

आयकर अपीलीय अधिकरण, "के" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI
श्री शक्तिजित डे, न्यायिक सदस्य, एवं श्री एन के प्रधान, लेखा सदस्य, के समक्ष
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं/ I.T.A. No.802/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

The Income Tax Officer 8(1)(3) Room No.206, 2 nd Floor, Aayakar Bhavan, Mumbai - 400020	बनाम/ Vs.	Dania Oro Jewellery Pvt. Ltd. Gala No.601 and 602, Block No.1, SEEPZ-SEZ, SEEPZ++, Andheri (East) Mumbai - 400096
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCD3214E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Smt. Arati Vissanji
Department by:	Shri N. K. Chand

सुनवाई की तारीख / Date of Hearing: 26.07.2016

घोषणा की तारीख /Date of Pronouncement: 29.07.2016

आदेश / ORDER

PER N.K.PRADHAN, AM:

The present appeal has been filed by the Revenue assailing the impugned final assessment order passed by the ITO-8(1)(3) Mumbai in pursuance of the direction given by the Dispute Resolution Panel(DRP)-1 Mumbai vide order dated 31st October 2013 u/s 144C(5) of the I.T. Act 1961(for short "the Act"). The relevant assessment year is 2009-10.

2. The grounds raised by the Revenue read as under :-

“Whether on the facts and in the circumstances of the case and in law, the Hon’ble DRP was correct in deleting the addition of Rs.33,90,931 on account of notional interest due to delayed recovery of trade debts from AE by accepting the assessee’s contention without verifying factual accuracy of the same.

Whether on the facts and in the circumstances of the case and in law, the Hon’ble DRP was correct in deleting the addition of Rs.33,90,931 on account of notional interest due to delayed recovery of trade debts from AE without appreciating the fact that the assessee by its own admission dated 22.12.2013 (Annexure-1 is made part of this authorization), has mentioned that in the case of non-AE if two cases of huge delay are excluded, the average delay in respect of non-AE would be 64.54 days as against average credit period of 145 days advanced to the assessee (calculation of interest as per Annexure-2 is made part of this authorization)”.

3. Briefly stated the facts of the case are that during the year under consideration the assessee has entered into the following transactions with the Associated Enterprises (AEs):

Sr. No.	Nature of transaction	Amt. (Rs.)
1	Sale of studded jewellery	31,97,66,749/-
2	Purchase of Diamonds	3,936/-

3.1 The Transfer Pricing Officer (TPO) noted that the assessee has received the sale proceeds of studded jewellery after considerable delay and did not charge any interest from the AE. Accordingly, the TPO computed the interest recoverable from the AE on such delayed recovery after allowing the credit period. The interest was charged @ 15.41% per annum. The sole objection of the assessee before the DRP was against addition of Rs.33,90,931/- proposed by the Assessing Officer (AO) in the draft assessment order u/s 143(3) r.w.s. 144C(1) of the Act, dated 11th March 2013. The DRP having considered the

draft assessment order passed by the AO and the submission filed by the assessee came to a finding which reads as under:

“3.4 We have considered the facts material on record, discussions emerging in the order of the TPO and from the submissions of the assessee. With respect to the issue pertaining to the chargeability of the interest is concerned, while the apparent relationship might be that of a trade creditor and debtor, in practice, the assessee is allowing its AE to access to interest-free funds without corresponding compensation to itself. A trade transaction cannot be permitted to be utilized as a funding opportunity especially when no compensation is being received for the same. In the facts of the case therefore we find that the TPO is correct in identifying the interest receivable by the assessee and making an adjustment on this count. However, the similar credit period, in case of non-AE exceeds the credit period of the AE and similar interest is not charged from the non-AE. Therefore, considering the facts as demonstrated, it is hereby held that no interest is chargeable from the AE also. Accordingly the adjustment made by the TPO is directed to be deleted”.

4. Before us, the Id. Departmental Representative (DR) referred to page 1 to 5 of the compilation dated 20th August 2015 filed by the Counsel of the assessee before the Hon'ble Tribunal. He particularly referred to page 3 and 5 of the above compilation to state that recovery of receivables from the AE is not faster. He brought to our notice the amount of invoice (in USD) - delay (in days) of 784,181,500 in the case of sales made to AE and 685,424,283 in the case of Non-AEs. Reliance was placed by him on the order of the ITAT in the case of *Dania Oro Jewellery Pvt. Ltd. vs. ITO Ward-8 (1)(3) Mumbai* for A.Y. 2008-09 (ITA(TP) No. 6827/Mum./2012); *Ameriprise India Pvt. Ltd. vs. ACIT Circle 1(1) New Delhi* for A.Y. 2009-10 (ITA No. 2010/Del/2014) & *ACIT Circle 1(1) New Delhi vs. Ameriprise India Pvt. Ltd.* (ITA No.2575/Del/2014); *Avenue Asia Advisors Pvt. vs. DCIT Circle 2(1) New Delhi* for A.Y. 2009-10 (ITA

No.6638/Del/2013) and *iGATE Computer Systems Ltd. vs. Addl. CIT* for A.Y 2005-06 (ITA No. 2504/PN/2012) & the *Addl. CIT vs. iGATE Computer Systems Ltd.* (ITA No. 342/PN/2013)

5. Before us, the Id. Counsel for the assessee submitted that there were delays in realization of export proceeds from both AE and Non-AEs and the average delay in realization of export proceeds in AE as well as Non-AEs is same. No interest has been charged on such delayed realization and therefore, she submitted that the act of not charging interest on delayed debt from AE as well as Non-AEs meets with the principle of arm's length by applying the CUP Method. In support of her contention, she relied upon the decision of the Hon'ble Jurisdictional High Court in the case of *Indo American Jewellery Ltd. vs. CIT* 44 taxmann.com 310 (Bombay).

6. We have heard the rival contentions, perused the findings of the authorities below as well as material available on record. The Id. Counsel for the assessee has placed reliance on the judgment of the Hon'ble Bombay High Court in the case of *CIT-9 vs. Indo American Jewellery Ltd.*. The said head note is extracted below:

“Section 92C of the Income-tax Act, 1961- Transfer Pricing-Computation of arm's length price [Comparables and adjustments] – In transfer pricing proceedings, TPO while determining ALP of international transactions, noticed that outstanding balance from Associated Enterprises was amounting to Rs.8.76 crores – said amount was outstanding for more than year and, thus, taking rate of interest at 10 per cent, Transfer Pricing Officer determined interest receivable at Rs.87.66 lakhs and added same to international transaction cost – Tribunal noted that there was complete uniformity in act of assessee in not charging interest from both Associated Enterprises and non-Associated Enterprises debtors for

delay in realization of export proceeds – Tribunal thus deleted addition of notional interest on outstanding amount of export proceeds realized belatedly- whether on facts, no substantial question of law arose from Tribunal's order – Held, yes [Para5] [In favour of assessee]

6.1 The above decision squarely applies to the present case. This is the only decision of a High Court applicable to the case at hand which has been cited before us. In the case of *Dr. T.P. Kapadia vs. CIT* [1973] 87 ITR 511 (Mys.) it has been held that a decision of a High Court would have binding force in the State in which it has jurisdiction.

6.2 Even in the case of the assessee for the assessment year 2008-09 (*Dania Oro Jewellery Pvt. Ltd. vs. ITO*) relied on by the ld. DR, we find that in some of the cases the terms of credit has been extended beyond 700 days and in some of the cases, it has gone beyond 1200 days whereas in the case of Non-AE, the maximum delay is of 203 days. In view of the above, the order of the Tribunal in the case of the assessee for the A.Y. 2008-09 is not applicable to the issue at hand for the A.Y. 2009-10.

6.3 Let us now examine the facts in the present case. In a case like this the proper method is to take a simple average. If we take a simple average then there has been a delay of 132 days in the case of AE and 130 days in the case of Non-AEs in realization of the export proceeds. Thus there is uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realization of export proceeds.

7. Respectfully following the judgment of Hon'ble Bombay High Court in the case of *Indo American Jewellery Ltd.* the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29th July, 2016.

Sd/-
(SAKTIJIT DEY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(N.K.PRADHAN)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29th July, 2016

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

ITA No.802/Mum/14
A.Y.2009-10