**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"I" Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member**
**and Shri N.K. Pradhan, Accountant Member**

**ITA No.1695/Mum/2018**
**(Assessment Year: 2007-08)**

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| The Tata Power Co. Ltd.<br>Corporate Center,<br>Block 'B', 5th Floor, 34,<br>Sant Tukaram Road,<br>Carnac Bunder,<br>Mumbai-400 009 | Vs. | Income Tax Officer<br>(International Taxation)-TDS (2)<br>Air India Building,<br>Mumbai - 21 |
| PAN – AAACT0054A | | |
| **(Appellant)** | | **(Respondent)** |

Appellant by: Shri Nitesh Joshi, A.R
Respondent by: Shri Nishant Samaiya, D.R

Date of Hearing: 28.08.2019
Date of Pronouncement: 13.09.2019

**O R D E R**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-58, Mumbai, dated 07.03.2016, which in turn arises from the order passed by the A.O under Sec.201(1)/201(1A) r.w.s 195 of the Income Tax Act, 1961 (for short 'Act'), dated 31.10.2013. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1. The learned CIT (A) has erred in law and in facts by holding the Order passed by the learned AO u/s 201(1) and 201(1A) of the Income Tax Act, 1961, as good despite the fact that the ITO(IT) - TDS(2), Mumbai, has erred by not following the directions given by Hon'ble CIT(A)-6 vide order dated on 14th July, 2013, which say that the Order may be passed within a reasonable period (2 months), however, the same was not passed within the

reasonable time. Therefore, the Order passed by learned AO is bad in Law and should be set aside.

2. The learned CIT(A) has erred in law and in facts by holding that the payments made to Entec UK Ltd., UK (Entec) are in the nature "Fees for Technical Services" and erred in not appreciating that rendering of services by a non-resident to an Indian payer, which though may be a technical in nature can lead to accrual of "Business Income" in India if the Non- Resident is not "Making available any technology to the payer.

3. The learned CIT (A) has erred in law and in facts by holding that the Entec has "made available" any technology to the appellant which make the payment therefore as "fees for Technical service' as defined in the DTAA with UK.

4. The learned CIT(A) has erred in law and in facts by holding that payments made to Entec does not get covered under the Article 7 read with Article 5.2(k) of the India-UK Treaty viz. "Business Income" since the Entec does not have permanent Establishment in India.

5. The appellant craves it's leave to add, alter, amend any ground or grounds."

Apart therefrom, the assessee has also raised the following additional grounds of appeal before us:

"The appellant craves leave to raise the following additional grounds without prejudice to the grounds raised in original appeal:

1. On the facts and circumstances of the case and in law, the order dated 31October 2013 passed by the learned Income-tax Officer (International Taxation)-TDS 2, Mumbai (hereinafter referred to as the ITO) is passed beyond the period specified by proviso to section 201(3) of the Income-tax Act, 1961 (the Act) rendering the said order to be barred by limitation and ought to be quashed.
2. The order dated 31 October 2013 passed by the ITO beyond the period of one year from the end of the financial year in which the proceedings were originally initiated by issue of notice dated 28 September 2007 is barred by limitation.
3. As no action has been taken by the Department against Entec UK Limited (i.e. the payee) and the time for taking such action has expired, no order under Section 201(1)/201(1A) read with section 195 of the Act could have been passed.

The appellant craves leave to add to, amend, alter, vary, omit or substitute the aforesaid ground of appeal or add a new ground or grounds at any time before or at the time of hearing of the appeal as they may be advised."

As the aforesaid additional grounds of appeal raised by the assessee involves purely a question of law as regards the validity of the jurisdiction assumed by the A.O for passing the order under Sec.201(1)/201(1A) r.w.s 195 of the Act, which would require adjudication on the basis of the facts available on record, therefore, the same in light of the judgment of the **Hon'ble Supreme Court** in

the case of **National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)** are admitted.

2. Briefly stated, the assessee company is engaged in the business of generation, purchase, transmission and distribution of electricity. The case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. During the course of the assessment proceedings it was interalia observed by the A.O that the assessee had made a remittances of Rs.7,94,56,634/- to certain foreign parties without deduction of any tax at source. The A.O holding a conviction that the assessee who remained under a statutory obligation to have deducted tax at source under Sec.195 on the aforesaid remittances had failed to do so, disallowed the amount of Rs.7,94,56,634/- under Sec.40(a)(ia) of the Act.

3. Aggrieved, the assessee assailed the aforesaid disallowance under Sec. 40(a)(ia) made by the A.O before the CIT(A). The CIT(A) vide his order dated 21.03.2012 directed the A.O to get an opinion of the ITO(IT)-TDS, Mumbai regarding applicability of the TDS provisions as regards the aforesaid payments. Observing, that the assessee had claimed to have filed a letter with the ITO (IT)-TDS, Range-2, Mumbai for non-deduction of tax at source on foreign remittances, the CIT(A) directed the A.O to obtain necessary clarification from the ITO (IT)-TDS, Range-2, Mumbai and accordingly reduce the disallowance made under Sec. 40(a)(ia) of the Act. The A.O in compliance to the aforesaid direction of the CIT(A) unsuccessfully sought a clarification from the ITO(IT)-TDS, Range-2, Mumbai. In the absence of any reply from the ITO(IT)-TDS, Rage-2, Mumbai, it was observed by the A.O that the relief was to be allowed to the assessee only on receipt of the necessary clarification from him. Aggrieved, the assessee once again carried the matter before the CIT(A), who now directed the A.O to

positively obtain the clarification in respect of the aforesaid issue from the ITO(IT)-TDS, Range-2, Mumbai and reduce the disallowance in terms of the clarification obtained. Apart there from, it was observed by the CIT(A) that in case the ITO(IT)-TDS, Mumbai failed to furnish any reply, then the entire disallowance made by the A.O under Sec. 40(a)(ia) shall stand deleted. The A.O giving effect to the aforesaid directions of the CIT(A), vide his order dated 15.10.2013 vacated the disallowance that was earlier made by him under Sec.40(a)(ia), though subject to a rider, that in case if a contrary report would be received from the ITO(IT)-TDS, Range-2, Mumbai, then the relief allowed to the assessee would be withdrawn.

4. Subsequently, the ITO(IT)-TDS, Range-2, Mumbai passed an order dated 31.10.2013 under Sec. 201(1) & 201(1A) r.w.s 195 of the I.T Act, dated 31.10.2013, holding the assessee as being in default in respect of the remittance of Rs. 1,67,78,879/-made to a non-resident party viz. Entec U.K. Limited.

5. Aggrieved, the assessee assailed the order passed by the A.O under Sec. 201(1)/201(1A) r.w.s 195 of the I.T Act before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee was however not persuaded to subscribe to the same and dismissed the appeal.

6. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. At the very outset of the hearing of the appeal, the ld. A.R assailed the validity of the order passed by the A.O under Sec. 201(1)/201(1A) r.w.s 195 of the I.T Act, dated 31.10.2013. We find that the validity of the order passed by the A.O under Sec. 201(1)/201(1A) r.w.s 195, dated 31.10.2013 has been assailed by the

assessee before us on three grounds viz. (i) that, as the order passed by the ITO(IT)-TDS, Range-2, Mumbai is beyond the period specified in the *proviso* to Sec. 201(3) of the I.T Act, therefore, the same is barred by limitation;(ii) that, as the order passed by the A.O under Sec.201(1)/201(1A) r.w.s 195, dated 31.10.2013was passed beyond a period of one year from the end of the financial year in which proceedings for treating the assessee as being in default were originally initiated by issuance of a notice dated 28.09.2007, therefore, the same was barred by limitation; and (iii) that, as the department had not taken any action against the payee viz. Entec U.K. Limited, and also the time for taking such action had already expired, therefore, no order under Sec.201(1)/201(1A) r.w. Sec. 195 treating the assessee as being in default could have been validly passed.

7. As the assessee has assailed the validity of the jurisdiction assumed by the A.O for passing the order under Sec. 201(1)/201(1A) r.w.s 195 of the Act, therefore, we shall first advert to and adjudicate the same. It is the claim of the ld. A.R, that as the order passed by the A.O under Sec. 201(1)/201(1A) r.w.s 195, dated 31.10.2013 is beyond the prescribed time limit contemplated in the *proviso* to sub-section (3) of Sec.201 of the Act, therefore, the same is barred by limitation. On a specific query by the bench as to how the sub-section (3) of Sec.201 would be applicable in respect of payments made by an assessee to a non-resident payee, the ld. A.R relied on the judgment of the Hon'ble High Court of Delhi in the case of Bharti Airtel Limited Vs. Union of India (2017) 245 Taxman 80 (Del) and the order of the ITAT, Mumbai bench 'L' in the case of Tech Mahindra Ltd. Vs. ITO, IT, Circle-1, Mumbai (2018) 96 taxman.com 357 (Mum). It was submitted by the ld. A.R that as the order u/ss. 201(1)/201(1A) r.w.s 195, dated 31.10.2013 was passed beyond the permissible time limit prescribed in the *proviso* to Sec. 201(3) of the Act, therefore, the same was barred

by limitation. The ld. A.R also assailed the validity of the order passed by the A.O u/ss. 201(1)/201(1A) r.w.s 195, dated 31.10.2013 on the ground that the proceedings for treating the assessee in default u/s 201(1) were initiated by the ITO(IT)-TDS-2, Mumbai beyond a period of four years from the end of the relevant financial year i.e latest by 31.03.2011.It was submitted by the ld. A.R that though no limitation is prescribed in Sec. 201 of the Act, however, as had been held by the various courts, the action must be initiated by the competent authority within a period of 4 years. In order to fortify his aforesaid contention the ld. A.R had drawn support from the judgments of the Hon'ble High Court of Delhi in viz. (i) CIT, Delhi XVII Vs. NHK Japan Broadcasting Corporation (2008) 305 ITR 137 (Del); (ii) CIT Vs. Hutchinson Essar Telecom Ltd. (2010) 323 ITR 230 (Del); and (iii) Vodafone Essar Mobiles Services Ltd. Vs. Union of India. Also, support was drawn by the ld. A.R from the judgment of the Hon'ble High Court of Gujarat in the case of CIT (TDS) Vs. Anagram Wellington Assets Management Co. Ltd. (2016) 389 ITR 654 (Guj). In the backdrop of the aforesaid settled position of law so laid down by the Hon'ble High Courts, it was submitted by the ld. A.R that the ITO(IT)-TDS-2, Mumbai had issued a 'Show cause' notice, dated 18.10.2013 to the assessee, therein calling upon it to explain as to why it should not be deemed to be an assessee in default under Sec. 201(1) of the Act. Accordingly, it was submitted by the ld. A.R that as the proceedings u/s 201(1) were initiated beyond the stipulated time period of four years from the end of the relevant financial year i.e after 31.03.2011, therefore, no valid order u/ss. 201(1)/201(1A) treating the assessee as being in default could have been passed. In order to fortify the aforesaid factual position the ld. A.R took us through the observations of the ITO(IT)-TDS-2, Mumbai at Para 3.7 – Page 9 of his order passed under Sec. 201(1)/201(1A) r.w.s 195, dated 31.10.2013. Apart there

from, it was submitted by the ld. A.R that the ITO(IT)-TDS-2, Mumbai, at Page2 – Para 2.3 of his order passed under Sec. 201(1)/201(1A) r.w.s 195, dated 31.10.2013, had categorically stated that neither any order under Sec.201(1)/201(1A) was passed in the case of the assessee nor any proceedings were pending in its case under Chapter XVII of the Act for A.Y. 2007-08. Accordingly, it was submitted by the ld. A.R that as the revenue had not initiated any proceedings for declaring the assessee as being in default within a period of 4 years from the end of the relevant financial year i.e up to 31.03.2011, therefore, on the said count also the order passed by him under Sec. 201(1)/201(1A), dated 31.10.2013 was clearly barred by limitation and was liable to be quashed. Further, it was further submitted by the ld. A.R that an order under Sec. 201(1) is statutorily required to be passed within a period of one year from the end of the financial year in which the proceedings for treating the assessee as being in default were initiated. On the basis of his aforesaid contention, it was submitted by the ld. A.R, that as the proceedings in the case of the assessee were initiated on 28.09.2007, therefore, the order passed by the ITO(IT)-TDS-2, Mumbai under Sec. 201(1)/201(1A), dated 31.10.2013 was beyond the prescribed limit and thus liable to be quashed. In support of his aforesaid contention the ld. A.R had relied on the order of the ITAT 'B' Bench, Pune in the case of Atlas COPCO (India) Ltd. Vs. DCIT, Circle-8, Pune (ITA No.1669, 1670 & 1671/Pun/2014, dated 05.04.2019). Also, the ld A.R in order to drive home his aforesaid contention had drawn support from the order of the ITAT 'F' Bench, Mumbai in the case of Hathway C-Net Pvt. ltd. Vs. The Tax Recovery Officer (TDS), Mumbai (ITA No. 4112/Mum/2016, dated 31.01.2018). Lastly, it was the claim of the ld. A.R that as the department had not taken any action in the hands of the payee viz. Entec U.K. Ltd, and also the time limit for taking any such action at

the time of passing of the order u/ss. 201(10/201(1A) had lapsed, therefore, the assessee could not be treated as being in default u/s 201(1) of the Act. In support of his aforesaid contention the ld. A.R had relied on the order of the 'Special Bench' of the ITAT, Mumbai 'H' in the case of Mahindra & Mahindra Ltd. Vs. DCIT, TDS-Range-1(1), Mumbai (2010) 122 ITD 216 (Mum) (SB). The ld. A.R took us through the relevant observations of the Tribunal at Para18.12 of the said order. It was submitted by the ld. A.R that the Tribunal in the aforesaid case had observed that as neither the revenue had framed the assessment in the case of the non-resident payee nor such time limitation for taking necessary action was available under Sec.147 of the Act, therefore, no lawful order could have been passed against the assessee either under Sec. 201(1) or 201(1A) of the Act. Also, support was drawn by the ld. A.R from the orders of the ITAT 'L' bench, Mumbai in the case of M/s Red Hat India Pvt. ltd. Vs. DDIT (IT) (ITA No. 1085 &1086/Mum/2014, dated 24.03.2017) and Crompton Greaves Ltd. Vs. DCIT (TDS), Circle-1(1) (2012) 19 Taxman.com 272 (Mum). On the basis of his aforesaid contentions, it was submitted by the ld. A.R that the order passed by the A.O under Sec. 201(1)/201(1A) r.w.s. 195, dated 31.10.2013 could not be sustained and was liable to be vacated.

7. The ld. Departmental Representative (for short 'D.R.') relied on the orders of the lower authorities.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncement relied upon by them. We shall first advert to the contentions advanced by the ld. A.R that the order passed by the ITO(IT)-TDS, Range-2, Mumbai is beyond the time limit prescribed in the statute. It is the claim of the

ld. A.R that as per the *proviso* to sub-section (3) of Sec. 201 of the Act, an order under Sec. 201(1) & 201(1A) could have been validly passed in the hands of the assessee only up to 31.03.2011. In sum and substance, it was the claim of the ld. A.R that as the order passed under Sec. 201(1) & 201(1A), dated 31.10.2013 is beyond the prescribed time period, therefore, the same cannot be sustained and is liable to be vacated. We have given a thoughtful consideration to the contentions advanced by the ld. A.R and find substantial force in the same. At the first blush, on a perusal of the language employed in sub-section (3) of Sec.201, we held a doubt that the said statutory provision as was made available on the statute for the first time by the Finance Act, 2009 w.e.f 01.04.2010 was applicable only in respect of resident deductees. However, our doubts had been dispelled by the judgment of the **Hon'ble High Court of Delhi** in the case of **Bharti Airtel Limited Vs. Union of India(2017) 245 Taxman 80 (Del)**. In the said case, it was observed by the Hon'ble High Court that the limitation period prescribed in sub-section (3) of Sec. 201 would be equally applicable in respect of non-residents. The aforesaid judicial pronouncement had thereafter been followed by the **ITAT, Mumbai bench 'L'** in the case of **Tech Mahindra Ltd. Vs. ITO, IT, Circle-1, Mumbai (2018) 96 taxman.com 357 (Mum)**. In the backdrop of the aforesaid settled position of law, we are persuaded to subscribe to the claim of the ld. A.R that the order under Sec. 201(1) & 201(1A) r.w.s 195 for A.Y 2007-08 in the case of the assessee before us could have been passed latest by 31.03.2011. Accordingly, as the order under Sec. 201(1) & 201(1A) r.w.s 195 had been passed by the ITO (IT)-TDS-2, Mumbai on 31.10.2013, therefore, the same being beyond the prescribed time period envisaged in the *proviso* to Sec. 201(3) is thus barred by limitation. On the basis of our aforesaid observations, we are of the considered view that the order passed by the A.O under Sec.

201(1) & 201(1A) r.w.s195, dated 31.10.2013having been passed beyond the prescribed period of limitation cannot be sustained and is liable to be vacated. The **"Additional Ground of appeal No. 1"** is allowed.

9. We shall now advert to the claim of the assessee that as the order passed by the ITO(IT)-TDS-2, Mumbai under Sec.201(1) & 201(1A) r.w.s 195, dated 31.10.2013 is beyond a period of 1 year from the end of the financial year in which the proceedings were originally initiated by issue of notice dated 28.09.2007, therefore, the same on the said count also is barred by limitation. Admittedly, the **Hon'ble High Court of Bombay** in the case of **DIT(International Taxation) Vs. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom)** had approved the observation of the **'Special Bench'** of the Tribunal in **Mahindra & Mahindra Ltd. Vs. Dy. CIT (2009) 313 ITR (AT) 263 (Mum) (SB)** that an order under Sec. 201(1) has to be passed within a period of one year from the end of the financial year in which proceedings under Sec. 201(1)/201(1A) were initiated. Now, in the case before us, it is the claim of the ld. A.R that the proceedings under Sec. 201(1) were initiated by the ITO(IT)(TDS), Range-2, Mumbai, vide a notice dated 28.09.2007. Accordingly, it is the averred by the ld. A.R that as per the aforesaid date of initiation of proceedings under Sec. 201(1) the order under Sec. 201(1)/201(1A) could have been passed latest by 31.03.2009. We have given a thoughtful consideration to the aforementioned contention of the ld. A.R and are unable to persuade ourselves to subscribe to his aforesaid claim. We find that the ITO(IT)-TDS, Range-2, Mumbai had vide his letter dated 28.09.2007 only called upon the assessee to explain as to why no tax was deducted at source before making the remittances to the 30 non-resident payees (as stated in the 'Annexure' enclosed with the query letter). The aforesaid letter was thereafter followed by a reminder letter dated

15.02.2008, wherein the assessee was once again called upon to furnish its explanation as was earlier sought vide the aforesaid letter dated 28.09.2007. Further, the A.O issued another letter dated 05.09.2013, wherein the assessee was called upon to furnish certain documentary evidence, failing which it was to be presumed that the payments made by the assessee were liable for deduction of tax at source. We find from a perusal of the aforementioned letters/notices that the ITO(IT)-TDS, Range-2, Mumbai had only called upon the assessee to furnish certain documentary evidence along with its explanation as to why tax on the payments therein stated was not deducted at source. We are of the considered view that neither of the aforesaid letters dated 28.09.2007, 15.02.2008 and 05.09.2013 can be construed as a 'Show cause' notice under Sec. 201(1) of the Act. In fact, as is discernible from the order passed by the A.O under Sec. 201(1) & 201(1A) r.w.s 195, dated 31.10.2013, the 'Show cause' notice was issued by the ITO(IT)-TDS, Range-2, Mumbai to the assessee for the first time on 18.10.2013,wherein it was called upon to explain as to why it may not be deemed to be an "assessee in default" and therein be directed to pay the defaulted tax along with interest as per the provisions of Sec.201(1) & 201(1A) of the Act. Further, a perusal of Page 2 – Para 2.3 of the aforesaid order of the ITO(IT)-TDS, Range-2, Mumbai reveals that till 05.09.2013 neither any order under Sec. 201(1) & 201(1A) had been passed nor any proceedings were pending with him under Chapter XVII of the I.T. Act in the case of the assessee for A.Y. 2007-08. Accordingly, we are of the considered view that as the proceedings under Sec. 201(1) were initiated by the ITO(IT)-TDS, Range-2, Mumbai for the first time on 18.10.2013, therefore, the contention advanced by the ld. A.R that the said order having been passed beyond a time period of one year from the end of the financial year in which the said proceedings had been initiated, was thus not

sustainable, we are afraid does not merit acceptance and is thus hereby rejected. The **"Additional Ground of appeal No. 2"** is dismissed.

10. We shall now advert to the claim of the assessee that now when the department has not taken any action against the payee viz. Entec U.K. Ltd., and also the time for taking any such action had expired, therefore, no order under Sec. 201(1)/201(1A) r.w.s 195 could have been passed in the case of the assessee. We have given a thoughtful consideration to the aforesaid claim of the assessee and are persuaded to subscribe to the same. As per Explanation to Sec. 191 of the I.T Act, an assessee shall be deemed to be an assessee in default within the meaning of sub-section (1) of Sec. 201 of the I.T Act subject to cumulative satisfaction of twin conditions therein envisaged viz. (ia) there is failure on the part of the assessee to deduct any sum in accordance with the provisions of the Act; and (ii) there is non-payment of tax directly by the payee/recipient. It is the claim of the assessee before us that as neither the revenue had taken any action against the payee/recipient nor any such action could be taken against the payee as the same was barred by limitation, therefore, in the absence of conjoint satisfaction of the aforementioned twin conditions the assessee could not have been held as being in default in terms of Sec. 201(1) of the Act. The ld. Departmental Representative has not controverted the contention advanced by the ld. A.R that neither any assessment in had been made in respect of the tax liability of payee/recipient for A.Y. 2007-08, nor there was any possibility for the revenue for taking any action as regards the same in the hands of the payee/recipient, as the same was barred by limitation. In fact, the A.O in his factual report dated 22.07.2019 on the 'additional grounds of appeal' filed with the Tribunal (through proper channel), had admitted that there was no record which would show that any

assessment had been made on the payee. We find that the aforesaid issue is squarely covered by the decision of the **"Special Bench"** of **ITAT, Mumbai** in the case of **Mahindra & Mahindra Ltd. VS. DCIT (2009) 122 TTJ 577 (SB) (Mum)**. In its aforesaid order, it was observed by the Tribunal that where revenue has not taken any action against the payee and also the time limit for taking such action against him had expired, no order under Sec.201(1)/201(1A) could have been validly passed in the hands of the assessee payer. The aforesaid order of the "Special Bench" of the ITAT in the case of Mahindra & Mahindra Ltd. (supra) had thereafter been followed by the **ITAT "L" Bench, Mumbai** in the case of viz. **(i)M/s Red Hat India Pvt. Ltd. Vs. DDIT (International Taxation), Pune (ITA No. 1085 & 1086/Mum/2014, dated 24.03.2017); and (ii)Crompton Greaves Ltd. Vs. DCIT (TDS), Circle-1(1) (2012) 149 TTJ 484 (Mum)**. In the backdrop of the aforesaid facts and the settled position of law, we are of the considered view that as in the case before us the revenue had not taken any action against the payee viz. Entec U.K Limited for non-deduction of tax at source, and also the time limit for taking such action against them under Sec. 148 had expired, therefore, the order against the payer assessee under Sec. 201(1) & 201(1A) r.w.s. 195, dated 31.10.2013 would be invalid. Accordingly, the order passed the ITO(IT)-TDS, Range-2, Mumbai under Sec. 201(1) & 201(1A) r.w.s. 195, dated 31.10.2013 is also struck down on the said count. The **"Additional Ground of appeal No. 3"** is allowed.

11. As the order passed by the ITO(IT)-TDS, Range-2, Mumbai under Sec. 201(1) & 201(1A) r.w.s. 195, dated 31.10.2013 has been struck down by us on the ground of valid assumption of jurisdiction, therefore, we refrain from adverting to and therein adjudicating the merits of the case, which having been rendered as academic in nature are left open.

12. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 13.09.2019

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| Sd/- | Sd/- |
| (N.K. Pradhan) | (Ravish Sood) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

मुंबई Mumbai; दिनांक 13.09.2019
***P.S Rohit

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

**आदेशानुसार/** BY ORDER,

**उप/सहायकपंजीकार** (Dy./Asstt. Registrar)

**आयकरअपीलीयअधिकरण,** मुंबई **/ ITAT, Mumbai**