ICICI Bank for loan granted to its Associated Enterprise (AE) of Rs.29.26 cr. The appellant company has not charged any Corporate Guarantee Commission on its guarantee provided to AE. Hence, a show cause notice was issued to the appellant company as to why the rate charged by independent Indian banks shall not be taken as benchmark and guarantee fee charged @1.5%. In response to the same, the appellant company has stated that the AE is continuously running in losses and the appellant is not incurring any cost by

providing guarantee to AE and also it is not an international transaction. Moreover, they are prohibited from charging any commission. In view of the same, the appellant company requested the AO not to charge any guarantee commission.

3. (a) The Ld.AO after taking into consideration the submissions, held that atleast 1.0% guarantee commission should have been charged and added the same after placing reliance of the jurisdictional High Court's decision of Everest Kanto Cylinders and other decisions mentioned in the assessment order.

(b) The DRP has reduced the guarantee commission to 0.5% as determined in appellant's own case in A.Y.2017-18.

(c) The appellant claims that the DRP's direction was not challenged for A.Y.2017-18, as a rectification petition was filed before DRP as certain issues raised by appellant company were not adjudicated and the same is pending before DRP.

(d) The Ld.DR relied on the T.P. order and DRP order.

4. After hearing both sides and perusing the material on record, the Bench decided to remit the issue to DRP to adjudicate the issue, as the

rectification petition is pending before them on the same issue for the earlier year.

5. The next ground of appeal relates to charging of interest on a loan given to its AE. The TPO has charged interest @5% and made an adjustment as the appellant company has not charged any interest on this loan given to AE. The appellant's contention is that the AE is in deep financial trouble and not repaying the loan and hence interest was not charged and even if it is charged, it can't recover the same. When it is not recovered, again appellant company has to write it off and hence it is revenue neutral. The appellant company has submitted that the TPO has wrongly mentioned that the loan is given in current year, but DRP has mentioned that it is a mistake apparent from record and there is nothing serious about it and facts/issue of charging of interest won't change due to the mistake committed by TPO. Accordingly, DRP has confirmed the addition made by TPO after placing reliance on Rule10B, as per which Arm's length price has to be determined. Several cases-law were relied on by DRP to come to the conclusion that the Order of TPO is correct because the Transfer Pricing regulations and comparability analysis do not recognize purpose and source of transaction by AE as relevant factors for determination of Arms Length Price. All the

arguments of appellant company were taken into consideration and the levy of interest was upheld by DRP.

6. Before the ITAT also, the appellant company has raised similar arguments. The Ld.DR relied on the TP order and DRP order.

7. After hearing both sides and perusing the material on record, the Bench decides that the lower authorities are correct in charging the interest on the loan given to AE because of the following reasons :

- a) The appellant has lost the opportunity of earning interest in open market/keeping it in bank as FD. There is no doubt that the appellant has taken the risk also by advancing loan to its AE.
- b) It is a settled law that the Arm's Length Price is LIBOR+margin for opportunity cost of the capital and risk remuneration as held in the case of Dabur India 126 taxmann.com 259 and CIT Vs. Cotton Naturals 55 taxman.com 523 and Gharda Chemicals 35 SOT 406 (Mum) dt.30.11.2009.
- c) The Bench agrees with the order of DRP where it was mentioned that the whole purpose of Chapter X dealing with transfer pricing regulations is to compute arm's length

situation whether appellant wants to treat the loan as investment or not, what really matters is whether loan transaction has happened or not.

d) In view of the above, charging of interest by Ld.AO is upheld.

8. The next issue to be decided by the Bench is whether the claim of appellant about disputed customs duty paid in the year is allowable or not. The appellant company has filed an additional ground that, even otherwise, the amount paid is allowable u/s 43B. In this regard, the DRP order says that why alleged Customs Duty on a barge sold 12 years ago, was debited in the current year was not explained and disallowance made by AO was confirmed.

8.1. Before the ITAT, the Ld.AR filed additional ground of appeal and argued that on payment basis, the expenditure should have been allowed and relied on certain cases-law. But, the whole issue is before ITAT also, the Ld.AR of appellant did not explain the purpose of payment of Customs Duty after 12 long years. Hence, the issue is remitted to the file of AO/TPO to find out the purpose of payment, whether legal or not etc. If the amount paid to Customs Department as per Income Tax Law, i.e. if it is not for the purposes prohibited by law, then the same may be allowed after verification.

9. The last issue raised by appellant company and to be adjudicated relates to certain amounts which were written off in the books are to be allowed as expenditure. The DRP has confirmed the disallowance of Rs.8,77,970/- as the appellant could not prove how this amount is to be treated as bad debt. Before the ITAT also, the Ld.AR of appellant could not clarify the issue and hence requested the Bench to remit the issue back to TPO for verification. Accordingly, the Bench remits the issue to TPO for fresh adjudication.

10. In the result, appeal of the appellant is partly allowed for statistical purposes as above.

Order pronounced in the open court on 5<sup>th</sup> February, 2026.

<b>Sd/-</b> <b>(पवन सिंह)</b> <b>(PAWAN SINGH)</b> <b>न्यायिक सदस्य/JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(ओम्कारेश्वर चिदरा)</b> <b>(OMKARESHWAR CHIDARA)</b> <b>लेखा सदस्य/ACCOUNTANT MEMBER</b>
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Visakhapatnam,  
Dated 05.02.2026.  
*L.Rama/SPS*

आदेश की प्रतिलिपि ँ ग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	
2.	राजस्व/ The Revenue	:	
3.	The Principal Commissioner of Income Tax		
4.	प्रिभक्षीय प्रतिनिधि, आयकर ँ पीलीय ँ धिकरण / DR,ITAT.		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशमुसए / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam