

## ITAT benchmarked LIBOR and EURIBOR to determine ALP of interest charged on sum advanced to AE

**Summary – The Mumbai ITAT in a recent case of IL&FS Transportation Networks Ltd., (the Assessee) held that where ALP of interest charged on amounts advanced by assessee to its AEs had been benchmarked by assessee as per LIBOR and EURIBOR rates, same could not have been determined as per Indian rate as had been done by Assessing Officer/TPO**

### Facts

- The assessee had given loans in USD to its AEs, viz., IMOPL and I IPL at an interest rate of USD LIBOR plus 5.5 per cent. Further, loan was given by the assessee in EUROS to its AE, viz., Elsamex at an interest rate of EURIBOR plus 1.75 per cent. The assessee had for the purpose of benchmarking the aforesaid transactions used external CUP derived from the Reuters Loan Connector, Bloomberg and claimed the interest rate charged to be within the permissible range. However, the Assessing Officer/TPO did not accept the geography of the borrower as the determining factor for computing the ALP of the interest rate charged. The TPO used the CRISIL credit rating scale for financial year 2008-09 and adopted the annualized average yield of bonds of 15.41 per cent to determine the CUP of the interest rate to be applied for the determination of the ALP, and resultantly worked out the shortfall in charging of interest by the assessee on loans advanced to its AEs.
- It was the contention of the assessee that the lower authorities was in error in benchmarking as per the Indian rates.
- On appeal:

### Held

- The ALP of the interest charged on the amounts advanced by the assessee to its AEs had rightly been benchmarked by the assessee as per LIBOR and EURIBOR rates, and the same could not have been determined as per the Indian rate as had been so taken by the Assessing Officer/TPO. Thus, the Assessing Officer/TPO is directed to determine the ALP of the interest charged by the assessee on the amounts advanced to its AEs viz., (i) ILFS Maritime Offshore PTE Limited; and (ii) IL&FS International PTE Limited by taking the LIBOR rates as the basis. Insofar as, the amount advanced by the assessee to its AE *i.e.* Elsamex is concerned the Assessing Officer shall take the EURIBOR rates as the basis for benchmarking the interest charged by the assessee on the loan advanced to the said AE.