

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## INCOME TAX APPEAL NO.1320 OF 2012

The Commissioner of Income Tax 2.

...Appellant.

Vs.

Tata Autocomp Systems Ltd.

...Respondent

.....

Mr.Suresh Kumar, for the Appellant.

Mr.Percy Pardiwalla, Senior Advocate i/b. Mr.A.K.Jasani, for the Respondent.

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**CORAM: M. S. SANKLECHA &  
G. S. KULKARNI, JJ.**

**DATE : 3<sup>rd</sup> FEBRUARY, 2015.**

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**P.C.:-**

1. This appeal by Revenue under Section 260A of the Income Tax Act,1961 (the Act) assails the order dated 30.4.2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The assessment year involved is A.Y. 2007-08.

2. The appellant-Revenue proposes the following questions for our consideration:-

“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in treating lending

transactions on par with borrowing transactions in conservation to the provision of Section 92B, thereby overlooking crucial factors of opportunity cost and risks borne by the lending entity which is a resident of India, as distinguished from the transaction where the lender is not a resident in India ?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in directing the Assessing Officer to benchmark the interest at prevailing EURIBOR rate instead of rupee loan rate to compute the Arms Length interest on the loan amounting to EURO 20,50,000 advanced by the assessee to its AE, ignoring the fact that EURIBOR does not govern the monetary markets or interest rates in India, which is the residence country of assessee and EURIBOR rate is not applicable to the loans for which foreign currency has to be purchased by the Lender as in assessee's case ?

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in deleting the adjustment made by the TPO at Rs.1,50,56,737/- applying 10.25% rate of interest per annum to the interest free loan advanced by the assessee to the AE taking into account the prevalent domestic rate of interest payable on working capital loan and which govern the lending and borrowing market in India ?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in relying on the

RBI circular pertaining to advancement of pre-shipment export credit and re-discounting of export bills permitting banks to fix interest rates with reference to LIBOR, EURIBOR etc. to justify assessee's claim to fix interest rate as per EURIBOR rate, overlooking the fact that RBI circular refers to credit facilities allowed to Indian exporters by Indian banks which cannot be compared to the out bound loan to AE and additionally where conversion of rupee into Euro is through purchase of forex ?

(e) Whether on the facts and in the circumstances of the case and in law, and without prejudice to the other grounds, the Tribunal was correct in not appreciating the fact that the domestic lending company has to carry out a number of risk adjustments to fix the rate of interest on the loans advanced to a foreign entity in an uncontrolled scenario irrespective of base interest EURIBOR ?”

3. The respondent – assessee is engaged in the business of manufacturing of plastic parts and rendering engineering services. The respondent - assessee had advanced an amount of Euro 26.25 lakhs to its wholly owned subsidiary in Germany. The respondent-assessee charged no interest on the above loan. However, during the course of examination of respondent – assessee's international transaction with its subsidiary company i.e. Associated Enterprises, Transfer Pricing Officer (TPO) determined the Arms Length Price (ALP) i.e. interest on the loan advanced by the respondent – assessee to its German subsidiary at 10.25%. This measure of rate of interest was on the basis of

lending rate charged by the banks in India. The Assessing Officer passed a draft assessment order in line with the order of the TPO.

4. Being aggrieved, the respondent – assessee carried the draft assessment order to Dispute Resolution Panel (DRP) The DRP enhanced ALP i.e.the interest on the loan given by the respondent-assessee to its German Associate Enterprise to 12%. Consequent to the directions of DRP, the Assessing Officer by an assessment order dated 19.9.2011 charged interest of Rs.1.76 crores on the above account as a part of the respondent-assessee's income.

5. Being aggrieved, the respondent – assessee preferred an appeal to the Tribunal. The Tribunal by the impugned order held :

(a) that the interest free loan extended by a company to its Associate Enterprise comes within the ambit of International Transaction and issue to be examined in such a case would be the ALP of such an International Transactions; and

(b) With regard to quantum of addition on account of interest by ALP 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 i.e. rates prevailing in Europe. Thus partly allowed the respondent – assessee's appeal by applying the decision of the Tribunal in the case of “VVF Ltd. Vs. DCIT, (ITA No.673/Mum/06)” and “DCIT Vs. Tech Mahindra Ltd. (46 SOT 141)” by holding that the loan advanced to an Associate Enterprise situated abroad, the rate of interest to be applied is the rate prevailing in the country where the loan has been consumed.

6. Mr.Pardiwala, learned Senior Advocate for the respondent-assessee pointed out that although they have raised an issue of transaction not being

international transaction, before the Tribunal, the respondent – assessee has in the facts of the present case chosen not to assail the order of the Tribunal on the above account. In view of the above, there is no occasion for us to express our opinion on the above issue.

7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of “VVF Ltd. Vs. DCIT” (*supra*) and “DCIT Vs. Tech Mahindra Ltd.”(*supra*) 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. Mr.Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in “VVF Ltd. Vs. DCIT” (*supra*) and “DCIT Vs. Tech Mahindra Ltd.”(*supra*) on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in “VVF Ltd. Vs. DCIT” (*supra*) and “DCIT Vs. Tech Mahindra Ltd.”(*supra*). The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in “VVF Ltd. Vs. DCIT” (*supra*) and “DCIT Vs. Tech Mahindra Ltd.”(*supra*).

8. In view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has

been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law.

9. Appeal is dismissed. No order as to costs.

**(G. S. KULKARNI, J.)**

**(M. S. SANKLECHA, J.)**