IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2' NEW DELHI

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA NO 2623/DEL/2015
Assessment Year: 2010-11

A.T. Kearney India Pvt. Ltd. (India Branch Office), 6th Floor, Tower D, Global Business Park, Gurgaon-122002 (PAN: AADCA1436G)	**vs**	ACIT, Circle 1(1), New Delhi.
Appellant		Respondent

Assessee by: Shri Himanshu Sinha, Adv.
Ms Vrinda Tulsiyan, Adv.

Department by: Shri H.K. Choudhary, CIT DR
Ms Saweta Nakra, Sr. DR

Date of hearing : 14.06.2019
Date of pronouncement : 21.06.2019

O R D E R

PER SUDHANSHU SRIVASTAVA, JM

This appeal is preferred by the assessee against the final assessment order passed subsequent to the directions of the Ld. Disputes Resolution Panel-1, New Delhi (DRP) for assessment year 2010-11.

2.0 Brief facts of the case are that the assessee company was incorporated in June 2001. It is a Software Technology Park unit

which is engaged in the business of providing information technology related services to its overseas group entities and is eligible for claiming deduction u/s 10A of the Income Tax Act, 1961 (hereinafter called 'the Act'). It has been claiming deduction u/s 10A in the immediately preceding eight assessment years and the year under consideration is the ninth year for the claim of deduction u/s 10A of the Act. The return of income for the captioned year was filed declaring an income of Rs. 66,39,988/- which was initially processed u/s 143(1) and was later selected for scrutiny in terms of CASS guidelines. The assessee also claimed deduction of Rs. 1,69,61,565/- u/s 10A of the Act.

2.1 The assessee had also entered into international transactions with its Associated Enterprises (AEs) and, therefore, in accordance with provisions of section 92CA of the Act, a reference was made to the Transfer Pricing Officer (TPO) for determining the Arm's Length Price (ALP) of the international transaction.

2.2 Since, while filing the return of income, the assessee had made a voluntary transfer pricing adjustment amounting to Rs. 1,96,45,478/- and, thereafter, had claimed a deduction of Rs. 1,69,61,565/- u/s 10A of the Act, the Assessing Officer, in his

draft assessment order, held that the assessee had carried out a faulty calculation of the deduction u/s 10A of the Act. The Assessing Officer was of the opinion that *suo moto* transfer pricing adjustment of Rs. 1,96,45,478/- could not be included as part of the 'total turnover' of the undertaking and resultantly could not also form part of the total profit of the undertaking. The Assessing Officer (AO) proceeded to reduce the quantum of deduction claimed u/s 10A from Rs. 1,69,61,565/- to Rs. 76,12,562/-. The Assessing Officer was of the opinion that the figures of turnover and profit appearing in the audited books of account could not be altered by adjustments made under the provisions of the Income Tax Act.

2.3 Apart from this, the TPO also made a transfer pricing adjustment with respect to interest on receivables to the tune of Rs. 45,36,868/- by applying the SBI prime lending rate of 14.88% to impute notional interest on outstanding receivables over and above 30 days during the year. The Transfer Pricing Officer made a total upward adjustment of Rs. 60,84,687/- to the income of the assessee.

2.4 The assessee took the matter before the Ld. DRP who upheld the disallowance made by the Assessing Officer in respect

of the 10A deduction. The Ld. DRP held that *suo moto* adjustment made by the assessee did not bear the character of income and, therefore, could not be considered as being 'derived from' activity of IT enabled services eligible for deduction u/s 10A of the Act. The Ld. DRP further observed that additional income offered by the assessee by way of *suo moto* adjustment in the computation of income represented a notional figure and not the real income of the assessee and, therefore, it could not be treated as 'profits and gains derived by an undertaking'.

2.5 The Ld. DRP also upheld the transfer pricing adjustment in respect of interest on delayed payment of receivables.

2.6 Aggrieved with the directions of the Ld. DRP, the assessee is now before this Tribunal (ITAT) and has raised the following grounds of appeal:-

"A. General Grounds

> *Based on the facts circumstances of the case and in law, the final order issued by the Learned Assistant Commissioner of Income Tax, Circle -1 (1), New Delhi ("Ld. AO") under section 143(3) read with section 144C of the Income-tax Act, 1961 ("the Act") is bad in law.*

B. Transfer Pricing Grounds

> *Addition on account of Transfer Pricing - Provision of IT Enabled Services*

1. *On facts, circumstances of the case and in law, the Ld. AO and Hon'ble DRP erred in enhancing the income of the Appellant by INR 943,747 holding that the international related party transaction pertaining to provision of IT enabled Services ("ITeS) do not satisfy the arm's length principle and also by not allowing the benefit of (+/-) 5% as provided in the proviso to Section 92C(2) of the Act.*

2. *On facts and in law, the Hon'ble DRP and Ld. AO erred in disregarding the Appellant's use of multiple year/ prior years' data in contravention of the provision of section 92C of the Act read with Rule 10B and Rule 10D of the Income Tax Rules, 1962 ("the Rules").*

   Addition on account of Transfer Pricing - Interest on outstanding receivables

3. *On facts and in law, the Hon'ble DRP / Ld. AO have erred in making an addition of INR 4,536,868 to the income of the Appellant, by making an impugned adjustment in lieu of interest on account of delayed payments from AE during the year.*

C. *Corporate Tax Grounds*

   B.1 Deduction u/s 10A is to be computed on taxable income determined under normal provisions of the Act and not on profits as per books of accounts.

   1.1 On the facts and in the circumstances of the case, the learned AO has erred in proposing and the Hon'ble DRP has further erred in confirming the computation of deduction u/s 10A of the Act on the profits as per books of accounts instead of income under the Act, and holding that for the purpose of section 10A of the Act, the figures of turnover and profit are meant to be figures as

appearing in the audited books of accounts and cannot be altered by the adjustments stemming from, the income tax provisions.

1.2 On the facts and in the circumstances of the case, the learned AO has erred in proposing and the Hon'ble DRP have erred in confirming the disallowance of the deduction claimed by the appellant u/s 10A of the Act on the amount of transfer pricing adjustment voluntarily made by the appellant in its return of income of income for the subject assessment year.

1.3 On the facts and in the circumstances of the case, the learned AO has erred and the Hon'ble DRP has further erred in not appreciating the submissions made by the appellant regarding allowability of deduction u/s 10A on voluntary transfer pricing adjustment made by the appellant.

B.2 Set off of brought forward loss.

On the facts and in the circumstances of the case, the learned AO has erred and the Hon'ble DRP has further erred in confirming the action of the AO in not allowing set off of brought forward loss of Rs. 5,389,388 as claimed by the appellant in its return of income of the subject assessment year.

B.3 Set off of Minimum Alternate Tax ('MAT') credit.

On the facts and in the circumstances of the case, the learned AO has erred and the Hon'ble DRP has further erred in confirming the action of the AO in not allowing set off of available MAT credit.

B.4 Levy of interest under section 234B and 234D.

On the facts and in the circumstances of the case and in law, the learned AO has erred in charging interest under section 234B of the Act.

On the facts and in the circumstances of the case and in law, the learned AO has erred in levying interest under section 234D of the Act.

B.5 Initiation of penalty provisions u/s proceedings u/s 271(1)(c).

On the facts and in the circumstances of the case, the learned AO has erred in proposing and the Hon'ble DRP has further erred in confirming the initiating the penalty proceedings under section 271(1)(c) of the Act.

The above grounds are independent and without prejudice to each other.

The Appellant craves leave to add, withdraw, amend or vary the above grounds of appeal ' before or at the time of hearing."

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that grounds B1 and B2 were not being pressed because the issue already stood resolved in favour of the assessee of virtue of the rectification order passed u/s 154 by the Assessing Officer vide order dated 16.7.2015.

3.1 With respect to ground no. C pertaining to disallowance in the deduction u/s 10A of the Act, the Ld. AR submitted that the Ld. DRP while upholding the disallowance had held that proviso to section 92C(4) is applicable because it has ordered certain

adjustment to the ALP of the main ITES transaction in Para 7 of its directions. It was submitted that subsequently no adjustment to the ALP had survived as there was a computational error in this respect and the TPO had passed an order u/s 154 on 16.7.2015 deleting the adjustment ordered by the Ld. DRP. Our attention was drawn to the said rectification order u/s 154 of the Act which was placed at paper book pages 346 and 347. The Ld. AR further submitted that various High Courts and the different Benches of the ITAT on various occasions had held that provisions of section 92C (4) of the Act would not be attracted on the voluntary transfer pricing adjustment made by the assessee and the provisions were to apply only in cases where the adjustments had been made by the TPO/Assessing Officer. It was submitted that since no transfer pricing adjustment has survived, the deduction u/s 10A of the Act could not be denied on the voluntary transfer pricing adjustment made by the assessee. The Ld. AR placed reliance on the following judicial precedents in this regard:-

i) I Gate Global Solutions Ltd. Vs ACIT (2007) 112 TTJ 1002 in ITA No. 453/2008 of the Hon'ble Karnataka High Court.

ii) G.S. Engineering & Construction India of the ITAT Delhi Bench reported in 93 taxmann.com 154 (Delhi Tribunal)

iii) QX KPO Services Pvt. Ltd. vs. ITO of the Ahmedabad Tribunal in ITA No.2043/AHD/2014

iv) Approva Systems Pvt. Ltd. vs DCIT of the Pune Bench of ITAT in ITA No.1051/Pune/2015

v) Sumtotal Systems India (P) Ltd. vs DCIT of the Hyderabad Tribunal reported in 88 taxmann.com 897

3.2 The Ld. AR emphasised that the first proviso to section 92C(4) was applicable only to situations where the adjustment to ALP was made by the Assessing Officer/TPO/Ld. DRP and not to the voluntary adjustments made by the assessee itself in the return of income.

3.3 The ld. AR also submitted that the Assessing Officer, while computing eligible deduction u/s 10A of the Act, has considered the profit as per the books of accounts instead of the profit as computed under the Act under the head 'income from business and profession' and even the Ld. DRP upheld the Assessing Officer's finding that deduction u/s 10A needs to be computed based on book profit. It was submitted that if the Assessing

Officer's view is to be taken as correct, this would lead to inclusion of even the profits of non-10A units in a case where the assessee has profits from non-export undertaking as well which could not be the intention of the legislature. The Ld. AR argued that the various Hon'ble High Courts and the co-ordinate Benches of the Tribunal have allowed revised enhanced deduction u/s 10A of the Act on the additions to the income made during the revised return/course of assessment. It was argued that if the deduction u/s 10A of the Act were to be only restricted to book profit, no revision of deduction u/s 10A would ever be possible. For this proposition, the Ld. AR placed reliance on the following judicial precedents:-

i) PCIT vs. Oracle (OFSS) BPO Services Ltd. of the Hon'ble High Court reported in 102 taxmann.com 396

ii) C.I.T. vs. Gem Plus Jewellery India Ltd. of the Hon'ble Bombay High Court reported in 194 Taxman 192

iii) PCIT vs. Lionbridge Technologies Pvt. Ltd. of Hon'ble Bombay High Court reported in 86 taxmann.com 101

iv) ITO vs. Cerner Healthcare Solutions Pvt. Ltd. of the Bangalore Tribunal 83 taxmann.com 62

3.4 The ld. AR further argued that the voluntary transfer pricing adjustment made by the assessee will essentially have to form part of the profits of the business for the purposes of claiming deduction u/s 10 of the Income Tax Act. It was submitted that the assessee is engaged in the business of providing information technology enabled services to its overseas group entities and the very basis of the voluntary transfer pricing adjustment was the fact that the profit level margins of the assessee's business were deemed below the accepted profit margin under the provisions of section 92 and, therefore, voluntary adjustment was made to revise the profit margin upwards to meet the provisions of section 92. It was submitted that in numerous cases, the deduction u/s 10A had been allowed even on ancillary income. In this regard, following judicial precedents were brought to our notice:-

i) C.I.T. vs. Motorola India Electronics Pvt. Ltd. Hon'ble Karnataka High Court reported in 265 CTR 94

ii) Mercer Consulting (India) Pvt. Ltd. vs. DCIT (2014) of ITAT Delhi Bench reported in 150 ITD 1

iii) Maral Overseas Ltd. vs. Addl. C.I.T. of Indore Tribunal Special Bench in ITA Nos. 777 and 900/Ind/2004

iv) Hritnik Exports of the Hon'ble Delhi High Court in ITA 219/2014 and 239/2014

3.5 Ld. AR also submitted that is not the department's case that there is no disclosure made by the assessee in this regard and that the disclosure has duly been made in Form 3CEB by the assessee. It was further submitted that even after claiming this deduction on the transfer pricing adjustment, the assessee had, in effect, paid more taxes and this also cannot be the department's case that the assessee was trying to evade taxes by making this kind of transfer pricing adjustment. It was further submitted that the concept of transfer pricing adjustment is in itself notional and, therefore, the observations of the lower authorities that deduction u/s 10A could not be allowed on notional adjustment is also not correct. The Ld. AR vehemently argued that if a voluntary adjustment to the price on notional transaction is to be treated at par with the adjustment made by the Assessing Officer by relying on the provisions of section 10A, then the first proviso to section 92C (4) of the Act will be rendered redundant which would clearly not be permissible under the scheme of the Act. It was further submitted that the Ld. DRP's reliance on the judgment of the Hon'ble Apex Court in Liberty

India and Sterling Foods was erroneous inasmuch as in these two cases, the Hon'ble Apex Court was examining the interpretation of term 'profits derived from' in the context of section 80HH and 80IB whereas the scheme of section 10A was entirely different on account of sub-section 4 of section 10A. Ld. AR submitted that this distinction has been dealt in great detail by the Hon'ble Delhi High Court and other High Courts in various decisions like Hritnik Exports (supra) and Riviera Home Furnishings vs. ACIT of the Hon'ble Delhi High Court reported in 237 Taxman 520.

3.6 With respect to ground no. B2, challenging the action of the Assessing Officer in not allowing the set off of brought forward loss of Rs. 53,89,388/-, it was submitted that suitable directions may be given in this regard.

3.7 Similarly with respect to ground no. B3 challenging the action of the Assessing Officer in not allowing the set off of available MAT credit, it was prayed that suitable directions may be given in this regard.

3.8 On the transfer pricing ground B3 challenging the upward addition of Rs. 45,36,868/- on account of notional interest on delayed payments from the AE, the Ld. AR submitted that during

the year under consideration, the assessee had compared its operating margin (OP/OC) with its comparable companies. It was submitted that the TPO made an adjustment on account of delayed payment of outstanding receivables by allowing a credit period of 30 days whereas it was the assessee's policy to allow 90 days credit period. For this, our attention was drawn to copy of invoices raised by the assessee which was part of the paper book in pages 450-453. The Ld. AR also submitted that the TPO had applied interest rate of 14.88% by taking SBI PLR plus 300 points whereas the interest rate of LIBOR and 150 points should have been taken. It was further submitted that both the TPO and the Ld. DRP had failed to appreciate that the adjustment, if any, should have been worked out on net outstanding receivables balance i.e. after making adjustment for the outstanding payables to the AE. The Ld. AR also argued that since the assessee was a debt free captive service provider to the AE, no adjustments should be made as it could not be presumed that borrowed funds have been utilised to pass on the credit facility to the AEs.

3.9 With respect to the levy of interest u/s 234B and 234D as taken in ground no.B.4 the Ld. AR submitted that this ground was consequential.

4.0 In response, the Ld. Senior Departmental Representative (Sr. DR) submitted that it was fact of the matter that the assessee had actually earned foreign exchange of Rs. 8,05,76,197/- only against the declared turnover of Rs. 8,65,33,094/- which was increased by the assessee due to voluntary Transfer Pricing adjustment. The Ld. Sr. DR emphasised that this income does not form part either of the profit and loss account or the balance sheet and it is only a notional figure used by the assessee for the purpose of computation of income and deduction u/s 10A. It was submitted that this amount represented by the voluntary adjustment was neither actually received in India nor is the actual profit of the undertaking. It was further submitted that the deduction u/s 10A is allowed to a taxpayer for earning income from export of eligible services only and not *suo moto* adjustment made by the assessee and would not bear the character of income. While making reference to provisions of section 92C, the Ld. Sr. DR submitted that the Act does not empower adjustments u/s 92C(4) and since this adjustment has

been made outside the books of accounts, it cannot be taken as being part of the turnover. The Ld. Sr. DR re-emphasised that the assessee or the department cannot go beyond the books of accounts. With respect to the case laws relied upon by the assessee, Ld. Sr. DR submitted that all these cases were distinguishable on the facts as the facts were not identical in any of the cases.

4.1 With respect to the assessee's ground challenging transfer pricing adjustment pertaining to interest on delayed payments, reliance was placed on the findings and observations of the Assessing Officer/TPO in this regard.

5.0 We have heard the rival submissions and perused the material available on record. The first issue for determination before us is whether the assessee will be eligible for claim of deduction u/s 10A of the Act with respect to *suo moto* transfer pricing adjustment made by the assessee. Both the parties have argued at length on the issue. On one hand, it is the assessee's contention that provisions of section 92(4) will not be applicable in this case as the transfer pricing adjustment has been made voluntarily by the assessee and once the income has been offered to tax, it forms part of the profit of the business and the

deduction u/s 10A cannot be denied. The Ld. AR has also cited a number of judicial precedents in support of his contention. On the other hand, Ld. Sr. DR has taken a stand that the Act does not empower the assessee to enhance the Arm's Length Price and that only the Assessing Officer is empowered to make adjustments u/s 92C(4) of the Act. The facts leading to this controversy are that while filing its income tax return, the assessee had compared its operating margin with the comparable companies and since the operating margin earned by the assessee was lower than the operating margin earned by the comparable companies, the assessee made a voluntary transfer pricing adjustment amounting to Rs. 1,96,45,478/-. After this voluntary adjustment, operating profit margin of the assessee came to 25% which was higher than the three years average operating profit margin of the comparables. Thereafter, the return of income was filed which included the voluntary transfer pricing adjustment and the gross taxable income before deduction u/s 10A was determined at Rs. 2,23,50,953/-. Thereafter, the assessee proceeded to claim deduction of Rs. 1,69,61,565/- u/s 10A which was denied by the Assessing Officer and later on confirmed by the Ld. DRP.

5.1 As per the proviso to section 92C(4), no deduction u/s 10A or 10B or Chapter VIA is to be allowed in respect of amount of income by which the total income of the assessee is enhanced after computation of income under the sub-section. The department has disallowed the assessee's claim by relying on this proviso. An identical case came up for hearing before the ITAT Bangalore Bench in the case of I-Gate Global Solutions Limited vs. ACIT (supra) and the ITAT Bangalore Bench returned a finding that the assessee was entitled to deduction u/s 10A in respect of income declared in the return of income on the basis of computation of ALP. The relevant portion of the ITAT's order is reproduced here in under:-

> *"The last grievance is in respect of not allowing deduction under s. 10A on the adjustment made by the assessee to the arm's length price.*
>
> *In the instant case, the assessee company entered into transaction with associated enterprise. The assessee company determined arm's length price and accordingly made adjustment to the income because arm's length price determined was more than the consideration, at which the transactions were shown in the books of account. The deduction under s. 10A has not been allowed as per proviso to s. 92C(4). As per this proviso, no deduction under s. 10A or 10B or under Chapter VI-A is to be allowed in respect of*

amount of income, by which the total income of the assessee is enhanced after computation of income under the sub-section. The learned Authorized Representative during the course of proceedings has referred to the word 'enhanced'. In case the income is enhanced, then deduction is not permissible. However, in the instant case, income has not been enhanced because the same was already returned by the assessee. In the Memo Explaining the Provisions of Finance Bill, 2006, it has been mentioned as under:

> *"Under sub-s. (4), it has been provided that on the basis of arm's length price so determined, the A.O. may compute the total income of an assessee. The first proviso to sub-s. (4) provides that where the total income of the assessee as computed by AO is higher than the income declared by the assessee, no deduction under s. 10A or s. 10B or under Chapter VI-A will be allowed in respect of the amount of income, by which the total income of the assessee is enhanced after computation of income under sub-section."*

From the Memo Explaining the Provisions of Finance Bill, 2006 as well as from the literal meaning of the word 'enhanced[1], it is clear that if income increased, as a result of computation of arm's length price, then such increase is not to be considered for deduction under s. 10A. In the instant case, the assessee himself has computed the arm's length prices and has disclosed the income on the basis of arm's length prices. It is not a case, where there is an enhancement of income due to determination of arm's length price. Hence, it is held that the assessee was entitled to deduction under section 10A in respect of income declared in the return of income

on the basis of computation of arm's length price.

In the result, both appeals are partly allowed."

5.2 This order of the ITAT Bangalore Bench was upheld by the Hon'ble Karnataka High Court in ITA 453/2008 wherein vide judgment dated 17.6.2014, the Hon'ble Karnataka High Court answered the substantial question of law no. 4 against the revenue and in favour of the assessee. We further note that ITAT Ahmedabad Bench in the case of QX KPO Services Pvt. Ltd. vs. ITO (supra) had followed the order of the ITAT Bangalore Tribunal in the case of I-Gate Global Solutions Ltd. Vs ACIT (supra) and had accordingly allowed the deduction u/s 10A of the Act on the voluntary TP adjustments made by the assessee. Similarly, the ITAT Pune Bench in the case of Approva Systems Pvt. Ltd. vs. DCIT (supra) also followed the decision of ITAT Bangalore Bench in the case of I-Gate Global Solutions Ltd. Vs ACIT (supra) and allowed deduction u/s 10A of the Act on the voluntary transfer pricing adjustment made by the assessee by noting that the assessee was entitled to deduction u/s 10A of the Act on additional income offered on account of *suo moto* adjustment on account of transfer pricing provisions and that the provisions of section 92C(4) of the Act were not attracted. Similarly, ITAT

Hyderabad Bench in the case of Sumtotal Systems Pvt. Ltd. vs. DCIT reported in 88 Taxmann.com 897 also relied on the order of the ITAT Bangalore Bench in the case of I-Gate Global Solutions Ltd. Vs ACIT (supra) and allowed deduction u/s 10A of the Act on voluntary transfer pricing adjustment made by the assessee. Thus, the ratio of the aforesaid orders of the Tribunal, which we are bound to follow, is that the first proviso to section 92C(4) of the Act is evidently applicable only to situations where adjustment to the ALP is made by the Assessing Officer/TPO/Ld. DRP and not to the voluntary adjustment made by the assessee itself. If the legislative intent was to treat the adjustments made by the Assessing Officer at par with the voluntary adjustment made by the assessee, the legislative intent would have been expressed in different words and section 92C(4) would not have referred to computation of income made by the Assessing Officer in terms of the ALP determined u/s 92C(3) based 'enhanced' income. We also note that the Ld. Sr. DR has placed reliance on the ratio laid down in the case of Deloitte Consulting India (P) Ltd.(2012) 22 taxmann.com 107 (Mumbai). However, the same does not stand because of the ratio of the judgment of the Hon'ble High Court of Karnataka on the same issue. Though the

said judgment is of the non-jurisdictional High Court, the same is binding on this Tribunal in absence of any contrary decision of the Jurisdictional High Court. Therefore, respectfully following the ratio of the decision of the Coordinate Benches as mentioned in the preceding paragraphs as well as the Hon'ble High Court of Karnataka, we allow assessee's ground nos. B.1, 1.1, 1.2 and 1.3 and we direct the Assessing Officer to delete this disallowance and grant benefit of deduction u/s 10A on the amount of voluntary TP adjustment made by the assessee.

5.3 Coming to the ground relating to transfer pricing adjustment in respect of notional interest on outstanding receivables, it is seen that the department has made transfer pricing adjustment based on credit period of 30 days whereas it is the contention of the assessee that it allows credit period of 90 days and for this, the assessee has also placed reliance on invoices raised by it wherein credit period of 90 days has been mentioned. Another grievance of the assessee in this regard is that the department has not made any adjustment in respect of outstandings payable to the associated enterprises and has made the transfer pricing adjustment only on the outstanding

receivables. The assessee has prayed that the transfer pricing adjustment, if any, has to be made on net outstanding receivables. The third grievance of the assessee on this issue is that the TPO has made the adjustment based on SBI plus 300 basis points whereas the adjustment should have been made on LIBOR plus 150 basis points. The assessee has also relied on the judgment of the Hon'ble Delhi High Court in the case of C.I.T. vs. M/s Cotton Naturals India Pvt. Ltd. in ITA 233/2014 wherein the Hon'ble High Court has held that the interest rate should be market determined interest rate applicable to the currency concerned in which the loan has to be repaid and that the interest rate should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. A perusal of the order of the TPO as well as the directions of the Ld. DRP shows that these aspects have not been duly considered by either of the authorities below and they have simply proceeded to make the transfer pricing adjustment on a certain notion without looking into the specific facts of this case. Therefore, in view of aforementioned anomalies, as pointed out by the Ld. AR, with which we are in complete agreement, we deem it appropriate to restore this issue

to the file of the TPO for adjudicating the issue afresh after duly considering our observations as well as after giving due opportunity to the assessee to present its case. Accordingly, ground no. B.3 stands allowed for statistical purposes.

5.4 As far as ground no. B.2 regarding not allowing set off of brought forward loss is concerned, the Assessing Officer is directed to allow the same after due verification.

5.5 Similarly with respect to ground no. B.3 regarding set off of available MAT credit, the Assessing Officer is directed to do the needful as per law.

5.6 Ground no. B.4 is consequential and no specific adjudication is required.

5.7 Ground no. B.5 challenging the initiation of penalty proceedings u/s 271(1)(c) of the Act is again consequential and needs no specific adjudication.

6.0 In the result, the appeal of the assessee stands allowed in terms of our observations as contained in the preceding paragraphs.

Order pronounced in the open court on 21st JUNE, 2019.

Sd/-	**Sd/-**
(N.S. SAINI)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 21st JUNE, 2019
'GS'

Copy forwarded to: -

1) Appellant
2) Respondent
3) CIT(A)
4) CIT
5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	