

आयकर अपीलीय अधिकरण  
कोलकाता 'सी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य  
एवं  
श्री रakesh मिश्रा, लेखा सदस्य  
के समक्ष  
**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 2597/KOL/2024  
Assessment Year: 2021-22**

M/s. Tega Industries Ltd.	Vs.	DCIT, Circle-11(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AABCT2074M</b>		

**Appearances:**

**Assessee represented by** : Ketan K. Ved &  
Amit Poddar, Ld. AR.

**Department represented by** : Praveen Kishore, CIT DR.

Date of concluding the hearing : 20-May-2025

Date of pronouncing the order : 16-June-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Assessment Unit, Income Tax Department (hereinafter referred to as Ld. 'AO') passed u/s 143(3)/144C/144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2021-22 dated 26.10.2024.

2. The assessee has raised the following grounds of appeal before the Tribunal:



*“1. Order bad in law and on facts*

*1.1. That the assessment order passed by the Ld. Assessing Officer ('Ld. AO') under Section 143(3) r.w.s 144C(13) read with Section 144B of the Act and read with the order passed by the Ld. Transfer Pricing Officer (TPO), under section 92CA(3) read with section 144C(5) of the Act is bad in law and void ab-initio.*

*1.2. That the Hon'ble DRP erred in not holding that the order of Ld. TPO and the draft order of the Ld. AO (in so far it relates to transfer pricing proceedings) are void-ab-initio as the conditions of section 92C(3) of the Act have not been satisfied.*

*2. Determination of arm's length price by the Ld. TPO, Ld. AO and Hon'ble DRP for Corporate guarantee commission received by the Appellant*

*2.1. That the Ld. TPO /Ld. AO/ Hon'ble DRP erred in not appreciating the fact that the issuance of corporate guarantee on behalf of the AE is not an international transaction as per section 92B of the Act.*

*2.2. On the facts and circumstances of the case and in law, the Ld. TPO, Ld. AO and Hon'ble DRP erred in making an adjustment of INR 24,79,701/- in relation to issuance of corporate guarantee on behalf of Tega Industries Chile SpA ("Tega Chile"), and in doing so, have grossly erred by amongst other things:*

*2.2.1. Not appreciating that the corporate guarantee has been issued to bank on behalf of the AE in the capacity of a shareholder, as shareholder functions, and there is no provision of service which warrant a separate charge.*

*2.2.2. Applying an arbitrary approach to benchmark the corporate guarantee transaction by erroneously using Comparable Uncontrolled Price ("CUP") method as the most appropriate transfer pricing method, although the said method applied is not in accordance with the first proviso to section 92C (2) of Act and Rule 10B (1) (a) of the Rules;*

*2.2.3. Without prejudice to above, the rate of guarantee commission recovered by the Appellant in the instant case is more than the rate being upheld by Hon'ble ITAT in plethora of judicial pronouncements wherein, the arm's length rate ranges from 0.20% to 0.53%.*

*3. Non-grant of interest under section 244A of the Act*

*3.1. The Ld. AO erred in not-granting consequential interest under section 244A of the Act to the appellant.”*



3. Brief facts of the case are that the assessee filed its return of income for AY 2021-22 on 15.03.2022 declaring total income of ₹ 118,64,50,672/-. The assessee company is engaged in the business of providing customized solutions to mining, mineral beneficiation, bulk material handling, environment and slurry transportation industry. The company specializes in manufacturing, distribution and life cycle management of wear resistant lining components required for grinding, sizing and beneficiation of minerals, and downstream equipment used in the aforesaid industries. The case was selected for complete scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). Accordingly, notice u/s 143(2) of the Act dated 28.06.2022 was issued and served upon the assessee. In response to the notice, the assessee submitted its reply on 06.07.2022. As the reason for selection of the case for scrutiny assessment included the 'Transfer Pricing Risk Parameter', the case was referred to the TPO with the approval of the Competent Authority. The Ld. TPO carried out the transfer pricing study and passed an order u/s 92CA(3) r.w.s. 144C(5) of the Act and computed the total Arm's Length Price adjustment at ₹ 24,79,701/- vide order passed u/s 92CA(3) of the Act dated 25.10.2023. The assessee filed an objection before the Dispute Resolution Panel which after hearing the assessee's contention issued directions/order u/s 144C(5) of the Act dated 19.09.2024. Subsequent to these directions the total transfer pricing adjustment made vide order u/s 92CA(3) of the Act dated 25.10.2023 at ₹ 24,79,701/- remained unchanged. Consequently, the assessment order was made by adding the variation of ₹ 24,79,701/- to the income of the assessee. Aggrieved with the assessment order, the assessee has filed the appeal before the Tribunal.



4. Rival contentions were heard and the submissions made and the paper book filed have been examined. No separate written submission has been made before the Tribunal and only the submission made before the Ld. AO, Ld. TPO and copy of orders passed by the Tribunal in assessee's own case have been filed.

5. Ground no. 1 being general in nature does not require any separate adjudication.

6. In the course of the appeal, the Ld. AR contended that the only ground of appeal is regarding the adjustment on account of corporate guarantee. The same is mentioned at para 3 to 3.3 of the directions of the Ld. DRP, which are as under:

*"3. Brief facts of the case*

*3.1 The assessee is primarily engaged in the development and manufacture of specialized wear resistant rubber lining offering a range of rubber, PU and ceramic based lining products. During the financial year 2020-21 relevant to the assessment year 2021-22 the assessee has entered into international transaction pertaining to guarantee for loans taken by its AEs.*

*3.2 During the year under consideration the assessee has entered into the following international transaction for AY 2020-21:*

<i>Transaction</i>	<i>pertain to Method</i>	<i>Amount (Rs.)</i>
<i>Manufacturing activity</i>		
<i>Receipt of SBLC fee</i>	<i>(Other Method)</i>	<i>6,96,641</i>

*3.3 The Assessing Officer/ TPO has proposed the following adjustments:*

<i>Amount of Loan (USD)</i>	<i>Terms of interest rate</i>	<i>Actual interest rate</i>	<i>Arm's length rate</i>	<i>No. of Days for which the loan was availed</i>	<i>Interest saving</i>	<i>CG Fee in INR considering 50% saving to be allocated to guarantor (USD)</i>
<i>20,00,000</i>		<i>3.10</i>	<i>6.385</i>	<i>365</i>	<i>3.285</i>	<i>32850</i>
<i>1,545,000</i>		<i>3.05</i>	<i>6.385</i>	<i>141</i>	<i>3.335</i>	<i>9997</i>
	<i>Total</i>					<i>42847</i>
	<i>Total CG Fee in INR (1 USD = 74.1322)</i>					<i>31,76,342</i>
	<i>Less: Amount offered as CG Fee</i>					<i>6,96,641</i>
	<i>Transfer Pricing Adjustment</i>					<i>24,79,701</i>



7. The Ld. AR argued before us that corporate guarantee is not an international transaction. However, without prejudice he also came up with an alternate argument which is also mentioned at para 2.2.3 in ground no. 2 of the appeal that the same may be adopted at the rate of 0.5%. In support, the assessee drew our attention to page 526 of the paper book being the order in the case of the assessee itself in I.T.A. No. 539/Kol/2022 for AY 2018-19; order dated 08/04/2024 in which the corporate guarantee fee at the rate of 0.5% has been charged. The relevant extract from the order of the Tribunal in the assessee's own case is as under:

*"8. We have heard rival contentions and perused the material placed before us. So far as the first issue as to whether the alleged transaction of providing corporate guarantee to its associate enterprise i.e., Tega Singapore and Tega Chile will fall into the category of international transactions or not, we find that Section 92B of the Act provides for the meaning of international transactions and the same is reproduced below:-*

*"92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.*

*(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be <sup>95</sup>[deemed to be an international transaction] entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise <sup>96</sup>[where the enterprise or the associated enterprise or both of them are*



non-residents irrespective of whether such other person is a non-resident or not].

*Explanation.*—For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction"<sup>98</sup> shall include —

(a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

(b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

(c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, 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;

(d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

(e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;”

9. Now, from perusal of the explanation to sub-Section (2) of Section 92B, the expression international transaction includes capital financing, include any type of long-term or short-term borrowings, 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. Since inclusive definition of international transaction includes the activities relating to capital financing and borrowings, in our view now corporate guarantee transaction also falls under the category of international transactions. In the instant case, undisputedly, the assessee has given corporate guarantee for loan borrowed by its subsidiary/SPV after acquiring the business. Certainly, with the help of such corporate guarantee interest burden of the AE has been lowered. Though, it is contended by the assessee that it had saved immediate use of it(s) own funds and the interest on the said borrowings has also been paid by the AE but this plea will not apply in the said transactions because, we are dealing





*specifically with the transactions of corporate guarantee and that with the help of such corporate guarantee, the AE has gained and then as per the TP provisions, the assessee is required to offer the corporate guarantee fee as income. Therefore, in view of the provisions of Section 92B of the Act, the alleged transactions of corporate guarantee with the AE falls in the category of international transactions. Our view is further supported by the judgment of the Hon'ble Madras High Court in the case of Principal Commissioner of Income Tax 5 vs. M/s. Redington (India) Limited in T.C.A.Nos.590 & 591 of 2019 judgment dt.: 10.12.2020. Accordingly, ground raised by the assessee that the alleged transactions is not an international transactions, is hereby dismissed.*

*10. Now, so far as the Ground relating to calculation of corporate guarantee fee is concerned, we find that this issue has come up before various judicial forums and corporate guarantee fee range of 0.2% to 0.5% has been found to be justified. We find support from the judgment of the Hon'ble Bombay High Court in the case of CIT v. Everest Kento Cylinders reported in (2015) 378 ITR 57 (Bom), and are inclined to give part relief to the assessee directing the TPO to compute corporate guarantee fee @ 0.5% and delete excess amount added in the hands of the assessee. Accordingly, Ground Nos. 2 & 3 raised by the assessee are partly allowed.*

*11. Ground Nos. 11 & 12 are relating to levy of interest u/s 234B/C of the Act which are consequential in nature and need no adjudication.*

*12. In the result, appeal of the assessee is partly allowed for statistical purposes."*

8. We have considered the submissions made. In view of the directions issued by the Tribunal in the assessee's own case for AY 2018-19 and the statutory provisions in this regard, the corporate guarantee is now held to be an international transaction. However, considering the fact that in the assessee's own case, the corporate guarantee fee at the rate of 0.5% has been upheld for A.Y. 2018-19 by the Coordinate Bench, we are also inclined to give part relief to the assessee and direct the Ld. TPO/AO to compute the corporate guarantee fee at the rate of 0.5% and delete the excess amount added in the hands of the assessee. Accordingly, ground no. 2 raised by the assessee is partly allowed.



9. Ground no. 3 relates to non-grant of interest u/s 244A of the Act. As regards interest u/s 244A of the Act, the same is allowable as per the provisions of sub-section (2) of section 244A of the Act and the dispute relating to the period of interest etc. is to be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final. Further, subsection (1A) of section u/s 244A of the Act refers to additional interest payable on account of a refund arising as a result of giving effect to an order u/s 254 wholly or partly, otherwise than by making a fresh assessment or reassessment and the provision in this regard. The assessee is required to approach the Ld. THE LD. AO, who shall consider the same in accordance with law as the granting of interest u/s 244A of the Act is an administrative issue and the same has to be done in accordance with law.

10. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open Court on 16<sup>th</sup> June, 2025.**

*Sd/-*

**[George Mathan]**

Judicial Member

*Sd/-*

**[Rakesh Mishra]**

Accountant Member

Dated: 16.06.2025

*Bidhan (P.S.)*





*Copy of the order forwarded to:*

1. **M/s. Tega Industries Ltd., 807, 8<sup>th</sup> Floor, Godrej Waterside Tower-2, Block DP-5, Sech Bhawan S.O, Salt Lake, North 24 Parganas, Kolkata, West Bengal, 700091.**
2. **DCIT, Circle-11(1), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata