

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

INCOME TAX APPEAL NO. 812 OF 2015

Tooltech Global Engineering Pvt. Ltd., .. Appellant.
v/s.
Assistant Commissioner of Income Tax
Circle-7, Pune & Another .. Respondents.

Mr. K. Gopal with Mr. Tanmay Phadke i/b. Jitendra Singh, for the Appellant.
Mr. Tejveer Singh, for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 5th MARCH, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 28th August, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 28th August, 2014 is in respect of Assessment Year 2009-10.

2 Revenue urges only the following question of law, for our consideration:

“ Whether the Tribunal is justified in law in confirming the action of the Assessing Officer in making adjustment under section 92 of the Act with respect to a transaction between the holding company and 100% subsidiary company with respect to advance on which no obligation to charge interest existed and the adjustment made under section 92 resulted into a notional income and not real income?”

3 The impugned order of the Tribunal dismissed the Respondent's appeal filed from the order dated 10th January, 2014 of the Assessing Officer under Section 143(3) read with Section 144C of the Act. The Assessing Officer has passed the order dated 10th January, 2014 in conformity with the directions given by the Dispute Resolution Panel (DRP).

4 The impugned order hold that the loans and advances given by the Appellant-Assessee to its Associated Enterprises (AE) would be an International Transactions hit by the provisions of Chapter X of the Act. In terms of the Explanation to Section 92(B) of the Act, loans/ Advances to AE is an International Transactions. Therefore, the interest income earned on such loans and advances has to be reworked to determine the Arms Length Price (ALP). Thus, upholding the enhancement of the income of the Respondent-Assessee.

5 The grievance of Mr. Gopal is that the addition on account of interest can only be made on real income and not on notional income. However, Mr. Gopal does not dispute that the transaction is an International Transactions.

6 Chapter X of the Act, is an anti-avoidance measure and not an anti-evasion measure. It is not premised on the basis that the transactions entered into between the parties suffers from under/over invoicing. It accepts the value shown in the books of the Assessee. However, the value of the transactions by legislative mandate is brought in line with the consideration which would pass between two independent parties i.e. non-related/ non-associated enterprises. In fact, when the new provisions

viz: Section 92 to 92F of the Act was introduced w.e.f. Assessment Year 2002-03, the Explanatory Notes to the Finance Act, 2001 explained its objectives as under:-

“55.4:- The newly substituted section 92 provides that income arising from an international transactions between persons shall, be computed having regard to arm's length price. Any expenses or outgoing in an international transactions is also to be computed having regard to Arms Length Price”

*55.6:-
The basic intention underlying the new transfer pricing regulations is to prevent shifting out of its profits by manipulating prices charged or paid in International Transactions, thereby eroding the ... tax base ...
... ..”*

7 The Legislature has introduced a special provisions in respect of International Transactions to bring the income to tax having regard to Arms Length Price (ALP). In such case, the parties are obliged is to establish the ALP of the International Transactions entered into between the two AE is to bring to tax the real income i.e. the correct price of the transactions, shorn of, the price arrived at on account of relationship. It means the real income on application of a new measure. The object of the Transfer Pricing Officer is to put a stop to capital erosion and transfer of profits from one taxable territory to another taxable territory.

8 In the above settled position in law, the question as framed does not give rise to any substantial question of law.

9 Accordingly, **Appeal dismissed.** No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)