

**आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.192 & 193/Vizag/2017  
(निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13)

ACIT, Circle-1(1),  
Guntur

M/s. CCL Products (India) Limited  
Duggirala, Guntur Dist.

[PAN No.AAACC9552G]

(अपीलार्थी / Appellant)

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri R.S. Aravindakshan,  
DR

प्रत्यार्थी की ओर से / Respondent by

: Shri K. Ramesh Babu, AR

सुनवाई की तारीख / Date of hearing

: 14.09.2017

घोषणा की तारीख / Date of Pronouncement

: 21.09.2017

**आदेश / ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

These appeals filed by the revenue are directed against Order of the Commissioner of Income Tax (Appeals)-1 {CIT(A)} Guntur vide ITA No.17/15-16/CIT(A-1)/GNT dated 30.11.2016 for the assessment years 2011-12 & 2012-13. Since the common issues are involved in both the

appeals, the appeals are clubbed and heard together and disposed off in a common order for the sake of convenience.

2. All the grounds of appeal are related to the addition made by the A.O. relating to the interest charged on loans advanced to its foreign subsidiary companies u/s 92CA(3) of the Income Tax Act, (hereinafter called as 'the Act'). During the assessment proceedings, the A.O. found that the assessee had international transactions with its foreign subsidiary companies and hence the international transaction was referred to the Transfer Pricing Officer (TPO) to determine the arms length price (ALP). The TPO during the transfer pricing proceedings found that the assessee had given a loan to its foreign subsidiary M/s. Jayant PTE Limited (JPL) and the opening balance of the loan was Rs.6,32,18,772/- and the closing balance was Rs.5,32,15,257/- for the assessment year 2011-12. The assessee had adopted CUP method as the most appropriate method and loans were extended to the foreign subsidiary at an interest of 2% on outstanding balance. The CCL has paid the interest @ 1.5% to the financial institutions on the loans availed by the assessee company. Hence, the tax payer held that the transaction was at arms length price in its transfer pricing document. The TPO has examined the arms length price and held that Indian Prime Lending Rate (PLR) is a better CUP to determine the outbound loans and

accordingly, called for the explanation from the assessee by show cause notice as to why the Indian PLR rate should not be adopted for benchmarking the interest on loan transaction. The assessee filed its reply objecting for adopting the Indian PLR with detailed explanation. Not being convinced with the assessee's explanation, the TPO viewed that the international transactions with Associated Enterprises (AEs) have to be seen with arms length perspective. In an arms length situation any independent party would either invest in an equity and to see that shares are allotted within specified period or if a loan or advance has been given it would accept suitable interest on it. Whether the source of the loan is interest free or interest bearing, it has to be seen earning of the interest. The advance was from India and the Indian currency has been converted into the currency of geographical location of the AE, hence the A.O. was of the view that the PLR of the Indian banks has to be applied. The A.O. further observed that the out bound loans are effectively rupee loans in case of a rupee source lending transaction the lender in order to maximize his profits would try to bench mark its returns with the domestic interest rate rather than LIBOR. The ideal interest rate on outbound intra group loans would be the interest rate which would have been charged by independent parties dealing in similar circumstances and during the same period of time. RBI does not

allow Indian entities to lend loans to any other entity than their wholly owned subsidiaries and therefore there is no uncontrolled transaction available. Further, interest rate expected by the lender is equivalent to total cost of such funds. According to the Ld. A.O., the hypothetical CUP would be the Indian entity's investments in bank deposits, stocks, mutual funds or real estate and the corresponding return would be the effective Indian interest rate. Accordingly, the TPO adopted PLR of 12.25% as the arms length interest and interest was charged on the amounts outstanding at the end of each month on monthly basis. The A.O. charged the interest of Rs.73,53,775/- against the interest collected by the assessee amounting to Rs.11,08,305/- and the difference amount of Rs.62,45,470/- was brought to tax for the assessment year 2011-12. Similarly, for the assessment year 2012-13, the A.O. adopted the PLR of 14.75% as arms length interest and charged the interest of Rs.1,42,26,375/- against the interest charged by the assessee amounting to Rs.37,00,493/- and the difference amount of Rs.1,05,25,882/- was brought to tax. The A.O. adopted the arms length interest worked out by the TPO and passed the assessment order u/s 143(3) r.w.s. 92CA(3) of the Act.

3. Aggrieved by the order of the A.O./TPO, the assessee went on appeal before the CIT(A) and the Ld. CIT(A) allowed the appeal of the

assessee vide order No.17/15-16/CIT(A-1)/GNT dated 30.11.2016 for the assessment year 2011-12 and order No.07/16-17/CIT(A-1)/GNT dated 30.12.2016 for the assessment year 2012-13.

4. Aggrieved by the order of the Ld. CIT(A), the revenue is in appeal before us.

5. Appearing for the revenue, the Ld. D.R. argued that the assessee has given loans to its sister concerns, on outbound loans the interest reasonably has to be charged as per the Indian money market and as per the PLR of India for determining the arms length price. Though the loans were given in Singapore dollars, the assessee has converted the Indian rupees into Singapore dollars and lent the money. Therefore, the Ld. D.R. argued that when the monies were lent from India, the LOBOR is not applicable and Indian PLR is applicable. According to the Ld. D.R., there is no error in the order of the TPO/AO, which requires to be confirmed.

6. On the other hand, the Ld. A.R. argued that the Associated Enterprises (AEs) are wholly owned subsidiary companies of the assessee and the loans were given to its foreign subsidiaries for the purpose of business but not for the purpose of financing. The assessee is not in the finance business. Assessee in the manufacturing and the production activity established the subsidiary companies in the foreign

countries with an intention to expand the business and to earn the profit but not to earn the interest and the assessee is not in the money market for the purpose of giving the loans. The loans given were purely business loans and the assessee company is having substantial interest free funds from which the amounts were advanced to the subsidiary companies. There is no interest cost to the assessee. The question of arms length price comes into play when the assessee is borrowing of funds and lending them or the assessee is advancing monies for the purpose of financing or with an intention to earn the interest. In the assessee's case the aim of the assessee was to expand the business and enhancing the brand value of the company's product globally and to save the transportation cost while exporting the products of the company. The loans were given solely with the business purpose, business expediency and the business convenience and not with the aim of earning the interest from the subsidiary. The Hon'ble Courts have held that in the case of outbound loans to its foreign subsidiary, the arms length rate should be computed based on market determined interest applicable to the currency in which the loan has to be repaid i.e. LIBOR and not based on PLR of Indian banks. This view is supported by the Hon'ble Delhi High Court decision in the case of CIT Vs. Cotton Naturals India (P) Ltd. 55 Taxmann.com 523. The Ld. A.R. also relied

on the decision of this Tribunal in the case of 3F Industries in ITA No.120/Vizag/2016 dated 14.6.2017, wherein the ITAT remitted the matter back to the file of the AO for the assessment year 2008-09 and 2009-10, with a direction to adopt the LIBOR and re-do the assessment. Further, Ld. A.R. brought to our notice that the assessee has charged the interest @ 2% to its subsidiaries against the LIBOR of 0.92% for the assessment year 2011-12 and 0.83% for the assessment year 2012-13. Accordingly, the Ld. A.R. vehemently opposed the contention of the revenue to charge interest as per Indian PLR and pleaded that no interference is called for in the order of the Ld. CIT(A).

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has given advances to its Associated Enterprises (AEs) i.e. M/s. Jayant PTE Limited (JPL) and charged the interest @ 2% and the assessee is paying the interest @ 1.5% on its advances. The loan was outbound loan and the AEs are wholly owned subsidiary companies of the assessee company. The Loans were advanced for the purpose of business but not with an intention to earn the interest. The prime aim for advancing the loans to AEs is improve the brand image, business purpose and to get the global market. The assessee has not borrowed any funds for the purpose of advancing loans to its subsidiary

companies. All the funds were the internal accruals and there is no cost involved for advancing the funds. Hon'ble Delhi High Court in the case of Cotton Naturals cited (supra) held that for outbound loans, the interest rates as per LIBOR should be adopted but not PLR of Indian banks. The Ld. CIT(A) relied on the decision of Hon'ble Delhi High Court and other decisions relied upon by the Ld. A.R. and allowed the appeal of the assessee.

8. The Ld. A.R. relied on the following decisions, wherein the various courts/Tribunals on the same subject held that loans/deposits advanced by Indian companies to its overseas subsidiary, the rate of interest on international loans should be with reference to the LIBOR rate only. The relevant decisions relied upon by the Ld. A.R. are as follows:

1. *Tech Mahendra Limited Vs. DCIT (ITA No.1176/Mum/2010)*
2. *VVF Ltd Vs. DCIT (ITA No.673/Mum/06).*
3. *M/s. Siva Industries & Holding Ltd. Vs. The ACIT (2011-TII-67-ITAT-MAD-TP)*
4. *Aithent Technologies (P) Ltd. Vs. ITO (ITA No.3647/Del/2007)*
5. *Tata Autocom Comp Systems Ltd., 374 ITR 516 (Bombay) 56 Taxmann.com 206 (Bombay)*
6. *Indigene Life Systems Pvt. Ltd. Vs. ACIT, Circle 11(4), Bangalore (2015) 60 Taxmann.com 28 (Bangalore-Trib)*
7. *Fouir Soft Ltd. Vs. DCIT (ITA No.1495/Hyd/2010)*
8. *DCIT, Range-8(1), Mumbai Vs. Geodesic Ltd. (2015) 62 taxmann.com 383 (Mumbai Tribunal).*

9. The Ld. CIT(A) allowed the appeal as per the discussion made in the appellate order which reads as under:



"I have gone through the facts of the case, contents of the assessment order, written submissions of the assessee and the case laws referred and relied by the assessee. The M/s. CCL Products (India) Ltd., is engaged in the business of Manufacturing of Instant Coffee/Soluble Coffee. While completing the scrutiny assessment u/s.143(3) the AO has disallowed the difference in arm's length price as determined by the TPO of Rs.62,45,470/-.

The Assessee is a Public Limited Company listed in th BSE & NSE Stock Exchanges and is an <sup>100%</sup> EOU with about 98% export sales. It is having a 100% subsidiary in Singapore Viz. M/s. Jayant PTE Ltd which in turn has established instant coffee manufacturing units in Switzerland and Vietnam through its 100% subsidiary in the respective countries. Hence, in effect all these step down subsidiaries are 100% subsidiaries of the Company and their profits and benefits will exclusively accrue and belong to the assessee company only. They were established with the principle aim of enhancing the brand image of Company's Products globally and also to save on transportation costs.

As on 31.03.2009, the Company is having huge internal accruals of about Rs.162.30 crores and out of the same, the Company has lent a small amount of Rs.9.58 crores on 16.07.2009 to its wholly owned subsidiary Viz. Jayant PTE Ltd. with the above mentioned objects i.e. only for business purposes Viz, enhancing its brand value in global markets and to save on huge transportation costs. As on 01.04.2010, the opening balance in the above loan account is Rs.6,32,18,772/- and at the end of the financial year i.e. as on 31.03.2011 the closing balance was P.s.5,32,15,255/-.

The Company being an 100% EOU with 100% exports, all its borrowings from Banks are in packing credit and in foreign currency and its effective borrowings cost is only 1.5% P.A. Though the entire amount was lent to its 100% subsidiary out of its own internal accruals with no cost, however, as a measure of fair corporate practice, the Company charged interest on the above loan at 2% which is much higher than the borrowing cost of the Company which is only 1.5% P.A.

The Hon'ble Delhi High Court in the case of CIT-i Vs. Cotton Naturals (I)(T) Ltd., 55 taxmann.com 523 (Delhi) was held that the question whether the interest rate prevailing in India should be applied, for the lender was an Indian company/assessee, or the lending rate prevalent in the United States should be applied, for the borrower was a resident and an assessee of the said country, must be answered by adopting and applying a commonsensical and pragmatic reasoning. The interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower

*or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. [Para 39]"*

*The Hon'ble Bombay High Court in the case of CIT-2 Vs. Tata Auto Comp Systems Ltd., (2015) 56 taxmann.com 206, "held that the impugned order held that "as the amounts were advanced to Associated Enterprises in Germany, the rate of interest is to be determined on EURIBOR rate of interest. Thus, Tribunal partly allowed the assessee's appeal by holding that the loan advanced to an AE situated abroad, the rate of interest to be applied is the rate prevailing in the country where the loan has been consumed. The impugned order of The Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of VVF Ltd. v. Dy. CIT [IT Appeal No. 673 (Mum.) of 2006] and Dy. CIT v. Tech Mahindra Ltd. [2011] 12 taxmann.com 132/46 SOT 141 (Mum.) (URO) to reach the conclusion that ALP in the case of loans advanced to associate enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. The revenue has not preferred any appeal against the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra) on the above issue. No reason has been shown as to why the revenue seeks to take a different view in respect of the impugned order from that taken in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). The revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). [Para 7]. In view of the above, there is no reason to entertain the instant appeal as in similar matters the revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. [Para 8]"*

*The Hon'ble Bangalore ITAT 'C' Bench in the case of Indege Life systems (P) Ltd., Vs. ACIT, Circle 11(40, Bangalore, 60 taxmann.com 28) held that "in the case of Siva Industries & Holdings Ltd. Vs. Asst. CIT [2011] 11 taxmann.com 404/46 SOT 112 (URO)(Chennai) identical issue was considered by the Tribunal. In fact, the ITAT Bangalore Bench in the case of TTK Prestige Ltd. v. Asst. CIT [IT Appeal No. 1257 (Bang) of 2011] for Assessment Year 2005-06, has also dealt with an identical issue and following the decision of the Mumbai Bench of the Tribunal in Tata Autocomp Systems Ltd. v. Asst. CIT [2012] 21 taxmann.com 6/52 SOT 48 held that in the matter of determination of ALP in respect of a loan transactions, LIBOR rate of interest should be the interest rate applied for determining the ALP. [Para 15]*

*The Hon'ble ITAT, Chennai 'A' Bench in the case of Siva Industries & Holdings Ltd., Vs. ACIT, Company Circle- VI (4), Chennai, held that "once the transaction between the assessee and the associated enterprises was in foreign currency and the transaction was an international transaction,*

*then the transaction would have to be looked upon the applying the commercial principles in regard to international transaction. If that was so, then the domestic prime lending the rate would have no applicability and the international rate fixed being LIBOR would come into play. In the circumstances, the view that LIBOR rate had to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the associated enterprises was to be upheld.*

*The Hon'ble Bombay ITAT 'K' Bench in the case of IL & PS maritime Infrastructure company Ltd., Vs. ACIT-14(2)(1), Mumbai, held that "It is seen that in the eight case laws cited by the assessee, it has been held that it is the LIBOR, which has to be applied in the case of foreign currency loan given to AE. All these case laws were cited by the assessee before the DRP. However, the DRP has not followed these case laws, contending that the decision in Perot Systems TSI (I) Ltd. Vs. Dy. CIT [2010] 37 SOT 358 (Delhi) was not considered by the Tribunal in any of these eight cases. Now, as rightly contended on behalf of the assessee, the judicial hierarchy is to be respected and an order passed by a higher court/authority cannot be disregarded/distinguished for any reason, including for non-consideration of some case laws, as has been done by the DRP in the present case. There is no gainsaying that the orders of the Tribunal are binding on the lower authorities, including the DRP. In view of the above, the grievance of the assessee is found to be justified and it is accepted as such. [Para 11]"*

*In the case of CIT-I Vs Cotton naturals India Private Ltd., the facts of which are same as of assessee, the Delhi High court categorically held that where the Parent company advanced loan to its foreign subsidiary, the Arm's Length interest rate should be computed based on market determined interest rate applicable to currency in which loan has to be repaid i.e. LIBOR an should not be based on PLR of Indian banks.*

*In the case of CIT-2 Vs Tata Auto Comp Systems Ltd., the Bombay High Court clearly held that where assessee advanced loans to its AE situated in Germany, rate of interest is to be determined on the basis of rate prevailing in Germany where loan had been consumed and not to be determined on the basis of rate prevailing in India.*

*In the case of Indigene Life Systems (P) Ltd Vs. ACIT, the Bangalore ITAT held that in respect of loan granted by assessee to its AE located abroad, LIBOR rate of interest should be applied for determining ALP and consequently where interest charged by assessee on loan given to its AE was higher than LIBOR the same is to be accepted.*

*In view of the detailed discussions of the facts, circumstances and the Court and Tribunal judgments making addition under the head interest an amount of Rs.62,45,470/- being difference in arm's length price as determined by the TPO is not tenable. Hence, the addition made by the A.O is deleted and assessee's this ground of appeal is allowed."*

10. In the instant case the assessee had advanced the sums on of it's 100% foreign subsidiary for increasing the business and to improve the brand image of the company. The loans were for purely business purpose. Hon'ble Delhi High Court in the case of Cotton Naturals cited (supra) held that LIBOR should be adopted in outbound loans. The assessee has established the fact that the loans were given for the purpose of carrying on the business and to build the brand image globally and there is no intention of earning interest. Therefore, we hold that the interest charged by the assessee @ 2% which is more than LIBOR rate is reasonable and at arms length. Accordingly, we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.

11. In the result, the appeals filed by the revenue for the assessment years 2011-12 & 2012-13 are dismissed.

The above order was pronounced in the open court on 21<sup>st</sup> Sept'17.

Sd/-

(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 21.09.2017

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant – The ACIT, Circle-1(1), Guntur
2. प्रत्यार्थी / The Respondent – M/s. CCL Products (India) Limited, Duggirala, Guntur Dist.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A)-1, Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM

