आयकर अपीलीय अधिकरण, मुंबई "के" खंडपीठ
Income-tax Appellate Tribunal -"K"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and C.N. Prasad,Judicial Member

आयकर अपील सं./ITA/6332/Mum/2008,निर्धारण वर्ष /Assessment Year: 2003-04

M/s. Star India Pvt. Ltd. Star House, Opp. Dr. E'Moses Road Mahalaxmi,Mumbai-400 011. **PAN:AAACN 1335 Q**	Vs.	ACIT, Range-11(1) Mumbai-400 020.

आयकर अपील सं./ITA/6385 /Mum/2008,निर्धारण वर्ष /Assessment Year: 2003-04

ACIT, Range-11(1) M.K. Marg,Mumbai-400 020.	Vs.	M/s. Star India Pvt. Ltd. Star House, Mahalaxmi,Mumbai-400 011.

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent)**

Revenue by: Shri N.K. Chand-CIT
Assessee by: S/Shri Porus Kaka & Divesh Chawla

सुनवाई की तारीख **/ Date of Hearing: 04.05.2016**
घोषणा की तारीख **/ Date of Pronouncement: 20.05.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-</u>

Challenging the order,dtd.12/11/2008,of CIT(A)-XXXII,Mumbai,the assessee and the Assessing Officer (AO) have filed cross appeals for the above mentioned AY. Assessee-company is engaged in the business of producing/ procuring TV programmes and supplying them to overseas media companies. It also acts as an agent for advertisement sales for overseas media companies and carries on channel subscription business. It filed its return of income on 30.10.2004, declaring total income at Rs.42,79,81,700/-.The AO completed the assessment on 28/12/2006, u/s. 143(3) of the Act, determining its income at Rs.311.49 Crores. Before us, the Authorised Representative (AR) of the assessee stated that assessee was not interested in pursuing first three Grounds. Hence, same stand dismissed.

2. During the assessment proceedings, the Assessing Officer(AO)found that assessee had entered into International Transaction(IT) with its Associated Enterprise(AE). He made a reference to the Transfer Pricing Officer (TPO), as

per the provisions of section 92 of the Act,to determine the Arm's Length Price (ALP) of the said transaction. The TPO selected following comparables:

Comparable companies	**Operating margins on cost**
Cinerad Communication Limited	1.47%
Cinevistaas Limited	13.63%
Creative Eye Limited	5.57%
New Delhi Television Ltd.	30.90%
Arithmetic mean	**12.89%**

He found that the assessee had calculated the margin of 5.04% on operating costs for the year under appeal. Therefore, the TPO made TP adjustment of Rs.18,85,92,757/- as under:

Particulars	Amount(in Rs.)
Margin on operating cost as per arms length margin (2402065960*12.89%)	30,96,26,302
Margins earned	121,03,35,45
Adjustment	**18,85,92,757**

In pursuance of the order of the TPO, the AO made an addition of Rs. 18.85 crores to the total income of the assessee.

4.Aggrieved by the order of the TPO/AO the assessee preferred an appeal before the First Appellate Authority(FAA). Before him, the assessee argued that during the year under consideration the assessee had procured more than 90% of its contents from external producers, that it was engaged in negligible content creation activity, that it merely procured the contents from third party for supply to its AEs, that the TPO had erred in using the margins of the companies engaged in creation of the contents, that the said data was not available to the assessee at the time of preparing TP study, that the TPO had selected four comparables, that two of the comparables namely NDTV and Cinevistass Limited (CL)ought not have been selected as comparable, that NDTV had earned an unusual operating cost of 30.90% as compared to operating cost margin earned by the other comparables, that selection of NDTV was not proper, that the financial statements of NDTV for the year under consideration were not available in public domain, that the financial statements of NDTV were available were from the next the year, that NDTV had entered into content

production agreement with Star and BBC in 1995-96, that in the year 1998 NDTV started its first 24 hour news channel in alliance with Star, that from a content supplier to Star it became a national broadcaster and the owner of its own channels

After considering the submission of the assessee and the orders of the TPO/AO, the FAA held that the assessee was engaged in procuring the contents through (i) programmes created by third parties, (ii) films procured from producers, (iii) format shows, (iv) inhouse production, (v) Promotions, that out of those sources the assessee basically acted as content creator/producer in respect of the activities at (i), (iii) & (v), that the programmes created by third parties on behalf of the assessee were in the nature of assessee's own content, creation, that same were made to order format and were prepared under the supervision and instruction of the assessee, that the items at (iii), (iv) & (v) were self created programmes, that out of five models of content procurement in four models the assessee acted as creator/producer, that the assessee had claimed almost 90% of their content was procured external producers, that no such party-wise detail of procurement and inhouse production details were furnished during appellate proceedings to substantiate the claim, that the relevant transaction of the assessee was not comparable to ordinary exporters, that the TPO was justified in rejecting such comparables used by it in the TP study report, that the assessee had objected inclusion of NDTV and CL, that it had argued that their margins very high and unusual, that NDTV was the content creator and it supplier to the assessee, that simultaneously it could not be treated as content creator, that the argument advanced by the assessee devoid of merit, that the profit margins of the four comparables, identified by the TPO were in a normal progression of 1.47%, 5.57%, 13.63% and 30.9%, that the margins of any one of them could not be excluded, that none of the comparables had shown unusually high or low figure of profit, that the assessee acted as a content creator, that it had not procured all its contents form NDTV, that it was doing inhouse content

production activity also, that assessee had not made a claim that 90% of the content was procured from the content creators like NDV, CL, Balaji Telefilms, UTV Software Communication, etc. Finally, the FAA upheld the order of the AO.

5.Before us, the Authorised Representative(AR) stated that assessee was engaged in purchasing/procuring/sourcing content from external producers and in-house production for supply to its AE, that it had purchased/procured/sourced more than 90% of its contents from external producers by way of films (page 803 of the paper book), that it had created only 2% of its contents, that it would sell the content to its AE on a cost +5% markup which further sold the content to the general companies, that the assessee primarily acted as an export trader in respect of content purchased/procured/sourced, that the assessee used TNM and it was the most appropriate method, that it had considered the companies that were engaged in a broad range of export trading activity (Pg.555-56 of the PB), that based on the details search conducted it identified eleven comparables, that arithmetic mean of those companies was 5.75% , that the IT was concluded at arm's length(Pg.558 of the PB), that the TPO without following any proper procedure arbitrarily held that assessee was a content created/producer, that the TPO did not carry out any such process or disclose the procedure that led to selection of the for comparables(Pg.558), that the comparables were selected contrary to the procedure required by the Act, that the FAA had upheld the adjustment on the ground that products were made for the assessee, that he treated the assessee is creator of the product, that as purchaser/procurer it was sourcing 98% of the contents from third parties, that the assessee could not be compared to content producers due to the different Functions, Assets and Risks (FAR) and business models. To demonstrate that the assessee was purchasing/ procuring/sourcing of contents, the AR referred to the agreement entered into with UTV Softwares (UTVS)(Pg.1300-17 of the PB). He further stated that the

assessee exercised control over the quality of the product sourced, that it was a normal business requirement of a person- including a trader, that the FAR of the assessee was very different from the content producers such as NDTV and Cinevistaa, that the assessee would undertake inspection and quality control, that it would coordinate with the content producers and its AE's, that the content producers would develop, create, compose film, that they would also look after post production that they would edit and deliver the contents to other parties for broadcasting, that all the costs related to production such as actors, equipments, creator personnel were in the books of the content-producers, that assets such as lights camera studios and sets were not utilised by the assessee except for its in-house production, that financials of the assessee did not include any such costs/ assets for the contents purchased/procured/sourced, that NDTV utilised such assets, that two of the comparable companies selected by the TPO i.e. NDTV, CL were actual content producers for the assessee, that the assessee had bought content from both of these companies during the assessment year 2003-04, that financial statements of NDTV for AY.2003-04 were not available in the public domain at the time or even today, that the assessee had requested the concerned TPO to provide with evidence forming the basis for selecting NDTV as comparable and the manner of computation of margin earned by NDTV for the subject assessment year, that the financial assessments of NDTV available in the public domain are from AY.2004-05 onwards, that NDTV had admitted that it had entered into content reduction agreement with STAR and BBC (Pg.1182 of the PB), that the assessee had furnished the details of programmes procured from the external producers and the inhouse production (page 803 of the PB), that the assessee had filed details of the programs procured from NDTV, CL, Balaji Telefilms, etc. and a claim in this regard was also made before the AO (page 544, 588-589, 833-835 of the PB).

The Departmental Representative(DR) referred to article 3 closes 3.1 and 3.2 of the agreement entered into with the UTV and stated that the assessee had

control over production and procurement, that UTV had to produce the program as per the technical guidelines from the assessee, that it would control the technical quality of the programs produced by UTV, that nature of the activities has to be decided on the basis of agreement, that the assessee was deeply involved in creation, that the assessee had picked up comparables that were engaged in marketing, that the TPO had selected comparables from the entertainment industry, that the assessee was not simply procuring programmes, that it was monitoring supervising and creating programmes, that agreement with NDTV and others was for production but the assessee was monitoring the progress. He referred to pages 345-349 and 1300-1354 of the paper book.

6.We find that the assessee had procured contents worth Rs.2,03,49,34,614/- from the third parties during the year under appeal, that the expenditure incurred for in-house production was Rs.3.55 crores, that the promotional and post - production expenses for the year under consideration was Rs.11.66 crores. If the expenditure incurred by the assessee for in house production is compared with the expenses of procurement one thing becomes very clear that the assessee had rightly claimed that in-house production was very less. We find that the assessee had furnished the details about the programmes procured from the outsiders and the inhouse programmes during the assessments/appellate proceedings. Perusal of pages 544, 588, 803 & 833 clearly establish that the above mentioned details were made available to the departmental authorities.

6.1. First of all we would like to discuss the issue of process of selecting comparables. We find that in the case of Temasek Holding Advisers India Private Limited (ITA/776/Mum/2015)the Tribunal has discussed the issue of in following manner:

> *"…. Before analysing each and every comparables in the background of arguments made before us and material placed on record, it is notice that nowhere in the TPO order it is mentioned what selection process has been adapted for including the two*

comparables by the TPO. What are the criteria, keywords, quantitative and qualitative filters applied for selecting the comparables. If rules provide for selection criterion of comparables, then same has to be adhered to strictly i.e. either parties. If a particular mechanism of such process is to be done scientifically by the assessee then same applies to the TPO also, otherwise it will always create suspicion of cherry picking of the comparables by the parties. There cannot be two different standards under the law one for the assessee and one for the TPO. So far as selection of the comparables by the TPO, nothing has been brought on record before us, that the TPO had adopted any scientific method for selection of his two comparables, i.e. Motilal Oswal Investment Advisory Private Ltd. and Future Capital Holdings Ltd.…".

If the selection process of comparables adopted by the TPO is examined it becomes clear that he had not adhered to the process as envisaged by the provisions of the Act and the Income tax Rules,1962(Rules).In case of one comparable data of the year under consideration was not available in public domain. It was never made available to the assessee. We would discuss this issue at proper place. In short, the process adopted by the assessee with regard to select the comparable was faulty.

6.2. Now we would like discuss two of the comparables selected by the TPO and objected by the assessee. First of all we would refer to the agreement entered into by the assessee with UTVS i.e. the first comparable. The preamble of the agreement reads as under:

"….. STAR INDIA is engaged in the business of sourcing/supplying television programs"

"UTV is in the business of producing programmes and has agreed to produce program the same on audiovisual medium to match the shape and emerge the script and screenplay to the pre-decided thing and/or concept as per given specification"

"STAR INDIA has approached UTV for the creation, composition, filming, production, editing postproduction and delivery of programs…."(Pg. 1300-01 of the PB).

Clause 2.1 of Article 2 deals with Production, Delivery and Essential Elements and same reads as under:

"UTV agrees to create, compose, film, produce, post-produce, edit and delivers the episodes of the program and delivered to STAR INDIA.

We would like to refer to page 1222 of the PB which gives details of assets of NDTV.A perusal of the paper reveal that the items appearing in the balance sheet of NDTV are different from the assets and liabilities of the assessee-company.

We find that Pg.803 of the paper book clearly indicates the name and the content and the name of the production houses from whom those contents were bought by the assessee, that the production house/manufacturers margin are already included in the content purchase price of the assessee and therefore same cannot be compared with it. We find that at page 1192 of the PB, NDTV has mentioned that from year 2003-04 its primary business changed from production of television software to a broadcaster of its own channel, that it was handling two business models. At Pages 1199 & 1203 of the PB, the assessee has mentioned as under:

"a year in which your company was transformed from being production house that was producing programmes for a channel owned by another organisation, into becoming a national broadcaster and owner of our channels……..

Business review and operations

Our primary business change from reduction of television software for other broad - casters to television new broadcasting through our own channel."

Page 1222 of the PB, under the head production expenses, gives details of expenditure such as set construction, helicopter running and maintenance, graphic, music and edits etc.

6.3. Now we would like to take the other comparable i.e. CL. Pages 84 of the PB reads as under:

"the improved performance during the year as a result of the company's strong programming on the private satellite channels like Star plus with Sanjeevani, Sssssh Koi hai and Jai Mata Ki continuing to perform strongly".

At page 848 of the PB following description is found-

"Your company's studio at Kanjur Marg is being used extensively for the shooting of various television programmes, feature films and ad commercial for both in house and external producer."

From the above one thing is clear that the assessee is not content producer like

NDTV or CL. We agree with the argument advance by the assessee that quality control is totally different from manufacturing. If a businessman or trader gets anything produced or manufactured for his business he would definitely ask the supplier for certain quality. Whether he is the final consumer or not will not make any difference. In the competitive world of entertainment one has to keep in mind likes and dislikes of the viewers. The assessee was supplying the programmes to its AE and finally the programmes were to be telecasted. Without quality control or a guiding policy for the programmes one cannot go with the changing tastes and moods of the viewers. But, such guidance will not make the assessee content producer. The job profile of a content producer is totally different from an assessee who purchases programmes from them. Content producers have to hire artists, script writers, and technicians and produce serials or programmes. For that they have to spend a lot for site locations, shootings and have to pay remuneration to the artists and technicians. The profits and loss account and balance sheets of content producers will be totally different from the P&L a/c and B/S of a purchaser of contents. We find that the balance sheets of NDTV and CL are quite similar. The accounts maintained by the assessee do not have production or post production expenses. In short, FAR analysis of the assessee and the comparables reveal that they are not similar in any of the three fields. Therefore, comparing it with both these companies was not justifiable at all. One more important issue is of non availability of data in the public domain of NDTV for the year under appeal. The assessee had specifically raised this issue before the FAA, but he had not dealt with it. It is not known as to how and from where the TPO had got the data. He did not reveal the assessee the source of his information thought a specific request was made by it. The non-supply of basic data vitiate the whole TP exercise. As a quasi judicial authority TPO is required to follow the principles of natural justice. The TPO ignored them and the FAA allowed the violation of them. Tax liability cannot be fastened to an assessee in that manner.

Being a representative of the Sovereign the TPO should have supplied the information to the assessee if he wanted to use it to against it. Collecting information behind the back is permissible but using the same without confronting the assessee is impermissible. The FAA had also missed a very important fact that during the year under appeal NDTV was a pure content producer. Therefore, selection of NDTV, as a comparable in our opinion was not justified. Similarly, he should not have selected CL as a comparable because it was supplying contents to various entities including the assessee. Thus, there were two basic flaws in the approach of the TPO and the FAA. First to hold that the assessee was a producer of contents and secondly to include NDTV and CL in the list of the comparables. If both these comparables are taken out of the list no TP adjustment will be required. Therefore, reversing the order of the FAA we decide ground no.4 in favour of the assessee.

ITA/1370/M/2009:

7. First Ground of appeal, raised by the AO, is about deductibility of license fee.It was brought to our notice that while deciding the appeal for AY.2001-02, the Tribunal had decided the issue in favour of the assessee, that the Hon'ble Bombay HC had dismissed the Revenue's appeal, that the Hon'ble Supreme Court did not admit the SLP filed by the department, that the Tribunal had directed the AO to reconsider the claim of assessee, while deciding appeal for AY.2002-03, that the AO himself allowed the deduction at the assessment stage while completing assessment for the AY.s2005-06 and 2006-07.The DR left the issue to the discretion of the bench.

8.We find that while adjudicating the appeal for the AY.2002-03 the Tribunal had dealt the issue(ITA/3585&3586/Mum/2006/ dtd.28.05.2008) as under:

> *15. Having heard the rival submissions and from a careful perusal of records we find that in the impugned assessment yeas though Assessing Officer made a*

reference to the Transfer Pricing Officer under Section 2 of the I.T. Act to determine the arms length price of the licence fee but while adjudicating the issue he squarely relied upon his order for the Assessment Year 2001-02. He did not even made reference of the report of the Transfer Pricing Officer. The Assessing Officer even did not take into account the amendment brought in Section 92 with effect from 01-04-2002, i.e. Assessment Year 2002-03 according to which allowance for any expenses or interest arising from an international transaction shall be determined having regard to the arms length price. From the Assessment Year 2002-03 the Assessing Officer is required to compute the total income of the assessee under sub-section (iv) of Section 92C having regard to the arms length price determined under sub-section (iii) by the Transfer Pricing Officer. But the Assessing Officer did not look into the report of the Transfer Pricing Officer and he was carried away with the assessment order for the Assessment Year 2001-02 and has disallowed the entire claim of the assessee.

16. The CIT(A) has also adjudicated the issue in a cryptic manner following the order of his predecessor for the Assessment Year 2001-02 without looking into the fact that the provisions of Section 92 has undergone a change and with effect from Assessment Year 2002-03 the Assessing Officer is required to compute total income of the assessee under sub-section (iv) of Section 92C having regard to arms length price determined under sub-section (in) by the Transfer Pricing Officer. The CIT(A) also did not take cognizance of the report of the Transfer Pricing Officer and transfer pricing analysis for the licence fee filed before him. It is not the case where the assessee has made a payment of the licence fee without obtaining any approval from the competent authorities. The payment of licence fee was made after obtaining the approval of the Reserve Bank of India and copy Of the approval is placed on record. Reliance was also placed before us upon the judgement of jurisdictional High Court in the case of SG S India (P) Ltd. 208 CTR 263 in which it has been held that if the expenditures are incurred after obtaining the RBI approval, the reopening of the assessment on the ground that the calculations are not at arms length is without any merit. In the instant case the assessee has obtained the approval from the RBI before making the payment of licence fee, as such the nature of payment cannot be out rightly rejected or doubted. It requires proper adjudication in the light of detailed analysis and relevant evidences furnished by the assessee. Whereas the Assessing Officer has disallowed the entire claim of payment of licence fee without looking into the merits of the case and the relevant provisions of the Act. In the impugned assessment year the claim of the assessee should have been examined in the light of the report of the Transfer Pricing Officer and the evidences filed by the assessee but the Assessing Officer as well as the CIT(A) have not adjudicated the issue in accordance with law. We, therefore, are of the view that this issue requires fresh adjudication. Since the report of the Transfer Pricing Officer has already been obtained and the issue requires proper examination by the Assessing Officer in the light of the report of TPO, detailed analysis of licence fee paid and other evidences filed by the assessee, we set aside the order of the CIT(A) in this regard and the matter is restored to the file of the Assessing Officer to readjudicate the issue in terms indicated above.

Respectfully following the above we are restoring the issue to the file of the TPO/AO, who would decide the issue after hearing the assessee. First ground of appeal is decided in favour of the AO, in part.

9. Second Ground deals with deductibility of advertisement and publicity expenses. We find that the Tribunal had decided the issue against the AO for the AY.s 1997-98 to 2000-2003, that the Hon'ble High Court and the Apex Court did not entertain the appeals filed by the department. We would like to repro - duce the relevant part of the order of the Tribunal for the AY. 2000-01 in ITA No.1249 and 378/Mum/2004,dated 16.4.2008.

> *"69.The next issue, common to both the appeals, relates to the disallowance of Rs. 21,78,87,244/- in respect of advertisement expenditure. The disallowance was made by the Assessing Officer. Following his orders for the earlier years, on the ground that this expenditure was not incurred wholly and exclusively for the purpose of business as provided in section 37 of the Act. On appeal, the learned CIT (A), following his orders for the earlier years, allowed partial relief to the tune of Rs.6,33,97,222/-. Aggrieved by the same. the assessee as well as Revenue are in appeal before the Tribunal.*
>
> *70. After hearing both the parties, we find that this issue is covered in favour of the assessee by the decision of the Tribunal for Assessment Year's 1997-98 to 1999-2000 (supra) wherein it has been held that such expenditure was incurred wholly and exclusively for the purpose of business and therefore no disallowance could be made in this regard. Since the matter is covered by the earlier decision of the Tribunal in assessee's own case we have refrained ourselves from narrating the necessary facts and details in this regard. Following the decision of the Tribunal for earlier years, the issue is decided in favour of the assessee. The order of learned CIT(A) confirming the disallowance is hereby set aside and consequently, the disallowance confirmed by him is hereby deleted. This would dispose of ground no.3 in the appeals of the assessee as well as Revenue."*

Respectfully, following the above order second ground of appeal is dismissed.

10. Next ground deals with addition made on account of point of accrual of commission income. The AR stated that the Tribunal had decided the issue in favour of the assessee, while deciding the appeal for AY.s.1997-98 to 99-2000 (103ITD73)& AY.2000-01(22SOT444), that the department did not succeed before the Hon'ble High Court or the Hon'ble Supreme Court, that the Tribunal had decided identical issue in favour of the assessee while adjudicating the

appeal for AY.2006-07.The Tribunal had decided the issue as under while deciding the appeal for AY.2000-01 (supra).

> *"65. The next issue arising from the appeal of assessee relates to the addition of Rs.6,85,l5,145/- in respect of commission income (wrongly mentioned as addition of Rs.23,64,41,347/- in the ground no 2 raised by the assessee). Briefly stated, the facts are that assessee was acting as an agent for booking advertisements on behalf of its principle against which it was entitled to commission. In Assessment Year 1997-98, it was noticed by the Assessing Officer that up to Assessment Year 1996-97, the assessee was offering commission income on the basis of invoice amount billed on the advertisers and the income was declared in the year in which the invoices were raised. However, from Assessment Year 1997-98, assessee was of the view that commission income accrued only when the amount was collected or received by it from the advertisers. Consequently, the assessee started offering the commission income in the year in which the amount was received from the advertisers. The Assessing Officer, for the reasons given in his order for the Assessment Year 1997-98, held that it was a case of change of method of accounting from Mercantile system to cash system of accounting which was not permissible. It may be noted at this stage that up to Assessment Year 1997-98, the assessee was acting as an agent of Satellite Television Asia Region Advertising Sales B.V. However, in the year under consideration, the assessee was acting as an agent of Star Ltd., Hongkong under the agreement effective from 1.4.1999.The Assessing Officer had noted the relevant clause of the agreement which appears on page 10 of the assessment order. On perusal of the agreement, Assessing Officer was of the view that income accrued to the assessee the moment the invoice was raised. It was also noted by him that appeal of the assessee for the Assessment Year 1997-98 was dismissed by the learned CIT(A) vide order dated 8th January, 2003. Therefore, following the assessment order for the Assessment Year 1997-98, the Assessing Officer computed the commission income at Rs.42,l5,87,575/- being the amount @ 15% of the Invoice amount. Since the assessee had offered the commission income of Rs.35,30,72,440/-, the addition of Rs.6,85, 15, 135/- was made. On appeal, the learned CIT(A) confirmed the addition following his earlier order for the Assessment Year 1997-98 as well as the orders for the Assessment Year's 1998-99 and 1999-2000. Aggrieved by the same, the assessee is in appeal before the Tribunal .*
>
> *66. After hearing both the parties, we find that the issue arising in the appeal for Assessment Year 1997-98 has been decided by the Tribunal in favour of the assessee vide order dated 28th July, 2006 by holding that income accrued in the year in which the amount was received by the assessee or paid by the advertisers even under the Mercantile system of accounting. Since the lower authorities had relied on their orders for the preceding Assessment Year's, the addition cannot be upheld since the additions made in the earlier years on this account have been deleted by the Tribunal. However, the learned D.R. has submitted before us that there is a change in the terms and conditions of payment of commission and that the same may be considered. In view of the same it would be appropriate to refer the relevant clauses of the agreement for the benefit of this order. The clause (8) of the agreement dated 31st day of May,1994, which was considered by the Tribunal in the appeals relating to Assessment Years 1997-98 to 1999-2000 read as under :*
>
> *"The agent shall be entitled to retain 15% of the net invoiced amount paid by the assessee as commission……."*

67. XXXXXXXXXXXXX

68. After going through the relevant terms under both the agreements, we do not find any material difference since under both the agreements, the commission is to be paid on the basis of amount collected by the assessee. Clause (E)(4) specifically provides that no commission shall be due to the assessee against the amounts not received. Therefore it is clear from the terms of both the agreements that commission income accrued to the assessee only when the invoiced amount was received by the assessee on behalf of principle. Therefore there is no reason to deviate from the earlier order of the Tribunal. Following the said decision of the Tribunal for earlier years, the issue is decided in favour of the assessee by holding that accrual of commission income arose in the year in which the invoiced amount were received by the assessee even under the Mercantile System of accounting. The order of the learned CIT(A) is therefore, set aside on this issue and consequently, the addition confirmed by him is hereby deleted."

Respectfully, following the above, third ground is decided against the AO.

11. Fourth Ground of appeal deals with net commission and net miscellaneous income from the profit of business while computing deduction u/s.80HHF of the Act. We find that similar issue was decided by the Tribunal against the AO in the appeal filed for the AY.2000-01 to 2002-03.

"49. The next aspect of the issue relating to deduction u/s 80HHF is whether 90% of commission received by the assessee is to be excluded from the profits of business in terms of Explanation (f) to section 80HHF. The Ld. Counsel for assessee has fairly submitted that this issue has already been heard at length by the tribunal, 'B' bench in assessee's own case for A.Y. 2002-03 on 5.2.2008 and therefore, the A.O. may be directed to follow the same. In view of the above request and considering the consistency in the matter, the order of ClT(A) is set aside on this aspect of the matter and consequently, the A.D. is directed to decide the issue in the light of the order of the Tribunal discussed above. This would dispose of the ground no.4 in assessee's appeal."

We would like to refer the matter of ACG Associated Capsules(P.) Ltd.,(343 ITR 89),the Hon'ble Supreme Court has dealt the issue in the following manner.

"*"Under clause (1) of Explanation (baa) to section 80HHC of the Act, ninety per cent. of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head "Profits and gains of business or profession". The expression "included any such profits" would mean only such receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of the business as computed under the head "Profits and gains of business or profession". Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under sections 30 to 44D of the Act and is not included in the profits of business as computed under the head "Profits and gains of business or profession", ninety per cent. of such quantum of receipts cannot be reduced under clause (1) of Explanation (baa) from the profits of the business. In other words, only*

ninety per cent. of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to section 80HHC .

Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in it, the words "receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits" will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head "Profits and gains of business or profession" referred to in the first part of Explanation (baa). Accordingly, if any quantum of any receipt of the nature mentioned in clause (1) of Explanation (baa) has not been included in the profits of business of an assessee as computed under the head "Profits and gains of business or profession", ninety per cent. of such quantum of the receipt cannot be deducted under Explanation (baa) to section 80HHC……..that ninety per cent. of not the gross rent or gross interest but only the net interest or net rent, which had been included in the profits of business of the assessee as computed under the head "Profits and gains of business or profession", was to be deducted under clause (1) of Explanation (baa) to section 80HHC for determining the profits of the business."

Considering the above discussion, we decide fourth ground of appeal against the AO.

12. Last Ground of Appeal is about depreciation of computer peripherals like servers, cable connection, KVM switches etc. During the assessment proceedings the AO found that the assessee had clubbed computer peripheral items amounting to Rs.2.21crores under the head computer, that it had claimed depreciation@60%, that the items included graphic cards, servers, modems etc. The AO directed the assessee to file justification in this matter. After considering the submission of the assessee, the AO held that there was difference between computer and other devices, that each equipment linked through a dedicated computer net work could not be treated as computer, that as per provisions of law depreciation @60% were allowable on monitor, keyboard, mouse, CPU, UPS etc. After conducting a functionality test the AO held that the server, graphic card, KVM switch,2mbps modem, router, autoloader could not be treated as computer, that same were to be termed as computer peripherals, that those items were not classified to claim depreciation@60%,clubbing them under Plant and Machinery. He allowed depreciation @25% for those devices.

He allowed depreciation of Rs.38.86 lakhs and reduced the balance from the block, out of the total depreciation of Rs.93.28 lakhs.

12.1. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA)and made elaborate submission before him. After considering the submission of the assessee and the assessment order, he held that the issue stood covered in favour of the assessee by the order of the Kolkatta Tribunal delivered in the case of Samiran Majumdar (98ITD 119), that the Tribunal had held that the printer and scanner were an integral part of the computer, that the same were to be treated as computer for the purposes of allowing higher rate of depreciation @60%.He directed the AO to treat the computer items as a part of the computer and allow depreciation @60%.

12.2. During the course of hearing before us, the Departmental Representative (DR) stated that the AO had specifically excluded certain items from the list of computers, that those devices were entitled to depreciation @25% only. The AR stated that all the items were necessary to run the computers. He relied upon the cases Datacrafts India Ltd.(133TTJ377)and BSES Rajdhani Powers Ltd(ITA 1266 of 2010).

12.3. We have heard the rival submissions and perused the material before us. We find that in case of Datacrafts India Ltd. (supra),the Special Bench of the Mumbai Tribunal and held as under:-

> *"11. We have considered the rival submissions at length in the light of material placed before us and precedents relied upon. The chief question which falls for our adjudication is whether routers and switches are part of computer or not for the purposes of depreciation. Sec. 32(1) provides that where assets are owned wholly or partly by the assessee and used for the purpose of business or profession, deduction shall be allowed. Clause (ii) of sub-s. (1) provides that in case of any block of asset, the deduction shall be allowed at such percentage on the WDV thereof as may be prescribed. Rule 5(1) stipulates that depreciation in respect of any block of asset shall be calculated at the percentages specified in the second column of the Table in the*

Appendix I of these rules on the WDV of such block of asset as are used for the purpose of business or profession of the assessee at any time during the previous year. Appendix I, as applicable to asst. yr. 2002-03 under consideration, has different blocks of assets. We are concerned with the block of assets of machine and plant. General rate of depreciation provided is 25 per cent against item 1 in respect of machine and plant other than those covered by specific sub-items. Sub-item (2B) is "computers" and the rate of depreciation prescribed is 60 per cent Similarly for the asst. yr. 2003-04, which is also under consideration, the general rate of depreciation on machine and plant, other than those covered by specific sub-items, is 25 per cent. Sub-item (5) is "computers including computer software" on which rate of depreciation has been prescribed as 60 per cent. It is only with effect from asst. yr. 2003-04 that computer software has also been included in the category of computers for the purposes of allowing depreciation at the higher rate of 60 per cent. Thus, whereas upto asst. yr. 2002-03 only computers were eligible for depreciation at the rate of 60 per cent from asst. yr. 2003-04, the benefit of such enhanced depreciation rate has been extended also to computer software. Note No. 7 to the Appendix I, as applicable from asst. yr. 2003-04, defines "computer software" to mean any computer programme recorded on any disc, tape, perforated media or other information storage device. No definition of 'computers' has been given in the Appendix, unlike that of computer software. It is nobody's case that the routers or switches are computer software. Thus we shall restrict ourselves in understanding the meaning of the expression 'computers', in the facts and circumstances of the case.

12. Sec. 32, which grants depreciation allowance, does not define the word 'computer'. It is an admitted position that the word 'computer' has not been defined in the IT Act or IT Rules. We find that the term "computer system" has been defined in Explanation below s. 36(1)(xi) as follows :

"(a) 'Computer system' means a device or collection of devices including input and output support device and excluding calculators which are not programmable and capable of being used in conjunction with external files, or more of which contain computer programmes, electronic instructions, input data and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication and control;"

13. At this juncture it will be relevant to note that cl. (xi) of s. 36(1) was inserted by the Finance Act, 1999 w.e.f. 1st April, 2000 with a view to allowing relief in overcoming the immediate problem of Y2K likely to come up at the close of the calendar year 1999. From the Budget Speech of the Finance Minister in 1999 [236 ITR (St) 26] it can be seen that the Government assisted business sector in overcoming the Y2K problem by proposing that the expenditure incurred in making the computer system Y2K compliant, be allowed as revenue expenditure. It was with this intention that cl. (xi) of s. 36(1) was inserted which is relevant only for financial year 1999-2000 providing for deduction of any expenditure incurred by the assessee on or before the 1st day of April, 1999 but before the 1st day of April, 2000, wholly and exclusively in respect of a non-Y2K compliant computer system, owned by the assessee and used for the purposes of his business or profession. It was in this context that phrase 'computer system' came to be defined solely for the purpose of cl. (xi) of s. 36(1).

14. From the above discussion it is seen that the Expln. (a) defines 'computer system' and not 'computer' and that too only for the purposes of cl. (xi) of s. 36(1), which has force only for one year. As such we are not inclined to adopt this definition of 'computer system' for the purposes of granting depreciation under s. 32 of the Act on 'computers'. Recently the Hon'ble Supreme Court, vide its judgment dt. 7th May, 2010, has held in Jt. CIT vs. Saheli Leasing & Industries Ltd. [reported at (2010) 232 CTR (SC) 1 : (2010) 39 DTR (SC) 1'Ed.] that : 'A particular word occurring in one section of the Act, having a particular object cannot carry the same meaning when used in different section of the same Act, which is enacted for different object. In other words, one word occurring in different sections of the Act can have different meaning, if the object of the two sections are different and when both operate in different fields'. In view of the fact that the object of s. 36(1)(xi) is quite distinct from that of s. 32, we are of the considered opinion that the definition of the term 'computer system' given in the Explanation to s. 36(1)(xi) cannot be applied as such (for giving meaning to 'computer') in the context of s. 32.

15. In some of the cases decided by the Tribunal, reliance has been placed on the definition of "computer" given by the Information Technology Act, 2000, s. 2(i), which is as under :

"(i) 'Computer' means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network."

16. Before we go on to apply this definition in the context of s. 32, the scheme of the Information Technology Act, 2000, needs to be examined. Its preamble indicates that it is an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involves the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto. The statement of objects and reasons of this Act divulges that new communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Business and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. Paras 3 and 4 of the Statement of Objects and Reasons, which are relevant for our purpose, read as under:

"3. There is a need for bringing in suitable amendments in the existing law in our country to facilitate e-commerce. It is, therefore, proposed to provide for legal recognition of electronic records and digital signatures. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. It is also proposed to provide for a regulatory regime to supervise the certifying authorities issuing digital signature certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic

medium, it is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislation.

4. With a view to facilitate Electronic Governance, it is proposed to provide for the use and acceptance of electronic records and digital signatures in the Government offices and its agencies. This will make the citizens interaction with the Government offices hassle free."

17. Having seen the object of the Information Technology Act, 2000, the question which arises for consideration is that can we import the definition of 'computer', as given in it, in the IT Act, 1961 for the purposes of s. 32 ? It has been held by the Hon'ble Supreme Court in CIT vs. Venkateswara Hatcheries (P) Ltd. Etc. (1999) 153 CTR (SC) 105 : (1999) 237 ITR 174 (SC) that the meaning assigned to a particular word in a particular statute cannot be imported to a word used in a different statute. Similar view has been expressed by the Hon'ble Rajasthan High Court in Arihant Tiles & Marbles (P) Ltd. vs. ITO (2007) 211 CTR (Raj) 169 : (2007) 295 ITR 148 (Raj) holding that the interpretation of any expression used in the context of one statute is not to be automatically imported while interpreting similar expression in another statute. This judgment has been approved by the Hon'ble Supreme Court in ITO vs. Arihant Tiles & Marbles (P) Ltd. (2009) 227 CTR (SC) 513 : (2009) 32 DTR (SC) 161 : (2010) 320 ITR 79 (SC).

18. From the aforestated portion of the statement of objects and reasons and the preamble of the Act, it is evident that the rationale behind the Information Technology Act, 2000 is quite distinct from that of the IT Act, as can be seen from its preamble, which is 'an Act to consolidate and amend the law relating to income-tax and super-tax'. Thus it is palpable that both these Acts are not in pari materia. There is significant difference in the scope, purpose and substance of these two statutes. Exconsequenti the definition of 'computer' as given in the Information Technology Act, 2000, cannot be applied in the context of s. 32 of the IT Act. However, though the learned Authorised Representative also agreed that the definition in the Information Technology Act cannot be imported, we are of the opinion that a perusal of the objects of that enactment and a perusal of the definition of the term 'computer' given in the Information Technology Act, 2000 are nothing but common parlance definition which can be of some use in the definition of a computer. Thus in our considered view, aid can be taken of the definition of the term 'computer' given in Information Technology Act, 2000.

19. As per the General Clauses Act, 1897, if a particular word is not defined in the Central statute then meaning given to such expression under General Clauses Act may be considered for guidance and adoption in the former enactment. However, it is noticed that the word 'computer' has not been defined therein. Under such circumstances meaning of an expression has to be understood by applying the principles of statutory interpretation i.e., in this context we have to give a meaning to the expression 'computer' not merely going by the dictionary meaning but by applying common parlance and commercial parlance tests as well as by analysing the intendment of providing for higher rate of depreciation. We may refer to several case law to analyse as to which formula would aptly suit the situation in the given case.

20. In Indian Hotels Co. Ltd. & Ors. vs. ITO & Ors. (2000) 162 CTR (SC) 31 : (2000) 245 ITR 538 (SC), the issue was about the granting of deduction under s. 80J to an

industrial undertaking. It was noticed that s. 80J provides for grant of deduction to an assessee who derives income from an industrial undertaking or a ship or the business of a hotel to which the section applies and the section applies to any industrial undertaking, any ship or business of any hotel if the conditions prescribed under sub-ss. (4), (5) and (6) respectively, are satisfied. It was noticed that the words 'industrial undertaking' have not been defined in the Act. In this background of facts, the Hon'ble Court posed the question to itself as to whether the assessee has derived profits and gains from an "industrial undertaking" or from the "business of a hotel". After discussing the issue threadbare, it was held that 'Industrial undertaking is not given any meaning under the Act, hence it is to be understood as per common parlance language. Taking into this account, apparently, the business of the assessee is that of a hotel, which is a trading activity and not that of an industrial undertaking.' Resultantly the benefit of deduction was denied.

21. In Aspinwall & Co. Ltd. vs. CIT (2001) 170 CTR (SC) 68 : (2001) 251 ITR 323 (SC), their Lordships were concerned with the question of granting investment allowance, for which one of the prerequisite conditions as per s. 32A was that the industrial undertaking should be engaged inter alia in the manufacturing. It was noticed that the word "manufacture" was not defined in the IT Act. In such circumstances it was held that "In the absence of a definition, the word 'manufacture' has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity."

22. Similar view has been taken by the Hon'ble Supreme Court in Mangulu Sahu Ramahari Sahu vs. STO 1974 CTR (SC) 14 by holding that in the absence of specific definition, the meaning as understood in common parlance has to be adopted. From the legal position as enunciated in the above judgments, it is crystal clear that where a word has not been defined in the Act, it is desirable to comprehend its meaning as is understood in its natural sense.

23. A computer, in common sense and as popularly understood, refers to any electronic or other high speed data processing device which performs logical, arithmetic and memory functions on data' (hereinafter called the 'computer functions') and includes all input and output devices which are connected to or related to it. Para 24 of the assessment order indicates that the AO was also of the opinion that the meaning of the word "computer", as understood in the common parlance is 'an electronic device for storing and processing data and making, calculating and controlling machine which also includes input device like keyboards or mouse and the output devices like the printer or monitor'.

24. We would like to clarify here that the meaning of computer cannot be extended to a device or set of devices which are meant to perform some independent function(s) even though in achieving such desired independent function(s), some sort of 'computer functions' are also involved. Today is an electronic age. Most of the products used by us involve some sort of mechanism, which may be loosely called as computer functions. Take the instance of television set, mobile phone and cars etc., all of which, inter alia, involve one form or the other of computer functions. Simply because some 'computer functions' are involved in these equipments or the assistance

of computers is taken as such at one stage or the other in their operation, these will not become computer. The meaning of computer cannot be extended to another machine that operates with the assistance of computer. Conversely an item, which is an integral part of the computer, cannot be defined by its operations which it is capable of performing, for e.g. : A wire and plug are electrical items in general but cost of a wire, integrally connected to television, may be added to cost of TV whereas a wire and plug attached to the computer system has to be treated as computer.

25. Thus in order to determine whether a particular machine can be classified as a computer or not, the predominant function, usage and common parlance understanding, would have to be taken into account. To analyse further, let us take the case of a television, the principal task of which is to deliver visuals accompanied with audio. The signals are received through the relevant networks such as Dish TV, Tata Sky etc. But TV does not become computer for the reason that its principal function cannot be done only with the aid of 'computer functions' notwithstanding the fact that in the entire process of networking or receiving the output from different channels and making it available to the viewers, some sort of computer functions are necessarily involved. Similarly take the case of mobile phone. Its principal task is to receive and send calls. It is not a standalone apparatus which can operate without the relevant network, such as Airtel, BSNL, Reliance. It, therefore, follows that any machine or equipment cannot be described as computer, if its principal output or function is the result of some sort of 'computer functions' in conjunction with some non-computer functions. In order to be called as computer, it is sine qua non that the principal output/object/function of such machine should be achievable only through 'computer functions'.

26. Having analysed the meaning of 'computer' in common parlance, let us proceed to ascertain the concept, meaning and functions of 'router'. Again we find that the term 'router' has not been defined in the IT Act, 1961. Accordingly it also needs to be assigned the meaning as it is understood in common parlance. The learned Departmental Representative has placed some literature from the internet explaining the meaning of 'router' as a device in computer networking that forwards data packets to their destinations, based on their addresses. As per this literature the working of router has been explained by which data packets are transmitted over a network (say the internet), they move from many routers (because they pass through many networks) in their journey from the source machine to the destination machine. Routers work with IP packets, meaning that they work at the level of the IP protocol. Every router keeps information about its neighbours (other routers in the same or other networks). When a packet of data arrives at a router, its header information is scrutinized by the router. Based on the destination and source IP addresses of the packet, the router decides which neighbour it will forward it to.

27. The assessee vide its letter dt. 21st Feb., 2005, addressed to the AO, submitted a note on use of routers/switches by explaining that the routers are crucial device that let the messages flow from one computer to another. It was further explained that the router has two separate but related jobs, viz., (a) to ensure that the information does not go where it is not needed and (b) it makes sure that the information does make it to the intended destination.

28. A router is a networking device whose software and hardware are customized to the tasks of routing and forwarding information. A router has two or more network

interfaces, which may be to different physical types of network (such as copper cables, fibre or wireless) or different network standards. Each network interface is a small computer specialized to convert electric signals from one form to another. Routers connect two or more logical subnets, which do not share a common network address. The subnets in the router do not necessarily map one-to-one to the physical interfaces of the router. The term "layer 3 switching" is used often interchangeably with the term "routing". The term switching is generally used to refer to data forwarding between two network devices that share a common network address.

29. In simple words, a router means a device that routes data from one computer to another or from one network to another. Routers provide connectivity inside enterprises, between enterprises and the internet, and inside internet providers. From the above discussion it transpires that the function of a router is to receive the data from one computer and make it available to another computer for viewing or further processing. Apart from facilitating the flow of data between two computers, the routers also help in the transfer of data from network to computer. Thus the essential function of the router in a commercial organization is to facilitate the flow of data from one computer to another for its processing or storage. Switches are shorter version of routers, which perform similar functions as that of routers but within a limited sphere.

30. On functioning of a "router" we find that there is no dispute on the fact that a "router" does not perform any logical, arithmetic and intermediary functions on data nor it manipulates or processes data, the way a computer would do. A "router" does not have a "CPU". It only enables transmission of data and data packages, in a sophisticated manner, to intended places. A data cable also carries data from one place to another, but it does not selectively interchange packets of data between places. The difference between a "cable" and a "router" is that in a "router" data is "routed" as per the specification. Thus a "router" may not by itself be called a computer.

31. Now we have to consider whether a 'router' can be considered as "computer hardware" or a "computer component". Computer hardware refers to the physical parts of a computer and related devices. Internal hardware devices include motherboards, hard drives, and RAM. External hardware devices include monitors, keyboards, mouse, printers, and scanners. The internal hardware parts of a computer are often referred to as 'components', while external hardware devices are usually called 'peripherals'. Together, they all fall under the category of computer hardware. 'Software', on the other hand, consists of the programs and applications that run on computers. Because software runs on computer hardware, software programs often have 'system requirements', that list the minimum hardware required for the software to run.

31.1 In short, "router" is a hardware device that routes data (hence the name) from a local area network (LAN) to another network connection. A router acts like a coin sorting machine, allowing only authorized machines to connect to other computer systems. Most routers also keep log files about the local network activity. Now the question is whether this "machine" can be used independent of computer. If yes, then it cannot be called "computer hardware" in all circumstances.

31.2 When "computer hardware" is used as a component of the computer, it becomes part and parcel of the computer, as in the case of operating software in the computer. In such a situation, hardware in question can be considered as a part of a computer and hence a 'computer'. Per contra, when the machine is not used as a necessary assessory or in combination with a computer, it cannot be called a 'computer component'.

31.3 Coming to the routers, it is seen that these can also be used with a television and in such use, no computer is required. These are also called TV routers. Similarly, "Internet Service Providers", give connectivity, by installing a router in the premises of the persons/institutions availing the internet connection. In these cases the router is not used along with a computer. In such a situation, it would be a "standalone" equipment. In such cases this cannot be considered a component of a computer or computer hardware. Giving another example, a computer software can be used in many devices including washing machine, television, telephone equipment etc. When such software is used in those device, it integrates with that particular device. The predominant function of the device determines its classification. Only if the computer software, resides in a computer, then it becomes a part and parcel of a computer and, as an long as it is an integral part of a computer, it is classified as a 'computer'.

31.4 In view of the above discussion, we are of the considered view that router and switches can be classified as a computer hardware when they are used along with a computer and when their functions are integrated with a 'computer'. In other words, when a device is used as part of the computer in its functions, then it would be termed as a computer.

32. Now we will advert to the decisions relied on by the rival parties. We have set out above the cases decided by various Benches of the Tribunal in favour of the assessee. The lead order is in the case of Samiran Majumdar (supra) which has been followed, directly or indirectly, in most of the subsequent cases. We will take up this case for discussion, in which the question was whether printer and scanner could be allowed a higher rate of depreciation as applicable to computers. The Bench noticed that the printer and scanner cannot be used without computer. It was on this appreciation of the factual position that the printer and scanners were held to be part of computer qualifying for depreciation at the rate applicable to computer. In the opposition the orders taking view in favour of the Revenue are led by the case of Routermania Technologies (supra). In this case it was observed that the router is a device which links or connects the computers for the exchange of relevant data. In reaching the conclusion that router is not eligible for depreciation at the rate applicable to computer; the Bench noticed that the router at its own does not perform any logical, arithmetical or memory functions by manipulations of electronic, magnetic or optical impulses.

33. We prefer the view taken in the case of Samiran Majumdar (supra) over that in the case of Routermania Technologies (supra); with utmost respect, the Mumbai Bench had taken a narrow view on this issue, by holding that only a device which can perform logical, arithmetical or memory functions by manipulations of electronic impulses etc. is computer. It has restricted the meaning of computer only to the CPU of the computer and pulled out the input and output devices from the ambit of computer. No doubt the function of the computer, as one composite unit, is to perform logical, arithmetical or memory functions etc., but it is not only the equipment which performs such functions that can be called as computer; all the input and output devices, as discussed above, which support in the receipt of input and outflow of the

output are also part of computer. CPU alone, in our opinion, cannot be considered as synonymous to the expression 'computer'. The function of CPU is akin to the brain playing a pivotal role in the conduct of the body. As we do not call the brain alone as the body, similarly the CPU alone cannot be described as computer. Thus the computer has to necessarily include the input and output devices within its scope, subject to their exclusive user with the computer, as discussed above. If we constrict the definition of computer only to processing unit, as has been held in the case of Routermania Technologies (supra), then even the keyboard and mouse etc. will not qualify to be called as computer because these equipments also do not perform logical, arithmetical or memory functions. In the light of the meaning of 'computer' discussed in earlier paras, we are inclined to agree with the view taken by the Kolkata Bench in Samiran Majumdar (supra).

34. We therefore answer the question referred to this Special Bench in affirmative by holding that the routers and switches in the circumstances of the case, are to be included in the block of 'computer' entitled to depreciation @ 60 per cent.

Respectfully following the above ground No.5 is decided against the AO.

As a result, appeal filed by the assessee stands partly allowed and the appeal of the AO is dismissed.

Order pronounced in the open court on 20th May, 2016.
आदेश की घोषणा खुले न्यायालय में दिनाक 20th मई, 2016 को की गई ।

Sd/-	**Sd/-**
(सी. एन. प्रसाद **/ C.N. Prasad**)	(राजेन्द्र **/ Rajendra**)
न्यायिक सदस्य **/ JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांकDated : 20.05.2016.
Jv.Sr.PS.

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

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR "K " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
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आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**