IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'I-1' : NEW DELHI)

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1558/Del./2016
(Assessment Year : 2011-12)

DCIT Circle-16(2), Room No. 308, C.R.Building, New Delhi **(PAN : AAACM4764G)**	vs.	M/s. Mitsubishi Corporation India P. Ltd. 2nd Floor, Vijaya Building, 17, Barakhamba Road, New Delhi
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, CA

REVENUE BY : Shri Sanjay I. Bara, CIT-DR

Date of Hearing : 22.10.2019

Date of Order : 25.11.2019

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER

The Appellant, Dy. Commissioner of Income Tax (hereinafter referred to as 'the revenue') by filing the present appeal sought to set aside the impugned order dated 27.11.2015 passed by the Assessing Officer (AO) in consonance with the orders passed by the ld. DRP/TPO under section 254/143 (3) read with section 144C of the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2011-12 on the grounds inter alia that :-

1. ***"Whether on the facts and circumstance of the case and in law the Dispute Resolution Panel (DRP) is justified in disagreeing with the description of the activity carried out by the assessee as that of being akin to trading when issue was already decided by its coordinate Bench (Mitsubishi Corporation India Pvt. Ltd. Vs ACIT, Range-6, New Delhi on 23rd August 2013/ITA No. 5147/Del/2010) and also affirmed by the High Court and also when the functions as per assessee's submission remain the same in all its business segments.***

2. ***Whether on the facts and circumstances of the case and in law the DRP is justified in rejecting the functional analysis carried out by the TPO based on the TP study and submissions made in this case.***

3. ***Whether on the facts and circumstances of the case and in law the DRP is justified in law in rejecting the primacy of functions carried out by the assessee and basing its decision on the ground that risks were minimal in the case of the assessee.***

4. ***Whether on the facts and circumstances of the case and in law the DRP is justified in stating that no intangibles were created of the supply chain and human intangibles when these intangibles have been specifically acknowledged by their incorporation in the explanation (ii) to section 92B of the Income Tax Act.***

5. ***Whether on the facts and circumstances of the case and in law the DRP is justified in rejecting the TPO's analysis without going into the agreements the assessee has entered into with its AE being the final fact finding authority.***

6. ***Whether on the facts and circumstances of the case and in law the DRP is justified in rejecting the use of FOB in the cost base when it is the relevant cost base for determining the ALP of the international transaction of the assessee with its AEs.***

7. ***Whether on the facts and circumstances of the case and in law the DRP is justified in restoring the matter to the file of the TPO by already deciding that berry ratio be applied.***

8. ***Whether on the facts and circumstances of the case and in law the DRP is justified in law in directing acceptance of a PLI that does not include cost of goods among expenses, when all the functions performed, assets utilized and risk undertaken were in that context only.***

9. ***Whether on the facts and circumstances of the case and in law the DRP is justified in applying the ratio laid down by the decision of the Delhi High Court in the case of Li and Fung India Pvt. Ltd. Vs. Commissioner of Income Tax on 16 December, 2013/ITA 306/2012 to the facts of this case when the assessee is a sogo sosha company and Li & Fung is not.***

10. ***Whether on the facts and circumstances of the case and in law the DRP is justified in accepting the functional analysis of the assessee when the assessee had not submitted the information regarding its agreements to the TPO.***

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition made by the AO for non deduction of TDS amounting to Rs. 42,78,87,278/- without appreciating the facts of the case.

12. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not upholding disallowance of Rs. 1,01,049/- made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 without considering provisions of section 14A of the Act which do not prescribe the main or dominant object of earning income as a condition for operation of section 14A of the Act?

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in ignoring the legislative intent of section 14A which allows only that expenditure which is relatable to earning of income and therefore follows that expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not?

14. Whether, on facts and circumstances of the case and in law, the ITAT is justified in not upholding disallowance of Rs. 1,01,049/- u/s 14A of Income Tax Act 1961 without considering legislative intend of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?

15. Whether on facts and on circumstances of the case and in law, the ITAT is justified is not upholding disallowance of Rs. 1,01,049/- u/s 14A of the Act without consider a legal principles that allowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs. Rajendra Prasad Moody [1978] 115 ITR 519?

16. That the order of the Ld. DRP is erroneous and is not tenable on facts and in law?

17. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal?"

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : (M/s. Mitsubishi Corporation India Pvt. Ltd.) MCI is a company incorporated in 1996 under the provision of Indian Companies Act, 1956. MCI is a subsidiary of Mitsubishi Corporation, Japan (MC Japan), which is one of Japan's leading

general trading (Sogo Shosha company). These sogo shosha companies are unique in the world of commerce, and play an important role in linking buyers and sellers for products ranging from bulk commodities to specialized equipment. For largerly historic reasons, general trading companies like MC Japan are unique to Japan, with no real equivalent anywhere in the world. The conventional function of the sogo shosha companies has been to operate as a trade intermediary by providing services and not assuming the significant risk of the products. The main function performed by MCI is also related to these conventional trade intermediaries and is to provide coordination support to MC Japan by gathering information of the Indian Market and keeping contacts with buyers or sellers of products in India. MCI also undertakes business activity with third parties.

3. During the year under assessment taxpayer entered into International Transaction with its AE's associated enterprises (AE's) as under :-

S. No.	*Nature of transaction*	*Value of transaction*
1.	*Import of goods*	*31,119,074,777*
2.	*Export of goods*	*50,536,099*
3.	***Service Fee Received***	***57,302,008***
4.	***Commission paid***	***32,365,508***
5.	*Market Research Fee Received*	*117,369,312*
6.	*Professional services related with HR, IT, Accounting and other*	*12,281,555*

	administrative services Administrative & Professional Fee Received	
7.	*Administration support services to project office*	*1,982,477*
8.	*Miscellaneous Income*	*8,514,247*
9.	*Reimbursement of expenses by AEs*	*2,451,167*
10.	*Reimbursement of expenses to AEs*	*22,841,461*

4. However, during the year under assessment, TPO disputed only service / commission income segment. Taxpayer in order to benchmark international transaction applied transactional net margin method (TNMM) with Berry Ratio as Profit Level Indicator (PLI) as Most Appropriate Method (MAM). Taxpayer computed its Berry Ratio at 22.50%, selected 12 comparables using multiple year data with Berry Ratio of 11.47% and found its international transactions at Arm's Length. Taxpayer has also made a corroborative analysis by applying TNMM as the most appropriate method and OP/OR as the PLI suggesting that though the value addition of MCI is closer to the value addition of a service provider and it takes far less functions and risks as a trader, MCI's margins have been compared to traders on a conservative approach. Consequently, taxpayer concluded that its comparing margin (OP/OR) is 0.31% as against 4 comparables using multiple

years data of 0.85% and by applying the safe harbor Rules found its international Transaction at Arm's Length.

5. TPO however rejected the TP analysis made by the taxpayer and called upon the assessee to show cause as to why the service/ commission income be not treated as trading business in substance as was done in its case in the preceding year. TPO preceded to propose adjustment only qua service/commission income segment by holding that FOB value of goods sourced from India to the tune of Rs. 4,26,43,50,877/- shall be included as cost of good sold in the combined AE segment and thereby made adjustment of Rs. 5,87,70,531/-.

6. The taxpayer carried the matter before Ld. DRP by way of filing objections who has directed the TPO to delete this notional cost from assessee's cost base and compare the assessee with service companies having similar functions and risk profile by partly allowing the objections. Feeling aggrieved the revenue has come up before the Tribunal by way of filing the present appeal.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NOs. 1 TO 10

8. At the very outset, The Ld. AR for the taxpayer brought to notice of the Bench that identical issue has been decided by the Tribunal in favour of the taxpayer vide orders dated 21.10.2014 passed by Co-ordinate Bench of Tribunal in A.Y. 2007-08 in ITA No. 5042/Del/2011, in A.Y. 2008-09 in ITA No. 5885/Del/2012, in A.Y. 2009-10 in ITA no. 803/Del/2014 , in A.Y. 2010-11 in ITA no. 945/Del/2015 which have been upheld by the Hon'ble High Court.

9. Ld. DRP following the order passed by Tribunal in assessee's own case in the earlier years directed the TPO to delete the notional cost of Rs. 4,26,43,50,877/- from taxpayers cost base and thereafter to compute the Arm's Length services for the indent segment using appropriate service comparables. This factual position has not been controverted by Ld. DRP for the revenue.

10. Para 6.1(b) of the TP order shows that the Ld. TPO preferred not to follow the decisions relied upon by the taxpayer passed by the appellate authorities on the sole ground that the department is in process of filing appeal against the aforesaid decisions and that SLP filed by the department against the order passed by the Hon'ble High Court in case of Li & Fung has been admitted by the Hon'ble Supreme Court. Co-ordinate Bench of Tribunal in

assessee's own case for A.Y. 2007-08 decided the identical issue in ITA No. 5042/Del/2011 by returning following findings :-

> 80. ***"Coming to the service fee/ commission segment, we have noted that as regards the service fee/ commission segment, the TPO has re-characterized the same as trading activities as he was of the view that the right course of action will be to treat the same as equivalent to trading segment, because what the assessee has disclosed as service/ commission income is infact trading income. Accordingly, the cost of goods sold by the AEs, which was Rs 2927,92,05,406, was also to be included in cost base of the service/commission segment and then ALP was recomputed. So far as this aspect of the matter is concerned, the issue is now covered in favour of the assessee by Hon'ble jurisdictional High Court's decision in the case of Li & Fung wherein Their Lordships have,*** **inter alia,** ***observed as follows:***
>
> > ***……..This Court is of opinion that to apply the TNMM, the assessee's net profit margin realized from international transactions had to be calculated only with reference to cost incurred by it, and not by any other entity, either third party vendors or the AE. Textually, and within the bounds of the text must the AO/TPO operate, Rule 10B(l)(e) does not enable consideration or imputation of cost incurred by third parties or unrelated enterprises to compute the assessee's net profit margin for application of the TNMM. Rule 10B(l)(e) recognizes that "the net profit margin realized by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed*** *by the enterprise* ***..." (emphasis supplied). It thus contemplates a determination of ALP with reference to the relevant factors (cost, assets, sales etc.) of the enterprise in question, i.e. the assessee, as opposed to the AE or any third party. The textual mandate, thus, is unambiguously clear.***
> >
> > ***40. The TPO's reasoning to enhance the assessee's cost base by considering the cost of manufacture and export of finished goods, i.e., ready-made garments by the third party venders (which cost is certainly not the cost incurred by the assessee), is nowhere supported by the TNMM***

under Rule 10B(l)(e) of the Rules. Having determined that (TNMM) to be the most appropriate method, the only rules and norms prescribed in that regard could have been applied to determine whether the exercise indicated by the assessee yielded an ALP.

81. Clearly, therefore, it is impermissible to make notional additions in the cost base and thus take into account the costs which are not borne by the assessee. It is so opined by Hon'ble jurisdictional High Court on a careful analysis of rule 10B(l)(e)(i). It is, therefore, no longer open to the revenue authorities to reconstruct the financial statements of the assessee by including the cost of products incurred by the AEs, in respect of which services are rendered, in its reconstructed financial statements, and then putting the hypothetical trading profits, so arrived at in these reconstructed financial statements, to the tests for determining arms' length price. Respectfully following the esteemed views of Their Lordships, we hold that the adjustments carried out in the cost base of ALP computation, in respect of service fee/ commission segment, are indeed devoid of legally sustainable merits. We direct the Assessing Officer to delete these adjustments. Once this notional adjustment is deleted, the ALP determination is to be done on the basis of the commission/ service fees. As we have stated earlier in this order as well, in the course of proceedings before us, the assessee has filed fresh computation of the ALP which attempts to demonstrate that, if notional adjustments made by the TPO are deleted, no ALP adjustment will be warranted. However, we are not inclined to go into verifications which must take place at the assessment stage.

Conclusion on commission /service fees segment of assessee's activities

82. Accordingly, we deem it appropriate to uphold the grievances of the assessee in principle, as the terms above, delete the notional adjustments by TPO's adopting cost base of the AEs in assessee's ALP determination, and remit the matter to the file of the TPO for the necessary factual verifications on impact of this corrections. Accordingly, the matter stands restored to the file of the TPO in this respect also."

11. Aforesaid order passed by the Tribunal has been upheld by the Hon'ble High Court vide order dated 22.03.2017 passed in ITA No. 159/2017, CM Appl. 6427/2017.

12. Moreover, perusal of order passed by DRP shows that its findings are also based upon decision passed by the Co-ordinate Bench of Tribunal in Marubeni India P. Ltd. and decision rendered by Hon'ble High Court in case of Li & Fung. In Li-Fung case, revenue had applied a commission model wherein the compensation was linked with the FOB value of goods sourced from India on account of services provided by Li & Fung India, which approach has been rejected by the Hon'ble High Court on the ground that return on costs was proper model to test the profitability. Since these cases are applicable to the facts and circumstances of the case the Ld. DRP has rightly decided the issue in favour of the taxpayer.

13. So, following the decision rendered by Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2007-08, A.Y. 2008-09 and A.Y. 2009-10 which have been upheld by the Hon'ble High Court. We are of the considered view that Ld. DRP has rightly deleted the notional cost of Rs. 4,26,43,50,877/- from the taxpayer's cost base and thereafter directing the DRP to compute the arms length services for the indent segment using appropriate service comparables and determine the ALP accordingly after a factual verification on impact of this corrections. Consequently, Ground Nos. 1 to 10 raised by the revenue are dismissed.

GROUND NO. 11

14. The Assessing Officer noticed from the accounts of the taxpayer that the taxpayer has made purchases from its associated enterprises without deduction of tax at source in accordance with provisions contained u/s 195 of the Act which are as under :-

S. No	*Name and Address of the AE*	*Description of transaction*	*Amount of purchases*
1.	*Asia Modified Starch Co. Ltd. 130-132 Sindhorn Building, 2nd Floor, Tower 1, Wireless Road, Lumpini Pathumwan, Bangkok-10330, Thailand*	*Import of goods*	*2,55,94,266*
2.	*Mitsubishi Corporation, Japan (including overseas branches) Head Office, 3-1, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo, Japan*	*Import of goods*	*30,76,87,72,124*
3.	*Petro Diamond Japan Corporation 4th Floor, Mitsubishi Corp. Building, 6-3, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo 100-0005*	*Import of goods*	*10,83,16,915*
4.	*MC Energy, Inc 4th Floor, Mitsubishi Corp. Building, 6-3, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo 100-0005*	*Import of goods*	*18,67,08,783*
5.	*Mitsubishi International*	*Import of goods*	*19,82,951*

	GmbH, Germany Hamburg Branch, Maattenwiete 5, Hamburg		
6.	***Mitsubishi Shoji Chemical Corporation 6-1, Kyobashi, 1-Chome, Chuo-Ku, Tokyo 104-0031***	***Import of goods***	***2,53,72,689***
7.	***Mitsubishi Australia Ltd. Level 36,120 Collins Street, Melborune, Victoria 3000, Australia***	***Import of goods***	***23,27,050***
	Total		***31,11,90,74778***

15. Declining the contention raised by the taxpayer, AO made disallowance of Rs. 42,78,87,278/- on the ground that since all the aforesaid companies are having PEs in India, the taxpayer was required to deduct tax at source on the business profits of these companies in accordance with provisions contained u/s 195 of the Income Tax Act.

16. Ld. DRP, however, deleted disallowance by following the decision rendered by tribunal in assessee's own case for A.Y. 2006-07 to A.Y. 2009-10. On the ground that the purchases made by the taxpayer from the aforesaid group entities should not be subjected to disallowance u/s 40(a)(i) of the Act by thrashing the facts at length. Operating part of DRP finding is as under :-

"The Hon'ble Delhi ITAT in assessee's own case for AY 2006-07 to AY 2009-10 has deleted the disallowance on account of non-deduction of taxes at source on payments made to non-resident suppliers. The relevant findings of the Hon'ble Delhi ITAT in its various orders are summarized below:-

a) Non-discrimination clause: The Hon'ble ITAT deleted the disallowance by upholding the assessee's contention concerning the non-discrimination argument in relation to India-Japan DTAA and other similar DTAA (Para 9.3 & 9.4 at page 15-18 of ITAT Order for AY 2006-07). This position was not disputed in subsequent years' ITAT order from AY 2007-08 to 2009-10. In fact, relief was granted on another similar .argument;

b) No-PE of the related entities other than MCJ: The Hon'ble ITAT further held that since the group entities (other than MG) did not have a Permanent Establishment (PE) in India, the provisions of section 195 of the Act were not applicable and consequently disallowance u/s 40(a)(i) was bad in law (Para 9.7 at page 20 of ITAT order for AY 2006-07).This position was not disputed in subsequent years ITAT order from AY 2007-08 to 2009-10.

While disposing off the similar objection for AY 2010-11, the DRP relying on the order of A.Y. 2008-09 held as under:-
The above grounds of objections are interrelated and taken up together for consideration. The facts of the present case are similar to the facts as in A. Y, 2008-09. In A. Y. 2008-09, the DRP has held as under :
The DRP has examined the matter of disallowance of purchases made from non resident group companies u/ s 40(a)(ia) in the draft order.
Perusal of the case history and the DR P's order for A Y 2006-07 and A Y 2007-08 indicate that this issue is a matter of dispute between the assessee and the Department in the past and that the appeals are now before the ITAT''. The objections of the assessee in this year are similar to the one it had made in the past years. As the issues are identical, the DRP's view will remain the same for the purposes of consistency. Therefore, the AO's order is upheld.

Thus, in DRP placing reliance on its own order for A.Y, 2008-09 upheld the disallowance made by the AO, However, during the course of hearing, the assessee relied on the ITAT's orders of AY

2006-07 to AY 2010-11 wherein the Hon'ble HAT had deleted the said disallowance made u/s 40(a)(i) of the IT Act, 1961. However, the Panel upon an examination and deliberation of the evidence filed by the A' during the current proceedings in the form of the orders of the Hon'ble ITAT no. I.T.A Nos 5042/Del/11 for AY 2007-08, 5885/Del/12 for AY 2008-09, 803/Del/14 for AY 2009-10 dated 21st Oct 2014 and 945/Del/2915 for AY 2010-11 dated 26th May 2015 noticed thafthe decision formed by the erstwhile DRP in respect of this litigated issue was flawed. The matter now being res-integra provides us no room to divagate from the judgment pronounced by the Hon'ble courts on the above issues specifically. Judicial discipline demands that the aecisions of superior courts be honoured where there are instances of stare-decisis especially. Therefore in view of principle laid down by the eeaforementioned ITAT ruling for AY 2006-07 to AY2009-10 in assessee's own case, purchases made from above mentioned group entities should not be subjected to disallowance under section 40(a)(i) of the Act as per the facts and legal position discussed below:-

In relation to Mitsubishi Corporation, Japan (MCJ): It is an admitted position now that in the assessment order of MG for AY 2009-10 and AY 2010-11, it was held by the AO that sales to MCI were not taxable in the hands of MG.

Asia Modified Starch Co., Ltd. (AMS): It is an undisputed fact that it is a company incorporated in Thailand which did not have any presence jp India. The assessee purchased goods directly from AMS from outside India

MC Energy Inc, Japan (MEI) (Formerly known as Petro Diamond Corporation, Japan (PDC)):

It is an undisputed fact that it is a company incorporated in Japan which did not have any presence in India. The assessee purchased goods directly from MEI from outside India.

Mitsubishi Australia Ltd (MALV It is an undisputed fact that it is a company incorporated in Australia which did not have any presence in India. The assessee purchased goods directly from MAL from outside India.

Mitsubishi International GmbH, Germany (MIG): It is an admitted fact that it is a company incorporated in Germany which did not

have any presence in India. The assessee purchased goods directly from MIG from outside India.

Mitsubishi Shoji Chemical Corporation, Japan (MSCC): It is admitted position that it is a company incorporated in Japan which did not have any presence in India. The assessee purchased goods directly from MSCC from outside India.
The above entities were non-resident of India under the Act and as per DTAA between respective countries and except MCJ, none of the entities had presence in India during the year. Further, the assessee purchased goods from these entities directly from outside India and these entities did not perform any function in India in connection with sale to the assessee,

From the above, it was clear that all purchases made by the assessee were directly outside from India from MO (without involvement of its offices in India) and other group entities, and accordingly, not liable to tax in India,

Hence, no part of purchase amount paid to non-resident suppliers was taxable in India. Further, it was informed to the AO that the assessee was dealing directly with all the non-resident suppliers and their Indian offices, if any, were not involved in purchase of goods, which were patent from the details filed with Paper book 1 and Form 35A.

Therefore, no tax is deductible from the payments made for purchase of goods from these non-residents in the light of provisions of section 40(a)(i) (held to be read with section 195 and applicable DTAA). While holding as above, The Panel considers it pertinent to refer to the relevant findings recorded by the Hon'bie ITAT on identical facts. While deleting the additions made in latest order for AY 2010-11, the Hontile ITAT by bifurcating the non-resident suppliers into two categories i.e. entities having a PE in India i.e. MG and entities not having a PE in India i.e. non-MG entities. In respect of the said categories of companies as under:-

''11. First we espouse the category of purchases made from six foreign AEs, for which the id. AR claimed that they did not have a PE in India and made offshore sales to the assessee, not leading to generation of any income chargeable to tax under the Act in their hands.
14. Reverting to the facts of the instant case, we find that out of the assessee's import transactions with six AEs, three are with Mitsubishi Shoji Light Metai, Japan, Thai MC Company Ltd., Thailand and Petro Diamond Corporation, Japan. The assessee

made purchases from these three AEs in the immediately preceding assessment year and the Tribunal was pleased to hold that in the absence of any PE of these three enterprises in India, the provisions of section 40(a)(i) were not attracted. The AO, while finalizing the assessment for the current year, has noticed on pages 52 and 54 of his order that the assessee made identical reply which was made during the course of assessment proceedings for the assessment year 2009-10.....

... The crux of the matter is that since these six AEs did not have any PE in India, the offshore sales made by them to the assessee in India would not generate any income chargeable under the Act to the AEs from such sale transactions.

15. Now we take up the second category of purchases made from MO, for which the id. AR ciaimea the benefit of non-discrimination clause of the DTAA to bolster his submission of non-applicability of the provisions of section 40(a)(i) of the Act. The sum and substance of his argument is that total purchases amounting to Rs. 214.78 crore were made by the assessee from MO including its overseas branch office and non-discrimination clause under Article 24 of the DTAA applies warranting non-deduction of tax at source. On contrary, the Ld. DR put forth that the case of the assessee is covered under Article 9 of the DTAA and for that reason, the application of Article 24 is outset.

20...., Reverting to the facts of the instant case, we find that the assessee is seeking benefit of article 24 qua the disallowance u/s 40(a)(i) and not in respect of any transfer pricing adjustment made by bringing transactions between two AEs at arms' length price. Disallowance u/s 40(a)(i) is an independent component of the computation which is distinct from any transfer pricing adjustment... As disallowance u/s 40(a)(i) is in respect of purchases made from the AEs, which is in no manner connected with the Commissioner segment, we hold that the assessee is entitled to the benefit provided by article 24 of the DTAA and cannot be visited with disallowance u/s 40(a)(i) of the Act,

21. The foregoing discussion divuiges that there existed no liability of the assessee to deduct tax at source from the payments made by it to the above listed seven foreign AEs, either because of non- chargeability of income under the Act from sale of such goods to the assessee or because of the application of non-discrimination clause. The natural corollary which follows is that the provision of section 195 cannot apply, and resultantly, there can be no disallowance u/s 40(a)(1) of the Act. We, therefore, order for deletion of this disallowance. This ground is allowed.

Respectfully following the consistent Hon'ble ITAT order upto AY 2010-11, we are of the view that no disallowance is called for under section 40(a)(i). Accordingly ground & sub grounds are allowed."

17. So, we are of the considered view that there is no scope to interfere into the findings returned by Ld. DRP which are on facts by following the decision rendered by Tribunal in assessee's own case for A.Y. 2006-07 to A.Y. 2009-10, hence, ground no. 11 is decided against the revenue.

GROUND NOS. 12 TO 15

18. The Assessing Officer by invoking the provisions contained u/s 14A read with rule 8D made disallowance of Rs. 1,01,049/- on the ground that the taxpayer has made investment of Rs. 20,00,00,000/- but has not made any disallowance u/s 14A read with rule 8D.

19. However, Ld. DRP by noting the fact that no dividend income has been earned by the taxpayer during the year under assessment deleted the disallowance made by the AO.

20. Moreover, Co-ordinate Bench of Tribunal in assessee's own case in A.Y. 2009-10 and 2010-11 deleted the identical additions by following decision rendered by Hon'ble Delhi High Court in case of CIT-IV vs. Holcim India P. Ltd. (2014) (ITA No. 486/2014 & ITA No. 299/2014).

21. When the taxpayer has not earned any dividend income during the year under assessment and has specifically come up with the plea that no expenditure has been incurred qua the

investment in question, the Ld. DRP has rightly deleted the addition u/s 14A of the Act. Hence, we find no ground to interfere into the deletion made by the Ld. DRP made by the AO u/s 14A read with rule 8D of the Act. Consequently, this ground is also decided against the revenue.

22. In view of what has been discussed above, finding no illegality or perversity in the impugned order passed by DRP, the appeal filed by the revenue is hereby dismissed.

Order pronounced in open court on this 25th November, 2019.

Sd/-	Sd/-
(N.K.BILLAIYA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: the 25th day of November, 2019
Binita

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1.Appellant
2.Respondent
3.CIT
4.CIT(A)
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AR, ITAT
NEW DELHI.

Date of Dictation : 15.11.2019 & 19.11.2019

Date on which the typed draft is placed before the Dictating Member: 19.11.2019

Date on which the approved draft come to Sr.PS/PS :

Date on which fair order sent to Member for signature :

Date on which the fair order comes back after pronouncement to the Sr.PS/PS :

Date on which order is uploaded :

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 AR for signature on the order……

Date of Despatch of the Order……