Interest charged at rate more than LIBOR was reasonable if loans were given without any intention to earn income

Summary – The Visakhapatnam ITAT in a recent case of CCL Products (India) Ltd., (the Assessee) held that where loans were given for purpose of carrying on business and to build brand image globally and there was no intention of earning interest, the interest charged by assessee at rate of 2 per cent which was more than LIBOR rate was reasonable and at arm's length

Facts

- The assessee had given a loan to its foreign subsidiary (JPL). The assessee had adopted CUP method as the most appropriate method and loans were extended to the foreign subsidiary at an interest of 2 per cent on outstanding balance. The assessee had paid the interest at the rate of 1.5 per cent to the financial institutions on the loans availed by it and claimed that the transaction was at arms length price in its transfer pricing document.
- The TPO had examined the arms length price and held that Indian Prime Lending Rate (PLR) was a better CUP to determine the outbound loans and the Assessing Officer was of the view that the PLR of the Indian banks had to be applied.
- The Commissioner (Appeals) observed that the company had lent a small amount to its AE with the above objects only for business purposes *viz,* enhancing its brand value in global markets and to save on huge transportation costs. Though the entire amounts was lent to its 100 per cent subsidiary out of its own internal accruals with no cost, however, as a measure of fair corporate practice, the company charged interest on the above loan at 2 per cent which was much higher than the borrowing cost of the company which was only 1.5 per cent per annum and deleted the addition.

Held

- The loans were advanced for the purpose of business but not with an intention to earn the interest. The prime aim for advancing the loans to AEs is improve the brand image, business purpose and to get the global market. The assessee had not borrowed any funds for the purpose of advancing loans to its subsidiary companies. All the funds were the internal accruals and there was no cost involved for advancing the funds.
- In the instant case the assessee had advanced the sums of it's 100 per cent foreign subsidiary for increasing the business and to improve the brand image of the company. The loans were for purely business purpose. Delhi High Court in the case of *CIT* v. *Cotton Naturals (I) (P.) Ltd.* [2015] 55 taxmann.com 523/231 Taxman 401 held that LIBOR should be adopted in outbound loans. The assessee has established the fact that the loans were given for the purpose of carrying on the

business and to build the brand image globally and there was no intention of earning interest. The interest charged by the assessee at the rate of 2 per cent which is more than LIBOR rate is reasonable and at arms length.