

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

<b>IT(TP)A No. / C.O. No. &amp; Asst. Year</b>	<b>Appellant</b>	<b>Respondent</b>
77/Bang/2015 2010-11	Dy. Commissioner of Income Tax, Circle 3(1)(2), Bangalore.	M/s. Gokaldas Images Pvt. Ltd., 7 & 12, Indl. Suburb, 2 <sup>nd</sup> Stage, Yeshwanthpur, Bangalore-560 022 PAN AAACG6637Q
C.O. No.82/Bang/2015 (In IT(TP)A No.77/Bang/2015)	M/s. Gokaldas Images Pvt. Ltd., 7 & 12, Indl. Suburb, 2 <sup>nd</sup> Stage, Yeshwanthpur, Bangalore-560 022	Dy. Commissioner of Income Tax, Circle 3(1)(2), Bangalore.
439/Bang/2016 2011-12	-do-	-do-
582/Bang/2016 2011-12	Dy. Commissioner of Income Tax, Circle 3(1)(2), Bangalore.	M/s. Gokaldas Images Pvt. Ltd., 7 & 12, Indl. Suburb, 2 <sup>nd</sup> Stage, Yeshwanthpur, Bangalore-560 022
1502/Bang/2014 2009-10	M/s. Gokaldas Images Pvt. Ltd., 7 & 12, Indl. Suburb, 2 <sup>nd</sup> Stage, Yeshwanthpur, Bangalore-560 022	Dy. Commissioner of Income Tax, Circle 11(3), Bangalore.
1557/Bang/2014 2009-10	Dy. Commissioner of Income Tax, Circle 3(1)(2), Bangalore.	M/s. Gokaldas Images Pvt. Ltd., 7 & 12, Indl. Suburb, 2 <sup>nd</sup> Stage, Yeshwanthpur, Bangalore-560 022

Assessee By:	Shri Sathyanarayana Murthi, C.A.
Revenue By:	Ms. Neera Malhotra, CIT (D.R)

Date of Hearing :	27.01.2020
Date of Pronouncement :	05.02.2020

## **ORDER**

### **PER BENCH :**

These are the Cross appeals filed by the Assessee and Revenue against the order of CIT (Appeals) and Order/sec143 (3) r w s 144C (13) of the Act. And C.O. in revenue appeal by the assessee. Since the issues in these appeals are common and identical, hence, they are clubbed and heard and common consolidated order is passed. For the sake of convenience, we shall take up the Assessee appeal in ITA No.1502/Bang/2014 for the Assessment Year 2009-10 and facts narrated therein.

2. The assessee has raised the following grounds of appeal :

1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in confirming interest disallowance on the ground that borrowed fund were given as advance to sister companies. The assessee reiterates that advances made to sister companies were for business purposes and not necessarily out of any specific borrowings. Therefore, charging notional interest as indirect interest debited by the assessee on these business advances is not justified and needs to be deleted.
2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in not appreciating the that the advance amount of Rs.20,19,58,023/- given to Gokaldas Images Infrastructure Pvt Ltd is reimbursement of expenses and due to commercial expediency.

3. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in not appreciating the contentions of the company that the amounts due from Hinduja Realtors Pvt Ltd of Rs.85,87,05910/- were on account of business transactions and advances made due to commercial expediency. Further, having given a finding that the amount of advance increased by Rs.31,27,01,229/- has been directed to recalculate the interest on Rs.51,46,59,252/- [Refer paragraph 4.6 of the order of the Commissioner of Income Tax (Appeals)]

Under the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has not adjudicated on grounds no.4, 5, 6 7 and 8 which are reiterated as under:

4. On the facts and circumstances of the case, the learned Assessing Officer erred in not setting off of brought forward losses and allowances against income determined by him.
5. On the facts and circumstances of the case, the learned Assessing Officer failed to quantify the position of the carry forward losses and allowances.
6. On the facts and circumstances of the case and without prejudice to the above contention and without admitting any disallowance the learned Assessing Officer erred in not considering the correct amount of allowable expenses and inadmissible expenses while computing the total Income as per the assessment order. The comparative table is given below

As per the assessing officer:

PARTICULARS	EOU	EOU	NON EOU	TOTAL
Net Unit wise profit	7,45,07,014	7,04,07,979	(6,86,68,832)	7,62,46,161
Add: Inadmissible Expenses	2,66,71,680	2,04,55,355	4,49,40,845	9,20,67,880
Less: Allowable expenses	19,88,53,490	15,25,07,038	33,50,61,250	68,64,21,778
			11,09,94,320	11,09,94,320
Total	(9,76,74,796)	(6,16,43,704)	(46,97,83,557)	(62,91,02,057)
Add: interest disallowance			10,18,23,738	10,18,23,738
Total	(9,76,74,796)	(6,16,43,704)	(36,79,59,819)	(52,72,78,319)

## As per the assessee

PARTICULARS	EOU	EOU	NON EOU	TOTAL
Net Unit wise profit	7,45,07,014	7,04,07,979	(6,86,68,832)	7,62,46,161
Add:				
Inadmissible Expenses	37,44,540	73,71,545	9,20,67,890	10,31,83,975
Less: Allowable expenses	75,64,495	52,08,344	68,64,21,779	69,91,94,618
			11,09,94,321	11,09,94,321
Total	7,06,87,059	7,25,71,180	(77,40,17,042)	(63,07,58,803)
Add: interest disallowance			10,18,23,738	10,18,23,738
Total	7,06,87,059	7,25,71,180	(67,21,93,304)	(52,89,35,065)

7. On the facts and circumstances of the case, the learned Assessing Officer erred in not giving the credit for tax deducted at source of Rs. 6,20,622/- i.e TDS claimed as per return of Income filed Rs. 7,12,375/- minus Rs. 91,753/- credit given as per assessment order.
8. The learned Assessing Officer erred in initiating penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961

3. The Brief facts of the case are that the assessee is in the business of manufacture and export of readymade garments, and filed the Return of Income for the Assessment Year 2009-10 on 30.09.2009 with net loss of Rs.81,72,35,289. Subsequently, the case was selected for scrutiny and Notice under Section 143(2) of the Act was issued.

4. The learned Authorized Representative appeared from time to time and submitted the information before the authorities. The Assessing Officer found that there are international transactions which are exceeding the limit; therefore the matter was referred to the Transfer Pricing Officer (TPO). Whereas TPO has

passed the order dt.23.01.2013 and not suggested any Transfer Pricing Adjustment under Section 92CA of the Act. The Assessing Officer on perusal of the Balance Sheet as on 31.03.2009 found that the assessee has made advances to the sister concerns i. Gokaldas Images Infrastructure Pvt. Ltd. of Rs.20,19,58,023 and ii. Hinduja Realtors Pvt. Ltd. of Rs.85,87,05,910. The assessee has submitted the details of interest expenditure and explained the reasons for the advances to the sister concerns on commercial expediency and surplus funds available to the assessee. The Assessing Officer dealt on the issues in respect of the advances and on the claim of deduction under Section 10B of the Act. Whereas Ao is of the opinion that the assessee has diverted funds to the sister concerns without charging any interest over a period. Therefore the Assessing Officer worked out the interest disallowance @ 12% p.a on the 80% of the amount advanced Rs.84,85,31,146 being Rs.10,18,23,738 and disallowance under Section 10B of the Act on the adjustment of profits and Assessed the total income of Rs.15,77,21,683 and passed the order under Section 143(3) r.w.s. 92C of the Act dt.11.03.2013. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). In the Appellate Proceedings the CIT(Appeals) considered the grounds of appeal and findings of the Assessing Officer, and dealt on the financial statements of earlier years in respect of advances to the sister concerns and observed that the assessee has not furnished the details of advances and justification of commercial expediency. Hence the CIT (Appeals) directed the Assessing Officer to recalculate interest on

incremental advances made to the Gokaldas Images Infrastructure Pvt. Ltd. and Hinduja Realtors Pvt. Ltd. Further in respect of allocation of expenses, the CIT(Appeals) has directed the Assessing Officer to rework the disallowance on the rule of consistency. Whereas for setoff of profit of EOU Units, the CIT(Appeals) relied on the Hon'ble jurisdictional High Court decision of CIT Vs. Yokogawa India Ltd 341 ITR 385 (Kar) and directed the Assessing Officer to recompute the eligible deduction under Section 10B of the Act and partly allowed the appeal of the assessee. Aggrieved of the order of CIT(Appeals), the assessee has filed an appeal with the Tribunal.

5. At the time of hearing, the learned Authorized Representative submitted that the CIT(Appeals) has erred in directing the Assessing Officer to recompute the interest, irrespective of the fact that the advances were provided to sister concerns for business activities on commercial expediency. Further the advances are out of surplus funds available with the assessee and supported his arguments with the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 430 (Bom) , and the presumption that, advances are made out of surplus funds. The Ld. AR also relied on the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Golf View Homes Limited 394 ITR 540 (Kar) for advances provided to the sister concerns on commercial expediency. And in assessee own case, the co-ordinate bench of this Tribunal for the Assessment Year 2008-09 dealt on this issue. Further the Ld. AR submitted that the Ground Nos.4,

5, 6, 7 & 8 are in respect of the grounds of appeal raised before the CIT(Appeals) which were not adjudicated by the CIT(Appeals) and prayed for allowing the appeal. Contra, the learned Departmental Representative supported the orders of the Assessing Officer and referred to the facts dealt by the Assessing Officer at page 5 Para 8 of the assessment order and relied on the CIT(Appeals) order.

6. We heard the rival contentions and perused the material on record. On the first disputed issue of disallowance of interest by the AO, the learned Authorized Representative submitted that the CIT(Appeals) has erred in directing the Assessing Officer to rework the interest disallowance overlooking the facts that the advances made by the assessee to sister concerns are out of surplus funds available with the assessee, and no borrowed funds were utilized. Further there is also reimbursement of expenses on commercial expediency of business transactions. The Ld. AR referred to the order of CIT(Appeals) at paras 4.5 and 4.6 where the CIT(Appeals) has considered the submissions, findings of the AO and has directed the Assessing Officer to recalculate interest on advances considering the incremental increase in the current year. we found the co-ordinate bench of this Tribunal in assessee own case in ITA No.667/Bang/2013 and C.O. No.97/Bang/2013 dt.26.09.2014 for the Assessment Year 2008-09 (Gokaldas Images Pvt. Ltd. Vs. Addl. CIT) has dealt on the disputed issue at page 12 para 11(a) which is as under :

a) Gokaldas Images Infrastructure P. Ltd., (GIPL) -  
Rs.2,01,77,685/- :

The claim of the assessee was that the sum in question was paid not as a loan but as reimbursement of expenses incurred by GIPL for identification of property for development of textile SEZ. It was the case of the assessee that GIPL was appointed to identify and acquire land to an extent of 250 acres for setting up a textile SEZ. It is seen that this claim of the assessee is not supported by any evidence ~~What~~ ever as to what was the expenses incurred by GIPL which was ~~claim~~ to be reimbursed by the assessee, is also not given. The terms and conditions of appointment of GIPL for identifying and acquiring

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land has also not been filed. In these circumstances, we are of the view that the conclusions drawn by the CIT (A) do not call for any interference. At this stage, we may also clarify that the assessee does not dispute the fact that all the loans in question were given out of borrowed funds and not own funds.

We find the Ld AR relied on judicial decision of Cit vs. Reliance Utilities and Power Ltd. (supra) and Cit Vs Golf View Homes Ltd (Supra).which are not applicable to the disputed issue, in view of findings of Coordinate Bench of tribunal that loans are given out of barrowed funds and not own funds, which could

not be controvert by Ld. AR even in the present year. Accordingly, we are not inclined to interfere with the findings of CIT(A) on the issue.

Whereas in respect of advances to Hinduja Realtors Pvt. Ltd., the Tribunal observed at pages 13 to 15 para 11(c) which is read as under :

**c) HRPL – Rs.54 crores :**

As far as the aforesaid loan is concerned, the plea of the assessee before the Assessing Officer was that the assessee was occupying the premises in the capacity of a tenant and it wanted the building to be customized as per the requirements of the assessee. The sum of Rs.54 crores was stated to be for the aforesaid purpose. Before the CIT (A), the assessee took a stand that out of the sum of Rs.54 crores, a sum of Rs.29.17 crores was damages payable by HRPL to the assessee for breach of contract and not a loan as presumed by the Assessing Officer. The assessee further submitted that a sum of Rs.24.60 crores was for carrying out renovations to the office premises of the assessee. It is thus seen that the stand taken by the assessee is contradictory. In any event, there is no material on record brought by the assessee to show that these were the real transactions. The CIT (A) in his order says that complete details submitted by the assessee with regard to the sum of Rs.29.17 crores were forwarded to the Assessing Officer for comments and the Assessing Officer has not given any adverse

comment in the remand report. The CIT (A)'s order is also silent about the nature of the contract between the assessee and HRPL and as to how the damages of Rs.29.17 crores arose. The terms of the agreement for carrying out improvements to the building for which a sum of Rs.24.6 crores was advanced by the assessee to HRPL have also not been brought on record. In these circumstances, we are of the ~~view~~ that the issue requires a fresh consideration by the Assessing ~~Officer~~ and therefore the order of the CIT (A) is set aside. The ~~assessee~~ is directed to file the required documents to substantiate its case before the Assessing Officer. The Assessing Officer is directed to consider the same and decide the issue in accordance with law after affording the assessee an opportunity of being heard.

We, follow the judicial precedence and observations of the Tribunal, which are identical to the present case on hand, and restore the disputed issue to the file of the Assessing Officer for fresh consideration on the similar directions to decide as per provisions of law and a provide adequate opportunity of hearing to the assessee and allow the grounds of appeal of assessee for statistical purposes.

7. Further the Ld. AR submitted that the CIT(Appeals) has not adjudicated, the Grounds of appeal nos.4 to 8 raised before the authority. We found CIT(Appeals) has referred the grounds of appeal in his order at pages 3 & 4 but there is no finding or observations of the appellate authority. Accordingly, we restore the

grounds of appeal, to the file of CIT(Appeals) to give appropriate findings and pass a speaking order, and allow the grounds of appeal for statistical purposes.

8. In the result, the assessee appeal is partly allowed for statistical purposes.

Now we shall take up Revenue's appeal in ITA No.1557/Bang/2014.

9. The Revenue has raised the following grounds of appeal as under :

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. On the facts and in the circumstances of the case the learned CIT(A) erred in holding that the interest disallowance is to be calculated on a sum of Rs 51,46,59,252 whereas the AO had calculated the interest on Rs 84,85,31,146, it being the average amount of loan advanced by the assessee to its sister concern without charging any interest despite the fact that the assessee was not able to prove the commercial expediency for the same and the loan bearing funds were diverted by the assessee by these transactions with sister concerns.
3. On the facts and in the circumstances of the case the learned CIT(A) erred in law in directing the AO to rework the disallowance on the issue of allocation of common expenses between EOU units and non EOU units, by placing reliance on the order of CIT(A) in the case of assessee for AY 2008-09, which has not been accepted by the department and has not become final, without appreciating the fact that indirect common expenses have to be apportioned among all the units in proportion to the turnover as rightly done by the AO.

4. On the facts and in the circumstances of the case the learned CIT(A) erred in directing the AO to compute deduction u/s 10B without setting off of losses (depreciation/business) pertaining to non 10B units against the profit of 10B units by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Yokogawa India Ltd., but without appreciating the fact that deduction u/s 10B has to be allowed from the total income of the assessee, and as per Section 2(45) of the IT Act, the total income should be computed from various sources after set off of losses from one source against income from other sources under the same head of income in terms of Section 70(1).
  5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
  6. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.
10. At the time of hearing, the learned Departmental Representative submitted that the Ground No.1 is general in nature and Ground No.2 is in respect of the observations of the CIT (Appeals) on calculating the interest on Advances. Whereas the Ld.AR submitted that the CIT (Appeals) has dealt on the issue and has directed the Assessing Officer to recalculate the interest disallowance on advances at para 4.6 of the order. We found the assessee in ITA No.1502/BNG/2014 in above paragraphs could not substantiate with evidence on commercial expediency of advancing the loan. We relied on assessee own case, for the Asst. Year 2008-09 and restored the matter to the file of Assessing officer with the directions to rework the interest calculations on advances. Accordingly, we

consider it appropriate to restore the disputed issues in grounds of appeal raised by the revenue, to the file of Assessing officer as the issues are inter-related and allow the ground of appeal of revenue for statistical purposes.

11. On the Ground Nos.3 & 4, the learned Departmental Representative submitted that the CIT (Appeals) was not correct in directing the Assessing Officer to compute, deduction under Section 10B of the Act without setting off of the loss, depreciation / Business pertaining to non-10B Units placing reliance on the decision of jurisdictional High Court in the case of CIT Vs. Yokogawa (supra). Whereas The Ld. AR supported the order of CIT (Appeals) on this ground of appeal.

12. We heard the rival submissions and perused the material on record. We found that the CIT (Appeals) has relied on the jurisdictional High Court decision which was confirmed by the Hon'ble Supreme Court in Civil Appeal No.8498/2013. The learned Departmental Representative could not controvert the observations of the CIT (Appeals) with cogent evidence. Accordingly, we are not inclined to interfere with the order of CIT (A) on this disputed issue and confirm the same and dismiss the grounds of appeal of the Revenue.

13. In the result, the Revenue's appeal is partly allowed for statistical purposes.

14. Now we shall take up the Revenue's appeal in IT(TP)A No.77/Bang/2015 for the Asst. Year 2010-11 and C.O. of the assessee in ITA No.82/Bang/2015.

15. The Revenue has raised the following grounds of appeal :

1. The directions of the Dispute Resolution Panel are opposed to law and facts of the case.
2. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing the AO to compute deduction u/s 10B without setting off of losses (depreciation/business) pertaining to non 10B units against the profit of 10B units by placing reliance on the decision of Hon'ble High Court of Karnataka in the case of M/s Yokogawa India Ltd., but without appreciating the fact that deduction u/s 10B has to be allowed from the total income of the assessee, and as per Section 2(45) of the IT Act, the total income should be computed from various sources after set off of losses from one source against income from other sources under the same head of income in terms of Section 70(1).
3. On the facts and in the circumstances of the case the Dispute Resolution Panel erred in directing the TPO/AO to adopt the Cost Plus Method for determining the ALP and the TP document of the assessee be accepted as in earlier years without appreciating the fact that the TPO has given detailed reasoning for rejecting the Cost Plus Method adopted by the assessee for determining ALP.
4. For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.
5. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.

16. At the time of hearing, the learned Departmental Representative argued Ground No.2 is in respect of claim of deduction under Section 10B of the Act. We

have already dealt on this issue for the Asst. Year 2009-10 in Revenue's appeal ITA No.1557/Bang/2014 and the same decision shall apply. The learned Departmental Representative could not controvert the observations of the DRP with cogent evidence. Accordingly, we are not inclined to interfere with the finding of the DRP on this disputed issue and confirm the same and dismiss the grounds of appeal of the Revenue.

17. In Revenue's appeal Ground Nos.3 & 4 are in respect of directions of the DRP to the TPO/Assessing Officer .

18. The learned Departmental Representative submitted that the DRP has erred in its observations and directions to TPO/AO on no transfer pricing adjustment. We found that DRP at page 3 considering the objections of the assessee in Transfer Pricing has dealt on the issue in detail on Transfer Pricing Adjustment at page 3 and 4 of the order which is read as under :

Having heard the assessee, we find that there is no difference in terms of functions, assets and risks relating to the manufacturing and export of garments by the assessee to the AE as also non AE. GI, Inc. is the only owned subsidiary of the assessee and the goods have been sold at prices fixed between the parties based on the orders specifications. We have also noted that there is no significant difference in terms of margins obtained from transactions with AE viz-e-vis non AEs located in similar geography in USA, Europe and Asia. We therefore, of the considered view that TNM method is not an appropriate method to determine the arm's length price. The Internal CUP (comparable uncontrolled price) is the most appropriate method which shows that the sales to AEs are at arm's length price when compares with sales made to non-AEs. We also have noted that the TPO has not given any factual differences with regard to acceptance of assessee's TP documentation in earlier years, and justification for adopting TNM method. In view of the above we accept the objection of the assessee and hold that no TP adjustment is called for in this case.

We found the learned Departmental Representative could not controvert the observations of the DRP and relied on the TPO order. Accordingly, we do not find merits in the submissions and confirm the observations of the DRP and dismiss these grounds of appeal of revenue.

19. The assessee has filed C.O. No.82/Bang/2015 in support of the DRP. Since the Revenue appeal is dismissed, C.O. is infructuous and dismissed

. In the result, the Revenue appeal and C.O. of the assessee are dismissed.

20. For the Asst. Year 2011-12 in ITA 439/Bang/2016, the assessee has filed grounds of appeal as under :

*“On the facts and circumstances of the case, the learned Assessing Officer erred in disallowing notional interest of Rs.14,21,84,775 on the*

*receivable amount outstanding from Gokaldas Images Infrastructure Pvt. Ltd. on the ground that the same is capital in nature.”*

21. The learned Authorized Representative has made submissions in respect of disallowance of interest and learned Departmental Representative has supported the orders of the DRP. We found that this issue on usage of funds is dealt in assessee own case for the Asst. Year 2009-10 in ITA No.1502/Bang/2014 where the matter was restored to the file of Assessing Officer for fresh consideration. Accordingly, we restore the disputed issue to the file of the Assessing Officer on the similar directions for fresh consideration and decide as per provisions of law and a provide adequate opportunity of hearing to the assessee and allow the grounds of appeal of assessee for statistical purposes. .
22. The revenue has filed appeal in IT(TP)A No.582/Bang/2016, the grounds of appeal raised by Revenue are as under :

- 1 The directions of the Dispute Resolution Panel are opposed to law and facts of the case
- 2 .Whether the Hon'ble DRP was right in directing the TPO to adopt Cost Plus Method.
- 3.**Whether the Hon'ble DRP was right in stating that the taxpayer's TP document should be accepted, as it was accepted in the earlier years without any adjustment.**
- 4.For these and other grounds that may be urged at the time of hearing, it is prayed that the directions of the Dispute Resolution Panel in so far as it relates to the above grounds may be reversed.
- 5.The appellant craves leave to add, alter, amend and /or delete any of the grounds mentioned above.

23. At the time of hearing, the learned Departmental Representative has submitted that DRP has erred on observations and adopting of assessee objections

for no Transfer Pricing Adjustment. We found the DRP in order at pages 2 & 3 has held as under :

**Having heard the submissions**, we find that similar issue was also considered by the DRP in respect of the previous year (FY2009-10) and after careful examination of the issue, the DRP has given its findings as under:

“there is no difference in terms of functions, assets and risks relating to the manufacturing and export of garments by the assessee to the AE as also non AE. GI Inc. is the only owned subsidiary of the assessee and the goods have been sold

prices fixed between the parties based on the orders specifications. We have also noted that there is no significant difference in terms of margins obtained from transactions with AE vis-a-vis non AEs located in similar geography in USA, Europe and Asia. We, therefore, of the considered view that TNM method is not an appropriate method to determine the arm's length price. The Internal CUP (comparable uncontrolled price) is the most appropriate method which shows that the sales to AEs are at arm's length price when compares with sales made to non-AEs. We also have noted that the TPO has not given any factual differences with regard to acceptance of assessee's TP documentation in earlier years, and justification for adopting TNM method. **In view of the above, we accept the objection of the assessee and hold that no TP adjustment is called for in this case.”**

The facts and circumstances involved in the issue for the current year being identical, we find no reason to deviate from the stand taken by the DRP last year and accordingly, accept the objection of the assessee and direct the AO not to make any TP adjustment on this account.

24. We have already dealt on this issue for the Asst. Year 2010-11 in Revenue's appeal ITA No.77/Bang/2015 and the same decision shall apply. The learned Departmental Representative could not controvert the observations of the DRP

with cogent evidence. Accordingly, we are not inclined to interfere with the order of DRP on this disputed issue and confirm the same and dismiss the grounds of appeal of the Revenue.

25. In the result, the assessee's appeal is allowed for statistical purposes and revenue's appeal is dismissed.

26. Net Result, the IT(TP)A Nos.1502/Bang/2014 Assesse appeal & the IT(TP)A1557/Bang/2014 Revenue appeal for Asstyear2009-2010 are partly allowed for statistical purposes. IT(TP)A No.77/Bang/2015 revenue appeal and C.O. No.82/Bang/2015 Assessee Co for Asst Year2010-2011 are dismissed. For Asst year 2011-2012 IT(TP)A No. 439/Bang/2016 of Assessee is allowed for statistical purposes and IT(TP)A No. 582/Bang/2016 of Revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 05.02 .2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore