आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील स / ITA No.2215/PUN/2016
निर्धारण वर्ष / Assessment Year : 2012-13

The Dy.Commissioner of Income Tax, Circle 1(2), Pune. ..... अपीलार्थी / Appellant

बनाम v/s

Foseco India Limited, Gat No.922-923, Pune-Nagar Road, Sanaswadi, Taluka Shirur, Pune – 412 208. ..... प्रत्यर्थी / Respondent

PAN : AAACF1049H.

आयकर अपील स / ITA No.874/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Dy.Commissioner of Income Tax, Circle 1(2), Pune. ..... अपीलार्थी / Appellant

बनाम v/s

Foseco India Limited, Gat No.922-923, Pune-Nagar Road, Sanaswadi, Taluka Shirur, Pune – 412 208. ..... प्रत्यर्थी / Respondent

PAN : AAACF1049H.

Assessee by : Shri Soumen Adak / Shri Atul Poddar
Revenue by : Shri Sandeep Garg.

सुनवाई की तारीख / Date of Hearing : 15.03.2018		घोषणा की तारीख / Date of Pronouncement: 19.03.2018

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the Revenue are emanating out of separate orders of Commissioner of Income Tax (A) – 13, Pune dt.08.07.2016 for the assessment years 2012-13 and 2013-14.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts for assessment year 2012-13.

3. The relevant facts as culled out from the material on record are as under :-

3.1 Assessee is a company stated to be engaged in the business of manufacturing and supply of chemicals and steel mills. Assessee filed its return of income for A.Y. 2012-13 on 28.09.2012 declaring the total income of Rs.40,06,77,940/-. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 06.08.2013 and served upon assessee. Further, notice u/s 142(1) of the Act along with detailed questionnaire was issued on 25.09.2014. On the basis of the information furnished by the assessee, it was noticed that assessee had entered into international transactions with its Associated Enterprises (AEs) which were to the tune of Rs.43,68,80,663/-. Accordingly, reference u/s 92CA(3) of the Act was made to Transfer Pricing Officer (TPO) for computation of Arms Length Price (ALP) with reference to international transactions. TPO

passed order u/s 92CA(3) of the Act order dt.06.01.2016. TPO noticed that assessee had paid royalty of Rs.10,40,28,994/- to Foseco International which was considered by the assessee to be at ALP. TPO was of the view that the payment of royalty at the rates determined by the revised agreement were not justifiable since assessee has not been able to prove that the technology commensurate with the new terms and conditions has been provided by the A.E. He was of the view that assessee should have paid royalty only as per its old agreement dt.31.03.2003 wherein the payment of royalty was at 2% of exports and at 1% of domestic sales and not as per the new agreement which was 5% of the domestic sales and 8% of the exports. He accordingly determined the excess royalty of Rs.8,32,23,195/- in the order dt.06.01.2016 passed u/s 92CA(3) of the Act. The assessee was thereafter show caused and asked to explain as to why its income to an extent of Rs.8,32,23,195/- should not be disallowed to which assessee submitted that the submissions made before TPO be considered and that it did not agree with the proposed additions. Thereafter, as per Sec.92CA(3) of the Act, total income of the assessee was computed in conformity with the ALP determined by the TPO and accordingly addition of Rs.8,32,23,195/- was proposed to be made to the return of income in the draft assessment order dt.15.02.2016 passed u/s 143(3) r.w.s. 144(C)(1) of the Act. The assessee filed a letter on 23.02.2016 stating that he wishes to file the appeal before Ld.CIT(A) against the various proposed additions and does not wish to agitate before DRP and therefore requested the AO to pass final order. Thereafter, the order was passed u/s 143(3) r.w.s. 144C(3) of the Act

and the total income was determined of Rs.48,54,39,240/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.08.07.2016 (in appeal No.PN/CIT(A)-13/DCIT, Cir-1(2)/544/2015-16) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

> *"(i) The order of the learned Commissioner of income Tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
>
> *(ii) The learned Commissioner of Income-tax (Appeals) erred in holding that the payment of royalty of Rs.8,32,23,195/-made by the assessee to Foseco International was at an excessive rate and was not paid at arm's length price.*
>
> *(iii) The learned Commissioner of Income Tax (Appeals) erred in failing to appreciate that the enhancement of royalty payment was made only after the RBI permitted enhancement in the rate of royalty payments, as no specific additional benefit conferred to the assessee.*
>
> *(iv) The learned Commissioner of Income-tax (Appeals) erred in failing to appreciate that by virtue of the royalty contract agreement dated 14/07/2011, the assessee had not only acquired exclusive license to use trade' mark for promotion, distribution and sale or products manufactured by the assessee, whereas no additional benefit was received by the assessee in view of the new 'Collaboration Agreement'.*
>
> *(v) The learned Commissioner of Income-tax (Appeals) erred in failing to appreciate hat by virtue of the new 'Collaboration Agreement', no additional benefit was received by the assessee.*
>
> *(vi) The Ld. Commissioner of Income Tax (Appeals) grossly erred in allowing the ground in favour of assessee ignoring the provisions of section 194H of the Act which is applicable in the case of assessee.*
>
> *(vii) For these and such other grounds as may be urged at the time of hearing the order of the learned Commissioner of Income tax (Appeals) may be vacated and that of the Assessing Officer be restored.*

Similar grounds have been raised for A.Y. 2013-14 in ITA No.874/PUN/2017 which reads as under :

"(i) The order of the learned Commissioner of income Tax (Appeals) is contrary to law and to the facts and circumstances of the case.

(ii) The learned Commissioner of Income-tax (Appeals) erred in holding that the payment of royalty of Rs.8,37,77,695/-made by the assessee to Foseco International was at an excessive rate and was not paid at arm's length price.

(iii) The learned Commissioner of Income Tax (Appeals) erred in failing to appreciate that the enhancement of royalty payment was made only after the RBI permitted enhancement in the rate of royalty payments, as no specific additional benefit conferred to the assessee.

(iv) The learned Commissioner of Income-tax (Appeals) erred in failing to appreciate that by virtue of the royalty contract agreement dated 14/07/2011, the assessee had not only acquired exclusive license to use trade' mark for promotion, distribution and sale or products manufactured by the assessee, whereas no additional benefit was received by the assessee in view of the new 'Collaboration Agreement'.

(v) The learned Commissioner of Income-tax (Appeals) erred in failing to appreciate hat by virtue of the new 'Collaboration Agreement', no additional benefit was received by the assessee.

(vi) For these and such other grounds as may be urged at the time of hearing the order of the learned Commissioner of Income tax (Appeals) may be vacated and that of the Assessing Officer be restored.

4. Before us, at the outset, Ld.D.R. submitted that though the Revenue has raised various grounds but ground Nos.1, 7 and 8 are general in nature and grounds 2 to 5 are with respect to one issue of royalty and ground No.6 is with respect to another issue i.e., non-deduction of TDS on commission to Directors. It was submitted that only these two issues need to be adjudicated.

5. First issue is with respect to the deletion of addition made on account of royalty payment.

5.1. Before us, at the outset, Ld.A.R. pointed to the findings of Ld.CIT(A), wherein it was noted that similar royalty payments were

made by the assessee in earlier years and against which assessee had preferred appeal before Ld.CIT(A). Ld.CIT(A) had decided the issue in favour of the assessee. He therefore submitted that since the facts of the issue for the year under consideration are identical to that of earlier years and since in earlier years, the issue has been decided by the Co-ordinate Bench of the Pune Tribunal in ITA Nos.1481 and 1482/PUN/2015 for A.Ys.2010-11 and 2011-12 in assessee's favour, He placed on record the copy of the aforesaid order. It was further submitted by Ld.A.R. that the issue has reached finality in A.Ys. 2005-06 to 2007-08 since Revenue did not prefer any appeal before High Court. He therefore submitted that no interference to the order of Ld.CIT(A) is called for. Ld.D.R. did not controvert the submissions made by Ld.A.R. but however supported the order of AO.

6. We have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to deletion of addition on account of royalty payment. We find that identical issue of adjustment on account of royalty payment was made by the AO in earlier years. The issue was decided by the Co-ordinate Bench of the Tribunal in A.Ys. 2010-11 and 2011-12 in assessee's favour by following the order of Co-ordinate Bench of the Tribunal for A.Ys. 2009-10. The relevant findings of the the Co-ordinate Bench of the Tribunal while deciding the issue in A.Ys.2010-11 and 2011-12 reads as under :

> *"8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to adjustment of account of royalty payment. We find that identical issue*

of adjustment on account of royalty was made by AO in earlier years. The issue was decided by the Co-ordinate Bench of the Tribunal in A.Y. 2009-10 in assessee's favour by following the order of Co-ordinate Bench of the Tribunal for A.Ys. 2005-06 to 2009-10. The relevant findings of Co-ordinate Bench of the Tribunal while deciding the issue in A.Y. 2009-10 reads as under :

"9. We have heard the rival submissions and perused the material on record. We find that ld. CIT(A) while deciding the issue in favour of the assessee has noted that vide agreement dt.01.06.2003 that was entered between assessee and its AE, assessee did not had the licence to manufacture whereas as per the new agreement assessee had licence to manufacture. He further held that TPO's conclusion that assessee already had licence to manufacture was not based on facts on records. Ld. CIT(A) had further followed his own order for assessment years 2005-06 to 2008-09. We find that when the matter for A.Y. 2005-06 to 2008-09 was carried before the Co-ordinate Bench of the Tribunal, the Co-ordinate Bench of the Tribunal upheld the order of ld. CIT(A) by holding as under :

> *"10. We have heard the rival submissions and perused the material on record. The issue in the present case is with reference to adjustment of royalty payment by the assessee to its AE by considering it to be excessive. It is an undisputed fact that assessee had entered into an agreement with Foseco International on 1.7.2004 and the payment of royalty is as per the aforesaid agreement. It is also an undisputed fact that the percentage of royalty payment made by the assessee to its AE is as per the liberalized Scheme of RBI. The only reason for disallowance of royalty payment by the TPO/AO is that the as per the earlier agreement entered by the assessee the rate of royalty was less than the rate of royalty that was agreed as per the agreement dated 1.7.2004 and therefore according to TPO the payment of royalty was excessive and that no benefit was derived by the assessee by making the excess royalty payment. We find that Ld CIT(A) while deciding the issue has given a finding that that the first agreement dated 30.4.2003 that was entered into by the assessee with Foseco International was only with respect to acquisition of licence to use the trademark of Foseco whereas the second agreement dated 1.7.2004 entered by the assessee with Foseco International was a much wider agreement in its scope as it inter alia granted the assessee right to manufacture, have manufactured, use and sell the products in India and outside India and thus the scope of second agreement was much wider than the first agreement. He has further given a finding that the benefit test adopted by TPO/AO for disallowing the royalty payment cannot be applied because benefit test is applicable for availing services and cannot be applied for acquisition of rights and that there is no concept of application of benefit test under Indian Transfer pricing regulations. Before us, Revenue has neither brought any material on record to controvert the findings of Ld.CIT(A) nor has placed on record any contrary binding decision. Revenue has also not placed any material on record to demonstrate as to how the decisions relied upon by the Ld AR are not applicable to the present facts. We further find that the decisions relied upon by the Ld.AR and the*

decision of the Hon'ble Bombay High Court in the case of SGS India Pvt. Ltd(supra) are squarely applicable to the present facts. In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A) and ***thus the grounds of Revenue are dismissed.***

11. As far the grounds of Revenue in A.Y. 2007 – 08 & 2008 – 09 are concerned, since both the parties before us have submitted that the grounds raised by the Revenue in its appeal for AY 2007-08 and 2008-09 are identical to the ground raised by the Revenue in AY 2005-06, we therefore for similar reasons as stated herein above while disposing the appeal for Revenue for AY 2005-06 and for similar reasons, dismiss the grounds of Revenue in AY 2007-08 and AY 2008-09.

12. ***In the result all the appeals of Revenue are dismissed."***

10. Before us, Revenue has not pointed out any distinguishing feature in the facts of the present case and that of the earlier years nor has placed any material on record to demonstrate that the orders of Tribunal in assessee's own case for earlier years that was followed by ld. CIT(A) had been set aside by higher Judicial Forum. In view of these facts, we find no reason to interfere with the order of ld. CIT(A) and therefore following the same reasoning as for A.Y. 2005-06 to A.Y. 2008-09 and for similar reasons the grounds of the appeal of Revenue are dismissed."

9. Before us, Revenue has not pointed out any distinguishing feature in the facts of the present case and that of the earlier years nor has placed any material on record to demonstrate that the orders of Tribunal in assessee's own case for earlier years that was followed by ld. CIT(A) had been set aside by higher Judicial Forum. In view of the aforesaid facts, we find no reason to interfere with the order of ld. CIT(A) and therefore following the same reasoning as given by the Co-ordinate Bench of the Tribunal while deciding the appeal in A.Y. 2009-10 and ***for similar reasons, the grounds of the appeal of Revenue are dismissed.***

9.1 Thus, the appeal of Revenue is dismissed."

7. Before us, Revenue has not pointed out any distinguishing feature in the facts of the case for the year under consideration and that of earlier years nor has placed any material on record to demonstrate that the order of Tribunal in assessee's own case for earlier years, that was followed by Ld.CIT(A), has been set aside, stayed or over-ruled by higher Judicial Authorities. In view of the aforesaid facts, we do not find any reason to interfere with the order of Ld.CIT(A) and **therefore the grounds of Revenue are dismissed.**

8. Next ground is with respect to disallowance of commission to non-executive Directors u/s 40(a)(ia) for non-deduction of TDS.

8.1. During the course of assessment proceedings, it was noticed that assessee has claimed expenditure on account of commission payment made to non-executive Directors of Rs.15,38,100/-. The AO disallowed the amount u/s 40(a)(ia) of the Act as the similar disallowance was made by him in earlier years on account of failure on the part of assessee to deduct tax at source on commission payment to non-executive Directors. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who held that assessee is not liable to deduct u/s 194H on the commission payment to Directors by observing as under :

> *"2.3.4 I have considered the facts and arguments of the Appellant. It s seen that the Appellant has paid commission to its non-executive directors. From the Appellant's submission, I find that though the payment is named as 'commission', it is in the nature of director's sitting fees. This payment does not fall under the definition of 'commission' provided u/s 194H. Therefore, tax is not required to be deducted at source on the payment made to the non-executive directors. Accordingly, by following the decisions of the honourable Pune and Kolkatta Benches of the ITAT relied on by the Appellant, I delete the disallowance of Rs 15,38,100 made by the learned AO u/s 40(a)(ia)."*

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

9. Before us, at the outset, Ld.A.R. submitted that identical issue arose in assessee's own case in earlier years and the Co-ordinate Bench of the Tribunal, by following its own order for A.Y. 2009-10, has decided the issue in favour of the assessee. He pointed to the

relevant findings of the Tribunal. He therefore submitted that since there are no changes in the facts for the year under consideration, no interference to the order of Ld.CIT(A), is called for. Ld.D.R. did not object to the submissions made by Ld.A.R. but however supported the order of AO.

10. We have heard the rival submissions and perused the material on record. We find that identical issue of disallowance of commission to non-executive Directors on account of non-deduction of TDS u/s 194H arose in assessee's own case in A.Ys. 2010-11 and 2011-12. The Co-ordinate Bench of the Tribunal, by following the order of Tribunal in assessee's own case for A.Y. 2009-10, has decided the issue in favour of the assessee by observing as under :

> *"13. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to disallowance of commission paid to non-executive directors on account of non-deduction of TDS u/s 40(a)(ia) of the Act. We find that identical issue arose in assessee's own case in earlier years for A.Y. 2009-10 and the issue was decided in favour of the assessee by the Co-ordinate Bench of the Tribunal of earlier years, by holding as under :*
>
> > "*15. We have heard the rival submissions and perused the material on record. The issue in the present ground is with reference to disallowance of commission to non-executive directors for the reason that assessee did not deduct TDS u/s 194H before making the payment. We find that identical issue of disallowance of expenditure on account of non-deduction of TDS arose in case of assessee in earlier years. The Co-ordinate Bench of the Tribunal while deciding the issue for A.Y. 2005-06 to 2008-09 (order dt.30.11.2016) has decided the issue in favour of the assessee by holding as under :*
> >
> > *"29. We have heard the rival submissions and perused the material on record. The issue in the present case is with reference to disallowance u/s 40(a)(ia) of the Act on account of non deduction of TDS on the commission paid by assessee to its non executive directors. It is an undisputed fact that the commission has been paid to the non executive directors of the assessee. It is also a fact that the commission paid is not for any services rendered in the course of buying or selling of*

goods or in relation to any transaction relating to any asset, valuable article or thing are referred in s.194H of the Act. We find that the co-ordinate bench of tribunal in the case of Kirloskar Oil Engines (supra) and after relying on the decision in the case of Bharat Forge Ltd, has decided the issue in favour of assessee by holding as under:

6. Before we proceed with the issue it would be relevant to referred to the definition of 'commission' as defined in Explanation (i) to section 194H of the Act. The same is reproduced here-in-under:

> *i) "commission or brokerage" includes any payment received or receivable directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;"*

7. Under the provisions of section 194H tax is to be deducted at source on the payments made to a resident by way of commission (not being insurance commission referred to in section 194D) or brokerage. A bare perusal of the definition would show that it is an inclusive definition which includes payments made directly or indirectly for services rendered in the course of buying or selling goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities. The non-executive Directors appointed on the Board of Directors of the company do not render any of the services referred to in the definition of 'commission or brokerage'. A role of non-executive Director is to provide constructive suggestion for the better performance of the company and to protect the interest of the organization/shareholders by whom he has been nominated on the Board.

> *Thus, by no stretch of imagination the payments made to the non-executive Director fall within the ambit of term 'commission or brokerage' as defined u/s. 194H of the Act.*

8. The provisions relating to deduction of tax at source on payment of fee for professional or technical services are contained in section 194J. The provisions of section 194J have been amended by the Finance Act, 2012 w.e.f 01-07-2012 vide which Clause (ba) has been inserted in sub-section (1) of section 194J. The new clause inserted by the Finance Act, 2012 reads as under:

> *"[(ba)] any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or]"*

The memorandum explaining the amendment brought in by the finance bill 2012 is as under:

"TDS on remuneration to a director :

Under the existing provisions of the Income Tax Act, a company, being an employer, is required to deduct tax at the time of payment to its employees including Managing Director/whole time director. However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary.

It is proposed to amend section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration. This amendment will take effect from Ist July, 2012.

The provisions of newly inserted clauses are enforceable w.e.f 01-07-2012, therefore, it will have no application in the assessment years under appeal.

9. The Co-ordinate Bench of the Tribunal in the case of Bharat Forge Ltd. Vs. Additional Commissioner of Income Tax (supra) had occasion to deal with this issue. The Tribunal held that no tax at source was required to be deducted u/s. 194J from the payments made towards the Director's sitting fees prior to 01-07-2012. The relevant extract of the findings of the Tribunal are reproduced here-in-below:

"8. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions relied on by the learned counsel for the assessee. The only dispute in this ground is regarding deduction of tax at source from the sitting fees paid to the directors. According to the learned counsel for the assessee the provisions of section 194J is not applicable from such sitting fees since fees does not fall in any of the categories of professional service as per explanation to section 194J. Further, no such objection was taken in the past by the department for such non deduction and in view of insertion of sub section (ba) to section 194J(1) TDS is required to be made out of such director sitting fees w.e.f., 01-07-2012. Therefore, for non-deduction of tax at source from the sitting fees for the impugned assessment year there is no default on the part of the assessee. According to the revenue the director is also a manger under the provisions of the Companies Act and therefore technical personnel and therefore the company is liable to deduct tax at source under the provisions of section 194J.

8.1 As per the explanation to provisions of section 194J professional service means services rendered by a person in the course of carrying legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board. We,

therefore, find force in the submission of the learned counsel for the assessee that sitting fees paid to the directors does not amount to fees paid for any professional services as has been mentioned in the explanation to section 194J(1). We further find from the memorandum explaining to provisions of the Finance Bill 2012 that as per clause No.71 it was specifically mentioned that there was no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary. We find the provisions of section 194J(1)(ba) speaks of any remuneration or fees or commission by whatever name called other than those on which tax is deductible u/s. 192 to a director of a company on which tax has to be deducted at the applicable rate and the above provision has been inserted by the Finance Act, 2012. We, therefore, find force in the submission of the learned counsel for the assessee that no tax is required to be deducted u/s. 194J out of such director's sitting fees for the A.Y. 2007-08. In this view of the matter, the order of the CIT(A) is set-aside and the ground raised by the assessee on the issue of TDS on sitting fees paid to Directors is allowed."

10. The ld. DR has not been able to distinguish the findings of the Tribunal in the case of Bharat Forge Ltd. Vs. Additional Commissioner of Income Tax (supra). Respectfully following the same we affirm the findings of Commissioner of Income Tax (Appeals) on this issue and dismiss the appeals of the Revenue.

30. Before us, Ld DR could not point out any distinguishing feature in the facts of the present case and that of Kirloskar Oil (supra) nor has placed on record any contrary binding decision in its favour. In view of the aforesaid facts, and following the same reasoning as given by the co-ordinate Bench while deciding the issue in the case of Kirloskar oil (supra), We are of the view that in the present case assessee was not required to deduct TDS u/s 194H on the payment of commission to non executive directors and therefore provisions of s.40(a)(ia) are not attracted and therefore no disallowance of expenses is called for. ***Thus the ground of assessee is allowed.***

31. ***Thus the CO of Assessee is allowed.***

16. Before us, Revenue has failed to point out any difference in the facts in the year under consideration and that of earlier years, further it has also not placed any material on record to show that the order of the Co-ordinate Bench of the Tribunal in assessee's own case for earlier years has been set aside by higher Judicial Forum. In view of these facts and following the same reasoning as considered while deciding the appeal of assessee for A.Y. 2005-06 to 2005-09 and for similar reasons, set aside the disallowance made by AO. Thus the ground of assessee is allowed and the cross-objection of the assessee is allowed.

17. ***Thus the cross-objection of the assessee is allowed."***

11. Before us, Revenue has not pointed out any distinguishing feature in the facts of the case for the year under consideration and that of earlier years nor has placed any material on record to demonstrate that the order of Tribunal in assessee's own case for earlier years, that was followed by Ld.CIT(A) had been set aside, stayed or over-ruled by Higher Judicial Authorities. In view of these facts, we do not find any reason to interfere with the order of Ld.CIT(A). Thus, the ground of Revenue is dismissed.

12. **In the result, the appeal of Revenue in ITA No.2215/PUN/2016 is dismissed.**

13. As far as the grounds raised in appeal in ITA No.874/PUN/2017 for A.Y. 2013-14 are concerned, in view of the submission of both the parties that the facts of the case in the year A.Y. 2013-14 being identical to the facts and issue of the case in ITA No.2215/PUN/2016 for A.Y. 2012-13, we therefore for the reasons stated herein while disposing of the appeal in ITA No.2215/PUN/2016 for A.Y. 2012-13, and for similar reasons, dismiss the grounds of appeal of Revenue. **Thus, the grounds of the Revenue are dismissed.**

14. **In the result, both the appeals of Revenue are dismissed.**

Order pronounced on 19th day of March, 2018.

Sd/-	**Sd/-**
(**VIKAS AWASTHY**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 19th March, 2018.
Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-13, Pune / CIT(A) concerned.
4. CIT(IT/TP), Pune / CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
6. ITAT, "B" Pune;
   गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.