$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 387/2022

HAVELLS INDIA LIMITED .....Appellant

Through: Appearance not given.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -17 .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan & Mr. Vikramaditya Singh, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **19.02.2025**

1. The assessee seeks to impugn the order of the **Income Tax Appellate Tribunal**[1] dated 09 May 2022 and posits the following question for our consideration: -

> "Whether the Hon'ble ITAT has erred in law by holding the transaction in the instant matter as an International transaction u/s 92B in contravention of the provisions of the IT Act?"

2. We note that an identical issue had fallen for examination of the Division Bench of the Court in **M/s Dabur India Limited v. Pr. Commissioner of Income Tax – III**[2]**.** One of the questions which formed subject matter of that appeal was Question 'C' and which read as follows:-

> "(C) Whether in the absence of any cost incurred in relation to

[1] Tribunal
[2] ITA 513/2024 decided on 08 October 2024

corporate guarantee extended to the subsidiaries in assisting to secure the loan from financial institutions/banks is an international transaction contemplated under Section 92B(1) of the Income-tax Act? If yes, then whether the addition/upward adjustment sustained by the ITAT in respect of corporate guarantee extended to its subsidiaries is in accordance with method prescribed under law?"

3. While answering the aforesaid issue, the Division Bench had observed and held as follows:-

> "8. Insofar as the question whether the guarantee furnished by the appellant in respect of its foreign subsidiaries is an international transaction is concerned, the same stands covered by Explanation to Section 92B of the Act. By virtue of the Finance Act, 2012, the said Explanation was inserted with retrospective effect from 01.04.2002. Clause (c) of the said Explanation reads as under:-
>
> "Explanation.—For the removal of doubts, it is hereby clarified that—
> (i) the expression "international transaction" shall include—(a) xxxxx;
> (b) xxxxx;
> (c) capital financing, including any type of long-term or short-term borrowing, lending or <u>guarantee</u>, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;."
>
> **[emphasis added]**
>
> 9. <u>Since a 'guarantee' has been expressly included in the definition of an 'international transaction', no substantial question of law arises as to whether a guarantee furnished by the assessee for the benefit of its subsidiary is an international transaction."</u>

4. We bear in mind, the following conclusions which have come to be rendered by the Tribunal while dealing with this aspect: -

> "5. The amount guarantee provided by Havells Holdings Ltd . was Rs.143.13 crores against which the TPO has calculated guarantee fee @ 1.3% amounting to Rs.1.86 crores.
>
> 6. At the outset, the ld. AR argued that providing corporate guarantee is in the nature of shareholders activities and is not an 'international transaction' as investment in subsidiary company is not an 'international transaction' as held in the case of Vodafone India Services Pvt. Ltd. and Shell India Markets Pvt. Ltd. It was argued that the assessee has not incurred any cost for issuing corporate guarantee and such transaction has no bearing on the

profits, income, losses or assets of the assessee and it cannot be considered as an 'international transaction' in terms of Section 92B of the Act. It was further argued that the corporate guarantee issued by the assessee was purely on the commercial consideration with anticipation of significant benefit in the form of profit income in the later years and to protect the interest of the assessee company. It was argued that the bank guarantee and corporate guarantee are different and distinct matters and cannot be compared with .

7. The ld. DR argued that Hon'ble Madras high court's latest decision in Redington India Pvt. Ltd., Vs. DCIT, Tax Appeal No.590 and 591 of 2019, dt.10 -12-2020 has settled the law that a corporate guarantee indeed forms an international transaction. Relying on the order of the TPO , the ld. DR argued that corporate guarantees given by the assessee is indeed an international transaction amenable to adjustment.

8. Rebutting the argument of the ld . DR, the ld. AR alternatively argued that determination of the corporate guarantee at 1.3% is on a higher side and relied on the judgment of Hob'ble High Court of Bombay in the case of CIT Vs. Everest Kento Cylinders Ltd. 58 Taxmann 254 and also on the judgment of Hon'ble High Court of Bombay in the case of CIT V s Thomas Cook (India) Ltd. in ITA No. 712 of 2017 order dated 26.08.2019. Keeping in view, the judgments of the Hon'ble Bombay High Court and in the absence of any other judgment contrarily brought to our notice, we hereby direct that the adjustment in respect of corporate guarantee provided to AEs be determined at date of 0.5% instead of 1.3% determined by the revenue."

5. From the above conspectus of the facts as recorded, we find that the issue which is sought to be canvassed is identical to that which formed subject matter of the appeal in *Dabur*. We, consequently, find no justification to interfere with the view expressed by the Tribunal.

6. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 19, 2025/v