IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1776 OF 2016

Pr.Commissioner of Income-Tax-1 … Appellant

V/s.

Cox & Kings Limited … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Hiten Chande with Mr.Ojas Gole i/by M/s PDS Legal for the Respondent.

CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.
DATE : FEBRUARY 11, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal.

2. Following questions were presented for our consideration:

> "I. Whether u/s 92(1) r.w. 92F(ii) r.w. Rule 10B, the ALP of interest on loan granted by the assessee to its Singapore AE be determined by applying an adhoc mark-up of 200 basis points without considering any comparable uncontrolled transaction identified after considering factors such

> as nature of loan, nature of security and credit worthiness of the assessee and the parties involved in the comparable uncontrolled transaction?
>
> II. Whether the determination by the ITAT of the arm's length guarantee commission @ 0.5% is in accordance with the requirements of Chapter X of the I.T.Act?"

3. In relation to question No.1 the counsel for the parties pointed out that the issue is covered by the decision of this Court in case of **Commissioner of Income-tax-2 Vs. Tata Autocomp Systems Ltd.**[1] in which the Court held and observed as under:-

> "7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of "VVF Ltd. Vs. DCIT" (supra) and "DCIT Vs. Tech Mahindra Ltd."(supra) to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr.Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in "VVF Ltd. Vs. DCIT" (supra) and "DCIT Vs. Tech Mahindra Ltd."(supra) on the above issue. No reason has been shown to us as to why the Revenue seeks to take a different view in respect of the impugned order from that taken in "VVF Ltd. Vs. DCIT" (supra) and "DCIT Vs. Tech Mahindra Ltd."(supra). The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in "VVF Ltd. Vs. DCIT" (supra) and

1 (2015)56 taxmann.com 206 (Bombay)

"DCIT Vs. Tech Mahindra Ltd."(supra).

4. In relation to question No.2 we may notice that Tribunal's impugned judgment while accepting the guarantee commission at the rate of 0.5% relied on the decision of this Court in case of **The Commissioner of Income Tax, Mumbai Vs. M/s Everest Kento Cylinders Ltd. dated 8th May, 2015 in Income Tax Appeal No. 1165 of 2013.** In such judgment the Court held as under:-

> "10. Having considered submissions of Mr.Malhotra for the revenue and Mr.Pardiwalla for the assessee, we are of the view that the order of the Tribunal as regards disallowance under section 14A and restricting the same to Rs.1 lac was justified in view of the material before the Tribunal. Furthermore, having considered the fact that a sum of Rs.4,47,649/- was not conceded in the return but was adhoc acceptance during the course of assessment, the assessee could not be bound by it. The Tribunal as the second fact finding authority had gone into factual aspects in great detail and therefore having interpreted the law as it stood on the relevant date the order passed cannot be faulted. In the matter of guarantee commission, the adjustment made by the TPO were based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of a Corporate Guarantee. No doubt these are contracts of guarantee, however, when they are Commercial banks that issue bank guarantees which

are treated as the blood of commerce being easily encashable in the event of default, and if the bank guarantee had to be obtained from Commercial Banks, the higher commission could have been justified. In the present case, it is assessee company that is issuing Corporate Guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which applied for issuance of a Corporate guarantee are distinct and separate from that of bank guarantee and accordingly we are of the view that commission charged cannot be called in question, in the manner TPO has done. In our view the comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company. In view of the above discussion we are of the view that the appeal does not raise any substantial question of law and it is dismissed. There will be no order as to costs."

5. In the result, no question of law arises. Income Tax Appeal is dismissed.

(B.P.COLABAWALLA,J.) **(AKIL KURESHI,J.)**

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