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

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 473/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of Income Tax,
Circle-11, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Honeywell Automation India Limited,
S. No. 56 & 57, Hadapsar Industrial Estate,
Hadapsar, Pune-411 013.
PAN : AAACT3904F

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 446/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Honeywell Automation India Limited,
S. No. 56 & 57, Hadapsar Industrial Estate,
Hadapsar, Pune-411 013.
PAN : AAACT3904F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-11, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kamal Shaney

Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 05.03.2019

घोषणा की तारीख / Date of Pronouncement : 06.03.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

These two appeals preferred by the Revenue and assessee emanates from the order of Ld. Transfer Pricing Officer (TPO)/Dispute Resolution Panel (DRP) as per grounds of appeal on record.

2. The brief facts in this case are that the assessee is a public limited company and is engaged in the business of automation and control being categorized into following three business activities:

i) System Integration Segment (includes operations carried by the EHTP unit)

ii) Trading/Distribution Segment; and

iii) Software Engineering Service Segment.

During the year under consideration, the assessee has three units registered under the Software Technology Parks ('STP') Scheme of India and one unit registered under the Electronic Hardware Technology Parks ('EHTP') Scheme and one unit registered under the Special Economic Zone (SEZ) Scheme, these units are accordingly eligible to claim tax holiday under sections 10A and 10AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Under the Engineering segment, the assessee provides IT enabled engineering services to its associated enterprises ('AEs') from its following Software Technology Park ('STP') and SEZ units:

a) STP unit 1 at Pune.

b) STP unit 2 at Pune.

c) Chennai STP unit ; and

d) SEZ unit at Pune.

The details of the STPI unit and the expiration of the tax holiday are provided as under:

Sr. No.	*Unit*	*Tax holiday under section 10A of the Income Tax Act, 1961 ('the Act')*
1	*STP unit 1 at Pune*	*Available up to AY 2007-08*
2	*STP unit 2 at Pune*	*Available up to AY 2011-12 (on account of sunset clause in the section)*
3	*Chennai STP unit*	*Available up to AY 2009-10*

3. The assessee is engaged in the export Software Engineering/ Software services to its parent company in USA and /affiliates and to third parties. Profits derived from the export of the said services are eligible for deduction u/s.10A and 10AA of the Act and the assessee has accordingly claimed deduction u/s.10A and 10AA in respect of said profits amounting to Rs.32,28,11,128/- and Rs.16,59,98,284/- respectively for assessment year 2011-12. The assessee is an indirect subsidiary of Honeywell Inc. USA and is engaged in the business of providing software services and industrial automation manufacturing to its group companies. For assessment year 2011-12, it had total of 3 STPI units- two Software Technology Parks located in Pune & one in Chennai (Section 10A units) and an SEZ Units (Section 10AA Unit) located at Pune. For the year under consideration, the assessee had claimed the following deductions from its total income:

AY	*Section 10A Deduction*	*Section 10AA Deduction*	*Page reference*
2011-12	*32,28,11,128/-*	*16,59,98,284/-*	*Page 4 of the Final AO order*

ITA No. 473/PUN/2016 (By Revenue)
Assessment year 2011-12

4. It is with regard to the issue, the Revenue has preferred appeal before us. That on perusal of the records, it is apparent that the Assessing Officer has granted only a partial deduction of the above sums by invoking section 10A(7)/10AA(9) of the Act r.w.s. 80IA(10) of the Act on the ground that the assessee was claiming a substantially higher deduction than the ordinary profits of the comparable entities. In the previous assessment year, the Assessing Officer had come to the conclusion that as 81% of the shareholding of the assessee was held by the US entity (Honeywell Inc. USA) and there existed a close connection with the assessee as a result of which the Indian Entity was generating substantially higher profits compared to the comparable companies. It was on this basis that provisions under section 10A(7) r.w.s. 80IA were invoked and the deduction was restricted to the aggregate margins earned by the comparable entities.

5. The above contentions of the Assessing Officer were confirmed by the Ld. CIT(A) during the proceeding for assessment year 2007-08 wherein it was held that the key factors required for the Assessing Officer to invoke its powers u/s.10A r.w.s.80IA are 'close connection' and 'arrangement' between the assessee and other persons and such arrangement produced more than 'ordinary profits' in the eligible business. It was further held by the Ld. CIT(A) that an 'arrangement' can be inferred if the surrounding facts and circumstances so indicate and the present of abnormal profits in the case of STP units provide the existence of an 'arrangement' between the assessee and its AE's.

6. At the time of hearing, the Ld. AR of the assessee submitted that the case of the assessee is squarely covered by the decision of the Pune Bench of the Tribunal in assessee's own cases in ITA No.18/PUN/2011 for assessment year 2006-07, ITA No.2103/PUN/2012 for assessment year 2007-08 and in ITA No.359/PUN/2013 for assessment year 2008-09. The Ld. AR further placed reliance on the decision of Pune Bench of the Tribunal in ITA No.2544/PUN/2012 order dated 30.10.2017 and on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Schmetz India Pvt. Ltd. (ITA No.1382/2013 dated 24.06.2015. The Ld. AR of the assessee further submitted that against the decision of the Hon'ble Bombay High Court, Revenue had preferred appeal before the Hon'ble Apex Court in SLP CC No.2013/2016 dated 08.02.2016. However, this SLP of the Revenue was dismissed by the Hon'ble Apex Court.

7. We have perused the case records and have given thoughtful consideration to the various judicial pronouncements placed before us. On the same issue in assessee's own case in ITA No.18/PUN/2011 for assessment year 2006-07, the Tribunal has held as under:

> *"22. Before we proceed further, it would be appropriate to examine the scope and intent of the provisions of section 10A(7) r.w.s. 80-IA(10) of the Act. In this context, a reference has been made to the CBDT Circular No.308 dated 29.06.2008 wherein the reasons for introduction of sub-section (7) to section10A of the Act has been explained. In-particular, reference has been made to the following contents of the Circular :-*
>
> > *"The provisions of sub-section (8) and sub-section (9) of section 80-I will also apply in relation to the industrial undertaking referred to in the new section 10A as they apply in relation to an industrial undertaking referred to under section 80-I. Under the applied sub-section (8) of section 80-I, it is provided that where an Assessee has several units, some in the free trade zone and some outside, the profits of the unit in the free trade zone will be computed after taking the cost of the goods transferred to or from the unit on the basis of the market value of such goods. The applied sub-section (9) of section 80-I empowers the Income-tax*

Officer to determine the reasonable profits that could be attributed to the qualifying undertaking in the free trade zone in cases where, owing to the close connection between the Assessee and any other persons or for any other reason, the course of the business is so arranged that the industrial undertaking set up in the free trade zone derives more than ordinary profits which may be expected to arise in that business. This provision has been made with a view to avoiding abuse of the new tax concessions by manipulation of profits between associate concerns or different units of the same concern."

[underlined for emphasis by us]

23. Quite clearly, the provisions of section 10A(7) of the Act intend to plug abuse of tax concession by manipulation of profits between associated concerns or between different units of the same concern. The objective of the aforesaid Provision is that the tax concessions are not abused by manipulation of profits. In our considered opinion, the aforesaid explanation in the CBDT Circular (supra) signifies the legislative intent and it is also manifested in the language of section 10A(7) r.w.s. 80-IA(10) of the Act. We say so for the reason that the phraseology of section 80-IA(10) of the Act itself suggests that the profits and gains of an eligible business cannot be tinkered with by the Assessing Officer merely because they are more than the ordinary profits or that they are quite high. The existence of substantial or more than ordinary profits by itself does not sufficiently empower the Assessing Officer to disregard them and determine the profits which he may consider to be reasonably deemed to have been derived therefrom. The presence of the expression "the course of business ..... is so arranged ..... that the business transacted ..... produces to the assessee more than ordinaryprofits" is significant and its understanding has to be prefaced by the legislative objective of plugging abuse of the tax concessions granted u/s 10A of the Act by manipulation of profits between associated parties. In other words, the import of the expression "so arranged" has to be read in conjunction with the legislative intent that there should not be any abuse of tax concession by manipulation of profits. Therefore, section 10A(7) r.w.s. 80- IA(10) of the Act can be invoked only where it is shown that the course of business is so arranged which reflects an abuse of tax concession whereby the business transacted between two entities is so arranged, which produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business. The emphasis is to eschew those 'more than the ordinary profits' which are as a result of a business between two closely connected concerns having been arranged with the intent of abuse of the tax concession. Ostensibly, in the present case, the Revenue would have to justify that the course of business between assessee and the associated enterprises has been 'so arranged' which produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business with the intention of abusing the tax concession granted in section 10A of the Act. The mere existence of (i) a close connection between the assessee and the other person; and, (ii) more than ordinary profits is not sufficient to justify invoking of section 80-IA(10) of the Act in the absence of there being any material to say that the course of business between them is "so arranged" to abuse the tax concessions granted u/s 10A of the Act by manipulating profits between associated persons. Ostensibly, the same is required to be demonstrated on the basis of a cogent material and evidence. In other words, the presence of the expression "so arranged" has to be understood in the context of the abuse of tax concession which is sought

to be plugged by the provisions of section 10A(7) r.w.s. 80-IA(10) of the Act.

24. On this aspect, the Ld. CIT-DR had vehemently argued, based on the judgement of the Hon'ble Bombay High Court in the case of Bank of India Ltd. (supra) that the meaning of the word "arranged' in section 80-IA(10) of the Act has to be understood to mean an agreement or an understanding between the parties concerned. The relevant portion of the decision of the Hon'ble Bombay High Court has been reproduced in the earlier part of this order, according to which, it is said that the term arrangement in plain language means any agreement or understanding between the parties concerned. On this basis, the Ld. CIT-DR submitted that undeniably there is an agreement between the assessee and the associated enterprises whereby the services have been provided by the assessee to them and therefore the same is to be understood as an "arrangement" within the meaning of section 10A(7) r.w.s. 80-IA(10) of the Act. Along with the aforesaid, it has also been emphasized, on the basis of the language of section 80-IA(10) of the Act that, the Assessing Officer is not required to be prove that there is an arrangement for producing more than ordinary profits. Whereas, as per the Ld. CIT-DR, section provides that arrangement leading to production of more than ordinary profit will satisfy the necessary condition of section 80-IA(10) of the Act. Thus, according to the Ld. CIT-DR, in the instant case there is an arrangement and it has lead to production of more than the ordinary profits. According to the Ld. CIT-DR, the meaning of the words "so arranged" in section 80-IA(10) of the Act only seeks to ensure that there was an agreement between the assessee and associated enterprise.

25. We have carefully examined the aforesaid contentions of the Ld. CITDR. In our considered opinion, the import of the expression "arranged" in section 80-IA(10) of the Act is not to be understood in its plain language but the same has to be understood in the context in which it is placed in the section. Notably, section 80-IA(10) of the Act restricts the plain meaning of the term "arranged" because it is placed between the words ".....the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business....." . Therefore, it would necessarily mean that the 'arrangement' referred to is an arrangement of the course of business which produces to the assessee more than the ordinary profits with the intent of abusing the tax concession. Thus, the word "arranged" in the section does not envisage a simple arrangement, but a arrangement of "the course of business transacted" which produces to the assessee more than ordinary profits which might be expected to arise in such a business with the intent of abusing the tax concessions. Therefore, the meaning of the words "so arranged" have to be understood in the context in which they are placed in section 80-IA(10) of the Act. A mere agreement between the assessee and the associated enterprises for transacting business is not enough to invoke section 80-IA(10) of the Act.

26. In-fact, even the Hon'ble Bombay High Court in the case of Bank of India Ltd. (supra) has also appreciated the contextual meaning of the expression "arrangement". The issue before the Hon'ble Bombay High Court was with regard to the scheme of re-construction or arrangement contained in section 391(1) of the Companies Act, 1956. In the context of section 391(1) of the Companies Act, 1956, the Hon'ble High Court was dealing with the meaning of the word "arrangement". After having explained the meaning of the term arrangement in plain language, which we have referred earlier, the Hon'ble High Court went on to say

as under in the context of the word "arrangement" qua section 391(1) of the Companies Act, 1956 :-

> *"Section 391(1), however, in any opinion somewhat restricts this otherwise unlimited import of the term "arrangement" in so far as the said section applies only to an agreement or understanding between the company and its creditors or any class of them, or between the company and its members or any class of them, or between the company and its members or any class of them, which would necessarily mean that it must be an agreement or understanding which affects their rights"*
>
> *[underlined for emphasis by us]*

27. The aforesaid clearly points out that the Hon'ble High Court imparted meaning to the word "arrangement" in the context of section 391(1) of the Companies Act, 1956 to mean that it must be an agreement or understanding which affects the rights between the company and its creditors or any class of them and between the company and its members or any class of them. By the same analogy in the present context, we have to understand the meaning of the expression "as arranged" in section 10A(7) r.w.s. 80-IA(10) of the Act to mean a situation whereby the course of business has been so arranged that the business transacted produces to the assessee more that the ordinary profits with an intent to abuse the tax concessions granted in section 10A of the Act. Moreover, if one is to understand the import of the expression "so arranged" in section 80-IA(10) of the Act as canvassed by the Ld. CIT-DR, it would mean that for the purposes of fulfillment of the conditions prescribed in section 10A(7) r.w.s. 80-IA(10) of the Act, existence of mere close connection and more than the ordinary profits would suffice. In other words, as per the Revenue, the existence of close connection and high profits would lead to a presumption that there is an "arrangement" within the meaning of section 80- IA(10) of the Act. The aforesaid plea, in our view, not only belies the language of section 80-IA(10) but also the legislative intent which seeks to curtail the abuse of tax concession by manipulation of profits between associated concerns. Therefore, an arrangement which is referred to in section 10A(7) r.w.s. 80-IA(10) of the Act has to be one which is prefaced by an intention to abuse the tax concessions, as per the intendment of the legislature. Therefore, existence of a mere agreement to do business is not enough to fulfill the requirement of section 10A(7) r.w.s. 80-IA(10) of the Act in the context of the words "the course of business between them is so arranged".

28. At this stage, we may also address the argument of the Ld. CIT-DR that the burden cast on the Assessing Officer in section 10A(7) r.w.s. 80-IA(10) of the Act is much lighter and even a prima-facie satisfaction of an existence of tax avoidance is sufficient. In this context, we may refer to the decision of the Bangalore Bench of the Tribunal in the case of Digital Equipment India Ltd. (supra), wherein similar argument from the side of the Revenue has been addressed. The Bangalore Bench of the Tribunal was dealing with invoking of section 10A(6) r.w.s. 80-I(9) of the Act for assessment year 1995-96, which are pari-materia to section 10A(7) r.w.s. 80-IA(10) of the Act invoked by the Revenue before us. The following discussion is relevant :-

> *"The requirements under the section are :*
>
> *(a) There must be a close connection between the appellant and other person.*

(b) The course of business between them should be so arranged that it produces to the appellant more than the ordinary profits from such business.

To satisfy the above test the AO has to adduce evidence and reasons cogently and the same is open to verification by the appellate authorities. The primary rule of evidence is that "what is apparent is real" unless proved otherwise by the person alleging it otherwise. The manner of satisfaction outlined in the section should be based on evidence and not on surmise or suspicion. The question is not whether the onus is light or heavy but whether the AO has discussed objectively the conditions mentioned in the section to disturb the results declared by the appellant. In this case, the AO has failed to adduce any evidence or reason to satisfy the invoking of s. 80-1(9). First of all, a mere substantial profit does not give rise to any valid view that there could be any arrangement. It is a case of joint venture listed Indian company, where all arrangements are open for scrutiny and acceptance not only by digital group worldwide but also from joint venture partners and shareholders. Digital group overseas will not pay undue sum, which it cannot recoup entirely to exclusion of others. Hence nothing can be arranged to the exclusive benefit of overseas partner. One cannot presume the existence of close connection or possibility of an arrangement for earning more than ordinary profits. In this case the profits earned is comparable with the profits earned by other companies in the same industry. Hence there is no case for further verification. The AO has compared the profit of software unit with that of hardware unit. Thus the foundation itself is on wrong premise. There cannot be comparison between an orange and an apple. It is known fact that profitability of software units is always higher than hardware unit. The test whether the appellant has earned more than ordinary profits, in this case, the answer is obvious NO, even as found by the AO. When the profits earned are reasonable and not excessive, there is no reason to sustain the addition Further there is no evidence of existence of any arrangement as contemplated under s. 80-1(9).”

29. Quite clearly, as per the Tribunal the question is not whether the onus is light or heavy but whether the Assessing Officer has discussed objectively the conditions mentioned in the section to disturb the results declared by the appellant.

30. Now, the case of the Assessing Officer is that the profits derived by the assessee from the eligible business are more than the ordinary profits and therefore he is empowered to arrive at what could be a reasonable profit from such eligible business and such profit be taken as reasonably deemed to have been derived from the eligible business for the purposes of computing the deduction u/s 10A of the Act. We find that in the entire assessment order, there is no material or any evidence which has been brought out to say that the course of business between assessee and the associated enterprises has been so arranged that the business transacted has produced to the assessee more than the ordinary profits.

31. No doubt, there is a close connection between assessee and the associated enterprises and to that extent section 10A(7) r.w.s. 80-IA(10) of the Act has been rightly examined by the income-tax authorities. The second aspect that the course of business was so arranged so as to result in more than ordinary profits is not at all forthcoming from the order of the Assessing Officer. There is no material or evidence referred to in the assessment order to indicate that the course of business has

been so arranged so as to inflate profits with the intent to abuse tax concession u/s 10A of the Act. At this point, we may make a reference to the stand of the Assessing Officer that the operating profit margins of the assessee are substantially higher than the average operating margin of the comparables selected by the assessee in its Transfer Pricing Study. This has formed the basis for the Assessing Officer to say that assessee has earned more than ordinary profits which might be expected to arise in such a business. Be that as it may, the aforesaid is not enough to say that the course of business has been so arranged to result in more than ordinary profits. However, from the side of the Revenue, it was pointed out that the Transfer Pricing comparability analysis itself suggests that the profit margins of the assessee are more than the ordinarily accepted margin in this line of business. The moot question is as to whether the same can be considered as a material to indicate that the course of business between the assessee and the associated enterprises has been so arranged, so as to result in 'more than the ordinary profits' within the meaning of section 10A(7) r.w.s. 80-IA(10) of the Act. In this context, we may refer to the decision of the Chennai Bench of the Tribunal in the case of Visual Graphics Computing Services India (P) Ltd. vs. ACIT, 148 TTJ 621 (Chennai), wherein following discussion is relevant :-

> *"We heard both sides in detail and considered the issue. As far as the present case is concerned, the Transfer Pricing Officer has made a categorical finding that the operating profit reported by the assessee is higher than the profit worked out on the basis of arm's length price. The Transfer Pricing Officer, therefore, concluded that no transfer pricing adjustment is called for in the present case. The Assessing Officer has made the reference to the Transfer Pricing Officer under section 92CA. The reference is made for the purpose of computing income arising from an international transaction with regard to the arm's length price as provided in section 92. Therefore, it is to be seen that the scope and extent of reference made by the Assessing Officer to the Transfer Pricing Officer is confined to the singular purpose stated in section 92. Sections 92A, 92B, 92C, 92CB, 92D, 92E and section 92F are all precisely defining and facilitating provisions ultimately for the purpose of computing the income as stated in section 92. All the above stated sections provided in Chapter X of the Income-tax Act, 1961 belong to a separate code as such, enacted for the purpose of computing income from international transactions having regard to the arm's length price so as to confirm that there is no avoidance of tax by an assessee. Therefore, where in a case, the Transfer Pricing Officer suggests that the operating profit declared by an assessee is compatible to the arm's length price norms and no adjustment is necessary, the operation of all those provisions come to an end. If the, Assessing Officer has to make any other adjustment towards computing deduction available under section 10A, the computation has to be made in the context of section 10A(7) read with section 80-IA(10).*
>
> *It is clear that in a case of transfer pricing assessment, it has got two segments. The first segment consists of rules and procedures for computing the income other than the income arising out of international transactions with associate enterprise. The second segment consists of rules and procedures in connection with computation of income from international transactions with associate enterprises on the basis of the arm's length price. The second segment relating to computation of the arm's length price, is a set of rules for the purposes of transfer pricing matters and*

those procedures and rules can be used only for the purpose serving the object of section 92. When the Transfer Pricing Officer states that there is no need of transfer pricing adjustment, the matter should end there and any other adjustment that the Assessing Officer would like to make with reference to the first segment must be made independent of the order of the Transfer Pricing Office under section 92CA.

To state in simple terms, the transfer pricing regime is different from regular computation of income. Section 10A belongs to that part of regular computation of income and it should be computed independent of transfer pricing regulations and transfer pricing orders. It is not therefore, permissible for the Assessing Officer to work out section 10A deduction on the basis of arm's length price profit generated out of the order of the Transfer Pricing Officer.

In fact these issues have already been considered in various orders of the Tribunal. The Income-tax Appellate Tribunal, Chennai "A" Bench in the case of Tweezerman (India) P. Ltd. v. Addl. CIT [2010] 4 ITR (Trib) 130 (Chennai) (133 TTJ 308) has considered the matter in detail and held that the reduction of eligible profits of an assessee as done by the Assessing Officer by invoking the provisions of section 80-IA(10) read with section 10B(7), in the context of the Transfer Pricing Officer's order is unsustainable. The Tribunal has held that the Assessing Officer was not justified to invoke the provisions of section 80-IA(10) read with section 10B(7) so as to reduce the eligible profits on the basis of the arm's length price computed by the Transfer Pricing Officer without showing how he determined that the assessee had shown more than "ordinary profits".

As rightly argued by learned senior counsel the arm's length price is determined on the basis of the most appropriate method. The most appropriate method is chosen either on profit basis method or price basis method. In the latter ease, profits are not at all considered. In that method, profit is only a derivative of prices. When profits itself is not worked out, how is it justified to adopt the arm's length price profits to determine what is "ordinary profits" for the purpose of section 10A(7)?

In the facts and circumstances of the case, we hold that the Assessing Officer has erred in reducing Rs.4,48,50,795 from the eligible profits of the assessee under section 10A. The said adjustment made by the assessing authority in computing the deduction under section 10A is accordingly, deleted."

32. In our considered opinion, the result of the Transfer Pricing assessment can at best be taken as an indicator for the Assessing Officer to investigate as to whether or not there exists any arrangement which has resulted in more than ordinary profits qua the requirements of section 10A(7) r.w.s. 80-IA(10) of the Act. Even if it is accepted that the difference between the operating margins of the assessee and the comparables show existence of more than the ordinary profits in the hands of the assessee, so however, it was still imperative for the Assessing Officer to establish on the basis of substantive evidence and corroborative material that qua section 10A r.w.s. 80-IA(10) of the Act, the course of business between the assessee and the associated enterprises is so arranged that the business transacted between them produces to the assessee more than the

ordinary profits with the intent of abusing tax concession. Quite clearly, in the entire assessment order, there is no whisper of any material or evidence in this regard. In-fact, the approach of the Assessing Officer is quite misdirected as the following discussion in his order shows :-

> *"Accordingly, the section only encumbers the A.O. to examine if the profits derived from the eligible business by the assessee is more than the ordinary profits, then the A.O. has to arrive as to what could be the reasonable profit from the such eligible business and such profit has to be then taken as reasonably deemed to have been derived from the eligible business for the purposes of computing deduction under the section.*

33. The aforesaid discussion in the assessment order reveals that as per the Assessing Officer, the existence of close connection and more than ordinary profits is enough to assume an arrangement as contemplated u/s 80- IA(10) of the Act. The aforesaid understanding, in our view, is directly contrary to the judgement of the Hon'ble Karnataka High Court in the case of H.P. Global Soft Ltd. (supra) and our discussion in the earlier part of this order.

34. In view of the aforesaid, we conclude by holding that in the present case, the Assessing Officer has not proved that any arrangement had been arrived between the parties which resulted in higher profits. Consequently, the re-working of the profits by Assessing Officer by invoking section 10A r.w.s. 80-IA(10) of the Act is not justified. The action of the Assessing Officer to restrict the deduction u/s 10A of the Act to Rs.7,74,60,281/- as against the claim of Rs.36,35,09,382/- is hereby set-aside. Thus, assessee succeeds on this aspect."

8. Furthermore, the Hon'ble Bombay High Court in the case of CIT Vs. Schmetz India Pvt. Ltd. (supra.) has held as follows:

> "*So far as question (a) & (b) are concerned,* we *find that the Tribunal has considered the entire evidence and on facts come to the conclusion that the profits earned by Kandla division of the respondent-assessee is not abnormally high due to any arrangement between the respondent-assessee and its German Principal. The Tribunal correctly held that extraordinary profits cannot lead to the conclusion that there is an arrangement between the parties. This would penalize efficient functioning. Further, the authorities have also recorded a finding that the industrial sewing machine needles imported and traded by the Mumbai division are different from those manufactured & exported by the Kandla division. Consequently, this also negatives any arrangement between the parties to show extraordinary profits in respect of its Kandla division so as to claim deduction under section 10A of the Act. These are findings one of fact. The appellant-revenue have not been able to show that the findings are perverse or arbitrary. In the circumstances, questions (a) and (b) as formulated by the appellant/revenue do not raise substantial questions of law in the present facts and are therefore dismissed."*

Therefore, the issue is squarely covered in favour of the assessee; so far Revenue appeal is concerned. Respectfully, following our decision in ITA No.18/PUN/2011 for assessment year 2006-07 and the decision of the Hon'ble Jurisdictional High Court, we do not find any infirmity with the findings of DRP who has held and observed that with regard to disallowance of claim of deduction u/s.10A(7) and 10AA(9) amounting to Rs.35,95,51,296/-, the Ld. DRP directed to delete the entire proposed addition citing the decision of Tribunal's decision in assessee's own case for assessment year 2006-07 and 2007-08. Thus, as per examination on records and judicial pronouncements, we thereby hold that relief provided by the DRP to the assessee on this issue is sustained and grounds raised by the Revenue in appeal are dismissed.

9. In the result, appeal of the Revenue in ITA No.473/PUN/2016 is dismissed.

ITA No.446/PUN/2016 (By Assessee)
Assessment year 2011-12

10. Now, we proceed to decide the assessee's appeal. The Ld. AR of the assessee apprised the Bench that ground No.1 is general. That ground No.1 being general in nature, requires no adjudication.

11. The Ld. AR of the assessee is not pressing ground Nos. 2 to 13. Hence, ground Nos. 2 to 13 are dismissed as '**not pressed**'.

12. Ground No.15 is consequential. That the ground No.15 being consequential, requires no adjudication.

13. Thus the only ground left for adjudication is ground No.14. This ground is with respect to addition on account of reconciliation of receipts with Form 26AS. The grievance of the assessee is that the Ld. DRP/TPO has erred on facts and in law in considering the difference amounting to Rs.2,883,003/- in receipts reported in Form 26AS and as per the Profit and Loss Account as income of the assessee for assessment year 2011-12 and adding the same to the total income of the assessee for the year.

14. The facts on this issue are that during the course of assessment proceedings, the Assessing Officer asked the assessee to reconcile receipts reported in Form 26AS and receipts declared in profit and loss account. The amount which could not be reconciled by the assessee, was added to the total income of the assessee by the Assessing Officer. Against the action of the Ld. Assessing Officer, the assessee before the DRP has made following submissions:

> "*The sales/income on which tax has been deducted as per Form-26AS is Rs.277.26 Crores whereas the total sales reported by the appellant is Rs.1447.76 Crores, an amount much higher than the figure appearing in the Form 26AS. On plain reading of section 190 and 191, it may be established that the procedure for deduction of tax at source is only a made for collection of tax. Hence, it cannot be believed to be the source of income credit for a taxpayer.*
>
> *The provisions relating to "collection and recovery at tax-deducted at source" are machinery-provisions for effectuating collection and recovery of the taxes that are determined under the other provisions of the Act In other words, these provisions only deal with procedural matters and do not deal with either the computation of income or chargeability of income.*
>
> *This view was upheld by the Hon'ble Ahmedabad Tribunal in the case of ITO Vs. Hans Road Carries (Pvt.) Ltd. (140 TTJ 642) wherein it was observed that "provisions relating to TDS are not the provisions for the computation of income. An income of a taxpayer is not required to be computed merely with reference to the TDS certificate but assessment of an income is altogether an independent exercise."*
>
> *Accordingly, it was the submission of the appellant the sections regarding deduction of tax at source do not relate to computation of income chargeable to tax and accordingly, the accounting policies followed by the Appellant along with the relevant provisions of the Act*

(sections 28 to 43A for business income in the Appellant's case) should be considered In relation to income chargeable to tax.

That after considering the submissions of the assessee and the facts of the case, the Ld. DRP held that even before them, the assessee has not reconciled the difference between the receipts as per Form 26AS and income shown in the Profit and Loss account. Therefore, addition of Rs.28,83,003/- made by the Assessing Officer was confirmed.

15. At the time of hearing, the Ld. AR of the assessee vehemently argued that they have made best efforts for reconciliation. The Ld. AR further submitted that Form 26AS is a statement generated by the Revenue regarding transactions pertaining to income tax with the assessee and that cannot be a tool or basis for making addition in respect of the assessee. If there is any difference between the books of account of assessee and statement of Form 26AS, then the Revenue has machinery for verification from concerned parties regarding actual transactions carried out in the relevant year.

16. We have perused the case records and analyzed the facts and circumstances with regard to this issue. Herein, the assessee has stated that whatever receipts are acquired, they have reflected in their books of account. If there is any discrepancy, it is upon the Department to reconcile the same and that burden is shifted to the Department. However, while saying so, the assessee accepts TDS components involved in the transactions. If Form 26AS reveals Rs.100/- as received by the assessee while in the books account, the assessee has recorded Rs.90/- and there is discrepancy of Rs.10/-. However, for getting the benefit of TDS, the assessee accepts TDS with regard to Rs.100/- and not Rs.90/-. If the TDS benefit is availed by the assessee of

Rs.100/- then it is also onus on the assessee to prove and reconcile the said difference of Rs.10/- as to how Rs.90/- is recorded in their books of account.

The Ld. AR of the assessee heavily placed reliance upon the decision of Mumbai Bench of the Tribunal in ITA No.4828/Mum/2012. That on perusal of the said order, we find that it is substantially different on the facts from the present case of the assessee. In the case before the Mumbai Bench of the Tribunal, the assessee has in his possession the TDS certificate based on which it wants relief credited from Revenue Authority. There was discrepancy only to the extent of credit reflected in the Form 26AS. In the instant case, while the assessee is claiming benefit of entire TDS components involved in the transactions, however, records different amount in his books of account as appearing in Form 26AS. As examined earlier, since the assessee is taking benefit of entire TDS components, the burden of reconciliation also lies on the assessee.

17. In the interest of justice, we remand this matter to the file of AO for adjudication and direct the assessee to provide reconciliation of statement between Form 26AS and their books of account. The burden is clearly on the assessee since on TDS component benefit, they are taking it entirety. If the assessee is not able to reconcile the difference, then the AO may add the amount in difference to the income of the assessee.

With these observations, this ground is set aside to the file of the AO for adjudication. Needless to say, principle of natural justice should be followed by the AO while adjudicating this issue. Thus, ground No.14 raised in appeal by the assessee is allowed for statistical purpose.

18. In the result, appeal of the assessee in ITA No.446/PUN/2016 is allowed for statistical purposes.

19. In the combined result, appeal of the Revenue is dismissed and appeal of the assessee is allowed for statistical purposes.

Order pronounced on 06th day of March, 2019.

Sd/-	Sd/-
R.S.SYAL	**PARTHA SARATHI CHAUDHURY**
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 06th March, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	05.03.2019	Sr.PS/PS
2	Draft placed before author	06.03.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		