

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "K", MUMBAI**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.432/M/2014
Assessment Year: 2009-10**

M/s. Jewellmark India P. Ltd., 501, Tower 2, SEEPZ, MIDC, Marol, Andheri (East), Mumbai – 400 096 PAN: AABCJ3769M	Vs.	Income Tax Officer 8(2)(1), Aayakar Bhavan, Churchgate, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Mrs. Arati Vissanji, A.R.
Revenue by : Shri N. Padmanabhan, D.R.

Date of Hearing : 24.05.2016
Date of Pronouncement : 24.06.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 11.11.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The sole issue taken by the assessee vide its grounds of appeal is against the confirmation of addition of Rs.7,34,345/- being interest receivable by the assessee from its Associate Enterprises (AEs) calculated at the rate of 18% on the credit period beyond 180 days.

3. The assessee company is engaged in the manufacturing of jewellery. During the assessment proceedings, the Assessing Officer (hereinafter referred to as the AO) observed that the assessee had made transactions with its AEs amounting to Rs.97251676/- and applied TNMM method for determining the Arms Length Price. The AO further observed that the assessee company had

granted credit period to AEs beyond 180 days of total invoice value of Rs.8,55,61,484/-. When asked to explain as to why interest should not be disallowed on credit granted to AE beyond 180 days. The assessee explained as under:

- i. The assessee did not charge any interest on Exports Payments received after 180 days (overdue) from AE.
- ii. The assessee did not pay any interest to the AE on delayed Import payments made based on credit terms inspite of huge delay.
- iii. In respect of AE assessee submitted
 - a) The assessee has 57 sale bills with AE during the year under consideration.
 - b) There are 20 cases in which there is delay over 180 days
 - c) Majority of the delays are due to delay in receipt of a very small portion out of full invoice value (delay in receipt of balance payment).
- iv. From the above it was stated that delay in respect of realization of exports are very negligible totaling to US \$ 432,850/- as compared to total US \$ received amounting to US\$ 18.76,126/-.
- V. It was further stated that the assessee has enjoyed credit on import payments and if interest is calculated on such delays there will be interest payment to be made by the assessee. No such interest has been paid to the AE.
- vi. Thus, it was requested that no adjustment be made in respect of payments received beyond 180 days from AE as such interest gets squared off with interest payable to AE."

4. The AO, however, was not convinced with the submissions of the assessee and he accordingly made total adjustment of Rs.7,34,345/- in respect of interest on credit granted to AEs beyond 180 days. Being aggrieved from the order of the AO, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A), however, dismissed the appeal of the assessee while relying upon his own order on somewhat similar circumstances in the assessee's own case for A.Y. 2008-09. Being aggrieved by the said order of the Ld. CIT(A), the assessee has come in appeal before us.

5. At the outset, the Ld. A.R. of the assessee has brought our attention to the order of the Tribunal dated 15.04.15 passed in the own case of the assessee for A.Y. 2008-09 in ITA No.431/M/2014 wherein considering the identical issue, the Tribunal observed that there was force in the contention of the assessee that if the assessee had to make payments of imports to some party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AE on account of import payments.

6. We have gone through the said order of the Tribunal. The relevant part of the observation of the Tribunal for the sake of convenience is reproduced as under:

“3.1 Before us it was pleaded by Ld. AR that assessee is neither charging interest from its AE and also not paying any interest to its AE. It was submitted that assessee also utilized credit in the shape of import payments to be made to its AE and these are listed at page 133 of the paper book. It was submitted that assessee did not make payment even for a period, more than exceeding 1000 days. It may be mentioned here that on page- 133 of the paper book the assessee has given details regarding "working of interest on delay in import payments". Those payments in excess of 180 days are listed as against impugned interest of Rs.8,36,437/- worked out on delay in export realization, interest on delay in import payments have been worked out at Rs.1,10,01,043/-. Thus, it is the case of Ld. AR that when assessee is not making the payment for delay which is much more than 180 days, then how assessee's transaction for receiving delayed export realization can be considered to be not on arms length. Thus, it was pleaded by Ld. AR that adjustment of Rs.8,36,437/- should be deleted.

3.2 On the other hand, Ld. DR relied upon the order passed by TPO and Ld. CIT(A).

3.3 We have heard both the parties and their contentions have carefully been considered. To some extent there is a force in the contention of Ld. AR that if the assessee has to make payment of imports to same party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AE on account of import payments. Therefore, in the interest of justice, we consider it just and proper to restore this issue to the file of AO to examine and verify the facts and if on the dates when the impugned interest is computed in respect of export realization, the assessee is already having obligation to pay to its AE the amount regarding import made by it then, to that extent interest cannot be added as TP adjustment. We therefore, restore this matter to the file of AO with a direction

to re-adjudicate this issue as per directions given above. For statistical purposes this ground is treated to be allowed.”

7. The Ld. A.R. of the assessee has pleaded that there needs to be certain modifications in directions to be given to the AO in relation to the matter for the year under consideration vis-à-vis the directions given by the Tribunal in the earlier assessment year 2008-09. She has pleaded that though the Tribunal in principle agreed that if the assessee has to make the payments of imports some party then, receiving delayed export realization cannot be said to be bearing interest as assessee is already owing much more amount to its AEs on account of import payments. She, however, has contended that the Tribunal after observing above, directed the AO to examine and verify that if on the dates when the impugned interest is computed in respect of export realization, the assessee is already having obligation to pay to its AE the amount regarding import made by it, then, to that extent interest cannot be added as TP adjustment. She, in this respect, has contended that when the assessee is adopting a uniform policy of neither to receive the interest nor to pay the interest to its AEs, then, not only the parties or the dates on which the payment was receivable by the assessee is to be considered but the matter should be considered as a whole and the netting off of the interest payable and receivable be made.

8. We find force in the above contention of the Ld. A.R. The matter is to be examined by the AO as a whole and if bench mark of 180 days is to be taken as the credit period without levy of interest then the AO should adopt the same criteria also in relation to the payments payable by the assessee to its AEs. Thereafter, the AO should do netting off of the interest payable and receivable and to make adjustments of the resultant amount of interest, if any, found, receivable by the assessee. With the above modified directions, the matter is restored to the file of the AO to examine and verify the facts and adjudicate the same as per the directions given above.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 24.06.2016.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 24.06.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.