आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "आई-1", दिल्ली में

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1308/Del/2015
निर्धारण वर्ष / Assessment Year: 2010-11

Aricent Technologies Holdings Ltd.,
5, Jain Mandir Marg (Annex),
Connaught Place, New Delhi-110002.
PAN-AACCK8280B .....अपीलार्थी/Appellant

vs

DCIT,
Circle-3(1), New Delhi. ..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 4913/Del/2018
निर्धारण वर्ष / Assessment Year: 2011-12

Aricent Technologies (Holdings) Ltd.,
5, Jain Mandir Marg,
Connaught Place, New Delhi-110001.
PAN-AACCK8280B .....अपीलार्थी/Appellant

vs

DCIT,
Circle-3(1),
C.R.Building, New Delhi. ..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.5026/Del/2018
निर्धारण वर्ष / Assessment Year: 2011-12

Addl. CIT,
Special Range-1, Room No.-159A,
1st Floor, C.R.Building, New Delhi. .....अपीलार्थी/Appellant

vs

Aricent Technologies (Holdings) Ltd.,
5, Jain Mandir Marg,
Connaught Place, New Delhi-110001.
PAN-AACCK8280B ..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Ajay Vohra, Sr.Adv. &
Sh. Neeraj Jain, Adv.
प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjay I.Bara, CIT DR

आयकर अपील सं. / ITA Nos.7637/Del/2018 & 1944/Del/2017
निर्धारण वर्ष / Assessment Years: 2014-15 & 2012-13

Aricent Technologies (Holdings) Ltd.,
5, Jain Mandir Marg (Annex),
Connaught Place, New Delhi-110001.
PAN-AACCK8280B .....अपीलार्थी/Appellant

vs

Addl. CIT,
Special Range-1, Room No.-159A,
1st Floor, C.R.Building, New Delhi. ..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 7112/Del/2017
निर्धारण वर्ष / Assessment Year: 2013-14

Aricent Technologies (Holdings) Ltd.,
5, Jain Mandir Marg,
Connaught Place, New Delhi-110001.
PAN-AACCK8280B .....अपीलार्थी/Appellant

vs

JCIT,
Special Range-1,
C.R.Building, New Delhi. ..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Ajay Vohra, Sr. Adv.,
Sh. Neeraj Jain, Adv., Sh. Ramit Katyal, CA,
Sh. Anshul Sachar, CA & Sh. Karan Jain, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjay I Bara, CIT DR

सुनवाई की तारीख / **Date of Hearing :** **16.09.2019 & 17.09.2019**		घोषणा की तारीख / **Date of Pronouncement: 29.11.2019**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Out of this bunch of appeals, one appeal is filed by the assessee against the order of Assessing Officer u/s 143(3) r.w.s. 144C of the Income Tax Act, 1961 (in short "Act") dated 31.12.2014 relating to Assessment Year 2010-11. Further both the assessee and the Revenue have filed cross-appeals against the order of Assessing Officer u/s 143(3) r.w.s. 144C dated 21.04.2015 relating to Assessment Year 2011-12. Further, the assessee is in appeal against separate orders of the Assessing Officer dated 31.01.2017/ /13.10.2017/ 22.10.2018 u/s 144C(1) r.w.s 143(3) relating to Assessment Years 2012-13 to 2014-15 respectively.

2. This bunch of appeals relating to same assessee on similar issues were heard together and are being disposed off by this consolidated order for the sake of convenience.

ITA No.1308/Del/2015 [Assessee's appeal]
Assessment Year: 2010-11

3. The assessee has raised following grounds of appeal relating to Assessment Year 2010-11:-

> *1. "That the assessing officer erred on facts and in law in completing the assessment under Section 144C/143(3) of the Income-tax Act, 1961 ('the Act') at an income of Rs. 120,22,91,210 under the normal provisions of the Act, as against income of Rs. 114,65,96,393 returned by the appellant.*
>
> *2. That the assessing officer erred on facts and in law in making adjustment of Rs. 5,56,94,818 to the arm's length price of the 'international transactions' undertaken by the appellant with its associated enterprise on the basis of the order passed under Section 92CA(3) of the Act by the Transfer Pricing Officer ("TPO") read with directions of Dispute Resolution Panel ('DRP') passed under section 144C(5) of the Act.*
>
> *2.1 That the assessing officer/DRP erred on facts and in law in determining the arms length price of the international transactions of payment of corporate charges amounting to Rs. 3,66,31,346 at Nil allegedly holding that:*
>
> *(i) The services rendered by the associated enterprise are stewardship in nature*
>
> *(ii) Expenditure incurred by the appellant are duplicative and repetitive in nature*
>
> *(iii) There is no record as to the satisfaction of the taxpayer about the basis of the allocation of such expenditure.*
>
> *(iv) The services claimed to have been carried out have not been substantiated for the benefit warranting any compensation.*

(v) The appellant has qualified staff in India and has incurred expenses on similar heads in India

(vi) The appellant has not furnished the agreement, report on the cost allocation for inter group services for the relevant assessment year

2.2 That the DRP/TPO erred on facts and in law in not appreciating the fact that the associated enterprise while allocating the corporate charges to the appellant has duly excluded the cost in the nature of stewardship expenditure.

2.3 That the DRP/TPO erred on facts and in law in not appreciating that the allocation of expenditure by the associated enterprise was duly supported by a global transfer pricing report prepared by an independent consultant, namely, Deloitte Tax LLP, USA.

2.4 While allegedly holding that no benefit was received by the assessee from payment of corporate charges, the DRP erred on facts and in law in summarily disregarding the correlation between services received from the associated enterprise and increase in the revenue and profits of the appellant.

2.5 That the assessing officer/DRP grossly misunderstood and misinterpreted the facts of the cost allocation agreement entered into between the appellant and its AE.

2.6 That the DRP erred on facts and in law in not appreciating that payment made by the appellant to its associated enterprise on account of corporate charges, represents actual cost incurred by the associated enterprise on behalf of the appellant.

2.7 That the DRP erred on facts and in law in not appreciating the additional evidences submitted in the form of affidavits of employees of the associated enterprise rendering various services to the appellant.

2.8 That the assessing officer/ DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was wholly and exclusively for the purpose of business of the appellant.

2.9 That the assessing officer/DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was validly benchmarked along with other closely linked transactions applying TNMM as

most appropriate method and that no adverse inference could be drawn on this account.

That the assessing officer/ DRP erred on facts and in law in computing adjustment on account of international transaction of payment made for services received from the associated enterprise without applying any prescribed methods.

3. That the assessing officer erred on facts and in law in making an addition of Rs. 14,75,217 on account of the alleged difference in interest charged on foreign currency loan of USD 9,00,000 extended to the associated enterprise by applying the interest rate of 13.25%.

3.1 That the assessing officer / DRP erred on facts and in law in disregarding the fact that the loan was advanced by the appellant to its associated enterprise in foreign denominated currency and accordingly, loan available in the international market with interest rate computed considering Libor rates shall be applied for benchmarking.

3.2 Without prejudice, the assessing officer / TPO erred on facts and in law in not giving effect to the directions of the DRP to consider Base Rate of SBI for computing the arms length rate of interest and instead considering PLR of SBI.

4. That the assessing officer/TPO erred on facts and in law in making an adjustment of Rs. 1,75,88,255 by allegedly re-characterizing the outstanding receivables from the associated enterprise as in the nature of international transaction of unsecured loans.

4.1 That the assessing officer/TPO erred on facts and in law in not appreciating that delay in receipt of receivable does not constitute an international transaction in terms of section 92B of the Act but is a consequence of an internal transaction undertaken in the form of sales made to associated enterprise, and, therefore, is not required to be benchmarked separately.

4.2 Without prejudice, the assessing officer/TPO erred on facts and in law in not appreciating that the appellant has received receivables from unrelated parties with similar delay of period and accordingly the delay in receipt of receivables from unrelated parties should be considered as a valid CUP for the purpose of benchmarking.

4.3 That the assessing officer/TPO erred on facts and in law in not appreciating the since the operating profit margin earned by the appellant is higher than the comparable companies, the appellant has already factored the cost of interest in its pricing while providing software development services to its associated enterprise.

4.4 That the assessing officer/TPO erred on facts and in law in not appreciating that since the margin earned by the appellant is higher than the margin earned by the comparable companies after making adjustment on account of working capital requirements, no addition on account of notional interest for delay is receipt of receivables is otherwise warranted.

4.5 Without prejudice, that the DRP/TPO erred on facts and in law in disregarding the fact that the invoice for services were raised by the assessee to its associated enterprise in foreign denominated currency and accordingly, arm's length interest rate shall be computed considering Libor rates applicable on foreign denominated loans.

4.6 Without prejudice the assessing officer/ TPO erred in not giving effect to the directions of the DRP to consider Base Rate of SBI for computing the arms length rate of interest and instead considering PLR of SBI.

5. That the DRP erred on facts and in law in not adjudicating the claim of allowance of depreciation under section 32(1)(i) of the Act on the difference between the aggregate book value of investment in the equity shares of Flextronics Software Systems Limited ('Flextronics') in the books of the appellant and Future Software Limited ('FSL') in the books of Flextronics and the aggregate face value of share capital of Flextronics held by the appellant and FSL held by Flextronics accounted as goodwill amounting to Rs. 26,75,57,10,570 pursuant to amalgamation of Flextronics and FSL with the appellant.

5.1 That on the facts and circumstances of the case and in law, pursuant to the decision of Supreme Court in the case of CIT vs. Smifs Securities Ltd.: (2012) 348 ITR 302, depreciation ought to be allowed in terms of section 32(1)(i) of the Act in respect of 'Goodwill' pursuant to amalgamation of Flextronics and FSL while computing the taxable income of the appellant,

5.2 That on the facts and circumstances of the case and in law, consideration received by the appellant for transfer of certain customer relationships to Aricent Technologies Mauritius

Limited ought not to be included in the taxable income of the appellant and the aforesaid should instead be reduced from the amount of goodwill on which depreciation ought to be allowed under section 32(1)(i) of the Act.

5.3 That the DRP erred on facts and in law in not adjudicating the aforesaid claim on the Ground of appealthat the claim was not made by filing a revised return

5.4 That the DRP erred in law in directing that the new plea of the appellant cannot be considered by the Panel without appreciating that the additional Ground of appealraised by the appellant ought to have been considered by the DRP in terms of sub-section (2) to Rule 10 of the Income-tax (Dispute Resolution Panel) Rules, 2009.

6. That while computing the tax and interest liability on the assessed income, the assessing officer erred on facts and in law in not giving the credit of tax deducted at source amounting to Rs. 15,657,340.

7. That the assessing officer erred on facts and in law in levying interest under Section 234A, 234B and Section 234C of the Act.

The appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal and consider each of the grounds as without prejudice to the other grounds of appeal."

4. The Ground of appeal No.1 raised by the assessee is general in nature and does not require any adjudication. Hence, the same is dismissed.

5. The issue in Ground of appeal Nos. 2 to 2.11 is against the transfer pricing adjustment on account of payment of Corporate Charges.

6. Briefly in the facts relating to the issue, the assessee company was engaged in the business of production of computer software products and provision of software development services for communication industry. The assessee was engaged in the development of packaged software and providing software consultancy services and other ancillary products and services, primarily for use in telecommunications industry. The assessee had entered into various international transactions with its Associated Enterprises (in short "AE") and one of the said transaction was payment of Corporate Charges of Rs.3,66,31,346/-. The case of the assessee was that the AE was allocating the said corporate charges among the group companies on the basis of cost plus 5% mark up. The assessee further claims that the said payment of corporate charges of Rs.3.66 crores, was included in the cost base for the purpose of benchmarking the international transactions undertaken by assessee. The assessee applied Transactional Net Margin Method as the most appropriate method and OP/OC as the Profit Level Indicator (in short "PLI"). The margin of the assessee worked out to 25.54%. The comparables which were selected had mean margin of 14.79% and hence, the international transaction of payment of corporate charges, was benchmarked by the assessee, to be at arms length.

7. The Assessing Officer made reference to the Transfer Pricing Officer (in short "TPO") to determine the arms length price of the

aforesaid international transaction. The TPO in the TP proceedings show-caused the assessee in order to analysis the arms length price of the aforesaid international transaction. After considering the submissions made by the assessee, the TPO observed that there was no evidence that the services had actually been provided and also the assessee had failed to demonstrate the need for such services as also the receipt of the same. The TPO also stated that the assessee had failed to establish that its AEs had specific dedicated service centre for the assessee. He thus held that from the details available, it was clear that the assessee had not been able to prove that he had actually received services of same value, that called for cost allocation. In view thereof, he rejected the Transactional Net Margin Method approach applied by the assessee and was of the view that the said transaction had to be benchmarked separately by applying Comparable Uncontrolled Price (in short "CUP") method. Since the assessee, as per the TPO had not received any economic and commercial benefits for making the aforesaid payments, the TPO held the arms length price of the alleged services to be NIL. The Assessing Officer issued the draft assessment order in this regard, against which the assessee filed objection before the Dispute Resolution Panel (in short "DRP") who in turn dismissed the same. The Assessing Officer thus passed final assessment order dated 31.12.2014 and made an upward adjustment of Rs.3,66,31,346/-.

8. The assessee is in appeal against the order of Assessing Officer/ DRP/TPO.

9. The Ld.AR for the assessee pointed out that the order of the TPO was incorrect as for the purpose of determination of arms length price of any international transaction, it cannot be a criteria as to whether or not the services had resulted in any benefit to the assessee. Further referring to the order of the DRP, it was pointed out by the Ld.AR that vide para 6.6.19 at page 25 of the order, the panel says that there is no agreement between the parties. However, in para 6.6.5 at page 19, the Panel had observed that there was an agreement between the parties and at page 20, they did refer to the alleged agreement. He further pointed out that the issues raised stand covered by the order of the Tribunal in assessee's own case in ITA No.90/Del/2013 & 2671/Del/2014 relating to Assessment Years 2008-09 & 2009-10, vide consolidated order dated 26.07.2019. The Ld.AR for the assessee took us through the various aspects of the issues which have been deliberated upon by the Tribunal.

10. The Ld.DR for the Revenue pointed out that the assessee in TP study report had clubbed the international transaction of payment of corporate charges with other transactions of provision of software services and software development services. The assessee had applied Transactional Net Margin Method and on this combined approach,

had benchmarked the international transaction at arms length. It was further pointed out by the Ld. DR for the Revenue that the law allowed to benchmark the two transactions, if the same were closely linked; but the assessee has to demonstrate the same. Referring to the order of TPO at page 7, the Ld. DR for the Revenue pointed out that from the nature of services, it was clear that these were not services in the field of software services. In such circumstances, the said transaction had to be benchmarked separately. He then pointed out that only question which arises is whether there was any rendition of services and incase the answer is 'yes' then no adjustment to be made, but in case the answer is 'no' then the TPO has to look into the same. Referring to the order of the Tribunal in para 81, the Ld. DR for the Revenue stated that for this year, the evidences have been filed as additional evidences.

11. The Ld.AR for the assessee in re-joinder pointed out that the DRP at pages 13 & 14 had looked into the scope of services and all the services received by the assessee were integrally and inextricably linked to the business of the assessee. Since the intra group services provided by the AE were linked to the software services provided by the assessee hence, the same have to be benchmarked accordingly.

12. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is against the

transfer pricing adjustment made on account of payment of corporate charges. In the facts of the case, the assessee company during the year under consideration was engaged in the business of production of computer software products and provision of software development services for communication industry, through various 100% EOU units set up in software Technology parks in Gurgaon and Banglore. The assessee had entered into various international transactions with its AE and the issue which was raised vide Ground of appeal Nos.2 to 2.1 are against the benchmarking of international transaction of payment of corporate charges at Rs.3.66 crores. The claim of the assessee was that it was receiving the intra group services from its AEs, which were allocated among the group companies on the basis of report prepared by an independent consultant and the said services were charged on the basis of cost plus 5% mark up. The assessee had in TP study report considered the payment of corporate charges as cost base. It had further applied Transactional Net Margin Method as the most appropriate method with PLI of OP/OC. The margin of the assessee worked out to 25.54% as against the mean margins of comparables selected by the assessee, at 14.79%. The TPO however, was of the view that the assessee had failed to establish its case of receipt of economic and commercial benefits from such payment and also evidence of incurring such expenditure by the AE and thus, the TPO adopted the arms length price for the aforesaid transaction at

NIL. The DRP confirmed the determination of Arm's Length Price by the TPO on the Ground that the assessee talks of agreement, but no agreement between the parties was filed. One more aspect which has been considered by the TPO and which has not been disturbed by the DRP is that the assessee has failed to demonstrate the benefit arising on the availment of such services from the AE.

13. We find that similar approach was adopted by the Assessing Officer in benchmarking the international transaction of payment of corporate charges in Assessment Year 2009-10. The Tribunal in ITA No.2671/Del/2014 relating to Assessment Year 2009-10, with lead order in ITA No.90/Del/2013, vide order dated 26.07.2019 had addressed this issue and noted the case of the Revenue and the contention of the assessee, which are similar to the issue raised in the present appeal. The Tribunal looked into the evidences filed by the assessee to substantiate its case of rendition of services by the AE which is availed by the assessee against which payment as made on cost plus 5% mark up. It was pointed out that the AE was providing similar services to the group companies and the expenditure was allocated on the basis of report of an independent valuer, on cost plus 5% mark up. The first issue is whether it is open to the assessee to decide as to avail the service or not? The said issue stands decided by the Hon'ble Delhi High Court in Reebok India Company, 374 ITR 118 (Del.) which has also been applied by the Tribunal in para 81 at Page

51 of the order, to come to the findings that where the expenditure has been incurred for business purposes, the Assessing Officer cannot question requirement and quantum of expenditure.

14. Now coming to the next aspect and the issue whether the Revenue authorities can go into the aspect as to the necessity for the assessee to incur the aforesaid expenditure. This issue also stands covered in favour of the assessee by the decision of Hon'ble Delhi High Court in CIT vs Lumax Industries Ltd. (ITA No.102/2014). Coming to the next aspect of the issue raised as to whether the assessee derives any benefit from the services or not. The issue stands covered by the order of the Hon'ble Delhi High Court in CIT vs Cushman & Wakefield (India) Pvt.Ltd. (ITA No.475/2012) wherein it has been opined that the determination of benefit to the taxpayer was not in the domain of the Assessing Officer. The Tribunal in para 81 at pages 51 to 55 has deliberated upon the aforesaid issues and also the relevant findings of the Hon'ble Delhi High Court and we are referring to the same and not reproducing the same for the sake of gravity.

15. Now coming to the next approach of the TPO in treating the payment of corporate charges, which was included by the assessee as part of operating expenses, but which was benchmarked by the Assessing Officer/DRP/TPO separately. The Tribunal in Assessment Year 2009-10 had considered this aspect also and relying on different

decisions of Hon'ble Delhi High Court and also the decision of Co-ordinate Bench observed as under:-

> *85. "The undisputed fact is that the OPM of the assessee is @ 27.36% whereas that of all the comparable companies is @ 14.24%. As mentioned elsewhere the AE was created as a SPV for the purpose of giving services to the group companies for which the AE has charged cost + 5% as a marker and the assessee is making such payment in lieu of receiving vide scope of services from its AE. We are of the considered view that these are all inter linked transactions and therefore, should not be evaluated on a separate basis. This is also supported by para 1.42 and 1.43 of the OECD guidelines which provide for evaluation of combined transactions where such transactions are closely linked or continues and cannot be evaluate separately.*
>
> *86. This further finds support from the decision of the Hon'ble High Court in the case of Sony Ericson Mobile & Others in ITA No.16/2014 wherein the Hon'ble High Court affirm the benchmarked of closely linked transaction. The Hon'ble High Court held as under :-*
>
> > *"91. In case the tested party is engaged in single line of business, there is no bar or prohibition from applying the TNM Method on entity level basis. The focus of this method is on net profit amount in proportion to the appropriate base or the PLI. In fact, when transactions are interconnected, combined consideration may be the most reliable means of determining the arm's length price. There are often situations where closely linked and connected transactions cannot be evaluated adequately on separate basis. Segmentation may be mandated when controlled bundled transactions cannot be adequately compared on an aggregate basis. Thus, taxpayer can aggregate the controlled transactions if the transactions meet the specified common portfolio or package parameters. For complex entities or where one of the entities is not 'plain vanilla distributor, it should be applied when necessary and applicable comparables on functional analysis, with or without adjustments are available. Otherwise, the TNM Method should not be adopted or applied on account of being an inappropriate method.*
>
> *Further the Hon'ble Delhi Court in the case of Sony Ericsson Mobile (supra) also held that if the Indian entity has satisfied Transactional Net Margin Method (TNMM), i.e., as long as the operating margins of the Indian enterprise are higher than the operating margins of comparable companies, no further/separate compensation for AMP expenses is warranted. The Hon'ble Court held as under:*
>
> > *"101. However, once the Assessing Officer/TPO accepts and adopts TNM Method, but then chooses to treat a particular*

expenditure like AMP as a separate international transaction without bifurcation/segregation, it would as noticed above, lead to unusual and incongruous results as AMP expenses is the cost or expense and is not diverse. It is factored in the net profit of the inter-linked transaction. This would be also in consonance with Rule 10B(l)(e). which mandates only arriving at the net profit margin by comparing the profits and loss account of the tested party with the comparable. The TNM Method proceeds on the assumption that functions, assets and risk being broadly similar and once suitable adjustments have been made, all things get taken into account and stand reconciled when computing the net profit margin. Once the comparables pass the functional analysis test and adjustments have been made, then the profit margin as declared when matches with the comparables would result in affirmation of the transfer price as the arm's length price. Then to make a comparison of a horizontal item without segregation would be impermissible.

87. The coordinate bench in the case of M/s. BG Exploration and Production India Ltd. Vs. DCIT (ITA No. 1170/Del/2015) wherein the Tribunal has deleted the adjustment on account of payment made for intra group services. The Tribunal held as under :-

"72. On the examination of the volume and us details submitted by the assessee. The Ld. dispute resolution panel has come to the conclusion that assessee has received the services and those services are useful services.. With respect to the clubbing of the transaction it was held that when the transactions are closely interrelated it is but natural to club such transaction and benchmarked it together. The Ld. dispute resolution panel at page No. 30 — 31, has considered the suspect and agreed with the contention of the assessee that intra group services received from its associated enterprise are closely linked to the main business activity of the assessee company placing reliance on the US regulations, OECD regulations and OECD draft notes on comparability. In view of this we do not find any infirmity and none was pointed out before us by the Ld. departmental representative in the order of the Ld. dispute resolution panel. Consequently, after verifying that assessee has demonstrated need for those services, benefit derived from those services, evidence of receipt of such services and submitting that those services are neither duplicative in nature and nor are share holder activities, the DRP directed the Ld. transfer pricing officer to delete the adjustment proposed with respect to the intra group services of Rs. 3329766244/-, deserves to be upheld. The judicial precedents cited before us also supports the view that the needed test, the benefit test are also required to be viewed from the perspective of a businessperson and not from the perspective of the revenue. Further, no evidences have been led before us by revenue stating that these services are duplicative

in nature and also serves only the interest of the shareholder. According to the information supplied by the assessee and examined by the Ld. dispute resolution panel does not give any such indication. Further regarding non-sharing of the cost by the joint-venture partners we have given our findings while deciding the appeal of the assessee that such an action of the joint-venture partners cannot be the reason to determine the arm's length price of the services which is been received by the assessee at nil. In view of this we uphold the finding of the Ld. dispute resolution panel holding that transactions of intra group services are interlinked, therefore, they should be benchmarked together by adopting TNMM as the most appropriate method , hence, directing the Ld. transfer pricing officer to delete the adjustment proposed of Rs.3329766244/-. In the result Ground of appealNo. 1 to 3 of the appeal of the revenue are dismissed."

88. It would not be out of place to refer to the decision of the Hon'ble Delhi High Court in the case of Magneti Mareli Powertrain India Pvt. Ltd. (ITA No.350/2014) wherein the Hon'ble High Court held that technical know how fee paid by the assessee is to be benchmarked applying TNMM at the entity level. The said decision has been affirmed by the Hon'ble Supreme Court in ITA No.15244/2017.

89. Considering the judicial decisions discussed here in above in the light of the under lying facts in the issue we hold that TNMM is the most appropriate method for this international transaction and since the OPM of the assessee is higher than the OPM of the comparable companies, we are of the considered view that the benefit and the necessity test applied by the TPO/ DRP is uncalled for and accordingly direct the TPO/ AO to delete the addition of Rs.48397589/- Ground of appealNo.5.1 to 5.6 are allowed."

16. In view of the above said ratio laid down, we hold that where the assessee had demonstrated the need for the services and had also produced evidence of availment of such services and had also established the benefit derived from the said services, and where those services were neither deliberative in nature nor were shareholder activities, then the said availment of the intra-group services being inter linked with the other international transaction, then the same should be benchmarked on aggregate basis by

adopting the Transactional Net Margin Method as the most appropriate method. Consequently, we reverse the orders of the authorities below and delete the upward adjustment of Rs.3.66 crores. Thus, Ground of appeal Nos. 2 to 2.11 raised by the assessee in this appeal are allowed.

17. Now, coming to the next issue of transfer pricing adjustment of Rs.14,75,217/- made on account of interest on foreign currency loan extended to the AE. The assessee has raised Ground of appeal Nos. 3 to 3.2 in this regard.

18. Briefly in the facts relating to the issue, the assessee during the Financial Year 2009-10 had earned interest income of Rs.4,16,801/- in respect of loan of USD 9,00,000 extended to its AEs-Aricent Japan Ltd & Aricent Technologies (Beijing) Ltd. The interest on the said loans advanced was charged LIBOR + 1.5%. The case of the assessee was that the rate of interest which was charged by it from its AE was comparable to the rate of interest in the international market. The TPO however, applied the Comparable Uncontrolled Price method to benchmark the aforesaid international transaction and he applied rate of 14.88% being the prime lending rate, and made an adjustment of Rs.14,75,217/-. The DRP upheld the aforesaid adjustment but applied the rate of interest at 13.25%. The Assessing Officer

accordingly, passed the assessment order against which the assessee is in appeal before us.

19. The Ld.AR for the assessee pointed out that the loan to the AEs was extended as per the approval granted by Reserve Bank of India (in short "RBI") which also specified the rate of interest to be charged. Further it was pointed out that where the transaction of lending loan to the AE was a foreign currency, then the comparable transaction to be considered was the foreign currency lending rates, in case Comparable Uncontrolled Price method have to be applied. It is also pointed out by the Ld.AR for the assessee that similar issues arose before the Tribunal in Assessment Year 2008-09 (supra) and the adjustment made by the TPO has been deleted by holding that the rate of interest at LIBOR Plus should be applied.

20. The Ld. DR for the Revenue fairly pointed out that the prime lending rate of foreign loans could not be applied but LIBOR rate is to be applied alongwith basis point.

21. We find that the issue raised vide Ground of appeal Nos.3 to 3.6 is in relation to the transfer pricing adjustment made on account of foreign currency loan advanced by the assessee. The assessee had advanced same loan as in the earlier years and had charged interest by applying LIBOR +150 basis point. The Assessing Officer/DRP/TPO however applied the prime lending rate of 14.88%, which was reduced

to 13.25% finally. However, the case of the assessee before us is that it had advanced foreign exchange loan to its AE and the prime lending rate cannot be applied in such circumstances. We find merit in the plea of the assessee and hold that where the transaction is in foreign currency, then the rate of interest is to be applied is LIBOR plus. In the present case, it may also be pointed out that the loan was advanced after taking permission of the RBI and even the rate of interest was approved. In such facts and circumstances, we find no merit in the orders of the authorities below and hold that no transfer pricing adjustment needs to be made in the hands of the assessee on account of interest on foreign currency loan wherein the assessee himself had charged interest @ LIBOR + 150 basis points. Similar issue has been decided in favour of the assessee in Assessment Years 2008-09 & 2009-10 also. Thus, Ground of appeal Nos. 3 to 3.2 raised by the assessee are allowed.

22. The issue raised in Ground of appeal Nos. 4 to 4.6 is against the transfer pricing adjustment made on account of re-characterizing the inter-company receivables as unsecured loan extended by the assessee to its AEs.

23. Briefly in the facts relating to the issue the assessee had raised invoices on account of provision of services to its AEs. Some of the said payments were not received by the assessee. The TPO noted that

the receivables were outstanding for long period. He allowed credit of 30 days, treating the same to be normal period within which the amount due should have been paid by the debtors. He re-characterized the amount due from regular debtors, which was outstanding and treated the same as deemed loan. He then imputed notional interest on the delay in receipt of receivable @ 14.88% and proposed an adjustment of Rs.22.62 crores. The DRP upheld the adjustment made by the TPO, but directed the TPO to impute interest @ 11.75% and allow set off in respect of delayed payments by the assessee to its AEs. The TPO accordingly made an adjustment of Rs.8.72 crores, against which the assessee is in appeal before us.

24. The Ld.AR for the assessee submitted that the regular debtors which were outstanding for period more than 30 days, were treated as deemed loans by the TPO. It was pointed out that the delay of remittance could not be re-characterized as unsecured loan advanced to the AEs and then impute notional interest thereon. The Ld.AR pointed out that where the assessee was following consistent method with regard to the receivables, then there could not be any deeming adjustment in the hands of the assessee. Another aspect which is raised by the assessee was that the said transaction was part of the international transactions undertaken by the assessee and if Transactional Net Margin Method was applied as most appropriate method and the PLI was satisfied then there was no question of

segregating the transaction of receivables. The Ld.AR for the assessee pointed out that the Hon'ble Tribunal in assessee's own case for Assessment Year 2009-10 has deleted similar adjustment made on account of interest on receivable.

25. The Ld.DR for the Revenue placed reliance on the orders of the Assessing Officer/DRP/TPO.

26. We have heard the rival contentions and perused the record. The issue arising in the present grounds of appeal is against the adjustment made on account of notional interest due on the outstanding receivables. The TPO had noted the regular trade debtors which were outstanding and had treated the same as deemed loan, incase the said outstandings were not paid within period of 30 days. The transaction had been assumed by the TPO, rejecting the consistent approach applied by the assessee. First of all, we hold that there is no merit in the deeming adjustment made by the Assessing Officer/TPO in this regard. In any case where the operating profit margin shown by the assessee from its transactions with its AEs was higher than the mean margins of the comparable companies, then no separate adjustment could be made on account of imputing interest on outstanding receivables. In any case, the aforesaid receivables have been received by the assessee as and when due and the same could not be re-characterized as unsecured loan. Accordingly, we

reverse the order of the authorities below and delete the adjustment made on account of delay in receipt of receivables. The Tribunal in assessee's own case in Assessment Year 2009-10 had deleted the aforesaid addition and also held that there is no merit in resorting to explanation (1)(c) to section 92B of the Act. Applying the said ratio, we direct the Assessing Officer/TPO to delete the addition of Rs.8.72 crores. The Ground of appeal Nos.4 to 4.6 are thus allowed.

27. The issue raised in Ground of appeal Nos. 5 to 5.3 is against the claim of depreciation of goodwill arising out of amalgamation in Assessment Year 2008-09.

28. The Ld.AR for the assessee fairly pointed out that the assessee had not made the aforesaid claim in the return of income and the DRP did not adjudicate the same as no claim was made in return of income. The Assessing Officer also in the final assessment order applied the ratio laid down by the Hon'ble Supreme Court in Goetze (India) Ltd. [2006] 284 ITR 323 (SC).

29. The Ld.AR for the assessee pointed out that the depreciation was claimed in the accounts from Assessment Year 2008-09; but in terms of income tax, no such claim was made. The Ld.AR for the assessee further pointed out that ratio laid down by the Hon'ble Supreme Court in Goetze India Ltd.(supra) has been explained by Hon'ble Delhi High Court in Jai Parabolic Springs Ltd. [2008] 306 ITR

42 (Del) and the ratio of Hon'ble Apex Court does not apply to the appellate authorities. He thus pointed out that DRP had erred in not entertaining this Ground of appeal. He further pointed out that the issue now stands covered by the orders of Tribunal in Assessment Years 2008-09 & 2009-10, wherein the issue has been considered at length. The Ld.AR for the assessee also raised another issue vide Ground of appeal No. 5.2 of appeal which was then not pressed by him.

30. The Ld.DR for the Revenue on the other hand pointed out that since depreciation on goodwill was claimed by the assessee vide additional Ground of appeal, the DRP had not admitted the same. He pointed out that the amalgamation scheme was approved by the Hon'ble High Court, but the valuation of assets was not approved.

31. The Ld.AR for the assessee in the re-joinder pointed out that similar plea was raised before the Tribunal and the issue has been decided vide para 52 of Tribunal's order. He also pointed out that the said issue of goodwill was not arising for the first time.

32. We have heard the rival contentions and perused the record. The issue which is raised in Ground of appeal Nos. 5 & 5.1 is against the allowability of depreciation of goodwill.

33. Coming to the issue in hand, the Tribunal in Assessment Year 2008-09 (supra) had admitted the additional Ground of appeal vide paras 34 to 41 and then adjudicated the issue on merits vide para 42 onwards. The first aspect which was decided by the Tribunal was that all the facts in relation to creation of goodwill were available on record. Thereafter, looking into the aspects of amalgamation of two companies with assessee, under scheme of arrangement and amalgamation w.e.f 01.04.2007, which was approved by the Hon'ble High Court and after taking note of salient features of the amalgamation in paras 47 to 50 at page 25 to 33 of the order, wherein Tribunal also took note of the methodology approved as part of scheme of amalgamation, for computation of goodwill arising on amalgamation of two concerns of the assessee company, observed that the said methodology was approved by tax auditor of the assessee company. In para 52 onwards, the contention of the DRP was noted and one of the contentions was that exercise had to be carried out to determine the valuation of the assets and vide para 53, it was held that the said contention of the Ld.DR was not acceptable and it was observed as under:-

> *53. "This contention of the DR is not acceptable as the Hon'ble High Court in its order giving effect to the scheme of amalgamation mentioned elsewhere has clearly stated that the difference in the net asset value of FSSL and FSL and the consideration paid by the assessee shall be towards goodwill."*

34. The Tribunal vide paras 54 to 63 dealt with all other aspects of the issues and the arguments of the DRP on different facets of goodwill acquired in business reconsideration and held that the assessee to be entitled to claim depreciation on goodwill, as per the rates applicable for the year under consideration. We are referring to the findings of the Tribunal in paras 54 to 63, but not reproducing the same for the sake of brevity. However, following same parity of reasoning, we allow the claim of the assessee of depreciation on goodwill. The Ground of appeal Nos. 5 & 5.1 are thus allowed. Ground of appeal No.5.2 is dismissed as not pressed and Ground of appeal Nos. 5.3 & 5.4 also stand allowed.

35. The assessee has raised Ground of appeal No.6 against its claim of credit of tax deducted at source. The Ld.AR for the assessee pointed out that the Assessing Officer has failed to allow the credit of TDS, on the subsequent TDS Certificates received by the assessee. He fairly submitted that the credit be allowed on verification. We find merit in the plea of the assessee and direct the Assessing Officer to allow the claim of the assessee on due verification. The Ground of appeal No.6 is thus allowed for statistical purposes.

36. Now coming to Ground of appeal No.7 raised by the assessee, where the assessee is aggrieved by the levy of interest u/s 234A, 234B & 234C of the Act.

37. The Ld.AR for the assessee pointed out that for the year under consideration, the assessee had filed return of income on 14.10.2010 and the same was filed within due date, as the Circular No.225/72/2010-ITA.II dated 27.09.2010 had extended the due date of filing of return of income. Hence, there was no delay in filing the said return of income. Interest u/s 234A of the Act is chargeable incase the return of income have not been filed on time. But where the return of income has been filed in time, then there is no question of charging any interest u/s 234A of the Act. The Assessing Officer may verify the stand of the assessee and in case the assessee had filed the return of income within extended period of filing the return of income then no interest u/s 234A of the Act is to be charged.

38. Now coming to the next charge of interest u/s 234B of the Act, where the case of the assessee is that it is to be charged on assessed income and the interest u/s 234C of the Act is to be charged on the returned income. There is no dispute about the provisions of section 234B & 234C of the Act. The interest chargeable u/s 234B & 234C is consequential; hence, the Assessing Officer is directed to verify the stand of the assessee. Ground of appeal No.7 is thus, allowed for statistical purposes.

39. In the result, the appeal of the assessee is partly allowed.

ITA No.4913/Del/2018 [Assessee's appeal] &
ITA No.5026/Del/2018 [Revenue's appeal]
Assessment Year: 2011-12

40. Now coming to the cross-appeal filed by the assessee and the Revenue relating to Assessment Year 2011-12.

41. Following grounds of appeal are raised by the assessee and Revenue respectively in cross-appeals :-

ITA No.4913/Del/2018

1.1. "That the Ld. CIT(A) erred on facts and in law in upholding addition to the extent of Rs 3,76,37,933 being 20% of the amount paid by the appellant towards corporate charges to the associated enterprises holding such services to be in the nature of shareholder activity.

1.2. That the Ld. CIT(A) erred on facts and in law in treating 20% of the amount of payment I made towards corporate charges as shareholder activities and holding them to be of no economic and commercial value to the business of the appellant.

1.3. That the Ld. CIT(A) erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was wholly and exclusively for the purpose of business of the appellant.

1.4. That the Ld. CIT(A) erred on facts and in law in not appreciating that the associated enterprise has already reduced the amount incurred towards shareholder activity from the cost allocated to the appellant and accordingly, no cost attributable to shareholder activity has been allocated to the appellant.

1.5. That the Ld. CIT(A) erred on facts and in law in not appreciating that the appellant had benchmarked the impugned transaction in its TP documentation in accordance with provisions of section 92C(1) of the Income-tax Act, 1961 ("the Act") and there was no occasion to re-determine the arm's length price ("ALP") thereof in the absence of satisfaction of any of the conditions specified under section 92C(3) of the Act.

1.6. That the learned CIT(A) erred on facts and in law in not appreciating the details of benefits received which were furnished by the appellant during the course of assessment

proceedings; and further not providing an opportunity of being heard to furnish its rebuttal or additional details/evidence in support of its arguments, specifically in the absence of any finding to this effect by the learned TPO in his order under section 92CA(3) of the Act.

1.7. That the Ld. CIT(A) erred on facts and in law in arbitrarily holding marketing, strategy and IP related services as shareholder activity without providing any justification or cogent reasons.

1.8. That the Ld. CIT(A) erred on facts and in law in not appreciating that there was no allegation in the order passed by the TPO under section 92CA(3) of the Act that the services rendered by the associated enterprises are in the nature of shareholder activity.

1.9. That the Ld. CIT(A) erred on facts and in law in holding that the aforesaid services are in the nature of shareholder activity without providing any opportunity of being heard to the appellant to furnish its rebuttal or additional details/evidence in support of its arguments, specifically in the absence of any finding to this effect by the learned TPO in his order under section 92CA(3) of the Act.

1.10. That the Ld. CIT(A) erred on facts and in law in determining the arm's length price of international transaction on payment of corporate charges on an adhoc and arbitrary basis without applying any of the methods prescribed under section 92C of the Act.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not entertaining the claim of deduction of Rs.2,77,79,494 under section 43B of the Act in respect of leave encashment and gratuity paid before the due date of filing of return merely on the Ground of appealthat the said claim had not been made by way of revised computation of income.

2.1. That the Ld. CIT(A) grossly erred in not appreciating that he was duty bound to suo moto allow claims which are allowable to assessee but not claimed at all either in the return of income or during the assessment proceedings.

2.2 That the Ld. CIT(A) grossly erred in not appreciating that the claim made before the Ld. assessing officer was merely a modification of original claim made in the return of income and

was not altogether a new claim made during the course of assessment proceedings.

2.3 Without prejudice, that on the facts and circumstances of the case and in law, the Ld. assessing officer may be directed to allow deduction of Rs. 2,77,79,494 under section 43B of the Act in respect of leave encashment and gratuity paid by exercising the power conferred under Section 254 of the Act.

3. That the Ld. CIT(A) erred on facts and in law in not adjudicating on addition of Rs.19,12,401 on account of outstanding sundry credit balances completely ignoring the fact that the Ld. Assessing officer has not deleted the said addition on merits, vide rectification order dated 26.05.2017 passed under section 154/ 143(3) of the Act.

3.1. That the Ld. CIT(A) erred on facts and in law in not allowing the addition made on account of sundry credit balances outstanding from past three years completely ignoring the facts of the present case.

The appellant craves leave to add, amend, alter, forgo, delete, rescind or withdraw the above grounds of appeal either before or during the hearing before the Hon'ble Tribunal. Further, the aforesaid grounds are mutually exclusive and without prejudice to each other."

ITA No.5026/Del/2018

1. "Whether the Hon'ble CIT(A) erred in directed the TPO to apply TNMM in respect to transaction for Corporate charges Payment without giving cogent reasons as to how this method is the Most Appropriate Method for benchmarking this transaction, in spite of the fact that TPO in the original order had given elaborate reasons for rejecting TNMM as MAM for this transaction?

2. Whether the Hon'ble CIT(A) erred in direction the TPO to allow 20% deduction on account of corporate management support services in spite of the fact that TPO has already reduced the expenses to the level of arm's length?

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

42. The Ground of appeal Nos.1 to 1.10 raised by the assessee in this appeal are against the transfer pricing adjustment made on account of payment of corporate charges. It was also pointed out by the Ld.AR for the assessee that in the appeal filed by the Revenue, the issue was also in relation to the transaction of payment of corporate charges.

43. We have heard the rival contentions and perused the record. For the year under consideration, the assessee had selected Transactional Net Margin Method as the most appropriate method OP/OC as PLI. The operating margins of the assessee were 22.75% as compared to the mean margins of the comparable companies selected at 13.35% and hence were considered to be at arms length. The TPO did not dispute the rendition of services by the AEs but rejected the Transactional Net Margin Method and benchmarked the international transaction of payment of corporate charges by comparing the ratio of legal and professional fee of 0.37% incurred by the comparable companies with the ratio of 1.26% in the case of the assessee and made an adjustment of Rs.13,31,14,451/- being the allegedly excess expenditure incurred by the assessee.

44. The CIT(A) accepted that Transactional Net Margin Method was the most appropriate method to be applied, but disallowed 20% corporate charges holding them in the nature of share holder

activities. The CIT(A) observed that the assessee had not provided any details whether any deduction was made in the nature of shareholder activity.

45. The Ld.AR for the assessee pointed that the AE had already reduced the amount attributable to shareholder activity and hence, the adjustment sustained by the CIT(A) was bad in law.

46. We have heard the rival contentions and perused the record. The Ground of appeal of appeal raised by the assessee and the Revenue is in appeal against the benchmarking of the aforesaid transaction of payment of corporate charges by applying Transactional Net Margin Method as the most appropriate method. We have already adjudicated the issue of benchmarking of the international transaction of payment of corporate charges in the paras above and following the same parity of reasoning, we find no merit in the Ground of appeal raised by the Revenue hence, the same are dismissed.

47. Now coming to the disallowance retained by the CIT(A) at 20% of the total expenses; we find no merit in the same as the said amount attributable to shareholder activity has already been reduced by the AE while allocating the cost to the assessee. Accordingly, there is no merit in disallowing 20% of the aforesaid expenditure. Thus, we allow

the claim of the assessee. The Ground of appeal Nos.1 to 1.10 stand allowed.

48. The issue in Ground of appeal Nos.2 to 2.3 is against the claim of deduction u/s 43B of the Act in respect of leave encashment and gratuity paid, before the due date of filing of return of income, amounting to Rs.2.78 crores.

49. Briefly in the facts relating to the issue the assessee had filed revised return of income and not claimed the deduction u/s 43B of the Act. However, during the course of assessment proceedings, the claim was made for the aforesaid deduction in respect of leave encashment and gratuity paid, before the due date of filing of return of income. The said amount was paid on 31.07.2011 and the same was claimed to be allowable u/s 43B of the Act. The Assessing Officer did not allow the claim of the assessee in view of no claim being made in the return of income and applied the ratio laid down by the Hon'ble Supreme Court in Goetze (India) Ltd. [2006] 284 ITR 323 (SC). The CIT(A) upheld the order of the Assessing Officer against which the assessee is in appeal.

50. We have heard the rival contentions and perused the record. The Hon'ble Delhi High Court in CIT vs Jai Parabolic Springs Ltd. [2008] 306 ITR 42 (Del) has explained that the Tribunal has the power to adjudicate the fresh claim raised for the first time and has also

explained the ratio of the decision of Hon'ble Supreme Court in Goetze India Ltd. (supra). In view thereof, we adjudicate the claim of the assessee u/s 43B of the Act. As per Proviso to the said section, incase any amount, which is due to be paid, to which provision of section 43B of the Act are attracted, then no disallowance is to be made u/s 43B of the Act, incase the assessee deposits the said amount before the due date of filing of return of income. The assessee before us is aggrieved by the disallowance made on account of the leave encashment of Rs.90,79,494/- and gratuity of Rs.1.87 crores. The assessee had discharged its liability on 31.07.2011 and this fact was also verified and certified by the auditor as reported in Annexure (J) to the Tax Audit Report. However, inadvertently, the assessee did not claim the said deduction in the return of income filed for the year under consideration. We hold that the assessee is entitled to the aforesaid claim subject to verification by the Assessing Officer. Accordingly, we direct the Assessing Officer to allow the claim of the assessee on verification.

51. Now coming to the last issue raised vide Ground of appeal Nos. 3 & 3.1 is against the addition of Rs.19,12,401/- being sundry credit balances outstanding from past three years.

52. Briefly in the facts of the case the Assessing Officer had made an addition of Rs.19,12,401/- on account of alleged static creditors.

The addition made by the Assessing Officer is of Rs.19,12,401/-. The case of the assessee before us is that there is totaling error and amount totals to Rs.11,92,401/-. The said credit balances as per the assessee were enforceable and recoverable by the creditors and were reflected as payable in the books of accounts of the assessee and hence, the Assessing Officer could not make the aforesaid addition u/s 41(1) of the Act, unless it is established that the liability had seized to exist.

53. The CIT(A) vide para 5.15 & 5.16 observed that the issue has been decided in favour of the taxpayer by the Hon'ble Delhi High Court in CIT vs Dalmia Finance Ltd. ITA No.833/2010 relying upon the order of Hon'ble Supreme Court in CIT vs Sugauli Sugar Works Ltd. [1993] 236 ITR 518. However, it was observed by the CIT(A) that the Assessing Officer had rectified the above addition u/s 154/143(3) of the Act and hence, no grievance remains with the assessee.

54. The Ld.AR for the assessee pointed out that the rectification was carried out for MAT purposes and not for income tax purposes.

55. The Ld. DR placed reliance on the orders of the authorities below.

56. We have heard the rival contentions and perused the record. Applying the ratio laid down by the Hon'ble Supreme Court in CIT vs

Sugauli Sugar Works Ltd. (supra) where the creditors are outstanding in the books of accounts of the assessee and they have not been reversed, then such outstanding balance of creditors cannot be treated as income of the assessee. The CIT(A) has fairly pointed out that the issue is decided in favour of the assessee. However, while deciding the issue, reference was made to the rectification order u/s 154 of the Act, which is in respect of the computation of book profits under the MAT provision and not the income under the Income tax Act. Accordingly, we direct the Assessing Officer to allow the claim of the assessee in entirety and delete the addition of Rs.19,12,401/-, as this is the addition made in the hands of assessee. The Ground of appeal Nos. 3 to 3.1 are thus allowed.

57. The appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

ITA No.1944/Del/2017 [Assessee's appeal]
Assessment Year: 2012-13

58. The assessee has raised following grounds of appeal relating to Assessment Year 2012-13:-

> *1. "That the assessing officer erred on facts and in law in completing the assessment under Section 144C(1) r.w.s. 143(3) of the Income-tax Act, 1961 ('the Act') at an income of Rs.440,00,17,750 as against the income of Rs. 196,98,53,050 returned by the appellant.*

Corporate Tax issues

2. That on the facts and circumstances of the case, depreciation should be allowed in terms of section 32(1)(ii) of the Act in respect of intangible asset in the nature of goodwill amounting to Rs. 2675,57,10,570 arising upon amalgamation of Flextronics Software Limited (Flextronics) and Futures Software Limited (FSL) into the appellant pursuant to the scheme of amalgamation approved by the Hon'ble Delhi High Court vide order dated 16.05.2007.

2.1 That the DRP/ assessing officer erred on facts and in law in disallowing the depreciation of Rs. 211,64,18,512 under section 32(1)(i) of the Act on written down value of Goodwill of Rs. 846,56,74,048 arising out of amalgamation of Flextronics and FSL into the appellant on the Ground of appealthat the appellant did not assign fair value to other assets while computing Goodwill.

2.2 That the DRP/ assessing officer erred on facts and in law in relying on the ITAT Ruling of DCIT vs. Toyo Engineering Ltd., ITA No. 3279/ Mum/2008 without appreciating that the same was reversed by the Hon'ble Mumbai Bench of the Tribunal.

2.3. That the DRP erred on facts and in law in holding that the amalgamated company cannot claim depreciation on assets acquired under amalgamation that is more than the depreciation allowable to the amalgamating company in terms of 5th proviso to section 32(1) of the Act.

2.4. That the DRP erred on facts and in law in holding that the Supreme Court in the case of CIT vs. Smifs Securities Ltd.; 348 ITR 302 has merely held that goodwill is an intangible asset eligible for depreciation under section 32 of the Act and the Supreme Court has not dwelled into the aspect of applicability of 5th proviso to section 32(1) of the Act to the depreciation to be claimed on goodwill arising under amalgamation.

2.5. That the DRP/ assessing officer erred on facts and in law in not appreciating that the Goodwill represents difference between the aggregate book value of investment in the equity shares of Flextronics in the books of the appellant and FSL in the books of Flextronics and the aggregate face value of share capital of Flextronics held by the appellant and FSL held by Flextronics accounted as goodwill amounting to Rs.2675,57,10,570 pursuant to amalgamation of Flextronics and FSL with the appellant.

2.6. That the DRP/ assessing officer erred on facts and in law in not appreciating that the Goodwill depreciation claim could not have been part of Tax Audit Report in Form 3CD since the claim was made pursuant to the decision of Supreme Court in the case of CIT vs. Smifs Securities Ltd.: (2012) 348 ITR 302. As per Supreme Court the depreciation ought to be allowed in terms of section 32(1)(ii) of the Act in respect of 'Goodwill' pursuant to amalgamation of Flextronics and FSL with the appellant while computing the taxable income of the appellant.

2.7. That the DRP/ assessing officer erred on facts and in law in denying depreciation on goodwill by relying upon the decision of the Bangalore Tribunal in the case of United Breweries Ltd. vs. ADIT: 722/Bang/2014, wherein it has been held that depreciation on enhanced value of goodwill is barred in terms of sixth proviso to section 32(1)(ii) of the Act.

2.8. Without prejudice, that on the facts and circumstances of the case and in law, consideration amounting to Rs.43,36,58,490 received by the appellant for transfer of certain customer relationships to Aricent Technologies Mauritius Limited ('ATML') was capital in nature and part of Goodwill and ought not to be considered as part of taxable income of the appellant.

2.9. Without prejudice, that the DRP erred on facts and in law in not admitting the customer contracts filed as additional evidence in terms of Rule 9 of the Income Tax (Dispute Resolution Panel) Rules, 2009 allegedly holding that the appellant failed to discharge the primary onus cast upon it.

2.10. Without prejudice, that the DRP/ assessing officer erred on facts and in law in failing to appreciate that the customer relationships/ contracts transferred to ATML were intangible assets which was reduced from the goodwill eligible for deduction under section 32(1)(ii) of the Act and therefore, the said amount ought to be reduced while computing the taxable income of the appellant.

3. That the DRP/ assessing officer erred on facts and in law in making addition of Rs.2,65,46,256 allegedly holding that the appellant had received interest under section 244A of the Act on the income tax refund of Rs.24,77,65,100 during the year under consideration.

3.1. That the DRP/ assessing officer erred on facts and in law in not appreciating that the appellant did not receive any interest

under section 244A of the Act from the Government treasury during the year under consideration.

4. That the DRP/ assessing officer erred on facts and in law in disallowing expense to the extent of Rs.60,51,351 while computing long term capital gain from sale of land on the Ground of appealthat the same were not incidental for sale of land.

4.1. That the DRP/ assessing officer erred on facts and in law in failing to appreciate that the expenses of Rs.60,51,351 were incurred by the appellant towards legal charges paid to the legal advisors in respect of sale of land.

4.2 That the DRP erred on facts and in law In holding that the appellant failed to file the supporting documents as additional evidences without appreciating that the necessary supporting documents were duly placed on record in the course of the assessment proceedings.

5. That the DRP/ assessing officer erred on facts and in law in disallowing the loss on sale of shares of Aricent Japan Limited on the Ground of appealthat the valuation report of chartered accountant suffered from ambiguity.

5.1. That the DRP/assessing officer erred on facts and in law in not appreciating that valuation report obtained by Aricent Japan Limited from a technical expert was binding on the assessing officer.

5.2. That the DRP/ assessing officer erred on facts and in law in not appreciating that valuation report obtained by Aricent Japan Limited from a technical expert was as per the guidelines issued by the Reserve Bank of India in relation to transfer of shares by a resident to a non-resident.

6. That the DRP/ assessing officer erred on facts and in law in making addition of Rs.8,84,112 on account of interest on late deposit of TDS without appreciating that such interest is an allowable expenditure under section 37(1) of the Act.

7. That the DRP erred on facts and in law in alternatively disallowing u/s 37(1), the payment of corporate charges amounting to Rs 29,69,39,832.

Transfer Pricing Issues

8. That the assessing officer erred on facts and in law in making adjustment of Rs. 31,79,46,069 to the arm's length price of the 'international transactions' undertaken by the appellant with its associated enterprise on the basis of the order passed under Section 92CA(3) of the Act by the Transfer Pricing Officer ("TPO") read with directions of Dispute Resolution Panel ('DRP') passed under section 144C(5) of the Act.

8.1. That the assessing officer/DRP erred on facts and in law in determining the arm's length price of the international transactions of payment of corporate charges amounting to Rs. 29,69,39,832 at Nil allegedly holding that:

(i) The assessee has not been able to prove the benefits that it had derived from the services purportedly provided by the expats.

(ii) The assessee has not furnished any evidence as to the cost benefit analysis with regard to the independent local employees.

(iii) No documentation has been produced by the assessee to support its claim for the receipt of services.

(iv) The benchmarking done by the assessee is not in accordance with the law.

8.2 That the DRP/TPO erred on facts and in law in not appreciating the fact that the associated enterprise while allocating the corporate charges to the appellant has duly excluded the cost in the nature of stewardship expenditure.

8.3 That the DRP/TPO erred on facts and in law in not appreciating that the allocation of expenditure by the associated enterprise was duly supported by a global transfer pricing report prepared by an independent consultant, namely, Deloitte Tax LLP, USA.

8.4 While allegedly holding that no benefit was received by the assessee from payment of corporate charges, the DRP erred on facts and in law in summarily disregarding the correlation between services received from the associated enterprise and increase in the revenue and profits of the appellant.

8.5 That the assessing officer/DRP grossly misunderstood and misinterpreted the facts of the cost allocation agreement entered into between the appellant and its AE.

8.6 That the DRP erred on facts and in law in not appreciating that payment made by the appellant to its associated enterprise on account of corporate charges, represents actual cost incurred by the associated enterprise on behalf of the appellant.

8.7 That the DRP erred on facts and in law in not appreciating the additional evidences submitted in the form of affidavits of employees of the associated enterprise rendering various services to the appellant.

8.8 That the assessing officer/ DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was wholly and exclusively for the purpose of business of the appellant.

8.9 That the assessing officer/DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was validly benchmarked along with other closely linked transactions applying TNMM as most appropriate method and that no adverse inference could be drawn on this account.

8.10 That the TPO/ DRP erred on facts and in law in computing adjustment on account of international transaction of payment made for services received from the associated enterprise without applying any prescribed methods.

9. That the TPO/ DRP erred on facts and in law in proposing an addition of Rs. 2,39,616 on account of interest charged on loan given to associated enterprise by applying the interest rate of 3.12% (Libor +150 basis points).

9.1 That the TPO/ DRP erred on facts and in law in failing to appreciate that there was a statutory restriction on the associated enterprise in accruing interest in China when the entity has applied for repayment of loan.

10. That the TPO/DRP erred on facts and in law in proposing an adjustment of Rs. 2,07,66,621 on account of interest on receivables due from associated enterprise by applying interest rate of LIBOR + 400 basis points.

10.1 That the TPO/DRP erred on facts and in law by allegedly considering the delay in receipt of receivables from the associated enterprise is in the nature of unsecured loans.

10.2 That the TPO/DRP erred on facts and in law in not appreciating that delay in receipt of receivable is not an international transaction, per se, under section 92B of the Act but is a consequence of an internal transaction undertaken in the form of sales made to associated enterprise.

10.3 Without prejudice, the TPO/DRP erred on facts and in law in not appreciating that the appellant has received receivables from unrelated parties with similar delay of period and accordingly the delay in receipt of receivables from unrelated parties should be considered as a valid CUP for the purpose of benchmarking.

10.4 That the TPO/DRP erred on facts and in law in not appreciating that since the operating profit margin earned by the assessee is higher than the comparable companies, the assessee has already factored the cost of interest in its pricing while providing software development services to its associated enterprise.

10.5 That the DRP erred on facts and in law by holding that the working capital adjustment does not address the mispricing where the interest free receivables are outstanding beyond the average collection period.

10.6 Without prejudice, the TPO/DRP erred on facts and in law in failing to appreciate that the impact of working capital of the assessee vis-a-vis its comparables has already been factored in the pricing/profitability of the assessee, which is more than that working capital adjusted margin of the comparables companies.

10.7 Without prejudice that the TPO erred on facts and in law in failing to appreciate that no adjustment is warranted if complete set off is given for interest on payables due to all associated enterprises.

10.8. Without prejudice, that the TPO failed to appreciate that no adjustment was made on account of interest due from associated enterprise in Assessment Year 2011-12 and Assessment Year 2013-14."

59. The Ground of appeal No.1 raised by the assessee is general in nature and does not require any adjudication. Hence, the same is dismissed.

60. The Ground of appeal No.2 raised by the assessee against the corporate issue of non-allowance of depreciation on goodwill.

61. The Ld.AR for the assessee at the outset pointed out that the issue raised vide present grounds of appeal is similar to the issue raised vide Ground of appeal Nos. 5 to 5.3 of appeal in Assessment Year 2010-11.

62. We have already adjudicated the issue in paras above, while deciding the appeal for Assessment Year 2010-11 and following the same parity of reasoning, we allow Ground of appeal Nos. 2 to 2.7 of the assessee. Ground of appeal Nos. 2.8 to 2.10 are not pressed hence, dismissed as not pressed.

63. The issue raised vide Ground of appeal Nos. 3 to 3.1 is against the addition of Rs.2.65 crores being the interest received u/s 244A of the Act. The case of the assessee before us is that though the Assessing Officer vide paras 8.2 & 8.3 of the assessment order added the interest received u/s 244A of the Act in the hands of the assessee, but no such intimation had been issued to the assessee. The Ld.AR pointed out that the limited issue raised is that the same may be verified by the Assessing Officer and if correct the same may be

brought to tax in the hands of the assessee. Accordingly, we direct the Assessing Officer to verify the requisite details u/s 244A of the Act and also intimate to the assessee about the same and bring it to tax in the hands of the assessee. Hence, Ground of appeal Nos. 3 & 3.1 raised by the assessee are allowed as indicated.

64. Now, coming to Ground of appeal Nos. 4 to 4.2 wherein the issue raised is against the disallowance of expenses totaling to Rs.60,51,351/-, while computing the income from long term capital gains on sale of land, on the ground that the same were not incidental to sale of land. The case of the assessee is that the said expenditure were towards legal charges paid to the legal advisors for the transaction of sale of land. The assessee is also aggrieved by the observation of the DRP in holding that the assessee had filed the supporting documents as additional evidence, though the same were filed on record during assessment proceedings.

65. Briefly in the facts relating to the issue the assessee during the year under consideration had declared income from long term capital gains totaling to Rs.136.94 crores. The assessee had claimed legal expenses totaling to Rs.4.58 crores. The Assessing Officer allowed the brokerage fee paid by the assessee totaling to Rs.3.98 crores, but the balance expenditure was disallowed in the hands of the assessee. The Ld.AR for the assessee has taken us through the

details of the expenditure booked by the assessee and pointed out the evidences in this regard were filed both before the Assessing Officer & DRP. He further pointed out that the expenses were incurred for the purpose of carrying on the business and were booked as expenditure against the sale of asset and the same may be allowed in the hands of the assessee.

66. The Ld.DR for the Revenue pointed out that the expenditure incurred by the assessee have not been verified by either by the authorities below and the same may be directed to be verified.

67. We have heard the rival contentions and perused the details of legal expenses which have not been allowed in the hands of the assessee. The expenditure comprises of house tax payment of Rs.30 lakhs against the bill of Rs.26,26,296/-. The said expenditure is allowable in the hands of the assessee u/s 37(1) of the Act and we direct the Assessing Officer to verify the payment and allow the same. The assessee has also incurred legal consultancy charges relating to the sale of Banglore land, which are also allowable as an expenditure u/s 48(1) of the Act. The stand of the assessee may be verified and the Assessing Officer is directed to allow the same u/s 48(1) of the Act.

68. Now coming to the balance expenditure which was in relation to Jwala Land transaction, against which the assessee declared

income from long term capital gains. We find no merits in the orders of the authorities below in disallowing the same where the expenditure connected with the transfer of land, the same is to be allowed as deduction u/s 48(i) of the Act. Ground of appeal Nos. 4 to 4.2 raised by the assessee are thus allowed.

69. The issue raised in Ground of appeal Nos. 5 to 5.2 is against the disallowance of loss on sale of shares of Aricent-Japan Ltd.

70. Briefly in the facts of the issue raised, the assessee had declared long term capital loss of Rs.69,60,313/- on account of sale of share investments. The Assessing Officer asked assessee to file details of how the said shares had been valued for the purpose of determination of the sale consideration. The Assessing Officer noted that the assessee had entered into an Equity Purchase Agreement dated 25.08.2011 as per which 800 shares purchased by the assessee at a price of JPY 50,000 million were sold at a price of JPY 35 million. The assessee in support produced the valuation report and justified the capital loss declared at Rs.69,60,313/-. The Assessing Officer in the draft assessment order observed as under:-

> *11.3. "The purpose of DCF analysis is simply to estimate the money as investor would revised from an investment adjustment for time value of money. Discounted cash flow models are as good as their imports. Therefore, estimation of net cash flow is based on the data provided by the management and not on the comparable data. hence, it suffers from ambiguity."*

71. The long term capital loss of Rs.69,60,313/- was disallowed in the hands of the assessee. The DRP upholding the order of the Assessing Officer observed that the book value method would be appropriate method for valuing the shares of the companies, which was ITES company and DCF models cannot be applied. The Assessing Officer thus passed final assessment order making the aforesaid addition in the hands of the assessee.

72. The assessee is in appeal before us in this regard.

73. After taking us through the factual aspects, the Ld.AR for the assessee pointed out that there are no provision under Act to substitute the actual consideration with notional value. He further stated that section 50C(A) were inserted by Finance Act, 2017 w.e.f 01.04.2018 and prior to this there were no powers with the Assessing Officer to substitute the value of actual consideration. He further referred to the agreement placed at page 265 of the Paper Book and it was brought to our notice that the shares of the said company of Japan were sold by the assessee to Cyprus company and the sale consideration was duly mentioned in the agreement at page 268 of the Paper Book. He pointed out that the valuation report were for RBI purpose, copy of which is placed at pages 400 to 404 of the Paper Book, under which the shares were valued @ Rs.40,424 per share. It was stressed by the Ld.AR for the assessee that the said report does

not give any power to the Assessing Officer to substitute of value of actual consideration.

74. The Ld.DR for the Revenue on the other hand pointed out that only question which remains is fair market value of the shares. He fairly submitted that the sale consideration cannot be disturbed but it was not clear how the assessee had arrived at those figures.

75. We have heard rival contentions and perused the record. The issue which arises in the present appeal is the computation of capital gain on sale of shares of Aricent-Japan Ltd. The assessee had acquired 800 shares in AE Aricent-Japan JPY 50,000 million. The total cost of acquisition was Rs.1.54 crores. These shares were held by the assessee as on 01.04.2011. During the year under consideration, the assessee had entered into equity purchase agreement dated 25.08.2011 under which the said 800 shares were sold @ Rs.40,424 each i.e. for a consideration of Rs.2.15 crores. Evidence of sale of the shares is the equity purchase agreement dated 25.08.2011, copy of which is placed at pages 265 onwards on the Paper Book filed by the assessee. The Assessing Officer has disallowed the loss claimed by the assessee on the ground that the method adopted by the assessee for valuing its shares on the date of sale suffers from ambiguity. The question which arises before us is whether the Assessing Officer while computing the income from

capital gains on transfer of capital assets has the power not to accept the full value of consideration received or accruing on the transfer of assets. The Courts have time and again held that there is no power with the AO to substitute the actual consideration with any notional consideration or fair market value of the asset.

76. Another aspect which needs to be seen is that the said transaction of sale of shares was reported by the assessee in Form No.3CEB and transfer pricing report. The TPO has analyzed the international transaction undertaken by the assessee and had accepted the said transaction at arms length and did not propose any adjustment. In such facts and circumstances, the Assessing Officer cannot make any adjustment/addition by not accepting the sale consideration received by the assessee. The reference to the valuation report which was filed by the Assessing Officer before the RBI cannot be the basis for reworking the capital gains in the hands of the assessee, where the assessee had entered into equity purchase agreement dated 25.08.2011, wherein 800 shares were sold by the assessee at a price of JPY 35 million. Accordingly, we direct the Assessing Officer to allow the loss claimed by the assessee on the sale of shares of its AE, Aricent-Japan. Ground of appeal Nos.5 to 5.2 raised by the assessee are allowed.

77. The issue in Ground of appeal No.6 is against the disallowance of interest paid on late deposit of TDS amounting to Rs.8,84,112/-. The Ld.AR pointed out that the interest paid by the assessee was compensatory and hence, deductible in the hands of the assessee. He also pointed out that the said interest was not covered u/s 40(a)(ii) of the Act.

78. The Ld.DR for the Revenue placed reliance on the order of the Assessing Officer at page 18 of the assessment order.

79. Briefly in the facts relating to the issue the assessee had paid interest amounting to Rs.8,84,112/- on late deposit of TDS on the foreign remittances u/s 195 of the Act. The assessee claimed the said expenditure as allowable u/s 37(1) of the Act, being compensatory and not penal in nature. However, the said plea of the assessee was not accepted by the authorities below. Hence, the assessee is in appeal before us.

80. The Ld.AR for the assessee pointed out that interest paid on late deposit of tax by the recipient, was compensatory and deductible in the hands of the assessee. He also pointed out that the said interest was not covered under the provisions of section 40(a)(ii) of the Act.

81. The Ld.DR placed reliance on the order of the Assessing Officer in para 13 at page 18 of the order.

82. We have heard the rival contentions and perused the record. The assessee had paid interest amounting to Rs.8,84,112/- on late deduction of TDS under the provision of section 40(a)(ii) of the Act. Any sum paid on account of any rate of tax levied is not to be allowed as a deduction. Also, the interest paid on late deposit of tax is not an allowable expenditure in the hands of the assessee. Hence, we dismiss the claim of the assessee. Ground of appeal No.6 raised by the assessee in this appeal is dismissed.

83. Ground of appeal No.7 is not pressed by the assessee hence, the same is dismissed as not pressed.

84. The issue raised in Ground of appeal Nos. 8 to 8.10 is against the transfer pricing adjustment made on account of payment of corporate charges. The said issue is similar to the issue raised in Ground of appeal Nos.2.1 to 2.11 in Assessment Year 2010-11 and following the same parity of reasoning, we allow the claim of the assessee. Hence, Ground of appeal Nos. 8 to 8.10 are allowed.

85. Now coming to the issues raised vide Ground of appeal Nos.9 to 9.1 which is against the transfer pricing adjustment of Rs.2,39,616/- made on account of interest on foreign currency loan extended to the AE.

86. Briefly in the facts relating to the issue, the assessee had advanced loan to Aricent China. As was the practice, before repaying

the Chinese entity had to seek permission from the authorities for repaying the loan and the Chinese laws prohibited accruing of further interest once documents for the repayment of loans were submitted. During the year under consideration, the assessee had not received any interest on the said outstanding loan. The assessee thus, did not account for any interest on the said loans in its books of accounts. The explanation of the assessee was that in view of the provisions of Rule 10B(2)(d) of the Act, no such interest could be provided in the books of accounts. However, the TPO did not accept the plea of the assessee and made transfer pricing adjustment of Rs.2,39,616/- on account of interest due on foreign currency loan extended to the AE, against which the assessee is in appeal before us.

87. The Ld.AR for the assessee referred to the loan agreement executed in March, 2008 and as per clause 8, the said loan was repayable in March, 2011. On 01.04.2011, the AE moved an application before the Chinese authorities seeking permission for repayment of the aforesaid loan. The Ld.AR for the assessee placed reliance on the on the decision of Delhi Bench of Tribunal in DCIT vs M/s TMW ASPF i Cyprus Holding Company Ltd. in ITA No.879/Del/2016) relating to Assessment Year 2011-12, order dated 09.08.2019.

88. We have heard the rival contentions and perused the record. The issue which arises before us is against the transfer pricing adjustment made in the hands of the assessee on account of interest due from Aricent-China on the loans advanced to it. The assessee had advanced the said loans to Aricent-China under the loan agreement of March, 2008 and as per clause 8, the said loan was repayable after a period of three years. The AE in China moved an application for repayment of the said loan and as per the laws of China, once the application is moved for repayment of loan, no interest would accrue till the time, permission is given by the authorities to make the aforesaid repayment. Under the international transactions reported for benchmarking the assessee had accounted for the amount remitted by Aricent-China, which is not in dispute. The only issue which arises is whether any interest had accrued on the aforesaid loan during the period when the application for repayment was under process. Once the law of China provide no accrual of interest in the contracting state then there is no merit in holding the accrual of income in the hands of the assessee. Accordingly, the orders of the authorities below in this regard are reversed. We also hold that in the absence of any accrual of interest income, no adjustment could be made on account of alleged accrual of interest on the loan advanced to the AE.

89. Another aspect which needs to be considered is under the DTAA between India and China. For taxing the interest income, it is necessary that the interest should arise in the contracting state and as well as paid to the resident of other State. The said issue stands covered by the decision of Delhi Bench of Tribunal in DCIT vs M/s TMW ASPF i Cyprus Holding Company Ltd. (supra) in para 20 of the order dated 09.08.2019 which reads as under:-

> *20. "The aforesaid para envisages that for taxing the interest income in the hands of a non-resident, it is necessary that the interest should arise in a contracting state, i.e., twin conditions of accrual as well as the payment are to be satisfied. If there is no accrual or actual payment received then same is to be decided within the scope of Article 11(1). What the TPO/AO have sought to tax is that, assessee was supposed to receive interest of 18%, if the contingent event would have arisen, i.e., if in the event, the option was exercised by the assessee to sell its converted shares to the promoters of investee company at an option price then it would have given the return of 18%. Thus, entire edifice of the TPO/AO was based on fixation of contingent event which assessee was supposed to receive. It is also matter of record no such conversion was actualised and assessee remained invested even during the year under consideration. The transfer pricing adjustment has been made on this hypothetical amount of interest receivable. Whether such notional income can be brought to tax even under the transfer pricing provision, has been dealt by the Hon'ble Bombay High Court in the case of Vodafone India Services (P) Ltd. vs. Union of India (supra), wherein their Lordships have held that even income arising from international transaction must satisfy the test of income under the Act and must find its home in one of the charging provisions. Here in this case, nowhere the TPO/AO has been able to establish that notional interest satisfy the test of income arising or received under the charging provision of Income Tax Act. If income is not taxable in terms of section 4, then chapter X cannot be made applicable, because section 92 provides for computing the income arising from international transactions with regard to the ALP. Only the interest income chargeable to tax can be subject matter of transfer pricing in India. Making any transfer pricing*

adjustment on interest which has neither been received nor accrued to the assessee cannot be held to be chargeable in terms of the Income Tax Act read with Article 11(1) of DTAA. Here it cannot be the case of accrual of interest also, because none of the investee companies have acknowledge that any interest payment is due, albeit they have been requesting for waiving of interest of even coupon rate of 4%, leave alone the return of 18% which was dependent upon some future contingencies. Assessee despite all its efforts has acceded to such request. Further, in the India Cyprus DTAA wherein similar phrase has been used pertaining to FTS and Royalty in India Cyprus DTAA, Hon'ble Bombay High Court held that assessment of royalty or FTS should be made in the year in which amount have actually received and not otherwise. The coordinate bench of Mumbai ITAT in the case of Pramerica ASPF II Cyprus Holding Ltd. vs. DCIT (supra) on exactly similar set of facts, addition on account of notional interest was made; the Tribunal has held that the interest income in question can only be taxed on payment /receipt basis. The relevant observation has already been incorporated above. The Hon'ble Bombay High Court has confirmed the said finding. Similar view has been taken by the ITAT Chennai Bench in the case of DCIT vs. Inzi Control India Limited (supra). Thus, in view of Article 11(1) we hold that, only the interest which has actually been received can only be subject matter of taxation and no TP adjustment can be made on some hypothetical receivable amount which was contingent upon certain event which has actually not been taken place during the year. Thus, the order of the Direction of the DRP is upheld and the grounds raised by the revenue are dismissed.

90. Following the same parity of reasons, we delete the TP adjustment made on account of accrual of interest. Ground of appeal Nos. 9 to 9.1 raised by the assessee are thus allowed.

91. The last issue raised in Ground of appeal Nos. 10 to 10.8 is against the transfer pricing adjustment made of Rs.2.04 crores on account of re-characterizing the inter-company receivables as unsecured loans extended by the assessee to its AE. The issue raised herein is similar to issue raised vide Ground of appeal Nos. 4 to 4.6 in

Assessment Year 2010-11. Following the same parity of reasoning, we delete the aforesaid transfer pricing adjustment made in the hands of the assesse. Ground of appeal Nos. 10 to 10.8 are thus allowed.

92. In the result, the appeal of the assessee is partly allowed.

ITA No.7112/Del/2017 [Assessee's appeal]
Assessment Year: 2013-14

93. The assessee has raised following grounds of appeal relating to Assessment Year 2013-14:-

> *1. "That the assessing officer erred on facts and in law in completing the assessment under Section 144C(1) r.w.s. 143(3) of the Income-tax Act, 1961 ('the Act') at an income of Rs.297,48,60,850 as against the income of Rs.119,58,24,310 returned by the appellant.*
>
> *Corporate Tax issues*
>
> *2. That the assessing officer erred on facts and in law in not allowing depreciation of Rs.158,73,13,884 claimed under section 32(1)(i) of the Act on written down value of Goodwill of Rs.634,92,55,536 arising out of amalgamation of Flextronics Software Limited (Flextronics) and Futures Software Limited (FSL) into the assessee on the sole Ground of appealthat appellant has not assigned fair value to other assets while computing Goodwill.*
>
> *2.1 That the assessing officer erred on facts and in law in not appreciating that the Goodwill represents difference between the aggregate book value of investment in the equity shares of Flextronics Software Systems Limited ('Flextronics') in the books of the appellant and Future Software Limited ('FSL') in the books of Flextronics and the aggregate face value of share capital of Flextronics held by the appellant and FSL held by Flextronics accounted as goodwill amounting to Rs.2675,57,10,570 pursuant to amalgamation of Flextronics and FSL with the appellant.*

2.2 That the DRP/ assessing officer erred on facts and in law in relying on the ITAT Ruling of DCIT vs. Toyo Engineering Ltd., ITA No. 3279/ Mum/2008 without appreciating that the same was reversed by the Hon'ble Mumbai Bench of the Tribunal.

2.3 That the DRP/assessing officer erred on facts and in law in observing that tax audit report does not mention any asset as goodwill nor any depreciation allowable thereof, without appreciating that the Goodwill depreciation claim had been duly reflected under the head 'intangible assets' in the Tax Audit Report..

2.4 That the DRP erred on facts and in law in following its order for the preceding year wherein it has been alleged that the amalgamated company could not claim depreciation on assets acquired under amalgamation that is more than the depreciation allowable to the amalgamating company.

2.5 That the DRP erred on facts and in law in following its order for the preceding year wherein it has been held that the Supreme Court in the case of CIT vs. Smifs Securities Ltd.: 348 ITR 302 has merely held that goodwill is an intangible asset eligible for depreciation under section 32 of the Act and the Supreme Court has not dwelled into the aspect of applicability of 5th proviso to section 32(1) of the Act to the depreciation to be claimed on goodwill arising under amalgamation.

2.6 That the assessing officer erred on facts and in law in not admitting enhanced claim of depreciation of Rs.158,73,13,884 under section 32(1)(i) of the Act as against Rs. 122,72,31,644 claimed in the return of income, on the Ground of appealthat the said claim had been made by way of application during the course of assessment proceedings and not by revising its return of income.

2.7 That the assessing officer grossly erred in not appreciating that he was duty bound to suo-motu allow claim which are allowable to appellant but not claimed at all in the return of income

2.8 That the assessing officer grossly erred in not appreciating that the claim for enhancement of depreciation was only modification of original claim made in the return of income and was not altogether a new claim made during the course of assessment proceedings.

2.9 That the DRP I assessing officer erred on facts and in law in denying depreciation on goodwill by relying upon the decision of the Bangalore Tribunal in the case of United Breweries Ltd. vs. ADIT: 722/Bang/2014, wherein it has been held that depreciation on enhanced value of goodwill is barred in terms of sixth proviso to section 32(1)(ii) of the Act.

2.10 Without prejudice, the assessing officer has erred in facts and in law in inadvertently disallowing Rs.163,81,18,105 as against Rs.122,72,31,644 claimed as depreciation on goodwill by the appellant in the return of income.

3. That on the facts and circumstances of the case and in law, consideration amounting to Rs. 54,27,737 received by the appellant for transfer of certain customer relationships to Aricent Technologies Mauritius Limited is Capital by nature (part of Goodwill) and ought not to be considered as part of taxable income of the appellant.

3.1 That the assessing officer erred on facts and in law in failing to appreciate that the customer relationships/ contracts transferred to ATML were intangible assets which had been reduced from the goodwill eligible for deduction under section 32(1)(ii) of the Act and therefore, the said amount ought to be reduced while computing the taxable income of the appellant.

Transfer Pricing Issues

4. That the assessing officer erred on facts and in law in making adjustment of Rs. 13,54,90,701 to the arm's length price of the international transaction of payment of corporate charges undertaken by the appellant with its associated enterprise on the basis of the order passed under Section 92CA(3) of the Act by the Transfer Pricing Officer ("TPO") read with directions of Dispute Resolution Panel ('DRP') passed under section 144C(5) of the Act.

4.1 That the assessing officer/DRP erred on facts and in law in determining the arm's length price of the international transactions of payment of corporate charges amounting to Rs.13,54,90,701 at Nil allegedly holding

(i) The appellant has not been able to prove the benefits that it had derived from the services purportedly provided by the expats.

(ii) The appellant has not furnished any evidence as to the cost benefit analysis with regard to the independent local employees.

(iii) No documentation has been produced by the assessee to support its claim for the receipt of services.

(iv) The benchmarking done by the appellant is not in accordance with the law.

4.2 That the DRP/TPO erred on facts and in law in not appreciating the fact that the associated enterprise while allocating the corporate charges to the appellant has duly excluded the cost in the nature of stewardship expenditure.

4.3 That the DRP/TPO erred on facts and in law in not appreciating that the allocation of expenditure by the associated enterprise was duly supported by a global transfer pricing report prepared by an independent consultant, namely, Deloitte Tax LLP, USA.

4.4 While allegedly holding that no benefit was received by the appellant from payment of corporate charges, the DRP erred on facts and in law in summarily disregarding the correlation between services received from the associated enterprise and increase in the revenue and profits of the appellant.

4.5 That the assessing officer/DRP grossly misunderstood and misinterpreted the facts of the cost allocation agreement entered into between the appellant and its AE.

4.6 That the DRP erred on facts and in law in not appreciating that payment made by the appellant to its associated enterprise on account of corporate charges, represents actual cost incurred by the associated enterprise on behalf of the appellant.

4.7. That the DRP erred on facts and in law in not appreciating the evidences submitted in the form of affidavits of employees of the associated enterprise rendering various services to the appellant.

4.8 That the assessing officer/ DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was wholly and exclusively for the purpose of business of the appellant.

4.9 That the assessing officer/DRP erred on facts and in law in not appreciating that the expenditure on the payment for services received from the associated enterprise was validly benchmarked along with other closely linked transactions applying TNMM as most appropriate method and that no adverse inference could be drawn on this account.

4.10 That the TPO/ DRP erred on facts and in law in computing adjustment on account of international transaction of payment made for services received from the associated enterprise without applying any prescribed methods.

5 That the assessing officer erred on facts and in law in not granting MAT credit claimed under section 115JAA of the Act

6 That the assessing officer erred on facts and in law in granting credit of prepaid taxes at Rs. 56,05,00,620 as against Rs. 61,81,48,133 claimed in the income tax return.

7. That the assessing officer erred on facts and in law in levying interest under section 234B of the Act."

94. The Ground of appeal No.1 raised by the assessee is general in nature and does not require any adjudication. Hence, the same is dismissed.

95. The issue raised in Ground of appeal Nos. 2 to 2.10 and 3 to 3.1 is against the disallowance of depreciation on goodwill. We have already adjudicated this issue in paras above while deciding Ground of appeal Nos.5 to 5.1 raised in Assessment Year 2010-11 and following the same parity of reasoning, we allow Ground of appeal Nos. 2 to 2.10 and 3 to 3.1.

96. The next issue raised in Ground of appeal Nos. 4.1 to 4.10 is against the transfer pricing adjustment of Rs.13.54 crores made on

account of payment of corporate charges. The said issue has also been adjudicated by us under Ground of appeal Nos. 2.1 to 2.11 of Assessment Year 2010-11. Following the same parity of reasoning, we allow the claim of the assessee. Thus, Ground of appeal Nos. 4.1 to 4.10 are allowed.

97. The next issue raised in Ground of appeal No.5 is against the order of the Assessing Officer in not granting MAT credit claimed u/s 115JJA of the Act. The Assessing Officer is directed to verify the claim of the assessee after allowing reasonable opportunity of hearing to the assessee and decide the issue in accordance with law. Thus, Ground of appeal No.5 raised by the assessee is allowed.

98. Similarly the issue raised in Ground of appeal No.6 is that the assessee is aggrieved by non grant of part of TDS claimed by the assessee in the return of income. The Assessing Officer is directed to verify the claim of the assessee after allowing reasonable opportunity of hearing and decide the issue. Hence, Ground of appeal No.6 raised by the assessee is allowed.

99. The last issue raised in Ground of appeal No.7 is against the charging of interest u/s 234B of the Act, is consequential; hence, the same is dismissed.

100. In the result, the appeal of the assessee is partly allowed.

ITA No.7637/Del/2018 [Assessee's appeal]
Assessment Year: 2014-15

101. The assessee has raised following grounds of appeal relating to Assessment Year 2014-15:-

1. "That on the facts and circumstances of the case and in law, the impugned order passed by the assessing officer ("Ld. AO") is barred by limitation in terms of section 153 r.w.s 144C of the Act and therefore, is liable to be quashed.

On the facts and circumstances of the case and in law, the Ld. AO has erred in passing the assessment order under section 143(3) read with section 144C of the Income Tax Act, 1961 ("the Act") after considering the adjustments made by the learned Transfer Pricing Officer ("Ld. TPO") in his order passed under section 92CA(3) of the Act passed in accordance with the directions provided by the Hon'ble Dispute Resolution Panel ("Hon'ble DRP").

Each of the Ground of appealis referred to separately, which may kindly be considered independent of each other.

Corporate Tax issues

That the Ld. AO erred on facts and in law in not allowing depreciation of Rs.1,19,04,85,413 claimed under section 32(1)(i) of the Act on written down value of Goodwill of Rs.4,76,19,41,652 arising out of amalgamation of Flextronics Software Limited (Flextronics) and Futures Software Limited (FSL) into the assessee on the Ground of appealthat appellant has not assigned fair value to other assets while computing Goodwill.

2.1 That the Ld. AO erred on facts and in law in not appreciating that the Goodwill represents difference between the aggregate book value of investment in the equity shares of Flextronics in the books of the appellant and FSL in the books of Flextronics and the aggregate face value of share capital of Flextronics held by the appellant and FSL held by Flextronics accounted as goodwill amounting to Rs.26,75,57,10,570 pursuant to amalgamation of Flextronics and FSL with the appellant.

2.2 That the Ld. AO erred on facts and in law in alleging that the assesse was unclear on the valuation of goodwill and had failed to ascribe a correct value to goodwill, i.e. the fair value of net assets.

2.3 That the Hon'ble DRP/ Ld. AO erred on facts and in law in relying on the ITAT Ruling of DCIT vs. Toyo Engineering Ltd., ITA No. 3279/ Mum/2008 without appreciating that the same was reversed by the Hon'ble Mumbai Bench of the Tribunal.

2.4 That the Hon'ble DRP erred on facts and in law in following its order for the preceding year wherein it has been alleged that the amalgamated company could not claim depreciation on assets acquired under amalgamation that is more than the depreciation allowable to the amalgamating company.

2.5 That the Ld. AO erred on facts and in law in not admitting enhanced claim of depreciation of Rs. 1,19,04,85,413 under section 32(1)(i) of the Act against Rs. 92,04,23,734 claimed in the return of income.

2.6 Without prejudice, the Ld. AO has erred in facts and in law in inadvertently 1 disallowing Rs.92,36,46,122/- as against Rs.92,04,23,734 claimed as depreciation on goodwill by the appellant in the return of income.

4. That the Ld. AO erred on facts and in law in not allowing the deduction of R; 6,58,83,328 claimed on account of reimbursement paid to the parent company towards ESOP for granting stock options to employee's assesses.

4.1 That the Ld. AO erred on facts and in law in proposing to hold that employees section 37 of the Act alleging that the same was not incurred wholly and exclusively for the purpose of the business of the assessee company.

4.2 That the Ld. AO erred on facts and in law alleging that the expenditure claimed did not represent a crystallized liability and being without any objective evidence for justification, the same was not allowable as deduction.

4.3 That the Ld. AO erred on facts and in law in holding that ESOP is a part of salary and since the assessee did not deduct any tax at source on payment to the group company, the amount claimed was disallowable under section 40(a) of the Act.

4.4 Without prejudice, that the Ld. AO failed to appreciate that: (a) tax was not deductible on mere issuance of options and (b) no disallowance, in any case, can be made under section 40(a) of the Act on account of alleged non-deduction of tax on payments made in the nature of 'emoluments' to employees.

4.5 That the Ld. AO erred on facts and in law in failing to appreciate that the assessee had merely reimbursed the expenses to its group company and the same was not subject to deduction of tax at source.

4.6 That the Ld. AO erred on facts and in law in treating the amount of discount a short capital receipt and the entire expenditure to be in the nature of capital expenditure.

5. The Ld. AO/TPO/Hon'ble DRP have erred in law and on facts of the case by delinking the inter-company receivables arising from the primary international transaction i.e. provision of software development services ("main service transaction") and proceeding to benchmark the same as a separate transaction without appreciating the fact that the main service transaction was already accepted by the revenue to be at arm's length.

5.1 The Ld. AO/TPO/ Hon'ble DRP erred in facts and in law by re-characterizing the inter-company receivables as unsecured loan extended by the appellant to its associated enterprises ("AEs").

5.2 The Ld. AO/TPO/ Hon'ble DRP erred in facts and in law by not appreciating that the appellant is a debt free company and therefore, it is not justifiable to presume' that, borrowed funds have been utilized to pass on the facility to its AEs.

5.3 The benchmarking methodology, adopted by the Ld. AO/TPO/Hon'ble DRP for determining the arm's length price of the alleged transaction of interest on inter-company receivables is not in accordance with the provision of section 92C(1) of the Act.

5.4 Without prejudice to above, the Ld. AO /TPO/Hon'ble DRP erred on facts and in law in not appreciating that the appellant does not charge interest from third party customer on delayed payments which acts as an internal comparable uncontrolled price ("CUP") method.

5.5 Without prejudice to the above, for the benchmarking the alleged transaction of inter-company receivables, the mark-up of 400 points on LIBOR rate determined by the Ld. TPO/Hon'ble DRP lack any technical analysis and cogent reasoning.

5.6 Without prejudice to above, the Ld. AO/TPO/Hon'ble DRP erred in facts and in law by not calculating the adjustment on the net outstanding balance (i.e. receivables minus payables) instead of gross outstanding receivables.

5.7 The Ld. AO/TPO/Hon'ble DRP have erred in not appreciating that working capital adjustment takes into account the difference in working capital intensities of the comparable companies vis-a-vis the appellant which inevitably considers f'e impact of receivables and payables arising from main service transaction

6. Without prejudice, that the AO/DRP erred on facts and in law in incorrectly allowing credit of TDS of Rs 11,87,62,498 as against the credit of Rs.15,01,53,517 claimed by the appellant.

7. Without prejudice, that the AO/DRP erred on facts and in law in charging interest of Rs.1,00,45,784 under section 234A of the Act.

The assessing officer has erred in law and on facts, in levying interest under sections 234A and 234B of the Act."

102. The Ground of appeal Nos.1 & 1.1 raised by the assessee are general in nature and do not require any adjudication. Hence, the same are dismissed.

103. The Ground of appeal Nos. 2 to 2.6 raised by the assessee is against the disallowance of depreciation on goodwill. We have already adjudicated this issue in paras above while deciding Ground of appeal Nos.5 to 5.1 in Assessment Year 2010-11 and following the same parity of reasoning, we allow Ground of appeal Nos. 2 to 2.6 raised by the assessee.

104. The issue raised in Ground of appeal Nos. 4 to 4.6 is against the disallowance of ESOP expenses of Rs.6.58 crores.

105. Briefly in the facts of the issue raised, the assessee had claimed sum of Rs. 6.58 crores as deduction on account of reimbursement of ESOP expenses to the parent company. The assessee was asked to provide the details of tax deducted at source and proof of deposit of the same. The assessee in reply pointed out that the said amount was paid towards ESOP, on which no tax was deducted. The Assessing Officer show-caused the assessee to explain why the deduction on account of salary may not be disallowed, since it was not an allowable expenditure. The explanation of the assessee in this regard was as under:-

> *I. "ESOP expense represents revenue cost paid by the assessee to its parent company in relation to the award of shares to its employees. Employees covered under the Restricted Stock Units and stock options have been granted the award, which entitles them to receive shares of Aricents (the ultimate holding company of assessee company) after completion of the vesting period.*
>
> *II. It is a mere reimbursement which the assessee compensated the parent company for granting the stock options or RSU to the assessee's employees.*
>
> *III. It is an alternative to direct incentive in cash to the employees and is intended for achieving increased level of participation and retention.*
>
> *IV. It is an expenditure incurred to compensate employees in lieu of services rendered.*
>
> *V. It is a perquisite.*
>
> *VI. It is a deductible business expenditure u/s 37(1)."*

106. The Assessing Officer on the other hand did not allow the claim of the assessee alleging as under:-

> *(a) "Employees compensation expense claimed by the appellant was not allowable under section 37 of the Act since the same was not incurred wholly and exclusively for the purpose of the business of the appellant company.*
>
> *(b) Expenditure claimed did not represent a crystallized liability and being without any objective evidence for justification, the same was not allowable as deduction.*
>
> *(c) ESOP is a part of salary and since the appellant did not deduct any tax at source on payment to the group company, the amount claimed was disallowable under section 40(a) of the Act."*

107. The Assessing Officer thus disallowed the said expenditure in the hands of the assessee, which disallowance was confirmed by the DRP and by the Assessing Officer in the final assessment order.

108. The assessee is in appeal against the order of the Assessing Officer.

109. It was pointed out by the Ld.AR for the assessee that the fair market value of the shares was USD 0.77 dollars per share and options were exercised at USD 0.01 per shares. The difference was reimbursed to the AE in Cayman Island. Since the liability accrued /crystallized during the year and as the assessee was following mercantile system of accounting then the same is to be allowed as a

deduction u/s 37(1) of the Act. In this regard reliance was placed on the following decisions:-

[i] CIT vs M/s PVP Ventures Ltd. 211 Taxman 554 (Madras High Court);

[ii] CIT vs Lemon Tree Hotels Ltd. 104 taxmann.com 26 (Delhi High Court); and

[iii] Biocon Limited vs DCIT 155 TTJ 649 (Banglore) (Special Bench)

110. It was also pointed out that the Assessing Officer has placed reliance on the decision of Special Bench but u/s 192 r.w.s 17(2), when the option is exercised by the employee, then tax is to be deducted at source.

111. The Ld.DR for the Revenue placed reliance on the order of the Assessing Officer and DRP with special reference to page 24 of the order of the DRP.

112. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is with regard to claim of the expenses on account of reimbursement paid to the parent company towards ESOP for granting stock auctions to the assessee's employees. Share incentive plan for the employees of Aricent Group was floated and under the scheme, as part of the employee compensation measure, an option to purchase the shares after the completion of the vesting period was granted to the employees of the

company at a discounted price to the fair market value of the share. The difference between the fair market value of the shares and the amount paid by the employee on actual exercise of option represented employee compensation expenses. Since the option was granted to the employees during the relevant assessment year and assessee reimbursed the said amount to the group company, as the liability had accrued/crystallized and the same was recognized in the year itself as the assessee was following mercantile system of accounting. The aforesaid expense was claimed as deduction u/s 37(1) of the Act. It may be pointed out herein itself that the aforesaid payment to the Aricent Cayman has been accepted by the TPO to be at arms length.

113. We hold that the aforesaid payment under the ESOP scheme wherein the reimbursement was paid to the parent company, towards ESOP for granting stock options to assessee's employees is in the nature of employees compensation and is deductible as the expenditure incurred was wholly and exclusively for the purposes of business.

114. We further find that the issue stands covered by the decision of Hon'ble Madras High Court in CIT vs M/s PVP Ventures Ltd. (supra) wherein it was held that the amount of difference between the market value of the shares issued under Employees Stock Option Scheme and the value at which they were allotted to the employees, which was

debited to the P&L account in accordance with SEBI Guidelines, is an ascertained liability, and thus, allowable as revenue expenditure under section 37(1) of the Act.

115. The said proposition has been applied by the Hon'ble High Court in CIT vs Lemon Tree Hotels Ltd. (supra) and the claim of ESOP expenditure has been allowed as expenditure u/s 37 of the Act.

116. Further, the Special Bench in Biocon Ltd. vs DCIT (supra) held that discount on issue of ESOP, i.e. the difference between the market price of shares on date of exercise was deductible as business expenditure, since the same represents consideration/compensation for services rendered by employees. The Special Bench observed that the company incurs obligation of issuing shares at a discounted price on a future date in lieu of services rendered by the employees, which is allowable as deduction under section 37(1) of the Act. The Special Bench further held that the said discount was an ascertained liability, since the employer incurred obligation to compensate the employees over the vesting period, notwithstanding the fact that the exact amount of discount which is quantified only at the time of exercising the options.

117. Following the same parity of reasoning, we hold that the said expenses are allowable as a business expenditure in the hands of the assessee.

118. Now coming to the second aspect of the case that whether aforesaid payment requires tax deduction or not. The requirement to deduct tax would arise when the employee exercises the option granted under ESOP and it would be treated as perquisite in the hands of the employee on actual allocation/transfer of such shares, which is provided u/s 17(2)(vi) of the Act. Further, even the provision of section 192 of the Act mandate the deduction of tax at source on actual payment which is allotment of shares in the case of ESOP and not prior to that. Hence, there was no requirement to deduct tax at source by the assessee while reimbursing the amount to its AE during the year under consideration. Accordingly, we direct the Assessing Officer to allow the said expense totaling to Rs.6.58 crores. Ground of appeal Nos. 4 to 4.6 are thus allowed.

119. The issue raised in Ground of appeal No.5 by the assessee is against the transfer pricing adjustment of Rs.3.90 crores on account of interest on receivables. The said issue is similar to Ground of appeal Nos. 4 to 4.6 of Assessment Year 201-111. Following the same parity of reasoning, we delete the transfer pricing adjustment and allow the claim of the assessee. Ground of appeal No.5 raised by the assessee in this appeal is thus allowed.

120. The issue raised in Ground of appeal No.6 is against incorrectly allowing credit of TDS. The Assessing Officer is directed to verify the

claim of the assessee after allowing reasonable opportunity of hearing to assessee. Hence, Ground of appeal No.6 raised by the assessee is allowed.

121. The last issue raised in Ground of appeal No.7 is against the charging of interest u/s 234A of the Act. The Ld.AR for the assessee pointed out that the due date of filing of income was extended to 30.11.2014 and the assessee had filed the return of income on 29.11.2014. Hence, no interest is chargeable u/s 234A of the Act. We find merit in the plea of the assessee and direct the Assessing Officer to verify the claim of the assessee in this regard and decide the issue in accordance with law after allowing opportunity of hearing to the assessee. Ground of appeal No.7 raised by the assessee is thus allowed.

122. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29th day of November, 2019.

Sd/- **Sd/-**

(PRASHANT MAHARISHI) **(SUSHMA CHOWLA)**
लेखा सदस्य/ACCOUNTANT MEMBER **न्यायिक सदस्य/JUDICIAL MEMBER**

दिल्ली / दिनांक Dated : 29th November, 2019.
** Amit Kumar **

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण, **दिल्ली**
Assistant Registrar, ITAT, Delhi