

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'I', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 7065/Del/2019 : Asstt. Year: 2012-13**

M/s Maharashtra Seamless Ltd., Plot No. 5, 2 <sup>nd</sup> Floor, Pusa Road, New Delhi-110005 (APPELLANT)	Vs	DCIT, Circle-16(1), New Delhi-110002 (RESPONDENT)
<b>PAN No. AAACM0511B</b>		

**Assessee by : Ms. Supriya Mehta, CA  
Revenue by : Sh. Manu Chaurasia, Sr. DR**

<b>Date of Hearing: 06.12.2023</b>	<b>Date of Pronouncement: 27.02.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

This appeal has been filed by the assessee against the order of Id. CIT(A)-44, New Delhi dated 28.06.2019.

2. Following grounds have been raised by the assessee:

*"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) (CIT(A)) is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the transfer pricing adjustment of Rs.5,81,986/- made by the TPO on account of interest charged on foreign currency loan extended to the Associated Enterprise (AE), Jindal Pipes (Singapore) Pte. Ltd.*

*3. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in*

*sustaining the above adjustment computing the interest at the rate of 6 months LIBOR plus 350 basis points as the Arms' Length rate as against the 1 month LIBOR plus 320 basis points charged by the assessee.*

*(ii) That the above addition has been confirmed by taking the above rate of LIBOR plus 350 basis points without there being any basis for the same*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition rejecting the contention of the assessee that rate at which the Associated Enterprise has availed the loan from financial institution, being the internal comparable, should be preferable comparable.*

*5. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the action of the AO/TPO rejecting the additional evidences filed by the assessee under rule 46A of the Income Tax Rules, 1962.*

*6. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any adverse evidence against the assessee, only on the basis of presumption and assumption."*

3. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing of Seamless, ERW Pipes and Tubes, and trading of Pipes and Tubes. The assessee has filed its return of income in original on 28.09.2012. During the year under consideration, the assessee has advanced loan to Jindal Pipes (Singapore) Pte. Ltd (JPSPL) of around US\$ 33,64,847.52, equivalent to Rs. 16,99,24,281/-. The assessee has charged interest of Rs. 19,88,755/- on such advances at the rate of 1 months LIBOR plus 300 basis points which is 3.23% p.a. approx and the same was declared in the return of income filed by the assessee.

4. The above International transaction of interest received of Rs. 19,88,755/- was benchmarked by the assessee adopting CUP method, being the appropriate method. The assessee has considered JPSPL, its Associated Enterprise as the internal comparable because JPSPL (AE) has also taken the loan from Citibank N.A. Singapore for the tenure of 3 months at the rate of 6 months LIBOR + 225 basis points i.e. 2.937% p.a. approx. and the assessee has charged the higher rate of interest from JPSPL, AE, being 1 month LIBOR + 300 basis points i.e. 3.23% p.a. approx., thus the transaction of the assessee is at arm's length.

5. During the course of Transfer Pricing proceeding, the assessee submitted the rate charged by assessee to JPSPL is 1 month LIBOR + 300 basis points which comes out to be 3.23% p.a. approx. is already more than the rate of interest charged by Citibank, Singapore, and the transaction is considered at arm's length.

6. The TPO rejected the comparable provided by assessee citing following reasons:

- The loan granted by Citibank, Singapore is just for a period of 3 months.
- There involves a guarantee in the agreement between JPSPL and Citibank, Singapore where assessee stands as a guarantor.
- The two agreements pertain to different financial year and hence they are not comparable ignoring the fact that assessee has given loan in November 2011 to February 2012 and the agreement entered into between the JPSPL and Citibank, Singapore is dated April 2012.

7. The TPO has benchmarked the interest amount on the basis of Master circular on ECB and trade credits issued by RBI. While adopting

the rate to be applied, the TPO has adopted 6 month Libor + 500 basis points i.e 5.687% p.a. approx. which was ceiling rate given for loans exceeding 5 years and thus, made the addition of Rs. 15,02,959/-on the basis of interest at the rate of 5.687% p.a. as under:

Particulars	Balance/Transaction	Amount in INR	No. of days	Interest Rate (6 months LIBOR + 500 bps)	Interest amount in INR
New Loan					
	11.11.2011	32,55,001.22	142	5.687	72,016.14
	14.11.2011	15,51,39,500.00	139	5.687	33,59,909.28
	22.02.2012	98,39,336.90	39	5.687	59,788.93
Total Interest					34,91,714.36
Arms' Length Interest					34,91,714.36
Less: Interest received					19,88,755.00
Difference to be adjusted					15,02,959.36

8. Aggrieved by the order of the AO, assessee filed the appeal before CIT(A), who directed to consider LIBOR +350 points, resulting in filing of appeal before the Tribunal.

9. Heard the arguments of both the parties and perused the material available on record.

10. With regard to the tenure of loan granted by Citibank, Singapore being for a period of 3 months, the assessee explained that one of clauses of loan agreement entered into between the assessee and JPSPL is that the loan is repayable on demand and is for meeting temporary fund requirement which is evident from the agreement. Thus it is in essence a short term loan. On the other hand, the loan agreement between JPSPL and Citibank was for the period of 3 months which also qualifies as a short

term loan. Thus when both the loans are for short term, they are aptly comparable. The assessee further submitted that the loan granted by assessee has also been repaid back to it by JPSPL in the year 2012 itself i.e. within 12 months from the date of grant.

11. With regard to the guarantee in the agreement between Citibank, Singapore and JPSPL, it was submitted that JPSPL has obtained loan from Citibank, Singapore of around USD 2,90,00,000/-. No bank would provide such a huge amount of loan without taking any security in return, the security being any asset or any guarantee. In such circumstances, JPSPL has obtained loan backed by assessee's guarantee. The TPO has not brought on record any facts or material which depicts that the interest rate charged by bank is impacted by the securities offered by the borrower of the loan. The assessee holds 30% shareholding of JPSPL and the guarantee has been advanced by the assessee as a matter of commercial prudence primarily to protect the business interest of the group by fulfilling the shareholder's obligation.

12. With regard to the fact that two agreements pertains to different financial year, it was submitted that both the transactions pertain to the same period in which LIBOR rates are applied i.e. in 2012. It is noticeable that agreement between JPSPL and Citibank, Singapore pertains to Year 2012 and since the tenure of loan is for a period of 3 months, the interest will be accrued in same calendar year i.e. 2012. On the other hand, with reference to loan agreement between JPSPL and the assessee, it is undisputed that one of the clause in the agreement between assessee and JPSPL reads that interest shall be charged at 1 month LIBOR + 300 basis points as on the last business day of the financial year, in which interest is being accrued. This transaction belongs to FY 2011-12 and

thus the interest shall be charged at LIBOR prevalent in the year 2012. Accordingly, the ground of the TPO that the matter pertains to two different financial years is baseless as LIBOR of year 2012 only are being considered in both the cases.

13. Reliance is placed on the following judgments:

- DABUR INDIA LTD. VERSUS ADDL. CIT. RANGE-10. NEW DELHI in 2021 (2) TMI 1250 - ITAT DELHI - Dated.- February 18. 2021.
- COMMISSIONER OF INCOME TAX-I VERSUS M/S COTTON NATURALS (II PVT.LTD. In 2015 (3) TMI 1031 - DELHI HIGH COURT - Dated.- March 27. 2015.
- INSLICO LTD. VERSUS DCIT, CIRCLE 11 (11 . NEW DELHI in 2015 (12) TMI 1779 - ITAT DELHI - Dated.- December 4. 2015
- M/S E4E BUSINESS SOLUTIONS INDIA PVT. LTD., VERSUS THE DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE-3 (1) (2) BANGALORE AND VICE- VERSA in 2015 (11) TMI 1545 - ITAT BANGALORE - Dated.- November 4, 2015.
- GHARDA CHEMICALS LTD. VERSUS DEPUTY COMMISSIONER OF INCOME-TAX 9 (1). MUMBAI in 2009 (11) TMI 653 - ITAT MUMBAI - Dated.- November 30. 2009.
- M/S. AG1LA SPECIALTIES PVT. LTD. NOW MERGED WITH MYLAN LABORATORIES LTD.. VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX. CIRCLE 1 (1) (1). BANGALORE AND VICA-VERSA in 2015 (12) TMI 33 - ITAT BANGALORE Dated.- October 9. 2015.
- TECNIMONT ICB P. LTD. AND ANOTHER VERSUS ADDITIONAL COMMISSIONER OF INCOME-TAX AND ANOTHER in 2013 (9) TMI 595 - ITAT MUMBAI Dated.- July 17. 2012

14. In view of the above, it is comprehensible that interest has been earned by assessee at arm's length rate and accordingly, no adjustment on account of arm's length rate is required to be carried out. Therefore the

addition sustained of Rs. 5,81,986/- is hereby directed to be deleted.

15. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 27/02/2024.

**Sd/-**  
**(Saktijit Dey)**  
**Vice President**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 27/02/2024**

\*NV, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**