IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3321 /Mum./2008
(Assessment Year : 2004–05)

Kuoni Travel (India) Private Limited (Now Merged with Travel Corporation (India) Limited), 8th Floor, Urmi Estate 'A' 95, G.K. Marg, Lower Parel (W), Mumbai ……. Appellant

PAN–AAACS0170L

v/s

Dy. CIT Rg. 3(2), Aayakar Bhavan, Mumbai ……. Respondent

ITA no.2706 /Mum./2008
(Assessment Year : 2004–05)

ACIT 3(2), R. no. 608, 6th Floor, Aayakar Bhavan, Mumbai ……. Appellant

v/s

Kuoni Travel (India) Private Limited (Now Merged with Travel Corporation (India) Limited), 8th Floor, Urmi Estate 'A' 95, G.K. Marg, Lower Parel (W), Mumbai ……. Respondent

PAN–AAACS0170L

ITA no.5377/Mum./2012
(Assessment Year : 2005–06)

Kuoni Travel (India) Private Limited (Now Merged with Travel Corporation (India) Limited), 8th Floor, Urmi Estate 'A' 95, G.K. Marg, Lower Parel (W), Mumbai ……. Appellant

PAN–AAACS0170L

v/s

Addl CIT 3(2), RG 3(2), R. no. 605, Aayakar Bhavan, Mumbai ……. Respondent

ITA no.7685 /Mum./2010
(Assessment Year : 2006–07)

Kuoni Travel (India) Private Limited (Now Merged with Travel Corporation (India) Limited), 8th Floor, Urmi Estate 'A' 95, G.K. Marg, Lower Parel (W), Mumbai ……. Appellant

PAN–AAACS0170L

v/s

Dy. Commissioner of Income Tax, 3(2), Mumbai ……. Respondent

Assessee by : Madhur Agarwal/ Jay Bhansali, CA
Revenue by : Sushil Kumar Poddar/Ms. Samatha Mullumudi,

Date of Hearing – 10.10.2019	Date of Order – 31.10.2019

O R D E R

PER SAKTIJIT DEY, J.M.

This bunch consists of a set of cross appeals for Assessment Year (A.Y.) 2004–05 and two other appeals by the assessee for A.Y. 2005–06 and A.Y. 2006–07. All these appeals arise out of separate orders of learned Commissioner of Income Tax (Appeals), Mumbai. Since, these appeals relate to the same assessee and involve common issues, they have been clubbed together and, as a matter of convenience, disposed of in a combined order.

ITA no. 2706/Mum/2008
Appeal by Revenue for A.Y. 2004–05

2. In ground no. 1, the Revenue has challenged the decision of learned Commissioner (Appeals) in excluding the receipts of ₹. 52,04,70,961/– from the total receipt for computing deduction under section 80HHD of the Income Tax Act, 1961.

3. Briefly the facts are, the assessee, a resident company, carries on business as travel agent and tour operator. For the assessment year under dispute assessee filed his return of income on 31.10.2004 declaring total income of ₹. 18,65,81,256/–. In course of assessment proceeding, the Assessing Officer noticing that the assessee has claimed deduction under section 80HHD of the Act called upon the assessee to furnish the necessary details. From the details furnished by the assessee, he found that the assessee has transferred a receipt of ₹. 52,04,70,961/– to other hoteliers. Following the assessment order passed in assessee's own case for A.Y. 2002–03 the Assessing Officer concluded that the receipts transferred to other hoteliers should have been included in the total business receipt. Accordingly, he included the aforesaid receipt in the total business receipt for computing deduction under section 80HHD. Being aggrieved with the aforesaid decision of the Assessing Officer, assessee preferred appeal before learned Commissioner (Appeals). Noticing that his predecessor has decided the issue in favour of the assessee in A.Y. 2002–03,

learned Commissioner (Appeals) allowed assessee's claim in excluding the receipts transferred to other hoteliers from the total business receipts for computing deduction under section 80HHD.

4. We have heard the parties and perused the materials on record. At the outset, learned counsels appearing for the parties have submitted before us that the issue stands decided in favour of the assessee by the Tribunal in its own case in A.Y. 2002–03 and in A.Y. 2003–04. The relevant observations of the Tribunal on the issue were also brought to the notice of the Bench. Having considered rival submissions, we have noted that deduction under section 80HHD of the Act is calculated as a percentage of profit derived from services provided to foreign tourists. The mode and manner of computing such deduction has also been provided in the said provision. It is the specific case of the assessee that the receipts transferred to other hoteliers and tour operators by issuing certificate in Form no. 10CCAC should not form part of tourist receipts to compute deduction under section 80HHD as per the formula prescribed under the said provision. While deciding identical issue in A.Y. 2002–03, the Tribunal in ITA no. 1924/Mum/2007 dated 19.01.2018 held that the receipts passed on to other hotels and travel agents cannot be included in the total business receipts for computing deduction under section 80HHD. The same view was reiterated by the Tribunal while deciding the issue in A.Y. 2003–04 vide ITA no. 1851/Mum/2013 dated 28.02.2019. As could be seen

from the aforesaid facts, this is a recurring dispute continuing from past assessment years. In fact, the Assessing Officer as well as learned Commissioner (Appeals) have decided the issue simply following their respective decisions in the assessment year 2002–03. There being no difference in facts brought to our notice in the impugned assessment year, respectfully following the consistent view of the Tribunal in assessee's own case as referred to above, we uphold the decision of learned Commissioner (Appeals). Ground raised is dismissed.

5. In ground no. 2 Revenue has challenged the decision of learned Commissioner (Appeals) in excluding the unrealized tour receipts of ₹. 63,90,733/– for the purpose of computing deduction under section 80HHD of the Act.

6. Briefly the facts are, while computing deduction under section 80HHD of the Act, the Assessing Officer included the unrealized receipts of ₹. 63,90,733/– in the total business receipts. Assessee challenged the aforesaid decision of Assessing Officer before learned Commissioner (Appeals). Learned Commissioner (Appeals) having found that the Assessing Officer has included the unrealized receipts without making any discussion, held that such adjustment made by the Assessing Officer is unjustified. Accordingly, he allowed assessee's claim.

7. We have considered rival submissions and perused the materials on record. It is agreed before us by learned counsels appearing for the parties that the issue is covered in favour of the assessee by the decision of the Tribunal in its own case in A.Y. 2002–03 (supra). As rightly observed by Learned Commissioner (Appeals), the Assessing Officer has included the unrealized tour receipts of ₹. 63,90,733/– to the gross receipts for computing deduction under section 80HHD of the Act without making any discussion in the assessment order. Be that as it may, it has come to our notice that while deciding identical issue in assessee's own case in A.Y. 2002–03, the Tribunal in the order referred to above has held that unrealized tour receipts would not form part of total business receipts for computing deduction under section 80HHD of the Act. Facts being identical, following the decision of the Tribunal in A.Y. 2002–03, we uphold the decision of Learned Commissioner (Appeals) on the issue.

8. In ground no. 3, the Revenue has challenged the decision of Learned Commissioner (Appeals) in including the foreign exchange fluctuation gain of ₹. 3,66,81,741/– for the purpose of computing the deduction under section 80HHD of the Act.

9. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticing that the foreign gain amounting to ₹. 03,66,81,741/– was included in foreign exchange receipts for claiming deduction under section 80HHD of the Act, called upon the assessee to

justify the claim. After considering the submission of the assessee and taking note of the fact that in A.Y. 2002–03 and A.Y. 2003–04, the Assessing Officer had excluded foreign exchange fluctuation gain from the foreign exchange receipts for computing deduction under section 80HHD of the Act, followed the same procedure and excluded the foreign exchange gain to compute deduction under section 80HHD of the Act. The assessee challenged the decision of the Assessing Officer before learned Commissioner (Appeals). Having noticed that while deciding similar issue in A.Y. 2002–03 his predecessor has allowed assessee's claim in including foreign exchange fluctuation gain for computing deduction under section 80HHD of the Act, followed the same and allowed assessee's claim in the impugned assessment year as well.

10. We have heard the parties and perused the material on record. Learned counsels appearing for the parties have agreed before us that the issue is covered by the decision of Tribunal in assessee's own case in A.Y. 2002–03 and A.Y. 2003–04. Notably while deciding identical issue in assessee's own case in A.Y. 2002–03 (supra), the Tribunal following the decisions of the Hon'ble jurisdictional High Court in case of CIT vs. Syntel Limited (ITA no. 1974/2009) dated 15.12.2009 and in case of CIT vs. Rachana Udhyog 236 CTR 72 has held that the foreign exchange fluctuation gain has to be considered as part of foreign exchange receipt for computing deduction under section

80HHD of the Act. The same view was expressed by the Tribunal while deciding the issue in assessee's own case in A.Y. 2003–04 (supra). There being no difference in facts involved in the impugned assessment year, respectfully following the consistent view of the Tribunal in assessee's own case as referred to above, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

11. Ground no. 4 and 5 being general grounds do not require specific adjudication, hence, dismissed.

12. In the result, appeal is dismissed.

ITA No. 3321/Mum/2008
(Appeal by the assessee for A.Y. 2004–05)

13. Ground no. 1 is against disallowance of interest paid of ₹. 19,00,000/–.

14. Briefly the facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction of ₹. 19,00,000/– on account of interest paid on the loan availed from M/s USG Buildwell (P) Ltd., New Delhi. Observing that in the assessment order passed for A.Y. 2003–04, the aforesaid loan availed was treated as unexplained cash credit under section 68 of the Act and the addition was also confirmed by learned Commissioner (Appeals), the Assessing Officer disallowed the interest expenditure. Assessee challenged the

aforesaid disallowance before learned Commissioner (Appeals). Learned Commissioner (Appeals) also sustained the disallowance by holding that not only the genuineness of loan availed is doubtful but going by assessee's submission that the amount received was in the nature of advanced in relation to sale of property , the interest paid on such advance cannot be considered as business expenditure.

15. The learned Authorized representative submitted, a loan of ₹. 2 Crore was availed in A.Y. 2003-04. He submitted, in the said assessment year the Assessing Officer treating the loan as unexplained cash credit under section 68 of the Act had not only added the loan amount but also had disallowed the interest paid thereon. He submitted, while deciding the appeal in assessment year 2003-04 he learned Commissioner (Appeals) not only accepted the loan as genuine, thereby, deleting the addition made under section 68 of the Act, but also, allowed the interest expenditure. He submitted, the aforesaid decision of learned Commissioner (Appeals) was upheld by the Tribunal while deciding Revenue's appeal in ITA no. 1851/Mum/2013 dated 28.02.2019. Thus, he submitted, facts being identical, the decision of the Tribunal in assessment year 2003-04 would squarely apply.

16. The learned Departmental Representative submitted, even accepting that the loan availed by the assessee is genuine, still, the amount received for sale of property being in the nature of advance,

the interest paid thereon not being for the purpose of assessee's business is not allowable under section 36(1) (iii) of the Act.

17. In rejoinder, the learned AR submitted, there is absolutely no doubt that the loan/advance availed from USG Buildwell Pvt. Ltd., was for the purpose of utilizing in business activities. Therefore, it cannot be said that the interest paid on such loan/advance is not in connection with assessee's business. He submitted, if the amount is not allowable under section 36(1) (iii) of the Act, it has to be allowed as business expenditure under section 37 of the Act.

18. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee had availed loan of ₹. 2 Crore from USG Buildwell Pvt. Ltd. in assessment year 2003-04. It appears from record, the aforesaid loan/advance was availed by the assessee against proposed sale of one of its property in Delhi as the assessee needed finance for its business activities. While completing the assessment in assessment year 2003-04 the Assessing Officer had treated the aforesaid loan/advance as unexplained cash credit under section 68 of the Act. For the very same reason, the Assessing Officer also disallowed the interest paid thereon. However, in proceeding before learned Commissioner (Appeals), the Assessing officer again verified the loan transaction and in the remand report accepted it to be genuine. On the basis of such remand report, learned Commissioner (Appeals) not only deleted the addition made under section 68 of the

Act, but also allowed the interest expenditure. In the impugned assessment year, the Assessing Officer has disallowed the interest expenditure primarily for the reason that the loan transaction was treated as non genuine in assessment year 2003-04. However, as discussed earlier, the first Appellate Authority accepted the loan transaction as genuine and also allowed the interest expenditure thereon while deciding the appeal for A.Y. 2003-04. The aforesaid decision of learned Commissioner (Appeals) was also upheld by the Tribunal. That being the case, the reason on which the Assessing Officer disallowed the interest expenditure is unsustainable. As regards the observation of the learned Commissioner (Appeals) that the amount on which interest was paid being an advance the interest expenditure is not allowable, we must observe, the facts on record clearly reveal that since the assessee needed finance for his business activity it availed the loan/advance against proposed sale of property. The purpose of availing loan / advance is connected with the business of assessee. In any case of the matter, under identical facts and circumstances, interest expenditure was allowed in the preceding assessment year. That being the case, we delete the disallowance of interest expenditure. Ground raised is allowed.

19. In ground no. 2, assessee has challenged disallowance of deduction claimed of ₹. 1,61,71,875/- towards payment of non compete fees.

20. Briefly the facts are, in course of assessment proceedings the Assessing Officer noticing that deduction of ₹. 1,61,71,875/- was claimed on account of payment of non compete fees proceeded to verify assessee's claim. He observed, in the note appended to the computation of income assessee has stated that non compete fees of ₹. 1,50,00,000/- was paid to a former employee and ₹. 11,71,875/- was paid to former joint venture partner. To substantiate its claim, the assessee also furnished the agreement entered with the concerned persons. The Assessing Officer observed, since the agreement was entered on 30th June, 2001 it has no relevance for the impugned assessment year. Without prejudice, he observed, since on payment of non compete fee the assessee derived benefit of enduring nature, the expenditure is of capital nature. Accordingly, he disallowed the expenditure. While deciding assessee's appeal on the issue, learned Commissioner (Appeals) observed that the payment was not restricted to non competition alone but the assessee has acquired the ownership of tour club brand, trademark and goodwill. Thus, he held that the payment made by the assessee is inextricably linked with generation of capital asset. Accordingly, he agreed with the decision of the Assessing Officer in holding it as capital expenditure.

21. The learned AR submitted, identical issue came up for consideration in A.Y. 2002-03 and while deciding the issue the Tribunal allowed assessee's claim by treating it as Revenue expenditure.

Without prejudice, the learned AR submitted, if the payment made is held as capital expenditure, the assessee should be allowed depreciation at the rate applicable to intangible assets. Further, he submitted, for such without prejudice claim assessee has raised an additional ground.

22. The learned DR relied upon the observations of the Assessing Officer and learned Commissioners (Appeals).

23. We have considered rival submissions and perused the materials on record. The short issue arising for consideration is, whether the payment made towards non compete fee is in the nature of capital or revenue expenditure. It is the contention of the assessee that the non compete fee was paid for a period of five years to avoid competition. However, from the facts on record and, more particularly, from the observations of learned Commissioner (Appeals) it appears that the payment made by the assessee is not only for non compete but also for acquiring brand name, trademark, goodwill etc. While allowing assessee's claim in assessment year 2002-03 the aforesaid factual aspect appears to have not been brought to the notice of the Tribunal. Further, the fact that by making such payment the assessee has acquired assets of enduring benefit cannot be denied. Therefore, we concur with the view expressed by the Revenue Authorities that the expenditure incurred is capital in nature. However, it is established on record that the payment made by the assessee is for non compete,

acquiring brand name, trademark, goodwill etc. Therefore, by incurring such expenditure the assessee certainly has acquired assets which have to be considered as intangible assets as per section 32(1) (ii) of the Act. That being the case, assessee would be eligible to avail depreciation at the rate applicable to intangible assets. Therefore, we direct the Assessing Officer to allow depreciation on the expenditure claimed by the assessee. Consequently, ground no. 2 is dismissed, whereas, the additional ground is admitted and allowed.

24. In ground no. 3 assessee has challenged disallowance of expenditure under section 14A of the Act amounting of ₹. 05,26,896/-.

25. Briefly the facts are, in course of assessment proceedings the Assessing Officer noticed that during the year the assessee had earned taxed income by way of interest and dividend. However, the assessee has not disallowed any expenditure attributable towards earning of exempt income. Thereafter, following the method adopted by the Assessing Officer for making disallowance under section 14A in Assessment Year 2002-03, he disallowed 11.6% out of the exempt income earned by the assessee by attributing it towards expenditure disallowable under section 14A of the Act. Learned Commissioner (Appeals) while deciding the issue also sustained the disallowance partly by restricting it to ₹. 5,26,896/- as against the disallowance made by the Assessing Officer of ₹. 13,46,358/-.

26. The learned AR submitted, while deciding identical issue in A.Y. 2002-03, the Tribunal has restricted the disallowance to 2% of the exempt income earned during the year. Thus, he submitted, similar disallowance may be made in the impugned assessment year.

27. The learned DR relied upon the observations of learned Commissioner (Appeals).

28. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee has earned exempt income during the year under consideration. Therefore, expenditure attributable to earning of exempt income has to be allowed in terms of section 14A of the Act. It is observed, while deciding identical issue in assessment year 2002-03, the Tribunal, in the order referred to above, has restricted the disallowance to 2% of the exempt income earned during the year. Facts being identical, respectfully following the decision of the Coordinate Bench in assessee's own case, we direct the Assessing Officer to restrict the disallowance to 2% of the exempt income. Ground raised is partly allowed.

29. In ground no. 4, assessee has contested the disallowance of ₹. 50,00,000/-, being commission paid to PTC Holidays Private Limited.

30. Briefly the facts are, during the assessment proceeding, the Assessing Officer verifying the audit report found that an amount of ₹. 50,00,000/- was paid to PTC Holidays Pvt. Ltd., which is a related party. Alleging that the assessee was unable to adduce any justifiable

reason for allowability of the expenditure, the Assessing Officer disallowed it. While deciding the issue in appeal, learned Commissioner (Appeals) also sustained the disallowance on the reasoning that similar disallowance made in respect of payment made to same party in AY 2003-04 was upheld by the first Appellate Authority.

31. Learned AR submitted, the assessee has paid the amount of ₹. 50,00,000/- towards commission to general sales agents as per the terms of the agreement with them. He submitted, such payment is being made for more than five years. He submitted, instead of paying commission on percentage basis the assessee has paid on lump sum basis. The ld. AR submitted, unless the Assessing Officer proves that the expenditure incurred is unreasonable and excessive having regard to the market rate, it cannot be disallowed. Further, he submitted, when the assessee as well as payee are taxed at the same rate, there is no benefit passed on to the related party so as to invoke section 40A (2) of the Act. He submitted, in A.Y. 2002-03 the Assessing Officer himself has allowed such expenditure in scrutiny assessment. He submitted, though, in AY 2003-04, the Assessing Officer disallowed such expenditure however, learned Commissioner (Appeals) while deciding the appeal deleted the disallowance. He submitted, learned Commissioner (Appeals) wrongly mentioning that the first Appellate Authority has sustained disallowance of such expenditure in AY 2003-

04, has upheld the disallowance in the current year. In support of such contention, he relied upon the following decisions:-

i. CIT vs. Indo-Saudi Services Travel P. Ltd 2009 310 ITR 306 Bom

ii. Orchard Advertising P Ltd. vs. Addl CIT 2010 8 taxmann.com 162 Mum

32. The learned DR strongly relied upon the observations of learned Commissioner (Appeals) and Assessing Officer.

33. We have considered rival submissions and perused the materials on record. We have also carefully examined the case laws cited before us. Though, while disallowing the expenditure the Assessing Officer has not specifically referred to section 40A(2)(b), however, it is clear he intended to disallow the expenditure under the said provision. On a reading of section 40A(2) of the Act it becomes clear that if a particular expenditure concerning payment made to a related party, in the opinion of the Assessing Officer, is unreasonable and excessive having regard to the market rate, he may either disallow it or may allow it as per the market rate. Therefore, the Assessing Officer must establish on record that the payment made by the assessee to a related party is unreasonable and excesseive having regard to the market rate. On a careful reading of the assessment order, we are of the view that the Assessing Officer before disallowing the expenditure has not brought any material on record to demonstrate that the payment made by the assessee is unreasonable and excessive having

regard to the market rate. Learned Commissioner (Appeals) also sustained the disallowance on a factual misconception that similar disallowance was sustained by the first Appellate Authority in A.Y. 2003-04. Whereas, in Assessment Year 2003-04, Learned Commissioner (Appeals) has actually deleted the disallowance made by the Assessing Officer, as evident from his order dated 06.12.2012. In fact, in assessment year 2002-03 also the Assessing Officer himself allowed the payment made to the very same party in the scrutiny assessment. Therefore, considering the overall facts and circumstances relating to the issue, we are of the opinion that the disallowance made is unsustainable, accordingly, we delete it. This ground is allowed.

34. In ground no. 5, the assessee has challenged the decision of Learned Commissioner (Appeals) in excluding the income received on interest on income tax refund and misc. Income from total business receipt for computing deduction under section 80HHD of the Act.

35. Briefly the facts are, while computing deduction under section 80HHD of the Act, the assessee had included interest on income tax refund amounting to ₹. 2,07,54,857/- and misc. income of ₹. 2,27,10,558/-. Being of the view that the aforesaid income is not related to the business, the Assessing Officer reduced it from business income and assessed under the head income from other sources.

Learned Commissioner (Appeals) also agreed with Assessing Officer's view.

36. The learned AR, at the outset submitted, the assessee has instructed him not to contest the issue relating to interest on income tax refund as the assessee has decided to accept the decision of Revenue authorities in this regard. In so far as misc. income of ₹. 2,27,10,558/- is concerned, the learned AR submitted, this income is intricately related to the business activity of the assessee. Therefore, has to be included in the total business receipt for computing deduction under section 80HHD of the Act. He submitted, assessee has in its possession all details relating to such income and given a chance can furnish break up of such income with all supporting details to prove its claim. Thus he submitted, the issue may be restored back to the Assessing Officer for fresh adjudication.

37. The learned DR submitted, as per assessee's own admission interest on income tax refund cannot be treated as business income. In so far as the issue of inclusion of misc. income in the business receipt, he submitted, the issue may be restored back to the Assessing Officer to provide an opportunity to the assessee to prove its claim.

We have considered rival submissions and perused the materials on record. In so far as income from interest on income tax refund, the assessee has accepted the decision of Revenue authorities. Therefore, there is no need to deliberate any further on that issue. As regards

misc. income, it is the claim of the assessee that this income is closely related to the business activity of the assessee. It is observed, the Revenue authorities have disallowed assessee's claim in absence of necessary details. It has been submitted before us by the learned AR that the assessee is in possession of all the details relating to the income earned and can establish its claim before the AO. Considering the above, we are inclined to restore the issue relating to assessee's claim of misc. income to be treated as business income for deduction under section 80HHD to the Assessing Officer for de novo adjudication after verifying the details to be filed by the assessee. Needless to mention, the Assessing Officer must afford a reasonable opportunity of being heard to the assessee before deciding the issue. Ground raised is partly allowed for statistical purposes.

In the result appeal is partly allowed.

ITA no. 5377/Mum/2012
(Appeal by the assessee for AY 2005-06)

38. The solitary issue in this appeal relates to disallowance of ₹. 57,61,106/– under section 40A(2)(b) of the Act.

39. As could be seen, during the year assessee claimed deduction of Commission paid to a general commission agent, namely, PTC Holidays Pvt. Ltd for an amount of ₹. 57,61,106/–. The Assessing Officer considering the commission paid to be unreasonable and

excessive and not required for the purpose of business disallowed it. Learned Commissioner (Appeals) also upheld the disallowance.

40. We have heard the parties and perused the materials on record. The issue raised in this ground is identical to the issue raised in ground no.5 of ITA no. 3321/Mum/2008 (supra). While deciding the issue arising out of disallowance of commission paid to the very same party, we have deleted the disallowance on the basis of our detailed reasoning therein. The said decision of ours would apply *mutatis mutandis* to the issue raised in the present appeal also. Accordingly, the disallowance made by the Assessing Officer is deleted. Ground raised is allowed.

In the result appeal is allowed.

ITA no. 7685/Mum/2010
(Appeal by the assessee for AY 2006-07)

41. In ground no. 1, assessee has challenged disallowance of ₹. 10,40,154/– under section 14A of the Act. This issue is identical to the issue raised by the assessee in ground no.3 of ITA no. 3321/Mum/2008 (supra). Following our decision therein, we direct the Assessing Officer to restrict the disallowance under section 14A to 02% of the exempt income earned during the year. This ground is partly allowed.

42. In ground no. 2, assessee has challenged disallowance of ₹. 4,59,167/– under section 40A(2)(b) of the Act. The issue raised in this

ground is identical to the issue raised to ground no.4 of ITA no. 3321/Mum/2008 (supra). While considering the disallowance of commission paid to the very same party, we have allowed assessee's claim and deleted the disallowance. Following our decision therein, we delete the disallowance made in the impugned assessment year as well. Ground raised is allowed.

In the result appeal is partly allowed.

43. To sum up, appeal of the Revenue in ITA no. 2706/Mum/2008 is dismissed. Assessee's appeals in ITA no. 3321/Mum/2008 and ITA no. 7685/Mum/2010 are partly allowed. Assessee's appeal in ITA no. 5377/Mum/2012 is allowed.

Order pronounced in the open Court on 31.10.2019

Sd/-	**Sd/-**
MANOJ KUMAR AGGARWAL	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 31.10.2019

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

SH

Assistant Registrar
ITAT, Mumbai