Interest on foreign currency loan given to AE should be benchmarked as per LIBOR

Summary – The Mumbai ITAT in a recent case of IL & FS Maritime Infrastructure Co. Ltd., (the Assessee) held that It is LIBOR which has to be applied in case of foreign currency loan given by assessee to its AE

Facts

• The assessee had given a loan in U.S. Dollars to its AE. In a study report, the assessee had established that the prevailing international rate of interest in the currency in which the loan was given 5.62 per cent and thus, interest charged at 7 per cent by the assessee was at arm's length price.

• The Assessing Officer held that while considering the arms length price in respect of a loan given in a foreign currency, it was not necessary to only rely upon the rate of interest as prevailing in the currency in which the loan was given and the rate of interest prevailing in India or any other rate of interest determined in Indian rupees could be adopted.

• The DRP also followed the said principle and rejected the claim of the assessee.

• On appeal:

Held

• It is seen that in the eight case laws cited by the assessee, it has been held that it is the LIBOR, which has to be applied in the case of foreign currency loan given to AE. All these case laws were cited by the assessee before the DRP. However, the DRP has not followed these case laws, contending that the decision in *Perot Systems TSI (I) Ltd.* v. *Dy. CIT* [2010] 37 SOT 358 (Delhi) was not considered by the Tribunal in any of these eight cases. Now, as rightly contended on behalf of the assessee, the judicial hierarchy is to be respected and an order passed by a higher court/authority cannot be disregarded/distinguished for any reason, including for non-consideration of some case laws, as has been done by the DRP in the present case. There is no gainsaying that the orders of the Tribunal are binding on the lower authorities, including the DRP. In view of the above, the grievance of the assessee is found to be justified and it is accepted as such.