

## Transaction of providing loan to foreign AE at a higher rate than LIBOR was at ALP

**Summary – The Mumbai ITAT in a recent case of Everest Kanto Cylinder Ltd., (the Assessee) held that Charging of 0.5 per cent guarantee commission from AE being quite near to 0.6 per cent, which assessee had paid to ICICI Bank for credit arrangement, rate of 0.5 per cent can be said to be at arm's length**

**Where assessee had charged interest to EKC Dubai at rate higher than existing LIBOR rates, said transaction of providing loan to EKC Dubai was at arm's length**

### Facts - I

- The assessee had provided corporate guarantees in respect of advances given to its A.Es for expanding business of assessee of manufacture of cylinder in foreign markets and had charged guarantee commission at the rate 0.5 from its AE.
- For this purpose, assessee approached ICICI Bank, and the said bank agreed to provide term loans to the subsidiaries of assessee.
- Assessee had an independent sanction "letter of Credit arrangement" between ICICI Bank India in respect of Inland and Foreign LC, where a guarantee commission of 0.6 per cent per annum was to be paid by the assessee company to ICICI Bank India for the bank guarantee.
- Transfer Pricing Officer held that the assessee company ought to have charged a cost of guarantee of 3 per cent by drawing comparisons of the corporate guarantee commission rate charged by other banks. The TPO arrived at a rate of 3 per cent and proposed T.P. addition.
- The said adjustment was affirmed by the DRP.
- On appeal, the assessee submitted that the assessee had recovered from the AE, the comparable cost of guarantee commission charged by its bank in India. Hence, the transaction was at arm's length and required no further adjustment.

### Held - I

- The issue has already been decided by the Tribunal in immediately preceding year in assessee's own case, wherein charging of 0.5 per cent guarantee commission from AE was held to be quite near to 0.6 per cent, which assessee has paid independently to the ICICI bank and charging of guarantee commission at the rate of 0.5 per cent from its AE was held to be at arm's length.
- As the facts and circumstances of the case during the year under consideration are *pari materia*, respectfully following the decision of the Tribunal, the Assessing Officer was directed to compute arm's length price of transaction as per the direction given by the Tribunal in the above order for assessment year 2007-08.

### FACTS-II

- The assessee company had provided loan to EKC Dubai. Assessee had charged interest at the rate of 7 per cent per annum. The assessee had raised a sum of USD 35 million by issue of Zero Coupon Foreign Currency Convertible Bonds (FCCB) which were due for redemption in 2012. The assessee had also availed term loan at Citibank at 7 per cent per annum.
- The TPO made an adjustment on account of difference between the ALP determined by the TPO, *i.e.*, 14.39 per cent as against 7 per cent charged by the assessee.
- The DRP confirmed the action of the TPO.
- On appeal:

**HELD-II**

- Appropriate international rates should be used for the purpose of the comparability analysis. For this purpose, the London Inter Bank Offer Rate (LIBOR) is an internationally recognized rate for benchmarking loans denominated in foreign currency.
- In light of the above the rate to be used for undertaking an adjustment should be LIBOR and not the average yield rates considered by the TPO. The LIBOR rate for March 2008 was 2.6798 per cent. However the assessee had charged 7 per cent from its AE as per the internal CUP available, the assessee had charged interest to EKC Dubai and EKC China at the rate higher than existing LIBOR rates. Accordingly, the said transaction of providing loan to EKC Dubai and EKC China is at arm's length. Additions made by the Assessing Officer are accordingly set aside.