

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 539/Kol/2022
Assessment Year: 2018-19

M/s. Tega Industries Limited 807, 8 th Floor Godrej Waterside Tower-2 Block DP-5, Sech Bhawan S.O., Salt Lake, North 24 Parganas 700091 [PAN: AABCT2074M]	Vs	Assessment Unit, Income tax Department, National Faceless Assessment Centre (NFAC), Delhi/The Deputy Commissioner of Income Tax, Circle-11(1), Aayakar Bhawan, P-7, Chowringhee Square Kolkata - 700069
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri S.P. Chidambaran, Advocate
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 29/02/2024
घोषणा की तारीख /Date of Pronouncement: 08/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the directions of the Dispute Resolution Panel -2, New Delhi [hereinafter the "ld. DRP"] dt. 09/06/2022, passed u/s 144C(5) of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:-

1. *Order is bad in law and on facts (Refer our detailed grounds of appeal on this issue)*
2. *Determination of arm's length price by the Ld. AO, Ld. TPO and Hon'ble DRP for Corporate guarantee commission received (Refer our detailed grounds of appeal on this issue)*
3. *Rule of consistency (Refer our detailed grounds of appeal on this issue)*
4. *Negative figure of Loss on investment classified at FVTPL shown under 'Other Income' considered as positive figure thereby resulting in double taxation (Refer our detailed grounds of appeal on this issue)*

5. *Delay in Deposit of employees' contribution to provident fund and ESI (Refer our detailed grounds of appeal on this issue)*
6. *Disallowance of deduction claimed under section 80JJAA of the Act (Refer our detailed grounds of appeal on this issue)*
7. *Arbitrary addition of income (Refer our detailed grounds of appeal on this issue)*
8. *Short grant of Advance Tax Credit (Refer our detailed grounds of appeal on this issue)*
9. *Short grant of TDS Credit (Refer our detailed grounds of appeal on this issue)*
10. *Non grant of Foreign Tax Credit under section 91 of the Act (Refer our detailed grounds of appeal on this issue)*
11. *Erroneous Levy of Interest under section 234B of the Act (Refer our detailed grounds of appeal on this issue)*
12. *Erroneous Levy of Interest under section 234C of the Act (Refer our detailed grounds of appeal on this issue)"*

3. At the outset, the Id. Counsel for the assessee stated that Ground No. 4, 5, 6, 7, 8, 9 & 10 are not pressed. Accordingly, the same are dismissed as not pressed. Ground No. 1 is general in nature.

4. Ground No. 8 relates to short grant of advance tax credit and the only prayer is to restore the matter back to the Id. AO for necessary verification. Accordingly, the claim of the assessee that the Id. AO has not granted tax credit for Tega Industries (SEZ) Limited (in short 'Tega SEZ') to the tune of Rs.1,25,00,000/- is restored to the file of the Id. AO for necessary verification. Accordingly, Ground No. 8 is allowed for statistical purposes.

5. The remaining effective issues are raised in Ground No. 2 & 3 which pertains to Transfer Pricing (TP) adjustment on account of corporate guarantee amount of Rs.1,54,31,081/-.

6. Facts in brief are that the assessee is a limited company and has provided corporate guarantee on behalf of its subsidiary/step down subsidiary, namely, Tega Holding Pte Ltd., Singapore ('Tega Singapore') and Tega Industries Chile SpA, Chile ('Tega Chile'). It is submitted that the original transaction took place in AY 2011-12 wherein the appellant set up Tega Singapore as a Special Purpose Vehicle ('SPV') for acquiring two target companies, namely, Losugen Pty Ltd. Australia and Tega Chile. To fund the acquisition of these two companies, Tega Singapore obtained a loan from third party bank amounting to USD 43.5 Million i.e. INR 200 Crores (app.) backed by a corporate guarantee from the appellant. No income was offered by the assessee towards corporate guarantee fee in terms of Arm's Length Price of the said transactions. The ld. TPO after examining the transactions firstly held that there is an international transaction in the form of corporate guarantee given by the assessee to its SPV i.e. Tega Singapore and calculated corporate guarantee @ 6.96% with regard to the corporate guarantee given to Tega Singapore amounting to Rs.1,40,68,548/- and addition of Rs.13,63,534/- towards corporate guarantee to Tega Chile.

7. Before us, the ld. Counsel for the assessee had made two fold contentions. Firstly, contending that the alleged transactions do not fall under the category of international transactions and, therefore, no TP adjustment was needed. Secondly, taking an alternative plea it is stated that even if it is considered as an international transactions, for estimating corporate guarantee fees under similar set of facts and circumstances, various judicial forums have applied the percentage in the range of 0.2 to 0.5%.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

8. We have heard rival contentions and perused the material placed before us. So far as the first issue as to whether the alleged transaction of providing corporate guarantee to its associate enterprise i.e., Tega Singapore and Tega Chile will fall into the category of international transactions or not, we find that Section 92B of the Act provides for the meaning of international transactions and the same is reproduced below:-

"92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be ⁹⁵[deemed to be an international transaction] entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise ⁹⁶[where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not].

Explanation. – For the removal of doubts, it is hereby clarified that –

- (i) the expression "international transaction" ⁹⁸ shall include –*
- (a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;*
 - (b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;*
 - (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any*

type of advance, payments or deferred payment or receivable or any other ⁹⁹debt arising during the course of business;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;"

9. Now, from perusal of the explanation to sub-Section (2) of Section 92B, the expression international transaction includes capital financing, include any type of long-term or short-term borrowings, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business. Since inclusive definition of international transaction includes the activities relating to capital financing and borrowings, in our view new corporate guarantee transaction also falls under the category of international transactions. In the instant case, undisputedly, the assessee has given corporate guarantee for loan borrowed by its subsidiary/SPV after acquiring the business. Certainly, with the help of such corporate guarantee interest burden of the AE has been lowered. Though, it is contended by the assessee that it had saved immediate use of its own funds and the interest on the said borrowings has also been paid by the AE but this plea will not apply in the said transactions because, we are dealing specifically with the transactions of corporate guarantee and that with the help of such corporate guarantee, the AE has gained and then as per the TP provisions, the assessee is required to offer the corporate guarantee fee as income. Therefore, in view of the provisions of Section 92B of the Act, the alleged transactions of corporate guarantee

with the AE falls in the category of international transactions. Our view is further supported by the judgment of the Hon'ble Madras High Court in the case of *Principal Commissioner of Income Tax 5 vs. M/s.Redington (India) Limited in T.C.A.Nos.590 & 591 of 2019 judgment dt.: 10.12.2020*. Accordingly, ground raised by the assessee that the alleged transactions is not an international transactions, is hereby dismissed.

10. Now, so far as the Ground relating to calculation of corporate guarantee fee is concerned, we find that this issue has come up before various judicial forums and corporate guarantee fee range of 0.2% to 0.5% has been found to be justified. We find support from the judgment of the Hon'ble Bombay High Court in the case of *CIT v. Everest Kento Cylinders* reported in (2015) 378 ITR 57 (Bom), and are inclined to give part relief to the assessee directing the TPO to compute corporate guarantee fee @ 0.5% and delete excess amount added in the hands of the assessee. Accordingly, Ground Nos. 2 & 3 raised by the assessee are partly allowed.

11. Ground Nos. 11 & 12 are relating to levy of interest u/s 234B/C of the Act which are consequential in nature and need no adjudication.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 8th April, 2024 at Kolkata

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 08/04/2024

S/S

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata