

# TransPrice Times

Edition: 16<sup>th</sup> to 31<sup>st</sup> July 2019

## Suashish Diamonds Ltd – Mumbai ITAT

**Outcome:** Partially in favour of both  
**Category:** Interest rate on Share Application money

The taxpayer had advanced share application money in USD to its Associated Enterprise ('AE') and has received interest on such money on the basis of London Inter Bank Offered Rate ('LIBOR') plus 200 Basis Points ('BPS') based on recommendations of the Reserve Bank of India ('RBI') contending that it was at par with the interest rate on existing foreign currency loan availed by the taxpayer. The taxpayer also contended that a market-determined interest rate applicable to the currency in which the lending has to be repaid would be appropriate and not a comparison with the interest payable on the currency or legal tender of the location or country or residence of either entity.

The tax authorities contended that adding a mark-up to LIBOR only considers the risk when the transaction is made in forex, while ignoring foreign currency fluctuation risk, country risk, entity risk and administrative costs. The tax authorities further noted that the taxpayer had added 300 BPS in the prior year (accepted by the tax authorities) and thus, has violated the rule of consistency in the year under consideration by changing such mark-up to 200 BPS. The tax authorities, therefore, applied an additional 500 BPS and recalculated the interest receivable.

**The Tribunal held that since the taxpayer's own calculation of LIBOR plus 300 BPS for prior years has been accepted by the tax authorities, therefore, directed the tax authorities to recalculate the interest on share application**

money forwarded to AE by applying LIBOR plus 300 BPS.

## Adama India Pvt Ltd – Hyderabad ITAT

**Outcome:** In favour of the taxpayer  
**Category:** Benchmarking of Interest on CCDs

The taxpayer had borrowed funds from its AE by issuing Compulsory Convertible Debentures ('CCDs') and utilised the amount borrowed in the form of CCDs for its business operations within India.

The taxpayer compared its interest rate on the CCDs with the State Bank of India Prime Lending Rate ('SBI PLR') and concluded that the transaction was at arm's length. The transfer pricing authorities proposed to apply LIBOR rates as an appropriate method for benchmarking the international transaction of interest payments on the CCDs.

**After analysing the matter, the Tribunal observed that the matter is covered in the taxpayer's own case for a prior year where it was upheld by co-ordinate bench in favour of the taxpayer's determination of the interest payments to be at arm's length on the basis of SBI PLR as well as having supported such benchmarking by calculating the average coupon rate using data from NSDL website. Thus, the Tribunal upheld the contentions of the taxpayer in the instant matter and concluded the case in favour of the taxpayer.**

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**Amendment in India-China DTAA notified effective 5<sup>th</sup> June 2019**

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