

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4610/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

GE Global Sourcing India Private Limited, AIFCAS Building, 1 Rafi Marg, New Delhi - 11 0001.	बनाम/ v.	Income Tax Officer - Range 3(1)(4), Aayakar Bhavan, Mumbai - 400020.
स्थायी लेखा सं./PAN : AABCG0865H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	None
Revenue by :	Shri S. Senthil Kumaran,DR

सुनवाई की तारीख / **Date of Hearing** : 15-03-2016

घोषणा की तारीख / **Date of Pronouncement** : 13-06-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 4610/Mum/2013, is directed against the appellate order dated 07-02-2013 passed by learned Commissioner of Income Tax (Appeals)- 7, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28-12-2011 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"On the facts and circumstances of the case, the learned CIT(A) has:

1. erred in confirming action of the Assessing Officer in disallowing the professional fees paid to BMR Advisors Pvt. Ltd ('BMR'), an independent third party consulting firm on the ground that the expenses have not been incurred for the purpose of business of the Appellant;
2. erred in not appreciating the fact that the services provided by BMR in the process of bid with Rites Limited were in nature of advice from tax and regulatory perspective such as indirect taxes;
3. erred in confirming levy of interest under section 234B and 234C of the Act, which is not computed as per the law."

3. The brief facts of the case are that the assessee company is engaged in the business of providing sourcing services to GE Global Sourcing LLC, USA who is a 100% shareholder in the assessee company .The assessee company has said to have received an income of Rs.9,13,79,857/- on account of service charges from the holding company for providing vendor and supply related information to its holding company.

4. It was observed by the AO from the perusal of the P&L account for the year ended on 31st March, 2009 shows an amount of Rs. 1,65,31,483/- had been debited as 'legal and professional charges' by the assessee company. From the details submitted by the assessee company before the AO , it was observed by the AO that the assessee company paid a sum of Rs. 1,35,74,240/- to M/s BMR Advisors Pvt. Ltd.(hereinafter called "BMR") for 'consultancy advisory on upcoming business projects'. The assessee company was asked to submit the supporting evidences of these expenses. From the bills of BMR submitted by the assessee company, it was not ascertainable to the AO about the nature

and relation of these expenses to assessee company's business. The assessee company was asked by the AO to submit the details about the narration in the invoice 'Professional fee for the services rendered to GE in relation to the IR project' and how these expenses pertained to the business of the assessee company. The AO asked the assessee company to submit copies of the contract entered into by the assessee company with BMR .

The assessee company submitted that it is engaged in the business of providing sourcing services in relation to requirements of transportation, oil and gas and energy business and it further explored business of infrastructure projects. The assessee company submitted that as per its Memorandum of Association(MOA) , one of the objects of the assessee company is to engaged in the business of infrastructure projects in India. The assessee company made a bid for contract with Indian Railways for manufacturing and supplying locomotives to Indian Railways in relation to the manufacturing facility at Marhorwa , Bihar. The assessee company explained that the assessee company had paid 1,35,74,240/- to BMR for consultancy and advisory services for upcoming Indian Railways(IR) business project as stated above. The assessee company submitted that no agreement was entered into with BMR . The assessee company submitted that for availing these services from BMR for which there is no agreement other than invoices raised giving details of services rendered. The assessee company submitted that these expenses were incurred during the course of business of the assessee company although no income has been generated and hence these expenses should be allowed as business expenses. It was observed by the A.O. from the Profit and loss account for year ended 31st March, 2009 that an amount of Rs. 9,13,79,857/- was received by the assessee company on account of service charges from the holding company M/s GE Global Sourcing LLC, USA, and similarly for the preceding year the assessee company received its entire service income from the holding company M/s GE

Global Sourcing LLC, USA. During the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, the assessee company had furnished copy of service agreement dated 16th January, 2001 between the assessee company and the holding company M/s GE Global Sourcing LLC, USA which was for providing services to the holding company. It was observed that in consideration for payment of services contemplated in the agreement, the holding company GE Global shall pay to the assessee company i.e. GE India a fee which shall be equivalent to the cost of GE India providing the services plus 5% thereof. From the profit and loss account for the year ended 31st March, 2009, the A.O. observed that the total expenses of the assessee company was Rs. 9,90,14,100/-, while the income was Rs. 9,13,79,857/- and hence the expenditure was more than the income leading to a loss to the assessee company and hence there was some expenses claimed by the assessee company which does not pertain to their business of 'sourcing for the holding company'. In this endeavor as per the services agreement the assessee company is in receipt of a fee which is the cost plus 5%. The assessee company was captive service provider to the holding company. The A.O. further observed that the professional fee payment of Rs. 1,35,74,240/- paid to BMR Is not a business expense of the assessee company and is not incurred for company's business purposes. The assessee company has not added this expenditure in its monthly invoice to the holding company which proves that this expense is not for its business purposes. It was also observed that as per copy of MOA, object clause was inserted by the assessee company on 26th May, 2008 to engage in the business of infrastructure projects in India including manufacture of rail locomotives in India. Regarding expenses such as advises on new objective without concrete proposals cannot be considered as revenue expenditure deductible from income of original objectives of providing services to the holding company. It was observed from the computation of account furnished by the assessee company for financial year 2008-09 that the assessee company expanded the scope of its present

business of infrastructure projects to manufacture and supply of train locomotives etc. For this purpose, the assessee company incurred an expenditure of Rs. 1,35,74,240/- towards professional charges paid to consultants for assisting in the bidding for government contracts relating to setting up a manufacturing facility for manufacturing and supply of locomotives to Indian Railways. The proposal was cleared on technical and financial parameters, however, on account of decision by the Ministry of Railway, the said project was dropped. It was observed by the A.O. that apart from professional fees to BMR, no other expenses were claimed by the assessee company for such a project forming part of a purported separate line of business. The assessee company has obtained necessary approvals/clearance from the corporate law/government authorities and the proposal was cleared on technical parameters. Except for the professional fees of Rs. 1,35,74,240/- to BMR, no other expenses had been claimed by the assessee company. The details of services received from BMR stated about only of advice and research on government regulations and rules rendered by BMR. The invoices of BMR are not at all descriptive about the services rendered in relation to Indian Railways project hence it was not clear whether BMR is rendering service to the assessee company or any of the other subsidiaries or associate enterprise of the GE group. Thus it was held by the A.O. that the expenditure of Rs. 1,35,74,240/- is not assessee company's business expense neither it is a revenue expenditure, hence, the same is disallowed and added back to the total income of the assessee company vide assessment orders dated 28.12.2011 passed by the AO u/s 143(3) of the Act.

5. Aggrieved by the assessment orders dated 28.12.2011 passed by the A.O. u/s 143(3) of the Act, the assessee company has filed its first appeal before the learned CIT(A).

6. Before the learned CIT(A) , the assessee company reiterated its submissions as were made before the A.O.. It was submitted that the assessee company is engaged in the business of providing sourcing services to GE Global Sourcing LLC, USA in relation to the requirements of transportation, oil and gas and energy business projects. The assessee company expanded its present business operations to engage in the business of infrastructure projects as approved in terms of clause 4A of Article III(A) of the Memorandum Of Association of the assessee company, one of the objects of the assessee company is to engage in the business of infrastructure projects in India including but not limited to manufacture and supply of rail locomotives, spares and ancillary equipment and perform, carry out and engage in any acts, deeds, things, services in relation thereto. The assessee company made a bid for a contract with the Ministry of Railways in relation to a manufacturing facility at Marhowra, Bihar for manufacturing and supplying locomotives to the Indian Railways. The relevant copy of bid document submitted with the Ministry of Railway is filed by the assessee company before the learned CIT(A) for the first time as additional evidence which could not be filed before the A.O. The said documentary proof also covers the engagement letter with BMR advisors appointing them for giving advice for the Indian Railways project. The assessee company submitted that since the contract was a large contract, the assessee company wants to sub-contract part of the work to sub-contractors to make it cost effective and also desired to understand various tax costs associated with the project and also required assistance in the bidding process. Further, the assessee company desired to understand the incentives which were offered by the different Indian States for the said project to minimize overall tax cost. For this purpose, the assessee company engaged the services of BMR for consulting, advisory and other services like advice on various customs, excise and transfer pricing laws for manufacture and supply of locomotives to Railways and taxation etc. . For the above services rendered, the BMR raised invoices amounting to Rs.

1,35,74,240/- and the copies of the invoices capturing the details of the services were submitted to the A.O. The assessee company submitted that the invoices along with time costs demonstrate the nature of services rendered by BMR and the amounts charged which are incurred by the assessee company is wholly and exclusively in the course of its business. The assessee company has relied upon various case laws to support its contention. It is the contention of the assessee company that the A.O. has erred in disallowing the expenses in relation to the expenses such as advises on new objective without any concrete proposals , though the assessee company claimed that it is one of the object of the assessee company. The assessee company submitted that the professional charges paid to BMR are wholly and exclusively incurred for the purposes of business of the assessee company . Since it was for the infrastructure projects, which is separate from the sourcing business , the expenses were not included in the costs covered while invoicing to GE Global Sourcing LLC USA. It was also submitted that the expenses are incurred during the course of business carried out by the assessee company.

The learned CIT(A) asked for the remand report from A.O. with respect to the admissibility of the additional evidence.

The A.O. requested not to admit the additional evidence filed by the assessee company in its remand report submitted to the learned CIT(A). It was observed by the A.O. that the additional evidence document No. 1 to 4 did not pertain to the assessee company hence cannot be considered as having any bearing on the issue under consideration. The A.O. reported that the BMR is not rendering service to the assessee company, hence, the expenses cannot be attributed specifically to the business income of the assessee company.

The copy of remand report was sent by learned CIT(A) to the assessee company for its comments and in response to the remand report the assessee

submitted its reply. The assessee company had filed the following additional evidences before learned CIT(A) which were sent to the AO for his comments and remand report:-

- i) Acknowledgement from Rites Limited (A Govt. of India Enterprise) for receipt of bid documents from GE Global.
- ii) Relevant extract of draft agreement for procurement-cum-maintenance of locomotives, to be entered on onward of bid.
- iii) Relevant extract of request for qualification for bid.
- iv) Engagement letter with BMR.

The assessee company submitted that the above additional evidences are not advancing any new point but only to support the existing facts. It was submitted that in view of the new business, the assessee company made a bid for a contract with Ministry of Railways in relation to setting up of manufacturing facility at Marhowra, Bihar for manufacturing and supplying locomotives to the Indian Railways. The main objects of the assessee company was amended to insert clause 4A of the MOA as one of the objects of the assessee company was to engage in the business of infrastructure business, including but not limited, to manufacture and supply of rail locomotives , spares, ancillary equipments and perform, carry out and engage in any acts , deeds , things, service in relation thereto. The assessee company submitted the acknowledgment of Rites Limited acknowledging the receipt of bid, thereby considering the assessee company as an eligible candidate for bidding and submitted that it cannot be disregarded that the expenses incurred in relation to bid were business expenses of the assessee company. The relevant draft agreement and the relevant request for qualification were submitted. It was submitted that the Indian Railways contract is to be entered between the Director – Mechanical Engineering Works, Ministry of Railways and ‘Marhowra Diesel Locomotive Company Limited’ which was to be incorporated as a Special Purpose Vehicle(SPV) by the proposed bidder/consortium companies and hence the A.O.’s comments that different

concerns are parties to the agreement is untenable. It was submitted that draft bid documents were submitted by the assessee company before the learned CIT(A) and not the actual bid documents which contains the relevant information which are very confidential and sensitive which shows that the bids are still open and not awarded yet. The assessee company also submitted that the BMR is providing services to assessee company in relation to the infrastructure business and agreement is also between BMR and the assessee company with reference to Indian Railway project of the assessee company and not any other GE group company.

The learned CIT(A) rejected the contentions of the assessee company after admission of the additional evidence submitted by the assessee company. The learned CIT(A) held that the payment made by the assessee company is nowhere for the purpose of business of the assessee company. The BMR has rendered services to GE group and not to the assessee company. It was also held by the learned CIT(A) that based on facts on records, the said BMR is a firm of chartered accountants which has no such expertise in the bidding process of Rites Limited. There was no business exigency for such payment, hence, A.O. is justified in his action and accordingly the learned CIT(A) confirmed the disallowance made by the A.O. vide appellate orders dated 07/02/2013.

7. Aggrieved by the appellate orders dated 07/02/2013 of the learned CIT(A), the assessee company is in second appeal before the Tribunal.

8. At the time of hearing before us, none appeared on behalf of the assessee company. As per the order sheet entries, the appeal was adjourned several times earlier since 2014 as the assessee company was not appearing despite several notices issued by the Registry to the assessee company. Therefore, we proceed to dispose of this appeal after hearing the learned D.R.

9. The learned D.R. submitted that the payment has been made to BMR which is a Chartered Accountant Firm. As rightly pointed out by the lower authorities, the payment was not for the purpose of business of the assessee company. Further he relied upon the orders of authorities below.

10. We have heard the learned D.R. and also perused the material placed on record. We have observed that the assessee company is engaged in the business of rendering sourcing services to its 100% holding company GE Global Sourcing LLC USA on cost plus basis in relation to the requirements of transportation, oil and gas and energy businesses. The assessee company is recovering entire costs from its holding company along with mark up of 5%. The assessee company has amended the object clause in MOA during the relevant previous year and contemplates to enter into an entirely different line of business which is an altogether different source of income vis-à-vis existing business of the assessee company of rendering sourcing services to GE Global Sourcing LLC USA, by proposing to set up a manufacturing facilities for manufacturing and supplying locomotives to Indian Railways at Marhowra, Bihar. The assessee company has filed bids with Rites Limited, Ministry of Railways for award of the manufacturing facility at Marhowra, Bihar for manufacturing and supplying of locomotives to Indian Railways. From the records before us, it emerges that this is entirely a new line of business whereby new source of income will emerge and there is no connection with the existing business and source of the income of the assessee company. The assessee company has participated in the bid with Rites Limited, Ministry of Railways in consortium with bid partners for setting up manufacturing facility for manufacturing and supplying of locomotives to Indian Railways and not even the bids have been awarded to the assessee company and its consortium partners by Rites Limited, Ministry of Railways by the end of the previous year. Marhowra Diesel Locomotive Company Limited was proposed to be

incorporated as a Special Purpose Vehicle (SPV) by the proposed bidder/consortium partners to implement and set up this new manufacturing facility at Marhowra, Bihar for manufacturing and supplying of locomotives to Indian Railways. We find that a sum of Rs. 1,35,74,240/- was paid to M/s BMR for consultancy/advisory on upcoming business project for setting up manufacturing facility at Marhowra, Bihar for manufacturing and supplying of locomotives to Indian Railways. Since, these are pre operative and preparatory expenses which are incurred prior to setting up of business and prior to coming into an existence altogether new source of income as set out above, these expenses cannot be allowed as revenue expenditure as per provisions of Section 3 and 4 of the Act. Moreover as per facts emerges from records, these expenses are also relatable to the Special Purpose Vehicle (SPV) to be incorporated by the proposed bidder/consortium partners which included assessee company for setting up of a new manufacturing facilities at Marhowra, Bihar for manufacturing and supplying of locomotives to Indian Railways, hence, these expenses in-fact do not pertain to the assessee company as they are relatable to the project to be set up by the SPV as set out above by consortium partners and are in-fact preoperative and preparatory expenses of SPV which is yet to be incorporated and which are incurred prior to its incorporation and also prior to the setting up of afore-stated business by SPV. These expenses paid to BMR are also not incurred for the purpose of the existing source of income or business of the assessee company and are in-fact preparatory expenses prior to setting up of business by SPV. Even if it is considered to be borne by the assessee company and not to be borne by SPV, then also the new projects has not yet been set-up and in any case these expenses are pre-operative expenses and preparatory expenses relatable to the new manufacturing facility to be set up at Marhowra, Bihar for manufacturing and supplying of locomotives to Indian Railways and cannot be classified as Revenue Expenditure allowable under the provision of

the Act keeping in view the facts and circumstances of the case as set out above.

The reference is drawn to provisions of Sections 3 and 4 of the Act which stipulates as under:

" [***Previous year***" ***defined.***

3. For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year :

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year.]"

"***Charge of income-tax.***

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and [subject to the provisions (including provisions for the levy of additional income-tax) of, this Act] in respect of the total income of the previous year [* * *] of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.'

Section 4 of the Act is a charging section which stipulates that the income shall be charged to tax in respect of the assessment year on prescribed rates in accordance with and subject to provisions of the Act in respect of the total income of the previous year of every person. While previous year is defined to be financial year immediately preceding assessment year and in case of a business or profession newly set up or a source of income newly coming into existence , in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession , or as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year. Reference is also drawn to the judgment of Hon'ble Bombay High Court in the case of *Western India Vegetable Products Ltd. v. CIT* [1954] 26 ITR 151 whereby the Hon'ble Bombay High Court has drawn a distinction between the setting up of business and the commencement of business as under:

'Now, turning to our statute, the deductions claimed are under Section 10(2) and they are in relation to a business and in order that those deductions can be allowed, the business must be carried on by the assessee. In this case it is not disputed that the business was carried on in the relevant previous year which is the financial year 1946-47, but the important question that has got to be considered is from which date are the expenses of this business to be considered permissible deductions and for that purpose the section that we have got to look to is Section 2(11) and that section defines the "previous year" and for the purpose of a business the previous year begins from the date of the setting up of the business. Therefore it is only after the business is set up that the previous year of that business commences and in that previous year the expenses incurred in the business can be claimed as permissible deductions. Any expenses incurred prior to the setting up of a business would obviously not be permissible deductions because those expenses would be incurred at a point of time when the previous year of the business would not have commenced. We must therefore look at the

decision of the Tribunal as really referring to the setting up of the business in the language of Section 2(11) and not expenses connected with the commencement of the business. Mr. Palkhiwalla says that if that be the correct approach, then the Tribunal has misdirected itself in considering the commencement of the business and not the setting up of the business. Let us try and understand whether there is any difference between the two expressions "setting up" and "commenced" and if so, what is the difference. It has often been said that the English language does not contain synonyms and every English expression must mean something different, however slight the difference, from any other expression. English language is full of nuances and if possible we must give a different meaning to the expression "setting up" from the expression "commenced". Mr. Joshi very strongly relied on a judgment of Mr. Justice Rowlatt reported in Birmingham and District Cattle By-products Co. Ltd. v. Commissioners of Inland Revenue [1919] 12 Tax Cas 92. In that case the assessee company was incorporated on the 20th of June, 1913, and between that date and the 6th of October, 1913, the directors arranged for the erection of works and the purchase of plant and machinery, and entered into agreements relating to the purchase of products to be used in the business and to the sale of finished products. On the 6th of October, 1913, the installation of plant and machinery being completed, the company commenced to receive raw materials for the purpose of manufacture into finished products. For the purposes of excess profits tax a question arose as to the computation of average amount of capital employed by the company during the accounting period and the company contended that it commenced business on the date of its incorporation, viz., on the 20th of June, 1913, and that the pre-war standard should be based on the profits shown by revised accounts for the period 20th June, 1913, to 30th June, 1914, and Mr. Justice Rowlatt held, upholding the view of the Commissioners, that the business of the company had commenced on the 6th of October, 1913. Now, this is indeed a very strong case on facts in support of the Commissioner, because the view taken by Mr. Justice Rowlatt is that everything that had been done by the company before the installation of the plant

and machinery was completed was preparatory to the commencement of the business and it was only when the company actually started receiving raw materials for the purpose of manufacture into finished products, the plant and machinery being ready, that it could be said that the assessee company had commenced business, and this is what the learned Judge says at page 97 :

"Referring to their minutes having looked round, and having got their machinery and plant, and having also employed their foremen, and having got their works erected and generally got everything ready, then they began to take the raw materials and to turn out their products."

Therefore if this case were to be applied to the present assessee, then we would be driven to the conclusion that, if anything, the Tribunal has taken a view of the case very favourable to the assessee because on the facts of this case it would seem that the Income-tax Officer was right in holding that the net expenses prior to the 1st of November, 1946, should not be allowed as permissible deductions. That is why it is important to consider whether the expression used in the Indian statute for setting up a business is different from the expression Mr. Justice Rowlatt was considering, viz., "commencing of the business." It seems to us, that the expression "setting up" means, as is defined in the Oxford English Dictionary, "to place on foot" or "to establish," and in contradistinction to "commence". The distinction is this that when a business is established and is ready to commence business then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. But there may be an interregnum, there may be an interval between a business which is set up and a business which is commenced ' and all expenses incurred after the setting up of the business and before the commencement of the business, all expenses during the interregnum, would be permissible deductions under Section 10(2). Now applying that test to the facts here, the company actually commenced business only on the 1st of November 1946, when it purchased a ground-nut oil mill and was in a position to crush ground-nuts and produce oil. But prior to this there was a period

when the business could be said to have been set up and the company was ready to commence business, and in the view of the Tribunal one of the main factors was the purchase of raw materials from which an inference could be drawn that the company had set up its business; but that is not the only factor that the Tribunal taken into consideration. The Tribunal has as pointed out in the statement of the case, scrutinised the various details of the expenses given in the order of the Appellate Assistant Commissioner and having scrutinised those expenses the Tribunal has come to the conclusion even on an interpretation more favourable to the assessee than the one we are giving to the expression "setting up" that these expenses do not show that the business was set up prior to the 1st of September, 1946. In our opinion, it would be difficult to say that the decision of the Tribunal is based upon a total absence of any evidence. As we have often said we are not concerned with the sufficiency of evidence on a reference. It is only if there is no evidence which would justify the decision of the Tribunal that a question of law would arise which would invoke our advisory jurisdiction which after all is a very limited jurisdiction.

We will, therefore redraft the question submitted by the Tribunal as follows: "whether there was evidence before the Tribunal to hold that the assessee company set up its business as from 1st of September, 1946?" and we will answer that in the affirmative. No order as to costs.'

The above decision of Hon'ble Bombay High Court was approved by Hon'ble Supreme Court in the case of *CWT v. Ramaraju Surgical Cotton Mills Ltd.* [1967] 63 ITR 478.

In the instant case under appeal, the project for manufacturing and supplying of locomotives has not yet been set up , while only preparatory steps are taken by the assessee company by bidding for award of the contract by Rites Limited , Ministry of Railways in favour of the consortium partners which included assessee company also for setting up manufacturing facility at

Marhowra, Bihar for manufacture and supply of locomotives to Indian Railways whereby bid documents has been filed with Rites Limited , Ministry of Railways and these expenses of Rs.1,35,74,240/- paid to BMR on consultancy and advisory services in connection with this Indian Railway project are merely preparatory expenses incurred by the assessee company prior to setting up of business and hence cannot be allowed as revenue expenditure in the hands of the assessee company. Looking into all these facts and circumstances of the case we find no infirmity in the order of the ld. CIT(A) and we uphold and sustain the same for the reasons as indicated above. We order accordingly.

11. In the result, the appeal filed by the assessee company in ITA NO. 4610/Mum/2013 for the assessment year 2009-10 is dismissed.

Order pronounced in the open court on 13th June , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 13-06-2016 को की गई ।

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 13-06-2016

व.नि.स./ ए.के., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "G" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai