

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

आयकर अपील सं./ITA No.930/Ahd/2015
निर्धारण वर्ष /Assessment Year : 2010-11

Bosch Rexroth (India) Ltd. Near Village Iyava Sanand Viramgam Highway Tal: Sanand Dist: Ahmedabad - 382 170	बनाम/ v/s.	The Income Tax Officer Ward-1(1)(3) Ahmedabad
स्थायी लेखा सं./PAN: AAACM 9898 F		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Soparkar, Sr.Advocate and Shri Parin Shah, AR
Revenue by :		Shri Samir Tekriwal, CIT-DR

सुनवाई की तारीख/Date of Hearing : 04/07/2024
घोषणा की तारीख /Date of Pronouncement: 12/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

The captioned appeal preferred by the Assessee is against the order of the Assessing Officer, Ahmedabad relating to Assessment Year 2010-11 passed under section 143(3) r.w.s.143C(5) of the Income-tax Act, 1961 (in short "the Act) order dated 12/12/2015 passed in pursuance of directions of the Dispute Resolution Panel (in short "DRP") under Section 144C(5) of the Act dated 10/12/2014.

Facts of the case:

2. The present appeal filed by the assessee deals with the matter for A.Y. 2010-11, recalled vide order of the Tribunal dated 24-1-2024 in MA No.85/Ahd/2023 in IT(TP)AO.930/Ahd/2015. In the said MA, it was pointed out that the assessee had raised the issue of addition made by the AO/TPO on account of adjustment of Rs.52,91,667/- in relation to the international transaction of payment of guarantee fees to AE and the assessee sought the deletion of the same before the Tribunal in its above appeal. This issue was raised in ground no.4 in ITA No.930/Ahd/2015. However, the Tribunal vide impugned order dated 31-5-2023 confirmed the upward adjustment so made by the lower authorities and dismissed the claim of the assessee. It was further pointed out that the Tribunal while confirming the order of the lower authorities did not appreciate the fact that similar addition made by the Department for the A.Y. 2009-10 was deleted by the ITAT by holding that the payment for guarantee commission was justifiable, and therefore, the finding of the Tribunal for the impugned year is contrary to its earlier decision on the similar issue. Therefore, this being a mistake apparent on record of the case and the Tribunal found merit in the contention of the assessee decided to reconsider the issue and decided to recall the order of Tribunal *qua* ITA No.930/Ahd/2015 dated 31-5-2023 to the limited purposed of adjudication of Ground No. 4 only.

3. Therefore, now we decide on the ground number 4 with this order which is as follows:

"4. On the facts and in the circumstances of the case and in law, the Ld. AO/TPO under the directions of Hon'ble DRP, erred in making adjustment of Rs. 52,91,667/- in relation to the international transaction of payment of guarantee fees to AE."

The Appellant prays that the additions made by the Ld. AO / TPO in relation to the international transactions of payment guarantee fees to AE be deleted.

On the Ground of appeal:

4. The issue involved in this ground relates to the TP adjustment made in relation to international transactions of payment of guarantee fees by the assessee to its AE amounting to Rs.52,91,667/- the Arm's Length Price(ALP) of which was determined at NIL by AO/TPO, objection of the assessee to which, was dismissed by the DRP.

4.1. The facts relating to the issue are that during the impugned year, the assessee has availed Rs.100 crores borrowing from its group company viz. Bosch Ltd., Bangalore, and interest rate charged thereon was at the rate of 11%. For the said purpose, one of the AEs of the assessee i.e. Robert Bosch GmbH acted as guarantor and charged guarantee fee at the rate of 0.75% per annum to the assessee for the guarantee provided. During the impugned year, the assessee accordingly paid guarantee charges of Rs.52,91,667/-. The TPO found that no services for guarantee had been rendered by the AO; no distinct benefit had accrued to the assessee in form of reduction in the interest rate on account of guarantee and the transaction sought to be propagated by the assessee as comparable adopting CUP method was not comparable. Accordingly, the transaction of the AE giving guarantee on

behalf of the assessee company was benchmarked at NIL, as no service of any value was found rendered and upward adjustment to the extent of Rs.52,91,667/- was proposed to be made by the TPO. The relevant finding of the TPO in this regard at para 6 of his order are as under:

"6. As clearly brought out in the show cause letter issued to the assessee and the discussion made above following distinct features are noted in respect of this transaction.

- i. The loan has been taken from a related party Bosch India. The guarantee has also been supplied by a group entity Robert Bosch GmbH, Germany.*
- ii. There does not appear to have been any distinct insistence by the lender for guarantee. No evidence of this nature was furnished by the assessee to this office.*
- iii. There is no evidence of third parties also insisting on guarantee for giving loan to the assessee.*
- iv. The assessee had sufficient reserves as well as assets to support the loan and a collateral guarantee was neither needed nor demanded. It had no other charge on these assets.*
- v. A unilateral group policy imposing guarantee on the assessee and seeking charges for the same cannot be regarded as a service rendered to the assessee.*
- vi. Since no service has been rendered by the AE, no charge can be attributed to the transaction of giving guarantee to the assessee company.*
- vii. No distinct benefit has accrued to the assessee in the form of reduced interest rate on account of guarantee.*
- viii. The loan was to acquire capital assets which itself would have served as a collateral. Hence, an additional guarantee did not serve any purpose.*
- ix. The transaction sought to be propagated as CUP is incomparable due to the following reasons:*
 - a. The loan transaction is not a simple transaction. it is a composite transaction with short term funding along with the funding in the nature of guarantee to be provided by the bank to the assessee.*

- b. *The loan transaction is for working capital purposes while the loan obtained on the strength of guarantee was utilised for capex.*
- c. *The nature of the loan transaction was short term funding while the loan from related party is in the nature of long-term funding.*

- x. *Without prejudice, it is seen that the bank has provided the funds in the nature of guarantee for bank guarantees, shipping guarantees, bid bonds, performance bonds and export guarantees to the assessee, after obtaining the counter guarantee from the assessee. This clearly means that the bank has covered its risk and after coverage of such-risk, no guarantee fees has been charged from the assessee. In the case of loan from related party it is very clear that the risk of granting the loan to the assessee was negligible on account of the healthy reserves, and working capital position of the assessee and thus the risk of the lender was adequately covered. Therefore, on the same lines on which no guarantee fee was charged by the bank no guarantee should have been charged from the assessee also.*

6.1 In light of the above discussion, the transaction of the AE giving guarantee on behalf of the assessee company is benchmarked at NIL' as no service of any value as been rendered. Hence, a downward adjustment in the payment for guarantee to the extent of Rs 52,91,667/- is required to be made. Accordingly, the income of the assessee, is required to be adjusted upwards to the extent of Rs.52,91,667/-."

4.2. The Ld.DRP confirmed the finding of the Ld.TPO and, accordingly, rejected the objection filed by the assessee.

4.3. Upon reconsideration of Ground No. 4 in the present appeal for the assessment year (A.Y.) 2010-11, we are required to adjudicate the matter concerning the Transfer Pricing (TP) adjustment made by the Assessing Officer (AO)/Transfer Pricing Officer (TPO) and upheld by the Dispute

Resolution Panel (DRP) concerning the payment of guarantee fees to the Associated Enterprise (AE).

5. During the course of hearing before us, the Ld. Senior Counsel for the assessee highlighted the fact that during the F.Y. 2009-10 the assessee availed a short-term loan of Rs.10 crore from Deutsche Bank bearing an interest rate of 16% p.a. While for further short-term fund requirements totalling to Rs.100 Cr, assessee opted for extending the ongoing short-term borrowing @ 11% from the group company Bosch Ltd. Lender being listed company wanted guarantee / security. The assessee availed this guarantee from the AE - Robert Bosch GmbH by paying 0.75% guarantee fees. Thus, the effective rate of interest at which it paid interest to the group company was 11.75% including guarantee fee of 0.75% paid to AE. This arrangement has which has benefited the assessee.

5.1. The Ld.Senior Counsel for the assessee also contended that the Tribunal has deleted the addition made by the Department in A.Y. 2009-10 on similar facts in assessee's own case. He further stated that the said order of tribunal was challenged by the Revenue in Hon'ble Jurisdictional High Court in Tax Appeal No. 886 of 2018 and the Hon'ble High Court vide order dated 23.7.2018 upheld the order of the Tribunal, and in the light of the same, the inconsistent findings in the present comparable issue requires to be relooked into. A copy of decision of the Hon'ble High Court is placed on record.

6. The Ld.Departmental Representative supported the finding of the Tribunal on the impugned issue.

7. We have heard both the parties and perused the material available on records. We have also gone through the order of Hon'ble High Court dated 23-7-2017. The relevant para of the said order is reproduced here for ready reference:

"7. Now so far as the proposed Question (C), i.e. deleting the addition made on account of Transfer Pricing Adjustment of Rs.23,51,667/- is concerned, apart from the fact that in the case of the very assess in earlier year, similar addition was deleted, even on merits also, the learned ITAT has observed as under:-

"17. There is no dispute that all the three entities that is the assessee company, the lender company and the guarantor company are Associated Enterprises. There is also on dispute that the assessee has borrowed the money on interest of 12.25% per annum as against interest of 15% quoted by the Bank. Considering the guarantee commission of 0.75% paid by the assessee, the total cost of borrowing comes to 13% which is still lower than the rate of 15% quoted by the Bank. This in itself justifies the payment of guarantee commission. Further, the First Appellate Authority has given a categorical finding in relation to similar transactions in earlier assessment year, where no adjustment was made by the AO / TPO. Another undisputed fact is that the operating margin of the assessee company is at 18.21% which is much better as compared to the average margin of 10.36% of the other comparables. On this account also, the payment of guarantee commission is justifiable. Considering the facts in totality in the light of the previous history of the assessee, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground no.4 is accordingly dismissed."

Considering the aforesaid facts and circumstances, it cannot be said that the learned ITAT has committed any error in deleting the addition made on account of Transfer Pricing Adjustment of Rs.23,51,667/- . No substantial question of law arises.

8. In view of the above and for the reasons stated above, we concur with the orders passed by the learned CIT(A) as well as learned ITAT. As observed

hereinabove, no substantial questions of law arise. Under the circumstances, the present appeal deserves to be dismissed. It is, accordingly dismissed."

7.1. We observe that the assessee demonstrated that the effective borrowing cost, including the guarantee fee, was (11.75%) lower than the bank's quoted interest rate (16%), thus justifying the economic rationale for the guarantee fee.

7.2. The TPO did not present compelling evidence to establish that the guarantee fee was unwarranted. The benefits derived, as seen in lower interest rates and favorable operating margins, substantiate the transaction's arm's length nature.

7.3. For A.Y. 2009-10, the Tribunal had deleted a similar addition, justifying the payment of guarantee commission. This decision was upheld by the Hon'ble Gujarat High Court, which noted the consistency of the assessee's operating margin and the benefit of lower borrowing costs compared to bank rates, thereby justifying the guarantee fee.

7.4. The present case mirrors the facts and circumstances of A.Y. 2009-10, where the addition was deleted by the Tribunal and upheld by the Hon'ble Gujarat High Court. Consistency in judicial decisions is crucial to maintain legal certainty and fairness.

7.5. In light of the above considerations, we find that the TP adjustment made by the AO/TPO and upheld by the DRP is unjustified. The addition

of Rs.52,91,667/- on account of the guarantee fee payment to AE is hereby deleted. Accordingly, ground raised by the assessee is allowed.

8. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 12th July, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 12/07/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)/DRP, Ahmedabad-380 009
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोक्ट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad