

Corporate guarantee given to AE by charging 0.5% as service fee doesn't call for TP adjustment

Summary – The Mumbai ITAT in a recent case of Hindalco Industries Ltd., (the Assessee) held that Rate of 0.50 per cent charged by assessee for giving corporate guarantee to its AE was appropriate

Facts

- The assessee had given corporate guarantee to its AEs and charged guarantee fee at 0.25 per cent per annum.
- The Assessing Officer noticed that a US bank had charged a fee of 1.5 per cent to 2 per cent to the guarantee given by it. Accordingly, he adopted the rate of 1.75 per cent and computed the guarantee commission/fee, which resulted in an addition of Rs. 9.70 crores.
- The Commissioner (Appeals) also confirmed the same.
- On appeal :

Held

- The assessee has referred to the decision rendered by the co-ordinate Bench in the case of *Manugraph India Ltd* [IT Appeal No. 4761 (Mum.) of 2013], wherein the co-ordinate Bench has determined a rate of 0.50 per cent for guarantee given. The rate of 0.50 per cent is consistently followed in many of the cases by the Tribunal. In fact, in the case of *CIT v. Everest Kanto Cylinder Ltd.* [2015] 232 Taxman 307/58 taxmann.com 254 which was considered by the Bombay High Court, the Tribunal has determined the rate at 0.50 per cent and the same has not been disturbed by the Bombay High Court. Accordingly, order of Commissioner (Appeals) on this issue was modified and the Assessing Officer is directed to compute the addition by adopting the rate of 0.50 per cent.
- In the additional ground, the assessee is challenging the addition on the ground that the *Explanation* (i)(c) to section 92B was inserted by Finance Act, 2012 and, hence, the same should not be made applicable to the year under consideration.
- With regard to the legal issue urged through additional ground, there is no merit in the contention of the assessee. The *Explanation* to Sec. 92B was inserted by Finance Act, 2012 w.r.e from 1.4.2002 only to "clarify" the expression "international transaction" used in sec. 92B. It is not a case that the expression "International transaction" is inserted for the time with retrospective effect. Even prior to the insertion of the *Explanation*, the assessee is required to justify them. Hence, the *Explanation* in no way imposes any new liability with retrospective effect.