

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
579/Hyd/17	2012-13	GOCL Corporation Ltd., Hyderabad [PAN: AABCG8433B]	Dy.Commissioner of Income Tax, Circle-2(2), Hyderabad
2012/Hyd/17	2013-14		

For Assessee : Shri Y.Ratnakar, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 16-03-2021
Date of Pronouncement : 11-05-2021

ORDER

PER S.S.GODARA, J.M. :

These two assessee's appeals for AYs.2012-13 & 2013-14 arise against the DCIT, Circle-2(2), Hyderabad's assessment dated 30-01-2017 and 28-09-2017 framed in furtherance to the Dispute Resolution Panel ('DRP')-1, Bengaluru's directions dt.01-12-2016 and 31-08-2017 in F.No.132 & 280/DRP-1/BNG/2016-17, involving proceedings u/s.143(3) r.w.s.92CA(4) r.w.s.144C and 143(3) r.w.s.144C(5) r.w.s.144C(13) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. We now advert to the assessee's pleadings in both these assessment years. Its identical first grievance in AYs.2012-13, ground Nos.2 and 3 and 2, 4 and 5th substantive grounds in AY.2013-14; challenges correctness of the learned lower

authorities' action making Arm's Length Price (ALP) adjustments of Rs.11,64,240/- and Rs.31,85,162/- pertaining to corporate guarantees; assessment year-wise; respectively.

3. Learned counsel's first and foremost argument is that a corporate guarantee is a shareholder's activity which has been wrongly treated as an international transaction u/s.92B read with Explanation inserted by the Finance Act, 2012 with retrospective effect from 01-04-2002. He next sought to draw a distinction between the twin impugned assessment years that such a corporate guarantee furnished in AY.2012-13 could not fall u/s.92B of the Act since the foregoing Explanation came to be inserted vide Finance Act, 2012 as against financial year involved herein 2011-12 only. He has also quoted (2015) 63 taxmann.com 353 (Ahd-Trib) Micro Ink Limited Vs. ACIT, Addl.CIT Vs. Bharti Airtel Ltd. Vs. ACIT (2014) 63 SOT 113 (Delhi) and DCIT Vs. M/s.Mankasia Ltd., ITA Nos.208-209/Kol/2018, dt.30-11-2018. We find no merit in assessee's instant legal argument in principle since 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 and covered by the Explanation to section 92B with retrospective effect as well. The assessee's first and foremost legal argument fails therefore.

4. Next comes quantification of the impugned corporate guarantee commission. The assessee admittedly adopted 0.5% commission rate as against that adopted @1.8% in the

Transfer Pricing Officer's (TPO) order. The fact also remains that the DRP's order in AY.2013-14 has adopted similar corporate guarantee commission @1.3% only.

4.1. Learned departmental representative fails to dispute that TPO's order has gone by the Ministry of Finance, Government of India's Government Guarantee Policy in September, 2010 and State Bank of India's rates than fixing any independent comparable in the very segment. The fact also remains that we do not see any comparable coming from the assessee's side as well as its thrust all alone has been to contest the learned lower authorities' action treating such a corporate guarantee as an international transaction in above terms only.

4.2. Faced with this situation, we deem it appropriate that a lumpsum corporate guarantee commission of 0.9% in the given facts and circumstances would be just and proper in both the impugned assessment years i.e., AYs.2012-13 and 2013-14. We order accordingly. Necessary computation shall follow. It is further made clear that our impugned estimation shall not be taken as a precedent in any other case.

5. We stay back in AY.2012-13 and notice that the assessee's second substantive ground seeks to reverse both the lower authorities' alleged action denying carry forward set-off losses under the head 'capital gains' pertaining to AY.2010-11. It transpires during the course of hearing that this tribunal's order in assessee's appeal ITA No.401/Hyd/2016 (AY.2011-12) has restored the issue of carried forward of short term losses pertaining to earlier assessment years back to the Assessing Officer. The said order

has indeed not been considered in any of the lower appellate authorities' adjudication(s). We therefore proceed on the very line of action in the impugned assessment year as well by adopting judicial consistency and direct the Assessing Officer to verify all the necessary facts in the light of the consequential adjudication in the earlier assessment year(s). Ordered accordingly. This second substantive ground is taken as allowed for statistical purposes.

6. The assessee's third and last substantive ground in AY.2012-13 is that the learned lower authorities have erred in law and on facts in upholding capital gains addition of Rs.21,02,947/-. This Revenue's case on the other hand in light of the DRP's directions in para 2.3 is that the panel has already directed the Assessing Officer to verify the corresponding claim. The Assessing Officer's consequential assessment dt.30-01-2017 holds that such an additional claim could not be entertained in absence of a revised return as per hon'ble apex court's decision in Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC). We find no merit in the Revenue's foregoing argument. Their lordships have made it clear in para 4 that the same only applies on the Assessing Officer's jurisdiction to entertain a new claim than impinging upon the appellate authorities' similar jurisdiction to allow the concerned parties to plead new grounds. We therefore direct the Assessing Officer to adjudicate the assessee's impugned capital gains addition grievance on merits as per law within three effective opportunities of hearing. The assessee's former appeal ITA No.579/Hyd/2017 is partly allowed in above terms.

7. We are now left with AY.2013-14 appeal in ITA No.2012/Hyd/2017's latter substantive ground that the learned lower authorities have erred in law and on facts in not giving tax paid's credit to the tune of Rs.3,53,84,355/- on distributed profits u/s.115-O of the Act.

7.1. Learned counsel stated very fairly that the assessee no more wishes to press for the instant latter grounds as the due credit in issue already stands given in latter assessment years. This latter appeal ITA No.2012/Hyd/2017 is also accepted in part in foregoing terms. Necessary computation shall follow as per law.

8. These two assessee's appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 11th May, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 11-05-2021

TNMM

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Copy to :

1.GOCL Corporation Limited, Kukatpalli, PB No.01, Sanath Nagar (IE)(PO), Hyderabad.

2.The Dy.Commissioner of Income Tax, Circle-2(2), Hyderabad.

3.Dispute Resolution Panel (DRP), Bengaluru.

4.Director of Income Tax (IT & TP), Hyderabad.

5.Addl. Commissioner of Income Tax (Transfer Pricing), Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.